



COUNTY COMMISSION

BALDWIN COUNTY
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507
(251) 580-2564
(251) 580-2500 Fax
agary@baldwincountyal.gov
www.baldwincountyal.gov

ANU GARY
Records Manager
MONICA E. TAYLOR
Assistant Records Manager

May 17, 2017

Mr. Jason Padgett
General Manager
North Baldwin Utilities
25 Hand Avenue
Bay Minette, Alabama 36507

RE: North Baldwin Utilities License Agreement for Live Oak Landing Water and Sewer Services

Dear Mr. Padgett:

Please find enclosed a **fully executed copy** of the *License Agreement* approved during the May 2, 2017, Baldwin County Commission meeting between North Baldwin Utilities and Baldwin County for the purpose of constructing and operating a waste water treatment plant near the intersection of Highway 225 and Live Oak Landing Road. The term of this *Agreement* shall commence on the effective date. The initial term of this *Agreement* shall be five (5) years and shall automatically renew for successive five (5) year terms; however, following the initial term, the County or North Baldwin Utilities may terminate this *Agreement* upon one (1) year written notice.

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

Sincerely,

ANU GARY, Records Manager
Baldwin County Commission

AG/met Item BH2

cc: Joey Nunnally
Lisa Sangster

ENCLOSURE

LICENSE AGREEMENT

This License Agreement (the "Agreement") made as of this 16th day of May, 2017 (the "Effective Date"), by and between the Baldwin County Commission (the "County") and North Baldwin Utilities, a public corporation ("NBU").

WHEREAS, NBU is a public corporation organized under Title 11, Chapter 50, Article 9 of the Code of Alabama;

WHEREAS, NBU provides potable water, sewer and natural gas services to the citizens in north Baldwin County, Alabama;

WHEREAS, the County is the owner of certain real property generally located near the intersection of Highway 225 and Live Oak Landing Road in Baldwin County, Alabama;

WHEREAS, the County has requested and NBU has agreed to provide water and sewer services to the Live Oak Landing area, owned by the County; and

WHEREAS, in order to provide the requested services to the County, NBU will require access to and use of the real property identified herein for the purpose of constructing and operating a waste water treatment plant.

WITNESSETH:

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Non-exclusive License. The County hereby grants unto NBU a non-exclusive license in, on, under, over and across the following described real property owned by the County:

Commencing at the open top iron pipe at the existing and locally accepted Northeast corner of the Robert Gilchrist Grant Section 43, Township 1 South, Range 2 East, Baldwin County, Alabama; Thence run North $83^{\circ} 47' 56''$ W along the North line of Grant Section 43 a distance of 2000.83 feet to the Baldwin County Highway Department capped rebar (hereafter referred to as "BCHD capped rebar", on the West right-of-way line of Alabama State Highway 225 (80' R/W) also being the Point of Beginning.; thence $S29^{\circ} 39' 38''$ E along the West R.O.W. line of Hwy 225 a distance of 681.71' to a point; thence $S61^{\circ} 05' 04''$ W a distance of 166.78' to a point, thence $N28^{\circ} 33' 56''$ W a distance of 590.00' to a point; thence $N83^{\circ} 47' 56''$ W a distance of 217.79' to a point; thence $N28^{\circ} 33' 56''$ W a distance of 199.33' to a point; thence $S83^{\circ} 47' 55.71''$ E a distance of 404.95' to a BCHD capped iron rebar also being the point of beginning. Said parcel contains 3.52 acres as described.

(the "Treatment Parcel").

2. Use of the Treatment Parcel. The Treatment Parcel may be used by NBU for the purpose of constructing, installing, owning, operating, maintaining, repairing, disconnecting, replacing and removing a sewer treatment plant which will include, without limitation, a 4,600-gallon primary tank, a 4,600-gallon recirculation tank, an aerobic treatment unit, a 4,600-gallon discharge tank, all necessary disposal fields and all other structures necessary for the construction and operation of a sewer treatment plant (collectively, the "Improvements"). Except as approved by the County, all improvements shall be constructed underground. The County shall have the right to use the Treatment Parcel as it deems necessary, as long as such use does not unnecessarily interfere with NBU's use and operation of the Improvements.

3. Non-Exclusive License. The County further grants a non-exclusive license in, on, under, over and across the following described real property owned by the County for the purpose of providing NBU access to the Treatment Parcel:

Commencing at the open top iron pipe at the existing and locally accepted Northeast corner of the Robert Gilchrist Grant Section 43, Township 1 South, Range 2 East, Baldwin County, Alabama; Thence run North $83^{\circ} 47' 56''$ W along the North line of Grant Section 43 a distance of 2000.83 feet to the Baldwin County Highway Department capped rebar (hereafter referred to as "BCHD capped rebar", on the West right-of-way line of Alabama State Highway 225 (80' R/W) ; thence $S29^{\circ} 39' 38''E$ along the West R.O.W. line of Hwy 225a distance of 681.71' to a point; thence $S61^{\circ} 05' 04''$ W a distance of 119.30' to the Point of Beginning, thence along a curve to the left having an arc length of 35.82' and a radius of 69.35' to a point. Said curve has a chord bearing of $S14^{\circ}45'19.88''E$ and a chord distance of 35.42'. Thence $S25^{\circ}53'38.53''E$ a distance of 44.81' to a point; thence along a curve to the right having an arc length of 88.94' and a radius of 210' to a point. Said curve has a chord bearing of $S13^{\circ}45'42.12''E$ and a chord distance of 88.27'. Thence $S01^{\circ}37'45.71''E$ a distance of 69.50' to a point on the Live Oak Landing Road north Right-of-Way; thence westward along the Live Oak Landing Road north Right-of-Way $S89^{\circ}22'14.29''W$ a distance of 40.00' to a point; thence $N01^{\circ}37'45.71''W$ a distance of 69.62' to a point; thence along a curve to the left having an arc length of 72.00' and a radius of 170.00' to a point. Said curve has a chord bearing of $N13^{\circ}45'42.12''W$ and a chord length of 71.46'. Thence $N25^{\circ}53'38.53''W$ a distance of 43.67' to a point; thence $N26^{\circ} 52'36.97''W$ a distance of 33.39' to a point; thence $N61^{\circ}05'04.00''E$ a distance of 47.48' to the Point of Beginning.

(the "Ingress/Egress Parcel").

4. Depictions. The Treatment Parcel and the Ingress/Egress Parcel are depicted on Exhibit A, consisting of two pages, which is attached hereto and incorporated hereby reference.

5. Use. Subject to any regulatory requirements or limitations, at the request of the County, NBU shall use the Treatment Parcel and the Improvements to make available and/or provide

sewer services to County owned property located within the service area of the Improvements, including, without limitation, Live Oak Landing and Bicentennial Park, at NBU's expense. Said Improvements shall further be available to NBU for providing sewer service to other customers located within the service area of the Improvements.

6. Term. The term of this Agreement shall commence on the Effective Date. The initial term of this Agreement shall be five (5) years and shall automatically renew for successive (5) year terms; however, following the initial term, the County or NBU may terminate this Agreement upon one (1) year written notice to the other.

7. Construction. Certain Improvements, in conformity with Exhibit A, have previously been constructed and installed on the Treatment Parcel. Prior to the commencement of any work, materially expanding the Improvements, NBU shall, at its sole cost and expense, prepare and deliver to the County complete working drawings, plans and specifications ("Plans"), detailing the location and size of the Improvements. No work shall commence until the County has approved the Plans, which approval shall not be unreasonably withheld, conditioned or delayed. NBU shall: (a) perform all such construction and work in a safe and workmanlike manner; and (b) obtain, prior to the commencement of any construction and work, all necessary federal, state and municipal permits, licenses and approvals. The Improvements shall be constructed at the sole cost and expense of NBU, with NBU being responsible for the means and methods of such construction.

Notwithstanding the foregoing, attached hereto as Exhibit A is a sketch of the County approved locations for the as-built and installed Improvements.

8. NBU's Covenants. During the term of this Agreement, NBU hereby covenants and agrees: (a) to keep the Improvements in good order, repair and condition; (b) to comply with all federal, state and municipal laws, orders, rules and regulations applicable to the Improvements in relation to NBU's particular use; (c) to maintain commercial general liability insurance with a limit of \$5,000,000.00 each occurrence; and (d) to provide the County with a certificate of insurance reasonably acceptable to the County, naming the County and its officials and employees as additional insureds.

9. The County's Covenants. The County hereby covenants and agrees: (a) that the County is the owner of the real property made subject to this Agreement; and (b) during the term of Agreement, to use the Improvements for all of the County's sewer needs within the property owned by the County at Live Oak Landing and Bicentennial Park at NBU's standard published sewer rates.

10. Ownership of Improvements. NBU shall construct, install, own and maintain the Improvements described in this Agreement, in accordance with all applicable regulations and codes. All parts of the Improvements, regardless of location, shall remain the personal property of NBU, and shall not be considered a fixture to the real estate.

11. Termination. At the termination of this Agreement, NBU shall at its option or upon the request of the County remove, at NBU's sole cost and expense, all Improvements located above-ground, and repair all damage caused by such removal, reasonable wear and tear excepted.

12. Condition of Premises. NBU has inspected the real property subject to this Agreement and accepts the same "as is".

13. Casualty or Condemnation. In the event of a fire, casualty or condemnation by a governmental authority of any portion of the real property that affects NBU's use of the Improvements, in NBU's sole discretion, NBU shall have the right to terminate this Agreement upon six (6) months written notice to the County.

14. Access. NBU shall have uninterrupted access to the real property, over and across the Ingress/Egress Parcel, subject to this Agreement.

15. Indemnification. To the extent allowed by Alabama law, NBU shall indemnify, defend and hold the County, its officials and employees harmless from and against any and all loss, cost, damage and expense, including attorney's fees and costs, arising from NBU's work or the operation of the Improvements. Notwithstanding anything to the contrary contained herein, in no event shall NBU be liable for any first-party indirect, incidental, consequential, special, reliance or punitive damages, including without limitation damages for lost profits, advantage, savings or revenues of any kind.

16. Successors and Assigns. The benefits and obligations of this Agreement shall inure to the benefit of, and be binding upon, the successors of the County and NBU. Neither party shall have the right to assign this Agreement.

17. Default. In the event either party fails to comply with any provisions of this Agreement ("Default"), which Default shall not have been cured by the defaulting party within thirty (30) days after receiving written notice specifying such Default from the non-defaulting party, then the non-defaulting party may immediately or any time thereafter terminate this Agreement upon written notice to the defaulting party.

18. Governing Law. This Agreement shall be governed by the laws of the State of Alabama with venue in the Circuit Court of Baldwin County, Alabama.

19. Entire Agreement. This Agreement constitutes the entire agreement between the parties, there being no other terms, oral or written, except as herein expressed. This Agreement supersedes all other right of entry and license agreements between the parties, either oral or in writing.

20. No Partnership. Nothing contained herein shall be construed as creating a partnership or joint venture between the County and NBU.

21. Counterparts. This Agreement may be executed in counterparts and each counterpart constitutes an original document.

22. Amendments. This Agreement may be amended, changed or modified only by written amendment executed by the parties hereto.

23. Waiver. No waiver of any provision of this Agreement shall be valid unless in writing signed by the party charged.

24. No Third-Party Beneficiaries. This Agreement is not intended to and shall not be construed to give any person (other than the parties to this Agreement) any interests or rights (including, without limitation, any third-party beneficiary rights).

Witness the execution hereof as an instrument under seal as of the date first above written.

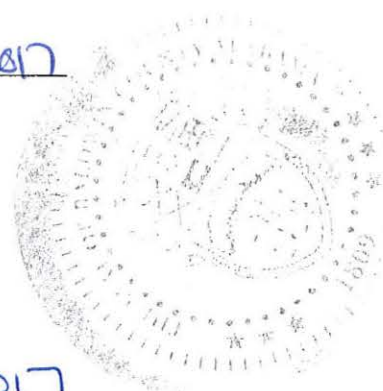
BALDWIN COUNTY COMMISSION:

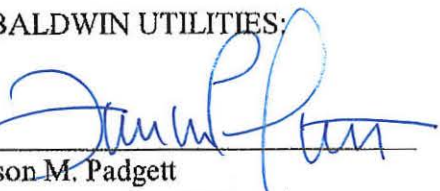
Signed: 
T. Christopher Elliott
Chairman

Date: May 16, 2017

Attest: 
Ronald J. Cink
County Administrator/Budget Director

Date: May 16, 2017



NORTH BALDWIN UTILITIES:
Signed: 
Jason M. Padgett
General Manger/CEO

Date: 5-8-2017

STATE OF ALABAMA

COUNTY OF BALDWIN

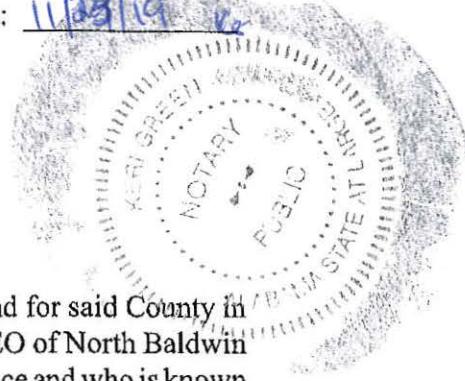
I, Keri Green, a Notary Public, in and for said County in said State, hereby certify that T. CHRISTOPHER ELLIOTT, as Chairman of the Baldwin County Commission, and RONALD J. CINK, as County Administrator/Budget Director of the Baldwin County Commission, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me and on this day that, being informed of the contents of said instrument, they, as such Chairman and County Administrator/Budget Director of the Baldwin County Commission, and with full authority, executed the same voluntarily on the day the same bears date for and as an act of said Baldwin County Commission.

Given under my hand and seal this the 16th day of May, 2017.

Keri Green

NOTARY PUBLIC

My Commission Expires: 11/23/19



STATE OF ALABAMA

COUNTY OF BALDWIN

I, Tracy L. Rogers, a Notary Public, in and for said County in said State, hereby certify that JASON M. PADGETT, as General Manager/CEO of North Baldwin Utilities, a Public Corporation, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the said instrument, and with full authority, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 8 day of May, 2017.

Tracy L. Rogers

NOTARY PUBLIC

My Commission Expires: 3-31-18





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/19/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Blackmon Insurance Agency 4 Hand Ave Bay Minette AL 36507	CONTACT NAME: April Hollins	FAX (A/C, No): (251) 937-9591	
	PHONE (A/C, No, Ext): (251) 937-9585	E-MAIL ADDRESS: april@blackmoninsurance.net	
INSURED North Baldwin Utilities 25 Hand Avenue Bay Minette AL 36507-	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Alabama Municipal Insurance Corp.		17710
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			[REDACTED]	12/13/2016	12/13/2017	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COM/OP AGG \$ 5,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			[REDACTED]	12/13/2016	12/13/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$			[REDACTED]			EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N	N/A			<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Property Insurance Coverage			[REDACTED]	12/13/2016	12/13/2017	Limit(Blanket): 7,958,263

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Baldwin County Commission, its officials and employees are listed as additional insureds on the General Liability Coverage only as pertains to the License Agreement with North Baldwin Utilities to supply Water and Sewer Services to the Live Oak Landing area (access and use granted for the purpose of constructing and operating a Waste Water Treatment Plant), owned by the County. License Agreement on file with Company.

CERTIFICATE HOLDER Baldwin County Commission 312 Courthouse Square, Suite 12 Bay Minette AL 36507-	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.	AI 003397
	AUTHORIZED REPRESENTATIVE 	