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IN THE SIXTH JUDICIAL DISTRICT  
DISTRICT COURT, BOURBON COUNTY, KANSAS  
CIVIL DEPARTMENT

SUSAN WALKER  
f/k/a SUSAN BANCROFT,

Plaintiff,

vs.

BOARD OF COUNTY COMMISSIONERS  
OF BOURBON COUNTY, KANSAS,

Defendant.

Case No. BB-2025-CV-000015

PURSUANT TO K.S.A. CHAPTER 60

**FIRST AMENDED PETITION**

1. Plaintiff is a resident of Bourbon County, Kansas and is an employee of Defendant.
2. Defendant is the governing body of Bourbon County and can be sued by service on any county commissioner or the County Treasurer.
3. Venue is proper in Bourbon County, Kansas.
4. Plaintiff was employed pursuant to a written contract dated November 30, 2021. A copy of the contract is attached as Exhibit 1.
5. Entering into contracts with employees is an administrative or proprietary function of the county.

6. In the contract, the county hired her as Finance Director of Bourbon County. Plaintiff agreed to work for Defendant from December 1, 2021, through December 1, 2025. Contract, ¶¶s 1 and 8.

7. The contract provided that unless written notice was given to one party from another 45 days prior to the termination date, that the contract would extend for “an additional period of one year” and would “continue thereafter for (1) year periods unless 45 days written notice is given prior to the expiration.” Contract, ¶ 8.

8. Neither party has ever given the other party the required written notice of termination. Defendant claimed it “negated” the contracts it had with employees in January of 2023, but it never provided Plaintiff with written notice of termination of the contract.

9. The minutes of Defendant’s meeting on January 24, 2023 state:

- a. Clifton made a motion to adopt Resolution 06-23 defining employment status of exempt employees reporting to the Bourbon County Commission. Nelson seconded. All approved. Jim asked Justin to explain what this resolution means. Justin asked Jim to give some history on the topic. Jim stated that in the past, and still some current employees, are considered exempt. What that means is they don’t have a contract, they have a base pay that was agreed upon by the commission and the employee. They earn no vacation, but they can take vacation. It doesn’t accumulate on days as a regular employee does. I don’t want to use the word unlimited because I’ve never known anybody, we have some in other departments that are that way today. What this does is it changes the no contract for CFO, COO, Public Works Director and County Appraiser by state statute kind of, but also the Emergency Preparedness Director. There is no county employee that has a contract with the county commissioners. Clifton stated that we are just going back to what it was two years ago. Justin stated that this started 20 years ago, I wasn’t here, but I think you’re predecessor Commissioner Fisher worked on this at length. To go back and build a vacation structure where you would have to pay for unused vacation time would cost the county close to 2 mils, about \$178,000. So, to attract good people you usually have to have some kind of vacation schedule so you have to pay it out but this Road and Bridge Director, I forgot his name, he got a pretty good chunk of change when he left so the commissioners at that time realized we couldn’t afford it. So this has all been a matter of trying to find qualified

people, build something that could potentially could be not abused, it hasn't yet, but this unlimited thing has always been a weird thing for me but it's worked and so without the money to have to pay off unused vacation time I think you're left with not a lot of options. This negates any contract the county has with any employee at this point. Those employees could leave with they wanted to. They could try to enforce our contract but it's going to be up to the chairman. He has the authority under this resolution to basically negotiate on behalf of the commission. Nothing can happen without the commission vote. Jim clarified that any action would come back to the full commission.

10. Plaintiff's contract provided that if it was terminated for reasons other than "any unethical or improper act involving personal gain" to her, she would be entitled to 120 days aggregate salary and her vacation and sick leave. Contract, ¶ 9.A.

11. The contract provided that if the county "at any time during the employment term, reduced the salary or other financial benefits of EMPLOYEE...or the EMPLOYEE resigns following a suggestion, whether formal or informal, by the COUNTY COMMISSION that EMPLOYEE resign, then, in that event, the EMPLOYEE may, at her option, be deemed to be 'terminated' at the date of such reduction or such refusal to comply with the meaning context of the herein severance pay provision." Contract ¶ 9.B.

12. If Defendant takes the position that its January 24, 2023, resolution terminated the contract, it should have paid Plaintiff her four months salary, vacation and sick leave.

13. Plaintiff disagreed that the Defendant could unilaterally "negate" the contract.

14. As the County prepared its 2024 budget, commissioners told Plaintiff they intended to omit Plaintiff's salary from the budget. When she objected, Commissioners suggested that she should run for office and if she did so, that "her salary would follow her."

15. Because she had been told that her salary was going to be eliminated from the budget and she had been told to run for office when she objected to that elimination, Plaintiff

received a “suggestion, whether formal or informal” that she leave her job. She registered to run for County Clerk in June of 2024, was elected County Clerk in November and remained in the Finance Director position until she took office on January 13, 2025. She also resigned because her salary was projected to be reduced to zero. Either or both reasons for termination would entitle her to 120 days wages and vacation and sick leave. The four months’ salary was \$43,843.20.

16. Despite telling her that her salary would follow her to an elected position, Defendant did not continue to pay her the contractual salary but instead paid her an annual salary of \$15,000 less.

17. Plaintiff’s contract also provided that in addition to the vacation provided to other county employees, she would earn an extra 28 days of paid vacation **each year**, effective with the date of employment, which was December 1, 2021. Contract, ¶7.

18. The value of the 28 days paid vacation each year that was promised but not paid from 2021 through the present is \$40,920.32.

19. The vacation pay that Plaintiff was to have earned is “wages” as defined by K.S.A. 44-315, as is the \$15,000 in salary she was promised but not paid and the four months salary if she left the position for which she had bargained. The penalty for not paying wages when due is 100%.

20. Plaintiff repeatedly made a demand on the county for these sums between 2023 and 2024 and again in a letter from counsel in January 2025, but those demands have been wholly ignored.

#### COUNT ONE—BREACH OF CONTRACT

21. Defendant did not comply with its contractual obligations because it did not:

- Provide Plaintiff with the promised 28 days of additional vacation each year.

- Provide Plaintiff with the salary she was promised under the contract.
- Provide Plaintiff with the 120 days severance she was owed pursuant to the contract.
- Properly terminate the contract by notifying her in writing 45 days before the contractual anniversary.

22. Contractual damages are liquidated, which entitles Plaintiff to pre-judgment interest of 10% per annum pursuant to K.S.A. 16-201.

WHEREFORE, Plaintiff prays for judgment against Defendant for her breach of contract damages, for any equitable relief the court deems appropriate and for her costs and attorneys' fees.

#### COUNT TWO—KWPA CLAIM

23. Plaintiff is an “employee” and Defendant is an “employer” and Plaintiff’s contractual right to her vacation pay and to her salary difference are “wages,” pursuant to the Kansas Wage Payment Act, K.S.A. 44-313.

24. Defendant has failed to pay Plaintiff wages when due, including the vacation pay for years 2021-2024 and the \$15,000 a year salary she was promised as her salary if she ran for office and the four months’ salary it promised if she left her position.

25. K.S.A. 44-315(b) provides that if an employer willfully fails to pay an employee wages for eight days after payment is due, the employer must pay a penalty equal to 100% of what is owed. Defendant has willfully failed to pay Plaintiff what it promised and has failed to pay the 28 days per year vacation pay that was due her pursuant to her written contract and has not paid her the four months’ salary it promised to pay if it encouraged her to leave her position. It owes her wages and a 100% penalty and pre-judgment interest on those sums.

WHEREFORE, Plaintiff prays for judgment against Defendant for the wages owed and for 100% penalty and for pre-judgment interest and any equitable relief the court deems appropriate and for her costs and attorneys' fees.

Respectfully submitted,

HITE, FANNING & HONEYMAN L.L.P.

By /s/ Gaye B. Tibbets

Gaye B. Tibbets #13240

*Attorneys for Plaintiff*

Start Date: 12-2-21

# EXHIBIT 1

## FINANCE DIRECTOR

### EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into this 30 day of November, 2021 by and between BOURBON COUNTY COMMISSIONERS, KANSAS, (hereinafter referred to as "County"), and SUSAN BANCROFT, (hereinafter referred to as "EMPLOYEE"), both whom understand as follows:

WHEREAS, the COUNTY desires to employ the services of SUSAN BANCROFT as the County Finance Director of Bourbon County, Kansas.

WHEREAS, the SUSAN BANCROFT, having accepted employment as Finance Director for Bourbon County, Kansas and the County Commission desiring to clearly establish conditions of employment and working conditions, it is hereby mutually agreed as follows:

#### WITNESSETH:

1. DUTIES. COUNTY hereby engages EMPLOYEE as Finance Director of Bourbon County, Kansas, and EMPLOYEE hereby accepts said employment to perform the functions and duties specified by the Bourbon County Commissioners that are legally permissible and proper duties and functions as the County Commission shall from time-to-time assign. County Commission appoints SUSAN BANCROFT as Finance Director and may remove her at any time subject to the provisions of this Agreement.
2. COMPENSATION. COUNTY agrees to pay EMPLOYEE for her services at an annual base salary rate of Ninety-Five Thousand and zero Cents (\$95,000) payable in installments at the same time as other employees of the COUNTY are paid. COUNTY agrees to increase said base salary and/or other benefits of EMPLOYEE in such amounts and to such an extent as the County Commission may determine on the basis of an annual review of said EMPLOYEE made at the same time as similar consideration is given to other employees generally.
3. DUES. The COUNTY agrees to budget and pay the professional dues and subscriptions of EMPLOYEE necessary for her continuation and full participation in national, regional, state and local associations and/or organizations necessary and desirable for her continued professional participation, growth, advancement, and good of the ~~COUNTY.~~ County *sb*
4. PROFESSIONAL DEVELOPMENT. The COUNTY hereby agrees as follows:
  - A. To budget for and to pay the travel and subsistence expense of EMPLOYEE for professional and official travel, meetings, and occasions adequate to continue the professional development of EMPLOYEE and adequately pursue necessary official and other functions for COUNTY including, but not limited to, the annual conference of the Government Finance Officers Association of Kansas, Kansas Association of Counties and for such regional, state, and local governmental groups and committees thereof which EMPLOYEE serves as a member. All expenses shall be itemized on COUNTY expense vouchers and any expenditure for lodging and other expenses shall be accompanied by a receipt.
  - B. To budget and pay for the travel and subsistence expense of the EMPLOYEE for short courses, institutes, and seminars that are necessary for EMPLOYEE's professional development and for the good of the COUNTY.

5. HEALTH INSURANCE. The COUNTY agrees to pay the cost for a single coverage to the EMPLOYEE.

6. SICK LEAVE. The COUNTY agrees to provide two (2) weeks sick leave per calendar year.

7. VACTION AND OTHER BENEFITS. The COUNTY agrees to provide twenty-eight (28) days of paid vacation each year effective with the date of employment. Other vacation days will be accrued in the same fashion as other County employees under the fringe benefit package offered to the County employees (eight (8) hours each month).

8. TERM. The term of this agreement for compensation is for one (1) year but EMPLOYEE agrees to remain in the exclusive employ of the COUNTY from December 1, 2021 until December 1, 2025. The EMPLOYEE shall neither accept nor become employed by any other employer until said termination date. The EMPLOYEE shall not devote any time to teaching, consulting, or other non-county connected business without the express prior approval of the County Commission.

In the event written notice is not given by either party to this contract to the other forty-five (45) days prior to the termination date as hereinabove provided, this contract shall be extended on the same terms and conditions as herein provided, all for an additional period of one (1) year. Said contract shall continue thereafter for (1) year periods unless forty-five (45) days written notice is given prior to the time of expiration.

9. TERMINATION AND SEVERANCE PAY.

A. In the event EMPLOYEE is terminated by the COUNTY COMMISSION before the expiration of this agreement, the COUNTY agrees to pay EMPLOYEE a lump sum cash payment equal to one hundred twenty (120) days aggregate salary, and accumulated vacation, and sick leave; provided, however, that in the event EMPLOYEE is terminated because of any unethical or improper act involving personal gain to her, then, in that event, the COUNTY shall have no obligation to pay the aggregate severance sum designated in this paragraph.

B. In the event the COUNTY, at any time during the employment term, reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across-the-board reduction for all COUNTY employees, or in the event the COUNTY refuses, following written notice, to comply with any other provisions benefiting EMPLOYEE herein, or the EMPLOYEE resigns following a suggestion, whether formal or informal, by the COUNTY COMMISSION that EMPLOYEE resign, then, in that event, EMPLOYEE may, at her option, be deemed to be "terminated" at the date of such reduction or such refusal to comply with the meaning in context of the herein severance pay provision.

C. In the event the EMPLOYEE decides to voluntarily resign her position, before the expiration of the aforesaid term of employment, said EMPLOYEE shall give the COUNTY at least forty-five (45) days advance notice in writing of her intention to resign, unless otherwise agreed to by the parties. The EMPLOYEE will not be entitled to the 120 days severance pay under Paragraph 9 in the event of resignation except she shall be paid for all of her unused sick leave and vacation time.

10. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

A. The COUNTY shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of EMPLOYEE provided such terms and conditions are not inconsistent with or in conflict with the provisions of this agreement, the County's policy or any other law.

B. The COUNTY agrees to pay EMPLOYEE'S reasonable dues in the civic organization of EMPLOYEE'S choice provided, however, that nothing beyond membership dues shall be paid. Costs of any meals, special assessments, or any other club assessment, except membership dues, shall be compensated by the COUNTY.

C. Pursuant to the Kansas Tort Claims Act, K.S.A. 75-6101, et seq., as amended, if EMPLOYEE is sued pursuant to said act, defense of the EMPLOYEE shall be provided pursuant to K.S.A. 75-6108, as amended.

D. The text herein shall constitute the entire agreement between the parties. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

E. This agreement shall be binding upon and inure to the benefit of the heirs at law and personal representatives of the EMPLOYEE.

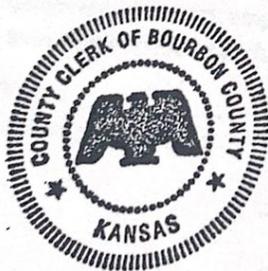
IN WITNESS WHEREOF, The COUNTY, has caused this agreement to be signed and executed on its behalf by its chairman and duly attested to by its County Clerk, and the EMPLOYEE has signed and executed this agreement, both in duplicate, on the date and year first above written.

THE BOURBON COUNTY COMMISSION, KANSAS

By: \_\_\_\_\_

Lynne Oharah, Chairperson  
(COUNTY-EMPLOYER)

Ashley Shelton  
Ashley Shelton, County Clerk



By: \_\_\_\_\_

SUSAN BANCROFT