

## **LICENSE AGREEMENT**

This LICENSE AGREEMENT (this “Agreement”) between the Baldwin County Commission (“Licensor”), with an address at 312 Courthouse Square, Suite 12, Bay Minette, Alabama 36507, and **Daphne Utilities** (“Licensee”), with an address at **900 Daphne Ave Daphne, Alabama 36526.**

### **WITNESSETH:**

WHEREAS, Licensor is the owner of the real property described as **2<sup>nd</sup> Street right-of-way** in Baldwin County, Alabama, and more particularly shown on the Site Map and Vicinity Map, which are attached hereto and included as if fully set forth herein (the “Property”);

WHEREAS, Licensee desires to obtain access to the Property for the purpose of **a) boring a 2-inch water line on the East side of the right-of-way for 137 feet and installing a flush hydrant at the end of the line; and b) trenching a ¾ inch water line for 174 feet and relocating one service meter. (The Baldwin County Utility Manual will be followed per attached Utility Permit Application. Appropriate erosion and sediment control practices shall be utilized and no clearing shall take place.)**; and

WHEREAS, Licensor is willing to grant said access based upon the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.** The above recitals and statements are incorporated as part of this Agreement as if fully set forth herein.

2. **Grant of Revocable, Non-Exclusive and Temporary License.** Subject to the terms and conditions set forth herein, Licensor hereby grants to Licensee, **Daphne Utilities**, a revocable, non-exclusive and temporary license (the “License”) to enter upon the Property as is reasonably required to **bore and trench a 2-inch and ¾ inch water line, install a flush hydrant and relocate one service meter.** The Property shall be used for the sole purpose of **placing utilities.** No further development or use of the Property is permitted or allowed without Licensor’s prior written consent. Licensor retains the right to use the Property as it deems necessary. This License is granted to Licensee and is limited and specifically restricted to Licensee and its representatives (“Licensee Representatives”). Licensee shall have the Property surveyed and staked prior to performing any work thereon. All improvements constructed by Licensee shall be maintained by Licensee for any and all portions of the Property that are not County maintained.

3. **Property.** The real property subject hereto is limited to and sufficiently described as the **2<sup>nd</sup> Street right-of-way** in Baldwin County, Alabama, as shown on the Site Map and Vicinity Map attached hereto. Any exhibits referenced and attached hereto shall be incorporated herein as if fully set forth.

4. Term of License (Installation and Maintenance). The term of the License for Installation and/or Maintenance shall commence on the date of full execution of this Agreement. The term for installation, unless sooner terminated, shall automatically terminate and expire at 11:59 p.m. on **February 6, 2021**. Maintenance shall be **indefinite** according to the terms of this Agreement, or until modified by written agreement with Licensor.

5. Condition of License Area: Assumption of Risk. Licensee accepts the Property in its "WHERE IS", "AS IS", condition and acknowledges that Licensor has made no representation or warranty to Licensee as to, and has no obligation for, the condition of the Property. Licensee assumes the risk of any latent or patent defects or problems that are or may be on the Property or the improvements thereon. Licensee agrees that Licensor shall not be liable for any personal or property damage, injury or loss on account of any such defects or problems. Licensee for itself and the Licensee Representatives waives and releases Licensor from any and all claims for injury to persons, including death, or damage to any property, whether real or personal, of Licensee or any Licensee Representatives in any way arising out of or related to the Property or Licensee's work contemplated by this Agreement.

6. Compliance. Licensee shall be responsible for obtaining any and all applicable permits. Licensee and the Licensee Representatives shall comply, at Licensee's expense, with all applicable laws, regulations, rules and orders, whether federal, state or local, and any regulation of any governmental body having jurisdiction over the Property with respect to Licensee's work and activities thereon, regardless of when they become effective. Licensee, at its cost, shall obtain any applicable licenses or permits required by applicable laws and regulations for the use of the Property. Licensee shall not use, nor permit the use, of the Property for any purpose in violation of such laws, regulations, rules or orders. Licensee agrees not to use the Property in any fashion which may in any way damage or restrict the same for future use by the public in general as a public right-of-way. Furthermore, said usage as described herein, or the placement of said usage, shall not in any way alter the present or future rights of the Licensor to move, relocate, amend, or otherwise change said travel way to any other location whatsoever. Licensee shall comply with Licensor's safety and security policies deemed to be necessary by Licensor and with such reasonable rules and regulations as Licensor, or its agents, may impose from time to time by notice to Licensee.

7. Public Property. Licensee acknowledges and consents that the Property is public in nature and that the usage hereunder is permissive. Licensee shall not obstruct or otherwise interrupt any rights of the general public to the Property. Licensee makes no claim of private ownership or other possessory interest in the Property subject hereto, and any rights of the Licensee granted by this Agreement are limited to the same extent as that of the general public. Any work performed by Licensee, or any improvements made as a result of the Licensee's work, on the Property is considered to be a benefit to the general public, and the Licensee makes no claim that such work or improvements are privately owned and waives all rights to claims that such work or improvements are private in nature. Licensee further represents and warrants that Licensor, nor any persons using said public access in conjunction with this License, may claim any personal rights in the subject property or any rights of adverse possession.

8. Indemnification. Licensee shall indemnify, defend and hold Licensors and its Commissioners, affiliates, employees, agents, representatives, contractors, subcontractors, licensee and invitees (collectively, "Licensor Representatives") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitation, attorneys' fees and costs, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by or imposed upon Licensor or any Licensor Representative, as a result of any entry upon or activity conducted by Licensee or any Licensee Representative, or any act or omission by Licensee or any Licensee Representative, or in any way arising out of or related to the Property or work contemplated by this Agreement. Licensee shall also assume the responsibility for any claims for damage done to any property due to the exercise, usage and/or presence of the resulting work as a result of this License.

9. No Alteration. Except as expressly permitted by this Agreement, Licensee shall not make nor permit any uses alterations or additions to the Property without Licensor's prior written consent.

10. Removal and Completion Upon Termination. Upon the expiration or termination of this License, Licensee shall (a) peaceably deliver to Licensor the full possession of the Property; (b) remove all materials, equipment, debris, waste, staged fill materials and improvements placed thereon by Licensee or Licensee Representatives or resulting from work under this Agreement; and (c) repair any damage to the Property and restore the Property to its condition on the date of this Agreement. Should Licensee fail, within thirty (30) days after the date of the termination of this License, to make such removal, repair and restoration, Licensor may, at its option, remove said materials, equipment and improvements and complete said repair and restoration at the sole cost of Licensee. Licensee shall reimburse Licensor for such costs within thirty (30) days after request by Licensor.

11. Damage to Property. Licensee agrees to pay for any damage which may arise to buildings, fences, machinery, or other property of Licensor or any third party on or near the Property resulting from Licensee's operations or presence on the Property. Licensee shall reimburse any and all costs related to any and all corrections, changes or improvements deemed to be necessary by Licensor as a result of work performed pursuant to this Agreement or as a result thereof.

12. Standard of Operation: Expenses. Licensee shall conduct all of its operations in a safe and workmanlike manner. All work and activities which Licensee or Licensee Representatives perform at the Property shall be at Licensee's sole risk, cost and expense. All portions of the work performed or improvements installed by Licensee or its representatives pursuant to this Agreement shall be located and performed so as to cause minimum interference with the proper use of the rights of way and with the rights and reasonable convenience of property owners who own or occupy adjacent properties. If during the course of the Licensee's construction, operation or maintenance of the project or improvements, there occurs a disturbance of the Property by Licensee or its representatives, Licensee shall, at Licensee's expense, replace and restore the same to a condition comparable to the condition it was in immediately prior to the disturbance to the satisfaction of Licensor and within the dates specified in any permits authorizing the work.

13. Insurance. Prior to occupying or using the Property, Licensee shall carry, with insurers satisfactory to Licensors, throughout the term hereof, Auto Liability Insurance, including owned, hired and non-owned vehicles, with limits of not less than \$1,000,000, combined single limit, for both bodily injury liability and property damage liability for each occurrence. Commercial General Liability Insurance, including all contractual liability hereunder, with limits not less than \$1,000,000, combined single limit, for both bodily injury liability and property damage liability for each occurrence; and Worker's Compensation Insurance, meeting the statutory limits of the state where the Property is located and Employer's Liability Insurance fully covering all employees and supervisors participating in the work at the Property with limits not less than \$1,000,000 each accident and \$1,000,000 each employee disease. All liability insurance shall name Licensors as an additional insured. Prior to commencing operations hereunder, a Certificate of Insurance evidencing such coverage, satisfactory to Licensors, shall be furnished to Licensors, which shall specifically state that such insurance shall provide for at least ten (10) days' notice to Licensors in the event of cancellation, termination or any change in such insurance policies. The workers compensation certificate shall bear an endorsement clearly evidencing a waiver of the right of subrogation against Licensors and Licensors Representatives. Should Licensee fail to furnish current evidence upon demand of any insurance required hereunder, or in the event of cancellation, termination or change in any such insurance, Licensors may, at its option, suspend this Agreement until insurance is obtained or terminate this Agreement immediately without further action.

14. Responsibility. Licensee shall be responsible for compliance by Licensee Representatives with the terms of this Agreement and for all acts or omissions by Licensee Representatives on the Property.

15. No Assignment. Licensee shall not have the right to assign this Agreement or any rights or obligations hereunder without Licensors' prior written permission. Any attempted assignment shall be void. No assignment shall relieve Licensee of its liabilities and obligations herein.

16. Agency. It is neither the express nor the implied intent of Licensors or Licensee to create an agency relationship pursuant to this License; therefore, any actions of the parties shall not be considered or implied to create such agency.

17. No Waiver. The failure of Licensors or Licensee to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

18. Termination. It is understood and agreed that Licensors, in its absolute discretion, with or without cause or hearing, may terminate the License and permission herein granted to Licensee. Termination of the License and permission herein granted may be accomplished in writing, or orally. Once notice of termination is given by Licensors to Licensee, the permission herein granted shall immediately and automatically terminate, and Licensee shall have no further right, permission or authority to utilize the Property. All representations, assurances and indemnity obligations set forth in this Agreement shall survive termination or expiration of this Agreement.

19. Miscellaneous.

(a) 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. Both Licensor and Licensee have contributed substantially and materially to the preparation of this Agreement.

(b) This Agreement shall apply to and bind the successors and permitted assigns of the respective parties.

(c) This Agreement embodies the entire agreement and understanding of the parties, and there are no further or prior agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

(d) This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties or their respective successors or permitted assigns.

(e) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(f) This Agreement may be executed in any number or counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. This agreement may be delivered by facsimile transmission.

(g) This Agreement shall be construed in accordance with and governed by the laws of the State of Alabama, with proper venue for any action arising hereunder lying in Baldwin County.

(h) Licensee's obligations under this Agreement shall survive expiration or termination of this Agreement.

20. Financial Terms/Conditions. Licensee shall incur and absorb all financial responsibility that arises to complete the project and/or work contemplated by this Agreement and shall remain responsible for the duration of the Agreement. The Licensor shall not incur any expense of the usage or maintenance described in this Agreement. These financial responsibilities shall lie solely with the Licensee.

21. Terms of Maintenance Agreement. Any damage to the existing Property caused by periodic maintenance to the Property shall be the sole responsibility of the Licensee to repair at the Licensee's expense.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of full execution by Licensor below.

**LICENSEE:**

\_\_\_\_\_  
BY: \_\_\_\_\_ / \_\_\_\_\_  
/Date

State of Alabama                    )  
County of Baldwin                )

I, \_\_\_\_\_, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_, is the individual whose name 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 instrument, he/she executed the same with full authority to do so voluntarily and personally on the day the same bears date.

Given under my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**LICENSOR:**

BALDWIN COUNTY, ALABAMA

**ATTEST:**

\_\_\_\_\_/\_\_\_\_\_  
Wayne Dyess /Date  
County Administrator

\_\_\_\_\_/\_\_\_\_\_  
Billie Jo Underwood /Date  
Chairman

State of Alabama )  
County of Baldwin )

I, \_\_\_\_\_, a Notary Public in and for said County, in said State, hereby certify that Billie Jo Underwood and Wayne Dyess, as Chairman and County Administrator, respectively, of the Baldwin County Commission, and whose names are 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 instrument, they executed the same with full authority to do so voluntarily on the day the same bears date.

Given under my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_