

STATE OF ALABAMA)
)
COUNTY OF BALDWIN)

OLD MOBILE ROAD DETOUR ROAD USE AND RESURFACING AGREEMENT

THIS OLD MOBILE ROAD DETOUR ROAD USE AND RESURFACING AGREEMENT (“Agreement”) is entered into by and between the BALDWIN COUNTY COMMISSION (hereinafter “County”), and H.O. Weaver and Sons, Inc. (hereinafter “Contractor”): as follows

WHEREAS, the County is the duly formed governing body in and for Baldwin County, Alabama; and

WHEREAS, the Contractor is the Contractor for the U.S. Highway 31 widening project; and

WHEREAS, Old Mobile Road is a County maintained road located within Baldwin County, Alabama, and more particularly shown on Exhibit “A” attached hereto and incorporated herein by reference; and

WHEREAS, the Contractor desires to obtain approval from the County for the use of Old Mobile Road as a detour road during a portion of the construction phase of the U.S. Highway 31 widening project; and

WHEREAS, the County is willing to grant said approval in exchange for the Contractor performing any maintenance repairs to Old Mobile Road resulting from its use as a detour road during the period used and for the Contractor to resurface Old Mobile Road after its use as a detour road is complete; and

WHEREAS, it is in the public interest for the County and the Contractor to cooperate toward the proposed road use and resurfacing.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the County and the Contractor do hereby agree as follows:

1. **Contractor to Maintain and Resurface Old Mobile Road:**

A. In consideration of the approval set forth in Paragraph 2 below, the Contractor agrees to maintain Old Mobile Road during the period used as a detour road and to promptly resurface Old Mobile Road as reflected on Exhibit "A" attached hereto.

B. All work and labor for said maintenance and resurfacing shall be supplied by the Contractor at no cost to the County.

C. The Contractor will follow the County's resurfacing Guidelines for Operations to resurface Old Mobile Road. The Contractor will resurface Old Mobile Road using asphalt mix BC723 at a rate of 165# per sq. yd. or other mix and rate approved by Baldwin County. The County will perform all striping and markings at no cost to the Contractor.

2. **Approval by County of Maintenance and Resurfacing:** During the period of use as a detour road, any maintenance required resulting from its use as a detour road must be approved by the County before the maintenance is performed. Upon the completion of resurfacing of Old Mobile Road, the County will inspect the resurfacing performed and shall notify Contractor of accepted as complete.

3. **Approval and Effective Date:** This Agreement shall become effective upon the date of full execution by both parties (the "Effective Date"),

4. **Term:** The term of this Agreement shall be for the period that Old Mobile Road is used as a detour road and end when the County accepts the resurfacing of Old Mobile Road as complete.

5. **Public Property:** Contractor acknowledges and consents that Old Mobile Road, including the Connecting U.S. Highway 31 Roadway, is public in nature and that the usage hereunder is permissive. Contractor shall not obstruct or otherwise interrupt any rights of the general public to Old Mobile Road, or the Connecting U.S. Highway 31 Roadway. Contractor makes no claim of private ownership or other possessory interest in Old Mobile Road, or the Connecting U.S. Highway 31 Roadway, and any rights of the Contractor to Old Mobile Road, or the Connecting U.S. Highway 31 Roadway, will be limited to the same extent as that of the general public. Any work performed by Contractor, or any improvements made as a result of the Contractor's construction of the Connecting U.S. Highway 31 Roadway or any work on Old Mobile Road whatsoever, is considered to be a benefit to the general public, and the Contractor

makes no claim that such work or improvements are privately owned and waives all right to claims that such work or improvements are private in nature.

6. **No Alteration**: Except as expressly permitted by this Agreement, Contractor shall not make nor permit any uses, alterations or additions to Old Mobile Road without the County's prior written consent.

7. **Damage to Property**: Contractor agrees to pay for any damage which may arise to buildings, fences, machinery, or other property of the County or any third party on or near Old Mobile Road resulting from Contractor's operations or presence on such property. Contractor shall reimburse any and all costs related to any and all corrections, changes or improvements deemed to be necessary by the County as a result of the Contractor's use of Old Mobile Road.

8. **Termination and Notice**: Notwithstanding the foregoing, the County may terminate this Agreement, with or without cause, upon written notice to the Contractor. The said termination notice shall be deemed effective, and the Agreement deemed terminated, seven (7) days after the date such notice is mailed by certified mail to the Contractor. In the event of termination for breach by the Contractor, the Contractor shall be responsible for all costs incurred by the County, for work specified herein, including any contractual obligations incurred by County in reliance upon this Agreement through the date of receipt of the requisite termination notice. All notices provided for herein shall be sent as follows:

To Contractor:

H.O. Weaver and Sons Inc.
c/o John McLaughlin
P.O. Box 8039
Mobile, AL 36689

To County:

Baldwin County Commission
c/o Joey Nunnally
312 Courthouse Square, Suite 12
Bay Minette, AL 36507

9. **Indemnity and Disclaimer of Warranties**: Contractor, for itself and its employees, agents, representatives, successors and assigns, waives and releases the County from any claims for injury to persons or damage to any real or personal property by reason of the condition of the designs, improvements, work, property, product, and services of the County or otherwise. From the Effective Date of this Agreement, the Contractor shall defend, indemnify, and hold the County, including its Commissioners, officers, directors, employees, representatives and agents, harmless from and against all demands, actions, and claims of any description whatsoever

for property damage, personal injury (including death), actions in trespass, and all other claimed loss, injury or damage, including, but not limited to, attorneys' fees and costs, arising out of relating to or resulting from any and all acts or omissions of the Contractor, its officers, directors, employees, agents or contractors related to the Contractor's construction of the Connecting Roadway or any of the Contractor's obligations under this Agreement.

All representations, assurances, payment obligations and indemnity obligations contained within this Agreement shall survive and exist beyond the date of termination or expiration of this Agreement.

Nothing contained herein shall be construed to limit or modify the laws of the State of Alabama as the same may apply to the County regarding any immunity, absolute or qualified, or limitations of liability to which the County is otherwise entitled by law.

10. **Miscellaneous:**

A. **Regulation of Rights-of-Way:** Nothing contained in this Agreement or otherwise shall limit the authority of the County to control, manage, supervise, regulate, repair, maintain or improve the public rights-of-way or improvements constructed pursuant to this Agreement in accordance with state law, and the County shall have the right to alter, change, modify, improve or remove any and all improvements constructed within their rights-of-way, in their discretion, in accordance with applicable state law.

B. **Entire Agreement:** This Agreement represents the entire and integrated agreement between the County and the Contractor 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.

C. **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 the County and the Contractor have contributed substantially and materially to the preparation of this Agreement.

D. **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.

E. No 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.

F. Choice of Law; Venue: The parties acknowledge and agree that this Agreement shall in all respects be governed by the law 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. Proper venue for any action arising hereunder shall lie in Baldwin County.

G. Counterparts: This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

H. Severability: Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provisions had never been contained herein.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of full execution below, which shall be the Effective Date of the Agreement.

COUNTY:

BALDWIN COUNTY COMMISSION

By: _____
CHARLES F. GRUBER
Its: Chairman

ATTEST:

WAYNE DYESS
County Administrator

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that CHARLES F. GRUBER, as Chairman of the Baldwin County Commission, and WAYNE DYESS, as County Administrator, of the Baldwin County Commission, 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 ____ day of _____, 2019.

Notary Public
My Commission Expires: _____

CONTRACTOR:

H.O. WEAVER AND SONS INC.

By:_____

Its:_____

STATE OF ALABAMA)
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that _____, as _____ of H.O. Weaver and Sons Inc., 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 Agreement, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said H.O. Weaver and Sons Inc.

Given under my hand and official seal this the _____ day of _____, 2019.

Notary Public
My Commission Expires: _____

EXHIBIT "A"

