

**RESOLUTION NO. 23-22**

**A Resolution to Authorize the Mayor to Enter into a Memorandum of Understanding with the Alabama State Department of Conservation and Natural Resources for Engineering and Installation of a New Sewer Line Connecting Wind Creek State Park to Alexander City Sewer Line at the Intersection of Highway 63 and Highway 128**

**WHEREAS**, the City of Alexander City (the City) and the State of Alabama Department of Conservation and Natural Resources have a mutual interest in improving the Wind Creek State Park's Wastewater Treatment Plant; and

**WHEREAS**, the sole source of funding with this proposed project is a grant awarded by the Alabama Department of Environmental Management; and

**WHEREAS**, it is recommended to authorize the Mayor to enter into a Memorandum of Understanding with the Alabama State Department of Conservation and Natural Resources.


**BE IT RESOLVED**, that the City Council of the City of Alexander City, Alabama, hereby authorizes the Mayor to execute a Memorandum of Understanding with the Alabama State Department of Conservation and Natural Resources as described in Exhibit "A".

**ADOPTED AND APPROVED** this 9th of January 2023.

**ATTEST:**

  
Stephanie J. Southerland, City Clerk

  
Audrey "Buffy" Colvin, Council President

  
Curtis "Woody" Baird, Mayor

Resolution: 23-22

**CERTIFICATION OF CITY CLERK**

The undersigned, as City Clerk of the City of Alexander City, Alabama, hereby certifies that the foregoing is a true, correct and complete copy of **Resolution No. 23-22** which was adopted by the City Council on this 9th of January 2023.

**WITNESS MY SIGNATURE**, as City Clerk of the City Alexander City, Alabama, under the seal thereof, this 9th of January 2023.



*Stephanie J. Southland*

City Clerk of the  
City of Alexander City, Alabama

Yeas: Tapley, Colvin, Hardy, E. Brown, C. Brown, Keel

Nays: None

**INTERGOVERNMENTAL MEMORANDUM OF UNDERSTANDING**

*Engineering and Installation of a New Sewer Line connecting Wind Creek State Park to Alexander City Sewer Line at intersection of Highway 63 and Highway 128 in Alexander City, Alabama*

This Intergovernmental Memorandum of Understanding ("Agreement") is entered into by and between the State of Alabama Department of Conservation and Natural Resources ("ADCNR") and the City of Alexander City (the "CITY"), collectively referred to hereinafter as the Parties to this Agreement, for and in consideration of the following terms and conditions contained herein:

- 1) **Background.** In order to make the necessary investments in sewer infrastructure, the Parties wish to partner to develop a new sewer line to connect *Wind Creek State Park* (WCSP) to the *City of Alexander City* (the CITY), in an effort to improve the WCSP's wastewater treatment plant and eliminate the duplication of efforts.
- 2) **Purpose.** ADCNR will cooperate with the CITY in order for the CITY to install a new sewer line from WCSP to the intersection of Highway 63/128. This joint infrastructure initiative will enable the installation of a new sewer line, lift station, and other appurtenances which will connect the WCSP to the CITY's wastewater treatment lines. The Parties will utilize the engineering services already associated with the CITY's sewer line extension project, which runs parallel to Alabama Highway 63.
- 3) **Funding.** The sole source of funding for the *Wind Creek State Park Sewer* is the ARPA grant awarded by the Alabama Department of Environmental Management directly to the CITY. The CITY agrees that it will expend the funds granted to it by ADEM in accordance with its terms and conditions and for the purposes outlined herein.
- 4) **Insufficient Funding Notice.** The CITY agrees that it will promptly notify ADCNR in writing, in advance of acceptance of a construction bid(s) and/or the commencement of construction and/or related work, if the CITY has any reason to believe that the costs it expects to incur under this Agreement will exceed the funding amount made available by ADEM. In the event of the CITY's anticipated funding shortage, the Parties agree to work cooperatively to identify additional funding to proceed with the project. However, nothing in this Agreement shall be considered as obligating either Party to expend money in excess of the funding provided for this project under this Agreement. If additional funding is not secured, either Party has the option to terminate, reduce, or modify this Agreement before construction work commences. ADCNR understands that any overages that occur after the acceptance of a bid(s), but approved in writing by ADCNR, will be the responsibility of ADCNR.

5) **Continuing Obligations.** Certain obligations in this Agreement are continuing and shall survive the termination of the Agreement for any reason and at all times, shall remain binding on the Parties. In particular:

- A) The CITY agrees to maintain at all times a fully-operational sewage system and to charge ADCNR a COMMERCIAL USER sewer fee based upon a flow meter measuring the discharge from the pump station.
- B) From time to time, the Purpose and/or Scope of Services may require a modification, extension, and/or an increase to the capacity and/or functionality of the sewer infrastructure in order to accommodate for increased demand due to population growth, expansion of ADCNR property, or other factors affecting usage. In the event of such a change, the ADCNR and CITY agree to negotiate the payment of additional costs to the City regarding design, engineering, and installation of necessary equipment as a result of the expansion.
- C) The CITY shall, at its own expense, perform all repairs, replacements, and routine maintenance of equipment installed by and owned by the City necessary to maintain the sewer structure fully functional, at all times.

6) **Scope of Services.**

A) The CITY will:

- a) Prepare, consistent with the *Purpose, Continuing Obligations*, and other considerations outlined herein, for the installation of a new six-inch sewer line, lift station, and appurtenances WCSP along AL Hwy 128 (Coven Abbett Hwy) to the intersection of AL Hwy 63/128 described in the attached Conceptual Estimate, **Exhibit A**, the following:
  - (i) the preliminary design and drawings;
  - (ii) the general description of materials and construction;
  - (iii) the general estimate of the cost of construction.
- b) Formulate a budget, that is specific to this Scope of Services, properly identified and easily delineated from other projects;
- c) Submit these documents to ADCNR for review and approval;
- d) Incorporate feedback from ADCNR;

- e) Prepare the necessary bid specifications and documents in consultation with ADCNR, and obtain all the necessary government permits and approvals;
- f) Coordinate with ADCNR the approval of the project after bid opening is concluded;
- g) Be responsible for the CITY's share (if any) of costs associated with this project.

B) ADCNR will:

- a) Assist in funding options for the CITY as stated in Paragraph 4.
- b) Upon completion of the Project, ADCNR shall pay the Capital Improvement Fee as required by all entities in the City limits, not to exceed \$50,000.00 (fifty thousand dollars) paid in equal installments over five years (on October 31 of each year).
- c) ADCNR shall pay the CITY a sewer fee based upon a flow meter measuring the discharge from their pump station at a base charge and usage rate based on CITY COMMERCIAL RATES as may be set by the CITY.
- d) ADCNR agrees to comply with City rules and regulations regarding discharges into its sanitary sewer system.
- e) Upon application by the CITY, ADCNR shall provide the necessary easements to the CITY within the WCSP to allow the CITY to maintain the sewer lines, pump station and any other appurtenances.

7) **Project Budget/Cost.** The general estimate of the cost of construction will be developed by the CITY and approved by ADCNR. The total cost of construction after the project has been bid must also be reviewed and approved by ADCNR before the project is awarded. The CITY will be the Project Lead on behalf of ADCNR, and the CITY will address the project expenses pursuant to the approved Project Budget. The City will administer the project payments.

8) **Schedule of Deliverables and Period of Performance.** The CITY will perform the services outlined in the Agreement in a timely manner, as expeditiously as possible considering the limitations of the timeliness of the release of funds from the CITY's

funding source(s). The CITY shall notify ADCNR as promptly as practicable, but in any event within 48 hours of normal business hours, upon becoming aware of a potential delay, including delays caused by supply chain issues.

9) **Contract Term and Period of Performance.** The term of this Agreement shall commence upon signature of the Parties, and shall continue through final completion of construction work as designated by ADCNR, unless terminated sooner in accordance with the terms of this Agreement (the “Period of Performance”). This Paragraph is subject to the Parties’ *Continuing Obligations* set forth herein, which shall bind the Parties in perpetuity. Upon written agreement executed by both Parties, this Agreement may be modified or extended for additional terms.

10) **Standards of the Services.** ADCNR and the CITY agree to the following:

- a) *Standard of Care.* The CITY will fully comply with the Contract. The CITY shall perform the services defined in this Agreement adhering to all applicable laws and regulations, and in conformance with the professional standard of care consistent with the prevailing industry standards engaged in programs of similar size and complexity as described herein.
- b) *Technical Accuracy.* ADCNR shall not be responsible for discovering deficiencies in the technical accuracy of the CITY services. The CITY shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to the deficiencies of information furnished to the CITY by ADCNR.
- c) *Davis-Bacon Wages.* As applicable, Davis-Bacon prevailing wage rates (as determined by the Department of Labor for applicable areas) must be paid for all construction projects.

11) **Records Retention and Access to Records.** Provided the CITY is given reasonable advance written notice and such inspection is made during normal business hours of the CITY, ADCNR or any duly authorized representative shall have unimpeded and prompt access to any of the CITY’s books, documents, papers, and/or records which are maintained or produced as a result of this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Agreement shall be retained by the CITY in accordance with ADCNR’s functional analysis and records disposition authority, a copy of which can be found at:

[http://www.archives.alabama.gov/officials/rdas/Conservation\\_RDA\\_2016.pdf](http://www.archives.alabama.gov/officials/rdas/Conservation_RDA_2016.pdf).

**12) Termination and Suspension.** ADCNR and the CITY agree to the following:

- a) *Termination.* ADCNR may terminate this Agreement with prior ninety (90) days' written notice to the CITY.
- b) *Suspension.* ADCNR may at any time instruct the CITY in writing to suspend, delay or interrupt all or part of the services under this Agreement for the convenience of ADCNR, or because of events beyond the control of ADCNR.

**13) Successors/Assignment/Third Parties.** The CITY acknowledges that it was selected by ADCNR to perform the services required hereunder based, in part, upon the CITY's special skills and expertise, as well as its resources. ADCNR, in its sole reasonable discretion, shall have the right to reject the letting of any such assignment or sub-contract agreement. The CITY must notify ADCNR in writing and submit a written request to sub-contract prior to assigning any portion of this Agreement. Subcontractors shall be subject to the terms and conditions of this Agreement and to any conditions of approval that ADCNR may deem necessary. Subject to the foregoing this Agreement shall be binding upon the respective successors and assigns of the Parties.

**14) Additional Provisions.** ADCNR and the CITY agree to the following:

- a) *Entire Agreement.* This Agreement and attachments hereto represent the entire and integrated agreement between ADCNR and the CITY and supersedes all prior negotiations, representations, or agreements, either written or oral.
- b) *Modifications of Agreement.* This Agreement may be amended only by written instrument signed by both ADCNR and the CITY, subject to the *Continuing Obligations* outlined in Paragraph 3.
- c) *Severability.* If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or enforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- d) *Indemnification and Hold Harmless.* To the fullest extent allowed by law, the CITY shall hold harmless and indemnify the State of Alabama and the Department of Conservation and Natural Resources, and any and all of their officers, agents, or employees, from any and all liabilities or damages of any nature, arising out of any injury, death, property damage, or any other claims and/or demands of any nature arising pursuant to this Agreement.

- e) ADCNR acknowledges that the CITY is the sole owner of all new infrastructure inside the WCSP, i.e., force main, the lift station, and any other appurtenances that are part of this design). ADCNR acknowledges that the City has no responsibility as to the maintenance of any existing infrastructure currently present in the Park. The CITY acknowledges its continuing commitment and responsibility to adjust scope of services/capacity for growth and to properly maintain and repair the infrastructure as outlined herein in *Paragraph 3, Continuing Obligations*.
- f) *Counterparts*. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, which shall be sufficient evidence by any one thereof.

**15) Not Entitled to Merit System.** The CITY understands and agrees that it is not hereby entitled to any benefits of the Alabama State Merit System.

**16) Boycott.** In compliance with Act 2016-312, the CITY 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.

**17) No Discrimination.** The CITY agrees to comply with all Federal and State laws which prohibit discrimination, including on the basis of race, color, religion, age, sex, pregnancy, national origin, genetic information, veteran status or disability.

**18) Immigration.** By signing this Contract, the contracting parties affirm, for the duration of the Agreement, that they 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, a contracting party 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.

**19) 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 Agreement 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 Agreement shall be deemed null and void.

**20) 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 involves 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.

- 21) **Authority to Contract.** The CITY warrants that (a) it is a validly organized entity with authority to enter into this Agreement; (b) it is qualified to do business and in good standing in the State of Alabama; (c) entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (d) notwithstanding any other provision of this Agreement to the contrary, there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.
- 22) **Public Records.** Notwithstanding any provision to the contrary contained herein, all Parties recognize that ADCNR is a public agency of the State of Alabama and is subject to the Alabama Open Records Act, §36-12-40, Code of Alabama, 1975. ADCNR shall not be liable to the CITY for disclosure of information required by court order or required by law.
- 23) **Debarment and Suspension.** The CITY certifies to the best of its knowledge and belief that it, its corporate officers, principal owners, managers, auditors and others in a position of administering government funds are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency or any political subdivision or agency of the State of Alabama.
- 24) **Not an Agent of the State.** By entering into this Agreement, the CITY is not an agent of the state, its officers, employees, agents or assigns. The CITY is an independent entity from the State and nothing in this agreement creates an agency relationship between the parties.
- 25) **Force Majeure.** In the case of a Force Majeure Event as defined herein, each party reserves the right to immediately terminate the Agreement without prior notice. Should this occur, neither Party shall be liable for or be considered in breach of this Agreement due to any failure to perform its obligations as a result of a cause beyond its control, including, without limitation: (i) acts of God; (ii) flood, fire or explosion; (iii) actions, embargoes, quarantines, or blockades in effect on or after the date of this Agreement; (iv) national, state, or regional emergency, whether ongoing or occurring on or after the date of this Agreement; (v) public health emergencies, outbreak, epidemic, or pandemic, whether ongoing or occurring on or after the date of this Agreement,


including, without limitation, **COVID-19**; or (vi) any other event which is beyond the reasonable control of such party (each of the foregoing, a “Force Majeure Event”).

**26) GOVERNING LAW; SOVEREIGN IMMUNITY; VENUE:** This Agreement shall be construed in accordance with and governed by the substantive and adjective laws of the State of Alabama, including but not limited to the State’s right of immunity from suit as provided by Article 1 Section 14 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, without regard to its conflicts of law provisions.

**IN WITNESS WHEREOF**, the Parties to this Agreement have duly executed and affixed their signatures on this the 12th day of January, 2023.

**Alabama Department of Conservation and Natural Resources**


**RECOMMENDED:**

  
\_\_\_\_\_  
Gregory M. Lein, State Parks Director

  
\_\_\_\_\_  
Christopher M. Blankenship, Commissioner

**TERMS ACCEPTED:**

City of Alexander City

By:   
\_\_\_\_\_  
Its: MAYOR

**APPROVED LEGAL**

  
\_\_\_\_\_

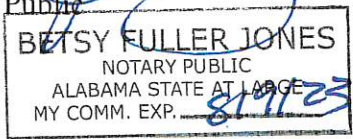
Reviewed By Accounting  
  
\_\_\_\_\_  
DCNR Accounting Director

STATE OF ALABAMA )  
MONTGOMERY COUNTY )

*Edward F. Pooler  
Jr*

I, the undersigned authority, a Notary Public in and for said State and County, hereby certifies that Christopher M. Blankenship, whose name as Commissioner of Conservation and Natural Resources of the State of Alabama 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, in his capacity as such Commissioner of Conservation and Natural Resources of the State of Alabama, executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 12 day of January, 2023.  
*Betsy Fuller Jones*  
Notary Public



STATE OF ALABAMA )  
Jalapaosa COUNTY )

I, the undersigned authority, a Notary Public in and for said State and County, hereby certifies that Curtis Baird, whose name as Mayor for the City of Alexander City, 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 Clerk for Alexander City, executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 10 day of January, 2023.  
*Stephanie J. Southard*  
Notary Public Expires 9/15/2026