

## 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

December 5, 2017

Buc-ee's Alabama, LLC  
327 FM 2004 Road  
Lake Jackson, Texas 77566

**RE: Development Agreement for Preliminary Engineering, Right-of-Way Acquisition, Utility, Construction, Project Management and Funding for a Buc-ee's Travel Center in Baldwin County**

Dear Sir or Madam:

The Baldwin County Commission, during its regularly scheduled meeting held on December 5, 2017, approved a *Development Agreement* between Baldwin County and Buc-ee's Alabama, LLC, for preliminary engineering, right-of-way acquisition, utility, construction, project management and funding for a Buc-ee's travel center in Baldwin County.

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

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 BG4

cc: Joey Nunnally  
Lisa Sangster

ENCLOSURE

**DEVELOPMENT AGREEMENT  
FOR PRELIMINARY ENGINEERING, RIGHT-OF-WAY ACQUISITION, UTILITY,  
CONSTRUCTION, PROJECT MANAGEMENT, AND FUNDING BETWEEN BUC-EE'S  
ALABAMA, LLC, AND THE BALDWIN COUNTY COMMISSION**

This Development Agreement (hereinafter "Agreement") is made and entered into by and between Buc-ee's Alabama, LLC (hereinafter "Developer"), 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 Developer is a foreign limited liability company registered in Alabama; and

**Whereas**, Developer has acquired property and is constructing a travel center situated in the northwest quadrant of the County Road 68 and Baldwin Beach Express intersection; and

**Whereas**, certain public infrastructure servicing the proposed travel center will need to be improved to accommodate the traffic generated by the development; and

**Whereas**, it is in the public interest for the County and the Developer to cooperate toward the implementation of the necessary public infrastructure improvements; and

**Whereas**, to facilitate the cooperation of County and Developer, improvements related to the proposed travel center have been divided into the following two projects:

**COUNTY ROAD 68 PROJECT** – Roadway improvements to County Road 68 and auxiliary lanes on the Baldwin Beach Express at County Road 68 as highlighted in Exhibit A and detailed in the Buc-ee's Civil Engineering Plans by Gonzalez Strength & Associates dated August 30, 2017 (and as may be amended).

**SIGNAL PROJECT** – Coordinated signals at the westbound I-10 ramps and at the intersection of County Road 68 and the Baldwin Beach Express as highlighted in Exhibit B and detailed in the Traffic Signal Installation Plans by Skipper Consulting, Inc. dated August 9, 2017 (and as may be amended).

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein, the sufficiency of which being hereby acknowledged, County and Developer 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 infrastructure related to the two projects set forth above and highlighted in Exhibit A and Exhibit B.

3. **County Road 68 Project Responsibilities:** The responsibilities of the parties related to the COUNTY ROAD 68 PROJECT shall be as follows:
- a. Developer will be responsible for all preliminary design and engineering, including all environmental studies and other similar documentation required by local, state, or federal agencies, as part of the preconstruction phase for the COUNTY ROAD 68 PROJECT. County and Developer have come to a mutual agreement on the number days permitted to construct the COUNTY ROAD 68 PROJECT based on the final construction plans, and a schedule of same is attached to this Agreement as Schedule 1.
  - b. If additional right-of-way is needed, Developer will be responsible for acquiring any additional right-of-way for the County, if needed, for the COUNTY ROAD 68 PROJECT at no cost to County.
  - c. Developer will be responsible for the relocation and/or installation of any utilities related to or servicing the COUNTY ROAD 68 PROJECT.
  - d. Developer will be responsible for obtaining all necessary permits and approvals for work to be performed off the Developer's property related to the COUNTY ROAD 68 PROJECT, including, but not limited to, all approvals or agreements required by the Alabama Department of Transportation ("ALDOT").
  - e. Developer will be responsible for the construction of the COUNTY ROAD 68 PROJECT.
  - f. Developer will be responsible for furnishing all construction engineering for the COUNTY ROAD 68 PROJECT.
  - g. Developer will be responsible for furnishing all necessary inspection and testing of materials when needed for the COUNTY ROAD 68 PROJECT.
  - h. Except as otherwise provided pursuant to this Agreement, County shall have no involvement in the COUNTY ROAD 68 PROJECT beyond the regulatory and inspection oversight mandated by local, state, or federal law.
  - i. The schedule for the COUNTY ROAD 68 PROJECT shall be at the discretion of Developer, except that Developer will coordinate with County as necessary in areas where the scope of the COUNTY ROAD 68 PROJECT and the SIGNAL PROJECT overlap.

Upon the expiration of 1 year after the completion and acceptance of the COUNTY ROAD 68 PROJECT improvements on County Road 68 and Baldwin Beach Express by the County, County shall be responsible for the continuing maintenance of the improvements within County right-of-way. It is the understanding of Developer and County that, upon the expiration of 1 year after completion and acceptance by ALDOT of the COUNTY ROAD 68 PROJECT improvements on State of Alabama right-of-way, ALDOT will be responsible for the continuing maintenance of the said improvements.

During the aforementioned one year period after the completion and acceptance of the COUNTY ROAD 68 PROJECT improvements on County Road 68 and Baldwin Beach Express by the County, the Developer shall be responsible for the maintenance and repair of the said improvements.

4. **Signal Project Responsibilities:** The responsibilities of the parties related to the SIGNAL PROJECT shall be as follows:
  - a. Developer will be responsible for all preliminary design and engineering, including all environmental studies and other similar documentation required by local, state, or federal agencies, and shall deliver to County 100% and Final plans for review, along with any other documentation required to let the SIGNAL PROJECT for public bid. County and Developer have come to a mutual agreement on the number days permitted to construct the SIGNAL PROJECT based on the final construction plans, and a schedule of same is attached to this Agreement as Schedule 1.
  - b. Developer will supply to the County any information necessary for County to apply for any permits and approvals for work related to the SIGNAL PROJECT to be performed on State of Alabama right-of-way, including, but not limited to, all approvals or agreements required by ALDOT.
  - c. County will be responsible for the relocation and/or installation of any utilities related to the construction of the SIGNAL PROJECT, as part of the construction cost.
  - d. County will be responsible for the construction of the SIGNAL PROJECT.
  - e. County will be responsible for furnishing all construction engineering for the SIGNAL PROJECT, as part of the construction cost.
  - f. County will be responsible for furnishing all necessary inspection and testing of materials when needed for the SIGNAL PROJECT, as part of the construction cost.
  - g. The schedule for the SIGNAL PROJECT is anticipated to be as follows:
    - i. Developer shall submit to County 60%, 100%, and Final plans and support documentation for review, and County will, within two business days, submit said plans to the Alabama Department of Transportation with appropriate permit applications.
    - ii. Upon receipt of approved Final Plans and permits, County will, within 30 days of the full execution of this Agreement, advertise, open and review bids, and award the project to lowest responsible and responsive bidder, subject to applicable state law.
    - iii. County will issue notice to proceed to lowest responsible and responsive bidder within 15 days of award, subject to applicable state law.

- iv. County will oversee project completion in accordance with the construction time established in paragraph (5)(a) above.
  - h. The County will submit reimbursable invoices for work performed on the I-10 signals, under the terms of this Agreement, to Developer within six (6) months after the completion and acceptance of the I-10 signal work by ALDOT. Any invoices submitted after this six (6) month period will not be eligible for payment. County will not seek reimbursement for the County Road 68 signal work. Developer shall remit payment to County within 30 days of receipt of an invoice for work performed on the SIGNAL PROJECT.
  - i. Upon completion and acceptance of the SIGNAL PROJECT, County shall be responsible for continuing maintenance of the traffic signals in coordination with ALDOT, at County's expense.
5. **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.
6. **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.
7. **Approval and Effective Date:** This Agreement shall become effective upon the date of full execution by both parties ("Effective Date").
8. **Term:** The term of this Agreement shall be for thirty-six (36) months 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.
9. **Termination and Notice:** Notwithstanding the foregoing, either party may terminate this Agreement, with or without cause, upon written notice to the other party. A party's said 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 other party. In the event of termination by the Developer, the Developer 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 Developer:  
Buc-ee's Alabama, LLC  
327 FM 2004  
Lake Jackson, TX 77566

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

10. **Indemnity:**

Developer 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 representation or warranty to Developer as to, and has no obligation to the Developer for the condition of, the improvements, work, property, product, and services of the County. Developer agrees that the County shall not be liable for any injury, loss or damage on account of any defects or problems. Developer for itself and Developer's Representatives waive and release the County from any claims for injury to persons or damage to the personal property by reason of the condition of the improvements, work, property, product, and services of the County or otherwise. From the Effective Date until the conclusion of the Warranty Period as defined pursuant to this Agreement, Developer 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 negligent acts or omissions of the Developer, its officers, directors, employees, agents or contractors related to the Developer's obligations under this Agreement. For avoidance of doubt, Developer's indemnity obligations pursuant to the foregoing sentence shall extend to actions that are proven to accrue or occur during the Warranty Period even if they are asserted after the conclusion of the Warranty Period.

All guarantees, duties, representations, assurances, payment obligations and indemnity obligations without limitation, 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 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 or ALDOT, respectively, 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 and ALDOT, respectively, 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. Maintenance Bond and Warranty for County Road 68 Project:**

- a. The Developer represents and warrants that its work and the construction of the COUNTY ROAD 68 PROJECT will be performed in a good and workmanlike manner in accordance with all applicable industry standards and the plans and specifications approved by the Baldwin County Engineer and ALDOT, respectively, and said work shall be free from all defects and/or deficiencies for a period of 1 year from the date of completion and acceptance of the COUNTY ROAD 68 PROJECT improvements on County Road 68 and Baldwin Beach Express by the County and ALDOT, respectively (the "Warranty Period"). The Developer warrants that it will correct all defects and/or deficiencies in the work during the Warranty Period immediately upon the receipt of written notice from the County or ALDOT. In addition, the Developer shall be responsible for the maintenance and repair of the improvements for the COUNTY ROAD 68 PROJECT during the Warranty Period.
- b. The Developer shall cause the provision of a maintenance bond or letter of credit for the COUNTY ROAD 68 PROJECT approved by County Engineer and County Attorney, which shall also be accepted and approved by the County Commission prior to the commencement of the work. The maintenance bond or letter of credit shall be in an amount equal to or greater than 40% of the cost (itemized engineer's cost estimate approved by the Baldwin County Engineer) of the full construction of the required right-of-way and drainage improvements within the public rights-of-way, including, but not limited to, grading, paving, and installation of drainage structures. If the County Engineer identifies potential problems, conditions or reasons which require further protection of the County, a greater amount of surety may be required by the County Engineer.
- c. The maintenance bond or letter of credit must state that it is valid for the duration of the Warranty Period.
- d. Notwithstanding the above requirements, this Warranty Period shall be automatically extended in the event that an invoice or notice of deficiencies has been sent to the Developer and the time of the subject invoice falls within, or the necessary repairs extend beyond the final date of, the Warranty Period. In such event, said maintenance bond or letter of credit shall remain in full force and effect until the Baldwin County Commission releases said surety document following the fulfillment of all obligations requiring the extension of the Warranty Period pursuant to this section.
- e. During the Warranty Period, if maintenance on the COUNTY ROAD 68 PROJECT is necessary as reasonably determined by the County Engineer, and it is reasonably determined that the necessary repairs are urgent, the Developer will be sent a notice that such repair work is necessary, and the repairs may be made by the Baldwin County Highway Department or other entity as determined by Baldwin County. The Developer will be sent an itemized invoice of the said repairs and be given the opportunity to immediately reimburse the County Commission for the cost of said repairs. If the Developer does not reimburse the County Commission for said repairs within thirty (30) days from the date of the

invoice, then the County Engineer will take the necessary actions to collect from the maintenance bond or letter of credit.

- f. During the Warranty Period, if maintenance on the COUNTY ROAD 68 PROJECT is necessary as reasonably determined by the County Engineer, and it is determined that the necessary repairs are not urgent, the Developer will be sent a notice and given fifteen (15) days from the date of receipt of such notice to make the necessary repairs. The Contractor will be required to obtain a License Agreement from the Baldwin County Highway Department, prior to making such repairs. If the Developer does not make the necessary repairs within said fifteen (15) day period, then said repairs may be made by the Baldwin County Highway Department or other entity as determined by Baldwin County, and the Developer will be sent an itemized invoice of the said repairs and will be given the opportunity to immediately reimburse the County Commission for the cost of said repairs. If the Developer does not reimburse the County Commission for said repairs within thirty (30) days from the date of the invoice, then the County Engineer will take the necessary actions to collect from the maintenance bond or letter of credit.
  - g. If the County Engineer considers the roadway and drainage improvements within the subject rights-of-way in good repair at the end of the Warranty Period, then the County Engineer will recommend that the Baldwin County Commission release the maintenance bond or letter of credit, and the Baldwin County Commission will release it without unreasonable delay.
13. **Other Work:** As between the County and Developer, all other work required as part of the travel center development that is not specifically addressed in this Agreement, whether on or off public rights-of-way, shall be the responsibility of the Developer.
14. **Entire Agreement:** This Agreement represents the entire and integrated agreement between County and Developer 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.
- This Agreement does not supersede any additional obligations between the parties under individual license agreements or permits related to the Projects herein.
15. **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 Developer have contributed substantially and materially to the preparation of this Agreement.
16. **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.

**DEVELOPER:**

BUC-EE'S ALABAMA, LLC

BY: [Signature] 12/5/17  
Arch H. Aplin III, President / Date

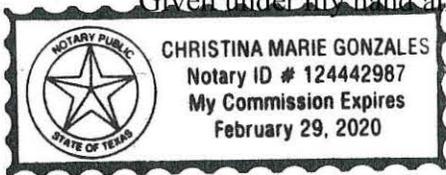
**ATTEST:**

[Signature] 12/5/17  
Jeff Nadalo, General Counsel and Secretary / Date

State of Texas )  
County of Brazoria )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that, Arch H. Aplin III, whose name as President for Buc-ee's Alabama, LLC, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said Buc-ee's Alabama, LLC.

Given under my hand and official seal, this the 5 day of December, 2017.

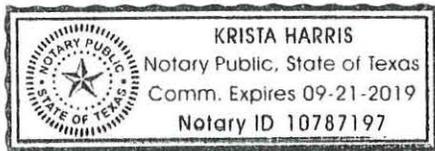


[Signature]  
Notary Public  
My Commission Expires: February 29, 2020

State of Texas )  
County of Brazoria )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Jeff Nadalo, whose name as General Counsel and Secretary for Buc-ee's Alabama, LLC, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said Buc-ee's Alabama, LLC.

Given under my hand and official seal, this the 5<sup>th</sup> day of December 2017.



[Signature]  
Notary Public  
My Commission Expires: 09-21-19

17. **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.
18. **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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of full execution below.

COUNTY:  
BALDWIN COUNTY

ATTEST:

BY: Frank Burt, Jr.  
Frank Burt, Jr.  
Chairman

/Date

Ronald J. Cink  
Ronald J. Cink  
County Administrator

/Date

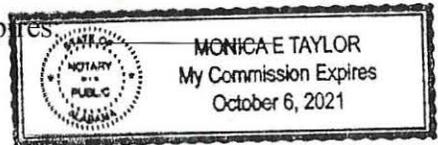
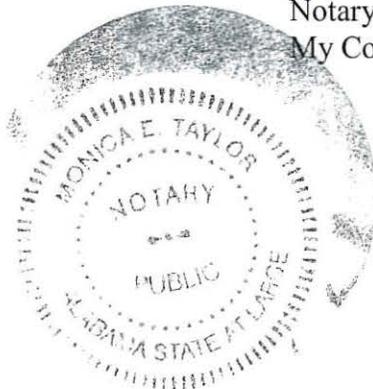
State of Alabama )  
County of Baldwin )

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.

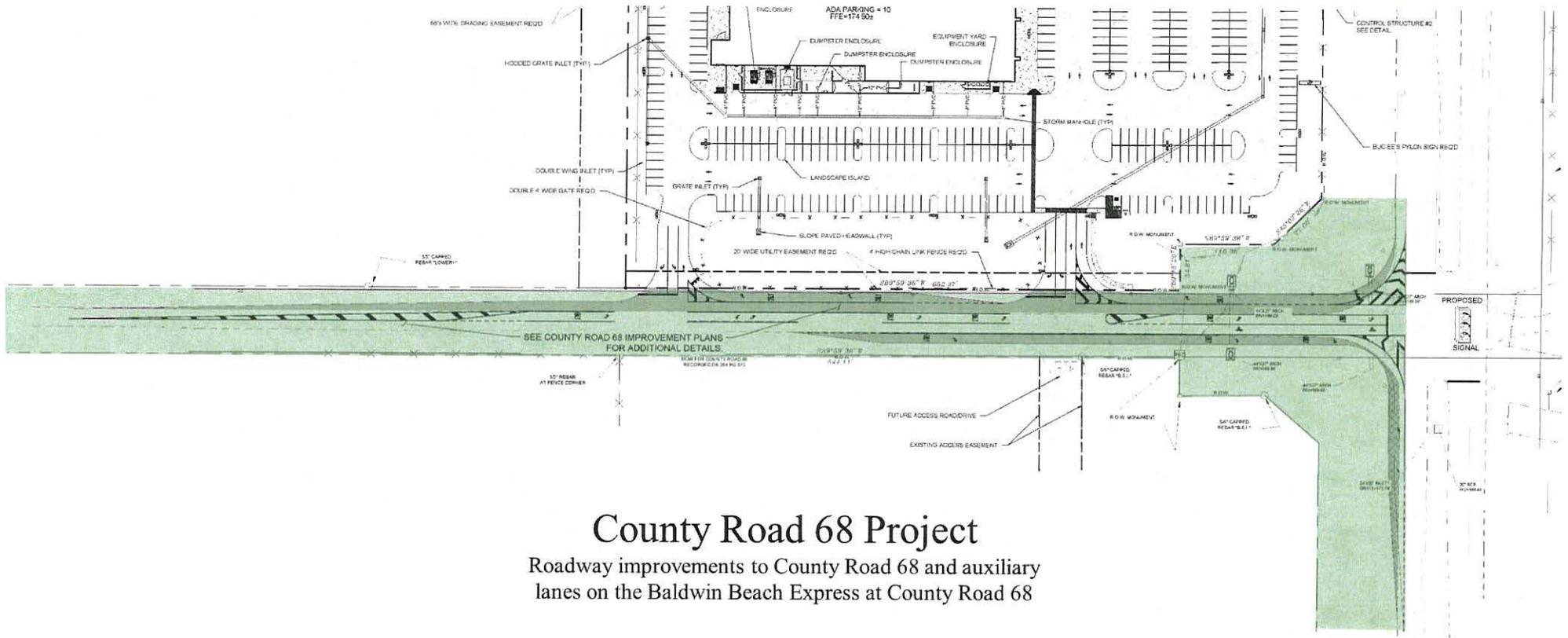
Given under my hand and official seal, this the 5<sup>th</sup> day of February, 2018

Monica E. Taylor  
Notary Public

My Commission Expires



# Exhibit A

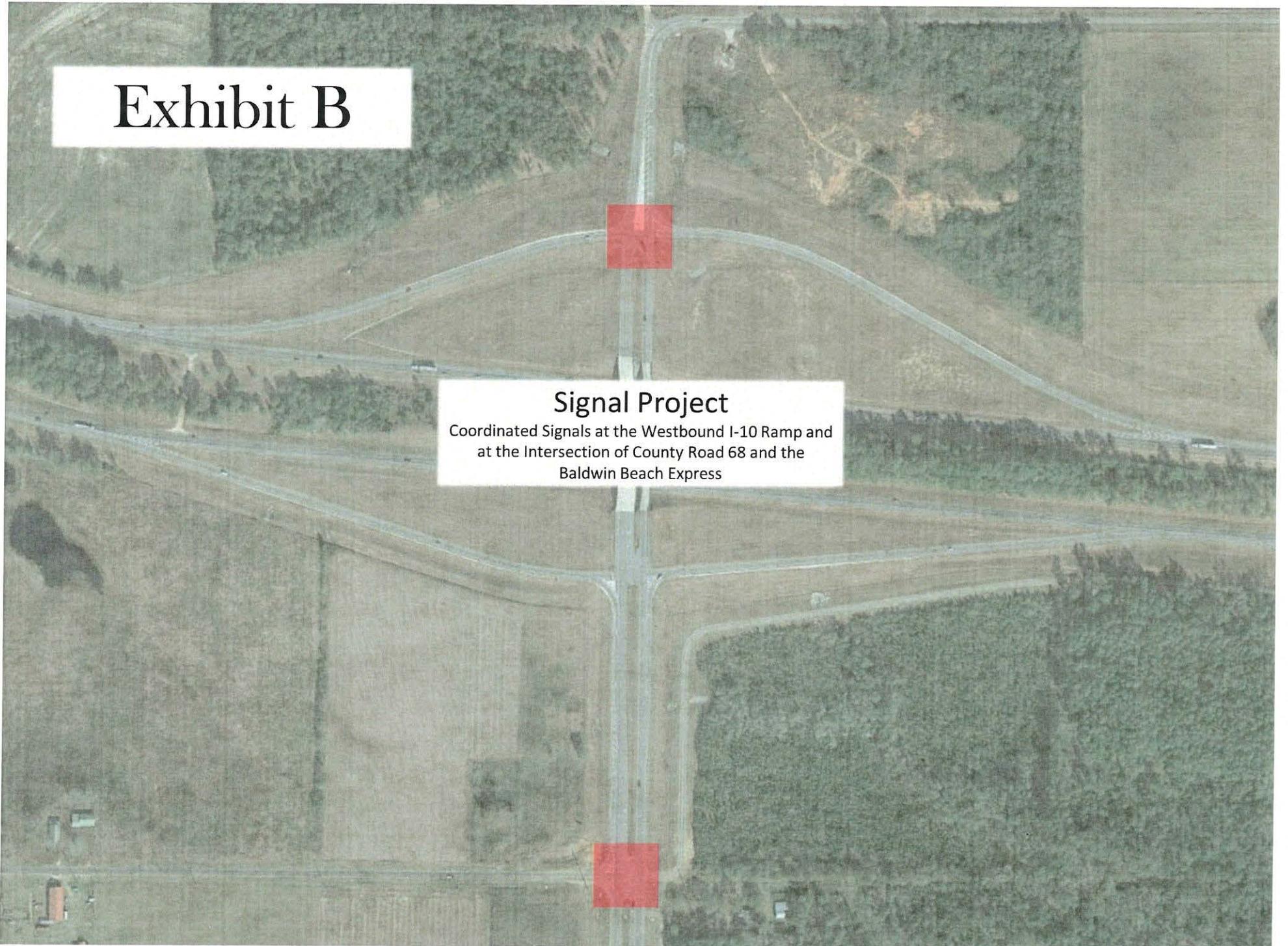


**County Road 68 Project**  
Roadway improvements to County Road 68 and auxiliary lanes on the Baldwin Beach Express at County Road 68

# Exhibit B

## Signal Project

Coordinated Signals at the Westbound I-10 Ramp and  
at the Intersection of County Road 68 and the  
Baldwin Beach Express



## SCHEDULE 1

### COUNTY ROAD 68 PROJECT SCHEDULE

Sitework Utilities Hardscape Landscape					
1000	Mobilization	5d	5d	04DEC17	08DEC17
1010	Erosion control	5d	5d	09DEC17	14DEC17
1020	Clear and Grub site	8d	8d	15DEC17	23DEC17
1030	Undercut - remove unsuitables - rough grade	37d	37d	26DEC17	07FEB18
1040	Engineered fill - Building pad	16d	16d	08FEB18	26FEB18
1050	Engineered fill - Fuel Canopy	12d	12d	27FEB18	12MAR18
1060	Engineered fill - concrete paving areas	13d	13d	13MAR18	27MAR18
1062	Storm drainage	20d	20d	28MAR18	19APR18
1230	Site lighting conduit runs	10d	10d	25MAY18	05JUN18
1240	UG phone - data raceways	10d	10d	06JUN18	16JUN18
1250	Site Sewer from well to building	15d	15d	20APR18	07MAY18
1260	Site Water to building	15d	15d	08MAY18	24MAY18
1270	Concrete pole bases for site lighting	15d	15d	06JUN18	22JUN18
1280	Base course at paving	25d	25d	18JUN18	17JUL18
1290	Form / reinf / pour and fin / paving - curbs	60d	60d	06JUL18	13SEP18
1292	ALDOT right of way lanes	20d	20d	14SEP18	06OCT18
1300	Irrigation - landscaping	20d	20d	14SEP18	06OCT18
1310	Striping of concrete paving	5d	5d	08OCT18	12OCT18
1320	Main Pylon sign fdns - tower - sign	20d	20d	28AUG18	19SEP18

### SIGNAL PROJECT SCHEDULE

12/4/17	Bid-Opening @ 10:00AM in Purchasing Conference Room
12/4/17	Bid-Tab/Letter of Recommendation <i>(Copy to Wanda, Purchasing)</i>
11/21/17	Work Session – Letter of Recommendation; Permission to Award
12/05/17	Commission Meeting; Award Project
12/06-12/15/17	Contract Documents – Execution
1/8/18	Pre-CN Meeting/NTP (Tentative)
1/8 - 2/8/18	Review and approval of Contractor’s materials (Skipper – est. 30 days)
2/9 - 6/1-18	Pole Procurement (16 weeks)
6/4 – 9/11/18	Construction period (70 Working Days)