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**REFUNDING TRUST AGREEMENT**

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**Dated September 1, 2016**

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**By and Between**

**BALDWIN COUNTY**

**And**

**REGIONS BANK**

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**This Instrument Prepared By James Birchall, Esq. of Jones Walker LLP, 1819 Fifth Avenue North,  
Suite 1100, Birmingham, Alabama 35203**

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## REFUNDING TRUST AGREEMENT

This **REFUNDING TRUST AGREEMENT** (the "Agreement") is made and entered into by and between **BALDWIN COUNTY**, an Alabama political subdivision (the "County") and **REGIONS BANK**, an Alabama banking corporation (the "Escrow Agent"), as of this the 1st day of September, 2016.

### Recitals

The County has heretofore issued its \$25,070,000 original principal amount of General Obligation Warrants, Series 2006-A, dated January 1, 2006 (the "Series 2006-A Warrants") on February 9, 2006. \$\$4,062,714 of the proceeds thereof was applied to the acquisition, construction and equipment of the County's "Wilderness Facility."

The Series 2006-A Warrants were advance-refunded in full on February 21, 2013 with the proceeds of the County's \$18,840,000 original principal amount of General Obligation Warrants, Series 2013, dated February 1, 2013 (the "Series 2013 Warrants"). The Series 2013 Warrants are outstanding in the principal amount of \$15,225,000. The County has determined that 16.21% thereof, or \$2,467,972.50, of the Series 2013 Warrants remains attributable to the Wilderness Facility.

The County has agreed to enter into a management contract with Pathway, Inc. to operate the Wilderness Facility. If and to the extent that such contract affects the tax-exempt status of the Series 2006-A Warrants/Series 2013 Warrants attributable to the Wilderness Facility (collectively the "Wilderness Facility Proceeds"), the County has decided to refund and retire the Wilderness Facility Proceeds with the taxable proceeds of its \$4,747,593.87 principal amount General Obligation Taxable Warrant, Series 2016-B, to be dated September 1, 2016 (the "Series 2016-B Warrant") on January 1, 2023.

In order to be certain that the County refunds not less than the principal amount of the Series 2013 Warrants attributable to the Wilderness Facility, the County will advance refund and redeem the principal amount of \$2,500,000 of the Series 2013 Warrants (the "Refunded Series 2013 Warrants") attributable to the Wilderness Facility. The \$12,725,000 principal portion of the Series 2013 Warrants that is not attributable to the Wilderness Facility and which will remain outstanding following the issuance of the Series 2016-B Warrant are collectively referred to as the "Remaining Series 2013 Warrants." The Refunded and Remaining Series 2013 Warrants are more particularly described on Exhibit A attached hereto and incorporated herein by reference.

### Agreement

NOW, THEREFORE, in consideration of the foregoing recitals and other good valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

## ARTICLE I

### DEFINITIONS AND USE OF PHRASES

#### **SECTION 1.1 Definitions.**

The following words and phrases and others evidently intended as the equivalent thereof shall, in the absence of clear implication herein otherwise, be given the following respective interpretations herein:

"Agreement" means this Refunding Trust Agreement.

"County" means the Baldwin County, an Alabama political subdivision, and any successor to its functions.

"Commission" means the Baldwin County Commission, the governing body of the County.

"Escrow Agent" means Regions Bank, the escrow agent under this Agreement for the Refunded Series 2013 Warrants.

"Escrow Fund" means the fund created in Section 3.1 hereof.

Refunded Series 2013 Warrants means the Series 2013 Warrants described on Exhibit A attached hereto and incorporated herein by reference.

Remaining Series 2013 Warrants means the Series 2013 Warrants described on Exhibit A attached hereto and incorporated herein by reference.

Series 2013 Warrants means the County's General Obligation Warrants, Series 2013, dated February 1, 2013, presently outstanding in the remaining principal amount of \$15,225,000.

Series 2016-B Warrant means the County's General Obligation Taxable Warrant, Series 2016-B, dated September 1, 2016.

"Series 2013 Authorizing Resolution" means the resolution and order duly adopted by the Commission authorizing the original issuance of the County's Series 2013 Warrants.

"Series 2016-B Authorizing Resolution" means the resolution and order duly adopted by the Commission on August 2, 2016 authorizing the issuance of the County's Series 2016-B Warrants.

## **SECTION 1.2 Use of Phrases.**

"Herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter," and other equivalent words refer to this Agreement as an entirety and not solely to the particular portion in which any word is used. The definitions set forth in Section 1.1 hereof include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural.

## **ARTICLE II**

### **REPRESENTATIONS AND COVENANTS BY THE COUNTY**

#### **SECTION 2.1 Representations by the County.**

The County makes the following representations as the basis for the undertakings on its part herein contained:

(a) The County has heretofore issued the Series 2013 Warrants in the original principal amount of \$18,840,000, which are now outstanding in the aggregate principal amount of \$15,225,000.

(b) The Series 2013 Warrants have stated maturities on January 1, and interest is payable semi-annually on January 1 and July 1 in each year.

(c) All principal and interest that has matured or come due with respect to the Series 2013 Warrants has been and shall continue to be paid in full.

(d) The County is not now and has never been in default under the Series 2013 Authorizing Resolution, and no such default is imminent.

(e) The money in the Escrow Fund will be sufficient, (1) with respect to the Refunded Series 2013 Warrants, (i) to pay in full the interest payments on the Refunded Series 2013 Warrants due on January 1, 2017, July 1, 2017, January 1, 2018, July 1, 2018, January 1, 2019, July 1, 2019, January 1, 2020, July 1, 2020, January 1, 2021, July 1, 2021, January 1, 2022, July 1, 2022 and January 1, 2023, and to (2) advance refund and redeem the Refunded Series 2013 Warrants on January 1, 2023.

(f) The County has the power to enter into this Agreement pursuant to the provisions of the laws of the State of Alabama. The execution and delivery of this Agreement on the part of the County have been duly authorized by all necessary action.

#### **SECTION 2.2 Representations by the Escrow Agent.**

The Escrow Agent, as the basis for the undertakings on its part herein contained, represents that it has the power to enter into this Agreement and has been duly authorized to do so by all necessary corporate action. The Escrow Agent is familiar with the terms and conditions of the Series 2013 Authorizing Resolution.

#### **SECTION 2.3 Covenant of County in Case of Deficiency in Escrow Fund.**

The County covenants and agrees that if at any time the moneys or investments on deposit in the Escrow Fund are insufficient to pay the principal of and interest on the Refunded Series 2013 Warrants, the County shall forthwith deposit into the Escrow Fund the amount of any such deficiency.

### **ARTICLE III**

#### **CREATION OF ESCROW FUND AND APPLICATION OF MONEY ON DEPOSIT THEREIN**

##### **SECTION 3.1 Escrow Fund.**

(a) There is hereby created an irrevocable trust fund called the "Escrow Fund" which shall be held by the Escrow Agent until all payments required by Sections 3.2 hereof have been made.

(b) With respect to the Refunded Series 2013 Warrants, \$3,194,525 shall be deposited in the Series 2013 Escrow Fund and applied to the advance refunding and redemption of the Refunded Series 2013 Warrants on January 1, 2023.

##### **SECTION 3.2 Application of Escrow Fund.**

The Escrow Agent is hereby directed, and by its execution and delivery of this Agreement does hereby agree, to apply such money in the Escrow Fund, (1) with respect to the Refunded Series 2013 Warrants, (i) to

pay in full the interest payments on the Refunded Series 2013 Warrants due on January 1, 2017, July 1, 2017, January 1, 2018, July 1, 2018, January 1, 2019, July 1, 2019, January 1, 2020, July 1, 2020, January 1, 2021, July 1, 2021, January 1, 2022, July 1, 2022 and January 1, 2023, and to (2) advance refund and redeem the Refunded Series 2013 Warrants on January 1, 2023.

**SECTION 3.3                    Investment of Escrow Fund.**

(a)        The proceeds of the Escrow Fund will be invested by the Escrow Agent at the written direction of the County in such investments that are permitted of the proceeds of the Series 2013 Warrants as set forth in the Series 2013 Authorizing Resolution or such other investments as directed by the County in writing to the Escrow Agent.

(b)        The yield on the Escrow Fund may not exceed the yield on the Refunded Series 2013 Warrants.

(c)        The Escrow Agent will transfer the investment earnings from the Escrow Fund to the County on a periodic or such other basis as agreed upon by the Escrow Agent and the County.

**SECTION 3.4                    Advance Refunding and Redemption of Refunded Series 2013 Warrants.**

(a)        The Refunded Series 2013 Warrants shall be redeemed in full by the County on January 1, 2023 (the "Redemption Date") at a redemption price for each Refunded Series 2013 Warrant equal to the principal amount thereof to be redeemed, plus accrued interest thereon to the date fixed for redemption, without premium or penalty.

(b)        The County does hereby call the Refunded Series 2013 Warrants for redemption on the Redemption Date and such warrants will become due and payable on said date at a redemption price equal to 100% of the principal amount thereof to be redeemed, plus accrued interest thereon until the date fixed for redemption, without premium or penalty. All interest on the Refunded Series 2013 Warrants so called for redemption will cease to accrue on the Redemption Date.

(c)        The County is not in default under the resolution and order pursuant to which the Refunded Series 2013 Warrants were issued and no such default is imminent.

(d)        The Refunded Series 2013 Warrants were issued for the purpose described hereinabove.

(e)        The County does hereby confer upon Regions Bank, the custodian escrow agent for the Refunded Series 2013 Warrants, irrevocable power to give, for and in the name of the County, notice of redemption of the Refunded Series 2013 Warrants in substantially the following form:

**NOTICE OF REDEMPTION**

NOTICE IS HEREBY GIVEN that a portion of the General Obligation Warrants, Series 2013, dated February 1, 2013, of Baldwin County, Alabama, numbered \_\_\_\_ through \_\_\_\_, inclusive, have been called for redemption on January 1, 2023 and will become due and payable on such date at a redemption price equal to 100% of the principal amount thereof to be redeemed, plus accrued interest thereon to the date fixed for redemption, without premium or penalty. All such warrants should be surrendered at the designated office of Regions Bank in Birmingham, Alabama, and no such

warrants will be paid until so surrendered. All interest on such warrants so called for redemption will cease to accrue on January 1, 2023 whether or not the warrants are presented for payment.

**BALDWIN COUNTY, ALABAMA**

By REGIONS BANK  
Its duly authorized agent

(f) The County hereby agrees it will not alter, amend, repeal or revoke this resolution calling the Refunded Series 2013 Warrants for redemption as provided herein except for manifest error and this resolution shall constitute an irrevocable trust agreement with Regions Bank for the retirement of the Refunded Series 2013 Warrants.

**ARTICLE IV**

**CONCERNING THE ESCROW AGENT**

**SECTION 4.1 Fees and Expenses of Escrow Agent.**

The Escrow Agent shall look solely to the County for the payment of its fees, compensation and expenses as such custodian, registrar and depository. Such fees, expenses, charges and disbursements shall in no event be payable from or constitute a lien or charge upon the Escrow Fund or any part thereof.

**SECTION 4.2 Acceptance of Trusts.**

The Escrow Agent accepts the trusts hereby created and agrees to perform the duties herein required of it, subject, however, to the following conditions:

(a) It is expressly understood and agreed that the Escrow Agent's duties and obligations in connection with this Agreement are confined to those expressly defined herein and no additional covenants or obligations shall be read into this Agreement against the Escrow Agent.

(b) It shall not be liable hereunder except for its noncompliance with the provisions hereof, its willful misconduct or its gross negligence, or the breach of any warranty or the untruthfulness of any acknowledgment or representation made herein by it, and, in particular and without limiting the generality of the foregoing, it shall not be liable for any losses resulting from any investment of moneys, or the conversion into cash of any investment, forming a part of the Escrow Fund if it shall have made such investment or conversion in accordance with the provisions hereof. Notwithstanding any provision herein to the contrary, in no event shall the Escrow Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

(c) It may consult counsel on any matters connected herewith and shall not be answerable for any action taken or failure to take any action in good faith on the written advice of counsel, provided that its action or inaction is not contrary to any express provision hereof.

(d) It need not recognize an owner of any of the Refunded Series 2013 Warrants as such without

the satisfactory establishment of his or her title thereto.

(e) It may conclusively rely upon and shall not be answerable for any action taken in good faith on any notice, request, consent, certificate or other paper or document which it believes to be genuine and signed or acknowledged by the proper party.

(f) It shall be entitled to compensation for its ordinary services hereunder and shall be entitled to reasonable extra compensation for unusual or extraordinary services or expenses incurred by it to the extent permitted by law.

(g) It may be the owner of the Refunded Series 2013 Warrants as if not Escrow Agent hereunder.

(h) It shall not be liable for the proper application of any moneys other than those that may be paid to or deposited with it.

(i) All moneys received by the Escrow Agent to be held by it hereunder shall be held as trust funds until disbursed in the manner herein provided therefor. The Escrow Agent shall not be liable to pay or allow interest thereon or otherwise to invest any such moneys except as specifically required herein.

(j) It shall, upon reasonable written request, advise the County and the owners of the Refunded Series 2013 Warrants of the amounts at the time contained in the Escrow Fund and in what such amounts are invested.

(k) It shall have the right to act through agents and attorneys.

(l) It has no obligation to use or risk its own funds.

(m) The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; hurricanes or other storms; wars; terrorism; similar military disturbances; sabotage; epidemic; pandemic; riots; interruptions; loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

#### **SECTION 4.3 Resignation and Removal of Escrow Agent; Appointment of Successor.**

The Escrow Agent, whether the original or a successor, may resign by giving written notice of its intention so to do to the County. In the event of the resignation of the Escrow Agent, or in the event said Escrow Agent shall fail or refuse, or become unable to perform its duties as Escrow Agent hereunder, the County hereby obligates itself to appoint as successor a bank in the State of Alabama which shall be a member of the Federal Deposit Insurance Corporation, qualified to serve as a depository in the State of Alabama, and having a paid in capital, surplus and undivided profits of not less than \$50,000,000. If no successor Escrow Agent shall have been so appointed and accepted appointment within sixty (60) days of the resignation of the Escrow Agent in the manner herein provided, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent until a successor shall have been appointed as above provided. All provisions of this Agreement applicable to the Escrow Agent shall apply to any successor so appointed.

**SECTION 4.4 Merger of Escrow Agent.**

Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from such conversion, sale, merger, consolidation or transfer to which it is a party shall be and become, ipso facto, successor Escrow Agent hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**ARTICLE V**

**MISCELLANEOUS**

**SECTION 5.1 Third Party Beneficiaries.**

The owners of the Refunded Series 2013 Warrants shall be third party beneficiaries of this Agreement. The owners of the Refunded Series 2013 Warrants shall be entitled to enforce the provisions of this Agreement, provided that nothing contained herein shall be construed to grant or confer a pledge of or lien on the Escrow Fund for the benefit of the owners of the Remaining Series 2013 Warrants and the Series 2016-B Warrant.

**SECTION 5.2 Use of Surplus Moneys.**

The Escrow Agent shall pay and transfer directly to the County all sums remaining after the full payment and redemption of the Refunded Series 2013 Warrants.

**SECTION 5.3 Benefit and Binding Effect of This Agreement.**

This Agreement shall inure to the benefit of, and shall be binding upon, the County and the Escrow Agent and their respective successors and assigns. Except as otherwise provided in Section 5.2 hereof with respect to the owners of the Series 2016-B Warrant and the Refunded Series 2013 Warrants, the covenants and agreements herein contained are for the sole and exclusive benefit of the parties hereto and their respective successors and assigns.

**SECTION 5.4 Severability.**

In the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**SECTION 5.5 Governing Law.**

The terms of this Agreement shall be governed by the laws of the State of Alabama, without regard to conflict of law principles.

IN WITNESS WHEREOF, the County and the Escrow Agent have caused this Agreement to be executed in their respective names, have caused their respective seals to be hereunto affixed, and have caused this Agreement to be attested, all by their duly authorized officers, all as of the day and year first hereinabove written.



Attest: [Signature]  
County Administrator

**BALDWIN COUNTY**

By [Signature]  
Chairman

BANK SEAL

Attest: [Signature]  
Its duly authorized representative

**REGIONS BANK**

By [Signature]  
Its duly authorized representative

**EXHIBIT A**

**[Identification of Refunded and Remaining Series 2013 Warrants]**

	Series 2013 Warrants	
<u>Jan. 1</u>	<u>Refunded</u>	<u>Remaining</u>
2017		1,275,000
2018		1,315,000
2019		1,370,000
2020		1,430,000
2021		1,485,000
2022		1,545,000
2023		1,595,000
2024		1,655,000
2025	685,000	1,055,000
2026	1,815,000	
<b>TOTAL</b>	<b>\$2,500,000</b>	<b>\$12,725,000</b>