

STATE OF ALABAMA        )

COUNTY OF BALDWIN     )

**AGREEMENT**

THIS AGREEMENT (“Agreement”) is entered into between ALABAMA COASTAL FOUNDATION, an Alabama non-profit corporation (hereinafter referred to as the “ACF”), and the BALDWIN COUNTY COMMISSION, the governing body of Baldwin County, Alabama (hereinafter referred to as “COMMISSION”), and is effective the date last executed below.

WHEREAS, the ACF is a non-partisan, Alabama non-profit organization, the mission of which is to improve and protect Alabama’s coastal environment through cooperation, education and participation; and

WHEREAS, the COMMISSION remains the honorable county governing body of Baldwin County, Alabama; and

WHEREAS, the COMMISSION recognizes that the purposes for which the ACF was organized helps to improve and protect Alabama’s coastal environment through cooperation, education and participation and, therefore, based upon the aforementioned benefits endowed upon the general public, the COMMISSION approved a one-time appropriation of Five Thousand Dollars and 00/100 (\$5,000.00), by and through its Baldwin County Fiscal Year 2020-2021 Budget, to pay the ACF funds specifically allocated towards the hiring of interns that will act as ambassadors to help educate the public about keeping the beach clean, filling any holes every evening, picking up trash and not using flashlights or flash photography when on the beach during nesting season; and

WHEREAS, the COMMISSION makes such one-time funding appropriation to the ACF respecting that the Supreme Court of the State of Alabama has ruled that Section 94 of the Constitution of Alabama 1901, as amended, is not violated when a public entity donates money or other thing of value in aid of a private individual or corporation if a public purpose is served. *Slawson v. Alabama Forestry Commission* 631 So. 2nd 953 (Ala. 1994).

NOW THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto, do AGREE as follows:

1.     The above recitals and statements are incorporated as part of this Agreement and shall have the effect and enforceability as all other provisions herein.
2.     The ACF shall continue to develop and carry out their various coastal programs benefits the general public.
3.     All ACF facilities, activities and services will be made available to the general public provided that the following conditions are met, to-wit: ACF facilities, activities and services must be utilized in accordance with ACF policies.
4.     The ACF shall have a nondiscriminatory policy and its facilities, activities and services will be available to all members of the general public regardless of race, age, sex, religion or disability.
5.     The COMMISSION will assist the ACF with a one-time funding appropriation of Five Thousand Dollars and 00/100 (\$5,000.00) to pay the ACF funds specifically allocated towards the hiring of interns that will act as ambassadors to help educate the public about keeping the beach clean, filling any holes every evening, picking up trash and not using flashlights or flash photography when on the beach during nesting season with said funding to benefit the general public.

6. The ACF expressly agrees not to use any of the one-time funding appropriation set forth at Section 5 of this Agreement outside the purposes provided at Section 5 of this Agreement and, furthermore, agrees not to use any of the one-time funding appropriation set forth at Section 5 of this Agreement to aid any private or individual benefit. It being expressly understood that the one-time funding appropriation set forth at Section 5 of this Agreement, as provided by the COMMISSION, be utilized, by the ACF, only toward the purposes set forth in this Agreement.
7. The ACF shall fully indemnify and hold the COMMISSION, its County Commissioners, departments, employees, supervisors, insurer, agents, representatives and attorneys (for purposes of this Section 7 referred to collectively as “COMMISSION”) completely harmless from any and all claims, demands, notices, violations, findings, actions or orders of whatsoever kind or character which may arise from, or which are in any way related to, the work done and duties or obligations performed by the ACF or the COMMISSION pursuant to this Agreement, including, without limitation, attorney fees and legal expenses and costs incurred as a result of the COMMISSION enforcing, defending or complying with this Agreement, or otherwise addressing or defending any actions or claims related in any way to this Agreement. This provision shall survive the expiration or termination of this Agreement.
8. This Agreement and the relationship created hereby does not in any manner create, imply or otherwise vest any authority in the ACF on behalf of the COMMISSION. Furthermore, this Agreement hereby expressly forbids the creation of an agency or any action that would create or imply that the ACF is an agent of the COMMISSION.
9. The ACF shall ensure that all materials publicizing or resulting from the funding appropriation as provided for by this Agreement shall contain an acknowledgment of the COMMISSION’s assistance with said acknowledgment of support made through the use of the following comparable footnote: “This activity was supported by the Baldwin County Commission.”
10. Notwithstanding anything written herein to the contrary, all commitments made herein by the COMMISSION are subject to the availability of funds. If at any time prior to the conveyance of the one-time funding appropriation the COMMISSION determines that the subject funds are not available, then the COMMISSION shall no longer be obligated or required to provide such one-time funding appropriation.
11. The ACF agrees, as a condition of receiving the funding appropriation referenced in this Agreement, to:
  - a. Supply to the COMMISSION, within 30 days from a written request to do so, all applicable data that is necessary for the COMMISSION to ensure the proper expenditure of the subject funding appropriation.
  - b. File with the COMMISSION no later than June 11, 2021, a written report of its activities for the preceding period which commenced on October 1, 2020, to ensure the proper expenditure of the subject funding appropriation.
12. This Agreement, as provided in the form of one (1) original instrument for the records of the ACF, and one (1) original instrument for the records of the COMMISSION, represents the entire terms and conditions of the Agreement between the COMMISSION and the ACF. It shall be necessary to account for only one (1) such instrument or counterpart in proving this Agreement.
13. This Agreement shall be in effect for a period of twelve (12) months, or in a shorter time as may be determined by the COMMISSION, commencing October 1, 2020, and expiring September 30, 2021, and may be amended only by written amendment executed by the COMMISSION and the ACF. The COMMISSION shall have the right to terminate this Agreement, with or without cause, by giving thirty (30) days

written notice to the ACF. Notwithstanding the aforementioned, the ACF acknowledges and agrees that all its obligations under this Agreement and the COMMISSION's right to enforce such obligations survive the expiration and / or termination of this Agreement.

- 14. This Agreement shall be deemed to have been made in the State of Alabama, and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder. The proper venue for any action arising hereunder or relating to the subject matter of this Agreement shall lie solely in Baldwin County, Alabama.
- 15. Should the COMMISSION employ an attorney or attorneys to enforce any of the terms and conditions hereof, the COMMISSION shall be entitled to recover from the ACF all reasonable costs, damages, and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.
- 16. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

IN WITNESS WHEREOF, the parties have affixed their hands and seals this date, as follows:

**BALDWIN COUNTY COMMISSION**

\_\_\_\_\_  
BILLIE JO UNDERWOOD  
As Its: Chairman  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
WAYNE DYESS  
County Administrator

STATE OF ALABAMA                    )  
COUNTY OF BALDWIN                )

I, the undersigned authority, a Notary Public, in and for Baldwin County, Alabama, and the State of Alabama, hereby certify that BILLIE JO UNDERWOOD, as Chairman of the Baldwin County Commission, and WAYNE DYESS, as County Administrator of the Baldwin County Commission, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me and on this day that, being informed of the contents of said instrument, they, as such Chairman and County Administrator of the Baldwin County Commission, and with full authority, executed the same voluntarily on the day the same bears date for and as an act of said Baldwin County Commission.

Given under my hand and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission expires: \_\_\_\_\_

**ALABAMA COASTAL FOUNDATION**  
**PO BOX 246**  
**Fairhope, AL 36533**

\_\_\_\_\_  
By:  
As Its: Chairman, Board of Directors  
Date: \_\_\_\_\_

STATE OF ALABAMA                    )  
COUNTY OF BALDWIN                )

I, the undersigned authority, a Notary Public, in and for Baldwin County, Alabama, and the State of Alabama, hereby certify that \_\_\_\_\_, as Chairman of the Board of Directors of the ALABAMA COASTAL FOUNDATION, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me and on this day that, being informed of the contents of said instrument, he/she, as such Chairman of the Board of Directors of the ALABAMA COASTAL FOUNDATION, and with full authority, executed the same voluntarily on the day the same bears date for and as an act of said ALABAMA COASTAL FOUNDATION.

GIVEN under my hand and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission expires: \_\_\_\_\_