

STATE OF ALABAMA        )

COUNTY OF BALDWIN     )

### **AGREEMENT**

THIS AGREEMENT (“Agreement”) is entered into between BALDWIN COUNTY SOIL AND WATER CONSERVATION DISTRICT, a governmental subdivision of the State of Alabama and public body corporate and politic organized in accordance with, and exercising those powers conferred by, Section 9-8-20 through Section 9-8-32 of the Code of Alabama (1975) (hereinafter referred to as the “BC SOIL AND WATER CONSERVATION DISTRICT”), 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 SOIL AND WATER CONSERVATION DISTRICT is a governmental subdivision of the State of Alabama and public body corporate and politic organized in accordance with, and exercising those powers conferred by, Section 9-8-20 through Section 9-8-32 of the Code of Alabama (1975); and

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

WHEREAS, the COMMISSION recognizes the public powers exercised by the BC SOIL AND WATER CONSERVATION DISTRICT as authorized at Section 9-8-25 of the Code of Alabama (1975) including the authority for the BC SOIL AND WATER CONSERVATION DISTRICT to cooperate or enter into agreements with any agency, governmental or otherwise, or any owner or occupier of lands within the BC SOIL AND WATER CONSERVATION DISTRICT in the carrying on of erosion control and prevention operations within the BC SOIL AND WATER CONSERVATION DISTRICT; and

WHEREAS, furthermore, in recognition of the aforementioned, the COMMISSION, by and through their Baldwin County Fiscal Year 2020-2021 Budget, approved a one-time total funding appropriation of Seventy-five Thousand Five Hundred Dollars and 00/100 (\$75,500.00) to aid the BC SOIL AND WATER CONSERVATION DISTRICT in the continuation of its public purposes in Baldwin County, Alabama, as enumerated at Section 9-8-20 through Section 9-8-32 of the Code of Alabama (1975), specifically, as funding assistance for the carrying on of erosion control and prevention operations within the BC SOIL AND WATER CONSERVATION DISTRICT, which includes the geographic limits of Baldwin County, Alabama, benefiting public soil and water conservation efforts in Baldwin County, Alabama; and

WHEREAS, further, the COMMISSION makes such one-time total funding appropriation to the BC SOIL AND WATER CONSERVATION DISTRICT 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 effect and enforceability as all other provisions herein.
2. The BC SOIL AND WATER CONSERVATION DISTRICT shall continue to carry on erosion control and prevention operations within the geographic limits of Baldwin County, Alabama, benefiting public soil and water conservation efforts in Baldwin County, Alabama.
3. All BC SOIL AND WATER CONSERVATION DISTRICT facilities, services and activities shall be made available to the general public.
4. The BC SOIL AND WATER CONSERVATION DISTRICT 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 SOIL AND WATER CONSERVATION DISTRICT by providing a one-time total funding appropriation of Seventy-five Thousand Five Hundred Dollars and 00/100 (\$75,500.00) to be used specifically as funding assistance for the carrying on of erosion control and prevention operations within the BC SOIL AND WATER CONSERVATION DISTRICT, which includes the geographic limits of Baldwin County, Alabama, benefiting public soil and water conservation efforts in Baldwin County, Alabama, and in the furtherance of its public purposes in Baldwin County, Alabama, as enumerated at Section 9-8-20 through Section 9-8-32 of the Code of Alabama (1975).
6. The BC SOIL AND WATER CONSERVATION DISTRICT expressly agrees not to use the one-time total 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 the one-time total 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 total funding appropriation set forth at Section 5 of this Agreement, as provided by the COMMISSION, be utilized, by the BC SOIL AND WATER CONSERVATION DISTRICT, in a manner consistent with 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 SOIL AND WATER CONSERVATION DISTRICT 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 SOIL AND WATER CONSERVATION DISTRICT is an agent of the COMMISSION.
8. To the fullest extent allowed by law, the BC SOIL AND WATER CONSERVATION DISTRICT 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 SOIL AND WATER CONSERVATION DISTRICT 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 SOIL AND WATER CONSERVATION DISTRICT 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 SOIL AND WATER CONSERVATION DISTRICT 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, a copy of an annual report that includes the appropriation period, and a copy of the most recently audited financial statements (audited financial statements must be from within the last two years, i.e. year 2019 or 2020, and should include an independent auditor's report, statement of financial position, statement of activities, statement of cash flows, and notes to the financial statements) 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 SOIL AND WATER CONSERVATION DISTRICT 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 SOIL AND WATER CONSERVATION DISTRICT. 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 SOIL AND WATER CONSERVATION DISTRICT. 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 SOIL AND WATER CONSERVATION DISTRICT.

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 SOIL AND WATER CONSERVATION DISTRICT 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: \_\_\_\_\_

**BALDWIN COUNTY SOIL AND WATER CONSERVATION  
DISTRICT  
207 Faulkner Drive  
Bay Minette, Alabama 36507**

\_\_\_\_\_  
FRANK TRIONE

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 FRANK TRIONE, as Chairman of the Baldwin County Soil and Water Conservation District, 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, he, as such Chairman of the Baldwin County Soil and Water Conservation District, and with full authority, executed the same voluntarily on the day the same bears date for and as an act of said Baldwin County Soil and Water Conservation District.

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

\_\_\_\_\_  
NOTARY PUBLIC

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