

STATE OF ALABAMA )

COUNTY OF BALDWIN )

### **AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into between BALDWIN COUNTY HISTORIC DEVELOPMENT COMMISSION, an Alabama non-profit governmental agency organized pursuant to Act No. 80-497 [Acts of Alabama, Regular Session 1980, Vol. II, p. 769], as amended by Act No. 89-960 [Acts of Alabama, Regular Session 1989, Vol. 2. P. 1897.] (hereinafter referred to as the "BC HISTORIC DEVELOPMENT COMMISSION"), 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 BC HISTORIC DEVELOPMENT COMMISSION is a non-profit governmental agency organized pursuant to Act No. 80-497 [Acts of Alabama, Regular Session 1980, Vol. II, p. 769], as amended by Act No. 89-960 [Acts of Alabama, Regular Session 1989, Vol. 2. P. 1897.] the purpose of which is to preserve and protect buildings of historic and architectural value within county commission designated historic districts, maintain the distinctive character of said county commission designated historic districts, foster and encourage the preservation, restoration and utilization of buildings of historic and architectural value in county commission designated historic districts and develop and promote county commission designated historic districts as major tourist attractions of historic and economic value; and

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

WHEREAS, the COMMISSION recognizes the public purposes of the BC HISTORIC DEVELOPMENT COMMISSION pursuant to the authority set forth in Act No. 80-497, as amended by Act No. 89-960, and further, the COMMISSION recognizes that said BC HISTORIC DEVELOPMENT COMMISSION remains in need of financial assistance to accomplish the public purposes for which said BC HISTORIC DEVELOPMENT COMMISSION is organized; and

WHEREAS, in recognition of the aforementioned, the COMMISSION, by and through their Baldwin County Fiscal Year 2020-2021 Budget, approved a one-time funding appropriation of, Eleven Thousand Dollars and 00/100 (\$11,000.00) with One Thousand Dollars and 00/100 (\$1,000) appropriated to aid the BC HISTORIC DEVELOPMENT COMMISSION with administrative costs and with Ten Thousand Dollars and 00/100 (\$10,000) appropriated to the BC HISTORIC DEVELOPMENT COMMISSION specifically for the groundskeeping and maintenance of the Swift-Coles Historic Home property to continue its public purposes as enumerated at Act No. 80-497, as amended by Act No. 89-960, and as said local laws maybe further amended by the Legislature of Alabama, with said funding appropriation benefiting public historic preservation purposes for the citizens of Baldwin County, Alabama; and

WHEREAS, further, the COMMISSION makes such one-time funding appropriation to the BC HISTORIC DEVELOPMENT COMMISSION 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. 2d 953 (Ala. 1994).

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto AGREE as follows:

1. The above recitals and statements are incorporated as part of this Agreement and shall have the same effect and enforceability as all other provisions herein.
2. The BC HISTORIC DEVELOPMENT COMMISSION shall continue to accomplish its purposes as hereinabove set forth at paragraph one and as enumerated by Act No. 80-497, as amended by Act No. 89-960, and as said local laws may be further amended by the Legislature of Alabama.
3. All BC HISTORIC DEVELOPMENT COMMISSION facilities, services and activities shall be made available to the general public.
4. The BC HISTORIC DEVELOPMENT COMMISSION shall have a nondiscriminatory policy, and its facilities, services and activities shall be available to the general public regardless of race, age, sex, disability or religion.
5. The COMMISSION shall assist the BC HISTORIC DEVELOPMENT COMMISSION as follows:
  - a. A one-time funding appropriation of up to, but not to exceed, One Thousand Dollars and 00/100 (\$1,000.00) to aid the BC HISTORIC DEVELOPMENT COMMISSION with administrative costs in the continuance of its public purposes as enumerated at Act No. 80-497, as amended by Act No. 89-960, and as said local laws may be further amended by the Legislature of Alabama, which funding assistance shall benefit public historic preservation purposes for the citizens of Baldwin County, Alabama.
  - b. A one-time funding appropriation of Ten Thousand Dollars and 00/100 (\$10,000.00) to aid the BC HISTORIC DEVELOPMENT COMMISSION with groundskeeping and maintenance of the Swift-Coles Historic Home property in the continuance of its public purposes as enumerated at Act No. 80-497, as amended by Act No. 89-960, and as said local laws may be further amended by the Legislature of Alabama, which funding assistance shall benefit public historic preservation purposes for the citizens of Baldwin County, Alabama.
6. The BC HISTORIC DEVELOPMENT COMMISSION expressly agrees not to use any of the one-time funding appropriation provided for by this Agreement outside the purposes provided for by this Agreement and, furthermore, agrees not to use any of the one-time funding appropriation set forth by this Agreement to aid any private or individual benefit. It being expressly understood that the one-time funding appropriation set forth by this Agreement, as provided by the COMMISSION, be utilized, by the BC HISTORIC DEVELOPMENT COMMISSION, only toward the purpose provided by this Agreement.
7. This Agreement and the relationship created hereby does not in any manner create, imply or otherwise vest, any authority in the BC HISTORIC DEVELOPMENT COMMISSION 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 BC HISTORIC DEVELOPMENT COMMISSION is an agent of the COMMISSION.

8. To the fullest extent allowed by law, the BC HISTORIC DEVELOPMENT COMMISSION shall fully indemnify and hold the COMMISSION, its County Commissioners, departments, employees, supervisors, insurer, agents, representatives and attorneys (for purposes of this Section 8 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 BC HISTORIC DEVELOPMENT COMMISSION 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. The provisions of this Section 8 and the rights, duties and obligation set forth herein shall survive the expiration or termination of this Agreement.
9. The BC HISTORIC DEVELOPMENT COMMISSION 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 anytime 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 BC HISTORIC DEVELOPMENT COMMISSION 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 and a copy of an annual report that includes the appropriation period, to ensure the proper expenditure of the subject funding appropriation.
12. This Agreement, provided in the form as one (1) original instrument for the records of the BC HISTORIC DEVELOPMENT COMMISSION 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 BC HISTORIC DEVELOPMENT COMMISSION. 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, during the aforementioned period of twelve (12) months, only by written amendment executed by the COMMISSION and the BC HISTORIC DEVELOPMENT COMMISSION. The COMMISSION shall have the right to terminate this Agreement, with or without cause or reason, by giving thirty (30) days written notice to the BC HISTORIC DEVELOPMENT COMMISSION.
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 BC HISTORIC DEVELOPMENT COMMISSION 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, BALDWIN COUNTY, ALABAMA

My Commission expires: \_\_\_\_\_

**BALDWIN COUNTY HISTORIC DEVELOPMENT  
COMMISSION**

\_\_\_\_\_  
By:  
As Its: Chairman  
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 Baldwin County Historic Development Commission, whose name is signed to the foregoing instrument and who is known by me, acknowledged before me and on this day that, being informed of the contents of said instrument, she, as such Chairman of the Baldwin County Historic Development 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 Historic Development Commission.

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

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