



COUNTY COMMISSION

BALDWIN COUNTY
312 Courthouse Square, Suite 12
BAY MINETTE, ALABAMA 36507
(251) 937-0264
Fax (251) 580-2500
www.baldwincountyal.gov

MEMBERS
DISTRICT 1. FRANK BURT, JR.
2. CHRIS ELLIOTT
3. J. TUCKER DORSEY
4. CHARLES F. GRUBER

June 6, 2017

The Honorable Dane Haygood
Mayor
City of Daphne
Post Office Box 400
Daphne, Alabama 36526

RE: Corte Road and Austin Road Improvements - Intergovernmental Service Agreement between Baldwin County and the City of Daphne

Dear Mayor Haygood:

The Baldwin County Commission, during its regularly scheduled meeting held on June 6, 2017, approved an *Intergovernmental Service Agreement* between the Baldwin County Commission and the City of Daphne for roadbed preparation and right-of-way acquisition on Phase I and right-of-way acquisition on Phase II of the Corte Road and Austin Road improvement project. The term of this *Agreement* shall be for thirty-six (36) months from its effective date upon the date of full execution of both parties and may be terminated as set forth therein.

Please find enclosed a **fully executed copy** of the *Agreement* for your file.

If you have any questions or need further assistance, please do not hesitate to contact me at (251) 990-4606 or Joey Nunnally, Acting and Interim County Engineer, at (251) 937-0371.

Sincerely,

T. CHRISTOPHER ELLIOTT, Chairman
Baldwin County Commission

TCE/met Item GA1

cc: Joey Nunnally
Lisa Sangster

ENCLOSURE

INTERGOVERNMENTAL SERVICE AGREEMENT

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 Highway 181 is needed; and

Whereas, City has planned an additional connector between County Road 13 and State 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 Highway 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 Highway 181 and Corte Road eastward to Austin Road (hereinafter "Phase II"); and

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

Whereas, County agrees 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); and

Whereas, City agrees to provide all design work and materials and shall 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

Whereas, County agrees to transfer maintenance obligations of Phase I and Phase II via quitclaim deed and annexation by the City; and

Whereas, County and City now wish to enter into this Agreement to provide for their joint cooperation for roadbed preparation and right-of-way acquisition on Phase I and right-of-way acquisition on Phase II.

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. **Purpose:** The parties acknowledge and agree that the purpose of this Agreement is for County to assist the City by providing roadbed preparation and right-of-way acquisition on Phase I and right-of-way acquisition on Phase II.
3. **County Remains Owner of Right-of-Way until Completion of Right-of-Way Acquisition:** The County shall retain exclusive responsibility for and control over Corte Road and Austin Road until right-of-way acquisition 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.
4. **Maintenance:** The City, at all times including during the effective term of this Agreement and at all times thereafter, shall retain exclusive maintenance responsibilities for Phase I and Phase II upon completion of right-of-way acquisition and receipt of Quitclaim Deeds.
5. **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.
6. **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.
7. **Approval and Effective Date:** This Agreement shall become effective upon the date of full execution by both parties ("Effective Date").
8. **Term:** The term of this Agreement shall be for thirty-six (36) 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.
9. **Reimbursements:** The City will reimburse the County for costs associated with right-of-way acquisition (less donated County time and services) upon receipt of an invoice from the County.

10. Services to be Performed by County (Phase I and Phase II):

Phase I

- A. Acquire all right-of-way necessary to complete the project.
- B. Donate Baldwin County employee time and services as “in kind” services.
- C. Send invoices to the City for all actual right-of-way acquisition costs (excluding in-kind services).
- D. Provide labor and equipment for grading and compacting assistance in the preparation of the Phase I roadbed prior to paving, subject to cost estimates provided by the City and approved by the County.
- E. Prepare and execute a Quitclaim Deed to the City conveying all rights, title and interest to any right-of-way owned on Corte Road.

Phase II

- A. Acquire all right-of-way necessary to complete the project.
- B. Donate Baldwin County employee time and services as “in kind” services.
- C. Send invoices to the City for all actual right-of-way acquisition costs (excluding in-kind services).
- D. Prepare and execute a Quitclaim Deed to the City conveying all rights, title and interest to any right-of-way owned within the project limits of Phase II.
- E. Prepare, execute and deliver a Quitclaim Deed to the City conveying all rights, title and interest to any right-of-way owned on the existing Austin Road from State Highway 181 to the project limits of Phase II.

11. Services to be Performed by City (Phase I and Phase II):

Phase I

- A. Provide all required survey data and mapping as needed for right-of-way acquisition.
- B. Reimburse the County for all actual costs associated with right-of-way acquisition (less donated County time and services) upon receipt of invoices (monthly, if necessary) from the County.

- C. Ensure that proper materials are provided (including roadway borrow pit base material). The County shall not be responsible for any issues arising from unsuitable materials.
- D. Prepare, load and truck borrow material to project site.
- E. Provide any and all material testing and all construction engineering and inspection (CE&I)
- F. Handle coordination and any costs associated with utility relocations.
- G. Acquisition, monitoring and reporting for all required permits (including ADEM) and any associated costs.
- H. Provide all design work, materials and any other costs or expenses.
- I. Responsible for maintenance of Phase I after receipt of Quitclaim Deed from the County.
- J. The City will 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.

Phase II

- A. Provide all required survey data and mapping as needed for right-of-way acquisition.
- B. Reimburse the County for all actual costs associated with right-of-way acquisition (less donated County time and services) upon receipt of invoices (monthly, if necessary) from the County.
- C. Responsible for all aspects of design and construction including utility relocations, any testing (including testing for design) and all construction engineering and inspection (CE&I).
- D. Acquisition, monitoring and reporting for all required permits (including ADEM) and any associated costs.
- E. Responsible for maintenance of the Phase II after receipt of Quitclaim Deed from the County.
- F. Responsible for maintenance of the existing Austin Road from State Highway 181 to the project limits of Phase II after receipt of Quitclaim Deed from the County.

G. The City will take all necessary action to take over the 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.

*Any tasks necessary for the completion of Phase I and Phase II not specifically delineated in Section 10 as a responsibility of County shall be the responsibility of City.

12. **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 (less donated County time and services) 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

13. **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 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.

14. **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.
15. **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.
16. **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.
17. **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.
18. **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: T. Christopher Elliott / 6/13/17 / Ronald J. Cink / 6/13/17
T. CHRISTOPHER ELLIOTT /Date RONALD J. CINK /Date
Chairman County Administrator

CITY:
THE CITY OF DAPHNE

ATTEST:

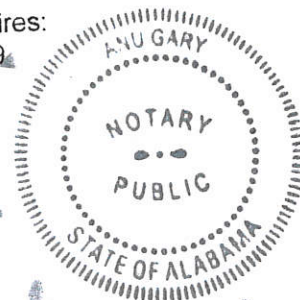
BY: Dane Haygood / 6/10/17 / Rebecca A. Hayes / 6/10/17
DANE HAYGOOD /Date REBECCA A. HAYES /Date
Mayor City Clerk

State of Alabama)
County of Baldwin)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that T. Christopher Elliott, as Chairman of the Baldwin County Commission, and Ron Cink, 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 13th day of June, 2017.

[Signature]
Notary Public
My Commission Expires: October 12, 2019



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 Rebecca A. Hayes, 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 5th day of June, 2017.

Anita Allen

Notary Public

My Commission Expires: 9-20-20

