

MEMORANDUM OF UNDERSTANDING

BETWEEN

FULTON COUNTY, GEORGIA

AND

BEAR CREEK NATURE CENTER, INC.

This Memorandum of Understanding (“MOU”), entered into this ____ day of _____, 2023, between Fulton County, Georgia, a political subdivision of the State of Georgia (“Fulton County”) and Bear Creek Nature Center, Inc. located at 6300 Cochran Mill Road, Chattahoochee Hills, Georgia 30268 (hereinafter referred to as “Nature Center”) and collectively the “Parties.”

WITNESSETH THAT:

WHEREAS, Fulton County, through its Department of Arts and Culture, has determined a need for environmental educational services in the County; and

WHEREAS, Fulton County, through its Department of Arts and Culture, has determined that these services can be best performed by a non-profit, tax exempt 501(c)(3); and

WHEREAS, the Nature Center is a Georgia non-profit, tax exempt 501(c)(3) organization that has a mission to connect people with nature by giving the youth a place to foster an active awareness and understanding of the ecology of the natural world through interactive, hands-on learning experiences and provide adults a local place for adult learning experiences, volunteerism, and outdoor family activities that strengthen the environmental stewardship commitment within the community; and

WHEREAS, Fulton County desires to enter into a Memorandum of Understanding with the Nature Center for the purpose of providing non-recurring funding to support environmental education services and capital improvements within the County at the Nature Center located at 6300 Cochran Mill Road in Chattahoochee Hills, Georgia; and

WHEREAS, the Nature Center will expend the funds under this MOU for environmental promotion and protection purposes consistent with its mission and non-profit status only, deriving no profit to the organization and on capital improvement activities consistent with Attachment A-1 and the MOU provisions set forth herein; and

WHEREAS, Fulton County is authorized to enter into this MOU with the Nature Center pursuant to O.C.G.A. § 36-1-19.1.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the parties hereunto agree as follows:

1.0 STATEMENT OF WORK

Under this MOU, the County shall provide non-recurring financial assistance for environmental education programming and capital improvements to the Nature Center for the operation and management of the current facility located at 6300 Cochran Mill Road, Chattahoochee Hills, Georgia. The Nature Center shall perform the services in accordance with Attachment "A" of this Contract, "Scope of Work," attached hereto and made a part hereof.

2.0 COMPENSATION FOR SERVICES AND WORK

Funding for the services and work described in Section 1.0 herein and in Attachments "A" and "A-1" hereto, shall be as follows: The total amount payable to the Nature Center per the terms and execution of this MOU is up to Seven Hundred Thousand Dollars (**\$700,000.00**)(non-recurring funding in an amount not to exceed \$200,000 for environmental educational services and non-recurring funding in an amount not to exceed \$500,000 for capital improvements). Compensation for Services and Work depicts the funding source for the project identified in Section 1.0. Such payments shall be made following execution of this MOU provided that the Nature Center agrees to submit all necessary documentation to the Fulton County Department of Arts and Culture as required in Attachment "A," Scope of Work. This documentation, along with an invoice and statement of costs, shall be submitted to the Director of the Department of Arts and Culture or designee. Two copies of the invoice and statement shall be included with the submission, one copy of which shall be accompanied by documentation supporting the costs.

3.0 TERM OF MOU

Unless terminated by mutual agreement, or in accordance with other terms and provisions contained herein, the term of this MOU shall be upon execution through December 31, 2023, unless otherwise extended in writing or terminated by the County. The Nature Center shall be eligible for reimbursement costs which are included within the scope of Sections 1.0 and 2.0 and Attachment "A" of this MOU. However, unless good cause is shown, should the Nature Center not have displayed significant action toward this MOU and its Scope of Work prior to the sixth (6th) month anniversary of the signing of this MOU, then said MOU shall be deemed void and any and all funds not expended or obligated toward the Scope of Work in this MOU shall be immediately returned to the County.

4.0 TERMINATION OF MOU

4.1 TERMINATION OF MOU FOR CAUSE

Either County or the Nature Center may terminate this MOU in the event the other party fails to perform in a timely and proper manner its obligations in accordance with the provisions of the MOU. Any party seeking to terminate this MOU is required to give thirty (30) days prior written notice to the other party specifying the reasons for such intention to terminate or suspend the MOU. The party receiving such notice under this provision shall have ten (10) days after receipt of service of the notice to correct the violation or cease the delay to the satisfaction of the aggrieved party. If such arrangements are not made, the MOU shall, upon expiration of said ten

(10) days, be suspended or terminated without further notice. Upon such suspension or termination, the Nature Center will be compensated by the County for expenses deemed by the County to be due and reasonable.

Notice of termination shall be delivered by hand delivery or certified mail with receipt for delivery returned to the sender.

4.2 TERMINATION FOR CONVENIENCE OF THE COUNTY

Notwithstanding any other provisions, the County may terminate this MOU for its convenience at any time by giving at least thirty (30) days prior notice in writing (hand delivery or certified mail with receipt) to the Nature Center.

5.0 RECORDS, REPORTS AND AUDITS

The Nature Center shall maintain accounts and records, including personal property and financial records, adequate to identify and account for all costs pertaining to this MOU and such other records as may be requested by the County to assure proper accounting for all funds, both public and private. Said records shall be made available for audit purposes to the County or its representative(s) and shall be retained for at least three (3) years after expiration of this MOU or completion of this project unless permission to destroy them is granted by the County. The Nature Center's records, and accounts shall at all times meet or exceed the applicable requirements of federal, state and county law, rules and regulations. Further, the Nature Center shall submit detailed reports on the progress made and services during the course of this project. At a minimum, these reports shall be submitted on a monthly basis.

Said reports shall be submitted to the attention of the Director of the Department of Arts and Culture. Two copies of the report shall be included in each submission.

6.0 INSPECTION OF FILES AND RECORDS

Fulton County's Department of Arts and Culture shall at all reasonable times have access to the pertinent offices and books and records of the Nature Center for inspection of the activities performed and expenses incurred under this MOU.

7.0 REVERSION OF ASSETS AND EQUIPMENT

Upon expiration or termination of this MOU, the Nature Center shall transfer to the County any County funds on hand at the time of expiration or termination and any accounts receivable attributable to the use of County funds.

Further, in the event that the Nature Center should sell or otherwise dispose of any property acquired with County funds, the manner of said disposition shall result in the County being reimbursed in an amount of the current fair market value of the property at that time less any portion of the value attributable to expenditures of non-County funds. In the event that such sale

or disposition occurs more than ten (10) years after expiration or termination of this MOU, such reimbursement shall not be required.

8.0 COPYRIGHT AND PUBLICITY

No report, map, or other document produced in whole or in part under this MOU shall be the subject of an application for copyright by or on behalf of the Nature Center without the prior written consent of the County. All such reports, maps, or other documents shall become and be deemed the property of the County and title therein shall vest in the County.

Further, any favorable publicity given to this project must identify the County prominently as a sponsoring agency. Specifically, at all places of and in all publications concerning this project, the Nature Center agrees to display and make known that the project was assisted under the auspices of the County.

9.0 ASSIGNMENT OF CONTRACT

The Nature Center shall not make any purported assignment of this MOU or any part thereof or delegate the duties herewith without prior written consent of the County.

10.0 CONFLICT OF INTEREST

No member, officer, or employee of the County or its designee or agents, no member of the governing body of the County, and no other official of the County who exercises or has exercised any functions or responsibilities with respect to County-assisted activities or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure or for one (1) year thereafter.

11.0 EQUAL OPPORTUNITY AND NONDISCRIMINATION; CIVIL RIGHTS ACT OF 1964 (AS AMENDED)

The Nature Center shall comply with all requirements imposed by or pursuant to Title VI and Title VII of the Civil Rights Act as Amended, Age Discrimination in Employment Act; Rehabilitation Act of 1973, as Amended, section 504; Equal Pay Act; the American with Disabilities Act of 1990, as Amended; Fair Housing Act, as Amended; and any other applicable Acts which prohibit/discrimination on the ground of race, color, religion, sex, age, national origin, handicap, disability, or familial status. No person in the United States shall be unlawfully excluded from participation in, be denied the benefit of, or be subjected to discrimination under this MOU.

12.0 HOLD HARMLESS

The Nature Center hereby warrants, represents, covenants and agrees to indemnify and hold harmless the County, its commissioners, officers, and employees, from any and all claims,

losses, liabilities, damages, deficiencies or costs (including without limitation, reasonable attorney's fees and legal expenses) suffered or incurred by, or asserted against, such parties, whether arising in tort, contract, strict liability or otherwise, and including without limitation, personal injury, wrongful death or property damage, arising in any way from the actions or omissions of the Nature Center, its agents, employees, officers and directors. The Nature Center does further hereby agree to release, indemnify, defend and hold harmless the County, its commissioners, officers, and employees, from any injury (including death resulting therefrom), loss, claim or damage sustained by the Nature Center's agents and employees, without regard to negligence. The language of this indemnification clause shall survive the termination of this MOU.

13.0 SEVERABILITY

If any provision of this MOU is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the MOU, which shall remain in full force and effect and enforceable in accordance with its terms.

14.0 VARIATIONS OR MODIFICATIONS TO CONTRACT

This MOU constitutes the entire arrangement between the County and the Nature Center, and there are no further written or oral agreements with respect thereto. No variation or modification of this MOU and no waiver of its provisions shall be valid unless in writing and signed by County and the Nature Center's duly authorized representatives.

Further, in the event of any material change or modification in the Nature Center's MOU or agreement with any other funding source during the course of this MOU, the Nature Center shall immediately notify the Department of Arts and Culture of such change. In such event, the County shall have the right to terminate its obligations under this MOU, discontinue future funding hereunder, and demand the refund or return of funds previously paid to or on behalf of the Nature Center.

15.0 NOTICES

All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid.

Notice to County, shall be addressed as follows:

Director, Department of Arts and Culture
141 Pryor Street SW, Suite 2030
Atlanta, Georgia 30303
404-612-5780

Copy To: Office of the County Attorney
141 Pryor Street, S.W. Suite 4038
Atlanta, Georgia 30303

Notices to the Nature Center shall be addressed as follows:

Bear Creek Nature Center, Inc.
6300 Cochran Mill Road
Chattahoochee Hills, Georgia 30268
770-306-0914
Attention: Norma Lewis, Director

16.0 GOVERNING LAW

This MOU will be executed and implemented in Fulton County. Further, this MOU shall be administered and interpreted under the laws of the State of Georgia. Jurisdiction of litigation arising from this MOU shall be in the Fulton County Superior Courts. If any part of this MOU is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this MOU shall be in full force and effect.

17.0 INSURANCE

The Nature Center further agrees to maintain for the life of this MOU such insurance as shall fully protect the County. Such requirements are attached hereto and made a part hereof as Attachment "B."

18.01 PROCUREMENT AND SUBCONTRACTING POLICIES

The Nature Center will conduct procurement activities in a fair, open and competitive manner without any favoritism or discrimination and as set forth in Attachment "C."

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, each of the parties hereto has caused MOU to be executed and delivered on this, the _____ day of _____, 2023.

For Bear Creek Nature Center, Inc.

Attest:

Norma Lewis, Director
Bear Creek Nature Center, Inc.

(Signature)

Name (Typed or Printed)

Title

(Seal)

For Fulton County

Attest:

Robert L. Pitts, Chairman
Board of Commissioners

Tonya R. Grier
Clerk to the Commission

(Seal)

Approved as to Content:

Approved as to Form:

David Manuel, Director
Department of Arts and Culture

Office of the County Attorney

ATTACHMENT "A"

SCOPE OF WORK

BEAR CREEK NATURE CENTER, INC.

In consideration of the SEVEN HUNDRED THOUSAND (\$700,000.00)(non-recurring funding in an amount not to exceed \$200,000 for environmental educational services and non-recurring funding in an amount not to exceed \$500,000 for capital improvements) allocated to Bear Creek Nature Center, Inc. ("The Nature Center"), The Nature Center agrees to perform services and provide the following program administration and evaluation information:

A. Program Administration and Evaluation

1. The Nature Center agrees to utilize the \$500,000 for capital improvements as outlined in Attachment "A-1" and provide the Department of Arts and Culture with invoices reflecting the expenditure of these capital improvement funds by December 31, 2023.
2. The Nature Center agrees to provide environmental promotion and protection services to Fulton County residents on a scheduled basis during regular hours for the benefit of the general public.
3. As a minimum agreement for supervision of the facility, The Nature Center agrees to direct day-to-day supervision of the management of The Nature Center and will operate at least 20 hours per week through the term of the MOU, with a responsible person to be located on site during operational hours.
4. The Nature Center agrees to maintain its status as a non-profit organization and, with its revenue, continue to promote education, conservation and environmental stewardship for the benefit of the public.
5. The Nature Center agrees to provide the Department of Arts and Culture with:
 - A. Copy of Bear Creek Nature Center's 2023 Work Plan, including program service goals and objectives;
 - B. Schedule of 2023 programs and special events and projected participation;
 - C. A copy of the 2022 year-end financial statement;
 - D. A copy of Certificate of Insurance, as described in "Attachment B;" and
 - E. A copy of The Nature Center's Certification of non-profit 501(c) (3) status.
 - F. A copy of the most recent Board Meeting Minutes and a list of all active Board Members, indicating the registered agent to sign contracts.
6. By the tenth (10th) day of each month during the term of this MOU, The Nature Center agrees to provide the Department of Arts and Culture with:
 - A. A monthly attendance report for each program/event held regarding environmental promotion and protection, beginning upon execution through December 31, 2023; and
 - B. The number of active volunteers and the number of volunteer hours donated for environmental promotion and protection activities for the previous month, beginning upon execution through December 31, 2023.
7. MOU funding will be paid out in one disbursement.

Attachment "A-1"

Bear Creek Nature Center

Capital Improvements Projects for \$500,000 Capital Improvements Grant by the Fulton County Board of Commissioners

A – Stand-alone projects:

1. Repair work to reinforce wall in exhibit room that has shifted slightly
 - a. Completion date: June-Sept 2023
 - b. Approx cost \$7,000 - \$10,000
 - c. Need an engineer's assessment
 - d. Need qualified contractor
2. Stain and seal decks. Replace wood as needed.
 - a. Completion date: June-August 2023
 - b. Approx cost \$5,000
 - c. Need qualified contractor/painter
3. New metal roof and gutters with gutter guards
 - a. Completion date: October-November 2023
 - b. Approx cost \$45,000 - \$60,000
 - c. Need qualified roofer
4. Box at gate for EMS access during closed hours.
 - a. Completion date: May 31, 2023
 - b. Approx cost \$500
 - c. Need purchase and installation of equipment
5. Repair cracks in apartment walls for weatherproofing.
 - a. Completion date: May 31, 2023
 - b. Approx cost \$1000
 - c. Need contractor
6. Completion of boardwalk and add lights for night use
 - a. Completion date: September-October 1023
 - b. Approx cost \$3,000 - \$5,000
 - c. Need contractor
7. Storage building for mower and lawn care equipment
 - a. Completion date: November 2023
 - b. Approx cost \$20,000 - \$25,000
 - c. Need to establish a bid process

B -- Equipment purchases

8. Computer upgrades
 - a. Completion date: May 15, 2023
 - b. Approx cost \$6,000 - \$7,000
 - c. Need to spec and purchase computer equipment

9. Lawn mower that can handle hillsides and side of dam
 - a. Completion date: May 15, 2023
 - b. Approx cost \$4000-\$5000
 - c. Need to purchase mower

10. Folding tables and chairs for general use
 - a. Completion date: May 15, 2023
 - b. Approx cost \$3,000
 - c. Need to purchase equipment

11. Tractor part for driveway maintenance
 - a. Completion date: August 2023
 - b. Approx cost \$2000
 - c. Need to purchase equipment

C – Landscape projects:

12. Electric gate at main entrance for security and safety purposes
 - a. Completion date: August 2023
 - b. Approx cost: \$2,500 - \$5,000
 - c. Need to assess needs, purchase and install

13. Entry area landscaping
 - a. Completion date: May 31, 2023
 - b. Approx cost \$8,000 - \$11,000
 - c. Need landscape design and installation

14. Entry sign as well as other signage along the road and at the building. (7 signs total)
 - a. Completion date: June 30, 2023
 - b. Approx cost \$10,000 - \$15,000
 - c. Need to design signs, produce and install

15. Driveway repairs and parking expansion
 - a. Completion date: June 30, 2023
 - b. Approx cost \$6,000 - \$10,000
 - c. Need to hire a qualified contractor

16. Landscape front of building
 - a. Completion November – December 2023
 - b. Approx cost \$15,000 - \$25,000
 - c. Need landscape design and installation

D – Facility improvements:

17. Replace all exterior doors
 - a. Completion date: October – November 2023
 - b. Approx cost \$7,500 - \$10,000
 - c. Need a board committee to establish aesthetics and a qualified contractor

18. Expanded deck area with roof, fans and lighting, similar to Sun Porch at Dunwoody Nature Center. Include an enclosed storage space for table and chair storage
 - a. Completion date: Spring 2024
 - b. Approx cost \$131,500
 - c. Need a design and a qualified contractor

19. Carpet for main floor, linoleum flooring for kitchen
 - a. Completion date: Spring 2024
 - b. Approx cost \$10,000 - \$15,000
 - c. Need to establish board committee to establish aesthetics and a qualified contractor

20. Enclose under deck storage area, make it water-tight for storage
 - a. Completion date: Spring 2024
 - b. Approx cost \$5,000 - \$10,000
 - c. Need a board committee to establish aesthetics and a qualified contractor

21. Fans installed at pavilion, new tables
 - a. Completion date: Spring 2024
 - b. Approx cost \$2,000
 - c. Need a board committee to establish aesthetics and a qualified contractor

22. Lights installed on “ceiling” of covered porch
 - a. Completion date: Spring 2024
 - b. Approx cost \$2,000
 - c. Need a board committee to establish aesthetics and a qualified contractor

23. Remodel basement classroom and add bathroom(s)
 - a. Completion date: Spring 2024
 - b. Approx cost \$85,00 - \$110,000
 - c. Need a board committee to establish aesthetics and a qualified contractor

24. Renovate main floor bathrooms to bring up to ADA standards, low flow toilets, etc.
 - a. Completion date: December – January 2023
 - b. Approx cost \$20,000 - \$30,000
 - c. Need to hire a qualified contractor

ATTACHMENT "B"

INSURANCE AND LIABILITY

The Nature Center shall maintain for the life of the MOU such insurance as shall fully protect Fulton County and any subcontractors performing work covered by this MOU from any and all claims, including bodily injury, property damage or personal injury that may arise or result from The Nature Center, Inc. under this MOU.

At a minimum, the above-described insurance must include the following elements and limits of coverage.

Comprehensive General Liability

- | | |
|---|-----------|
| 1. Bodily Injury (each occurrence and annual aggregate) | \$500,000 |
| 2. Property damage (each occurrence and annual aggregate) | \$500,000 |
| 3. Personal injury (each occurrence and annual aggregate) | \$500,000 |

Automobile Liability

- | | |
|--------------------------------------|-----------|
| 1. Bodily injury (each occurrence) | \$500,000 |
| 2. Property damage (each occurrence) | \$100,000 |

ATTACHMENT "C"

PROCUREMENT AND SUBCONTRACTING

The following procurement guidelines provided below for subcontracting will apply to all County funded organizations:

Subcontractor Approvals and Auditing

\$.01 to \$2,499.99	No bids are required but are recommended. The organization must solicit the most responsive bid at the lowest cost.
\$2,500 to \$49,999	Organization must solicit a minimum of five written quotes. Vendor recommendation is submitted to the Department of Arts and Culture for written approval prior to the job start.
\$50,000 and up	Formal sealed bid. The Purchasing Department will work in conjunction with the non-profit to provide technical assistance and guidance. The Department of Arts and Culture will provide project coordination. Vendor recommendation is submitted to the Department of Arts and Culture for written approval prior to the job start.