

STATE OF ALABAMA)

COUNTY OF BALDWIN)

AGREEMENT TO GRANT ACCESS POINT AND ACCESS EASEMENT

This AGREEMENT TO GRANT ACCESS POINT AND ACCESS EASEMENT (this “Agreement”) is made and entered into as of the ___ day of May, 2023, by and between the CITY OF ORANGE BEACH, ALABAMA, an Alabama municipal corporation (the “City”), and THE BALDWIN COUNTY BRIDGE COMPANY, L.L.C., an Alabama limited liability company (“BCBC”).

WHEREAS, BCBC owns Lot 5 of Resub of Express Village Subdivision, as recorded on Slide No. 2182-C, 2182-D and 2182-E in the Office of the Judge of Probate, Baldwin County, Alabama (“Lot 5”); and

WHEREAS, the City owns Lots 1 and 4 of Resub of Express Village Subdivision, as recorded on Slide No. 2182-C, 2182-D and 2182-E in the Office of the Judge of Probate, Baldwin County, Alabama (the “City Lots”); and

WHEREAS, the City Lots are adjacent to, and lie east of, Lot 5; and

WHEREAS, Lot 5 contains a paved street commonly known as Brown Lane (“Brown Lane”), which feeds into the northbound lanes of the Foley Beach Express going northerly, and feeds into the Baldwin County Road Number 4 (Extension) going southerly (the “County Road”); and

WHEREAS, Lot 5 also contains the northerly span of a toll bridge over the Intracoastal Waterway (the “Bridge”), and a toll plaza/facility at the northern base of the Bridge (the “BEX Toll Plaza”); and

WHEREAS, the City is contemplating acquiring certain real property north of the City Lots, consisting of approximately 24.7 acres, shown as “Parcel 1” on Exhibit A attached hereto and made a part hereof (the “Additional City Property”), and desires to have an access point onto Lot 5, so that vehicular traffic can go to and from the City Lots and the Additional City Property, on the one hand, and Lot 5, the Foley Beach Express, the Bridge and the County Road, on the other hand; and

WHEREAS, BCBC has agreed to grant the City an access point to Lot 5 onto Brown Lane, together with certain access easement rights with respect to Lot 5, on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises, agreements, representations and warranties set forth herein and in the Agreement, and for other good and

valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. BCBC hereby grants to the City an access point from and to Lot 5, in substantially the area depicted as “Access to BEX” on Exhibit B attached hereto and made a part hereof (the “Access Point”), on Brown Lane. Once the City’s plans and specifications are finalized for its proposed roadway infrastructure on the City Lots and the Additional City Property, the City shall provide a copy of such plans and specifications to BCBC, to indicate the exact location of the Access Point on Brown Lane.

2. BCBC hereby grants the City, its permittees and mortgagees, a non-exclusive permanent easement to provide for the right of vehicular (motorized or non-motorized) passage and use over, across, through and upon Lot 5 for the purpose of ingress to and egress from the City Lots and the Additional City Property, such that the grantees of such easement can traverse to and from the City Lots and the Additional Property, on the one hand, and Lot 5, the Foley Beach Express, the Bridge and the County Road, on the other hand. It is understood and agreed, however, that the Access Point shall be the only access point for roadway connection between the City Lots and the Additional City Property, on the one hand, and Lot 5, on the other hand, unless otherwise agreed by both parties hereto.

3. The City shall have the right to construct, install, repair and maintain from time to time a harmonized roadway connection from the City Lots to and from Lot 5, at the Access Point, including, without limitation, any grading or curb cuts which may be beneficial or necessary.

4. The City agrees to construct a traffic barrier (such as a steel-beam type of guardrail) across Brown Lane from the intersection with the Access Point (opposite the intersection), generally in the area designated as “Traffic Barrier” on attached Exhibit B, to help prevent traffic from crossing Brown Lane to reach the BEX Toll Plaza. BCBC grants the City and its contractors a non-exclusive permanent easement to install, repair and maintain, from time to time, such traffic barrier on Lot 5.

5. The City agrees to use reasonable efforts to prevent pedestrian access from the Access Point to the BEX Toll Plaza, including installing deterrent signage to that effect.

6. This instrument shall run with the land, and shall be binding on, and shall inure to the benefit of the parties hereto, their successors and assigns. In furtherance thereof, the easements, rights, privileges, benefits, covenants and obligations created, made or granted under this Agreement and each provision hereof shall be deemed covenants running with the fee title to the applicable properties described herein.

7. BCBC shall cause any lender who holds a mortgage or similar encumbrance against any portion of Lot 5 to execute and deliver a mortgagee consent to this Agreement in form acceptable to the City, which may be recorded by the City in the real estate records of the Office of the Judge of Probate of Baldwin County, Alabama.

8. Each party hereto will execute, acknowledge and deliver any further assurance, assignments, documents and instruments, and do such acts and things, as reasonably requested by another party hereto for the purpose of giving effect to the easements, covenants and agreements contemplated herein or the intentions of the parties with respect thereto.

9. This Agreement may be executed in counterparts, each counterpart of which, when taken together, shall constitute one and the same instrument.

10. Either party shall have the right to record this Agreement in the real estate records of the Office of the Judge of Probate of Baldwin County, Alabama.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to Grant Access Point and Access Easement to be duly executed by its duly authorized representative, as of the date first above written.

BCBC:

THE BALDWIN COUNTY BRIDGE COMPANY, L.L.C.

By: _____
Its: _____

CITY:

CITY OF ORANGE BEACH, ALABAMA,

By: _____
Tony Kennon
Its Mayor

ATTEST:

CITY CLERK

[ACKNOWLEDGEMENTS ON FOLLOWING PAGE]

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, _____, a Notary Public, in and for said County in said State, hereby certify that Tony Kennon, whose name as Mayor of the CITY OF ORANGE BEACH, ALABAMA, an Alabama municipal corporation, is signed to the foregoing Agreement to Grant Access Point and Access Easement and who is known to me, acknowledged before me on this day that, being informed of the contents of this Agreement to Grant Access Point and Access Easement, he, as such Mayor and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal this ___ day of May, 2023.

(SEAL)

NOTARY PUBLIC
My commission expires: _____

STATE OF _____)
COUNTY OF _____)

I, _____, a Notary Public, in and for said County in said State, hereby certify that _____, whose name as _____ of THE BALDWIN COUNTY BRIDGE COMPANY, L.L.C., an Alabama limited liability company, is signed to the foregoing Agreement to Grant Access Point and Access Easement and who is known to me, acknowledged before me on this day that, being informed of the contents of this Agreement to Grant Access Point and Access Easement, he/she, as such _____ and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this ___ day of May, 2023.

(SEAL)

NOTARY PUBLIC
My commission expires: _____

