

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

THE TOWN OF SUMMERDALE,)
ALABAMA, a municipality; BALDWIN)
COUNTY SEWER SERVICE, LLC, an)
Alabama limited liability company; CITY)
OF ROBERTSDALE, a municipality,)

Plaintiffs,)

v.)

CASE NO. CV-2009-901240.80

EAST CENTRAL BALDWIN COUNTY)
WATER, SEWER AND FIRE)
PROTECTION AUTHORITY and THE)
BALDWIN COUNTY COMMISSION,)

Defendants.)

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into on this ____ day of March, 2020, by and between the Town of Summerdale, hereinafter referred to as Summerdale, and East Central Baldwin County Water, Sewer, and Fire Protection Authority, hereinafter referred to as ECBC.

WHEREAS, Summerdale has instituted an action against ECBC now pending in the Circuit Court of Baldwin County, Alabama, captioned Town of Summerdale, et al, vs. East Central Baldwin County Water, Sewer, and Fire Protection Authority, et al, Civil Action No. CV-2009-901240, in which Summerdale has asserted claims; and

WHEREAS, ECBC denies any liability and wrongdoing whatsoever; and

WHEREAS, Summerdale and ECBC, through agreement, wish to settle and resolve all claims asserted in the Baldwin County Litigation and any and all other matters, claims, disputes and issues between Summerdale and ECBC; and

WHEREAS, the Parties to this Agreement having been advised of their potential rights, liabilities, obligations, if any, in connection with their respective claims against the other party and any related claims, and being represented by counsel of their own choosing, consider it in their best interest to fully settle, resolve, compromise and fully release all claims, disputes, and differences between them in order to avoid the costs, fees and uncertainty of judicial resolution and litigation; and

WHEREAS, each of the Parties desires to forego and waive any claims against the other party on the terms and conditions more specifically set forth in this Agreement.

NOW, THEREFORE, in consideration of the recitals, the mutual covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Summerdale and ECBC hereby covenant and agree as follows:

1. Summerdale and ECBC will enter into a consent decree which will incorporate the terms of this settlement. Attached thereto will be Exhibits A and B, color-coded maps which will reflect ECBC's existing service area, ECBC's concessions or transfer of service area to Summerdale, Summerdale's service area and infrastructure being sold and conveyed from ECBC to Summerdale hereunder. These Exhibits will be official documents of ownership of all involved parties.

2. Summerdale and ECBC agree to enter into a franchise agreement for ECBC to serve all those portions of Summerdale's corporate limits lying east of the Baldwin Beach Express, as they exist at the time of the execution of this Agreement, and as they are further identified on Exhibit A. The portion of ECBC's service area which includes Summerdale's corporate limits lying east of the Baldwin Beach Express as they exist at the time of this Settlement Agreement is outlined in green. The existing corporate limits therein are designated by the red cross-hatching. The terms of said franchise agreement shall be as follows:

- (A) ECBC shall pay Summerdale a 3% franchise fee.
- (B) The term of said franchise agreement shall be for thirty (30) years after which time the franchise fee would be re-negotiated.
- (C) ECBC will have no responsibility for the payment of a business license fee, permit fee or any other similar fee in those corporate areas where it is paying the 3% franchise fee.
- (D) The franchise fee shall be paid by ECBC to Summerdale in one annual payment.
- (E) Any area lying east of the Baldwin Beach Express and lying within ECBC's service area which is annexed by Summerdale after the date of the execution of this Agreement which said area is currently being served by ECBC or where ECBC has service reasonably accessible, shall not be subject to or required to be included in a franchise agreement. However, ECBC would be responsible for any business license fee or permit fee typically charged by Summerdale for the provision of such services in those areas.

3. It is specifically agreed by and between Summerdale and ECBC that Summerdale shall be authorized to run a water line from the east side of the Baldwin Beach Express, along County Highway No. 32 to a point where Resmondo Road intersects said County Highway No. 32. This line may be run on either the north or the south side of said County Highway No. 32. The purpose of this agreement is to afford Summerdale access to two parcels of property lying in the

northeast quadrant of the intersection of Baldwin County Highway No. 32 and the Baldwin Beach Express more particularly identified by their PPIN numbers of 10959 and 65382 and to afford Summerdale access to the western portion of the Hamm property the eastern portion of which was developed as Shadyfield Estates Subdivision and which is more particularly identified as PPIN 21124. It is specifically understood and agreed that the intent of this provision is to allow Summerdale to compete on an equal basis with ECBC for service to these three parcels and Summerdale agrees that it will not use its permitting authority or any other municipal authority to coerce the owner or developer of these parcels to utilize Summerdale's water services as opposed to ECBC's water services.

4. ECBC agrees to sell and Summerdale agrees to purchase ECBC's currently existing infrastructure as shown on Exhibit B, to-wit:

- (A) County Road 34 west of the Baldwin Beach Express
- (B) Guy Burns Road
- (C) Fred Duggar Road/Sanborn Avenue
- (D) The west side of the Baldwin Beach Express running north/south from Duggar Road to Baldwin County Highway No. 32

Summerdale shall have twenty-four (24) months to take possession of said lines. ECBC will continue to provide service in these lines until Summerdale takes possession thereof. Summerdale shall pay ECBC \$25.00 per foot for each 8" line, \$20.00 per foot for each 6" line and \$10.00 per foot for each 3" line. The total cost for the purchase of this infrastructure is \$241,853.50. Summerdale agrees to pay this amount in full within thirty (30) days of the execution of this Settlement Agreement.

5. ECBC agrees to reduce its currently existing service area lying west of the Baldwin Beach Express from a line running east and west through the mid-point of Section 28, Township 6 South, Range 4 East, south to the Foley Beach Express as is more particularly described on Exhibit A. This area is outlined on Exhibit A by the red-dotted line and is further designated by the green diagonal lines, all of which lie west of the Baldwin Beach Express.

6. Summerdale and ECBC shall construct one interconnect between their systems at the southeast corner of Baldwin County Highway No. 32 and the Baldwin Beach Express with the cost thereof to be divided equally (50/50) between Summerdale and ECBC. Further, both parties agree to enter into a mutual aid agreement within thirty (30) days of the construction of said interconnect. Any improvements or upgraded apparatus installed in conjunction with this interconnect shall be paid for by the benefitting party, including, but not limited to, a pressure sustaining valve.

7. The Shadyfield Estates Subdivision shall continue to be serviced by ECBC and shall be subject to the franchise agreement described in Paragraph No. 2 hereinabove. The determination of which entity shall serve any expansion of the Shadyfield Estates Subdivision shall be made by the developer thereof. However, the conditions as set forth in Paragraph 3 hereinabove concerning the competition between Summerdale and ECBC shall apply.

8. ECBC is authorized to extend a line on the east side of the Baldwin Beach Express running from Baldwin County Highway No. 32 north to the Baldwin County Highway No. 34 / Lehman Road intersection so as to provide a "loop" in ECBC's infrastructure.

9. ECBC agrees not to extend any infrastructure running south from Baldwin County Highway No. 36 along Baldwin County Highway No. 73 without the consent of Summerdale.

10. This Settlement Agreement shall become final when approved by the Baldwin County Commission which said approval shall be evidenced by its execution of this Agreement. Summerdale and ECBC will dismiss any and all pending actions or complaints against one another with prejudice. Summerdale and Baldwin County will dismiss any and all pending actions or complaints against one another herein with prejudice.

11. Any order entered in this case based upon this Settlement Agreement shall be recorded in the Probate Records of Baldwin County.

12. Each party shall be responsible for their own costs of this proceeding.

I HAVE READ THIS SETTLEMENT AGREEMENT AND UNDERSTAND AND AGREE TO THE TERMS AND PROVISIONS SET FORTH HEREIN.

TOWN OF SUMMERDALE,
a municipal corporation

BY: _____
DAVID WILSON
Its: Mayor

JAMES G. CURENTON, JR.
Attorney for the Town of Summerdale
P. O. Box 1435
Fairhope, AL 36533
jim@curentonlaw.com

STATE OF ALABAMA)

COUNTY OF BALDWIN)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that David Wilson, whose name as Mayor of TOWN OF SUMMERDALE, a municipal corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal of office this ____ day of March, 2020.

NOTARY PUBLIC

My Commission Expires: _____

**I HAVE READ THIS SETTLEMENT AGREEMENT AND UNDERSTAND AND
AGREE TO THE TERMS AND PROVISIONS SET FORTH HEREIN.**

**EAST CENTRAL BALDWIN COUNTY WATER,
SEWER AND FIRE PROTECTION AUTHORITY**

BY: _____

CARL A. DAVIS
Chairman of the Board

ROBERT A. WILLS
Attorney for East Central Baldwin County
Water, Sewer and Fire Protection Authority
Post Office Box 547
Bay Minette, Alabama 36507
Email: rwills423@aol.com

STATE OF ALABAMA)

COUNTY OF BALDWIN)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Carl A. Davis, whose name as Chairman of the Board of EAST CENTRAL BALDWIN COUNTY WATER, SEWER AND FIRE PROTECTION AUTHORITY, an Alabama nonprofit corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal of office this _____ day of March, 2020.

NOTARY PUBLIC
My Commission Expires: _____

I HAVE READ THIS SETTLEMENT AGREEMENT AND UNDERSTAND AND AGREE TO THE TERMS AND PROVISIONS SET FORTH HEREIN.

BALDWIN COUNTY COMMISSION

BY: _____
Printed Name: _____
Its: _____

HOPE C. HICKS
Attorney for Baldwin County
Post Office Box 2148
Montgomery, Alabama 36102
Email: hhicks@ball-ball.com

STATE OF ALABAMA)

COUNTY OF BALDWIN)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of the BALDWIN COUNTY COMMISSION, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal of office this _____ day of March, 2020.

NOTARY PUBLIC
My Commission Expires: _____

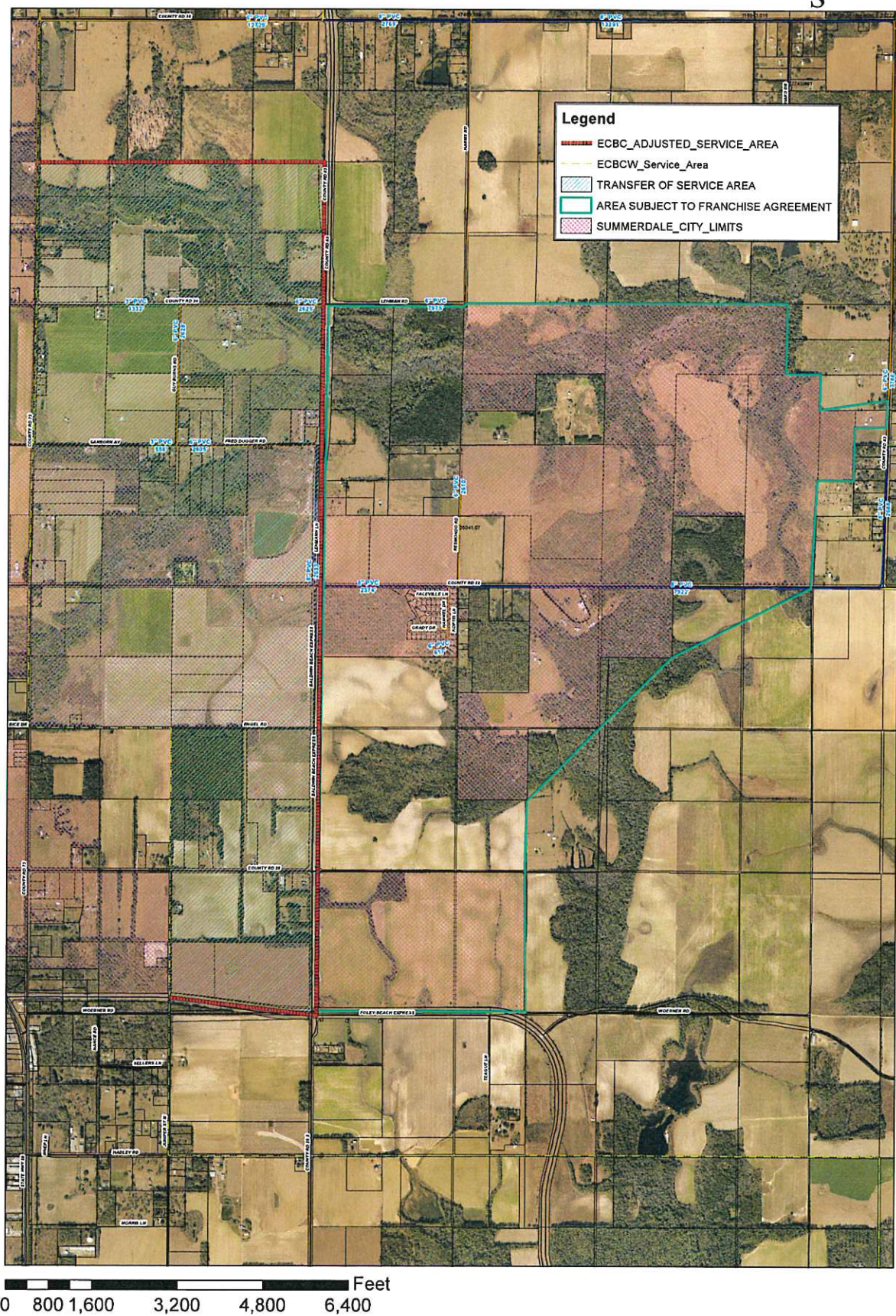


EXHIBIT B



0 270 540 1,080 1,620 2,160 Feet