INTERGOVERNMENTAL ROADWAY CONSTRUCTION AGREEMENT

This INTERGOVERNMENTAL ROADWAY CONSTRUCTION AGREEMENT (this "Agreement") is made and entered into this the 21st day of November, 2023 (the "Effective Date"), by and among the Baldwin County Commission (the "County") and the City of Daphne (the "City"), these individual entities collectively referred to herein as the "Parties".

RECITALS

WHEREAS, the County is the duly formed governing body in and for Baldwin County, Alabama, and the City is an incorporated municipality of the State of Alabama; and

WHEREAS, the County and the City are authorized under Alabama law to control, manage, supervise, regulate, repair, maintain, and improve certain public roads or rights-of-way inside their respective jurisdictions; and

WHEREAS, the Parties have determined that certain roadway and intersection improvements including a roundabout to connect CR 13, starting at its intersection with Milton Jones Road, westward approximately 2,640 linear feet to Friendship Road, ending at its intersection with Jonesboro Road, as depicted on **Exhibit A** hereto (the "Project"), are necessary to (i) improve road access for the citizens and residents of the City and the County, and (ii) promote the convenience, order, prosperity and welfare of the citizens and residents of the City and the County; and

WHEREAS, the Parties wish to set forth their mutual agreements and understandings regarding the funding and construction of such improvements.

NOW THEREFORE, in consideration of the respective promises and covenants contained herein and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **The Project**.

(a) The City's Obligations. The City shall contribute Five Hundred Thousand and No/100 Dollars ($500,000) (the "City Contribution") toward the total costs, fees and expenses of the Project, including all costs incurred for right-of-way, design, utility relocations, permitting, construction and CE&I. The City agrees to construct or cause to be constructed, subject to any plan alterations deemed necessary by the City, the Project to the satisfaction of the City within thirty (30) months of the Effective Date, subject to environmental permitting and any extension mutually agreed to by the Parties. The City agrees to utilize City employee time and resources to facilitate designing the Project, coordinating utility relocations, and facilitating the CE&I required to construct the Project. The City agrees that it shall let the Project out for public bid, annex the right-of-way containing the Project into the corporate limits, and assume maintenance of the Project after the completion of construction.

(b) The County's Obligations. The County shall tender payment to the City in an amount up to Two Million, Eight Hundred Thousand and No/100 Dollars ($2,800,000) (the

"County Contribution") to be applied toward the total costs, fees and expenses of the Project, including all costs incurred for design, utility relocations, right-of-way acquisitions, permitting, construction and CE&I. The County agrees to utilize County employee time and resources to facilitate any and all right-of-way acquisition required for the construction of the Project, and to convey all real property acquired for such purposes to the City prior to commencement of construction of the Project. All costs incurred by the County for right-of-way acquisition related to the Project shall be credited toward the County Contribution. The County shall make payments to the City as follows:

i. The remaining amount above the City Contribution of the combined total of the engineering design contract and construction contract for the Project, up to the County Contribution, within thirty (30) days following receipt of an invoice from the City and the execution by the City of the construction contract.

(c) Excess Costs. If the total costs, fees and expenses of the Project, including all costs incurred for design, utility relocations, right-of-way acquisitions, permitting and CE&I, exceed the sum of the City Contribution and the County Contribution, the City shall provide the additional funding required to cover such excess costs to complete the Project, not to exceed Two Hundred Thousand and No/100 Dollars ($200,000) (the "Excess City Contribution").

(d) Availability of Funds.

i. Notwithstanding the foregoing, if the total cost of the engineering design contract for the Project exceeds $100,000.00, the City shall have no obligation to enter into such contract, the City shall have no obligation to construct the Project, and the County shall have no obligation to provide the County Contribution.

ii. Notwithstanding the foregoing, if the County Contribution is not made available to the City, the City shall have no obligation to construct the Project.

iii. Notwithstanding the foregoing, if all responsive and responsible bids received by the City for the Project exceed the sum of the City Contribution, the County Contribution, and the Excess City Contribution, less the costs incurred or to be incurred for design, utility relocations, right-of-way acquisitions, permitting and CE&I, the City shall have no obligation to construct the Project and shall return any unspent County funds to the County.

2. **Representations.**

(a) Representations of the City. The City represents and covenants as follows:

i. The City has the full power and authority to enter into this Agreement and to carry out its respective obligations hereunder.

ii. There is no action or proceeding pending or, insofar as the City knows, threatened against the City which could impact upon the City's right, power, and authority to enter into this Agreement or to otherwise carry out its obligations hereunder.

iii. Each service provided by or for the City under this Agreement will be performed in compliance with applicable laws, rules, and regulations.

(b) Representations of the County. The County represents and covenants as follows:

i. The County has the full power and authority to enter into this Agreement and to carry out its respective obligations hereunder.

ii. There is no action or proceeding pending or, insofar as the County knows, threatened against the County which could impact upon the County's right, power, and authority to enter into this Agreement or to otherwise carry out its obligations hereunder.

iii. Each service provided by or for the County under this Agreement will be performed in compliance with applicable laws, rules, and regulations.

3. **Term**. The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until terminated by mutual agreement of the Parties or until the last of the obligations hereunder has expired.

4. **Relationship of the Parties**. In making and performing this Agreement, the Parties are acting and shall act as independent contractors. Neither the City, nor the County is, nor will either be deemed to be, an agent, legal representative, joint venturer, or partner of the other for any purpose. Except as expressly permitted hereunder, neither the City, nor the County will be entitled to (a) enter into any contracts in the name of or on behalf of the other, (b) pledge the credit of the other in any way or hold itself or themselves out as having authority to do so, or (c) make commitments or incur any charges or expenses for or in the name of the other. Neither the City's personnel nor the County's personnel are, nor shall they be deemed to be at any time during the term of this Agreement, employees of the other. Except as specifically set forth above with respect to the costs, fees or expenses of the respective Project, each Party shall each be responsible for its own costs incurred, whether internally or for its outside legal counsel, consultants and advisors, in conjunction with this Agreement.

5. **Force Majeure**. No Party shall be liable for any default or delay in performance of its obligations hereunder, to the extent such default or delay is attributable to events beyond the reasonable control of such Party, including without limitation acts of God, acts of public enemies, epidemics, floods, fires, strikes or other serious labor disputes, civil disturbances, and earthquake conditions; provided, however, that the Party subject to any such event shall use its commercially reasonable efforts to overcome the event as soon as is reasonably practicable and to continue its performance as required hereunder. Performance times shall be considered extended for a period of time equivalent to the time lost due to such an event.

6. **Assignment**. This Agreement may not be assigned by any Party without the prior written consent of the other Party, and any attempt to make such assignment shall be null and void.

7. **Binding Effect**. This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and inure to the benefit of the Parties and each of their respective successors and permitted assigns.

8. **Further Assurances**. The Parties shall take, and shall cause their respective affiliates to take, all appropriate action and execute or cause to be executed all documents of any kind which may be reasonably necessary or advisable to carry out any of the provisions hereof.

9. **Amendment**. No amendment, modification, or supplement of any provision of this Agreement or any exhibit hereto will be valid or effective unless made in writing and signed by the duly authorized representatives of the Parties.

10. **Governing Law**. This Agreement shall be governed by and performed in accordance with the laws of the State of Alabama. The Parties agree that venue concerning any dispute regarding the terms or enforcement of this Agreement shall only be in the State Courts of Alabama in Baldwin County.

11. **Severability**. Any of the provisions of this Agreement determined to be invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions hereof or affecting the validity or enforceability of any of the provisions of this Agreement.

12. **Negotiated Agreement**. The Parties each hereby acknowledge that the terms and language of this Agreement were the result of negotiations among the Parties and, as a result, there shall be no presumption that any ambiguities in this Agreement shall be resolved against any particular Party. Any controversy over construction of this Agreement shall be decided without regard to events of authorship or negotiation.

13. **Counterparts; Electronic Signature**. This Agreement may be executed in any number of counterparts, each of which shall be considered an original and all of which together shall constitute one and the same instrument. Transmission of images of signed signature pages by facsimile, email or other electronic means shall have the same effect as the delivery of manually signed documents.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

[*Remainder of Page Intentionally Left Blank*]

[*Signature Pages to Follow*]

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RECITALS

WHEREAS, the County is the duly formed governing body in and for Baldwin County, Alabama, and the City is an incorporated municipality of the State of Alabama; and

WHEREAS, the County and the City are authorized under Alabama law to control, manage, supervise, regulate, repair, maintain, and improve certain public roads or rights-of-way inside their respective jurisdictions; and

WHEREAS, the Parties have determined that certain roadway and intersection improvements including a roundabout to connect CR 13, starting at its intersection with Milton Jones Road, westward approximately 2,640 linear feet to Friendship Road, ending at its intersection with Jonesboro Road, as depicted on **Exhibit A** hereto (the "Project"), are necessary to (i) improve road access for the citizens and residents of the City and the County, and (ii) promote the convenience, order, prosperity and welfare of the citizens and residents of the City and the County; and

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

[*Remainder of Page Intentionally Left Blank*]

[*Signature Pages to Follow*]

[Signature Page to Intergovernmental Roadway Construction Agreement]

BALDWIN COUNTY COMMISSION,
BALDWIN COUNTY, ALABAMA

By: _____
Billie Jo Underwood, Chairman
Baldwin County Commission

ATTEST: _____
Roger H. Rendleman
County Administrator

[Signature Page to Intergovernmental Roadway Construction Agreement]

BALDWIN COUNTY COMMISSION,
BALDWIN COUNTY, ALABAMA

By: _____
Billie Jo Underwood, Chairman
Baldwin County Commission

ATTEST: _____
Roger H. Rendleman
County Administrator

[Signature Page to Intergovernmental Roadway Construction Agreement]

CITY OF DAPHNE, ALABAMA

By:_____
Robin LeJeune, Mayor

ATTEST: _____
Candace G. Antinarella, CMC, City Clerk

Exhibit A
Extend Milton Jones Rd from CR-13 to Friendship Road