

STATE OF ALABAMA)

COUNTY OF BALDWIN)

AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into between THE BALDWIN POPS, an Alabama non-profit corporation (hereinafter referred to as the “BALDWIN POPS”), 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 BALDWIN POPS is an Alabama non-profit corporation organized for the purpose of enhancing the cultural environment of all of the Eastern Shore and Baldwin County by providing free concerts to the public; and

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

WHEREAS, the COMMISSION recognizes that the purposes for which the BALDWIN POPS was organized to enhance the cultural environment of all of the Eastern Shore and Baldwin County by providing free concerts to the public. Therefore, based upon the aforementioned benefits endowed upon the general public, the COMMISSION approved a one-time appropriation of Five Thousand Dollars and 00/100 (\$5,000.00), by and through its Baldwin County Fiscal Year 2022-2023 Budget, to pay the BALDWIN POPS funds allocated towards general purposes, which include enhancing the cultural environment of all of the Eastern Shore and Baldwin County by providing free concerts to the public; and

WHEREAS, the COMMISSION makes such one-time funding appropriation to the BALDWIN POPS 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. 2nd 953 (Ala. 1994).

NOW THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto, do 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 BALDWIN POPS shall continue to enhance the cultural environment of all of the Eastern Shore and Baldwin County by providing free concerts to the public, which provides a valuable public service.

3. All BALDWIN POPS facilities, activities and services will be made available to the general public provided that the following conditions are met, to-wit: BALDWIN POPS facilities, activities and services must be utilized in accordance with BALDWIN POPS policies.
4. The BALDWIN POPS shall have a nondiscriminatory policy and its facilities, activities and services will be available to all members of the general public regardless of race, age, sex, religion or disability.
5. The COMMISSION will assist the BALDWIN POPS with a one-time funding appropriation of Five Thousand Dollars and 00/100 (\$5,000.00) to pay the BALDWIN POPS specifically allocated towards enhancing the cultural environment of all of the Eastern Shore and Baldwin County by providing free concerts to the public.
6. The BALDWIN POPS expressly agrees not to use any of the one-time 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 any of the one-time 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 funding appropriation set forth at Section 5 of this Agreement, as provided by the COMMISSION, be utilized, by the BALDWIN POPS, only toward the purposes set forth in this Agreement.
7. The BALDWIN POPS shall fully indemnify and hold the COMMISSION, its County Commissioners, departments, employees, supervisors, insurer, agents, representatives and attorneys (for purposes of this Section 7 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 BALDWIN POPS 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. This provision shall survive the expiration or termination of this Agreement.
8. This Agreement and the relationship created hereby does not in any manner create, imply or otherwise vest any authority in the BALDWIN POPS 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 BALDWIN POPS is an agent of the COMMISSION.
9. The BALDWIN POPS 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 any time 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 BALDWIN POPS 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 10, 2023, a written report of its activities for the preceding period which commenced on October 1, 2022 and a copy of an annual report that includes the appropriation period to ensure the proper expenditure of the subject funding appropriation.
12. This Agreement, as provided in the form of one (1) original instrument for the records of the BALDWIN POPS, 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 BALDWIN POPS. 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, 2022, and expiring September 30, 2023, and may be amended, during the aforementioned period of twelve (12) months, only by written amendment executed by the COMMISSION and the BALDWIN POPS. 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 BALDWIN POPS.
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 BALDWIN POPS 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**

JAMES E. BALL
As Its: Chairman
Date: _____

ATTEST:

RONALD J. CINK
Budget Director/Interim 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 JAMES E. BALL, as Chairman of the Baldwin County Commission, and RONALD J. CINK, as Budget Director/Interim 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 _____, 2022.

NOTARY PUBLIC
My Commission expires: _____

THE BALWIN POPS
PO BOX 38
FAIRHOPE, AL 36533

By:
As Its:
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 _____, as _____ of The Baldwin Pops, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me and on this day that, being informed of the contents of said instrument, he/she, as such _____ of The Baldwin Pops, and with full authority, executed the same voluntarily on the day the same bears date for and as an act of said The Baldwin Pops.

GIVEN under my hand and seal this the _____ day of _____, 2022.

NOTARY PUBLIC
My Commission expires: _____