



## COUNTY COMMISSION

BALDWIN COUNTY  
312 Courthouse Square, Suite 12  
BAY MINETTE, ALABAMA 36507  
(251) 937-0264  
Fax (251) 580-2500  
[www.baldwincountyal.gov](http://www.baldwincountyal.gov)

MEMBERS  
DISTRICT 1. FRANK BURT, JR.  
2. CHRIS ELLIOTT  
3. J. TUCKER DORSEY  
4. CHARLES F. GRUBER

November 6, 2018

Mr. Brian Utterback  
President  
Sunrise Property Owners Association, Inc.  
Post Office Box 424  
Elberta, Alabama 36530

**RE: Sunrise Property Owners' Association - Construction Agreement for Drainage Improvements in and Around Sunrise Subdivision**

Dear Mr. Utterback:

The Baldwin County Commission, during its regularly scheduled meeting held on November 6, 2018, took the following actions:

- 1) Authorized me, as Chairman, to execute the **enclosed** *Construction Agreement* with Sunrise Property Owners' Association, **contingent** upon its corporation being qualified to do business in the State of Alabama; and
- 2) Authorized me, as Chairman, to sign any other project related documents.

The terms of this *Agreement* shall commence upon full execution of the *Agreement* and shall remain in effect for ten (10) years from date of full execution.

If you have any questions or need further assistance, please do not hesitate to contact me at (251) 937-0395 or Joey Nunnally, County Engineer, at (251) 937-0371.

Sincerely,

  
FRANK BURT, JR., Chairman  
Baldwin County Commission

FB/met Item BN8

cc: Joey Nunnally  
Mary Booth  
Matthew Brown  
Lisa Sangster

ENCLOSURE

**CONSTRUCTION AGREEMENT  
FOR DRAINAGE IMPROVEMENTS IN AND AROUND THE SUNRISE  
SUBDIVISION BETWEEN SUNRISE PROPERTY OWNERS'  
ASSOCIATION, INC., AND THE BALDWIN COUNTY COMMISSION**

This Development Agreement (hereinafter "Agreement") is made and entered into by and between Sunrise Property Owners' Association, Inc. (hereinafter "Association"), and the Baldwin County Commission (hereinafter "County"), as follows:

**RECITALS**

**Whereas**, County is the duly formed governing body in and for Baldwin County, Alabama, and Association is an Alabama non-profit corporation; and

**Whereas**, the United States Navy (hereinafter "Navy") purchased property in and around the Sunrise Subdivision property for military use related to the expansion and operation of Navy Outlying Landing Field Barin; and

**Whereas**, the residents of Sunrise Subdivision and surrounding properties have experienced continued stormwater drainage issues following major rain events; and

**Whereas**, the County has undertaken an effort to collaborate with the Navy, the Alabama Department of Transportation (hereinafter "ALDOT"), the City of Foley, and the Association to attempt to reduce future stormwater problems for the local residents and business owners; and

**Whereas**, reducing future stormwater impacts will require improvements to certain public infrastructure and certain private infrastructure owned and maintained by the Association; and

**Whereas**, it is in the public interest for the County and the Association to cooperate toward the proposed public and private infrastructure improvements; and

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein, the sufficiency of which being hereby acknowledged, County and Association do hereby agree as follows:

1. **Recitals**: The recitals set out above are incorporated into this Agreement, as though the same were set out in full in this paragraph.
2. **Purpose**: The parties acknowledge and agree that the purpose of this Agreement is to establish the responsibilities of each party regarding the design, construction, management, and continuing maintenance of improvements to public and private infrastructure related to the infrastructure improvements highlight in Exhibit A.
3. **No Joint Ownership of Property**: The parties acknowledge and agree that they will not jointly acquire, own, or otherwise come into joint or common possession of any property as a result of, or in relation to, this Agreement. Each party shall remain solely responsible

for the construction, repair and maintenance of the drainage improvements located on their respective properties.

4. **Financing and Budgeting:** Each party shall be responsible for financing the obligations undertaken by that party hereunder and shall not be responsible for financing, or in any other manner contributing to, the costs or expenses of the obligations undertaken by the other party unless expressly identified herein.
5. **Approval and Effective Date:** This Agreement shall become effective upon the date of full execution by both parties ("Effective Date").
6. **Term:** The term of this Agreement shall be for ten (10) years from its Effective Date. This document may be amended only upon written approval by the Parties hereto, and any such amendment shall be approved by the same method by which this original contract has been approved by the Parties.
7. **Services to be Performed by County:**
  - A. Baldwin County will provide employee time and services to acquire all right-of-way necessary to complete the County portion of the project, including the proposed pond easement from the Navy.
  - B. Baldwin County will design, at County's own expense, a drainage system that will include the following components:
    1. a detention pond on Navy property that percolates in 48 hours or less;
    2. an outlet structure that provides for the controlled release of stormwater from the proposed County pond into the County's proposed ditch, and then into the Association's ditch and pond;
    3. an outlet structure that provides for the controlled release of stormwater from the Association pond to a downstream drainage system; and
    4. a downstream drainage system that ultimately terminates at Sandy Creek.
  - C. Baldwin County will provide to Association an engineered plan set of the outlet structure from paragraph (7)(B)(3) above.
  - D. Baldwin County will oversee any required utility relocation for the proposed improvements.
  - E. Baldwin County will construct, with County forces or otherwise, components 1, 2, and 4 of the drainage system described in paragraph (7)(B)(1), (2), and (4) above.
  - F. Baldwin County will maintain components 1, 2, and 4 of the drainage improvements, which include the newly constructed County pond, the outlet structure of the County pond, the County ditch between the County pond outlet structure and the Association ditch, and the downstream drainage system between the Association pond outlet structure and Sandy Creek.

**8. Services to be Performed by Association:**

- A. The Association will construct, at Association's expense and with the services of a licensed and insured contractor, the outlet structure designed pursuant to paragraph (7)(B)(3) above in accordance with the engineered plan set provided by the County.
- B. The Association will clean, at Association's expense and with the services of a licensed and insured contractor, the Association's retention pond, culverts, and ditch to the originally constructed and designed condition.
- C. The Association will maintain component 3 of the drainage improvements which includes the Association ditch, Association culverts, Association pond, and Association pond outlet structure.

9. **Termination and Notice:** Notwithstanding the foregoing, the County may terminate this Agreement, with or without cause, upon written notice to the Association. The said termination notice shall be deemed effective, and the Agreement deemed terminated, thirty (30) days after the date such notice is mailed by certified mail to the Association. In the event of termination for breach by the Association, the Association 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 Association:  
Sunrise Property Owners' Association, Inc.  
c/o Mr. Bryan Utterback, President  
PO Box 424  
Elberta, Alabama 36530

To County:  
Baldwin County Commission  
312 Courthouse Square, Suite 12  
Bay Minette, Alabama 36507

**10. Indemnity and Disclaimer of Warranties:**

Association agrees to accept the improvements, work, property, product, and services of County as result of the Projects set forth herein in their "WHERE IS", "AS IS", conditions and acknowledges that the County has made no representations or warranties to Association as to, and has no obligation to the Association for the condition of, the designs, improvements, work, property, product, or services of the County. Association agrees that the County shall not be liable for any injury, loss or damage on account of any defects, problems or claims. Association for itself and Association's Representatives waive and release the County from any claims for injury to persons or damage to the 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 Association shall defend, indemnify, and hold County and 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 Association, its officers, directors, employees, agents or contractors related to the Association'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.

11. **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.
12. **Entire Agreement:** This Agreement represents the entire and integrated agreement between County and Association 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.
13. **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 County and Association have contributed substantially and materially to the preparation of this Agreement.
14. **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.
15. **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.
16. **Choice of Law:** The parties acknowledge and agree that this Agreement shall in all respects be governed by the laws 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.

**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.

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.

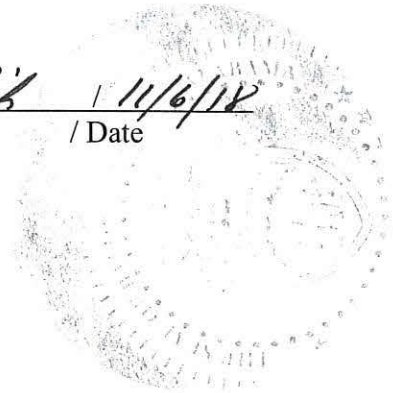
SIGNATURE PAGES TO FOLLOW

COUNTY:  
BALDWIN COUNTY

ATTEST:

BY: *Frank Burt, Jr.*  
Frank Burt, Jr. /Date  
Chairman

*Ronald J. Cink* / *11/6/18*  
Ronald J. Cink / Date  
County Administrator

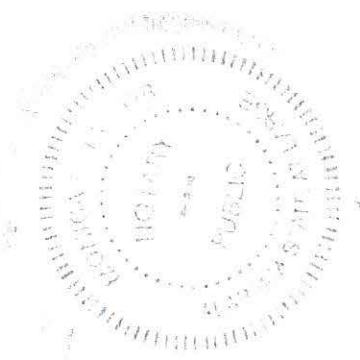
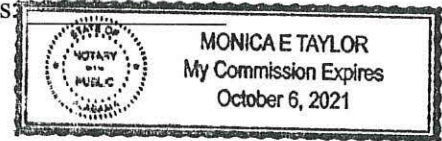


State of Alabama )  
County of Baldwin )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Frank Burt, Jr., as Chairman of the Baldwin County Commission, and RONALD J. CINK, 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 *6<sup>th</sup>* day of *November*, 2018.

*Monica E Taylor*  
Notary Public  
My Commission Expires





ASSOCIATION:  
SUNRISE PROPERTY OWNERS'  
ASSOCIATION, INC.

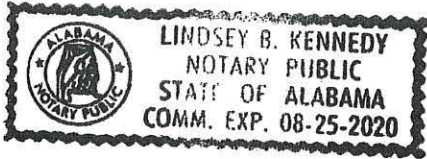
ATTEST:

BY: B. Utterback / 10/23/2018 / Laura Hayles / 10-23-2018  
President / Date Secretary / Treasurer / Date

State of Alabama )  
County of Baldwin )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that, Bryan Utterback, whose name as President for Sunrise Property Owners' Association, Inc., and Laura Hayles as Sec/Treas, 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 Sunrise Property Owners' Association, Inc.

Given under my hand and official seal this the 23rd day of October, 2018.



Lindsey B. Kennedy  
Notary Public  
My Commission Expires: 08/25/2020





## Exhibit A

Baldwin County  
Highway Department 2018

0

0.3 Miles

