

RESOLUTION

To Authorize the Mayor to Enter into an Agreement with the Tallapoosa County Commission to Accept \$800,000.00 Reimbursement American Rescue Plan Act Funds for Assistance with Funding a Sewer Project for the Willows and Willow Point Subdivision

WHEREAS, the Tallapoosa County Commission (County) at its regular meeting on January 8, 2024 adopted a resolution authorizing the release of \$800,000.00 to the City of Alexander City (City); and

WHEREAS, the County has received a Coronavirus State and Local Fiscal Recovery Fund (SLFRF) award under the American Rescue Plan Act (ARPA funds); and

WHEREAS, the County may use ARPA revenue replacement funds for government services; and

WHEREAS, in accordance with the provision of § 11-80-5, Code of Alabama, 1975, both the County and City are authorized to establish and furnish recreational, social and cultural facilities, services and programs; and

WHEREAS, the City is planning to avert sewage from entering Lake Martin; and

WHEREAS, the city wishes to enter into an agreement, as shown in Attachment A, with the County setting forth the terms and conditions governing the distribution of these funds and their use by the city.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Alexander City, Alabama, hereby authorizes the Mayor to enter into said agreement with the Tallapoosa County Commission.

ADOPTED THIS 5TH DAY OF FEBRUARY, 2024.

FOR PUBLIC RELEASE
By: Audrey Duffy Colvin, President
Alexander City Council

AUTHENTICATED THIS 5TH DAY OF FEBRUARY, 2024.

FOR PUBLIC RELEASE
By: Stephanie J. Southerland,
City Clerk

APPROVED:
FOR PUBLIC RELEASE

By: Curtis "Woody" Baird,
Mayor

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

Nays: None

**SERVICES AGREEMENT
BETWEEN
TALLAPOOSA COUNTY, ALABAMA
AND
CITY OF ALEXANDER CITY, ALABAMA
FOR**

**American Rescue Plan Act Revenue Replacement Funding
for Project Development Willow Point and Willows**

THIS AGREEMENT (the "Agreement") entered this ____ day of _____, 2024, by and between Tallapoosa County, Alabama (the "County") and the City of Alexander City, Alabama (the "City"), a municipality, (collectively, the "Parties").

WHEREAS, the County has received a Coronavirus State and Local Fiscal Recovery Fund ("SLFRF") award under the American Rescue Plan Act ("ARPA funds") from the U.S. Department of the Treasury ("Treasury"); and

WHEREAS, in accordance with the final rule issued by Treasury on January 6, 2022, the County has duly elected to take the standard allowance of revenue replacement funds of up to \$10,000,000 of its ARPA funds not to exceed its total award of ARPA funds ("ARPA revenue replacement funds"); and

WHEREAS, the County may use ARPA revenue replacement funds for government services; and

WHEREAS, in accordance with the provision of § 11-80-5, Code of Alabama 1975, the County is authorized to establish and furnish recreational, social, and cultural services and programs, which may be furnished with such public or private agencies as may be determined by such governing bodies as necessary or desirable; and

WHEREAS, the City is planning to expand the sewer infrastructure to the Willow Point and Willows area located on Hwy 63 South; and

WHEREAS, the County wishes to partner with the City in the implementation of the development; and

WHEREAS, on January 08, 2024, the County allocated up to \$800,000 of its ARPA revenue replacement funds to be provided to the City to be used for the sewer access that is necessary for the implementation of the current housing development program; and

WHEREAS, the County has determined that the allocation of these funds and expenditure for the purposes described herein will serve a public purpose; and

WHEREAS, the County wishes to enter into an agreement with the City setting forth the terms and conditions governing the distribution to and expenditure of these funds by City in furtherance of the sewer infrastructure program.

NOW, THEREFORE, it is agreed between the parties hereto that:

I. PURPOSE AND GOAL OF FUNDING PROJECT

The purpose and goal of this funding project (the "project") is to assist in the implementation of a sewer infrastructure program to be operated by the City through providing funds to be used for the purchase of equipment that is necessary for the implementation of the program.

II. TERMS AND CONDITIONS OF AGREEMENT

A. Competitive Procurement

1. Contracts for goods and services that are reasonably necessary for the City to complete the project shall be entered into in a manner consistent with the provisions of Alabama bid laws for the letting of public works contracts as provided in Title 39 of the Code of Alabama 1975 or, in the case of the acquisition of goods and services not subject to Title 39, in a manner consistent with competitive requirements set forth in Title 14, Chapter 16 of the Code of Alabama 1975.
2. Should the cost of any good and service necessary for the completion of the project fail to exceed competitive bidding thresholds under state law, prior to purchase such good or service, the City will obtain at least three written quotes.

B. Compliance with Applicable Provisions of the ARPA Award Terms and Conditions

Activities and expenditures funded pursuant to this Agreement with ARPA revenue replacement funds must comply with any rules and regulations, and other terms and conditions applicable to the use of ARPA revenue replacement funds. These terms and conditions are included in Attachment A to this Agreement. Recipient certifies that the activities and expenditures carried out under this Agreement will meet these terms and conditions.

C. Period of Performance

1. The period of performance for this Agreement shall begin on the date of execution of the Agreement by both parties, and shall end upon the completion of the project.
2. At a minimum, however, all activities and expenditures related to the funds available under this Agreement must comply with the period of performance as outlined by Treasury including, but not limited to:
 - a. **All funds must be obligated by December 31, 2024;**
 - b. All funds spent by December 31, 2026;
 - c. Project costs incurred prior to March 3, 2021, are ineligible;
 - d. For projects started prior to March 3, 2021, project costs are eligible if costs were incurred after March 3, 2021.

III. Project Milestones and Implementation Schedule

The Recipient shall make all reasonable efforts to comply with the following schedule for the implementation and completion of the project:

Milestone	Anticipated Completion Date
Competitive procurement process, i.e., issuance of invitation(s) to bid or	
Finalization of purchase agreement(s)	
Delivery and installation of all equipment to be purchased with funds provided pursuant to this Agreement	

IV. Oversight and Reporting

At a minimum, oversight will include the following:

1. The City must provide notice to the County as soon as practical of all issues or potential factors expected to inhibit the City from carrying out its obligations under this Agreement, as well as a plan to mitigate any concerns.
2. Once per month during the period of performance, the City will provide a status update in writing to the Project Monitor as to the progress of the project.

V. Project and Expenditure Reports

The City shall provide project and expenditure information as requested by the County in support of the County's obligation to provide a Project and Expenditure Report, including any programmatic information required under the Treasury's Compliance and Reporting Guidelines.

VI. BUDGET

Costs Covered by this Agreement: \$800,000.00

The County may require a more detailed budget breakdown than the one contained herein, and the City shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the County. Any amendments to the budget must be approved in writing by both the County and the City.

VII. PAYMENT TERMS AND PROCEDURES

- A. It is expressly agreed and understood that the total amount to be paid by the County under this Agreement shall not exceed \$800,000.00. Any other funding necessary to the completion of the project shall be the sole responsibility of the City.
- B. The City may apply to the County for distribution of funds to cover reasonable and necessary project expenditures obligated on or before December 31, 2024, upon the timely presentation of related invoices and submission of documentation evidencing compliance with applicable competitive procurement requirements as set forth in this Agreement.

- C. County will distribute funds to the City based upon the invoices presented, subject to the exercise of due diligence to determine compliance the County's policies and procedures and the terms and conditions of this Agreement.
- D. Submission of an invoice as provided in this section shall be deemed untimely if it is not submitted in a reasonably sufficient time for the County to review and verify the submission and process payment ahead of the end of the ARPA period of performance on December 31, 2026.

VIII. NOTICES

Notices required by this Agreement shall be in writing and delivered via certified mail (postage prepaid). Any notice delivered or sent as aforesaid shall be effective on the date of delivery. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written amendment to this Agreement.

Communication and details concerning this Agreement shall be directed to the following Agreement representatives:

County
 Blake Beck, County Administrator
 Project Monitor
 Tallapoosa County, Alabama
 125 North Broadnax Street Rm 131
 Dadeville, AL 36853
 256,835.4268
bbeck@tallaco.com

City
 Curtis Baird, Mayor
 City of Alexander City, Alabama
 281 James D. Nabors Drive
 Alexander City, AL 35010
 256.329.6730
woody.baird@alexandercityal.gov

IX. GENERAL CONDITIONS

A. General Compliance

The Parties agree to comply with all applicable federal, state, and local laws, policies, and procedures. It is understood that this project is being funded, at least in part, with American Rescue Plan Act (ARPA) funds granted to the County, which in accordance with Treasury's final rule have been designated as revenue replacement funds. As such, the Parties agree to comply with the requirements of section 603 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) (the "Act"), regulations adopted by Treasury pursuant to section 603(f) of the Act, codified as 31 C.F.R. Part 35, and guidance issued by Treasury regarding the foregoing.

B. Suspension and Debarment

The City certifies that it is eligible to receive federal funds and it is not debarred or suspended from doing so.

C. Immigration Law

Section 31-13-1, *et seq.*, of the Code of Alabama 1975 imposes conditions on the award of Chapter 13 of Title 31, Code of Alabama 1975, imposes conditions on the award of contracts by the County. The City agrees to fully comply with any applicable provisions of the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act.

D. Boycott Certificate

Section 41-16-5 of the Code of Alabama 1975 imposes conditions on the award of County contracts. The City must certify 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 this state can enjoy open trade.

E. Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating, or establishing the relationship of employer/employee between the parties. The City shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement.

A. Prohibition on the Town Acting as an Agent of the Commission

This Agreement and the relationship created hereby does not in any manner create, imply, or otherwise vest any authority in the City to act 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 City is an agent of the Commission.

F. Hold Harmless

The City shall hold harmless, defend, and indemnify the County from any and all claims, actions, suits, charges, and judgments whatsoever that arise out of the City's performance or nonperformance of the services or subject matter called for in this Agreement.

G. Liability

The City agrees to repay to County funds equal to the amount of ARPA funds provided to the City by the County, plus interest, which the County has determined that the City's agents or assigns have caused to have been expended in violation of this Agreement and/or any federal, state, or local laws or policies governing the use of ARPA revenue replacement funds. This provision shall be in addition to, and shall not be deemed to waive, any rights or remedies of the County under the law.

H. Amendments

1. The County or City may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the County's governing body. Such amendments shall not invalidate

this Agreement, nor relieve or release either the County or City from its obligations under this Agreement.

2. The County may, in its discretion, amend this Agreement to conform with federal, state, or local governmental guidelines, policies, and available funding amounts, or for other reasons. Such modifications will be incorporated only by written amendment signed by both County and City.

I. **Suspension or Termination**

1. The County may suspend or terminate this Agreement if the City materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:
 - a. Failure to comply with any of the rules, regulations, or provisions referred to herein, or such statutes, regulations, and ARPA guidelines, policies, or directives as are applicable at any time;
 - b. Failure, for any reason, of the City to fulfill in a timely and proper manner its obligations under this Agreement;
 - c. Ineffective or improper use of funds provided under this Agreement; or
 - d. Submission by the City to the County reports that are incorrect or incomplete in any material respect.

In the event the Agreement is terminated pursuant to this paragraph, the City shall reimburse the County for any amounts already paid pursuant to this Agreement.

2. This Agreement may also be terminated upon mutual agreement of the parties.
3. This Agreement may also be terminated by either the County or the City, in whole or in part, including for convenience, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the County determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the County may terminate the award in its entirety.

X. **LICENSURE REQUIREMENTS**

The City certifies that it is currently and throughout the period of performance of this Agreement will remain in compliance with applicable licensure requirements and shall ensure that any contractors or subcontractors performing work on the project are in compliance with applicable licensing requirements.

XI. **EXPENDITURES**

- A. The City certifies that funds awarded pursuant to this Agreement shall be expended only on goods and services reasonably necessary to meet the purpose and goals of the project.

- B. The City certifies that it will not expend any portion of the funds awarded pursuant to this Agreement on expenditures prohibited by the Final Rule, including the following:
1. Deposits into pension funds;
 2. Debt service;
 3. Replenishment of financial reserves;
 4. Expenditures for programs or activities that undermine the practices included in the Centers for Disease Control's guidelines and recommendations for stopping the spread of COVID-19;
 5. Expenditures in violation of the terms and conditions of the award of ARPA revenue replacement funds provided for in this Agreement, see Attachment A; and
 6. Expenditures for programs or activities in violation of state, federal, or local laws.

XII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

The City agrees to undertake financial management measures necessary to separately account for expenditure of funds awarded pursuant to this Agreement.

B. Documentation and Record Keeping

1. **Records to be Maintained:** The City shall maintain all records that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:
 - a. Records demonstrating compliance with the terms of this Agreement;
 - b. Financial records demonstrating the purpose and amount of expenditures of the funds awarded pursuant to this Agreement;
 - c. Documentation demonstrating compliance with competitive procurement requirements set forth in this Agreement; and
 - d. Documentation demonstrating compliance with terms and conditions of the award of ARPA revenue replacement funds provided for in this Agreement. See Attachment A.
2. **Retention Period:** The City shall retain all financial records, supporting documents, and all other records pertinent to the Agreement until December 31, 2031. The retention period begins on the date of the execution of this Agreement.
3. **Audits and Inspections:** All records of the City with respect to any matters covered by this Agreement shall be made available to the County or any of its authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the City within

thirty (30) days after receipt by the City. Failure of the City to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.

XIII. CONDUCT

A. Assignability

The City shall not assign or transfer any interest in this Agreement without the prior written consent of the County. Any consent to assignment shall not be considered consent to any subsequent assignment.

B. Conflict of Interest

No employee, officer, or agent of the City shall participate in the selection, or in the award or administration, of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

C. Lobbying

1. The City certifies that funds provided pursuant to this Agreement will not be used for any direct or indirect payments for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation.
2. The City certifies that it will not, and has not, used federal appropriated funds to any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C § 1352.

D. Religious Activities

The City agrees that funds provided under this Agreement will not be utilized for inherently religious activities.

E. Employment Restrictions: Prohibited Activity

The City is prohibited from using funds provided herein or personnel employed in the administration of the program for the following: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

F. Subcontracts

3. **Approvals:** The City shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the County prior to the execution of such agreement.
4. **Monitoring:** The City will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.
5. **Content:** The City will ensure that all terms and conditions of the award of ARPA revenue replacement funds provided for in this Agreement, see Attachment A, as well as applicable provisions of the Civil Rights Act, specifically or by reference, are included in every contract or purchase order pursuant to which funds will be expended or reimbursed under this Agreement so that such provisions will be binding upon each of its contractors.
6. **Selection Process:** The City shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements under federal and state law. Executed copies of all subcontracts shall be forwarded to the County along with documentation concerning the selection process.
7. **Licenses:** All subcontractors engaged in the project shall be fully qualified and properly licensed under state and local law to perform such services. The City shall ensure that all prime subcontractors are insured in accordance with state, local and federal requirements.

XIV. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

XV. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XVI. WAIVER

The County's failure to act with respect to a breach by the City does not waive its right to act with respect to subsequent or similar breaches. The failure of the County to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XVII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the County and the City for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written, between the County and the City with respect to this Agreement.

Date _____

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Tallapoosa County, Alabama

City of Alexander City, Alabama

FOR PUBLIC RELEASE FOR PUBLIC RELEASE

Chairman

Mayor

FOR PUBLIC RELEASE

**ATTACHMENT A: TERMS AND CONDITIONS FOR AWARD OF
ARPA REVENUE REPLACEMENT FUNDS**

The parties agree to comply with any applicable federal, state, and local laws and policies and procedures. It is understood that this project is being funded, at least in part, with American Rescue Plan Act (ARPA) revenue replacement funds granted to the County. As such, the parties agree to comply with applicable requirements of section 603 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) (the "Act"), regulations adopted by Treasury pursuant to section 603(f) of the Act, codified as 31 C.F.R. Part 35, and guidance issued by Treasury regarding the foregoing.

Federal regulations which are applicable to this Agreement include, without limitation, the following:

1. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension Non-procurement, 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 80 and Treasury's implementing regulation at 31 C.F.R. Part 19.
2. New Restrictions on Lobbying. Contractor must certify that it will not, and has not, used federal appropriated funds to any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C § 1352.
3. Generally applicable federal environmental laws and regulations. Contractor must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). All violations must be reported to the County, Treasury, and the Regional Office of the Environmental Protection Agency.
4. Generally applicable anti-discrimination laws and regulations, including protections for whistleblowers relating to the use of federal funds.
5. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance.
6. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.
7. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.
8. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.

9. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 *et seq.*), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. For contracts/subcontracts over \$100,000, work performed by mechanics and laborers is subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3702 and 3704), as supplemented by 29 C.F.R. Part 5, including, specifically, safety standards, limitations on hours in a workweek and overtime for any work spent over 40 hours, and proper documentation for all employees.
 - a. A contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall not require or permit any laborer or mechanic, in any workweek in which the laborer or mechanic is employed on that work, to work more than 40 hours in that workweek, except as provided 40 U.S.C. Chapter 37; and
 - b. When a violation of clause (1) occurs, the contractor and any subcontractor responsible for the violation are liable
 - i. to the affected employee for the employee's unpaid wages; and
 - ii. to the government, the District of Columbia, or a territory for liquidated damages as provided in the contract.