

STATE OF ALABAMA)
MONTGOMERY COUNTY)

MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING
between
THE ALABAMA FOREVER WILD LAND TRUST
and
THE _____ COUNTY COMMISSION

This Memorandum of Understanding ("Agreement") is made by and between the ALABAMA TRUST FUND FOR THE STATE OF ALABAMA (pursuant to Amendment 543 to the Alabama Constitution of 1901), acting by and through the ALABAMA FOREVER WILD LAND TRUST (Forever Wild), hereinafter called the "FWLT," through its Board of Trustees, and the _____ County Commission, hereinafter called the "COMMISSION." The FWLT and the COMMISSION are hereinafter collectively referred to as the "Parties." This Agreement is as follows:

I. PURPOSE AND SCOPE.

WHEREAS, Amendment 543 of the Alabama Constitution of 1901 creates the Forever Wild Land Trust (FWLT) for the purpose of identifying, acquiring, managing, protecting and preserving natural lands and waters that are of environmental or recreational importance for the benefit of future generations; and

WHEREAS, Amendment 543 declares that the promotion of proper balance between population growth, economic development, environmental protection, and ecological diversity is an express policy of the State of Alabama; and

WHEREAS, the Board of Trustees for the Alabama Forever Wild Land Trust pursuant to Amendment 543 governs the FWLT; and

WHEREAS, the Board of Trustees is authorized at its discretion to cooperate and contract with local governments to accomplish the purposes and goals of Amendment 543, including to effect payment of reasonable fees or expenses in connection with such cooperation efforts; and

WHEREAS, the Board of Trustees, as the fiduciary for the FWLT, wishes to cooperate with counties in which FWLT owns land by paying a reasonable fee to accomplish the purposes and goals of Amendment 543, including, but not limited to, the support, promotion, protection, and conservation of such lands within the county; and

WHEREAS, in its public meeting of May 5, 2022, the Board of Trustees considered whether to provide reasonable compensation to applicable counties, the calculation of which would be fair but would not create an undue administrative burden on FWLT; and

WHEREAS, such cooperative efforts between the FWLT and the county commissions for the counties in which the FWLT owns lands will ensure a proper balance between the need for continued economic development and the stewardship of the FWLT by facilitating the continued acquisition and conservation of land for future generations of Alabamians; and

WHEREAS, in its public meeting of May 5, 2022, the Board of Trustees voted and approved to make an annual payment from the FWLT available to local county governments where lands owned by FWLT are located;

NOW THEREFORE MUTUALLY AGREED, that in consideration of the mutual covenants and promises referred to herein, and in further consideration of the execution of the Agreement by the PARTIES hereto, and for all other good and valuable consideration, the receipt of which is specifically and directly acknowledged by both Parties, the FWLT and the COMMISSION agree as follows:

II. PARTIES' RESPONSIBILITIES.

1. The COMMISSION agrees to the following:

- (a) Adopt the Resolution attached hereto as Exhibit A approving this Agreement and authorizing its Chairperson or due designee to execute same.
- (b) Register as a vendor in the State of Alabama Accounting and Resource System (STAARS) prior to the submission of an invoice.
- (c) Timely submit to the Alabama Department of Conservation and Natural Resources (ADCNR):
 - i. The adopted Resolution.
 - ii. The executed Agreement.
 - iii. A completed Invoice for Payment in the amount assessed by the State Lands Division of ADCNR, the template for which is attached as Exhibit B hereto.
 - iv. A W-9 Form.
 - v. For its first payment (Fiscal Year 2023), the Commission must submit the documentation to ADCNR by December 30, 2022.
 - vi. For each subsequent fiscal year, the Commission must submit the documentation to ADCNR between October 1 and October 31.
- (d) Promptly mail or send via overnight courier all documents to the attention of:

Patricia P. McCurdy, State Lands Director
Alabama Department of Conservation and Natural Resources
64 North Union Street, Room 464
Montgomery, Alabama 36130
- (e) Utilize the funds received from the FWLT in accordance with applicable laws.

2. The FWLT agrees to:

- (a) Make an annual payment of \$1.60 per acre, beginning with FWLT's Fiscal Year 2023, to each county where FWLT owns land, upon the execution of this Agreement and receipt of required documentation specified herein.
- (b) Conduct and provide to the respective counties, through the ADCNR State Lands Division, an annual calculation of the acreage owned by the FWLT in each participating county as of August 1 of each year.
- (c) Timely provide the counties the calculation of annual amounts due as assessed by the State Lands Division pursuant to this Agreement to facilitate submission by the Commission of its annual invoice pursuant to Paragraph 1(c)iii.

III. TERM AND TERMINATION.

- 1. This Agreement shall become effective upon execution by both Parties and shall remain and continue in full force and effect until September 30, 2032 contingent upon the legal availability of funds, unless and until terminated in writing by either Party with advance written notice of 90 days to the other Party. This Agreement is subject to extension upon express written agreement of both Parties as allowed by law and subject to the continued legal availability of funds.

IV. GENERAL TERMS.

- 1. NON-ASSIGNABILITY: This Agreement may not be assigned or otherwise transferred without the express written consent of the Parties.
- 2. AUTHORITY TO EXECUTE: The COMMISSION warrants that its designee has the lawful authority to execute the Agreement.
- 3. AMENDMENT: This Agreement may be altered, supplemented, amended, or modified as necessary with the express written consent of the Parties.
- 4. AVAILABILITY OF FUNDS: It is expressly understood and mutually agreed that any commitment of funds herein shall be contingent upon the receipt and legal availability of funds under the program for which this Agreement is awarded.
- 5. NOT A DEBT OF THE STATE: It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this contract shall contravene any statute or constitutional provision or amendment, either now in effect or which may, during the course of this Agreement, be enacted, then that conflicting provision in the contract shall be deemed null and void.

6. ALTERNATIVE DISPUTE RESOLUTION: In the event of any dispute between the parties, senior officials of both Parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail, and the dispute involve the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For any and all other disputes arising under the terms of this contract which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of the Alabama State Bar.
7. IMMIGRATION: By signing this Agreement, the COMMISSION affirms, for the duration of the Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, the COMMISSION, if found to be in violation of this provision, shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.
8. COMPLIANCE WITH LAWS: The COMMISSION agrees to comply with all applicable laws, ordinances, regulations, and codes of the federal, state, and local governments in conducting activities pursuant to this Agreement.
9. RELEASE: The COMMISSION understands and agrees to release the FWLT, the Alabama Department of Conversation and Natural Resources, and related parties from liability and hereby waives its right to sue such entities regarding any and all claims resulting in economic loss or other damage as a result of or related in any way to the Agreement.
10. SEVERABILITY: Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement.
11. NO AGENCY: The COMMISSION understands and agrees it is not an agent of the State of Alabama by virtue of this Agreement.
12. RESERVATION OF RIGHTS: Except as otherwise expressly provided in this Agreement, the FWLT expressly reserves any and all rights and remedies available to it.
13. SUPERSEDES: The PARTIES represent that this Agreement supersedes all proposal, oral and written, all previous contracts, agreements, negotiations, and all other communications between the Parties with respect to the subject matter hereof.
14. BOYCOTT: In compliance with Act 2016-312, the Commission hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which the State can enjoy open trade.

15. NOT ENTITLED TO MERIT SYSTEM: Commission understands and agrees that it is not hereby entitled to any benefits of the Alabama State Merit System by virtue of this Agreement.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on this the _____ day of _____, 2022.

**ALABAMA TRUST FUND FOR THE STATE OF ALABAMA (PURSUANT AMENDMENT 543 TO THE ALABAMA CONSTITUTION OF 1901)
BY: ALABAMA FOREVER WILD LAND TRUST**

Christopher M. Blankenship, Chairman

**COUNTY COMMISSION:
BY: ITS CHAIRPERSON**

(signature)

_____, Chairperson

STATE OF ALABAMA)
MONTGOMERY COUNTY)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Christopher M. Blankenship, whose name as Chairman of the Forever Wild Land Trust Board of Trustees and Commissioner of the DEPARTMENT of Conservation and Natural Resources of the State of Alabama, is signed to the foregoing instrument and who is known to me, acknowledge before me on this day that, being informed of the contents of the within instrument, he, as such Chairman and Commissioner and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the _____ day of _____,
2022.

Notary Public

STATE OF ALABAMA)
_____ **COUNTY**)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that _____ whose name as _____ of _____ is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he/she in his/her capacity as such officer and with full authority executed the same voluntarily for and as the act of said entity on the day the same bears date.

Given under my hand and seal this the _____ day of _____, 2022.

Notary Public