



COUNTY COMMISSION

BALDWIN COUNTY

312 COURTHOUSE SQUARE, SUITE 12

BAY MINETTE, ALABAMA 36507

(251) 937-0264

FAX (251) 580-2500

www.baldwincountyal.gov

MEMBERS

DIST. 1. FRANK BURT, JR.
2. ROBERT E. (BOB) JAMES
3. J. TUCKER DORSEY
4. CHARLES F. GRUBER

May 7, 2013

Dr. Paul Smith
Post Office Box 1492
Orange Beach, Alabama 36561

**RE: License Agreement #13011 for Unopened Right-of-Way from U.S.
Highway 98 North 1,800 Feet**

Dear Dr. Smith:

The Baldwin County Commission, during its regularly scheduled meeting held on May 7, 2013, approved *License Agreement #13011* permitting you to clear approximately 40 feet by 1,800 feet of unopened right-of-way to access certain property from U.S. Highway 98. This *License Agreement* will be effective upon full execution by both parties and shall remain indefinitely.

Enclosed is a **fully executed copy** of the *License Agreement* for your file.

If you have any questions or need further assistance, please do not hesitate to contact me at (251) 972-8502 or Cal Markert, County Engineer, at (251) 937-0371.

Sincerely,

TUCKER DORSEY, Chairman
Baldwin County Commission

TD/met Item EF2

cc: Cal Markert
Vince Ramer
Lisa Sangster

ENCLOSURE

LICENSE AGREEMENT

This LICENSE AGREEMENT (this "Agreement") between Baldwin County, Alabama, ("Licensor"), with an address at 312 Courthouse Square, Suite 12, Bay Minette, Alabama 36507 and Dr. Paul Smith with an address at P.O Box 1492 Orange Beach, AL 36561 ("Licensee").

WITNESSETH:

WHEREAS, Licensor is the owner of the real property described as Unopened Right of Way from U.S. Highway 98 to Beasley Road and more particularly as shown on Right of Way Sketch prepared by Highway Department Right of Way Section and dated April 19, 2013 attached hereto and included as if fully set forth herein (the "Property").

WHEREAS, Licensee desires to obtain access to the Property for the purposes of: Clearing approximately 40' x 1800' of unopened right of way to be able to access his property from U.S. Highway 98, and Licensor is willing to provide such access pursuant to this Agreement.

WHEREAS, pursuant thereto Licensee agrees to indemnify and hold the Licensor harmless from any and all claims or demands for injuries or damage to persons or personal property and further agrees to assure the Licensor that he, nor any persons using said public access in conjunction with this License would claim any personal rights in the subject property or any rights of adverse possession.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Licensor, 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 License. Subject to the terms and conditions set forth herein, Licensor hereby grants to Licensee, Dr. Paul Smith, a revocable, non-exclusive, temporary license (the "License") to enter upon the Property as is reasonably required to clear unopened right of way to access property. Any other use of the Property requires the prior written consent of Licensor in each instance. This License is granted to Licensee and is limited and specifically restricted to Licensee and its employees ("Licensee Representatives"). 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.

3. Property. The real property subject hereto is limited to and sufficiently described as: Unopened right of way from U.S. Highway 98 to Beasley Road as depicted on Right-of-Way sketch prepared by the Highway Department Right-of-Way Section dated April 19, 2013, which is attached hereto as Attachment "A". 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 Maintenance shall commence on the date of full execution of this Agreement and shall remain indefinitely, terminated according to the terms of this Agreement, or until modified by agreement with the County.

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 injury, loss or damage 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 or damage to the personal property of Licensee or any Licensee Representatives by reason of the condition of the Property or otherwise.

6. Compliance. Licensee and the Licensee Representatives shall comply, at Licensee's expense, with all applicable laws, regulations, rules and orders, whether federal, state or local, or any regulation of any governmental body having jurisdiction over the Property with respect to Licensee's work and activities at the Property, 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 said right-of-way in any fashion which will in any way damage or restrict the same for future use by the public in general for 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.

7. Public Property. Licensee acknowledges and consents that said property/right of way 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 in the property will be 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 right to claims that such work or improvements are private in nature.

8. Indemnification. Licensee shall indemnify, defend and hold Licensor and its affiliates, employees, agents, representatives, contractors, subcontractors, licensees 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, 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, or any act or omission, by Licensee or any Licensee Representative. The Licensee shall also assume the responsibility for any claims for damage done to 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 performs at the Property shall be at Licensee's sole cost and expense.

13. ~~Insurance. Prior to occupying or using the Property, Licensee shall carry, with insurers satisfactory to Licensor, 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 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 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 Licensor as an additional insured. Prior to commencing operations hereunder, a Certificate of~~

~~Insurance evidencing such coverage, satisfactory to Licensor, shall be furnished to Licensor, which shall specifically state that such insurance shall provide for at least ten (10) days' notice to Licensor 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 Licensor and Licensor 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, Licensor 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 Licensor's 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 the Parties 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 Licensor 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 Licensor, 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 Licensor 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. The indemnity obligation 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.

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

20. Financial Terms/Conditions

The Licensee shall incur and absorb all financial responsibility that arises to complete the said described project and shall remain responsible for the duration of the Maintenance Agreement. The Licensor shall not incur any expense of the usage/maintenance described in this agreement. These financial responsibilities shall lie solely with the Licensee.

STATE OF ALABAMA)
COUNTY OF BALDWIN)

LA# 13011

21. Terms of Maintenance Agreement

Any damage to the existing Right-of-Way 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 Licensors below.

LICENSEE:

Paul L. Smith 5/3/13
DR. PAUL SMITH /Date

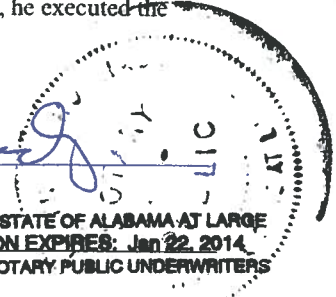
State of Alabama)
County of Baldwin)

I, Judith M. Hornady, a Notary Public in and for said County, in said State, hereby certify that DR. PAUL SMITH 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 executed the same with full authority to do so voluntarily and personally.

Given under my hand and official seal, this the 3RD day of May, 2013.

Judith M. Hornady
Notary Public

My Commission Expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Jan 22, 2014
BONDED THRU NOTARY PUBLIC UNDERWRITERS



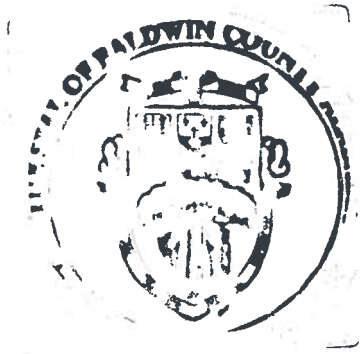
LICENSOR:

BALDWIN COUNTY, ALABAMA

J. Tucker Dorsey 5.7.13
J. TUCKER DORSEY / DATE
CHAIRMAN

ATTEST:
David A. Z. Brewer
DAVID A. Z. BREWER / DATE
COUNTY ADMINISTRATOR

5.7.2013



STATE OF ALABAMA)
COUNTY OF BALDWIN)

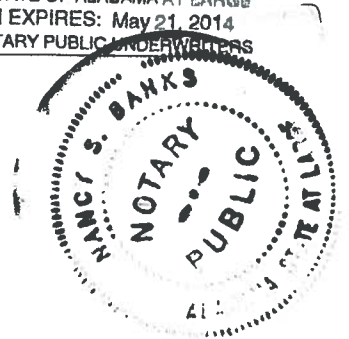
LA# 13011

State of Alabama)
County of Baldwin)

I, Nancy S. Banks a Notary Public in and for said County, in said State, hereby certify that J. TUCKER DORSEY and DAVID A. Z. BREWER, as Chairman and County Administrator of the Baldwin County Commission, respectively, and whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this date that, being informed of the contents of said instrument, they executed the same voluntarily for and as an act of the Baldwin County Commission.

Given under my hand and official seal, this the 7 day of May, 2013.

Nancy S. Banks
Notary Public NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 21, 2014
My Commission Expires: BONDED THRU NOTARY PUBLIC UNDERWRITERS



ARSA 300

UN OPENED
NOT MAINTAINED

4/19/13

UNOPENED Road
US 98 to BENSLEY ROAD
SECTIONS (26+27) - T7S - R3E

