

INTERGOVERNMENTAL SERVICE AGREEMENT
TO RESCIND PRIOR AGREEMENT AND ESTABLISH NEW
RESPONSIBILITIES FOR THE PROPOSED IMPROVEMENTS
TO CORTE ROAD AND AUSTIN ROAD

This Intergovernmental Service Agreement ("Agreement") is entered into by and between the Baldwin County Commission (hereinafter "County") and the City of Daphne, Alabama (hereinafter "City"), as follows:

RECITALS

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

Whereas, County and City are authorized under Alabama law to control, manage, supervise, regulate, repair, maintain, and improve (hereinafter collectively "control") certain public roads or rights-of-way inside their respective jurisdictions; and

Whereas, City has determined that an additional east-west arterial connecting County Road 13 and State Route 181 is needed; and

Whereas, City has planned an additional connector between County Road 13 and State Route 181 by making improvements to Corte Road to include design, right-of-way acquisition, grading, drainage, basing and paving of Corte Road from County Road 13 to State Route 181 (hereinafter "Phase I") and improvements to Austin Road to include design, right-of-way acquisition and construction of new roadway from the intersection of State Route 181 and Corte Road eastward to Austin Road (hereinafter "Phase II"); and

Whereas, County and City acknowledge and agree that County currently maintains the sections of Corte Road and Austin Road that lie within the project limits; and

Whereas, County and City entered into a prior Agreement (hereinafter "Prior Agreement") dated June 13, 2017, whereby the County and City agreed to the following:

- 1) County agreed to assist the City by providing labor and equipment for grading and compacting assistance in the preparation of the Corte Road roadbed prior to paving (Phase I) and assist the City with right-of-way acquisition by providing personnel to assist in the procurement of needed right-of-way and donating Baldwin County employee personnel time and services as "in kind" services (Phase I and Phase II);
- 2) City agreed to provide all design work and materials and be responsible for any other costs or expenses related to improvements on Phase I and Phase II and reimburse the County for all costs associated with the right-of-way acquisition (less donated County time and services) and provide all required right-of-way survey support for Phase I and Phase II; and

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- 3) County agreed to transfer maintenance obligations of Phase I and Phase II via quitclaim deed and annexation by the City, and City agreed to take the steps necessary to facilitate such transfer; and

Whereas, unforeseen circumstances and changes to the project scope require the County and City rescind its Prior Agreement dated June 13, 2017; and

Whereas, County and City wish to enter into this new Agreement to provide for their joint cooperation for the Phase I and Phase II improvements described above; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the sufficiency of which being hereby acknowledged, County and City do hereby agree as follows:

1. **Recitals:** The recitals set out above are incorporated into this Agreement, as though the same were set out in full in this paragraph.
2. **Rescission of Prior Agreement:** The parties acknowledge and agree that the Prior Agreement dated June 13, 2017, is hereby rescinded in its entirety and replaced with the present Agreement.
3. **Purpose:** The parties acknowledge and agree that the purpose of this Agreement is for the County to assist the City with right-of-way acquisition and for the City to manage the design, public letting, and construction of Phase I and Phase II at the City's expense.
4. **County Remains Owner of Right-of-Way until Completion of the Project:** The County shall retain exclusive responsibility for and control over Corte Road and Austin Road until the Project is complete. The City will have exclusive responsibility for and control over Phase I and Phase II upon receipt of Quitclaim Deeds from the County following Completion of the Project.
5. **Maintenance:** Upon completion of the Project and receipt of Quitclaim Deeds, the City shall retain exclusive maintenance responsibilities for Phase I and Phase II.
6. **No Joint Ownership of Property:** The parties acknowledge and agree that they will not jointly acquire, own, or otherwise come into joint or common possession of any property as a result of or in relation to this Agreement.
7. **Financing and Budgeting:** Each party shall be responsible for financing the obligations undertaken by that party hereunder and shall not be responsible for financing, or in any other manner contributing to, the actual costs or expenses of the obligations undertaken by the other party unless expressly identified herein.
8. **Approval and Effective Date:** This Agreement shall become effective upon the date of full execution by both parties ("Effective Date").

9. **Term:** The term of this Agreement shall be for twenty-four (24) months from its effective date. This document may be amended only upon written approval by the Parties hereto, and any such amendment shall be approved by the same method by which this original Agreement has been approved by the Parties.
10. **Reimbursements:** The City will reimburse the County for costs set forth herein within thirty (30) days from invoice date.
11. **Services to be Performed by County (Phase I and Phase II):**
- A. Donate Baldwin County employee time and services as “in kind” services to acquire all right-of-way necessary to complete the project. (This item has been completed between the date of the original agreement and the new agreement)
 - B. Send invoices to the City for all actual right-of-way acquisition costs (excluding in-kind services). (This item has been completed between the date of the original agreement and the new agreement. All invoices have been submitted and full payment has been received.)
 - C. Prepare and execute a Quitclaim Deed to the City conveying all rights, title and interest to any right-of-way owned on Phase I or Phase II following completion of the project.
 - D. Provide payment to the City in the amount of two-hundred thousand dollars \$200,000 to be used for the Project.
 - E. Any tasks necessary for the completion of Phase I and Phase II not specifically delineated in Paragraphs 11(A)-(C) as a responsibility of County shall be the responsibility of City.
12. **Services to be Performed by City (Phase I and Phase II):**
- A. Pay all outstanding invoices to reimburse the County for all actual costs associated with right-of-way acquisition (less donated County time and services), as a prior condition to the County’s performance of any of the services listed in paragraph 11(A)-(C). (This item has been completed between the date of the original agreement and the new agreement. All invoices have been submitted and full payment has been received.)
 - B. Provide to County, at City’s own expense, an engineered plan set for Phase I and Phase II that includes the following:
 - a. Title Sheet
 - b. General and Project Notes

- c. Typical Section for twenty-two foot roadway with 220 LB/SY wearing surface and eight-inch sand/clay base
- d. Project Details
- e. Geometric Layout (including location of temporary elevation benchmarks)
- f. Plan Profile (including overlay with future SR 181 intersection)
- g. Temporary Traffic Control Plan
- h. Cross Sections
- i. Utility Sheets (existing and proposed)
- j. Summary of Quantities
- k. Erosion and Sediment Control Plan
- l. Bid additive for Corte Road West 1700'
- m. Bid additive for additional Bellaton Entrance features
- n. Any other sheets deemed necessary to successful letting, award, and construction of Phase I and Phase II.

(This item has been completed between the date of the original agreement and the new agreement)

- C. Provide to County for review and approval, at City's own expense, an itemized Project Cost Estimate for Phase I and Phase II construction, prepared by the Engineer of Record, that includes the following:

- a. Construction cost estimate by pay item (including mobilization, engineering controls, and traffic control)
- b. County Utility Relocation cost estimate
- c. Materials and Testing cost estimate
- d. CE&I cost estimate
- e. Bid additive for Corte Road West 1700' cost estimate
- f. Bid additive for Bellaton Entrance Features cost estimate

(This item has been completed between the date of the original agreement and the new agreement)

- D. Hold a pre-bid meeting, pre-construction meeting, and ensure the City's Engineer of Record is available at any other times necessary to answer questions about the proposed design, at the City's expense. (This item has been completed between the date of the original agreement and the new agreement)

- E. Provide written correspondence from all utility companies within the Phase I and Phase II scopes of work stating that the company has reviewed and concurs the utility plans for the project. In the case that the project is designed such that the new roadbed will be constructed over existing utilities, the City shall provide written confirmation that this is the intended design. Any utility costs associated with the project shall be at the City's expense. (This item has been completed between the date of the original agreement and the new agreement)

- F. Any and all additional costs associated with the project shall be at the City's expense.
 - G. Acquire all required permits on behalf of the County, including but not limited to permits required by ADEM, the US Army Corps of Engineers, and ALDOT, and pay any associated costs. (This item has been completed between the date of the original agreement and the new agreement)
 - H. Responsible for maintenance of Phase I and Phase II after receipt of Quitclaim Deeds from the County.
 - I. Responsible for maintenance of the existing Austin Road from State Route 181 to the project limits of Phase II after receipt of Quitclaim Deeds from the County.
 - J. Take all necessary action to take over maintenance of the subject rights-of-way and the project, including, but not limited to, the passage of resolutions accepting maintenance and annexation of the rights-of-way.
13. **Termination and Notice:** Notwithstanding the foregoing, the County may terminate this Agreement, with reasonable cause, upon written notice to the City. The County's said notice shall be deemed effective, and the Agreement deemed terminated, thirty (30) days after the date such notice is mailed by certified mail to the City. In the event of termination by the County, the City shall be responsible for all actual costs incurred by the County, as set forth in this agreement, through the date of receipt of the requisite termination notice. All notices provided for herein shall be sent as follows:

To City: City of Daphne
P.O. Box 400
Daphne, Alabama 36526

To County: Baldwin County Commission
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507

14. **Indemnity:** To the fullest extent allowed by law, City shall indemnify, defend and hold the County and its Commissioners, departments, department heads, affiliates, employees, agents, and representatives (collectively referred to in this section as “County”) harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitations, attorneys’ fees and costs, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by, asserted against, or imposed upon the County, as a result of or in any manner related to the work or services performed by the County and City pursuant to this Agreement or in any way related to the work or services performed by the County or City pursuant to this

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Agreement, excluding those which arise from an alleged injury to a County employee. This indemnification provision shall survive the expiration or termination of this Agreement.

City accepts the improvement, work, property, product, funds and services of the County as a result of the Project in its "WHERE IS", "AS IS", condition and acknowledges that the County has made no representation or warranty to City as to, and has no obligation for the condition of, the improvements, work, property, product, funds and services of the County. City assumes the risk of any latent or patent defects or problems that are or may be contained in the improvements, work, property, product, funds and services of the County or City. City agrees that the County shall not be liable for any injury, loss or damage on account of any such defects or problems. City for itself and City Representatives waive and release the County from any claims for injury to persons (other than County employees) or damage to the personal property by reason of the condition of the improvements, work, property, product, funds and services of the County or otherwise.

All guarantees, duties, representations, assurances, without limitation, contained within this Agreement shall survive and exist beyond the date of termination or expiration of this Agreement, and time, or the lapse thereof, shall not be used for, or argued as a defense by, the City against the same.

Nothing contained herein shall be construed to limit or modify the laws of Alabama as the same may apply to the County or City related to any immunity, absolute or qualified, to which the County and City are otherwise entitled by law.

15. **Entire Agreement:** This Agreement represents the entire and integrated agreement between County and City and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the parties.
16. **Both Parties Contributed Equally to the Agreement:** This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both County and City have contributed substantially and materially to the preparation of this Agreement.
17. **Failure to Strictly Enforce Performance:** The failure of either party to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Agreement shall not constitute a default or be construed as a waiver or relinquishment of the right of a party to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.
18. **Assignment:** Neither this Agreement nor any interest herein shall be assigned, transferred or otherwise encumbered without a prior written agreement providing for such assignment, transfer, or other encumbrance, signed by the parties.

19. **Choice of Law:** The parties acknowledge and agree that this Agreement shall in all respects be governed by the laws of the State of Alabama, including without limitation all issues relating to capacity, formation, interpretation, and available remedies, without regard to Alabama conflict of law principles.

IN WITNESS WHEREOF, the parties have executed this Agreement by and through their duly authorized representatives as of the date of full execution below.

COUNTY:
BALDWIN COUNTY

ATTEST:

BY: _____ /
Billie Jo Underwood /Date
Chairman

_____/
Wayne Dyess / Date
County Administrator

CITY:
THE CITY OF DAPHNE

ATTEST:

BY:  /2/12/2020
DANE HAYGOOD /Date
Mayor

 2/12/2020
CANDACE G. ANTINARELLA /Date
City Clerk

State of Alabama)
County of Baldwin)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Billie Jo Underwood, as Chairman of the Baldwin County Commission, and Wayne Dyess, as County Administrator of the Baldwin County Commission, whose names 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 Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of said Baldwin County Commission.

Given under my hand and official seal, this the ____ day of _____, 2019.

Notary Public
My Commission Expires: _____

State of Alabama)
County of Baldwin)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that, Dane Haygood, whose name as Mayor of the City of Daphne, and Candace G. Antinarella, whose name as City Clerk of the City of Daphne, 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 Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of said City of Daphne.

Given under my hand and official seal, this the 12th day of February, ~~2019~~ 2020.

Jessica H. Linne
Notary Public
My Commission Expires: _____

