

STATE OF ALABAMA     )

COUNTY OF BALDWIN    )

**EMPLOYMENT CONTRACT**

**THIS EMPLOYMENT CONTRACT** (hereafter the “Contract”) is made by and between the Baldwin County Commission, the governing body of Baldwin County, Alabama, a political subdivision of the State of Alabama (hereafter the “Baldwin County Commission”), and KIMBERLY WITHERINGTON CREECH (hereafter the “Appointed Contract Employee”), wherein the Appointed Contract Employee agrees to provide and the Baldwin County Commission agrees to accept, in consideration of the mutual covenants contained herein, the terms and services specified within this Employment Contract.

**WITNESSETH:**

WHEREAS, pursuant to Section 45-2-120.12 of the Code of Alabama (1975), a certain and limited number of Baldwin County Commission administrative positions are required to be appointed contract employees; and

WHEREAS, Section 45-2-120.12 of the Code of Alabama (1975), provides, in pertinent part, as follows:

The following shall be appointed contract employees: County administrator, emergency management director, juvenile detention director, personnel director, building official, clerk/treasurer, county engineer, development and environmental director, budget director and communication and information systems director. Each of the appointed contract employees shall be employed under contract with the commission. Each contract shall include at a minimum the following provisions:

- (1) A provision for termination and severance.
- (2) A job description for the position.
- (3) An annual written evaluation to be reviewed with the employee and retained by the commission in the employee's personnel file.

(4) A provision that the contract will be nonbinding on the successor commission after each four-year election; however, the contracts must be cancelled or continued within 90 days of the successor commission taking office.

(5) A provision that any appointed contract employee employed by the county commission may not be subject to any action to cancel or not to renew the contract or in any other manner dismiss or terminate the contract employee except by a three-fourths vote of the elected members of the county commission.

WHEREAS, the Baldwin County Commission, during its January 15, 2019, regular meeting, voted to employ the Appointed Contract Employee as **Clerk/Treasurer**; and

WHEREAS, the Appointed Contract Employee is willing to accept said position pursuant to the terms set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the sufficiency of which are hereby acknowledged, the Baldwin County Commission and the Appointed Contract Employee agree as follows:

## **Article I.**

### **RECITALS**

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

## **Article II.**

### **DEFINITIONS**

With Cause: A reason exists, which may or may not be made public at the sole discretion of the Baldwin County Commission in accordance with applicable state law.

Without Cause: At the sole discretion of the Baldwin County Commission and without the need for a reason.

Severance Pay: Also known as separation pay; money (apart from back wages or salary) paid by the Baldwin County

Commission to a dismissed Appointed Contract Employee in accordance with the terms of this Agreement.

### **Article III.**

#### **TERM(S) AND PERIOD OF EMPLOYMENT**

The Baldwin County Commission appoints the Appointed Contract Employee, and the Appointed Contract Employee hereby accepts employment with the Baldwin County Commission as **Clerk/Treasurer**, which is classified as a salaried exempt position consisting of benefits only as set forth herein with absolutely no rights existing under the personnel merit system of Baldwin County, Alabama. The Appointed Contract Employee is employed solely at the pleasure of the Baldwin County Commission and may be dismissed with or without cause, as determined exclusively by and in the sole discretion of the Baldwin County Commission pursuant to this Employment Contract.

The Appointed Contract Employee shall continue and/or commence performance of said public duties, as written herein and as directed, upon the effective date of this Employment Contract, and the Appointed Contract Employee shall complete the adequate performance of the public duties and provisions noted herein on a continuing and ongoing basis to the exclusive satisfaction of the Baldwin County Commission.

### **Article IV.**

#### **PERIOD OF PERFORMANCE AND NON-BINDING EFFECT**

The effective date of this Employment Contract shall be January 15, 2019, and shall be for a term until November 9, 2022, subject to the terms and conditions of this Employment Contract and applicable state law. In the event the Baldwin County

Commission, by a three-fourths vote of the elected members of the Baldwin County Commission, elects not to renew this Employment Contract, this Employment Contract shall be at an end, and the Appointed Contract Employee's employment shall cease. Notwithstanding any other provisions of this Employment Agreement to the contrary, including, but not limited to, the provisions contained in Article IX, in the event the Baldwin County Commission elects not to renew this Employment Contract, the Appointed Contract Employee shall not be entitled to severance pay pursuant to this Employment Contract unless formally authorized and approved by the Baldwin County Commission. However, the Appointed Contract Employee shall be entitled to the paid benefits for unused annual leave that has accrued to which any other salaried-exempt employee of the Baldwin County Commission would be entitled upon separation in accordance with the terms, conditions and limitations set forth in the Baldwin County Commission Personnel Handbook, as the same may be amended. The Appointed Contract Employee shall not be paid any accrued sick leave except in the case of retirement in accordance with the terms, conditions and limitations set forth in the Baldwin County Commission Personnel Handbook, as the same may be amended. Any payments due for accrued leave time, as determined and calculated by the Baldwin County Commission, shall be paid in a lump sum to the Appointed Contract Employee within one month of the date of non-renewal of this Employment Contract. This Employment Contract shall be non-binding on the successor Baldwin County Commission after each four-year election; however, the Employment Contract must be cancelled or continued within ninety (90) days of the successor Baldwin County Commission taking office. Notwithstanding any other provisions of the Employment Contract to the contrary, including, but not limited to, the provisions contained in Article IX, in the event this

Employment Contract is cancelled within ninety (90) days of the successor Baldwin County Commission taking office, the Appointed Contract Employee shall not be entitled to severance pay pursuant to this Employment Contract unless formally authorized and approved by the Baldwin County Commission.

## **Article V.**

### **SCOPE OF SERVICES/ DUTIES**

The Appointed Contract Employee is employed as **Clerk/Treasurer**. The Employee will perform all duties of said position as are more particularly set forth in, BUT SHALL NOT BE LIMITED TO, the written job description of said position, which is attached hereto as Exhibit “A”, and such other additional tasks and functions as are incidental thereto as determined by the Baldwin County Commission. The aforementioned job description shall be attached hereto and included as though fully set forth herein. The Baldwin County Commission shall have the right to amend said job description from time to time, in its sole discretion, thereby reducing or increasing the duties, tasks or functions of the Appointed Contract Employee.

Furthermore, the Appointed Contract Employee shall serve as, and is hereby appointed to perform and accomplish the duties of, License Inspector for Baldwin County, Alabama, as authorized per Section 40-12-10 of the Code of Alabama (1975), and said License Inspector is hereby authorized to perform those duties prescribed by the general laws of Alabama and local laws applicable to Baldwin County, Alabama.

The Appointed Contract Employee shall be an employee of the Baldwin County Commission. The Baldwin County Commission, or its designee, shall have supervisory control over the Appointed Contract Employee, and the duties of the Appointed Contract

Employee may be changed from time to time in the sole direction of the Baldwin County Commission. Notwithstanding any such change, the employment of the Appointed Contract Employee shall be construed as continuing under this Employment Contract as so modified.

The Appointed Contract Employee shall devote his/her time, full ability, and attention to the business of the Baldwin County Commission without interruption during the term of this Employment Contract. The Appointed Contract Employee shall not directly or indirectly render any services of a business, commercial or professional nature to any other person or organization, whether for compensation or otherwise, without the prior written consent of the Baldwin County Commission.

## **Article VI.**

### **STANDARD OF PERFORMANCE**

The Appointed Contract Employee shall perform all such services in the manner and according to the standards observed by an able employee of the same skill and level of competence in the field within which said Appointed Contract Employee is engaged. All services and products of whatsoever nature, which the Appointed Contract Employee delivers to the Baldwin County Commission pursuant to this Employment Contract, shall be performed and prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person performing services or work in the Appointed Contract Employee's profession.

## **Article VII.**

### **COMPENSATION**

The Appointed Contract **Employee** shall be paid for his/her performance under this Employment Contract based upon an annual rate of salary of One Hundred Twenty Thousand Dollars (\$120,000.00). Said salary shall be due and payable in bi-weekly (every two weeks) installments and to coincide with the payment of the salary and/or payroll of other employees of the Baldwin County Commission. In addition, the Appointed Contract Employee shall be entitled to longevity pay on the same terms and conditions as full-time employees of Baldwin County in accordance with the Baldwin County Commission Employee Handbook, as the same may be amended, in the sole discretion of the Baldwin County Commission. Except as expressly provided in this Article VII, the Appointed Contract Employee shall not be entitled to any additional compensation unless approved by the Baldwin County Commission, in its sole discretion.

The Baldwin County Commission will review the Appointed Contract Employee's compensation set forth herein on an annual basis, and the Baldwin County Commission shall have the right, but not the obligation, to adjust the Appointed Contract Employee's compensation as deemed necessary by the Baldwin County Commission, in its sole discretion. In considering any compensation increases or decreases, the Baldwin County Commission may take into consideration any number of factors or matters, INCLUDING, BUT NOT LIMITED TO, the performance and evaluation of the Appointed Contract Employee, the resources of the Baldwin County Commission and any other information deemed to be necessary as determined solely by the Baldwin County Commission.

## **Article VIII.**

### **BENEFITS**

In addition to the compensation set forth above, the Appointed Contract Employee shall receive benefits only as follows:

The Appointed Contract Employee shall be eligible to participate in any available health insurance coverage, if any, provided by the Baldwin County Commission, subject to the terms and conditions of such health insurance coverage.

The Appointed Contract Employee shall enjoy leave accrual and other benefits on the same terms and conditions as are provided for other employees and in accordance with the Baldwin County Commission Personnel Handbook, as the same may be amended.

Notwithstanding any statement contained in this Employment Contract, nothing herein shall be construed or interpreted as affording the Appointed Contract Employee any rights existing under the personnel merit system of Baldwin County, Alabama.

## **Article IX.**

### **TERMINATION**

It is understood that the Appointed Contract Employee works at the sole discretion and the sole pleasure of the Baldwin County Commission, regardless of the capacity of public service. Nothing contained in this Employment Contract shall in any way prevent, limit or restrict the right of the Baldwin County Commission to cancel, terminate or not renew this Employment Contract and to discontinue the services of the Appointed Contract Employee at



any time, with or without cause, as those terms are herein defined; however, the Appointed Contract Employee shall not be subject to cancellation, termination or non-renewal or in any other manner dismissed or terminated except by a three-fourths vote of the elected members of the Baldwin County Commission.

In the event that the Appointed Contract Employee is terminated without cause, the Baldwin County Commission shall pay to the Appointed Contract Employee severance pay in an amount equal to one-twelfth (1/12th) of the Appointed Contract Employee's annual gross salary, with the exclusion of benefits, as specifically stated herein, i.e. (\$10,000.00). In the event that the Appointed Contract Employee is terminated with cause, interpreted and as determined solely by the Baldwin County Commission, he/she shall forfeit any and all rights to severance pay and shall not be entitled to receive the same unless formally authorized and approved by the Baldwin County Commission.

Regardless of whether the Appointed Contract Employee is terminated with or without cause, upon termination, he/she shall be entitled to the paid benefits for unused annual leave that has accrued to which any other salaried-exempt employee of the Baldwin County Commission would be entitled upon separation in accordance with the terms, conditions and limitations set forth in the Baldwin County Commission Personnel Handbook, as the same may be amended. The Appointed Contract Employee shall not be paid any accrued sick leave except in the case of retirement in accordance with the terms, conditions and limitations set forth in the Baldwin County Commission Personnel Handbook, as the same may be amended. Any severance pay and any payments due for accrued leave time, as determined and calculated by the Baldwin County Commission, shall be paid in a lump sum to the Appointed Contract Employee within one month of his/her official termination date.

The Appointed Contract Employee may cancel or terminate this Employment Contract at any time by giving two (2) weeks written notice of such cancellation or termination, and upon such cancellation or termination, said Appointed Contract Employee shall be entitled to the paid benefits for unused annual leave that has accrued to which any other salaried-exempt employee of the Baldwin County Commission would be entitled upon separation in accordance with the terms, conditions and limitations set forth in the Baldwin County Commission Personnel Handbook, as the same may be amended. The Appointed Contract Employee shall not be paid any accrued sick leave except in the case of retirement in accordance with the terms, conditions and limitations set forth in the Baldwin County Commission Personnel Handbook, as the same may be amended. However, said Appointed Contract Employee shall not be entitled to receive any severance pay pursuant to this Employment Contract. Any other payments due for accrued leave time, as determined and calculated by the Baldwin County Commission, shall be paid in a lump sum to the Appointed Contract Employee within one month of his/her official termination date.

## **Article X.**

### **APPOINTED CONTRACT EMPLOYEE EVALUATION**

The Baldwin County Commission shall prepare and review with the Appointed Contract Employee an annual written evaluation of performance. The evaluation criteria, procedure and method will be determined by the Baldwin County Commission. Said annual written evaluation shall be retained by the Baldwin County Commission within the Appointed Contract Employee's personnel file as kept and maintained by the Baldwin County Commission's Personnel Department. Said annual written evaluation, among other considerations, may be used by the Baldwin County Commission in determining the job

performance of the Appointed Contract Employee; however, said written annual evaluation shall in no way affect or limit the Baldwin County Commission's authority to terminate the Appointed Contract Employee with or without cause or at will.

The Appointed Contract Employee shall at all times adhere to the applicable Drug Free Workplace Policy and comply with Alabama's ethics laws as conditions of employment.

## **Article XI.**

### **DISPUTES**

In the event that a dispute should arise regarding any and all matters resulting from or dealing with this Employment Contract, and should such dispute result in litigation, it is agreed that the prevailing party shall be entitled to recover all reasonable costs incurred, including staff time, court costs, attorney's fees and other claim-related expenses.

## **Article XII.**

### **REMEDIES NOT EXCLUSIVE**

No remedy herein conferred upon or reserved to the Baldwin County Commission is intended to be exclusive of any other remedy or remedies, and the Baldwin County Commission retains each and every such remedy, now or hereafter existing, at law or in equity or otherwise.

## **Article XIII.**

### **SEVERABILITY**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be

deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other remaining provisions hereof. In that event, this Employment Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

#### **Article XIV.**

##### **ASSIGNMENT**

The Appointed Contract Employee shall not assign any of his/her rights nor transfer any of his/her obligations under this Employment Contract without the prior written consent of the Baldwin County Commission, and any attempt to so assign or so transfer without such consent shall be void, without legal effect and shall constitute grounds for cancellation or termination of the Appointed Contract Employee and this Employment Contract.

#### **Article XV.**

##### **NO WAIVER OF DEFAULT**

No delay or omission of the Baldwin County Commission to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy given by this Employment Contract to the Baldwin County Commission shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of the Baldwin County Commission.

## **Article XVI.**

### **ENTIRE CONTRACT AND AMENDMENT**

In conjunction with the matters considered herein, this Employment Contract contains the entire understanding and agreement of the Parties, and there have been no promises, representations, agreements, warranties or undertakings by any of the Parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Employment Contract may be altered, amended or modified only by an instrument in writing, executed by the Parties to this Employment Contract and by no other means. Each Party waives their future right to claim, contest or assert that this Employment Contract was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppels.

## **Article XVII.**

### **COMPLIANCE WITH THE LAW**

The Appointed Contract Employee shall at all times remain in compliance with all applicable Baldwin County, State, Federal and local statutes, ordinances, rules and regulations now in force or which may hereafter be in force with regard to this Employment Contract and the services or work performed hereunder.

## **Article XVIII.**

### **ALABAMA LAW**

The laws of the State of Alabama shall govern this Employment Contract. Any litigation regarding this Employment Contract or its contents shall be filed, if in state court,

in the County of Baldwin or, if in a federal court, the Federal District Court for the Southern District of Alabama.

## **Article XIX.**

### **AUTHORITY**

All parties to this Employment Contract warrant and represent that they have the power and the authority to enter into this Employment Contract in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity (ies), person(s), or firm(s), and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Employment Contract have been fully complied with. Furthermore, by entering into this Employment Contract, the Appointed Contract Employee hereby warrants that the Appointed Contract Employee shall not have breached the terms or conditions of any other contract or agreement to which the Appointed Contract Employee is obligated.

## **Article XX.**

### **NOTICES**

Any notices to be given under this Employment Contract by either Party to the other may be effected either by personal delivery in writing or by registered or certified United States Mail with postage prepaid and return receipt requested. Notices delivered personally shall be deemed communicated as of the actual receipt.

**Article XXI.**

**CAPTIONS**

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

**Article XXII.**

**RULE OF CONSTRUCTION**

The Parties hereto acknowledge that each Party and its counsel have had the opportunity to review and revise this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against a drafting party shall not be employed in the interpretation of this Employment Contract or any amendments hereto.

**THIS IS INTENDED TO BE A LEGALLY BINDING EMPLOYMENT CONTRACT. IF YOU DO NOT UNDERSTAND THE LEGAL EFFECT OF ANY PART OF THIS CONTRACT, SEEK LEGAL ADVICE BEFORE SIGNING.**

**BALDWIN COUNTY COMMISSION**

By: \_\_\_\_\_/\_\_\_\_\_  
CHARLES F. GRUBER Date  
As Its: Chairman

ATTEST:

\_\_\_\_\_  
RONALD J. CINK  
As Its: Budget Director

**KIMBERLY WITHERINGTON CREECH  
(APPOINTED CONTRACT EMPLOYEE)**

\_\_\_\_\_/\_\_\_\_\_  
KIMBERLY WITHERINGTON CREECH Date

**NOTARY PAGE TO FOLLOW**

STATE OF ALABAMA

COUNTY OF BALDWIN

I, \_\_\_\_\_, a Notary Public, in and for said County in said State, hereby certify that CHARLES F. GRUBER, whose name as Chairman, and RONALD J. CINK, whose name as Budget Director of the BALDWIN COUNTY COMMISSION, a county commission and political subdivision of the State of Alabama, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said county commission.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public, Baldwin County, Alabama

My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA

COUNTY OF BALDWIN

I, \_\_\_\_\_, a Notary Public, in and for said County, in said State, hereby certify that KIMBERLY WITHERINGTON CREECH, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this date, being informed of the contents of the instrument, he/she executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public: Baldwin County, Alabama

My Commission Expires: \_\_\_\_\_