

STATE OF ALABAMA)

COUNTY OF BALDWIN)

AGREEMENT

THIS AGREEMENT is made and entered into by and between the Baldwin County Commission, the honorable county governing body of Baldwin County, Alabama, a political subdivision of the State of Alabama, hereinafter referred to as the "COMMISSION," and the Weeks Bay Foundation, Inc., a domestic non-profit corporation identified under Business Entity ID Number 067-900 in the Office of the Secretary of State of the State of Alabama, hereinafter referred to as the "FOUNDATION."

WITNESSETH:

WHEREAS, the FOUNDATION has requested the United States Fish and Wildlife Service appropriate funds ("APPROPRIATION") to assist with the development of a habitat management plan ("PLAN") for the restoration of the 136 acre (more or less) tract of land which is a part of The Meadows ("COUNTY PROPERTY") located at a wetland system adjacent to County Road 1 on the Baldwin County Eastern Shore, said 136 acres (more or less) tract and owned by the COMMISSION; and

WHEREAS, the COMMISSION has been approached by the FOUNDATION whereby the FOUNDATION has expressed an interest for it to complete the aforesaid PLAN which may be considered by the COMMISSION as a potential guide for future habitat management viability of the COUNTY PROPERTY; and

WHEREAS, Section 11-3-11 (a) (1) of the Code of Alabama 1975 provides, in pertinent part, that the Baldwin County Commission shall have authority to direct, control and maintain the property of the county as it may deem expedient according to law; and

WHEREAS, further, Section 6 of Act No. 239 (1931), as amended, provides, in pertinent part, that the Baldwin County Commission shall have the duty, power, jurisdiction, authority and privilege to direct and control the property of Baldwin County, as it may deem expedient according to law; NOW THEREFORE

IN CONSIDERATION of the aforesaid authority provided at Section 11-3-11 (a) (1) of the Code of Alabama 1975 and Section 6 of Act No. 239 (1931), as amended, and without limitation, and, furthermore, realizing the public benefits moving each to the other it is mutually agreed by and between the COMMISSION and the FOUNDATION that they shall work together with the completion of the PLAN in order to protect the COUNTY PROPERTY benefiting natural conservation purposes benefiting Baldwin County, Alabama, and it is AGREED as follows:

RECITALS

The above recitals and statements are incorporated as part of this Agreement, as if fully set forth herein.

SERVICES

The FOUNDATION will contract with a third party contractor (“CONTRACTOR”) for development of the PLAN. The FOUNDATION shall provide a draft copy of the PLAN to the COMMISSION prior to finalization or acceptance or approval by the FOUNDATION of the PLAN. Thereafter the COMMISSION may consider the PLAN as a potential guide for future habitat management viability of the COUNTY PROPERTY; however, in no case shall the COMMISSION be bound or required to accept or follow the PLAN.

RIGHT OF ENTRY

The COMMISSION is the owner of certain real COUNTY PROPERTY, more particularly described on the map attached hereto as Exhibit A. The FOUNDATION is desirous to enter the COUNTY PROPERTY in connection with its due diligence associated with completing the PLAN for the COUNTY PROPERTY and, in relation thereof, the FOUNDATION and COMMISSION stipulate as follows:

1. The COMMISSION approves for the FOUNDATION and its CONTRACTOR to enter upon the COUNTY PROPERTY for a period commencing on October 18, 2016, and expiring on September 30, 2017, for the purposes of making surveys, investigations, and site assessments (collectively known as “INSPECTIONS”) related to work of completing the PLAN
2. The FOUNDATION shall obtain general liability insurance, naming the COMMISSION as additional insured, in an amount not less than \$1,000,000.00, and proof of insurance shall be provided to the COMMISSION.
3. Upon completion of such INSPECTIONS, the FOUNDATION or its CONTRACTOR, as the case may be, shall at its expense, restore or repair or cause to be restored or repaired any damage or adverse effect to the COUNTY PROPERTY caused by or arising from the INSPECTIONS to restore the COUNTY PROPERTY to its former condition and remove all debris and other material brought onto the COUNTY PROPERTY by the FOUNDATION and/or its CONTRACTOR.
4. The FOUNDATION shall defend, indemnify and hold harmless the COMMISSION from and against any and all claims, demands, losses, expenses, damages, costs and liabilities suffered or incurred by the FOUNDATION and/or its CONTRACTOR as a result of any physical damage to the COUNTY PROPERTY or death or personal injury to any person caused by or attributable to the acts or omission of the FOUNDATION and/or its CONTRACTOR or employees, arising in connection with INSPECTIONS performed by or on behalf of the FOUNDATION.

TERM AND TERMINATION

This Agreement shall cover services provided by the FOUNDATION for a period commencing on October 18, 2016, and expiring on September 30, 2016, or until said Agreement is otherwise sooner terminated as herein provided. The FOUNDATION and the COMMISSION further agree that this Agreement may be terminated at any time by either party upon the issuance of a thirty (30) day written notice to the other of intent to terminate the same. In the event of termination by either party, the COMMISSION is not liable for any portion of the APPROPRIATION proceeds which the FOUNDATION is required to pay back, forfeit or reimburse pursuant to the United States Fish and Wildlife Service or any other entity.

COMPREHENSIVE INDEMNITY

The FOUNDATION hereby covenants with the COMMISSION that it shall fully indemnify and hold the COMMISSION, its Commissioners, departments, employees, supervisors, agents, representatives and attorneys 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 COMMISSION pursuant to this Agreement or services provided or performed by the FOUNDATION and/or its CONTRACTOR or its employees, 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.

NO THIRD PARTY BENEFICIARIES OR AGENCY

It is the intent of the parties of this Agreement that they be the only parties to the Agreement and to expressly exclude third party beneficiaries. Nonparties to the Agreement may not claim benefits under the Agreement. The creation of an agency is strictly prohibited, and the FOUNDATION is forbidden to act on behalf or bind the COMMISSION for any purpose or reason.

INDEPENDENT CONTRACTOR

It is agreed between the COMMISSION and the FOUNDATION that the FOUNDATION is an independent contractor. The FOUNDATION acknowledges that it is an independent contractor, and the FOUNDATION shall at all times remain as such in performing hereunder. The FOUNDATION is not an employee, servant, partner, or agent of the COMMISSION and has no authority, whether expressed or implied, to contract for or bind the COMMISSION in any manner. The parties agree that the FOUNDATION shall be solely responsible for and shall have full and unqualified control over developing and implementing its own means and methods, as it deems necessary and appropriate in performing hereunder, and that the COMMISSION's interests herein are expressly limited to the results of said services.

CHOICE OF LAW

This Agreement in all respects, including without limitation its formation, validity, construction, enforceability and available remedies, shall be governed by the laws of the State of Alabama, without regard to Alabama conflict of law principles.

AMENDMENT

This Agreement may be amended or modified only by the written consent and agreement of the parties to this Agreement at the time of such amendment.

WAIVER

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce every provision of this Agreement.

BINDING EFFECT

This Agreement shall inure to the benefit of, and shall be binding upon, each of the parties hereto and their respective successors and assigns.

ENTIRE AGREEMENT

This Agreement and the documents referred to in this Agreement constitute the entire agreement between the parties, and there are no other representations, conditions, covenants or agreements which shall be binding upon the parties.

RULE OF CONSTRUCTION

The parties hereto acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments hereto.

MISCELLANEOUS

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless context requires otherwise.

CAPTIONS

The captions used in connection with the sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement, or be used in interpreting the meanings and provisions of this Agreement.

REPRESENTATIONS AND WARRANTIES

The FOUNDATION represents and warrants that it has the authority to enter into this Agreement on the terms and conditions contained herein, and the COMMISSION represents and warrants that it has the authority to enter into this Agreement on the terms and conditions contained herein.

SEVERABILITY

In the event that any of the provisions, or portions thereof, of this Agreement shall be held void or unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

NUMBER OF ORIGINALS

There is only one original of this Agreement which shall be retained by the COMMISSION.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as the date of approval of the Chairman of the Baldwin County Commission.

**WEEKS BAY FOUNDATION, INC
POST OFFICE BOX 731
FAIRHOPE, ALABAMA 36533**

BY: _____ / _____
Yael Girard / DATE
AS ITS: EXECUTIVE DIRECTOR

STATE OF ALABAMA)

COUNTY OF BALDWIN)

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Yael Girard, as Executive Director of the Weeks Bay Foundation, Inc, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this date, that she executed the same voluntarily for and as an act of the Weeks Bay Foundation, Inc.

GIVEN under my hand and seal this the _____ day of _____, 2016.

Notary Public
My Commission Expires: _____

BALDWIN COUNTY COMMISSION

BY: _____ / _____
J. TUCKER DORSEY / DATE
As its: Chairman

ATTEST:

_____/_____
RONALD J. CINK / DATE
As its: County Administrator/Budget Director

STATE OF ALABAMA)

COUNTY OF BALDWIN)

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that J. TUCKER DORSEY, and RONALD J. CINK, as Chairman and County Administrator/Budget Director, of the Baldwin County Commission, respectively, and whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this date, that they executed the same voluntarily for and as an act of the Baldwin County Commission.

GIVEN under my hand and seal this the ____ day of _____, 2016.

Notary Public
My Commission Expires: _____