

**CITY OF DAPHNE**  
**1705 MAIN STREET, DAPHNE, AL**  
**CITY COUNCIL BUSINESS MEETING AGENDA**  
**October 5, 2020**  
**6:30 P.M.**

- 1. CALL TO ORDER**
- 2. ROLL CALL**  
**INVOCATION** Pastor Ben Kimsal, 3 Circle Church  
**PLEDGE OF ALLEGIANCE**
- 3. APPROVE MINUTES:** Special Called Council Meeting – September 1, 2020; Council Meeting – September 21, 2020
- 4. REPORTS OF STANDING COMMITTEES**
  - A. FINANCE COMMITTEE – Conaway**  
Review the minutes from the September 21, 2020 meeting.  
Treasurer Report –
    - Unrestricted Fund Balance - \$17,575,689
    - Total Cash Balance - \$27,935,834Sales Tax for July 2020 - \$1,717,712  
Lodging Tax for July 2020 - \$101,581  
  
**MOTION** to recommend to Council to remove the monies appropriated for the Lakeshore Drive repair out of the 2020-N-Street Resurfacing project and appropriate for the Lakefront Drive repairs when project is commenced.
  - B. BUILDINGS & PROPERTY COMMITTEE – Goodlin**
  - C. PUBLIC SAFETY COMMITTEE – Scott**
  - D. CODE ENFORCEMENT/ORDINANCE COMMITTEE – Phillips**
  - E. PUBLIC WORKS COMMITTEE – Coleman**
- 5. REPORTS OF SPECIAL BOARDS & COMMISSIONS**
  - A. BOARD OF ZONING ADJUSTMENTS – Adrienne Jones**
  - B. DOWNTOWN REDEVELOPMENT AUTHORITY – Conaway**
  - C. INDUSTRIAL DEVELOPMENT BOARD – Rudicell**
  - D. LIBRARY BOARD –Phillips**
  - E. PLANNING COMMISSION – Scott**  
Review the minutes from the August 27, 2020 meeting and the report from the September 24, 2020 meeting.
  - F. RECREATION BOARD – Coleman**
  - G. UTILITY BOARD – LeJeune**

**City Council Agenda – October 5, 2020**

**6. MAYOR’S REPORT**

**7. CITY ATTORNEY REPORT**

**8. DEPARTMENT HEAD REPORTS**

**9. CITY CLERK’S REPORT**

**10. PUBLIC PARTICIPATION**

**11. RESOLUTIONS & ORDINANCES**

**A. RESOLUTIONS:**

**2020 – 53** – Acceptance of Roads and Rights-of-Ways Jubilee Farms Subdivision Phase 6

**2020 – 54** - Cooperative Maintenance Agreement for a Guardrail at Jubilee Farms

**2020 – 55** – Cooperative Maintenance Agreement for Corte Road and Austin Road

**2020 – 56** – Resolution to Authorize the Lease of City Property and authorize the Mayor to execute any necessary documents – Whataburger Restaurants, LLC

**2020 – 57** – Resolution Calling for the Redemption of the City’s General Obligation Warrant, Series 2017

**B. 2<sup>nd</sup> READ ORDINANCES:**

**C. 1<sup>ST</sup> READ ORDINANCES:**

**2020 – 33** – Appropriation: Drainage Improvements Engineering Fees For: North Main Street Fire Station and Lakeshore Drive - \$49,400

**2020 – 34** – Additional Appropriation of Funds to Resolve a Pending Claim

**2020 – 35** – Ordinance Authorizing the Issuance of General Obligation Refunding Warrants, Series 2020-A

**2020 – 36** – Ordinance Authorizing the Issuance of General Obligation Refunding Warrants, Series 2020-B

**12. COUNCIL COMMENTS**

**13. ADJOURN**

**SEPTEMBER 1, 2020  
CITY COUNCIL MEETING  
SPECIAL CALLED MEETING  
1705 MAIN STREET  
DAPHNE, AL  
12:00 P.M.**

**1. CALL TO ORDER:**

There being a quorum present Council President Robin LeJeune called the meeting to order at 12:03pm.

**2. ROLL CALL:**

**COUNCIL MEMBERS PRESENT:** Tommie Conaway, Robin LeJeune, Pat Rudicell, Ron Scott and Joel Coleman

**COUNCIL MEMBERS ABSENT:** Angie Phillips and Doug Goodlin

**Also Present:** Candace Antinarella, City Clerk; Jay Ross, City Attorney; Mayor Haygood; Vickie Hinman, HR Director; Ange Baggett, Marketing and Recreation Director; and Jessica Linne, Assistant City Clerk

**INVOCATION/PLEDGE OF ALLEGIANCE**

Invocation was given by Councilman Ron Scott.

**3. CANVASS VOTES OF THE MUNICIPAL ELECTION:**

The City Clerk opened the provisional ballots. Steve Carey had seven (7) additional votes; Robin LeJeune had nine(9) additional votes; Selena Vaughn had three(3) additional votes; Ron Scott one(1) additional votes; Benjamin Hughes had seven (7) additional votes; Wesley Wright had four(4) additional votes.

**MOTION by Councilman Scott to waive the reading of Resolution 2020-44. Seconded by Councilman Coleman.**

**MOTION CARRIED UNANIMOUSLY.**

**MOTION by Councilman Scott to amend Resolution 2020-44 to reflect the numbers updated after the canvassing of the votes. Seconded by Councilman Coleman.**

**City Clerk called roll.**

<b>Councilwoman Conaway</b>	<b>aye</b>
<b>Councilman Rudicell</b>	<b>aye</b>
<b>Councilman Coleman</b>	<b>aye</b>
<b>Councilman Scott</b>	<b>aye</b>
<b>Council President LeJeune</b>	<b>aye</b>

**MOTION CARRIED UNANIMOUSLY.**

**MOTION by Councilman Scott to adopt Resolution 2020-44 as amended. Seconded by Councilman Coleman.**

**City Clerk called roll.**

<b>Councilwoman Conaway</b>	<b>aye</b>
<b>Councilman Rudicell</b>	<b>aye</b>
<b>Councilman Coleman</b>	<b>aye</b>
<b>Councilman Scott</b>	<b>aye</b>
<b>Council President LeJeune</b>	<b>aye</b>

**MOTION CARRIED UNANIMOUSLY.**

**SEPTEMBER 1, 2020  
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12:00 P.M.**

**11. COUNCIL COMMENTS:**

Councilman Scott congratulated all the candidates. Mayor Haygood congratulated Benjamin Hughes and Councilman Scott.

**12. ADJOURN:**

THERE BEING NO FURTHER BUSINESS TO DISCUSS, COUNCIL ADJOURNED AT 12:45PM.

Respectfully submitted by,

Certification of Presiding Officer,

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Candace G. Antinarella, CMC, City Clerk

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Robin LeJeune, Council President

**SEPTEMBER 21, 2020  
CITY COUNCIL MEETING  
REGULAR BUSINESS MEETING  
1705 MAIN STREET  
DAPHNE, AL  
6:30 P.M.**

**1. CALL TO ORDER:**

There being a quorum present Council President Robin LeJeune called the meeting to order at 6:33pm.

**2. ROLL CALL:**

**COUNCIL MEMBERS PRESENT:** Tommie Conaway, Robin LeJeune, Pat Rudicell, Ron Scott, Angie Phillips, Doug Goodlin and Joel Coleman

**Also Present:** Candace Antinarella, City Clerk; Mayor Haygood; Jay Ross, City Attorney; Kelli Reid, Finance Director; BJ Eringman, Public Works Deputy Director; Chief Brown, Fire Department; Captain Taylor, Police Department; Adrienne Jones, Planning Director; Vickie Hinman, Human Resources; Tonja Young, Library; Troy Strunk, Director of City Development; and Jessica Linne, Assistant City Clerk.

**INVOCATION/PLEDGE OF ALLEGIANCE**

Invocation was given by John Lake.

**3. APPROVAL OF MINUTES:**

The minutes from the September 8, 2020 regular meeting were approved.

**3. REPORT OF STANDING COMMITTEES:**

**A. FINANCE COMMITTEE**

Councilwoman Conaway said the operating budget Ordinance is a second read this evening. She said the report from the meeting that afternoon will be in the next packet.

**B. BUILDINGS & PROPERTY COMMITTEE**

Councilman Goodlin said the next meeting is October 12<sup>th</sup> at 5:15pm.

**C. PUBLIC SAFETY COMMITTEE**

Councilman Scott said the next meeting is October 12<sup>th</sup> at 4:30pm. He said the minutes from the August 10<sup>th</sup> meeting are in the packet.

**D. CODE ENFORCEMENT/ORDINANCE COMMITTEE**

Councilwoman Phillips said the next meeting is October 5<sup>th</sup> at 4:30pm.

**E. PUBLIC WORKS COMMITTEE**

Councilman Coleman said the next meeting is October 5<sup>th</sup> at 5:30pm. He said the minutes from the August 3<sup>rd</sup> meeting are in the packet.

**4. REPORTS OF SPECIAL BOARDS & COMMISSIONS:**

**A. Board of Zoning Adjustments**

Mrs. Jones said there was no report.

**B. Downtown Redevelopment Authority**

Councilwoman Conaway said the Downtown Redevelopment Authority did not meet in September due to the storm, but they will meet again in October.

**C. Industrial Development Board**

Councilman Rudicell said the next meeting is the second Tuesday in October at 11:30am.

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**D. Library Board**

Councilwoman Phillips said the next meeting is October 8<sup>th</sup> at 4:30pm.

**E. Planning Commission**

Councilman Scott said the next meeting is Thursday at 5:00pm.

**F. Recreation Board**

Councilman Coleman said the next meeting is October 14<sup>th</sup> at 6:30pm.

**G. Utility Board**

Councilman LeJeune said the next meeting is September 30<sup>th</sup>. He said that he was happy to announce Daphne Utilities didn't have a boil notice during the storm. He commended the Utilities Department.

**5. MAYOR'S REPORT:**

Mayor Haygood gave an update on Hurricane Sally recovery. He encouraged citizens to view FEMA's website. He said the debris pickup has begun. He said Public Works is picking up garbage and reminded everyone to take in their can if it's empty. He shared that Daphne Utilities did well during the storm. He said Riviera Utilities is working to restore power and update everyone. Mayor said there are hot meal distribution sites. Councilman Scott asked if Riviera had given any type of time table on restoration. Mayor Haygood said he had not received a time frame.

**6. CITY ATTORNEY REPORT:**

City Attorney said there were several items to discuss that require Executive Session. He said the topics include items such as buying and selling of real estate as well as threatened litigation. He said if it was the will of the Council that they could enter into Executive Session at the end of the meeting. He said there would be a potential reason for them to come out of Executive Session to vote.

**7. DEPARTMENT HEAD COMMENTS:**

Chief Brown commended the Fire Department and the great job they did during the storm.

Captain Taylor commended the Police Department for their work during the storm.

Tonja Young shared that the Library had a few little roof leaks but that they are open.

BJ Eringman, Public Works, thanked the Council and Mayor for responded as early as they did to the hurricane. He thanked the staff who were called in and commended Public Works staff for their hard work and pushing through the city in a day and a half to make roads passable. Councilman Scott commended Public Works for their hard work.

**8. CITY CLERK'S REPORT:**

**MOTION by Councilwoman Conaway to authorize the Mayor and City Clerk to work with the Eastern Shore Chamber of Commerce to rescheduled and reissue a permit for the Jubilee Festival no less than 3 weeks from now. Seconded by Councilwoman Phillips.  
MOTION CARRIED UNANIMOUSLY.**

City Clerk shared that there is a resolution on the agenda for consideration. It is concerning amending the State of Emergency Resolution previously adopted.

City Clerk reminded everyone that the Mayoral run-off election is October 6<sup>th</sup>. She said districts 1-5 vote at the Civic Center and district 6-7 vote at Trojan Hall.

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**9. PUBLIC PARTICIPATION:**

Public Participation opened at 7:09pm.

John Lake, Lake Forest, thanked the Council for their work. He said Lake Forest has its struggles but he is proud of the Utility Board. He said if FEMA wants to use the 19<sup>th</sup> hole in Lake Forest for set up, they are welcome to.

Victoria Phelps, Lake Forest, thanked Police, Fire and Public Works for their hard work. She updated the power outages in Lake Forest. She gave information regarding FEMA.

Rod Drummond, Ridgewood Drive, thanked Victoria Phelps. He thanked Mayor Haygood. He suggested the DISC project be renamed the Steve Carey Retired Airman Park.

Public Participation closed at 7:24pm.

**10. RESOLUTIONS & ORDINANCES:**

**A. RESOLUTIONS:**

**2020-51** – Resolution Declaring Certain Personal Property Surplus and Authorizing the Mayor to Dispose of Such Property- Rear Loading TK, New Holland Tractor, Ford F-150, John Deere Mower

**2020-52** – Resolution to Amend the State of Emergency Resulting from Hurricane Sally

**MOTION by Councilman Coleman to waive the reading of Resolution 2020-51 and 2020-52. Seconded by Councilman Goodlin.**

**MOTION CARRIED UNANIMOUSLY.**

**MOTION by Councilman Coleman to adopt Resolution 2020-51. Seconded by Councilwoman Phillips.**

**MOTION CARRIED UNANIMOUSLY.**

**MOTION by Councilman Coleman to adopt Resolution 2020-52. Seconded by Councilwoman Phillips.**

**Vickie Hinman, HR, explained why an end date is needed on the resolution. Councilman Coleman amended his motion for the resolution to have an end date of “end of shift on September 22, 2020”.**

**Seconded by Councilman Goodlin.**

**ORDINANCES:**

**B. 2<sup>nd</sup> READ ORDINANCES:**

**2020-28** – Revision of the Official City of Daphne Zoning Map

**2020-29** – Additional Appropriation: Legal Fees – WPNVA, LLC - \$35,000

**2020-30** – Annexation of Property Contiguous to the Corporate Limits of the City of Daphne – Corte Road, a Portion of Austin Road and the Realignment of Austin Road

**2020-31** – Additional Appropriation: Daphne Tennis Center and Restroom Facility at Lott Park

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**2020-32 – Adopting the Fiscal Year 2021 Budget**

**MOTION by Councilwoman Conaway to waive the reading of Ordinances 2020-28, 2020-29, 2020-30, 2020-31 and 2020-32. Seconded by Councilman Coleman.  
MOTION CARRIED UNANIMOUSLY.**

**MOTION by Councilwoman Conaway to adopt Ordinance 2020-28. Seconded by Councilman Rudicell.  
MOTION CARRIED UNANIMOUSLY.**

**MOTION by Councilwoman Conaway to adopt Ordinance 2020-29. Seconded by Councilman Scott.  
MOTION CARRIED UNANIMOUSLY.**

**MOTION by councilman Scott to adopt Ordinance 2020-30. Seconded by Councilman Goodlin.  
MOTION CARRIED UNANIMOUSLY.**

**MOTION by Councilman Scott to adopt Ordinance 2020-31. Seconded by Councilman Goodlin.  
MOTION CARRIED UNANIMOUSLY.**

**MOTION by Councilman Scott adopt Ordinance 2020-32. Seconded by Councilwoman Phillips.  
Councilman Rudicell clarified that this was only the operating budget.  
MOTION CARRIED UNANIMOUSLY.**

**C. 1<sup>ST</sup> READ ORDINANCES:**

**11. COUNCIL COMMENTS:**

Mayor Haygood thanked everyone for coming out this evening. He said he felt the City was spared through the storm. He gave a COVID update and said numbers have dropped.

Councilwoman Conaway said the Education Advisory Committee will meet on September 28<sup>th</sup> at 11:00am. She thanked the departments for all they are doing.

Councilman Goodlin thanked Fire Department, Public Works and Police Department for their work during the storm. He reminded everyone that schools will be closed until September 30<sup>th</sup>.

Councilwoman Phillips thanked BJ Eringman, Public Works, Police Department, Fire Department, Victoria Phelps and the citizens for their response and help during the storm.

Councilman Coleman thanked the Mayor, Department Heads and staff for their work during Hurricane Sally. He thanked who have come from out of town to help. He thanked citizens for stepping up to help their neighbors.

Councilman LeJeune thanked the Mayor, staff, Public Works, Fire Department and Police Department for their work during the storm. He thanked citizens for helping one another. He asked everyone to be patient with utilities as they are working hard. He reminded everyone that the Jubilee Festival has been postponed.

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City Attorney certified that the Council should enter into an Executive Session concerning matters of the threatened litigation as well as the potential buying and selling of real property. He said it should take 30 minutes. He said the Council may come back out into Chambers to consider further action.

**MOTION by Councilman Scott to enter into executive session. Seconded by Councilman Goodlin.  
City Clerk called roll.**

<b>Councilwoman Conaway</b>	<b>Aye</b>
<b>Councilman Coleman</b>	<b>Aye</b>
<b>Councilman Goodlin</b>	<b>Aye</b>
<b>Councilman Scott</b>	<b>Aye</b>
<b>Councilman Rudicell</b>	<b>Aye</b>
<b>Councilwoman Phillips</b>	<b>Aye</b>
<b>Councilman LeJeune</b>	<b>Aye</b>

**MOTION CARRIED UNANIMOUSLY.**

Council moved into Executive Session at 7:48pm.

Council returned from Executive Session at 8:15pm.

**MOTION by Councilman Scott to use the proceeds from the refinance of bonds for capital purchases.  
The MOTION received no second.**

**MOTION by Councilman Rudicell to use proceeds from the refinance of bonds to pay down debt services. Seconded by Councilwoman Phillips.  
MOTION CARRIED UNANIMOUSLY.**

**12. ADJOURN:**

THERE BEING NO FURTHER BUSINESS TO DISCUSS, COUNCIL ADJOURNED AT 8:23PM.

Respectfully submitted by,

Certification of Presiding Officer,

\_\_\_\_\_  
Candace G. Antinarella, CMC, City Clerk

\_\_\_\_\_  
Robin LeJeune, Council President

**CITY OF DAPHNE**  
**FINANCE COMMITTEE MINUTES**  
**SEPTEMBER 21, 2020**  
**4:30 P.M.**

**I. CALL TO ORDER/ROLL CALL**

The meeting was called to order at 4:30 p.m.

Present were:

Chairperson Mrs. Tommie Conaway  
Councilman Mr. Pat Rudicell  
Councilman Mr. Joel Coleman  
Councilman Mr. Doug Goodlin

Councilman Mr. Ron Scott  
Councilman Mr. Robin LeJeune  
Councilwoman Mrs. Angie Phillips

**Also Present:** Mayor Dane Haygood, Finance Director Mrs. Kelli Reid, Senior Accountant Mrs. Suzâne Henson, Human Resource Director Mrs. Vickie Hinman, Revenue Officer Mrs. Courtney Coleman, City Clerk Mrs. Candace Antinarella, Executive Director of City Development Mr. Troy Strunk, Deputy Public Works Director Mr. William Eringman, Director of Events and Marketing Mrs. Ange Baggett, Parks and Recreation Manager Mr. Charlie McDavid, and City Attorney Mr. Jay Ross.

**II. PUBLIC PARTICIPATION**

There was no public participation.

**III. APPROVE MINUTES FOR THE PREVIOUS MEETING**

The previous minutes were approved.

**IV. HUMAN RESOURCES BUSINESS**

**A. Update on Human Resources Department Activity**

Mrs. Vickie Hinman reviewed the Human Resource Report:

- Posted positions – 12
- Reviewing/Testing/Interviewing/Background check - 9
- Promotion/Internal Transfer - 0
- New Hires – 2
- Open positions - 0

Mrs. Hinman reviewed the monthly Safety Committee meeting topics discussed and other Human Resource projects and events.

- New Employee Orientation: Rescheduled
- Processing employee requests of individual/family benefits: September 1 – September 30, 2020

Discussion was made on the Public Works Director open position and a question was asked on how many applicants had applied. Mrs. Hinman answered there were approximately 28 applicants. Discussion continued on hiring a new Public Works Director and the terms of the six month probation period.

**B. Overtime Report and Special Events Overtime Recap Report**

The Overtime reports was included in the packet for review.

**V. BUSINESS LICENSE REPORT**

**A. Report: New Business Licenses – August, 2020**

Mrs. Coleman reviewed the following reports and information:

- Code enforcement issued 2 warnings resulting in businesses becoming compliant and \$197.50 in revenue.
- New Businesses with a physical location in Daphne - 3
- Simplified Sellers Use Tax collections - \$82,771.73 and YTD collections - \$746,257.52

<b>BUSINESS LICENSE COUNT through 08/31/2020</b>	
NEW Licenses	<b>24</b>
RENEWAL Licenses (2020)	<b>22</b>
<b>Total Issued THIS MONTH</b>	<b>46</b>
Total Issued THIS MONTH - PREVIOUS YEAR	58
<b>Net Gain/-Loss Current VS Previous Yr MONTH</b>	<b>-12</b>
<b>Total Issued YTD 2020</b>	<b>3,737</b>
<b>Total Issued YTD - PREVIOUS YEAR</b>	<b>4,563</b>
<b>Net Gain/-Loss Current VS Previous Yr YTD</b>	<b>-826</b>

<b>Business License Fee Historical Comparison 2019 / 2020</b>				
	<b>FY 19</b>	<b>FY 20</b>	<b>+/- Previous Year</b>	<b><u>Budget 2020</u> \$2,335,000</b>
<b>October</b>	\$7,486.91	\$15,924.77	\$8,437.86	<b>(\$2,319,075.23)</b>
<b>November</b>	\$3,983.03	\$3,754.50	<b>(\$228.53)</b>	<b>(\$2,315,320.73)</b>
<b>December</b>	\$2,614.81	\$80,771.34	\$78,156.53	<b>(\$2,234,549.39)</b>
<b>January</b>	\$1,409,468.98	\$1,641,711.72	\$232,242.74	<b>(\$592,837.67)</b>
<b>February</b>	\$698,411.44	\$210,511.03	<b>(\$487,900.41)</b>	<b>(\$382,326.64)</b>
<b>March</b>	\$169,548.90	\$226,661.69	\$57,112.79	<b>(\$155,664.95)</b>
<b>April</b>	\$48,761.33	\$120,558.73	\$71,797.40	<b>(\$35,106.22)</b>
<b>May</b>	\$28,001.93	\$34,866.11	\$6,864.18	<b>(\$240.11)</b>
<b>June</b>	\$15,746.69	\$37,917.88	\$22,171.19	\$37,677.77
<b>July</b>	\$17,108.00	\$21,867.35	\$4,759.35	\$59,545.12
<b>August</b>	\$9,802.05	\$4,527.49	<b>(\$5,274.56)</b>	\$64,072.61
<b>Year to Date</b>	\$2,410,934.07	\$2,399,072.61	<b>(\$11,861.46)</b>	<b>\$64,072.61</b>
<b>All amounts include penalty and interest.</b>				

Mrs. Coleman discussed the process of issuing business license to contractors coming from out of town to do cleanup work due to storm damage created from Hurricane Sally. Mrs. Coleman explained the fee schedule for these contractors who are obtaining a Business License who are itinerant workers is higher than the normal fee charged at this time.. Mrs. Coleman asked for Council's input on the different fee schedules. Discussion continued on the difference in these contractors from the ones who have ongoing business operations in the City. Mrs. Phillips agreed that the out of town contractors should be classified as itinerant workers and the \$500 fee charged.

## **VI. SALES & LODGING TAX REPORT**

### **A. Sales and Use Taxes: July, 2020**

Mrs. Henson reviewed the Sales & Use Tax Reports: \$1,717,711.91 was collected for July, 2020 which was up \$91,086.53 from July 2019's collections: :

- YTD Variance over Budget - \$1,339,288.36

### **B. Lodging Tax Collections, July, 2020**

Mrs. Henson reviewed the Lodging Tax Collections Report and noted the collections for July, 2020 were \$101,581.29 which is down (\$54,290.26) from July 2019's collections .

- YTD Variance over Budget: (\$246,912.90)

**C. Lodging Tax Fund : Statement of Rev over Exp, August, 2020**

Mrs. Henson reviewed the Lodging Tax Statement of Revenues over Expenditure report for August, 2020.

- Unreserved balance for Bayfront related purchases - \$1,496,503.93
- Recreation for related purchases - \$618,448,.85

**VII. FINANCIAL SCHEDULES & REPORTS**

**A. Financial Reports**

**1. Treasurer’s Report: August, 2020**

Mrs. Reid reviewed the Treasurer’s Report:

<b>TREASURER'S REPORT</b>					
<b>As of August 31, 2020</b>					
Account Type/Title	8/31/2020	7/31/2020	Increase (Decrease) from last Month	8/31/2019	Increase (Decrease) from Last Year
<b>GENERAL FUND &amp; ENTERPRISE FUNDS</b>	\$ 11,572,135	\$ 11,553,253	\$ 18,882	\$ 6,806,174	\$ 4,765,961
CERTIFICATE OF DEPOSIT	-	-	-	500,000	\$ (500,000)
INVESTMENT FUND	5,925,500	5,927,188	(1,689)	5,598,167	\$ 327,333
CREDIT CARD ACCOUNT	78,054	55,616	22,438	13,459	\$ 64,595
<b>Total Unrestricted Cash Balance</b>	<b>17,575,689</b>	<b>17,536,058</b>	<b>39,631</b>	<b>12,917,800</b>	<b>4,657,889</b>
<b>SPECIAL REVENUE FUNDS</b>					
<b>AGENCY FUNDS</b>					
MUNICIPAL COURT	1,868	1,735	133	2,326	(458)
SELF INSURANCE	212,561	209,642	2,919	165,973	46,588
FLEX SPENDING	21,832	11,350	10,482	1,866	19,966
OPEB TRUST INVESTMENT FUND	528,654	521,874	6,780	-	528,654
	4,033,685	3,972,721	60,963	3,335,978	697,707
<b>CAPITAL PROJECT FUNDS</b>					
CAPITAL RESERVE	4,579,927	4,903,648	(323,720)	3,079,894	1,500,033
2019 CAPITAL IMPROVEMENTS	-	57,841	(57,841)	919,378	(919,378)
	4,579,927	4,961,489	(381,561)	3,999,272	580,655
<b>DEBT SERVICE FUNDS</b>					
DEBT SERVICE	1,746,533	1,485,897	260,636	1,819,151	(72,618)
<b>Total Restricted Cash Balance</b>	<b>10,360,145</b>	<b>10,420,107</b>	<b>(59,962)</b>	<b>9,154,401</b>	<b>1,205,744</b>
<b>Total City Cash Balance</b>	<b>\$ 27,935,834</b>	<b>\$ 27,956,165</b>	<b>\$ (20,331)</b>	<b>\$ 22,072,201</b>	<b>\$ 5,863,633</b>
	<b>Encumbrance Total as of</b>		<b>8/31/2020</b>	<b>\$ 375,998.52</b>	

Mrs. Reid noted that the total cash balance is down \$20,331 from last month and that the 2019 Capital Improvements account now has a zero balance.

***The Treasurer’s Report as of AUGUST, 2020 Total Unrestricted Cash Balance - \$ 17,575,689 and Total City Cash Balance - \$27,935,834 was presented to be filed for audit.***

**2. Investment Report**

Mrs. Reid presented a report on the City’s investments fund. Mrs. Reid noted the balance was up \$255,627 from last year.

**3. Encumbrance Report**

- Encumbrance balance is - \$378,998.52 as of August, 2020.

Mrs. Reid reviewed the Encumbrance Report and noted that she expects 3-4 items will clear off by year end including IT firewall, historical signage, SAFE Room, and museum grant for building improvements.

**4. Outstanding Appropriations**

Mrs. Reid reviewed the outstanding appropriations and discussed several projects including Bayfront related projects, CR64, Corte Road, and Road Resurfacing projects.

**5. Financial Overview: Debt Summaries & Monthly Financial Statements, July, 2020**

Mrs. Reid reviewed the following Financial Statements:

- Debt Summary Schedules (General & Enterprise Funds), August, 2020
  - Jubilee Square: Debt payments are currently fully paid through December 2019 thus 8 months in arrears. Arrearage includes \$307,544 in principal and \$43,418 in interest

**Monthly Financial Statements – July 2020 Financial Highlights**

**General Fund:**

	<u>FY 2020</u>	<u>FY 2019</u>	<u>Change</u>
• YTD Budgetary Net Income:	\$2,994,498	\$48,501	\$2,945,997
• Total sales tax collected year to date is approximately \$1.34 million over budgeted income and \$1.39 million over prior year to date income			
• Licenses and permits were approximately \$6677,000 over prior year to date			
• Unassigned Fund Balance: \$17,795,518			
• Outstanding Encumbrances: \$381,471			

**Debt Service Fund/Outstanding Debt:**

- Outstanding Warrant Balance as of July 31, 2020: \$33,512,977
- Outstanding Note Payable Balance as of July 31, 2020: \$595,495
- Outstanding Capital Lease Balance as of July 31, 2020:
  - General Fund: \$1,213,501
  - Enterprise Fund: \$1,044,066

**Capital Project Funds (Capital Reserve, 2019 Construction):**

- The 2019 Construction Fund has been fully expended with total FY 2020 expenditures for Fire Station #5 totaling \$864,802

**Special Revenue Funds (12 separate funds):**

- Lodging Tax Fund –
  - Bayfront Unreserved Fund Balance: \$1,476,968
  - Recreation Unreserved Fund Balance: \$610,053
  - Total lodging tax collected was approximately \$247,000 under budgeted income and \$245,000 under prior year to date income.

**Enterprise Funds (Solid Waste, Civic Center, and Bayfront):**

- Year to date transfers for each of the enterprise funds were as follows:

	<u>FY 2020</u>	<u>FY 2019</u>	<u>Change</u>
Solid Waste Fund	\$ 568,806	\$ 258,826	\$ 309,980
Civic Center Fund	\$ 244,575	\$ 62,278	\$ 182,297
Bayfront Park Fund	\$ 71,256	\$ 107,361	\$ < 36,105 >

- July was the final month of the three month waiver of garbage fees in response to the COVID-19 pandemic

**6. Unfunded Future Projects Expenditure Summary**

Mrs. Reid reviewed the Unfunded Future Projects Expenditure Summary.

**7. Summary of Budgetary Amendments**

Mrs. Reid reviewed the General Fund budgetary amendments made to the FY2020 Budget.

- Total Appropriations Year to Date – \$ 2,889,641
- Adjusted Expenses over Revenue – (\$2,836,678)

**B. Bills Paid Reports – August, 2020**

The Bills Paid Report were previously presented electronically.

### **VIII. BIDS (Resolution)**

#### **A. 2020-N-Street Resurfacing**

Mrs. Reid discussed the request forwarded from the Public Works Committee to remove Lakeshore Drive and replace with Lakefront Drive repairs. Discussion continued that Lakefront Drive would need to be a separately bid project at a later date. Mrs. Reid noted the monies from removing Lakefront Drive would be set aside for the Lakeshore Drive project.

***MOTION BY Mr. Scott to recommend to Council to remove the monies appropriated for the Lakeshore Drive repair out of the 2020-N-Street Resurfacing project and appropriate for the Lakefront Drive repairs when project is commenced. Seconded by Mrs. Phillips.***  
***MOTION CARRIED UNANIMOUSLY***

### **IX. APPROPRIATION REQUESTS: (Ordinance)**

#### **A. North Main Street Fire Station Drainage Improvements – Engineering - \$9,400 & Lakeshore Drive Drainage Improvements – Engineering - \$40,000**

Mrs. Reid reviewed the requests forwarded from the Public Works Committee meeting to appropriate monies for engineering for North Main Street Fire Station Drainage improvements and Lakeshore Drive drainage improvements.

***MOTION BY Mr. Scott to recommend to Council to adopt the Ordinance amending the budget to appropriate \$9,400 for engineering for North Main Street Fire Station and \$40,000 for engineering for Lakeshore Drive drainage improvements. Seconded by Mr. Goodlin.***  
***MOTION CARRIED UNANIMOUSLY***

### **X. NEW BUSINESS**

#### **A. Declare property surplus**

Mrs. Henson stated that the items listed on the draft resolution was scheduled to be discussed at the Buildings and Property committee meeting that was cancelled due to the pending storm Hurricane Sally. Mrs. Henson noted the item was moved to the Finance Committee meeting so the items could be prepared to sell. Mrs. Reid noted the surplus resolution is on the Council agenda for tonight's meeting.

***MOTION BY Mr. Goodlin to recommend to Council to adopt a Resolution declaring the following equipment as surplus: 2-2012 International 20CY Rear Loading refuse Trucks, 1998 New Holland Tractor, 2000 F150, 2008 John Deere 72" Mower. Seconded by Mrs. Phillips.***  
***MOTION CARRIED UNANIMOUSLY***

#### **B. 2017 Bond Refunding**

Mrs. Reid stated the City's bond rating was just released so the City can go to market for refunding the 2017 bond. Mr. Ross stated that Mr. Walter Lewis, Piper Sandler & Company the City's bond counsel is available to call to answer any questions. Mr. Lewis discussed, by phone conference, the savings created by refinancing the bond and the three options for the use of the savings: 1) refinance and reduce debt payments over time – save approximately \$100,000/year over 17 years. 2) take all net present value savings and cash out for future projects with debt service payments staying the same and 3) take portion of net present value savings for projects with the balance used to reduce debt service payments which would result in a lower payment per month over the remaining 17 years. Mr. Lewis discussed that the City would have flexibility to purchase property or fund a project. Discussion continued that the City did not have to be specific on what property or project to initiate the refunding but a decision needs to be made before the bond can go to market for pricing. Discussion was made on the Council going into executive session to discuss some property purchase options before making a decision on which option to select.

#### **C. FY2021 Operating Budget (Ordinance)**

Mrs. Reid reviewed the FY2021 Operating Budget and noted the ordinance will be a second read on tonight's Council meeting agenda. Mrs. Reid noted she was there to answer any questions on the operating budget. Mr. Goodlin reviewed his handout of questions on the operating budget. Mrs. Reid addressed Mr. Goodlin's questions and reviewed City departments travel budget and the City's travel policy that was updated last year. Discussion continued and Mrs. Reid reviewed several line items and continued to answer questions on the operating budget.

**D. Hurricane Sally Cleanup update**

Mr. Eringman gave an update on the cleanup for Hurricane Sally. Mr. Eringman thanked the Council and the Mayor for meeting and allowing the City departments to prepare for the storm. Mr. Eringman commended his staff and other City staff for how hard they worked to prepare for the storm and how hard they are working to clean up and clear streets. Discussion continued on the City’s debris contractor, Crowder Gulf. Mr. Eringman stated that Crowder Gulf has already begun to pick up debris. Mr. Eringman stated that Public Works crews were still clearing streets and cutting hanging limbs but noted they need to start doing maintenance on clearing drainage areas throughout the City. The Mayor reviewed the debris pickup process.

**XI. OLD BUSINESS**

**A. Jubilee Festival**

Eastern Shore Chamber of Commerce representatives Ms. Casey Williams and Ms. Liz Thomson discussed the changes they were working on to make the festival safe with all the damage from Hurricane Sally. Discussion continued on all the work the Chamber has done to make the Jubilee Festival a success and the possibility of moving the festival to a later date to allow City crews additional time to continue to address damages and cleanup debris from Hurricane Sally before holding the festival.

***MOTION BY Mr. Scott to authorize the Mayor, city clerk and all who are required to sign permits allowing the Eastern Shore Chamber of Commerce to schedule the Jubilee Festival at least three weeks from the original festival date. Seconded by Mrs. Phillips .***  
***MOTION CARRIED UNANIMOUSLY***

**XII. ADJOURN**

The meeting adjourned at 6:15 p.m.

The City of Daphne  
Planning Commission Minutes  
Regular Meeting of August 27, 2020  
Council Chamber, City Hall - 5:00 P.M.

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Call to Order:

Chairman called the regular meeting of the City of Daphne Planning Commission to order at 5:07 p.m. The number of members present constitutes a quorum.

Call of Roll:

Members Present:

William "BJ" Eringman, Public Works Deputy Director  
\*Ed Kirby (excused @ 6:38 p.m.)  
James "Bo" White  
Phillip Hodgson, Secretary  
Marybeth Bergin, Chairman  
Ron Scott  
Andrew Prescott, Vice Chairman

Staff Present:

Adrienne Jones, Director of Community Development  
Jan Vallecillo, Planning Coordinator  
Patrick Dungan, Attorney  
Troy Strunk, Executive Director, City Development

The first order of business is the approval of the minutes.

Chairman asked for questions, comments or corrections to the minutes *of the regular meeting of June 25, 2020.*

*During discussion, Chairman advised of a minor correction to the minutes to reflect coordination with the Public Works Committee rather than the Public Works Director.*

*After discussion, minutes are approved as amended.*

The next order of business is site plan review for Daphne City Hall Parking Lot Addition.

An introductory presentation was given by Amanda Thompson, representative of Goodwyn, Mills & Cawood, of a parking lot addition located southwest of Belrose Avenue and Main Street; it is connected to the existing city hall parking by a sidewalk. She noted that the driving portion of the parking lot is asphalt; the parking stalls are pervious pavers.

Chairman asked for Commission questions or comments and about staff deficiencies.

Mr. Scott commented that this adds thirty-three parking spaces that city hall and the downtown area desperately need.

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Chairman stated Public Works Director advised at the site preview meeting that the city owns the parking lot; however, shared parking agreements may be negotiated with adjacent property owners in the future.

Chairman asked for Commission questions or comments and a motion.

**A Motion** was made by Mr. Prescott and **Seconded** by Mr. Scott **to approve the Daphne City Hall Parking Lot Addition site plan. There was no discussion on the motion. The Motion carried unanimously.**

The next order of business is preliminary/final plat review for Lazzari Acres Subdivision.

An introductory presentation was given by Hunter Smith, representative of Smith, Clark & Associates, requesting preliminary/final plat review of a two-lot subdivision consisting of seventy-five point three acres located northwest of County Road 64 and Pursley Road to create a fourteen acre outparcel.

Chairman asked for Commission questions or comments.

Chairman stated the application initially qualified as a family exemption for administrative review. She asked for clarification. Ms. Jones responded that the Lazzari's submitted a subdivision exemption application to Baldwin County to request a family division. Prior to city's approval, the property was conveyed which disqualifies it from the exempt subdivision process; therefore, a preliminary/final subdivision is the only process to cure what is considered an illegal subdivision of land.

Chairman opened the floor to public participation. No one came forth. She closed public participation and asked for a motion.

**A Motion** was made by Mr. Hodgson and **Seconded** by Mr. Prescott **to approve Lazzari Acres preliminary/final subdivision plat. There was no discussion on the motion. The Motion carried unanimously.**

The next order of business is preliminary/final plat review for Van Avenue Gardens and a rezoning request for ODRG 2019, L.L.C.

Mr. Scott recused himself from discussion and action on the agenda item.

An introductory presentation was given by David Diehl, representative of S.E. Civil, requesting preliminary/final plat review of a three-lot subdivision consisting of one-point one five acres and a zoning request from B-3 to an R-6(G) located southwest of Van Avenue and Main Street to develop three residential lots. He advised he has provided a revision to the availability letter for Riviera Utilities, and the revised the subdivision plat to reflect a ten-foot side setback and tree protection buffer on the west property line and a fifteen-foot tree protection buffer on the south property line. He noted that the developer requests that all other setbacks correspond with the requested zoning district.

**The City of Daphne  
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Renderings of the house styles were distributed to the Planning Commission for review.

Chairman asked for Commission questions or comments and if a commercial zoned property can be subdivided for residential use. Ms. Jones advised that the zoning of a subdivision must be consistent with the proposed use.

Ms. Jones clarified that the applicant is not interested in subdividing this property for commercial use, and that the applicant requested the plat accompany the rezoning application; however, he understands that this does not entitle it to approval tonight; it may be tabled or have a contingency set upon zoning.

Chairman read the noted added to the plat "plat approval is contingent upon a favorable outcome for the R-6(G) rezoning request" and asked can the applicant remove the note without further Planning Commission approval. Ms. Jones responded that the table and note presented are informational purposes only and for a comparison of the current and proposed zoning of the subdivision. Upon certification of the final plat by the Planning Commission, the only notes that will remain are the setbacks and no further resubdivision will be permitted on this property.

Chairman asked for Commission questions or comments.

Mr. Hodgson asked should the Commissioners discuss rezoning prior to the subdivision and if the developer is agreeable to the three residential lot restriction. Mr. Diehl said the applicant is agreeable to the restriction.

Chairman stated as a matter of order, a motion could be presented for rezoning first.

Chairman opened the floor to public participation.

Pat Rudicell, 605 Dryer Avenue, spoke in opposition and provided an overview of the history of the trailer park and the request to rezone the property to commercial. He asked about the consideration of ten-foot setback and conformity of the zoning consistent with the residential neighborhood.

Anderson Reed, representative of 68 Ventures, commented about the rezoning to commercial and right to develop it as mixed use, residential/commercial, and that this is a downgrade on zoning. He added that the setbacks are narrow, but offset by the backyard area.

Jack McAleer, 1401 Main Street, stated that he is curious about the dimensions of the property and quality of the homes.

Chairman responded the lot frontage varies, but cannot speak to the quality of the homes.

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Chairman asked for Commission questions or comments and closed public participation.

Mr. Kirby referenced the rendering presented and asked the width of the homes. Chairman responded fifty-foot wide.

Mr. Diehl stated the width of the house will fit on the lot with a six-foot, not ten-foot setbacks. In regards to the zoning, property to the east is commercial and this would be a good transition to residential.

Chairman asked for a motion.

**A Motion** was made by Mr. Hodgson and **Seconded** by Mr. Kirby **to approve Van Avenue Gardens preliminary/final subdivision plat, contingent upon City Council's favorable determination regarding the rezoning petition for R-6(G). There was no discussion on the motion. The Motion carried. Mr. Scott abstained.**

Chairman asked for Commission questions or comments and a motion.

**A Motion** was made by Mr. Hodgson and **Seconded** by Mr. Prescott **to set forth a favorable recommendation to rezone the subject property from B-3 to R-6(G) with the following conditions: development of the subject property shall be limited to no more than three (3) residential lots upon review and approval through the city's subdivision process and thereafter shall not be further subdivided; and, rezoning shall not be subject to the reversionary clause. There was no discussion on the motion. The Motion carried. Mr. Scott abstained.**

The next order of business is rezoning request for John & Deborah Kim.

An introductory presentation was given by John Kim, owner, of a rezoning request from R-2 to B-3 located southwest of County Road 64 and Pollard Road. He stated initially, the rezoning request presented in 2015 when the property was purchased was denied because a tenant was not secured. A building permit was issued in April and meetings were held with Councilman Scott, Councilwoman Conaway and Community Development. The residence was remodeled with the intent and vision to renovate this property for a professional business. The reason for the rezoning request is the analysis of this property in accordance with development trends dictates that property on County Road 64 is best suited for professional or medical; especially, since this property sits at an intersection of which three corners were zoned general business by the City or Baldwin County. The proposed tenant, Flourish Counseling, operates a community-based service of life coaching for woman and at-risk teen girls of which services conducted are in a private and discreet setting; therefore, parking, noise and traffic are similar to typical residential occupancy.

Mr. Eringman asked if a site plan or in specific a parking geometry plan submission for staff review. Ms. Jones stated no, it is a gravel parking lot. Mr. Kim responded a site plan was presented to the Building Department.

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Ms. Jones stated the site plan that Mr. Kim is referring to is in your packet.

Mr. Kim stated we understand that upon rezoning, a site plan is required in order to use this property as professional business.

Mr. Scott stated asked prior to obtaining a business license to operate as a professional business if they must meet all the requirements. Ms. Jones stated yes.

Mr. Prescott asked about the installation of sidewalks on Pollard Road. Ms. Jones responded that at the site preview meeting, Public Works indicated that it is a part of the sidewalk master plan so sidewalks will be required along Pollard Road.

Mr. Prescott asked installed by the landowner? Ms. Jones responded prior to the issuance of a business license; that will be a part of administrative site plan review by staff.

Ms. Jones clarified that Mr. Kim mentioned that he meet with us during the renovations to discuss the potential options for that property, but he did not mention "timing". In their meeting she had advised that the only use by right of the property is residential or AIRBNB, not commercial. They met after renovations were completed. He later requested consideration of a special exception as a medical office; however, the proposed use was general office in nature, not medical.

Natalie Wynn, representative of Flourish Counseling, operates a community-based service of life coaching for women and at-risk teen girls of which services conducted are in a private and discreet setting with limited traffic.

Mr. White asked if her services include suicide prevention. Ms. Wynn advised that she is not a counselor, but rather a life coach that counsels teens below poverty level that are at-risk for career training and job placement.

Seller Payne, realtor and appraiser, stated based on the location, traffic count and the zoning of the properties on County Road 64, the highest and less intensive use of the property is professional business. He stated that Chief Appraiser of Baldwin County advised the property taxes of the adjacent property owners would not increase due to the zoning change of the subject property.

Ms. Jones asked if he wished to submit that document to be a part of the record. Mr. Payne stated yes.

Chairman asked about the encroachment of the residence into the right-of-way. Ms. Jones responded the structure is grandfathered.

Chairman asked for Commission questions or comments.

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Mr. Scott commented on the previous zoning request to B-2 denied due to speculative zoning. He stated that professional business is the appropriate and less intensive zoning for this property to transition to residential.

Chairman opened the floor to public participation.

Ethel Washington, representative of Clarence Hubert, 1707 Pollard Road, spoke in opposition of the rezoning and expressed concerns about preservation of the historical residential area, adverse effect on property taxes, and traffic.

Paul Houlson, adjacent property owner, spoke in opposition of the rezoning and expressed concerns about preservation of the residential area, but he stated that he has no objection to what Mr. Kim is doing.

Willie Williams, 1513 Pollard Road, spoke in opposition of the rezoning and expressed concerns about the residential growth and commercial traffic on Pollard Road from Friendship Road.

Kay Frances Williams, 1501 Conaway Street, spoke in opposition of the rezoning and expressed concerns about preservation of the residential area and traffic.

Andrea Conaway, 1314 Daphne Avenue, spoke in opposition of the rezoning and expressed concern about traffic & commercial encroachment.

George Pickett, 1002 Pickett Avenue, spoke in favor of the rezoning and stated that his property on Pickett Avenue is already commercial and noted that many here in opposition are not adjacent property owners.

Diron Curtis, 28595 Bay Branch Drive, spoke in opposition of the rezoning and expressed concern about the type of counseling and clients that will be at this location upon approval of the rezoning.

Cassandra Boykin, 821 Daphmont Drive, expressed concern about the existing commercial traffic on Pollard Road from Friendship Road.

Francis Conaway, 1606 Conaway Street, spoke in opposition of the rezoning and expressed concerns about preservation of a residential area, traffic, and lighting impacts of a commercial development.

Chairman closed public participation and asked the applicant to address the Commission.

Mr. Kim, spoke in rebuttal, to address traffic, property taxes and elaborated on the proposed use of the property.

Chairman asked about conditions of the rezoning to B-3. Ms. Jones advised that Mr. Kim would have to be agreeable to the conditions so that it would be a part of the ordinance.

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Ms. Jones clarified that the Planning Commission set forth a favorable recommendation in 2013; there was no action by the City Council so it failed.

Chairman asked for Commission questions or comments and a motion.

Mr. Hodgson clarified that we are the Planning Commission, not the City Council, who will make the final decision. He commented that professional business is the appropriate and least intensive zoning for this property.

**A Motion was made by Mr. Hodgson and Seconded by Mr. Kirby to set forth a favorable recommendation to rezone the subject property. There was no discussion on the motion. Due to the lack of a supermajority vote, the Planning Commission failed to set forth a favorable recommendation to City Council to rezone the subject property from R-2 to B-3, Professional Business. Five voted in the affirmative and two dissented (Mr. White and Mr. Scott).**

Mr. Kirby was excused at 6:38 p.m.

The next order of business is public participation.

Chairman asked for public participation.

Willie Young, Pollard Road, asked if the city plans to develop this area (i.e. Pollard Road south of County Road 64) commercial.

Chairman respond no.

Willie Williams, 1513 Pollard Road, spoke in opposition of the rezoning and expressed concerns about preservation of the residential community and spot zoning.

Kesha Young, Pollard Road, spoke in opposition of the rezoning and expressed concern about traffic.

The next order of business is the attorney's report.

Mr. Dungan stated no report.

The next order of business is commissioner's comments.

None presented.

The next order of business is director's comments.

Site Preview is September 14, and the Regular Meeting is September 23, 2020. She commented that she is now a Certified Planner and thanked Troy for his support.

Ms. Jones stated the city will be working on a Comprehensive Plan within the next year and hope that you in the audience are in those discussions. We appreciate you being here.

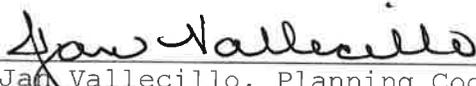
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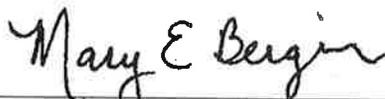
Ms. Jones stated you are always welcome to attend and to stay informed about what is going on in your community because you are vital to and are the City of Daphne. Kay Frances Williams said black lives matter and black people's property matter. Yes, they do, but all of God's children lives matter. It is my hope that we do not create a division in the City of Daphne that would mirror what is going on in the world. Stay close and stay as one in the community because that is where change will happen.

*There being no further business, the meeting was adjourned at 6:50 p.m.*

*Respectfully submitted by:*

  
\_\_\_\_\_  
Jan Vallecillo, Planning Coordinator

Approved: September 24, 2020

  
\_\_\_\_\_  
Marybeth Bergin, Chairman

**CITY OF DAPHNE**  
**PLANNING COMMISSION AGENDA**  
**REGULAR MEETING OF SEPTEMBER 24, 2020**  
**COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.**

Report



1. **CALL TO ORDER:** 5:03 p.m.
2. **CALL OF ROLL:** Marybeth Bergin, James “Bo” White, Andrew Prescott, Ron Scott, BJ Eringman, and Phillip Hodgson
3. **APPROVAL OF MINUTES:**  
Review of minutes of the regular meeting of August 27, 2020. (**Approved**)
4. **NEW BUSINESS:**
  - A. **JUBILEE FARMS, PHASE SIX FINAL PLAT AND STREET ACCEPTANCE:**
    1. **FINAL PLAT REVIEW:**

File SDF20-03: (**Approved**)

Subdivision: Jubilee Farms, Phase Six

*Present Zoning: PUD, Planned Unit Development*

Location: Southeast of Austin Road and Alabama Highway 181  
Area: 30.98 ± Acres, (78) lots  
Owner: Forestar “USA” Real Estate Group, Inc. - Tucker Dorsey  
Agent: Dewberry - Al Finley and Casey Hill  
Surveyor: Dewberry - Victor Germain  
Engineer: Dewberry - Jason Estes
    2. **STREET ACCEPTANCE PETITION:**

**File AP20-15: (Set forth a favorable recommendation to City Council)**

Presentation to be given by Adrienne Jones, Director of Community Development, recommending acceptance of all right-of-ways contained within Jubilee Farms Subdivision, Phase Six. Said right-of-ways being Secretariat Boulevard (1,318 linear feet), Sunday Silence Avenue (190 linear feet), Citation Loop (1,477 linear feet), Ruffian Route (152 linear feet), and Affirmed Avenue (887 linear feet).
  - B. **ADMINISTRATIVE PRESENTATION:**

**MBNEP-ADEM 319 PUBLIC WORKS AND BROOKHAVEN STORMWATER FACILITY RESTORATION PROJECT:**

    1. **File AP20-13: (No action taken)**

Presentation to be given by Ashley Campbell, Environmental Programs Manager, and Lee Rambo, Jade Consulting, regarding the MBNEP-ADEM 319 Public Works and Brookhaven Stormwater Facility Restoration Project.
  - C. **ELECTION OF 2020-2021 OFFICERS:** Marybeth Bergin, Chairman, Andrew Prescott, Vice Chairman, & Phillip Hodgson, Secretary

**CITY OF DAPHNE**  
**PLANNING COMMISSION AGENDA**  
**REGULAR MEETING OF SEPTEMBER 24, 2020**  
**COUNCIL CHAMBERS, CITY HALL - 5:00 P.M.**

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Report

5. **PUBLIC PARTICIPATION**: None presented
6. **ATTORNEY'S REPORT**: No report
7. **COMMISSIONER'S COMMENTS**: BJ Eringman, Public Works Deputy Director, thanked Public Works employees for their service, and Commissioners asked about disaster relief and garbage service resulting from Hurricane Sally (see minutes for details).
8. **DIRECTOR'S COMMENTS**:  

Ms. Jones presented the following:

  - a. City Council Actions:
    1. Adoption of the ordinances for Forestar "USA" Real Estate Group, Inc. Zoning Amendment and Jubilee Farms PUD Modification on September 8, 2020; and, City of Daphne Zoning Map and annexation of the rights-of-ways for Corte Road, a portion of Austin Road, and realignment of Austin Road on September 21, 2020;
    - b. Site Preview is October 14 and the Regular Meeting is October 22, 2020.
9. **ADJOURNMENT**: 5:27 p.m.

**CITY OF DAPHNE  
RESOLUTION 2020-53**

**Acceptance of Streets and Rights-of-Way Jubilee Farms, Phase Six**

**WHEREAS**, the City Council of the City of Daphne, Alabama has received notice that the Planning Commission of Daphne has given Final Plat approval to Jubilee Farms, Phase Six on September 24, 2020, and the City of Daphne hereby recommends acceptance of said street(s) located in Jubilee Farms, Phase Six, and

**WHEREAS**, an inspection was made by the Director of Community Development, and all reports, as well as, all other related documents have been provided stating that said streets and storm water drainage have been installed in conformity with city standards; and,

**WHEREAS**, an inspection was made by the Director of the Division of Public Works, and said director has recommended acceptance said streets and storm water drainage of Jubilee Farms, Phase Six, and

**WHEREAS**, the developer has provided to the City a two-year maintenance bond in the amount of \$150,364.03 as required and now requests acceptance and dedication of the same for maintenance of said improvements as outlined in Article XVII, entitled the Procedures for Subdivision Review of the City of Daphne Land Use and Development Ordinance, and

**WHEREAS**, the developer has caused the plat to be recorded on slide 2744-B of the records in the Baldwin County Judge of Probate Office, and

**WHEREAS**, the City Council of the City of Daphne believes it is in the best interest of the citizens of the City for the City to accept said right-of-way.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE AS FOLLOWS**, that Jubilee Farms, Phase Six, a portion of Secretariat Blvd (1,318.44 linear feet) a 60-ft right of way; and a portion of Sunday Silence Ave. (190 linear feet) and right of way varies; and a portion of Citation Loop (1,477.86 linear feet) a 50-ft right of way; and a portion of Ruffian Route (152.47 linear feet) and right of way varies; and a portion of Affirmed Ave. (887.13 linear feet) a 50-ft right of way; according to the plat presented by Dewberry as recorded in the Office of the Judge of Probate, Baldwin County, Alabama, are hereby accepted by the City of Daphne, Alabama as city streets for maintenance.

**ADOPTED AND APPROVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA ON THIS THE \_\_\_ DAY OF October, 2020.**

\_\_\_\_\_  
**DANE HAYGOOD, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**JESSICA LINNE, ASSISTANT CITY CLERK**

To: Office of the City Clerk  
From: Adrienne D. Jones, AICP,  
Director of Community Development  
Subject: Jubilee Farms Subdivision, Phase 6  
Acceptance of Roads and Rights-of-Ways  
Date: September 28, 2020

## MEMORANDUM

**LOCATION:** Southeast of Austin Road and Alabama Highway  
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**RECOMMENDATION:** At the September 24, 2020 regular meeting of the City of Daphne Planning Commission, six members were present. The motion carried unanimously for a **favorable recommendation** for the acceptance of Secretariat Boulevard, Sunday Silence Avenue, Citation Loop, Ruffian Route, and Affirmed Avenue.

Attached please find said documentation for placement on the Monday, October 5, 2020 City Council agenda.

Thank you,  
ADJ/jv

cc: file  
William "BJ" Eringman, Public Works Deputy Director

attachment(s)

1. Correspondence from project engineer requesting acceptance
2. Record plat
3. Petition of Acceptance of Roads and Rights-of-Ways

**FILE**  
09/28/20  
12:15 pm

August 12, 2020

Mrs. Adrienne Jones  
Planning Director, City of Daphne  
P.O. Box 400  
Daphne, Alabama 36526

**RE: JUBILEE FARMS PHASE SIX**

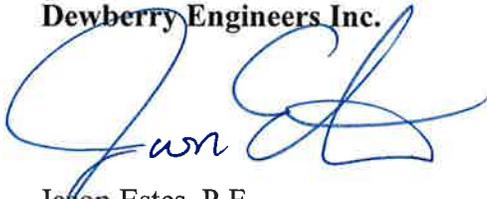
Dear Mrs. Jones:

I, Jason Estes, a professional engineer registered in the State of Alabama, Registration Number 22714, do hereby certify that the streets for JUBILEE FARMS PHASE SIX have been constructed under my supervision in accordance with the approved construction plans.

I further certify I have checked all test reports and that all construction materials have been installed in accordance with the typical sections, profiles, and plan details and meet minimum requirements as set out in the State of Alabama Highway Department's Standard Specifications for Highway Construction, latest edition and current revisions.

Therefore, I hereby request that the City of Daphne accept the streets for JUBILEE FARMS PHASE SIX subdivision.

Sincerely,  
**Dewberry Engineers Inc.**



Jason Estes, P.E.  
Associate Vice President  
Business Unit Manager



**CITY OF DAPHNE  
PETITION FOR ACCEPTANCE  
OF ROAD(S) AND/OR RIGHTS-OF-WAY**

**SUBDIVISION NAME:** JUBILEE FARMS PHASE SIX

**THIS PETITION FOR ACCEPTANCE OF ROADS AND/OR RIGHTS-OF-WAY** is made this 12 day of August, 2020 by FORESTAR (USA) REAL ESTATE GROUP, INC., hereinafter called "the subdivider," owner of certain property located in the City of Daphne, Alabama known as JUBILEE FARMS PHASE SIX to be recorded in the office of the Judge of Probate of Baldwin County, Alabama; and,

**WHEREAS**, the subdivider has agreed to the dedication of the roads and rights-of-way located in said subdivision to the City of Daphne, and further warrants that said roads and rights-of-way are complete and are in compliance with the minimum standards as outlined for construction in the City of Daphne Land Use and Development Ordinance, Article XVII, entitled Procedures for Subdivision Review, and Article XI, Minimum Requirements and Required Improvements for Subdivisions and Commercial Site Developments. The subdivider further warrants that the same are free from defects from any cause and are free and clear of any liens and encumbrances; and,

**WHEREAS**, a bond is required by the City as a condition of the acceptance of any new roads or rights-of-way as outlined in Article XVII in an amount equal to twenty percent (20%) of all street and drainage improvements in the subdivision as a warranty for such improvements to last for a period of two (2) years after the date of dedication and upon acceptance by the City Council, the subdivider has provided a \$ 150,364.03 maintenance bond; and,

**WHEREAS**, the project engineer, Jason Estes, PE, acting on behalf of the subdivider does hereby certify that all roads and rights-of-ways are complete and are in compliance with the minimum standards for construction as outlined in the City of Daphne Land Use and Development Ordinance, Article XVII, entitled, Procedures for Subdivision Review, and Article XI, Minimum Requirements and Required Improvements for Subdivisions and Commercial Site Developments, and further warrants that the same are free from defects from any cause; and,

**NOW, THEREFORE**, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the subdivider does hereby dedicate the roads and rights-of-way in said subdivision to the City of Daphne, a municipal corporation, as per the favorable recommendation of the City of Daphne Planning Commission voted upon at its meeting held on September 23, 2020. Said subdivision according the plat recorded in the Judge of Probate, Baldwin County, Alabama and said streets being named as follows:

<b>Name of Right of Way</b>	<b>Length (linear feet)</b>	<b>Width (feet)</b>
<b>SECRETARIAT BLVD</b>	<b>1318.44</b>	<b>60</b>
<b>SUNDAY SILENCE AVE.</b>	<b>190.00</b>	<b>VARIES</b>
<b>CITATION LOOP</b>	<b>1477.86</b>	<b>50</b>
<b>RUFFIAN ROUTE</b>	<b>152.47</b>	<b>VARIES</b>
<b>AFFIRMED AVE.</b>	<b>887.13</b>	<b>50</b>

**Are each hereby dedicated to the City of Daphne, Alabama as a city street.**

**CITY OF DAPHNE  
PETITION FOR ACCEPTANCE  
OF ROAD(S) AND/OR RIGHTS-OF-WAY**

**IN WITNESS WHEREOF**, the subdivider has caused the execution of this dedication as of the date set forth above.

Respectfully submitted,

FORESTAR (USA) REAL ESTATE GROUP, INC.  
Name of Individual or Corporation (Printed)

By: Tucker Dorsey TUCKER DORSEY  
(Print Legibly and Sign)

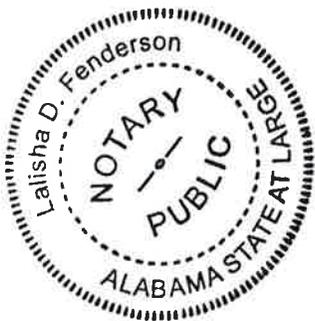
Its: DIVISION PRESIDENT  
(Print Legibly)

**STATE OF ALABAMA)  
COUNTY OF BALDWIN)**

I, the undersigned Notary Public in and for said State and County, hereby certify that Tucker Dorsey whose name as Division President of Forestar (USA) REAL ESTATE GROUP, INC. an Alabama corporation or as owner of \_\_\_\_\_ 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 as such officer or owner and with full authority, executed the same voluntarily on the day same bears date.

Given under my hand and official seal on this the 9 day of July, 2020.

Lalisha D. Fenderson (NOTARY SEAL)  
NOTARY PUBLIC  
My commission expires: 08-30-23

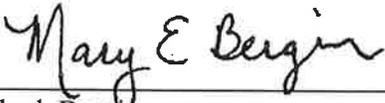


**CITY OF DAPHNE  
PETITION FOR ACCEPTANCE  
OF ROAD(S) AND/OR RIGHTS-OF-WAY**

Favorable recommendation on behalf of Daphne Public Works:

  
\_\_\_\_\_  
William "BJ" Eringman  
Public Works Deputy Director  
City of Daphne

Favorable recommendation on behalf of Daphne Planning Commission:

  
\_\_\_\_\_  
Marybeth Bergin  
Planning Commission Chairman  
City of Daphne

**CITY OF DAPHNE, ALABAMA  
RESOLUTION 2020-54**

**Cooperative Maintenance Agreement for Jubilee Farms**

**WHEREAS**, the City Council of the City of Daphne, Alabama has received notice that the Alabama Department of Transportation (“ALDOT”) requires that there be a guardrail (the “Guardrail”) located near the entry feature and within the public right of way and Subdivision common area adjacent to Secretariat Boulevard located in Jubilee Farms, and

**WHEREAS**, the City must enter into a Cooperative Maintenance Agreement with ALDOT (the “CMA”); and,

**WHEREAS**, the City will agree to enter into the CMA on the condition that the Association agree to reimburse the City for its actual and reasonable additional expenses of installing and maintaining the Guardrail which may be incurred by the City pursuant to the CMA, and

**WHEREAS**, the City Council of the City of Daphne believes it is in the best interest of the citizens of the City for the City to accept said Cooperative Maintenance Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE AS FOLLOWS**, the non-standard guardrail along Secretariat Blvd in the AL 181 Right of Way located in Jubilee Farms, Daphne Alabama, are hereby accepted by the City of Daphne, Alabama for maintenance.

**ADOPTED AND APPROVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA ON THIS THE \_\_\_ DAY OF October, 2020.**

\_\_\_\_\_  
**DANE HAYGOOD, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Candace G. Antinarella, CMC, City Clerk**

## MAINTENANCE AGREEMENT

This Maintenance Agreement (“Agreement”) is made this \_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Daphne, an Alabama municipal corporation (the “City”) and Jubilee Farms Owners Association, Inc., an Alabama nonprofit corporation (the “Association”).

WHEREAS, the Association was formed to, among other things, own, manage and control the common areas and improvements located within the boundaries of the Jubilee Farms Subdivision located in Daphne, Alabama (the “Subdivision”), and to develop and promote certain architectural design aesthetics for the benefit of the Subdivision lot owners;

WHEREAS, the main entry road to the Subdivision, commonly known as Secretariat Boulevard, serves as the primary means of ingress and egress to and from the Subdivision, and contains an entry way feature consistent with the Association’s design aesthetics;

WHEREAS, the Alabama Department of Transportation (“ALDOT”) requires that there be a guardrail (the “Guardrail”) located near the entry feature and within the public right of way and Subdivision common area adjacent to Secretariat Boulevard, as depicted on Exhibit A;

WHEREAS, in order to conform the Guardrail as closely as possible to the design aesthetics developed by the Association, the Association desires that certain ALDOT approved specifications be utilized for the Guardrail, and those specifications will result in additional cost;

WHEREAS, due to the additional cost, the City must enter into a Cooperative Maintenance Agreement with ALDOT (the “CMA”); and

WHEREAS, the City will agree to enter into the CMA on the condition that the Association agree to reimburse the City for its actual and reasonable additional expenses of installing and maintaining the Guardrail which may be incurred by the City pursuant to the CMA.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. The City shall enter into any CMA which may be required by ALDOT so that the Guardrail, as depicted on Exhibit A, may be installed with the Association’s preferred design specifications. The City shall maintain the Guardrail in a manner consistent with the requirements of ALDOT pursuant to any required CMA.
2. The Association shall reimburse the City for its actual and reasonable expenses incurred under such CMA as may be reasonably required by ALDOT with respect to the Guardrail. Such reimbursement of the City’s costs and expenses shall be made within sixty (60) days of the Association’s receipt of the City’s written invoice for such costs.

3. This Agreement shall in no way affect the obligations or responsibilities of the Association or City with respect to any other traffic control features adjacent to or near the Subdivision, or elsewhere, and is limited solely to the Guardrail.
4. This Agreement shall in all respects be interpreted, enforced, and governed under the laws of Alabama.
5. This Agreement may be executed in multiple counterparts by original or facsimile signatures, and each such counterpart shall be considered an original, but all of which together shall constitute one and the same agreement.
6. This Agreement constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect. No amendment, change, modification, or termination of this Agreement shall be valid unless in a writing signed by both parties. This Agreement shall not confer any rights or remedies upon any person or entity other than the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by and through their respective duly authorized representatives as of the day and year first above written.

**JUBILEE FARMS OWNERS ASSOCIATION,  
INC.,** an Alabama nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
As its: \_\_\_\_\_

**CITY OF DAPHNE, ALABAMA**

By: \_\_\_\_\_  
Name: Dane Haygood  
As its: Mayor

EXHIBIT A

**CITY OF DAPHNE  
RESOLUTION 2020-55**

**Cooperative Maintenance Agreement for Corte Road and Realignment of Austin Road**

**WHEREAS**, the City Council of the City of Daphne, Alabama has received notice that the Planning Commission of Daphne has given approval to Corte Road and a portion of Austin Road on June 25, 2020, and the City of Daphne hereby recommends acceptance of the maintenance of said street(s) located on Corte Road and Austin Road, and

**WHEREAS**, an inspection was made by the Director of Community Development, and all reports, as well as, all other related documents have been provided stating that said streets and storm water drainage have been installed in conformity with city standards; and,

**WHEREAS**, an inspection was made by the Director of the Division of Public Works, and said director has recommended acceptance maintenance of said street(s) located on Corte Road and Austin Road, and

**WHEREAS**, the City Council of the City of Daphne believes it is in the best interest of the citizens of the City for the City to accept said Cooperative Maintenance Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE AS FOLLOWS**, that a portion of Corte Road (a part of the Southwest Quarter of Section 22, Township 5 South, Range 2 East and the North Half of Section 27, Township 5 South, Range 2 East); and a portion of Austin Road (a part of the West Half of the Northwest Quarter of Section 26, Township 5 South, Range 2 East), are hereby accepted by the City of Daphne, Alabama as city streets for maintenance.

**ADOPTED AND APPROVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA ON THIS THE \_\_\_ DAY OF October, 2020.**

\_\_\_\_\_  
**Dane Haygood, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Candace G. Antinarella, CMC, CITY CLERK**

## **CORTE ROAD**

**A part of the Southwest Quarter of Section 22, Township 5 South, Range 2 East and the North Half of Section 27, Township 5 South, Range 2 East, Baldwin County, Alabama and being more fully described as follows:**

**It is the intent of this document to remise, release, quitclaim and convey unto the City of Daphne, Alabama, any and all right and title to Corte Road right-of-way owned and maintained by Baldwin County, beginning at the east right-of-way line of County Road 13, running easterly to the west right-of-way line of State Route 181; said right-of-way being quitclaimed is described in Instrument No. 1689857; Instrument No. 1661857; Instrument No. 1677090; Instrument No. 1673712; Condemnation Order rendered in Baldwin County Probate Court Case File Number 35524, filed Instrument No. 1702120; Slide 2504-E; Slide 2587-E and Slide 2671 A-D.**

## **AUSTIN ROAD**

**A part of the West Half of the Northwest Quarter of Section 26, Township 5 South, Range 2 East, Baldwin County, Alabama and being more fully described as follows:**

**It is the intent of this document to remise, release, quitclaim and convey unto the City of Daphne, Alabama, any and all right and title to Austin Road right-of-way owned and maintained by Baldwin County, beginning at the east right-of-way line of State Route 181, running easterly approximately 1,770 feet and the Austin Road right-of-way realignment, Baldwin County Project No. 0205317; said right-of-way being quitclaimed is described in Real Property Book 391 page 1306; part of Real Property Book 391 page 1307; part of Real Property Book 391 page 1304; Instrument No. 1107111; Instrument No. 1689857, corrected in Instrument No. 1824503 and Condemnation Order rendered in Baldwin County Probate Court Case File Number 35524, filed in Instrument No. 1702120.**

**CITY OF DAPHNE, ALABAMA  
RESOLUTION 2020 – 56**

**Resolution to Authorize the Lease of City Property**

**WHEREAS**, the City of Daphne owns certain real property located on U.S. Highway 98 and Lavender Lane in Daphne, Alabama; and

**WHEREAS**, the City desires to lease a portion of said property to Whataburger Restaurants LLC; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA**, as follows:

**SECTION 1.** It is hereby established and declared that the City of Daphne, Alabama, no longer needs for public or municipal purposes the following described real property, to-wit:

That certain parcel of land located at the northeast corner of U.S. Highway 98 and Lavender Lane, in the City of Daphne, County of Baldwin, and State of Alabama having an area of approximately 42,000 square feet and being more particularly described in Exhibit “A” to the Ground Lease Agreement to be executed by the parties, and incorporated herein by reference.

**SECTION 2.** The City of Daphne, Alabama, having received an offer from Whataburger Restaurants LLC (“Whataburger”) to lease that real property described in Section 1, above, it is hereby declared to be in the best interest of the public and the City to lease said real property to Whataburger under the following terms and conditions, to-wit:

- (a) Ground Lease Agreement to Whataburger Restaurants LLC (“Tenant”) of the above described real property for the initial term of fifteen (15) years.
- (b) Tenant shall have options to extend said Lease for three (3) consecutive periods of five (5) years each.
- (c) Tenant shall pay rent in the amount of \$100,000 annually (years 1-5), \$110,000 annually (years 6-10), and \$117,700.00 (years 11-15) and pursuant to the schedule set out in the Ground Lease Agreement for each Option term.
- (d) The full terms and conditions are contained in the Ground Lease Agreement to be executed by the parties, a copy of which is attached hereto, and incorporated by reference.

**SECTION 3.** The Mayor is hereby directed and authorized to execute said Ground Lease Agreement, in the same or substantially the same form as is before the Council, and any other documentation necessary to complete this transaction.

**APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA ON THIS THE \_\_\_\_ DAY OF OCTOBER, 2020.**

\_\_\_\_\_  
Dane Haygood, Mayor

ATTEST:

\_\_\_\_\_  
Candace G. Antinarella, CMC, City Clerk

**WHATABURGER RESTAURANTS LLC**

**GROUND LEASE AGREEMENT**

Northeast Corner of U.S. Highway 98 and Lavender Lane  
City of Daphne, Baldwin County, Alabama

## GROUND LEASE AGREEMENT

**THIS GROUND LEASE AGREEMENT** (this "Lease") is entered into by and between the **CITY OF DAPHNE**, an Alabama municipal corporation ("Landlord"), and **WHATABURGER RESTAURANTS LLC**, a Texas limited liability company ("Tenant") as of the Effective Date. The Effective Date of this Lease ("Effective Date") is deemed to refer to the later date on which this Lease has been signed, and initialed, if applicable, by both parties. It is the intention of Landlord and Tenant that this Lease be effective between the parties as of the Effective Date and that as of such Effective Date, each of Landlord and Tenant have their respective rights and obligations hereunder.

1. DEMISE. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord that certain parcel of land located at the northeast corner of U.S. Highway 98 and Lavender Lane, in the City of Daphne, County of Baldwin, and State of Alabama, having an area of approximately 42,000 square feet and being more particularly described in Exhibit "A" attached hereto, together with all rights, privileges and appurtenances thereto (hereinafter collectively called the "Premises"). Tenant intends to operate a Whataburger restaurant with drive-thru service (the "Restaurant") on the Premises.

2. TERM.

2.1. Initial Term. The term of this Lease commences on the earlier of (i) ninety (90) days after issuance of a building permit and Landlord's completion of required deliverables including, but not limited to, those noted in Section 7, "Landlord's Work", herein, or (ii) Tenant's completion of construction and opening for business (the "Commencement Date"), and expires on the last day of the one hundred eightieth (180th) full calendar month after the Commencement Date (the "Initial Term"). The actual Commencement Date and the termination date (the "Termination Date") of the Initial Term shall be set forth in an instrument in the form of Exhibit "B" attached hereto, and the parties hereby agree to execute such instrument within ten (10) days after the Commencement Date.

2.2. Option Terms. Tenant shall have options to extend this Lease for three (3) consecutive periods of five (5) years each (each, an "Option Term") for the respective Base Rent amounts shown below, on the same terms, covenants and conditions as herein provided. Tenant may exercise any one or more of the Option Terms by giving Landlord notice at least one hundred eighty (180) days prior to the expiration of the Initial Term or the then-current Option Term. If Tenant continues to occupy the Premises and does not have or does not exercise an Option Term, this Lease shall automatically extend on a month to month basis under the same covenants and conditions as herein provided, unless and until either Landlord or Tenant terminates this Lease by giving the other at least thirty (30) days written notice. In the event that Tenant fails to notify Landlord ninety (90) days prior to the expiration of the Term, or any Option Term, Landlord shall then remind Tenant in writing of its Option Term and allow thirty (30) days in which Tenant may reply, whether the reminder is given before, at or after expiration of the Initial Term or any of the Option Terms.

3. **RENT.** Tenant shall pay to Landlord the following minimum rent during the Initial Term and any Option Terms ("**Base Rent**") in equal monthly installments, which shall be due on the first day of each calendar month during the Initial Term or Option Term at the address provided herein or such other address as Landlord may direct:

Years 1-5	\$100,000.00 annually	(\$8,333.33 per month)
Years 6-10	\$110,000.00 annually	(\$9,166.67 per month)
Years 11-15	\$117,700.00 annually	(\$9,808.33 per month)
Years 16-20 (Option I)	\$125,939.00 annually	(\$10,494.92 per month)
Years 21-25 (Option II)	\$134,754.00 annually	(\$11,229.50 per month)
Years 26-30 (Option III)	\$144,187.00 annually	(\$12,015.58 per month)

The Base Rent for any fractional calendar month shall be prorated.

4. **SURVEY.** On or before forty-five (45) days from the Effective Date, Tenant shall, at Landlord's expense to be reimbursed to Tenant by Landlord at the time the first payment of Base Rent is due, up to, but not to exceed Four Thousand Five Hundred Dollars (\$4,500.00), obtain a survey (the "**Survey**") of the Premises, as shown on the site plan attached hereto as Exhibit "F", prepared by a licensed surveyor. The metes and bounds or platted legal description prepared by the surveyor shall be the legal description of the Premises, and Exhibit "A" attached hereto shall be revised accordingly. Landlord shall approve or reject the property description shown on the Survey by written notice to Tenant on or before ten (10) days from delivery of the Survey to Landlord. If no such notice is received, Landlord shall be deemed to have approved the same. Tenant shall have the right to review the Survey and object thereto as set forth in Section 5 below. Tenant shall receive rent credit for the cost of the Survey upon commencement of Base Rent payments. In the event Tenant does not commence Base Rent payments for any reason other than Landlord's failure to perform or Tenant's failure to accept the Title Commitment or Survey, then Tenant shall receive no credit or reimbursement for the cost of the Survey.

5. **TITLE.** Within twenty (20) days from the Effective Date, Tenant shall obtain a commitment for title insurance (the "**Title Commitment**") from Chicago Title of Texas, LLC (the "**Title Company**"), Attn: Mr. Doug Becker, 15727 Anthem Parkway, Suite 210, San Antonio, Texas 78249, Telephone: (210) 482-3500, Facsimile: (210) 482-3695. Notwithstanding the above, Landlord shall deliver copies of any existing restrictive covenants affecting the Premises known to the Landlord and in the possession of the Landlord to Tenant on or before ten (10) days from the Effective Date. The Title Commitment shall include legible copies of all recorded restrictions, easements, encumbrances and covenants shown on the Title Commitment. Should such Title Commitment or Survey show that Landlord's title contains any defects, exceptions or other matters not acceptable to Tenant, then Tenant shall notify Landlord of Tenant's objections thereto on or before seventy-five (75) days from the Effective Date. Landlord must notify Tenant in writing of its intent to cure any of such objections on or before ten

(10) days from receipt of the objections. After all such title defects have been either removed by Landlord or waived by Tenant, Tenant may obtain, at its discretion, and at Landlord's expense to be reimbursed to Tenant by Landlord as a rental credit at the time the first payment of Base Rent is due, a leasehold title insurance policy ("**Leasehold Title Policy**") issued by the Title Company, insuring title subject only to such exceptions and matters as are accepted by Tenant. Notwithstanding the foregoing or anything to the contrary contained in this Lease, whether or not Tenant objects, Landlord shall, at no expense to Tenant, take all of the following actions at or prior to the expiration of the Inspection Period: (a) provide the Title Company with such evidence of authority and due organization with respect to Tenant as may be required by the Title Company in order to issue the Leasehold Title Policy, (b) cure, remedy or otherwise satisfy any and all requirements shown by Schedule C of the Title Commitment which relate to Landlord and/or the Premises (including, without limitation, the release of any and all debt instruments, mechanics' and materialmen's liens and other monetary liens for which Landlord has not provided a subordination, non-disturbance and attornment agreement in accordance with Section 37 below), if any, (c) if Landlord or any person or entity affiliated with Landlord owns any oil, gas or other mineral rights relating to the Premises, then Landlord will execute and will cause each such person or entity affiliated with Landlord to execute a surface waiver agreement, waiving any right to use the surface of the Demised Premises for the exploration and extraction of such oil, gas or other minerals, which surface waiver agreement will be in form and substance reasonably acceptable to Landlord and Tenant, and (d) provide any documentation and/or other information required by the Title Company to issue the Leasehold Title Policy to Tenant without any exceptions for rights of tenants and/or other parties in possession (the foregoing items (a)-(d) are collectively referred to herein as the "**Mandatory Cure Items**"). None of the Mandatory Cure Items will be exceptions to title for purposes of this Lease or the Leasehold Title Policy. Acceptance of title, waiver of requirements, or waiver of title examination shall not affect any rights or remedies of Tenant under this Lease that may accrue upon a total or partial failure of Landlord's title; nor shall such action by Tenant alter Landlord's warranty of title or any other undertaking of Landlord in this Lease. The Leasehold Title Policy shall be in the amount of \$850,000.

6. **CONSTRUCTION APPROVALS**. Tenant shall have the right, at any time after the date of this Lease or throughout the Initial Term, any Option Terms, and any tenancy after either to construct any lawful improvements Tenant may desire, and to make such alterations, deletions, additions and changes to the Premises or structures now or hereafter located on the Premises as Tenant may desire, subject to any easements and or setback restrictions on the Premises. All improvements shall be subject to compliance with all federal, state and local laws and/or ordinances.

6.1. **CONCEPTUAL PLAN APPROVAL**. With respect to Tenant's initial construction of its prototypical restaurant improvements, Landlord acknowledges that it hereby approves the Conceptual Site Plan, the Building Elevations, and the Conceptual Signage Plan attached hereto as **Exhibit F** (each defined below and collectively referred to as the "***Conceptual Plans***"), and Landlord hereby further approves (i) any

subsequent changes to such approved Conceptual Plans that may be necessitated or required in connection with the City, County or State code, ordinances or regulations, conditional permits, permits, or building review in connection with the approval of Tenant's proposed construction (collectively, "**Governmental Requirements**"), and (ii) any non-material changes made during the design process to the approved Conceptual Plans prior to or during construction subject to any easements and/or setback restrictions on the Premises. Landlord, solely in its capacity as Landlord, hereby approves, and waives any further right to comment or request changes to, Tenant's proposed Conceptual Plans as displayed in Exhibit F attached hereto. Landlord acknowledges that the improvements reflected in the Conceptual Plans, subject to any changes necessitated by Governmental Requirements, and any non-material changes or deviations developed during the design process or construction, may be constructed without any additional approval by Landlord. "**Conceptual Plans**" are defined herein as Tenant's conceptual site plans and building elevations for Tenant's intended improvements on the Premises, including the approximate size, location and conceptual design and color scheme of the improvements Tenant intends to construct on the Premises, including buildings, driveways, parking lots, access points, utility infrastructure, signage (including any identification and price signage Tenant intends to install on the Monument Sign or any other monument signage on the Premises or Landlord's Remainder Property), fencing and landscaping.

6.2. CCRE APPROVALS. Landlord shall deliver to Tenant, any proposed declaration of conditions, covenants, restrictions, or easements ("**CCRE's**") that are intended to encumber the Premises within the latter of (i) thirty (30) days after the Effective Date of this Lease or (ii) thirty (30) days after the commencement of the Inspection Period. Tenant shall have thirty (30) days from receipt of the CCRE's to notify Landlord in writing of any objections to the CCRE's (the "**CCRE Objection Notice**"). If Tenant fails to send the CCRE Objection Notice within the thirty (30) day period, then Tenant shall be deemed to have accepted and approved the proposed CCRE's for all purposes. If Tenant does send the CCRE Objection Notice timely, then Landlord and Tenant will have thirty (30) days after Landlord receives the CCRE Objection Notice to discuss in good faith and mutually agree as to any changes to be made to the proposed CCRE's (the "**CCRE Modifications**") to accommodate Tenant's Intended Use and restaurant construction. If Landlord and Tenant do not agree within such thirty (30)-day period to the CCRE Modifications, then Tenant shall have the right to terminate this Lease and Landlord shall reimburse Tenant, within thirty (30) days after Tenant's delivery of an invoice, for any of Tenant's expenses actually incurred as agreed to and set out in this Lease. Landlord's obligation to reimburse Tenant for those expenses set out in this Lease shall survive the termination of this Lease. If any approvals of the Conceptual Plans are required under any existing CCRE's ("**CCRE Approvals**"), then Landlord agrees to obtain (or at Tenant's option, to reasonably cooperate and participate with Tenant in connection with Tenant's efforts to obtain) the CCRE Approvals during the Inspection Period.

### 6.3 ZONING.

(a) Zoning. The Landlord warrants the Property is zoned B-2 and a fast food restaurant with drive-thru service is allowed in said B-2 zone by right.

7. LANDLORD'S WORK. Landlord shall, on or before ten (10) days from the date the Landlord has obtained, in hand, all permits and/or approvals required from third party governmental or regulatory agencies and is able to begin Landlord's Work ("**Start Date**"), deliver to Tenant (i) the following documentation known to be in the possession of the Landlord: photographs of the property dated June 9, 2020 and February 21, 2015; NRCS Grant fund request letter dated April 30, 2014; City of Daphne Ordinance dated April 6, 2015; NRCS Grant Award Agreement and forms dated May 8, 2015; USACE Application dated August 28, 2015; site maps dated August 3, 2015; drainage narrative dated September 14, 2015; project plans dated September 30, 2015; as-built plans dated April 11, 2016; grant close out documents dated April 27, 2016; Baker Subdivision documents dated May 24, 1999; Daphne Justice Center plans dated February 7, 1994; Justice Center Warranty Deed dated December 17, 1992; revised dimensional site plan for Target Store dated October 11, 1999; (ii) a construction timeline for Landlord's Work, if any; and (iii) defined construction boundaries or a limits of construction document that are in the Landlord's possession, and readily and reasonably accessible to the Landlord. In the event Landlord is able to obtain, in hand, all permits and/or approvals from third party governmental or regulatory agencies and is able to begin Landlord's Work, then Landlord shall give Tenant written notice thereof (the "**Start Date Notice**"). In the event of Landlord's failure to provide the Start Date Notice to Tenant on or before June 1, 2021, then such event shall allow Tenant to terminate this Lease, in Tenant's sole discretion. If Tenant terminates this Lease, it will be of no further force and effect, and Landlord and Tenant will be released from all obligations under this Lease and will have no further liability to each other, except as otherwise noted herein.

7.1. Landlord's Construction Plans. Tenant shall have approved the construction plans prepared by Landlord ("**Landlord's Construction Plans**") for the platting, overlot grading, Utility Extensions (as defined herein) and Development Improvements (as defined herein) serving the Premises and the Landlord's Remainder Property (collectively, "**Landlord's Work**"). Landlord shall deliver to Tenant the preliminary Landlord's Construction Plans within thirty (30) days after the latter of (i) sixty (60) days after the Start Date, and (ii) thirty (30) days after the commencement of the Inspection Period. Within thirty (30) days after Tenant's receipt of the preliminary Landlord's Construction Plans, Tenant shall approve the same or notify Landlord in writing of Tenant's objections. If Tenant fails to respond in writing to Landlord with respect to the preliminary Landlord's Construction Plans within such 30-day period, then Tenant shall be deemed to have accepted and approved the preliminary Landlord's Construction Plans for all purposes. If Tenant delivers notice to Landlord of Tenant's objections to the preliminary Landlord's Construction Plans, then Landlord and Tenant will cooperate to discuss in good faith and mutually agree as to any changes to be made to the preliminary Landlord's Construction Plans during the Inspection Period. Should the parties fail to reach an agreement during such time period, Tenant may elect to terminate the Agreement. In the event that the aforesaid approval process exceeds

the date of expiration of the Inspection Period, then the Inspection Period shall be deemed to have been automatically extended through such approval process, and Tenant shall have a period of five (5) business days beyond such extended Inspection Period within which to terminate this Agreement without penalty.

7.2. Utility Extensions And Development Improvements. Landlord shall have installed or Landlord shall install, at Landlord's sole cost and expense, in accordance with the approved Landlord's Construction Plans, the Utility Extensions to the boundary line of the Premises (and the extension of any utility to adjacent properties if required by applicable authorities in order to obtain service to the Premises) and construct the Development Improvements no later than the expiration of the Approvals Period or any applicable extension thereof. "**Utility Extensions**" means each of the utilities in the size and capacities shown on the approved Landlord's Construction Plans. "**Development Improvements**" means grading and compacting of the surface of the Premises to its natural grade (and the same elevation as Lavender Lane and the adjoining parcel located to the north of the Premises and currently occupied by the Wacky Shrimp restaurant) and to Tenant's required compaction levels; the improvements required by governmental requirements, including, without limitation, all required off-site street improvements, paving, landscaping, curbing, gutters, sidewalks, median improvements, deceleration and acceleration lanes, driveway extensions, curb cuts and related access drives to the Premises (as approximately shown on Exhibit F); an access road at the rear of the Premises connecting Lavender Lane and the parcel occupied by Target and containing finished curb cuts providing access to the Premises; a cross-easement with the parcel located to the north of the Premises and currently occupied by the Wacky Shrimp restaurant, such cross-easement benefitting the Premises and located at the front of the two properties; the driveways over the Access Easements (as defined in Section 11); any other common driveways contemplated by the proposed CCRE's (as defined in Section 6.2) or otherwise; a traffic control signal at the existing intersection of Lavender Lane and U.S. Highway 98, affording full ingress and egress from Lavender Lane; street lighting; all other lighting on Landlord's remaining and adjacent property; any monument sign; and offsite retention and detention areas to serve the Premises (or shall satisfy retention and detention requirements by paying to the appropriate governmental authorities any fees, and obtaining any associated permits, that would permit storm water drainage serving the Premises into the adjacent streets in compliance with Governmental requirements), if applicable.

7.3. Completion of Landlord's Work. If Landlord fails to timely complete the construction of the Utility Extensions and Development Improvements prior to the expiration of the Landlord's Work Period, as evidenced by the acceptance thereof by applicable governmental authorities, the Commencement Date shall be automatically extended one (1) day for each day until the Utility Extensions and Development Improvements are completed as required under this Section. In the event that the Commencement Date is delayed for sixty (60) days or more, Tenant shall have the right, but not the obligation, to construct any or all of the Utility Extensions and Development Improvements and offset the cost and expense incurred by Tenant in connection therewith against the Base Rent until Tenant is fully reimbursed. Landlord

shall have also satisfied any requirements of (i) the City of Daphne, the Alabama Department of Transportation or any other relevant governmental authorities with respect to the completion of any Traffic Impact Analysis and (ii) Alabama Department of Environmental Management (or any other relevant governmental authorities) with respect to the completion of any Stormwater Prevention Pollution Plan for the Parent Tract and the Premises. In the event that Landlord, prior to the end of Landlord's Work Period, notifies Tenant that it is necessary for Landlord to transfer a fee interest or any other interest in any real property that abuts the Premises to Target Corporation for the purpose of installing a sign along Highway 98 at Lavender Lane (as depicted on Exhibit "E-1"), Landlord, prior to such transfer, shall enter into an Easement Agreement with Tenant, mutually agreeable to Landlord and Tenant, which allows Tenant and its customers to cross such real property for ingress and egress to the Premises and the Easement Agreement shall provide that Tenant's driveways or other areas of access shall not be impeded in a way that will impair access between the Premises and the adjoining streets. Prior to such transfer by Landlord, Landlord shall cause such other party to enter into an Acknowledgment Agreement with respect to the Easement Agreement. Tenant hereby reserves any and all rights at law and in equity with respect to the enforcement of Tenant's rights under this Agreement in the event that Landlord fails to complete Landlord's Work in a timely manner in accordance with the terms and conditions of this Agreement.

8. PLATTING. At Landlord's sole cost and expense, Landlord will obtain all required approvals under Governmental Requirements, will make all necessary fiscal arrangements for the approval and filing of, (collectively, "**Plat Approvals**") within thirty (30) days of the State Date, the plat that subdivides the Premises in accordance with all Governmental Requirements as a single lot and separate tax parcel ("**Plat**"). Landlord shall make application for and diligently pursue all Plat Approvals promptly after receipt of the Approvals Notice or such earlier date on which Tenant requests that Landlord apply for and pursue the Plat Approvals. Landlord shall not record the Plat or make any modifications to the Plat unless such Plat (including curb cut access) and modifications are approved by Tenant in writing in advance.

9. INSPECTION PERIOD. It is understood and agreed between the parties hereto that this Lease and the commencement of Base Rent payments are subject to the Tenant's satisfaction with the condition of the Premises. Tenant shall have until one hundred twenty (120) days after the Start Date for such inspection (the "Inspection Period") to inspect the Premises and determine, in Tenant's sole discretion, whether the Premises are suitable for Tenant's purposes and Intended Use. In order to facilitate Tenant's investigation of the Premises, on or before ten (10) days after the Start Date, Landlord shall provide Tenant with copies of any and all documentation in Landlord's possession, as set out in Paragraph 4 hereinabove, relevant to Tenant's inspection of the Premises, including, without limitation, environmental assessments, results of soils tests, existing surveys, leases, encumbrances, covenants and restrictions, if any, affecting the Premises. Tenant's right to access and inspect the Premises shall include, without limitation, the right to conduct an investigation and/or feasibility study of the

Premises, including, without limitation, a physical inspection of the Premises, an appraisal of the Premises, an engineering inspection of the Premises, and an environmental audit of the Premises. It shall be a condition of the continued effectiveness of this Lease after the Inspection Period that Tenant shall notify Landlord in writing within the Inspection Period that Tenant wishes to proceed to lease the Premises pursuant to the terms and conditions of this Lease. Tenant's failure to provide such notice to Landlord shall automatically constitute Tenant's termination of this Lease, in which event neither party shall have any further obligation to the other under this Lease thereafter. Notwithstanding the foregoing, however, Tenant may elect to terminate this Lease for any reason or no reason at all prior to the expiration of the Inspection Period by providing notice to Landlord, in which event neither party shall have any further obligation to the other under this Lease thereafter. Notwithstanding any other provision of this Lease to the contrary, Tenant shall pay Landlord the sum of One Hundred and No/100 Dollars (\$100.00) as "**Independent Consideration**" (herein so called) for the execution of this Lease and the rights granted herein. The Independent Consideration shall be paid to Landlord in all instances, upon execution hereof is fully earned, and shall not be applied against the payment of Base Rent.

Notwithstanding anything to the contrary contained in this Lease, Tenant may, at Tenant's option, elect to extend the Inspection Period for two (2) additional periods of thirty (30) days each, at no additional cost to Tenant, by delivering written notice of Tenant's election to Landlord.

10. APPROVALS PERIOD. Tenant's obligation to lease the Premises is contingent upon Tenant obtaining, to its sole satisfaction, and at its own expense: (i) all permits and approvals from all appropriate governmental agencies authorizing the razing of existing improvements and erection of the Restaurant on the Premises, and location and number of curb cuts to the Premises; and (ii) an acceptable estimate for the cost of construction of the Restaurant and related improvements on the Premises. Tenant shall apply for all such permits and approvals as soon as possible, but in not more than sixty (60) days after the expiration of the Inspection Period, as may have been extended (the "**Approvals Period**"). In the event Tenant is able to obtain all such permits and approvals and an acceptable estimate for construction costs, all to its sole satisfaction within the Approvals Period, then Tenant shall give Landlord written notice thereof (the "**Approvals Notice**"), and this Lease Agreement shall remain in full force and effect. In the event of (i) Tenant's failure to timely provide the Approvals Notice to Landlord, or (ii) Tenant's notice that the permits, approvals or construction cost estimates were not obtained to Tenant's sole satisfaction, then either such event shall constitute Tenant's termination of this Lease. If Tenant terminates this Lease, it will be of no further force and effect, and Landlord and Tenant will be released from all obligations under this Lease and will have no further liability to each other, except as otherwise noted herein.

11. CROSS ACCESS EASEMENT AGREEMENT. (a) Landlord is the current owner of an additional tract of land that is adjacent to the Premises; said tract being hereinafter referred to as "**Landlord's Remainder Property**" and shall be graphically

depicted on Exhibit "A-1" attached hereto and made a part hereof for all purposes. All driveways and other areas of vehicular and pedestrian access on the Premises and on Landlord's Property may all be used by the employees and customers of both the Landlord's Property and of Tenant and may be used by and for the benefit of adjoining property owners.. Tenant and Landlord shall not allow the driveways or other areas of access to be impeded in a way that will impair access between the Premises, the Landlord's Property and the adjoining streets. Except for temporary closures for construction or repair purposes, in no event shall Landlord take any action that materially obstructs public access to the Premises. Landlord and Tenant shall agree to the final terms of a Cross Access Easement Agreement on or before the expiration of the Inspection Period, which shall be substantially in the form attached hereto as Exhibit "E".

12. EXISTING IMPROVEMENTS. Landlord shall, at its expense, remove all improvements, if any, including without limitation, foundations and underground facilities, from the Premises. Landlord shall remove said improvements within thirty (30) days following receipt of notification from Tenant of its intent to proceed as set forth in Section 9 above (addressing the Inspection Period) and Tenant has all permits and approvals sought during the Approvals Period or the Extended Approvals Period, if applicable. In the event that Landlord does not remove said improvements, Tenant shall have the right to do so and deduct the full cost of removing said improvements from Base Rent payments upon the commencement of Base Rent payment.

13. SIGHTLINE RESTRICTIONS ON CONTIGUOUS PROPERTY. Tenant intends to build the Restaurant facing U.S. Highway 98 (the "**Primary Road**"), as shown on the site plan attached hereto as Exhibit "F" (as may be revised from time to time), and visibility of the Restaurant is essential to optimal operation. If Landlord's Property borders the Primary Road, Landlord shall encumber Landlord's Property with a building line sightline restriction that precludes the construction of any improvements on Landlord's Property closer to the Primary Road than the Restaurant will be to the Primary Road, as shown on the site plan attached hereto as Exhibit "F" (as may be revised from time to time) other than utility structures and/or signage. In addition, Landlord shall provide a separate declaration in recordable form sufficient to constitute notice of the covenant to persons subsequently acquiring interests in real property affected hereby, and the parties shall agree to the form and substance of such declaration on or before the expiration of the Inspection Period, and the same shall be executed and recorded by Landlord in the appropriate public records on or before the Commencement Date.

14. USE OF PREMISES. Tenant shall have the right to use the Premises for operation of the Restaurant or with the consent of Landlord, which shall not be unreasonably withheld, delayed or conditioned, any other lawful purpose (the "**Intended Use**"). Tenant shall obtain a Certificate of Occupancy from a proper governmental authority approving Tenant's Intended Use of the Premises.

15. UTILITIES CHARGES. Tenant shall pay all public utility charges, including water, sewer, electricity, cable, telephone and other utility services on the Premises during the term of this Lease. Landlord shall pay, at Landlord's expense, all standby fees, if applicable, prior to Tenant's construction of its improvements.

16. TAXES AND ASSESSMENTS. During the Initial Term, any Option Term and any tenancy after either, Tenant shall, in addition to the Base Rent payments specified herein, pay as they become due all ad valorem (if any), personal property, and other property taxes levied against the Premises; provided, however, that all ad valorem taxes (if any) due for the calendar year in which this Lease commences and for the calendar year in which this Lease terminates (either at the end of the Initial Term, any Option Term, or any tenancy thereafter), shall be prorated as of the Commencement Date (or Termination Date, as applicable) so that Tenant is only obligated to pay for that portion of the year during which the Initial Term, an Option Term, or a tenancy after either occurred. Should Tenant be required to make payment for the taxes for the entire calendar year in which the Lease commences, Tenant shall be entitled to invoice Landlord for Landlord's pro rata share of such year's apportioned taxes, and if Landlord does not reimburse Tenant in full for Landlord's share of taxes within thirty (30) days of receipt of notice from Tenant, Tenant may thereafter deduct such amount from the Base Rent as it becomes due each month until such time as Tenant has been reimbursed in full. Property taxes due for the year at the time of the Lease expiration or termination are to be accounted for based upon three percent (3.0%) inflation over the previous year's taxes, and shall be included with the final Base Rent payment. Tenant shall also pay any assessments levied against the Premises during the Initial Term, any Option Term or any tenancy thereafter, except that as to any assessments levied during the final year of the then-current Lease term, Tenant shall pay only so much thereof as is attributable, pro rata, to the time remaining in the current term of the Lease. However, if the assessment is made during the Initial Term or during the first two (2) Option Terms, and if Tenant thereafter elects to exercise an additional Option Term in accordance with Section 2 hereof, then Tenant shall reimburse Landlord for any portion of such assessment paid by Landlord. Tenant may, at its option, at its own expense and for its sole benefit, in its own name or in the name of the Landlord as the circumstances may require, protest and/or contest the validity or amount of taxes or special assessments levied upon the Premises. Tenant shall not be obligated to pay any transfer, succession, rental profits, capital, franchise, rent tax, income, estate, inheritance, margin, or other similar taxes that may be levied or assessed against Landlord or the successors or assigns of Landlord with respect to the Premises or the income received by Landlord hereunder. In the event that any mortgagee of the Premises should require that a pro rata share of the annual taxes be escrowed on a monthly basis, this shall be the sole responsibility of Landlord; it being the intent of this Section that Tenant shall pay all applicable taxes only on an annual basis, as they become due. Tenant agrees and shall arrange with the applicable taxing authorities to have all tax statements and notices of assessment mailed directly to Tenant. Landlord agrees to cooperate with Tenant in providing an Appointment of Agent for Tenant to receive tax notices and make protests, if any, during the Lease Term. Tenant shall have the right, at its own cost and expense, to file notices of protest and present protests, negotiate and resolve disputed

tax matters and otherwise contest by appropriate proceedings, the existence, amount, validity or applicability of any such Governmental requirements. Tenant shall pay such taxes and provide Landlord or any mortgagee, upon request, copies of all paid tax statements in a timely manner. Landlord shall attempt to keep the Premises assessed as a part of a larger tract, and Tenant's share of the tax on the Premises shall be a proportionate amount of the tax on the larger tract, based on the total square footage of the Premises as the numerator and the total square footage of the larger tract as the denominator. All ad valorem, personal property, special taxes and/or assessments attributable to time periods prior to the Commencement Date shall be paid by Landlord, including, without limitation, all taxes resulting from subsequent assessments for years or portions thereof prior to the Commencement Date due to changes in land usage or ownership. Upon request, Tenant shall provide Landlord a copy of the most recent paid receipt from the tax authority indicating that all real and personal property taxes on the Premises have been paid in full.

17. INSURANCE.

17.1. Liability Insurance. Tenant shall, at its expense, provide and keep in force commercial general liability insurance containing bodily injury and property damage coverage of not less than Two Million Dollars (\$2,000,000.00) per occurrence. Such \$2,000,000.00 limit may be reached through a combination of commercial general liability and umbrella insurance policy limits. Such policies shall cover the entire Premises. Tenant shall deliver evidence of such policies to Landlord in the form of an ACORD 25 Certificate of Insurance. All such insurance policies shall be with responsible insurance companies with an A.M. Best rating of not less than A- and a financial size category of not less than VIII, authorized to do business in the State of Alabama.

17.2. Property Insurance. Tenant shall, at its expense, maintain and keep in force standard fire, extended coverage, vandalism and malicious mischief insurance on the building and improvements located on the Premises. In no event shall the insurance coverage be less than eighty percent (80%) of the full insurable value, on a current basis. The term "full insurable value" shall mean the actual current replacement cost, excluding land, excavation, foundation, paving and underground facilities. Tenant shall deliver evidence of such policies to Landlord in the form of an ACORD 25 Certificate of Insurance. All such insurance policies shall be with responsible insurance companies with an A.M. Best rating of not less than A- and a financial size category of not less than VIII, authorized to do business in the State of Alabama.

Subject to the self-insurance limitations provided below, Tenant, at Tenant's election, may self-insure if it does so under its corporate insurance program. If self-insurance is provided, Landlord shall be provided the same rights as those provided by a commercial insurance policy.

17.3. Self-Insurance. Tenant shall maintain at Tenant's expense the insurance described in this Lease. As long as Tenant complies with the requirements of this Lease, Tenant may provide insurance through self-insurance under the terms and

conditions provided below. Tenant may elect to self-insure against any or all of the risks, or any portion thereof, against which Tenant is required to insure pursuant to this Lease, provided Tenant maintains a net worth of not less than Fifty Million Dollars (\$50,000,000) as computed in accordance with generally accepted accounting principles consistently applied. Only Tenant, or its parent, affiliate or subsidiary originally named herein may self-insure. Any third party assignee or subtenant shall maintain the insurance required hereunder with a licensed insurance company meeting the requirements of this Lease. If Tenant or its Parent Company, affiliate or subsidiary self-insures, such party or parties shall provide Landlord with the same coverage which Landlord would be afforded if the insurance called for in this Lease was maintained including, without limitation, a defense waiver of subrogation and indemnities.

If self-insurance is provided, Landlord shall be provided the same rights as those provided by a commercial insurance policy, such as Tenant, at Tenant's sole cost and expense, undertaking the defense of any such claim, including a defense of the indemnified party.

If Tenant self-insures, Tenant will use its own funds to pay any claim or replace any property or otherwise provide the funding which would have been available from insurance proceeds except for the election by Tenant to self-insure. All amounts which Tenant pays or is required to pay and all claims resulting from risks for which Tenant has elected to self-insure will be subject to the waiver of subrogation provisions hereof and will not limit Tenant's waiver of claims and indemnities benefiting Landlord. Tenant's election to self-insure will in no way restrict or reduce rights and/or benefits which Landlord would have received if Tenant had not elected to self-insure.

18. SUBROGATION AND INDEMNITY. Anything herein to the contrary notwithstanding, each party hereto hereby releases and waives all claims, rights of recovery and causes of action that either party or any party claiming by, through or under such party by subrogation or otherwise may now or hereafter have against the other party or any of the other party's partners, directors, officers, employees or agents for any loss or damage that may occur to the Premises, Tenant's improvements or any of the contents of any of the foregoing by reason of fire or other casualty, or any other cause except gross negligence or willful misconduct (but including negligence of the parties hereto or their partners, directors, officers, employees, or agents) that could have been insured against under the terms of (i) any standard fire and extended coverage insurance policies required under the terms of this Lease; or (ii) any other loss covered by insurance required to be maintained under the terms of this Lease; provided, however, that this waiver shall be ineffective against any insurer of Landlord or Tenant to the extent that such waiver (i) is prohibited by the laws and insurance regulations of the State of Alabama; or (ii) would invalidate any insurance coverage of Landlord or Tenant. The waiver set forth in this Section 18 shall not apply to any deductibles on policies carried by Landlord or to any coinsurance penalty that Landlord might sustain.

Except for any of the claims, rights of recovery and causes of action that Landlord has released and waived pursuant to this Section Tenant hereby releases, indemnifies, defends and holds harmless, Landlord and Landlord's partners, agents, directors, officers, officials, employees, invitees and contractors from all claims, losses, costs, damages or expenses (including, but not limited to, attorneys' fees) resulting or arising from any and all injuries or death of any person or damage to any property occurring during the Initial Term, any Option Term, or any tenancy thereafter, caused or alleged to have been caused by any act, omission, or neglect of Tenant or Tenant's directors, officers, employees, agents, invitees or guests, or any parties contracting with Tenant relating to the Premises, except (i) when such loss results from a default by Landlord under this Lease or the willful conduct or negligent act or omission of Landlord, its agents, employees or contractors; or (ii) to the extent of any insurance proceeds received (or receivable) by Landlord or payable under Landlord's insurance.

Except for any of the claims, rights of recovery and causes of action that Tenant has released and waived pursuant to this Section, Landlord hereby releases, indemnifies, defends and holds harmless, Tenant and Tenant's partners, agents, directors, officers, employees, invitees and contractors, from all claims, losses, costs, damages or expenses (including, but not limited to, attorneys' fees) resulting or arising from any and all injuries or death of any person or damage to any property occurring during the Initial Term, any Option Term, or any tenancy thereafter, caused or alleged to have been caused by any act, omission, or neglect of Landlord or Landlord's directors, officers, employees, agents, invitees or guests, or any parties contracting with Landlord relating to the Premises, except (i) when such loss results from a default by Tenant under this Lease or the willful conduct or negligent act or omission of Tenant, its agents, employees or contractors; or (ii) to the extent of any insurance proceeds received (or receivable) by Tenant or payable under Tenant's insurance.

Tenant and Landlord agree that each shall not be responsible or liable to the other, or to their agents, customers or invitees, for any loss or damage to any property or persons occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority (including Landlord when acting in its governmental capacity and not as a landlord), or any other cause beyond the control of either party, or for any inconvenience or loss to either party in connection with any of the repair, maintenance, damage, destruction, restoration or replacement referred to in this Lease.

19. MAINTENANCE AND REPAIRS. Landlord shall not be required to maintain or repair any portion of the Premises or any improvements located thereon. Tenant shall provide any maintenance and repairs at Tenant's own expense. Tenant shall be entitled to paint, decorate or change the architectural treatment of any part of its building or signage.

20. TENANT'S RESTAURANT EQUIPMENT; TITLE TO IMPROVEMENTS. Landlord recognizes and agrees that the Restaurant furniture, trade fixtures, signs, and equipment (including, by way of example but not limited to, grills, deep fryers, beverage

dispensers, cash registers, tables, chairs, booths, cold storage facilities, and service counters) located on the Premises are the property of Tenant and are not to automatically become the property of the Landlord upon the termination hereof. Landlord further agrees that Landlord's rights, or any rights of Landlord's mortgagee(s), in any such furniture, fixtures, signs and equipment shall at all times be subordinate to the rights of Tenant or any other person or entity who acquires a security interest in same as a result of a financial transaction with Tenant. Tenant does, however, recognize and agree that any buildings, improvements, or any equipment that is an integral part of the structure, such as air conditioning and heating equipment, lighting fixtures, electric switch boxes, plumbing, restroom fixtures, and the like, which may be located on the Premises shall become the property of Landlord upon termination hereof, subject to the provisions of Section 26, which shall control in the event of any termination resulting from condemnation. Tenant shall have thirty (30) days after the termination of this Lease to remove its furniture, fixtures, signs and equipment from the Premises; provided that Tenant repairs any damage caused by such removal, to the extent reasonably and commercially feasible.

21. COMPLIANCE WITH LAWS. Tenant shall comply with all laws, orders, ordinances and regulations of federal, state and municipal authorities, which shall impose any duty upon Landlord or Tenant with respect to the operation of business on the Premises. Tenant, at its expense, shall obtain all licenses or permits that may be required for the conduct of its business within the terms of this Lease, or for alterations, improvements, or additions that Tenant may desire to make, and Landlord, where necessary, shall join with Tenant in applying for all such permits or licenses. Any reference in this Lease to approval or consent by the Landlord shall not be deemed to be approval or consent of the City of Daphne governmental authority. Tenant, with the assistance of Landlord, shall attempt to obtain all approvals and/or consents required by the City of Daphne ordinances separate and apart from this Lease.

22. SIGNS AND LIGHTING. Tenant shall have the right to erect signs advertising Tenant's business and building image lighting anywhere on the Premises; provided that such signs are in accordance with building and zoning standards and approvals have been obtained by the Tenant as may be required by local ordinances.

23. ASSIGNMENT-SUBLEASING BY TENANT. Tenant may at any time assign this Lease or sublease, or licensing, all or any part of the Premises, provided that Tenant remains primarily responsible for the Base Rent, terms and conditions of this Lease. Tenant shall notify Landlord of any such assignment or subleasing or licensing, unless such assignment or subleasing is to an affiliated entity.

24. ASSIGNMENT BY LANDLORD. Landlord shall have the right to assign this Lease, collaterally or otherwise, without Tenant's consent; provided, however, that Landlord shall give written notice to Tenant of any proposed assignment at least thirty (30) days prior thereto. No assignment by Landlord shall alter the rights of Tenant hereunder, and all of the recitals, terms, covenants, and conditions of this Lease shall remain in full force and effect upon the assignment. Upon any assignment by Landlord,

Landlord shall remain fully liable for obligations of Landlord up to the date of said assignment. Upon any assignment by Landlord, Tenant shall be entitled to continue making Base Rent payments to Landlord unless and until Landlord actually delivers to Tenant a written notice directing rental payments to thereafter be made to the assignee.

25. HOLDOVER. Any holdover by Tenant after any termination of this Lease shall automatically create a month-to-month tenancy at 125% of the then-current Base Rent and on all other applicable conditions herein provided.

26. CONDEMNATION. If the whole of the Premises shall be taken or condemned under the right of eminent domain, then this Lease shall automatically terminate. If less than the whole of the Premises shall be taken or condemned but the part taken or condemned constitutes, in Tenant's sole judgment, such a substantial part of the Premises so that the remaining part of the Premises shall be insufficient for the economic and feasible operation of Tenant's Intended Use, then Tenant shall have the right to terminate this Lease. If this Lease is terminated pursuant to this Section, whether automatically or at Tenant's election, then (a) such termination shall be effective as of the date possession is lawfully acquired by the condemning authority, (b) from and after such effective date of termination, (i) this Lease shall be of no further force or effect and the parties hereto shall have no further obligations hereunder (except for any obligations expressly surviving such termination), and (ii) the obligation to pay Base Rent hereunder shall cease, and (c) notwithstanding any termination of this Lease, the awards or payment of compensation by the condemning authority on account of the taking or condemnation shall be applied as follows: Landlord shall receive that portion of the total awards or payments that are attributable to Landlord's leased fee interest in the Premises that are taken or damaged by the condemnation.

Tenant shall receive that portion of the total awards or payments that are attributable to Tenant's leasehold interest in the Premises that are taken or damaged by the condemnation. In addition to recovering compensation for the taking or damaging of Tenant's leasehold interest, Tenant shall receive all compensation awarded for the taking or damaging of the actual and constructive improvements made by Tenant to the Premises, including but not limited to Tenant's building, site improvements, furniture, fixtures, and equipment, and Tenant's signage and trade fixtures.

Landlord, Tenant and any person or entity having an interest in the awards or payments shall have the right to participate in any condemnation proceedings or agreements for the purpose of protecting its interests, and such party shall pay its own costs and expenses therein. If the parties are not permitted to proceed as separate parties, they shall jointly select counsel to present and prosecute their claim, and all costs thereof shall be paid by the parties in proportion to the amount of the award, settlement or sale proceeds that each receives.

If only a part of the Premises shall be taken or condemned and the part remaining can, in the sole judgment of Tenant, be economically adapted for Tenant's Intended Use, then this Lease shall remain in full force and effect, and Base Rent

payments by Tenant shall be reduced by a percentage equal to the percentage that the part(s) taken is of the whole Premises to the extent that the part(s) taken result in (i) a reduction in the amount of parking, (ii) a reduction in the accessibility to Tenant's building by pedestrian and/or vehicular traffic (including, without limitation, the removal of a point of access or the loss of any portion of Tenant's drive-thru lane or Tenant's internal circulation drive aisles), (ii) the removal of points of access to and/or from the Premises, or (iii) some other a material adverse effect on Tenant's ability to operate for business from the Premises in at least a comparable economic and profitable manner as existed prior to such taking or condemnation. Notwithstanding the foregoing or anything to the contrary contained herein, if any parking on the Premises is taken, or lost as a result of a taking, then, at Tenant's option, the Base Rent shall be reduced by either: (a) the percentage that the part taken is of the whole Premises as described above, or (b) the percentage that the number of parking spaces taken and/or lost as a result of the taking is to the total number of parking spaces existing on the Premises before the taking. Additionally, if part of the Premises is taken and this Lease remains in force and effect, Landlord shall be entitled to all compensation awarded for the land (as vacant) taken and any improvements built and paid for by Landlord that are in the taking, and for damages, if any, to Landlord's leased fee interest; and Tenant shall be entitled to all compensation awarded for any improvements built and paid for by Tenant, including but not limited to, Tenant's building, Tenant's site improvements, paving, curbing, landscaping and appurtenances, and signage, that are in the taking, and for damages, if any, to Tenant's leasehold interest.

Landlord shall notify Tenant within ten (10) days of any notification from any governmental entity regarding the proposed taking or condemnation of any or all of the Premises. In addition, Landlord shall copy Tenant on any subsequent correspondence regarding same, including but not limited to, the condemning authority's offer(s) of compensation and appraisal(s) upon which such offer(s) is based.

Any termination of this Lease pursuant to this Section, whether automatically or by Tenant's election hereunder, shall not be deemed to terminate this Lease for purposes of Tenant's prosecuting and receiving an award or settlement from the condemning authority as compensation for the taking or damaging of its leasehold interest in the Premises, including but not limited to, the actual and constructive improvements made by Tenant to the Premises as provided for in this Section, which shall be in no way impaired.

**27. DAMAGE OR DESTRUCTION OF PREMISES.** In the event the whole or any part of the improvements on the Premises (including Tenant's equipment and fixtures) shall be damaged or destroyed by fire, flood, windstorm, strikes, riots, civil commotions, acts of God, or other casualty, Tenant shall restore same to their condition just prior to said loss without unreasonable delay, and the Base Rent payable hereunder shall be proportionately and equitably abated during said restoration. Any insurance proceeds received by Landlord or by Tenant, pursuant to the provisions of this Lease, shall be held in an escrow fund (at a bank designated by Tenant) and shall be disbursed directly to Tenant during the restoration period to pay for the cost of said

restoration. Any insurance proceeds over and above the cost of restoration shall be paid to and be the property of Tenant upon completion of restoration. If the insurance proceeds are insufficient to pay for the cost of restoration, Tenant shall, at its expense, pay the difference. Landlord and Tenant may mutually agree in writing not to restore the improvements. In the event any such damage mentioned in the first sentence of this Section is in excess of fifty percent (50%) of the total replacement cost of the improvements during the final sixty (60) months of the Initial Term or during any Option Term, Tenant may terminate this Lease within ninety (90) days after such damage. If Tenant does not elect to terminate this Lease, Tenant shall restore the improvements as provided herein. If this Lease is terminated under any provision of this Section, (i) Tenant shall, at Tenant's expense, remove all of Tenant's improvements from the Premises and deliver the Premises to Landlord in level-grade condition and any excess insurance proceeds shall be retained by Tenant; and (ii) Base Rent shall be payable through the date of casualty, and Landlord will refund to Tenant any prepaid unaccrued Base Rent, less the sum, if any, Tenant owes to Landlord.

## 28. DEFAULT.

### 28.1. TENANT DEFAULT.

28.1.1. *Events of Default.* Under this Lease, each of the following is considered to be a "**Tenant Default**": (i) Tenant fails to pay monthly Base Rent to Landlord within ten (10) days after the date on which Tenant receives a written notice from Landlord that states the alleged default or breach (the "**Tenant Default Notice**"); (ii) Tenant fails to perform any other obligation of Tenant under this Lease within thirty (30) days after receiving a Tenant Default Notice; **provided however**, that if the breach or failure to perform cannot be reasonably cured within the 30-day period, then a Tenant Default shall only be deemed to occur if Tenant does not in good faith commence the cure within the 30-day period and thereafter fails to diligently pursue the cure to completion as quickly as is commercially reasonable but in no event longer than ninety (90) days after receiving the Tenant Default Notice; and/or (iii) Tenant becomes insolvent, files a petition for protection under the United States Bankruptcy Code or any other similar federal or state law, or is named in any involuntary bankruptcy proceeding, unless that proceeding is dismissed within thirty (30) days after it is filed.

28.2. Landlord Remedies. Upon the occurrence of a Tenant Default, Landlord may, in addition to any and all other remedies or claims for relief provided by law, declare this Lease terminated, cancelled and forfeited by written notice to Tenant of the termination. If Landlord terminates this Lease as provided in this Section, then Landlord shall be entitled to possession of the Premises without further notice or demand.

28.2.1. *Cure by Landlord.* Landlord may, but is not obligated to, cure any existing Tenant Default. If Landlord does so, then as additional rent hereunder, Tenant shall reimburse Landlord upon demand for the actual out-of-pocket costs incurred by Landlord.

28.2.2. Lease Termination. Landlord may terminate this Lease by written notice to Tenant (the "**Termination Notice**"), effective on the date stated

in the Termination Notice (the “**Termination Date**”). On or prior to the Termination Date, Tenant shall pay to Landlord an aggregate sum equal to: (1) all unpaid rent for any period prior to the Termination Date; plus (2) the present value as of the Termination Date of the amount, if any, by which: (a) the aggregate of the Monthly Rent payable by Tenant under this Lease that would have accrued for the period from the Termination Date through the Expiration Date, or if the Termination Date occurs during a Renewal Term, the last day of the current Renewal Term (the “**Term Remaining**”), exceeds (b) the amount of such Monthly Rent which could reasonably be recovered by reletting the Premises for the Term Remaining at the then-current fair rental value, after reducing that amount by the reasonable out-of-pocket costs that would be incurred by Landlord in connection with marketing, repairing, remodeling and reletting the Premises.

28.2.3. Repossession. Landlord may reenter and take possession of the Premises (“**Repossession**”) and relet it on the behalf of Tenant (“**Reletting**”). While Landlord reserves the right, following a Repossession, to exercise its right to terminate this Lease, mere Repossession of the Premises by Landlord will not be construed as an election by Landlord to terminate this Lease unless Landlord delivers to Tenant a written Termination Notice. If Landlord Repossesses the Premises, Landlord may make such repairs, alterations or improvements as Landlord reasonably considers appropriate to accomplish Reletting, and if Landlord does so, then, upon written demand by Landlord (with appropriate supporting documentation), Tenant will reimburse Landlord for all of reasonable out-of-pocket costs incurred by Landlord in connection with such Reletting. After deducting the reasonable out-of-pocket costs actually incurred by Landlord in connection with marketing, repairing, remodeling and reletting the Premises, Landlord shall apply all income from Reletting to amounts due from Tenant hereunder.

### 28.3. LANDLORD DEFAULT.

If Landlord is ever in default under the terms of this Lease, or if Landlord commits a breach of any one or more of the covenants, terms and conditions herein set forth, then Tenant shall deliver Landlord a written notice that states the alleged default or breach (the “**Landlord Default Notice**”). If Landlord does not cure the alleged default or breach within thirty (30) days after it receives the Landlord Default Notice (**provided however**, that if the breach or failure to perform cannot be reasonably cured within the 30-day period, then a Landlord Default shall only be deemed to occur if Landlord does not in good faith commence the cure within the 30-day period and thereafter fails to diligently pursue the cure to completion within ninety (90) days after receiving the Landlord Default Notice), then, in addition to any and all other remedies or claims for legal relief provided by law or in equity, Tenant may cure such default or breach, and Landlord shall reimburse Tenant for all third party out-of-pocket costs expended by Tenant in connection therewith (the “**Cure Costs**”), within thirty (30) days after receiving an invoice from Tenant therefor, and if Landlord fails to reimburse Tenant within the 30-day period, then Tenant may deduct the amount of the Cure Costs from the next

installment of monthly Base Rent due hereunder. Nothing herein shall be construed under any circumstances to give Tenant the ability to terminate this Lease upon a default by Landlord.

29. LANDLORD'S REPRESENTATIONS AND WARRANTIES. Landlord warrants and represents to Tenant as of the date hereof:

a. Title to Premises. Landlord has indefeasible title to an undivided 100% fee interest in and to the Premises, subject only to the permitted title exceptions referenced in Section 5 herein. If at any time Landlord's title or right to receive Base Rent hereunder is disputed, or there is a change of ownership of Landlord's estate by act of the parties or by operation of law, Tenant may withhold Base Rent thereafter accruing until Tenant is furnished satisfactory proof as to the party entitled thereto.

b. Authority. Landlord is a duly organized and validly existing municipal corporation organized under the laws of the State of Alabama. This Lease, and the consummation of the documents herein provided to be executed by Landlord shall be (subject to the terms and conditions herein contained), duly authorized, executed and delivered by, and, upon delivery thereof, shall be binding upon and enforceable against Landlord in accordance with their respective terms.

c. Public Improvements and Condemnation. To the best of Landlord's knowledge, no pending or proposed public improvements other than the Lavender Lane project or condemnation proceedings exist which may result in special assessments or in any reduction in the usefulness of the Premises.

d. Agreements Affecting Intended Use. To the best of Landlord's knowledge, there are no lease, rental, reciprocal easement, access, parking or other agreements in existence of any kind whatsoever that would adversely affect the ability of Tenant to operate its Intended Use on the Premises.

e. Proceedings affecting Intended Use. There are no pending or contemplated proceedings to which Landlord is a party or of which it has been given notice concerning impairment of access, tax adjustment, zoning changes or similar proceedings, assessments or plans by any government authority, or any pending claims or litigation, that might affect the Premises or Tenant's ability to use the Premises for its Intended Use in accordance with the terms and conditions of this Lease.

f. Matters affecting Intended Use. There are no matters known to Landlord that would materially and adversely affect Tenant's ability to operate its Intended Use on the Premises. Tenant is aware of the Lavender Lane project and acknowledges the same will not materially or adversely affect Tenant's ability to operate its Intended Use on the Premises.

g. Reports of Hazardous Materials. Landlord has not filed nor been required to file any reports of Hazardous Materials (as defined in Section 41 below) on the Premises with any federal, state or local governmental authority.

h. Actions of Hazardous Materials. There is no ongoing environmental cleanup or remediation action of Hazardous Materials on the Premises and to Landlord's actual knowledge, there is no such action planned for or threatened against the Premises. There are no underground storage tanks located on or under the Premises.

i. Compliance. Landlord and the Premises are in compliance with all federal, state and local laws, ordinances, rules, regulations and requirements, including but not limited to environmental laws.

j. Utility Extensions. Utility Extensions of the types and in the capacities set forth on Exhibit "G" attached hereto will physically be located on the Premises, or at the property line of the Premises, and shall located within areas specified in recorded easement agreements that are acceptable to Tenant, on or before the expiration of the Approvals Period, as part of Landlord's Work pursuant to Section 7 herein.

k. Platted Lot. The Premises will be a separately platted lot consistent with the legal description to be provided upon plat approval, and will be marked as Exhibit "A" hereto.

l. Zoning. The Premises is properly zoned to allow for Tenant's Intended Use.

m. Water Detention/Retention/Filtration. The Premises, in its current state, is in compliance with all state and local laws, ordinances, rules, regulations and requirements regarding water detention/retention/filtration, etc.

n. Ad Valorem Taxes. The Premises is not currently subject to ad valorem taxes.

30. NOTICES. All notices and other communications that may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date (i) delivered in person; (ii) deposited with Federal Express (or other similar national overnight delivery service) postage or charges prepaid for next day delivery; or (iii) deposited in the U.S. Mail, certified with return receipt requested, all postage prepaid. All notices required or permitted by any provision of this Lease shall be directed as follows, or at such other addresses as specified by notice delivered in accordance herewith:

TO LANDLORD:

City of Daphne  
Mailing Address:

Post Office Box 400  
Daphne, Alabama 36526  
Physical Address/Overnight Mail Address:  
1705 Main Street  
Daphne, Alabama 36526  
Attn: Mayor's Office  
Telephone: (251) 620-1000

Payment Address (if different from above):  
Same as above  
Attention: Finance Department

WITH A COPY TO: Jay M. Ross  
Attorney for the City of Daphne, Alabama  
Adams and Reese LLP  
P.O. Box 1348  
Mobile, Alabama 36633-1348  
(251) 433-3234

TO TENANT: WHATABURGER RESTAURANTS LLC  
Attn: Real Estate Department  
300 Concord Plaza Drive  
San Antonio, Texas 78216  
Telephone: (210) 476-6000

WITH COPIES TO: WHATABURGER RESTAURANTS LLC  
Attn: Office of the General Counsel  
300 Concord Plaza Drive  
San Antonio, Texas 78216  
Telephone: (210) 476-6327

AND

Balch & Bingham LLP  
Attn: Thomas G. Amason III  
P. O. Box 306  
Birmingham, Alabama 35201-0306  
Telephone: (205) 226-3463

or to such other place as either party shall subsequently notify the other in writing.

31. QUIET ENJOYMENT. Tenant, upon paying the Base Rent and performing the covenants and agreements of this Lease, shall quietly have, hold and enjoy the Premises and all rights granted Tenant in this Lease during the Initial Term, any Option Term or any tenancy thereafter.

32. COMMISSIONS. It is understood and agreed that the only broker involved in the negotiation and consummation of this Lease has been and is Capital Growth Real Estate, LLC ("Broker"), and, if this Lease is effected, a commission shall be earned by Broker pursuant to a separate written agreement with Landlord and shall be paid by Landlord upon the Commencement Date of this Lease. All real estate commissions occasioned by the execution and/or consummation of this Lease shall be the sole responsibility of Landlord. Landlord agrees to indemnify and to hold harmless Tenant from any and all claims for real estate commissions arising through Landlord's actions and Tenant agrees to indemnify and to hold harmless Landlord for all such claims arising through Tenant's actions.

33. CHANGE OF BUILDING UPON TERMINATION. Upon termination of this Lease, Landlord shall not thereafter use on the Premises any trademark, trade name, service mark, sign structure or form of advertising indicative of the "WHATABURGER" trade names, trademarks, logos, symbols, or image (collectively the "**Protected Property**"). Tenant, at its option and expense, may make, or cause to be made, changes in signs and building appearance (appearance change does not contemplate structural change), including the removal or change of distinctive signs and colors which in the opinion of the owner of the Protected Property are indicative of a "WHATABURGER" affiliate or otherwise mimic, infringe upon, or encroach upon the Protected Property. Tenant must make said changes within thirty (30) days after the termination of this Lease.

34. FORCE MAJEURE. If the performance of any duty or obligation under this Lease is prevented, restricted, delayed or interfered with by reason of labor disputes, strikes, acts of God, floods, lightning, severe weather, shortages of materials, rationing, utility or communications failures, earthquakes, war, revolution, civil commotion, incidence of disease or other illness that reaches outbreak, epidemic and/or pandemic proportions (including, without limitation, COVID-19), acts of public enemies, blockade, embargo or any law, order, proclamation, regulation, ordinance, demand or requirement having legal effect of any government or any judicial authority or representative of any such government, or any other act whatsoever, whether similar or dissimilar to those referred to in this Section, which are beyond the reasonable control of a party, then such party shall be excused from such performance to the extent of and during the period of such prevention, restriction, delay or interference. A party excused from performance pursuant to this Section shall exercise all reasonable efforts to continue to perform its obligations hereunder and shall thereafter continue with reasonable due diligence and good faith to remedy its inability to so perform except that nothing herein shall obligate either party to settle a strike or other labor dispute when it does not wish to do so.

35. CONSENT TO MORTGAGE AGREEMENT. Landlord agrees, if required by Tenant's lender, to execute a consent to mortgage agreement in order for Tenant to obtain funds for the construction of Tenant's improvements on the Premises.

36. MEMORANDUM OF LEASE. Landlord agrees, if required by Tenant or Tenant's lender, to execute a Memorandum of Lease (herein so-called), the form of which is attached hereto as Exhibit "C", for recordation in the county in which the Premises are located, at Tenant's expense prior to end of the Approvals Period.

37. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT. In the event Landlord (or any successor Landlord) has pledged the Premises as collateral for any lien against the Premises, then Tenant, Landlord and Landlord's lender shall execute a Subordination, Non-Disturbance and Attornment Agreement in the form attached hereto as Exhibit "D" in multiple copies prior to the end of the Inspection Period. The requirement of this Section shall be applicable to any future lender or lienholder.

38. HAZARDOUS MATERIALS. Landlord warrants that the Premises are not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under, or about the Premises including, but not limited to, soil and groundwater conditions. There is no proceeding or inquiry by any governmental authority with respect to the presence of Hazardous Materials on the Premises or the migration of Hazardous Materials from or to other premises. The term "Hazardous Material" means any substance, material or waste that is toxic, ignitable, reactive or corrosive and that is or becomes regulated by any local or state governmental authority or the United States Government. The term Hazardous Material includes, without limitation, any material or substance that is, (i) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," or "hazardous material", by any local or state law; (ii) oil and petroleum products and their by-products; (iii) asbestos; (iv) designated as a "hazardous substance" pursuant to the Federal Water Pollution Control Act; (v) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act; or (vi) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act.

39. INDEMNITY AND HOLD HARMLESS AGREEMENT. Landlord acknowledges that it is Tenant's intent to lease the Premises in a clean and uncontaminated condition. Tenant may, in its sole discretion, arrange for an environmental assessment to be conducted on the Premises by a qualified environmental consultant for the purpose of conducting a Phase I Environmental Risk Assessment and, if necessary, in Tenant's sole discretion, a Phase II Environmental Risk Assessment. Landlord and Tenant intend that this Lease governs their respective potential environmental liabilities and constitutes an independent obligation between them. Landlord acknowledges and agrees that Landlord is responsible for any environmental contamination or Hazardous Materials existing on the Premises on or before the Effective Date. This indemnity and hold harmless provision shall be limited

to conditions created by or resulting from activities conducted by any person or entity other than Tenant. This indemnity and hold harmless agreement specifically excludes any release, contamination, or hazardous condition created by Tenant. The indemnities set forth in this Section shall survive termination of this Lease.

40. COMPETITOR EXCLUSION. During the Initial Term, any Option Term or any tenancy thereafter, Landlord agrees that no portion of the Restricted Property (as hereinafter defined) shall be used for the operation of any business engaged in the sale of prepared hamburgers, including, but not limited to, Wendy's, McDonald's, Burger King, Sonic, Jack-in-the-Box, Dairy Queen, Steak-n-Shake, A&W, Prince's, Carl's Jr., Mooyah Burgers & Fries, Five Guys Burgers & Fries, Mighty Fine, In-and-Out Burgers, and Freddy's Frozen Custard & Steamburgers, without Tenant's prior written consent (which consent may be withheld by Tenant in its sole and absolute discretion). This provision shall not apply to the Premises. Landlord hereby warrants and represents that (i) Landlord is the sole owner in fee simple of the Restricted Property, (ii) no consents are required from any third parties in order to encumber the Restricted Property as contemplated in this paragraph, and (iii) no lease or other agreement with respect to real property that Landlord owns, both individually or jointly, contains any provision that might prevent Tenant from using the Premises as a fast food restaurant or for Tenant's Intended Use. In addition, Landlord shall provide in the Memorandum of Lease, or in a separate declaration in recordable form sufficient to constitute notice of the covenant set forth in this paragraph to persons subsequently acquiring interests in the real property affected thereby, and the parties shall agree to the form and substance of the same on or before the expiration of the Inspection Period, and the same shall be executed and recorded by Landlord in the appropriate public records on or before the Commencement Date. The Memorandum of Lease or other recorded declaration shall, among other things, (1) provide that the foregoing covenant shall run with the Restricted Property and be binding upon all successor owners and occupants thereof, and (2) include a consent by any third party having a lien on the Restricted Property at the time of the filing of the Memorandum or such declaration, as applicable, pursuant to which such lienholder agrees that the covenant contained therein shall survive any foreclosure of the Restricted Property by such lienholder. For purposes of this Lease, the term "**Restricted Property**" shall mean all of that certain real property described on Exhibit "I" attached hereto and made a part hereof.

41. ENTIRETY-EXECUTION-SUCCESSION. This Lease merges and supersedes all prior negotiations, representations, and agreements, and constitutes the entire contract between Landlord and Tenant concerning the leasing of the Premises and the consideration therefor. This Lease and all options herein shall bind and inure to the benefit of the heirs, administrators, executors, successors and assigns of Landlord and Tenant. If more than one person or entity executes this instrument as Landlord, his, her, their, or its duties and liabilities under this Lease shall be joint and several.

42. GOVERNING LAW AND VENUE. The laws of the State of Alabama shall govern this Lease, and all obligations of the parties to this Lease are fully performable in Baldwin County, Alabama.

43. SEVERABILITY. If any provision of this Lease shall, for any reason, be held to violate any applicable law, and so much of this Lease is held to be unenforceable, then the invalidity of such specific provision shall not be held to invalidate any other provision of this Lease, which shall remain in full force and effect.

44. EXHIBITS. The Exhibits that are referenced in, and attached to, this Lease are incorporated in, and made a part of, this Lease for all purposes.

Exhibit "A"	Description of Premises
Exhibit "A-1"	Description of Landlord's Remainder Property
Exhibit "B"	Lease Term Commencement and Termination Dates
Exhibit "C"	Memorandum of Lease
Exhibit "D"	Subordination, Non-Disturbance and Attornment Agreement
Exhibit "E"	Cross Access Easement Agreement
Exhibit "E-1"	Easement Agreement
Exhibit "F"	Conceptual Plans - Site Plan, Building Design, Elevations and Signage
Exhibit "G"	Utilities
Exhibit "H"	[Intentionally Deleted]
Exhibit "I"	Description of Restricted Property
Exhibit "J"	Estoppel Certificate

45. ATTORNEYS' FEES. If either party hereto shall be required to employ an attorney to enforce or defend the rights of such party hereunder, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

46. CALCULATION OF TIME PERIODS. Should the calculation of any of the various time periods provided for herein result in an obligation becoming due on a day occurring on a Saturday, Sunday or recognized Federal Reserve Bank holiday, then the due date of such obligation or scheduled time of occurrence of such event shall be delayed until the next business day. For purposes of calculating additional time periods following such due date, any such extended time period shall thereafter be deemed to have expired on the extended due date, and not the due date of original expiration before taking into account the weekend or recognized Federal Reserve Bank holiday. As used herein, a day is to be considered a "calendar day" (any day of the week, month or year) unless otherwise specified as a "business day" (the days between and including Monday to Friday and not including public holidays and weekends).

47. CAPTIONS. The captions in this Lease are used for convenience only, and they in no way define, limit or prescribe the scope or intent of this Lease or any provisions thereof.

48. MODIFICATION. This Lease may not be modified except by a written agreement signed by both of the parties.

49. RELATIONSHIP OF THE PARTIES. Nothing contained herein shall be deemed or construed to create the relationship of principal and agent, partnership, joint venture or any relationship between the parties hereto other than that of Landlord and Tenant.

50. FURTHER ENCUMBRANCES. From and after the Effective Date, Landlord shall not enter into any lease, license, easement, restriction or other agreement (including, but not limited to, any recorded or unrecorded exclusive use or prohibited use restriction) with respect to or which would otherwise encumber in any way affect the Premises, the critical access drives to and from the Premises, and/or any portion of the Premises or the critical access drives, or affect Tenant's rights under this Lease, or result in any increase of the Tenant's obligations under this Lease without the prior written consent of Tenant, which consent may be withheld in Tenant's sole and absolute discretion, except for (i) any utility easements expressly agreed to by Tenant herein, if any, and (ii) any mortgage, deed of trust, deed to secure debt or other lien hereafter created upon the Premises for which Landlord has pledged the Premises as collateral, and to any amendments, modifications, renewals and extensions thereof, provided that Landlord and the lender then holding such lien against the Premises shall each execute and deliver to Tenant a Subordination, Non-Disturbance and Attornment Agreement in accordance with Section 37 of this Lease; and (iii) any sale of the Premises [and/or the Shopping Center or any portion thereof].

51. CONFIDENTIALITY. Landlord and Tenant each hereby acknowledge that the content of this Lease and any related documents constitute confidential information. Landlord and Tenant shall each keep such confidential information strictly confidential and, except as set forth in the Memorandum of Lease executed by both parties and recorded in accordance with the terms hereof or as may be otherwise expressly contemplated by the terms hereof, neither Landlord nor Tenant shall, without the prior written consent of the other party hereto, disclose this Lease or any information set forth herein to any person or entity, other than such party's own employees, attorneys and consultants who have agreed to keep all such information confidential to the extent the same is not considered to be subject to any laws regulating the release of public documents and/or open records.

52. ESTOPPEL CERTIFICATES. From time to time when requested by Landlord, but no more than two (2) times in any calendar year, Tenant shall deliver to any prospective purchaser, present or future mortgagee or lessor, in each case, of all or any part of the Premises, or any interest of Landlord therein, a certificate signed by Tenant in the form attached hereto as Exhibit "J" within thirty (30) days following Tenant's receipt of a written request therefor by Landlord.

53. COUNTERPARTS AND ELECTRONIC SIGNATURES. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, and all counterparts together shall constitute one Lease. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Lease are intended to authenticate this writing and to have the same force and effect as

manual signatures. Delivery of a copy of this Lease or any other document contemplated hereby bearing an original or electronic signature by e-signature, by electronic mail in "portable document format" (.pdf) form, or by any other electronic means intended to replicate or signify a signature for a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

*[The remainder of this page intentionally left blank;  
signature page immediately follows.]*

**IN WITNESS WHEREOF**, the said parties have caused this Lease to be executed on the later date on which this Lease has been signed by both Landlord and Tenant.

**TENANT:**

WHATABURGER RESTAURANTS LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Manager

Date: \_\_\_\_\_

**LANDLORD:**

CITY OF DAPHNE  
an Alabama municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT "A"**

**DESCRIPTION OF PREMISES**

To be further revised upon receipt of the Survey. Lease must be amended upon receipt of Survey to add final description of Premises.

**EXHIBIT "B"**

**LEASE TERM COMMENCEMENT AND TERMINATION DATES**

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the CITY OF DAPHNE, an Alabama municipal corporation, as "Landlord" and WHATABURGER RESTAURANTS LLC, a Texas limited liability company, as "Tenant." Capitalized terms not defined herein shall have the meaning as set forth in the Lease to which this is an exhibit.

**WHEREAS**, the parties have previously entered into a Ground Lease Agreement dated \_\_\_\_\_ whereby Landlord leased to Tenant certain property located at \_\_\_\_\_ and more particularly described therein;

**WHEREAS**, the Commencement Date has passed and is now specifically identifiable; and

**WHEREAS**, the parties have agreed to specifically define the Commencement Date and Termination Date of the Initial Term of the Lease;

**NOW, THEREFORE**, the parties hereby agree.

1. That the Commencement Date of the Initial Term of the Lease shall be the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.
2. That the Termination Date of the Initial Term of the Lease shall be the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands on the day and year first above mentioned.

**TENANT:**

WHATABURGER RESTAURANTS LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Manager

**LANDLORD:**

CITY OF DAPHNE,  
an Alabama municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



1. Subject in all respects to the terms and conditions contained in the Lease, Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, the Leased Premises for a term of fifteen (15) years from the Commencement Date.

2. There are three (3) options to renew the term of the Lease for an additional period of five (5) years each.

3. As more fully set forth in the Lease, the addresses of Lessor and Lessee for the purposes of notices, payments and other communications required hereunder are as follows:

LESSOR:

CITY OF DAPHNE

---

City of Daphne  
Mailing Address:  
Post Office Box 400  
Daphne, Alabama 36526  
Physical Address/Overnight Mail Address:  
1705 Main Street  
Daphne, Alabama 36526  
Attn: Mayor's Office  
Telephone: (251) 620-1000

WITH A COPY TO: Jay M. Ross  
Attorney for the City of Daphne, Alabama  
Adams and Reese LLP  
P.O. Box 1348  
Mobile, Alabama 36633-1348  
(251) 433-3234

LESSEE:

WHATABURGER RESTAURANTS LLC  
Attn: Real Estate Department  
300 Concord Plaza Drive  
San Antonio, Texas 78216  
Telephone: (210) 476-6000  
Facsimile: (210) 476-6976

WITH COPIES TO:

WHATABURGER RESTAURANTS LLC  
Attn: Office of the General Counsel  
300 Concord Plaza Drive  
San Antonio, Texas 78216  
Telephone: (210) 476-6327

Facsimile: (210) 476-6922

AND

BALCH & BINGHAM LLP  
Attn: Thomas G. Amason III, Esq.  
1901 6<sup>th</sup> Avenue North, Suite 1500  
Birmingham, Alabama 35203  
Telephone: (205) 226-3463  
Facsimile: (205) 488-5840

4. Nothing contained in this Memorandum of Lease shall be deemed, construed or implied to alter, modify or amend in any manner whatsoever any of the terms, provisions, covenants or agreements contained in the Lease.

5. Upon the earlier of termination or expiration of the Lease, pursuant to the terms thereof, Lessee and Lessor shall execute a release of this Memorandum of Lease (the "Release"), which shall be filed of public record. Lessor and Lessee agree to execute the Release within ten (10) days after receipt of a written request for same by either of them. If Lessee or Lessor shall fail to execute the Release within said ten (10) day period, the requesting party shall be hereby deemed the other party's attorney-in-fact for the sole purpose of executing and recording the Release on behalf of said other party.

6. During the term of the Lease, including any option terms exercised by Lessee, or any tenancy thereafter, Lessor agrees that no portion of the Restricted Property (as hereinafter defined) shall be used for the operation of (i) any business engaged in the sale of prepared hamburgers, including, but not limited to, Wendy's, McDonald's, Burger King, Sonic, Jack-in-the-Box, Dairy Queen, Steak-n-Shake, A&W, Prince's, Carl's Jr., Mooyah Burgers & Fries, Five Guys Burgers & Fries, Mighty Fine, In-and-Out Burgers, and Freddy's Frozen Custard & Steakburgers, without Tenant's prior written consent (which consent may be withheld by Tenant in its sole and absolute discretion. The foregoing covenant shall run with the Restricted Property and be binding upon all successor owners and occupants thereof. This provision shall not apply to the Premises. For purposes hereof, the term "Restricted Property" shall mean all of that certain real property described on Exhibit "B" attached hereto and made a part hereof.

[INSERT REFERENCE TO ANY RESTRICTIONS ON ADJOINING PROPERTY]

7. This Memorandum may be executed by counterparts, each of which shall be deemed an original, and together the counterparts, when taken together, shall comprise one instrument.

8. Lessor and Lessee acknowledge that the information contained herein is true and correct and that they intend to place this Memorandum of Lease of record for the

purpose of giving public notice of the Lease in accordance with Sections 35-4-6 and 35-4-51.1, *Code of Alabama*, 1975.

The Remainder of this Page  
Intentionally Left Blank

**IN WITNESS WHEREOF**, the parties hereto have caused this Memorandum of Lease to be executed as of the day and year first above written.

**LESSOR:**

**CITY OF DAPHNE**  
an Alabama municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Candace Antinarella, City Clerk

*[Lessor's signature page to Memorandum of Lease.]*

**LESSEE:**

WHATABURGER RESTAURANTS LLC,  
a Texas limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Manager

STATE OF \_\_\_\_\_ )  
\_\_\_\_\_ COUNTY )

I, \_\_\_\_\_, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_ whose name as \_\_\_\_\_ of WHATABURGER RESTAURANTS LLC, a Texas limited liability company, 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, as such officer 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 the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires: \_\_\_\_\_

*[Lessee's signature page to Memorandum of Lease.]*

## EXHIBIT A

**Exhibit "B"**  
**"Restricted Property"**

**EXHIBIT "D"**

**SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

**THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT** (this "Agreement") is entered into as of \_\_\_\_\_, 20 \_\_\_\_\_, by and among the CITY OF DAPHNE, an Alabama municipal corporation ("Landlord"), \_\_\_\_\_ a \_\_\_\_\_ ("Lender") and Whataburger Restaurants LLC, a Texas limited liability company ("Tenant").

RECITALS:

**WHEREAS**, Landlord and Tenant have entered into that certain Ground Lease Agreement dated as of \_\_\_\_\_, 20 \_\_\_\_\_ (the "Lease"), covering certain property located at \_\_\_\_\_, Baldwin County, Alabama, as more particularly described on Exhibit "A" attached hereto (the "Property");

**WHEREAS**, Landlord is indebted to Lender, and as security for such debt, Lender is beneficiary under a deed of trust (together with any increased, future or consolidated mortgages or deeds of trust held by Lender, the "Deed of Trust") executed by Landlord and covering the Property; and

**WHEREAS**, Lender, Landlord and Tenant consider this Agreement to be in their mutual best interests in connection with the Lease.

**NOW, THEREFORE**, in consideration of the foregoing, the covenants, conditions, provisions and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby represent, acknowledge, covenant and agree as follows:

1. Subordination. Tenant covenants and agrees with Lender that all of Tenant's right, title and interest in and to the Property and any lease hereafter executed by Tenant covering any part of the Property, is and shall be subject, subordinate and inferior to the Deed of Trust and loan secured thereby which covers or affects the Property, and all renewals, extensions, substitutions, replacements, consolidations and increases in amount of the indebtedness secured by the Deed of Trust or any related loan papers, and to all right, title and interest of the Lender in the Property created by the Deed of Trust or any other security instrument held by the Lender, in the same manner and to the same extent as if the Lease had been executed subsequent to the execution, delivery and recordation of such Deed of Trust and the related loan papers.

2. Non-Disturbance. Provided Tenant is not in default (beyond any period(s) given under the Lease to Tenant to cure such default) under the Lease,

Tenant's possession of the Property under the Lease and Tenant's rights and privileges thereunder shall not be disturbed or affected by Lender in the exercise of its rights under the Deed of Trust or otherwise shall be made subject to Tenant's right of possession under the Lease.

3. Recognition and Attornment. If Lender succeeds to the interest of Landlord in and to the Property or under the Lease, the Lease and all terms therein, and the rights of Tenant thereunder, shall continue in full force and effect and shall not be altered, terminated or disturbed, and Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the Lease term thereof with the same force and effect as if Lender were the Landlord under the Lease. In such event, Tenant shall attorn to Lender as its Landlord, such attornment to be effective and self-operative without the execution of any other instruments on the part of Lender or Tenant, immediately upon Lender succeeding to the interest of Landlord under the Lease. Provided, however, Tenant shall be under no obligation to pay any monetary obligation set forth in the Lease to Lender until Tenant receives written notice from Lender that either Lender has succeeded to the interest of the Landlord in and to the Property or under the Lease, or Lender has posted the Property for foreclosure, with such notice being sent to Tenant postage prepaid, certified mail, return receipt requested at Tenant's address as shown in the Lease. Upon receipt by Tenant of such notice from Lender, Tenant shall make all payments of monetary obligations due by Tenant under the Lease to Lender or as Lender may in writing direct. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the lease term of the Lease, shall be and are the same as are then in existence between Tenant and Landlord as set forth in the Lease.

4. Rights Under the Lease. If Lender shall (i) succeed to the interests of Landlord in and to the Property or under the Lease; or (ii) enter into possession of the Property, Lender shall be bound to the Tenant under all of the terms, covenants and conditions of the Lease, and Tenant shall, from and after Lender's succession to the interest of Landlord in and to the Property or under the Lease or entry into possession of the Property, as the case may be, have the same remedies against Lender as Landlord for the breach of any provision contained in the Lease that Tenant might have had under the Lease against Landlord if Lender had not succeeded to the interests of Landlord in and to the Property or under the Lease or entered into possession of the Property, as the case may be.

Additionally, in the event of Lender's (i) succession to Landlord's interests in and to the Property or under the Lease; or (ii) entry into possession of the Property, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease, and Lender shall, from and after Lender's succession to the interests of Landlord in and to the Property or under the Lease or entry into possession of the Property, as the case may be, have the same remedies against Tenant, as Landlord for the breach of any provision contained in the Lease that Landlord might have had under the Lease against Tenant if Lender had not succeeded to the interests of Landlord in and to the

Property or under the Lease or entered into possession of the Property, as the case may be.

5. Persons Other Than Lender. The recognition, nondisturbance and other covenants herein made by Lender for the benefit of Tenant shall be binding upon any person other than Lender who may acquire the interest of Landlord in the Property and/or the Lease as of a result of foreclosure of the Deed of Trust or any other proceeding(s) to enforce the rights of Lender or any sale, assignment or transfer of the Property and/or the Lease after Lender has acquired the interest of Landlord in the Property and/or the Lease.

6. Entire Agreement. This Agreement contains the sole and entire agreement and understanding between the parties with respect to the subject matter hereof and shall supersede any and all oral or prior written agreements between the parties with respect to the subject matter hereof.

7. Counterparts. This Agreement may be executed in one or more counterparts, and each counterpart when so executed and delivered constitutes an original of this Agreement, but all such separate counterparts constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

**TENANT:**

WHATABURGER RESTAURANTS LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF TEXAS           §  
  §  
THE COUNTY OF BEXAR       §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_  
\_\_\_\_\_, \_\_\_\_\_ of WHATABURGER  
RESTAURANTS LLC, a Texas limited liability company, on behalf of said limited liability  
company.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS



**LENDER:**

\_\_\_\_\_ a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE STATE OF \_\_\_\_\_ §

§

THE COUNTY OF \_\_\_\_\_ §

§

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, the State of \_\_\_\_\_

**LANDLORD:**

CITY OF DAPHNE  
an Alabama municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE STATE OF \_\_\_\_\_ §

§

THE COUNTY OF \_\_\_\_\_ §

§

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_, \_\_\_\_\_ of  
\_\_\_\_\_, a \_\_\_\_\_, on behalf  
of said \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, the State of \_\_\_\_\_

**EXHIBIT "E"**

**CROSS ACCESS EASEMENT AGREEMENT**

**THIS CROSS ACCESS EASEMENT AGREEMENT** is between WHATABURGER RESTAURANTS LLC, a Texas limited liability company ("WHATABURGER"), and the CITY OF DAPHNE, an Alabama municipal corporation ("Landlord"), dated \_\_\_\_\_, 20\_\_ (the "Agreement").

**WHEREAS**, WHATABURGER is under lease for the property being described on Exhibit "B";

**WHEREAS**, Landlord is the owner of the property being described on Exhibit "A";

**WHEREAS**, the parties hereto are desirous of entering into an agreement providing for vehicular and pedestrian cross access between their respective properties; and

**WHEREAS**, the effectiveness of this Agreement is contingent upon WHATABURGER leasing the above described property;

**NOW THEREFORE**, each party hereby grants to the other party, its employees, customers, agents and assigns, non-exclusive access over and across the curb cuts, entrances, exits and driveways located from time to time on, or to be located on, each party's property as legally described herein, (the "Easement Area"). It is agreed and understood that this Agreement does not include parking rights.

Neither party shall construct improvements over the Easement Area (excluding paving), or block, or interfere with, access over and across the Easement Area. During maintenance of the Easement Area, the Easement Area shall be kept clear so as not to unreasonably interfere with vehicular and pedestrian access. The parties shall maintain in good repair, at its own cost, that portion of the Easement Area located on their respective properties.

If either party removes, or relocates any exit, driveway, curb cut, or entrance affected by this Agreement, said party shall construct a replacement exit, driveway, curb cut, or entrance which provides substantially the same access to the properties and public roads as existed prior to the removal, or relocation, and which shall be subject to this Agreement.

WHATABURGER shall indemnify, save and hold Landlord harmless from any loss, claim or liability arising out of, or attributable to its use, construction, maintenance, and occupation of this easement.

**THIS AGREEMENT** shall be binding upon the parties hereto, their successors,

heirs and assigns, and shall last in perpetuity unless canceled in writing by both parties or their respective successors, or assigns.

**THIS AGREEMENT** shall be construed in accordance with the laws of the State of Alabama.

This Agreement is executed by the parties hereto on the acknowledgement dates set forth below to be effective for all purposes.

**WHATABURGER:**

WHATABURGER RESTAURANTS LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF TEXAS           §  
  §  
THE COUNTY OF BEXAR       §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_  
\_\_\_\_\_, \_\_\_\_\_ of WHATABURGER RESTAURANTS  
LLC, a Texas limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**LANDLORD:**

CITY OF DAPHNE  
an Alabama municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Candace Antinarella, City Clerk

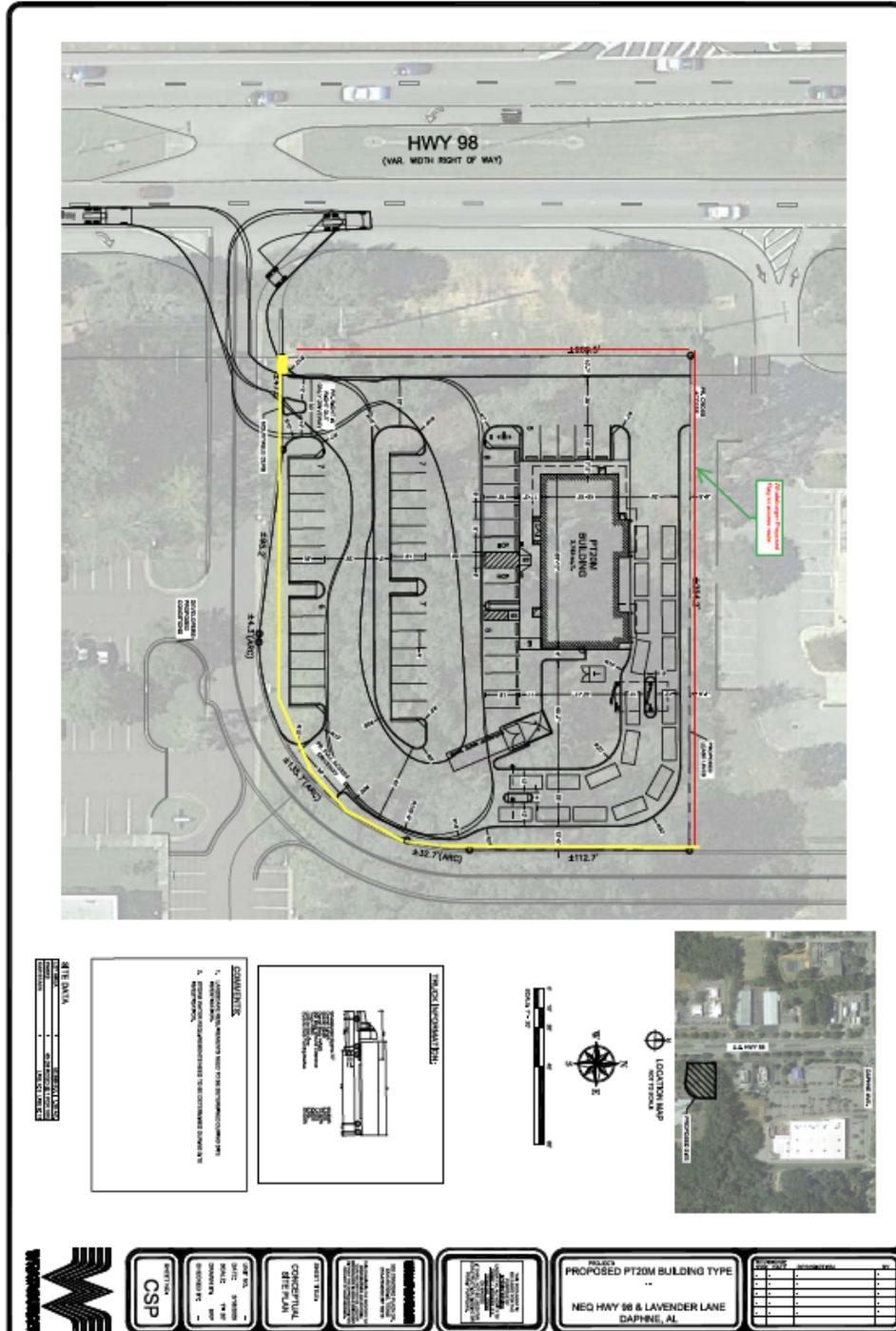
**EXHIBIT "A"**  
**TO**  
**EXHIBIT "E"**  
**(LANDLORD PROPERTY)**

**EXHIBIT "B"**  
**TO**  
**EXHIBIT "E"**

**(WHATABURGER PROPERTY)**

**EXHIBIT "E-1"**

**DEPICTION OF POTENTIAL EASEMENT AREA**



**EXHIBIT "F"**

**SITE PLAN, BUILDING DESIGN, ELEVATIONS AND SIGNAGE**

[see attached]

## EXHIBIT " G "

### UTILITIES

**Sanitary:** A six inch (6") or larger main that the municipal or utility authority will allow to be tapped with a six inch (6") line located within satisfactory easements or rights-of-way to a location five feet (5') inside the perimeter of the Premises, at which point Tenant can receive service without the imposition of tap-in charges to Tenant other than tap-in charges which are customarily and normally charged in the locality in which the Premises are located

**Water:** A two inch (2") or larger domestic line that is approved by municipal or utility authority to be tapped with a one and one-half inch (1½") domestic water meter and line. No irrigation meter and/or line or fire water line are required to satisfy city requirements, as no fire sprinkler system will be required within Tenant's improvements. Such line or lines shall be located within satisfactory easements or rights-of-way to a location five feet (5') inside the perimeter of the Premises, at which point Tenant can receive service without the imposition of tap-in charges to Tenant other than tap-in charges which are customarily and normally charged in the locality in which the Premises are located

**Electric:** Service voltage - 120/208, 3 phase

Service size - 800 amps

**Telephone:** A telephone line that will be brought within the boundary line of the Premises at no charge to Tenant

**Impact Fees:** All utility, roadway/traffic, community or other impact fees associated with obtaining governmental approvals will be paid by Tenant, provided that such fees are specific to the Premises.

**EXHIBIT “ H”**

**Intentionally Deleted**

**EXHIBIT "I"**

**DESCRIPTION OF RESTRICTED PROPERTY**

**EXHIBIT "J"**

**TENANT ESTOPPEL CERTIFICATE**

**UNIT # \_\_\_\_\_**

THIS TENANT ESTOPPEL CERTIFICATE (this "Certificate") is made by WHATABURGER RESTAURANTS LLC, a Texas limited liability company having an address at 300 Concord Plaza Drive, San Antonio, Texas 78216 ("Tenant"), in favor of \_\_\_\_\_, a \_\_\_\_\_ [("Lender")][("Purchaser")], and acknowledged by \_\_\_\_\_, a \_\_\_\_\_ ("Landlord").

1. Tenant and Landlord (or its predecessor in interest) entered into that certain Ground Lease Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the "Lease"), in connection with that certain premises commonly known as Whataburger Unit # \_\_\_\_\_, located at \_\_\_\_\_, \_\_\_\_\_, as more particularly described in the Lease (the "Leased Premises").
2. As of the date of this Certificate, the Lease has not been amended or modified and is in full force and effect. **\*\*OR\*\*** As of the date of this Certificate, the Lease is in full force and effect and has not been amended or modified, except pursuant to: \_\_\_\_\_.
3. As of the date of this Certificate, and to the best of Tenant's knowledge and belief, neither Landlord nor Tenant is in default in any respect under the terms of the Lease. Tenant has not given Landlord any notice of termination under the Lease or made any claim in writing against Landlord alleging Landlord's default under the Lease.
4. The commencement date of the primary term of the Lease was \_\_\_\_\_, 20\_\_\_\_, the rent commencement date was \_\_\_\_\_, 20\_\_\_\_ and the current term of the Lease is currently scheduled to expire on \_\_\_\_\_, 20\_\_\_\_, unless sooner terminated as provided in the Lease.
5. The Lease provides for \_\_\_\_\_ (\_\_\_\_) consecutive \_\_\_\_\_ (\_\_\_\_) year renewal options, as more particularly set forth therein.
6. Tenant is in possession of the Leased Premises.
7. The current monthly base or minimum rent under the Lease is \$ \_\_\_\_\_. No monthly base or minimum rent has been paid to Landlord in advance of the due date set forth in the Lease. As of the date

of this Certificate and to the best of Tenant's knowledge and belief, there are presently no offsets, defenses, counterclaims or credits against the rentals due under the Lease except as may otherwise be expressly provided by the terms of the Lease.

8. Tenant has not made a security deposit with Landlord.
9. Tenant has not assigned the Lease or any rights therein to any third party, and has not and is not subletting the Leased Premises, or any part thereof.
10. The undersigned is a duly appointed officer of the Tenant, is the incumbent in the office indicated, and is duly authorized to execute this Certificate on behalf of Tenant.
11. This Certificate shall inure to the benefit of [Lender][Purchaser] and Landlord and their respective successors and assigns, and shall be binding upon Tenant and Tenant's legal representatives, successors, and assigns.
12. Notices to the Tenant relating to the Lease or the Leased Premises shall be addressed to the address set forth in Section of the Lease.

The statements contained herein are not affirmative representations, warranties, covenants or waivers, but shall act solely to estop Tenant from asserting any claim or defense against [Lender][Purchaser] and/or Landlord if and when any of such parties succeed to Landlord's interest under the Lease, to the extent such claim or assertion is based upon facts now known to Tenant which are contrary to those contained herein, and provided that the party in question has acted in reasonable reliance upon such statements without knowledge of facts to the contrary. This Certificate shall not be deemed to amend or modify the Lease in any way.

All capitalized terms used herein and not otherwise expressly defined shall have the meanings ascribed to them in the Lease.

This Certificate shall not be effective, and neither [Lender][Purchaser] nor Landlord shall have any right to rely on the statements contained herein, until such time as this Certificate is fully executed by both Tenant and Landlord.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**TENANT:**

WHATABURGER RESTAURANTS LLC,  
a Texas limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Senior Vice President - Development

Acknowledged and agreed to by:

**LANDLORD:**

\_\_\_\_\_,'

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PT20M**  
MATERIAL RENDERING

STOREFRONT SYSTEM  
"PPG - UC51131XL SILVER"

KINGSPAN  
METAL PANEL  
"CHAMPAGNE GOLD"

PRE-FINISHED METAL PANEL  
"CHAMPAGNE GOLD"



ACME BRICK  
"DOESKIN"



ACME BRICK  
"PARK AVENUE"

# WHATABURGER®

NEQ HWY 98 AND LAVENDER LANE  
DAPHNE, AL 36526



10101 Reunion Place  
Suite 500  
San Antonio, TX 78216  
P 210. 886. 0644  
waltonsignage.com  
© 2017 WALTON ALL RIGHTS RESERVED

Client: WHATABURGER  
Address: NEQ HWY 98 AND LAVENDER LANE  
City/State: DAPHNE, AL 36526  
Sales: HOUSE Designer: IP  
Date: 09.03.20 PM LS

This is an original drawing created by Walton. It is submitted for your personal use, however, it shall at all times remain the property of Walton. It may be used in connection with the project being planned for you by Walton, but not otherwise. You are not authorized to show these drawings to anyone outside your organization, nor is it to be reproduced, used, copied or exhibited in any fashion.

Revision:  
R1) 09/04/20 Revision to sign C & G - IP

Signs will be manufactured with 120 or 277 Volts A/C. All Primary electrical service to the sign, and final connection thereof, is the responsibility of the buyer. All work is to be done in accordance with the purchase agreement attached hereto. In case of variance between the specifications of the purchase agreement and this drawing, the drawing shall prevail.

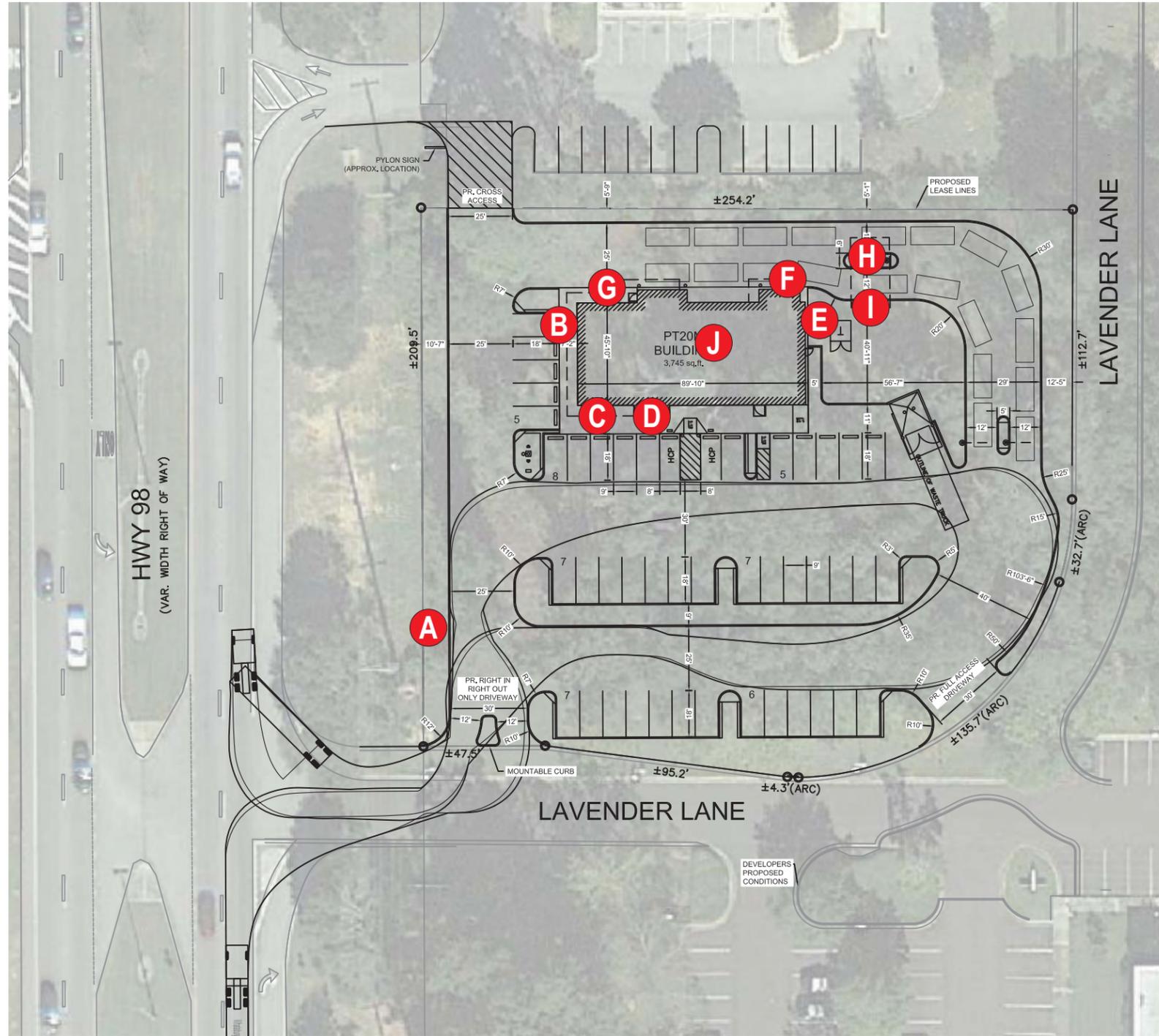
This sign is intended to be installed in accordance with the requirements of Article 600 of the National Electrical Code and/or other applicable local codes. This includes proper grounding and bonding of the sign.

PAGE SIZE: 11" x 17"

Approvals:

Sales:	Date:
P.M.:	Date:
Design:	Date:
Client:	Date:

**CID314327**  
Sheet: 1 of 12

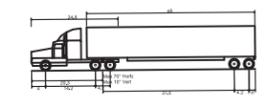


LOCATION MAP  
NOT TO SCALE



SCALE: 1" = 20'

TRUCK INFORMATION:



Whataburger Sigma 70"	63.00ft
Overall Length	63.00ft
Overall Width	8.50ft
Overall Body Height	14.25ft
Site Body Ground Clearance	8.50ft
Track Width	6.00ft
Lock-to-lock time	32.00ft
Curb to curb Turning Radius	32.00ft

COMMENTS:

1. LANDSCAPE REQUIREMENTS NEED TO BE DETERMINED DURING SITE INVESTIGATION.
2. STORM WATER REQUIREMENTS NEED TO BE DETERMINED DURING SITE INVESTIGATION.
3. THE DRIVEWAY LOCATIONS HAVE BEEN DICTATED BY THE CITY OF DAPHNE, AL.
4. THE RIGHT-IN RIGHT-OUT ONLY DRIVEWAY IS A REQUIREMENT OF THE CITY OF DAPHNE, AL.
5. THE PROPOSED CROSS ACCESS TO THE NORTH WILL REQUIRE CONSTRUCTION INTO THE NEIGHBORING LOT IN ORDER TO CONNECT TO THEIR EXISTING PAVEMENT.

SITE DATA

LOT AREA	=	62,368 S.F.	1.20 AC.
PARKS	=	45 (36 RECD @ 1 PER 100)	
CAR STACK	=	LINE A: 9' LINE B: 11'	

REVISIONS	DATE	DESCRIPTION
1	09/03/20	PER WORKFLOW COMMENTS

PROPOSED PT20M BUILDING TYPE  
NEQ HWY 98 & LAVENDER LANE  
DAPHNE, AL

THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTER REVIEW UNDER THE AUTHORITY OF TERRE & ROGERS, P.C. TEXAS REG. 000003. IT SHALL NOT BE USED FOR CONSTRUCTION, RECORDING OR PERMIT PURPOSES.

**WHATABURGER**  
300 CONCORD PLAZA DR.  
SAN ANTONIO, TEXAS  
210-476-6000 ZIP 78216

SHEET TITLE:  
CONCEPTUAL  
SITE PLAN

UNIT NO. --  
DATE: 3/18/2020  
SCALE: 1"= 30'  
DRAWN BY: ERP  
CHECKED BY: --

SHEET NO:  
CSP



SITE PLAN  
Scale: Not to Scale



Client: **WHATABURGER**  
Address: **NEQ HWY 98 AND LAVENDER LANE**  
City/State: **DAPHNE, AL 36526**  
Sales: **HOUSE** Designer: **IP**  
Date: **09.03.20** PM **LS**

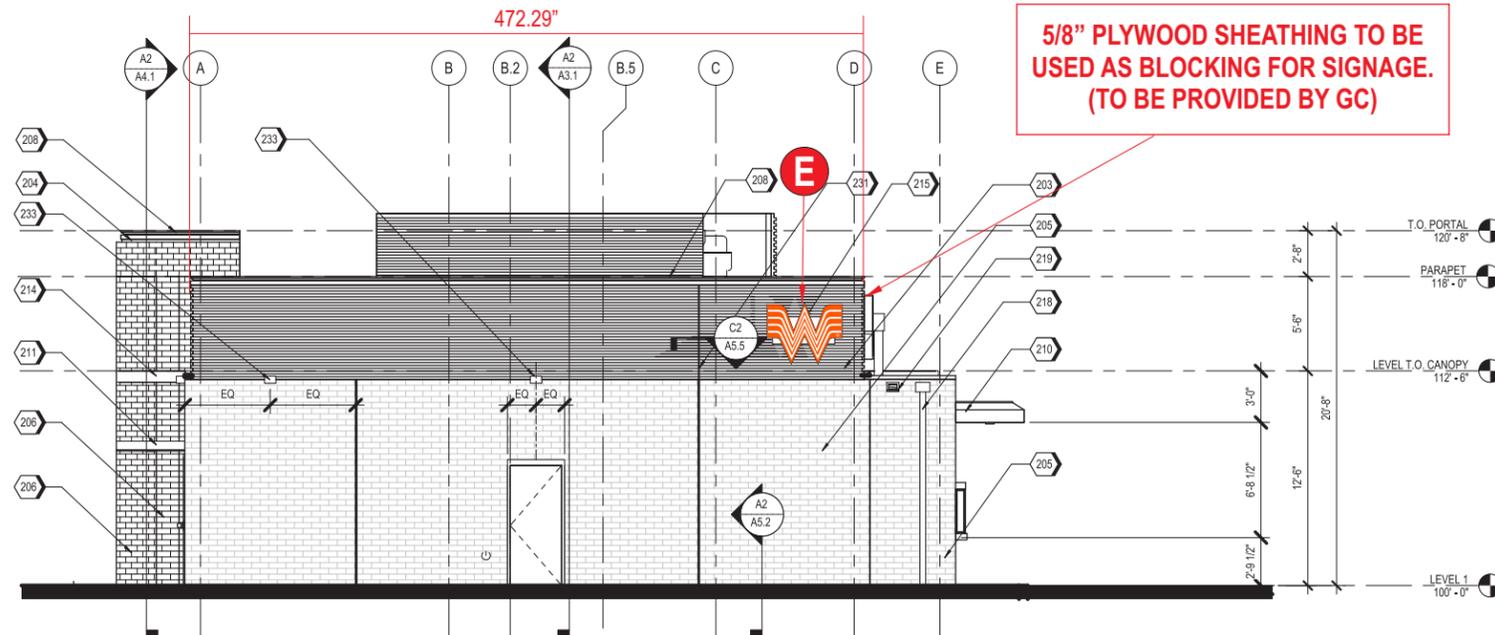
Revision:  
R1) 09/04/20 Revision to sign C & G - IP

Signs will be manufactured with 120 or 277 Volts A/C. All Primary electrical service to the sign, and final connection thereof, is the responsibility of the buyer. All work is to be done in accordance with the purchase agreement attached hereto. In case of variance between the specifications of the purchase agreement and this drawing, the drawing shall prevail.

This sign is intended to be installed in accordance with the requirements of Article 600 of the National Electrical Code and/or other applicable local codes. This includes proper grounding and bonding of the sign.

Approvals:  
Sales: \_\_\_\_\_ Date: \_\_\_\_\_  
P.M.: \_\_\_\_\_ Date: \_\_\_\_\_  
Design: \_\_\_\_\_ Date: \_\_\_\_\_  
Client: \_\_\_\_\_ Date: \_\_\_\_\_

**CID314327**  
102  
Sheet: 2 of 12



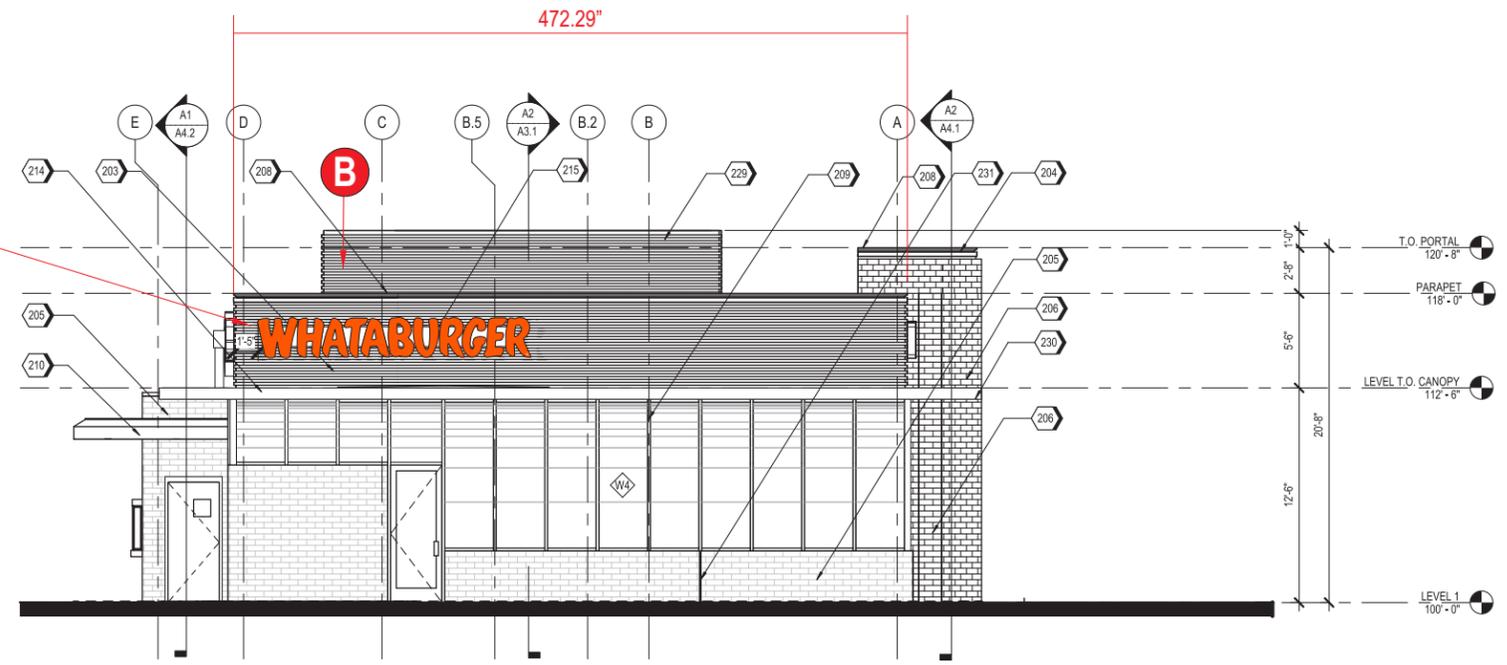
**ALLOWED 30% OF FRONT ELEVATION - 45'-10" X 18' X 30% = 246SF**

**SIGN B: 27" LETTERS - 37.5**  
**SIGN C: 27" LETTERS - 37.5**  
**SIGN D: 54" LOGO - 25.125**  
**SIGN E: 42" LOGO - 15.32**  
**SIGN F: 42" LOGO - 15.32**  
**SIGN G: 27" LETTERS - 37.5**

**TOTAL SF STANDARD - 168 SF**

**EAST ELEVATION**  
 Scale: 3/32" = 1'-0"

**5/8" PLYWOOD SHEATHING TO BE USED AS BLOCKING FOR SIGNAGE. (TO BE PROVIDED BY GC)**



**WEST ELEVATION**  
 Scale: 3/32" = 1'-0"



Client: **WHATABURGER**  
 Address: **NEQ HWY 98 AND LAVENDER LANE**  
 City/State: **DAPHNE, AL 36526**  
 Sales: **HOUSE** Designer: **IP**  
 Date: **09.03.20** PM **LS**

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Revision:  
 R1) 09/04/20 Revision to sign C & G - IP

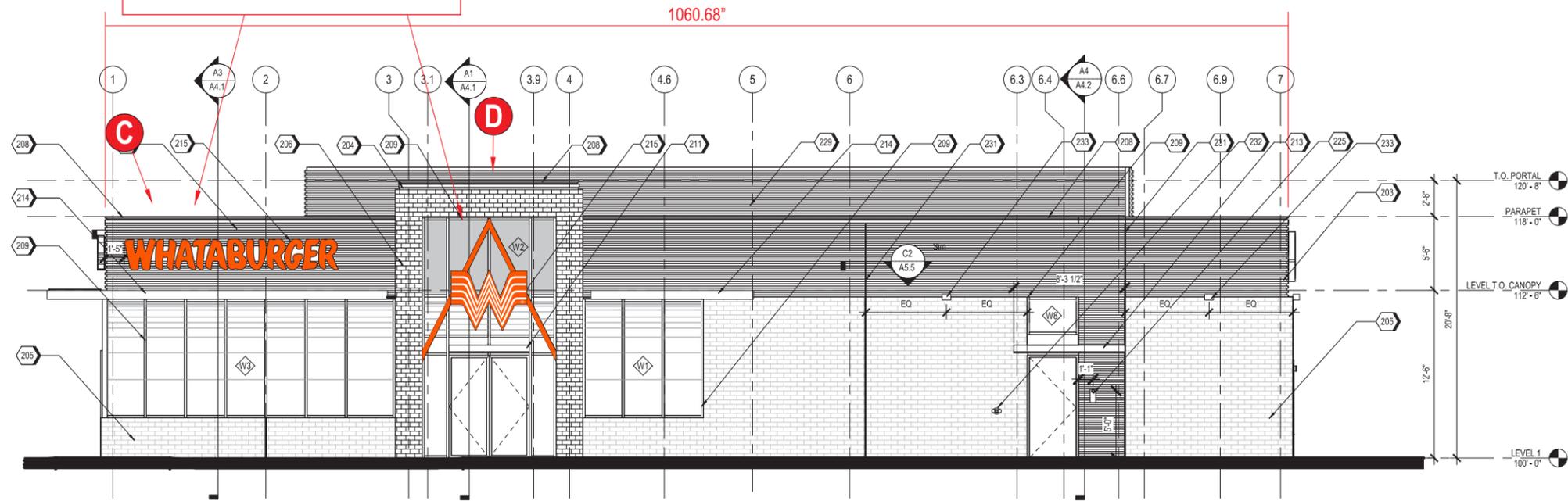
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**PAGE SIZE: 11" x 17"**

Approvals:  
 Sales: \_\_\_\_\_ Date: \_\_\_\_\_  
 P.M.: \_\_\_\_\_ Date: \_\_\_\_\_  
 Design: \_\_\_\_\_ Date: \_\_\_\_\_  
 Client: \_\_\_\_\_ Date: \_\_\_\_\_

5/8" PLYWOOD SHEATHING TO BE USED AS BLOCKING FOR SIGNAGE. (TO BE PROVIDED BY GC)



ALLOWED 30% OF FRONT ELEVATION - 45'-10" X 18' X 30% = 246SF

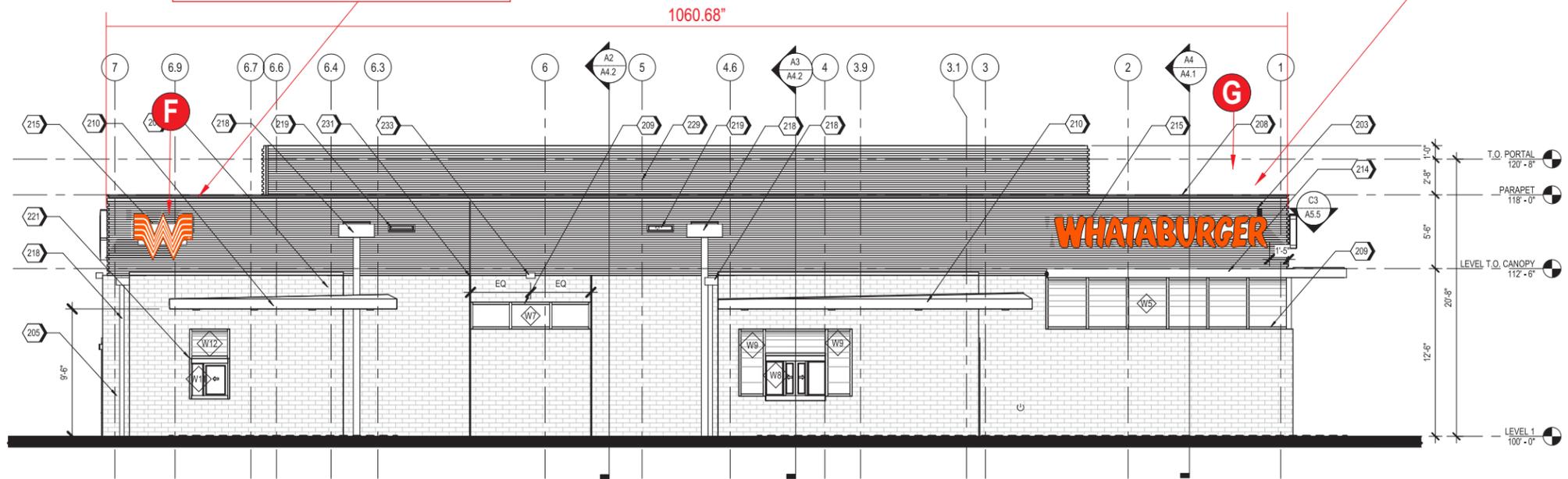
SIGN B: 27" LETTERS - 37.5  
 SIGN C: 27" LETTERS - 37.5  
 SIGN D: 54" LOGO - 25.125  
 SIGN E: 42" LOGO - 15.32  
 SIGN F: 42" LOGO - 15.32  
 SIGN G: 27" LETTERS - 37.5

TOTAL SF STANDARD - 168 SF

**SOUTH ELEVATION**  
 Scale: 3/32" = 1'-0"

5/8" PLYWOOD SHEATHING TO BE USED AS BLOCKING FOR SIGNAGE. (TO BE PROVIDED BY GC)

5/8" PLYWOOD SHEATHING TO BE USED AS BLOCKING FOR SIGNAGE. (TO BE PROVIDED BY GC)



**NORTH ELEVATION**  
 Scale: 3/32" = 1'-0"



Client: **WHATABURGER**  
 Address: **NEQ HWY 98 AND LAVENDER LANE**  
 City/State: **DAPHNE, AL 36526**  
 Sales: **HOUSE**  
 Date: **09.03.20**  
 Designer: **IP**  
 PM: **LS**

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Revision:  
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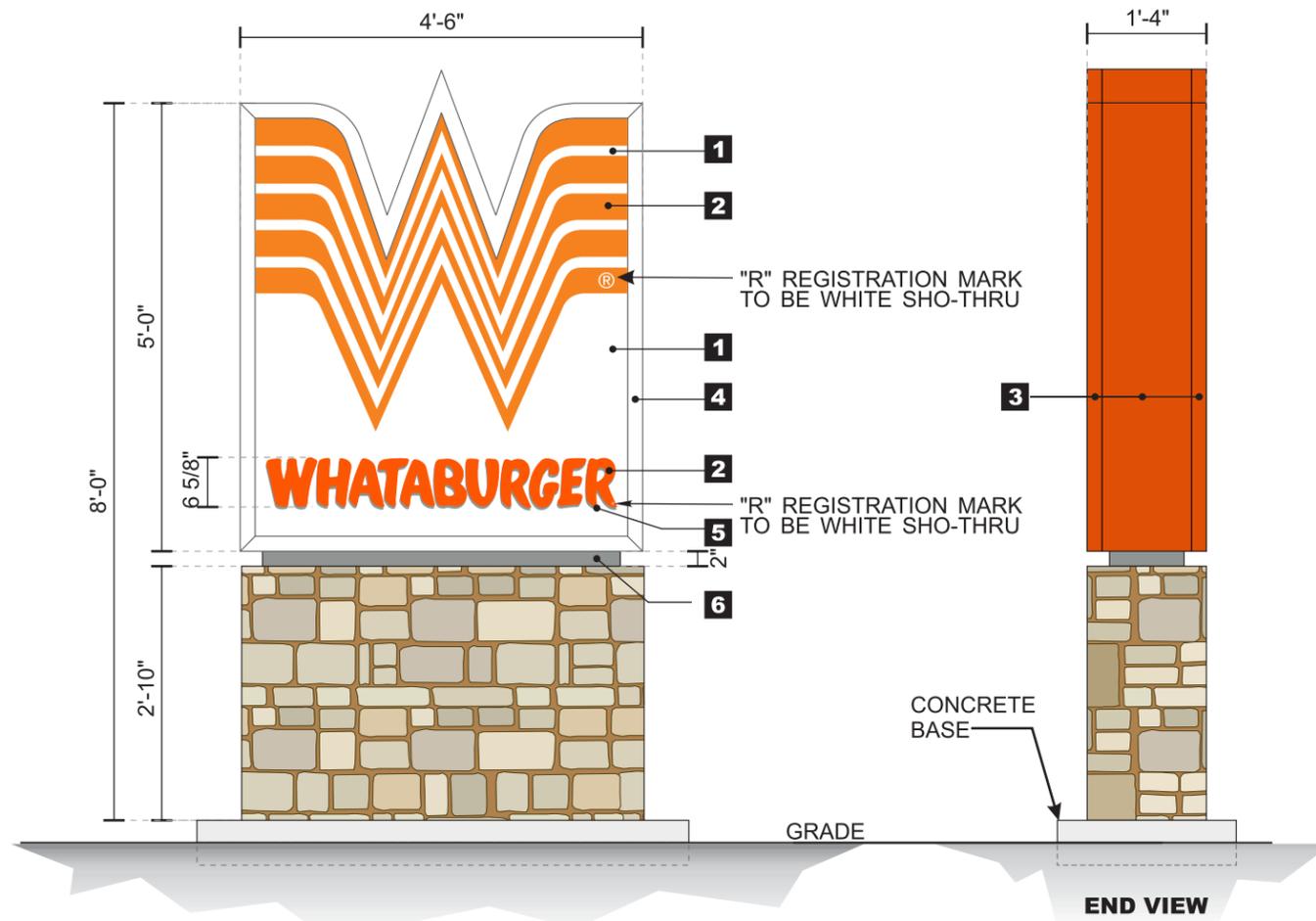
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PAGE SIZE: 11" x 17"

Approvals:  
 Sales: \_\_\_\_\_ Date: \_\_\_\_\_  
 P.M.: \_\_\_\_\_ Date: \_\_\_\_\_  
 Design: \_\_\_\_\_ Date: \_\_\_\_\_  
 Client: \_\_\_\_\_ Date: \_\_\_\_\_

**CID314327**  
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 Sheet: 4 of 12



**A D/F MONUMENT 5 FT CABINET** SCALE: 1/2"=1'-0"

22.50 SQ. FT.  
CABINET ONLY

D/F ALUM. CABINET - .063" FILLERS WITH 2" RETAINERS.  
SG ACRYLIC FACES WITH APPLIED 1ST SURFACE 3M VINYL GRAPHICS.

INTERNALLY ILLUMINATED WITH WHITE L.E.D.  
DISPLAY TO HAVE ON/OFF SERVICE SWITCHES

2" ALUM. REVEAL

ONE STEEL SUPPORT WITH CONCRETE PIER

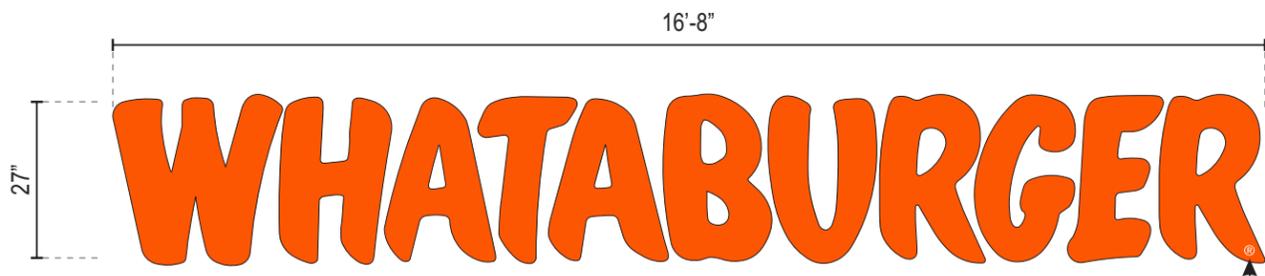
CONCRETE PAD AND MASONRY BY G.C.  
STONE VENEER TO MATCH BUILDING STONE.

U.L. LABELS REQUIRED. LABELS TO BE ATTACHED IN VISIBLE  
AREA, DIRECTLY BELOW ON/OFF SWITCH

**COLOR SCHEDULE**

- 1** 3/16" WHITE SG ACRYLIC FACES
- 2** 3M 3630-44 ORANGE VINYL
- 3** P.T.M. P.M.S. 1665C ORANGE.
- 4** SPRAYLAT MARK 1: SM-102S SATIN WHITE
- 5** 3M 3630-51 SILVER GRAY VINYL
- 6** P.T.M. P.M.S. 430 GRAY

**NOTE:** STEEL AND FOUNDATION FOR SIGN TO BE DETERMINED BASED ON SITE SPECIFIC BASIS, LOCAL SOIL CONDITIONS AND WIND LOAD REQUIREMENTS.



WHITE OPAQUE VINYL ®

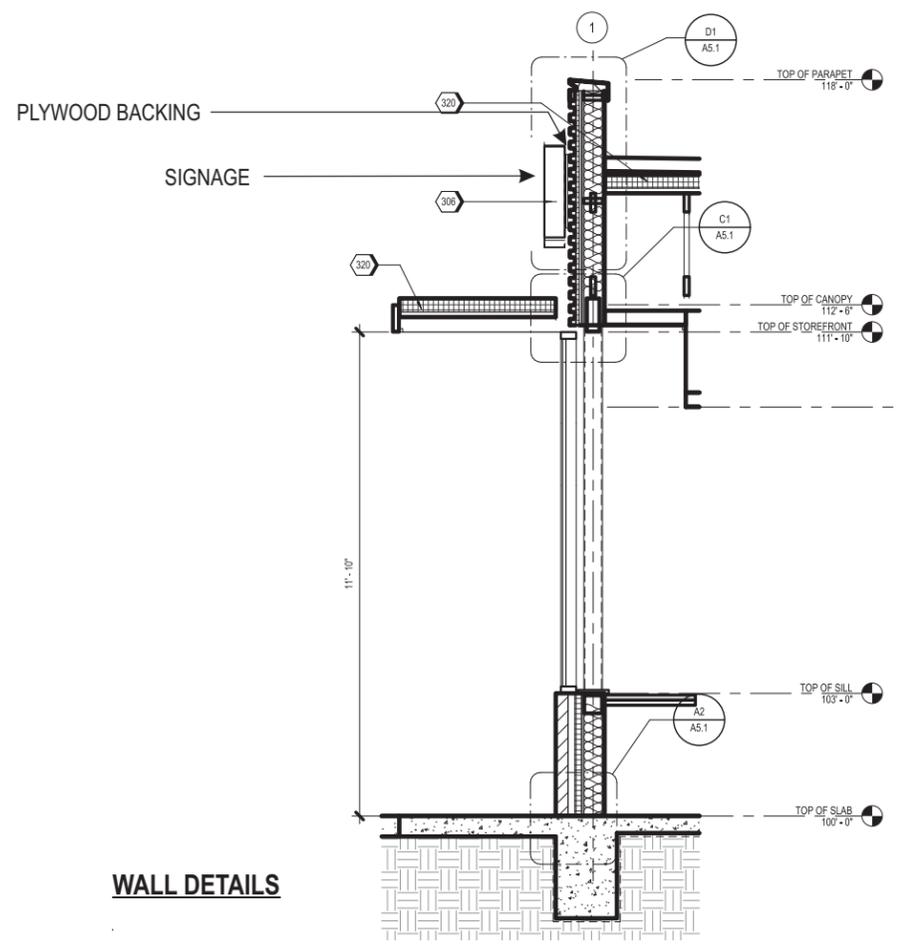
**B C G** 27" PCL - RCWY - 37.5 SQ. FT.  
Scale: 3/8" = 1'-0"

**SCOPE OF WORK:**

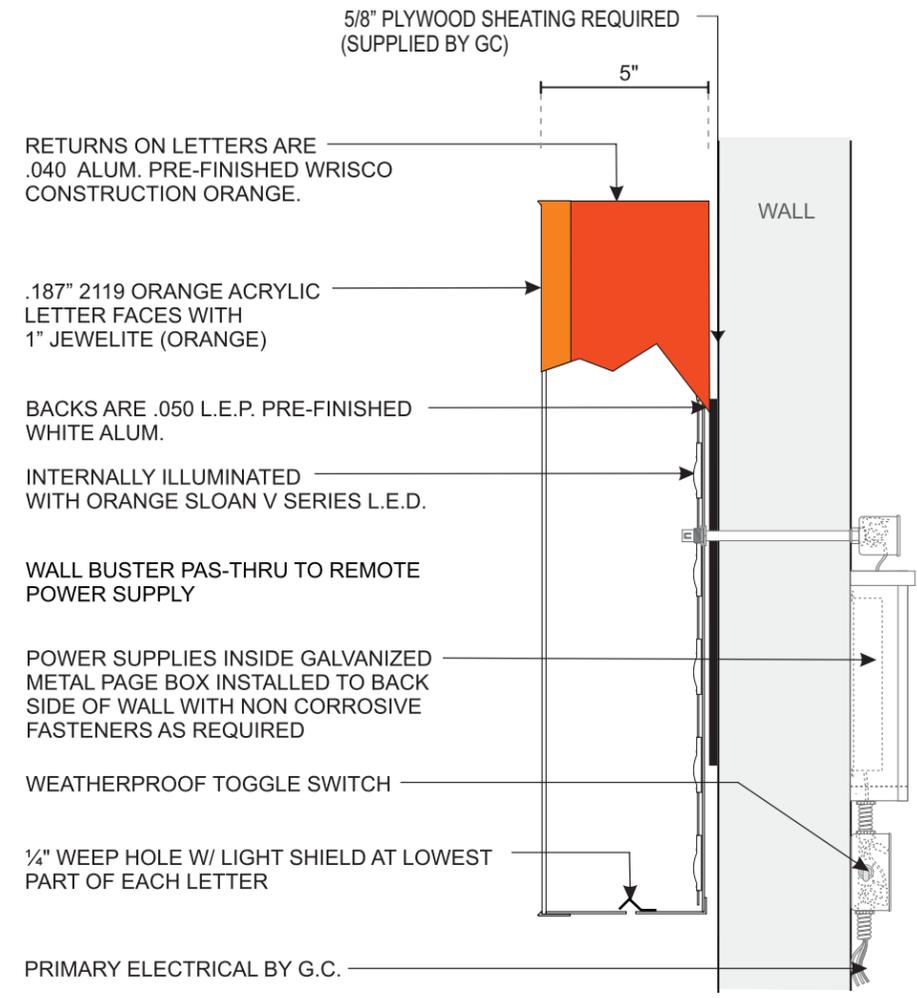
MANUFACTURE AND INSTALL (1) ONE SETS OF ILLUMINATED LETTERS W/ REMOTE POWER SUPPLIES

**GENERAL SPECIFICATIONS:**

DISPLAY TO HAVE ON/OFF SERVICE SWITCHES ON TRANSFORMER BOXES



**WALL DETAILS**



**LETTER SECTION**

N.T.S.



Client: **WHATABURGER**  
Address: **NEQ HWY 98 AND LAVENDER LANE**  
City/State: **DAPHNE, AL 36526**  
Sales: **HOUSE** Designer: **IP**  
Date: **09.03.20** PM **LS**

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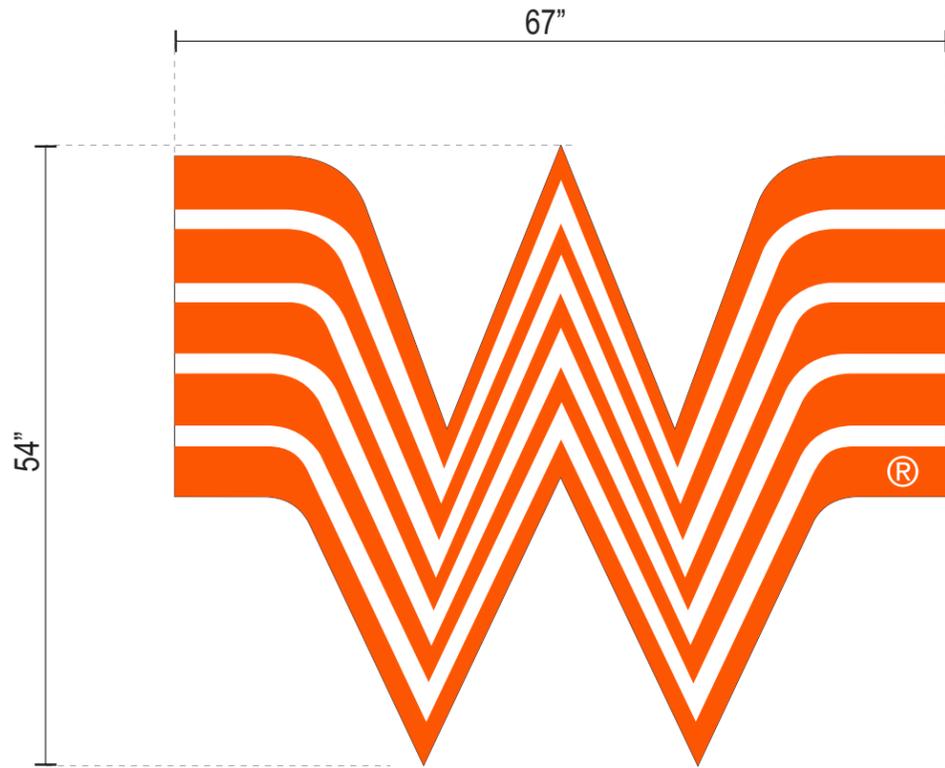
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Approvals:  
Sales: \_\_\_\_\_ Date: \_\_\_\_\_  
P.M.: \_\_\_\_\_ Date: \_\_\_\_\_  
Design: \_\_\_\_\_ Date: \_\_\_\_\_  
Client: \_\_\_\_\_ Date: \_\_\_\_\_

PAGE SIZE: 11" x 17"

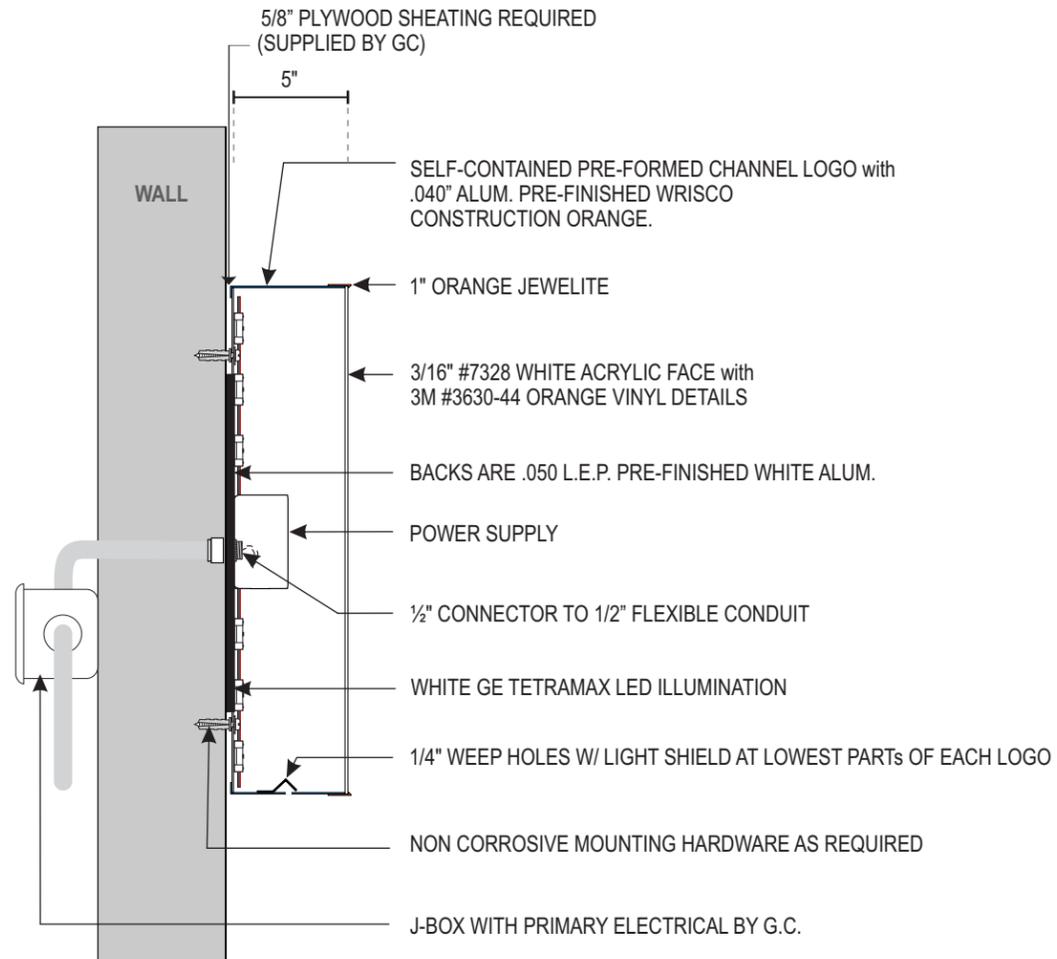
**CID314327**  
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Sheet: 6 of 12



**D** 54" PCL - LOGO - 25.13 SQ. FT.  
Scale: 3/4" = 1'-0"

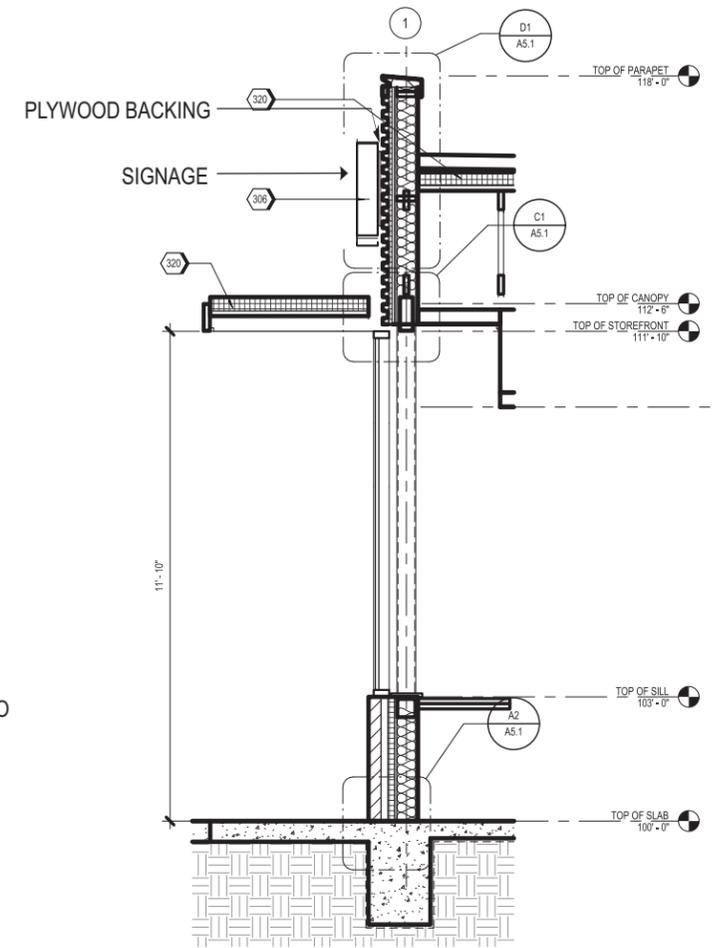
**SCOPE OF WORK:**

MANUFACTURE AND INSTALL (1) ONE SELF-CONTAINED LOGO

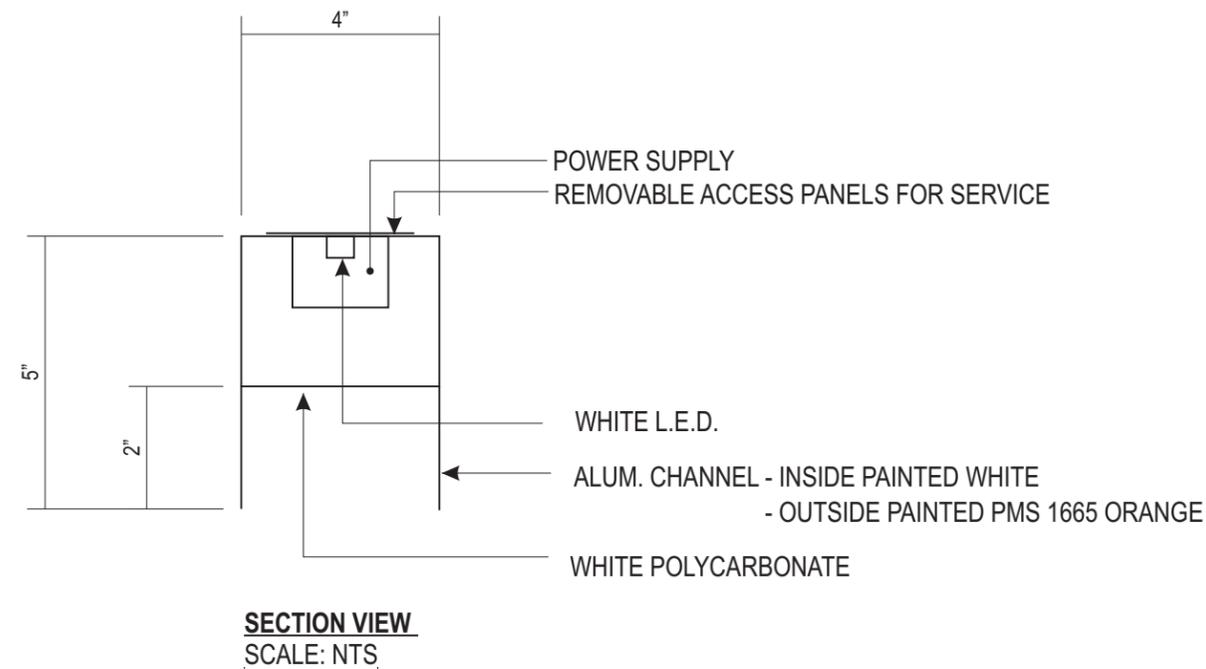
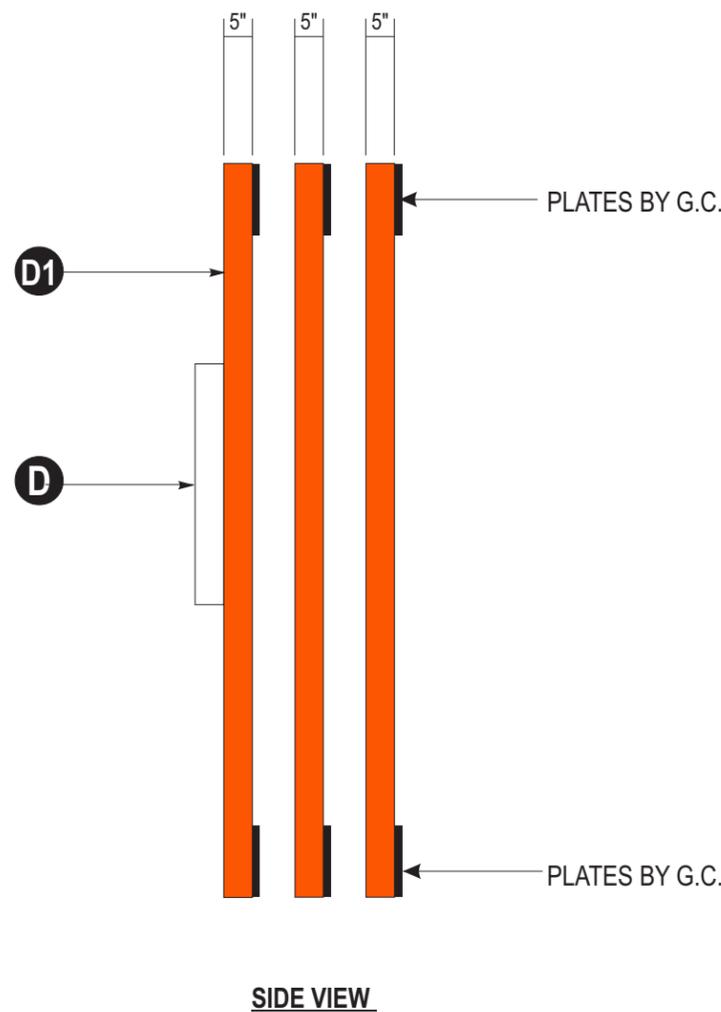
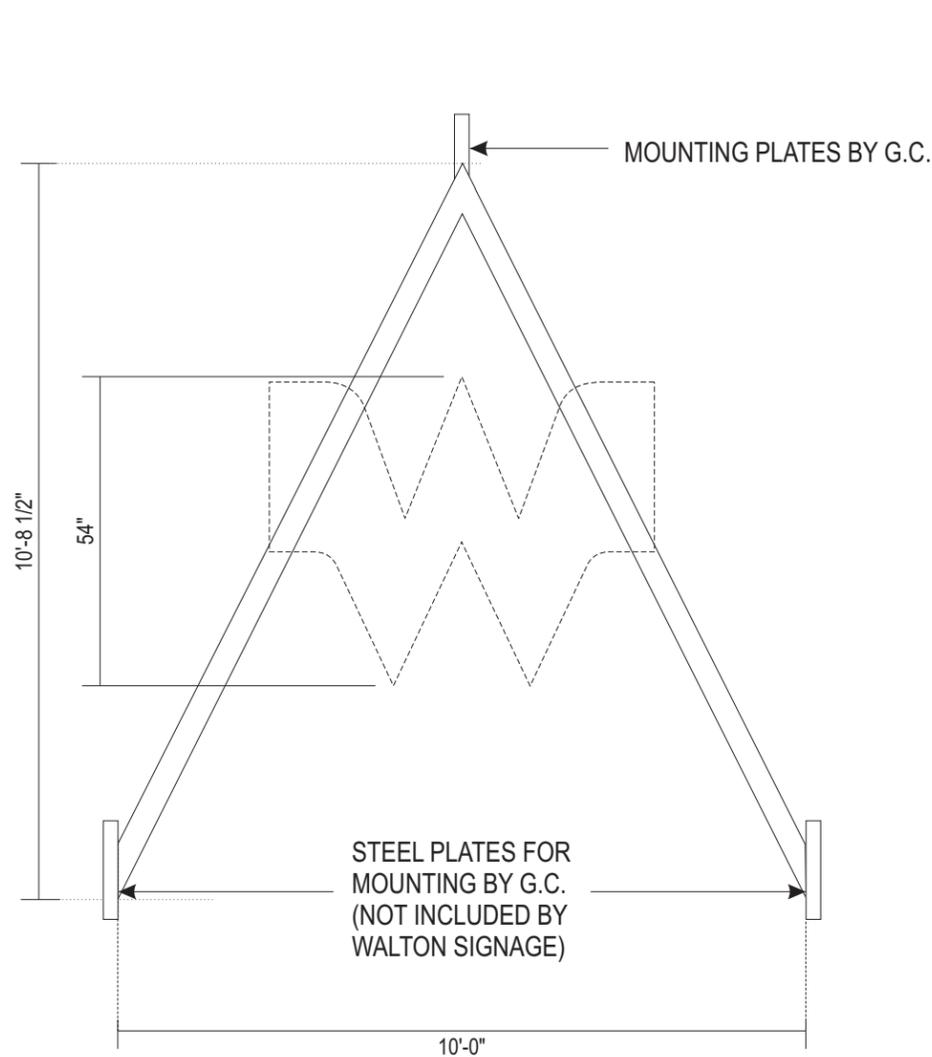


**SELF-CONTAINED LOGO SECTION**

Scale: Not to Scale



**WALL DETAILS**

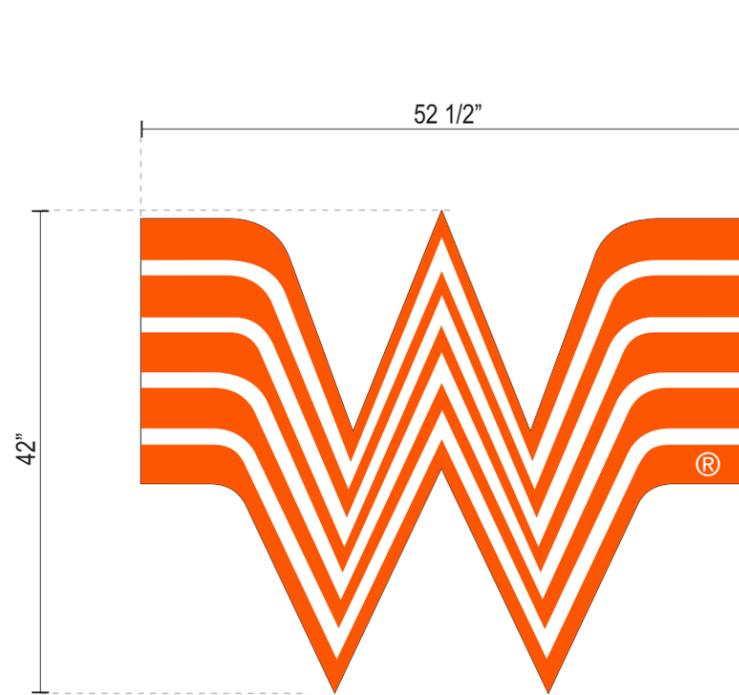


**D1 LIT CHANNELS**  
Scale: 3/8" = 1'-0"

**SCOPE OF WORK:**

THREE (3) REQUIRED - MANUFACTURE & INSTALL

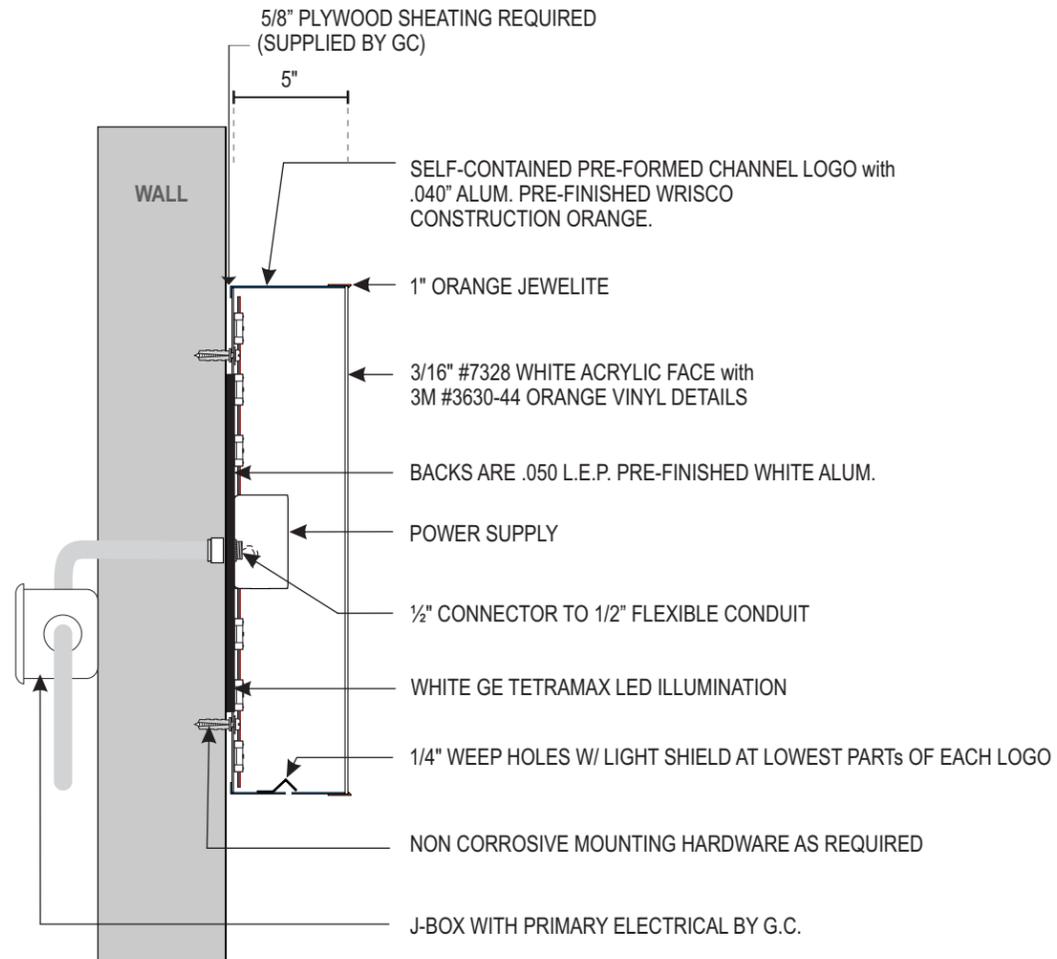
SURVEY NOTE:  
DIMENSIONS HEREIN ARE APPROXIMATE.  
VERIFICATION REQUIRED PRIOR TO  
MANUFACTURING.



**E F** 42" PCL - LOGO - 15.32 SQ. FT.  
Scale: 3/4" = 1'-0"

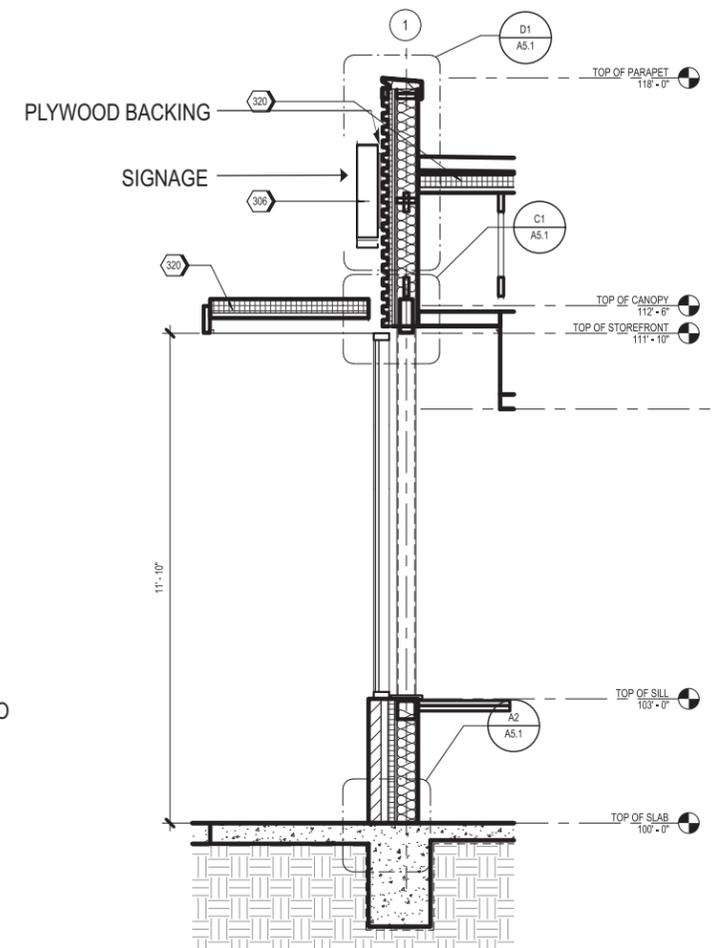
**SCOPE OF WORK:**

MANUFACTURE AND INSTALL (1) ONE SELF-CONTAINED LOGO



**SELF-CONTAINED LOGO SECTION**

Scale: Not to Scale



**WALL DETAILS**

Revision:

R1) 09/04/20 Revision to sign C & G - IP

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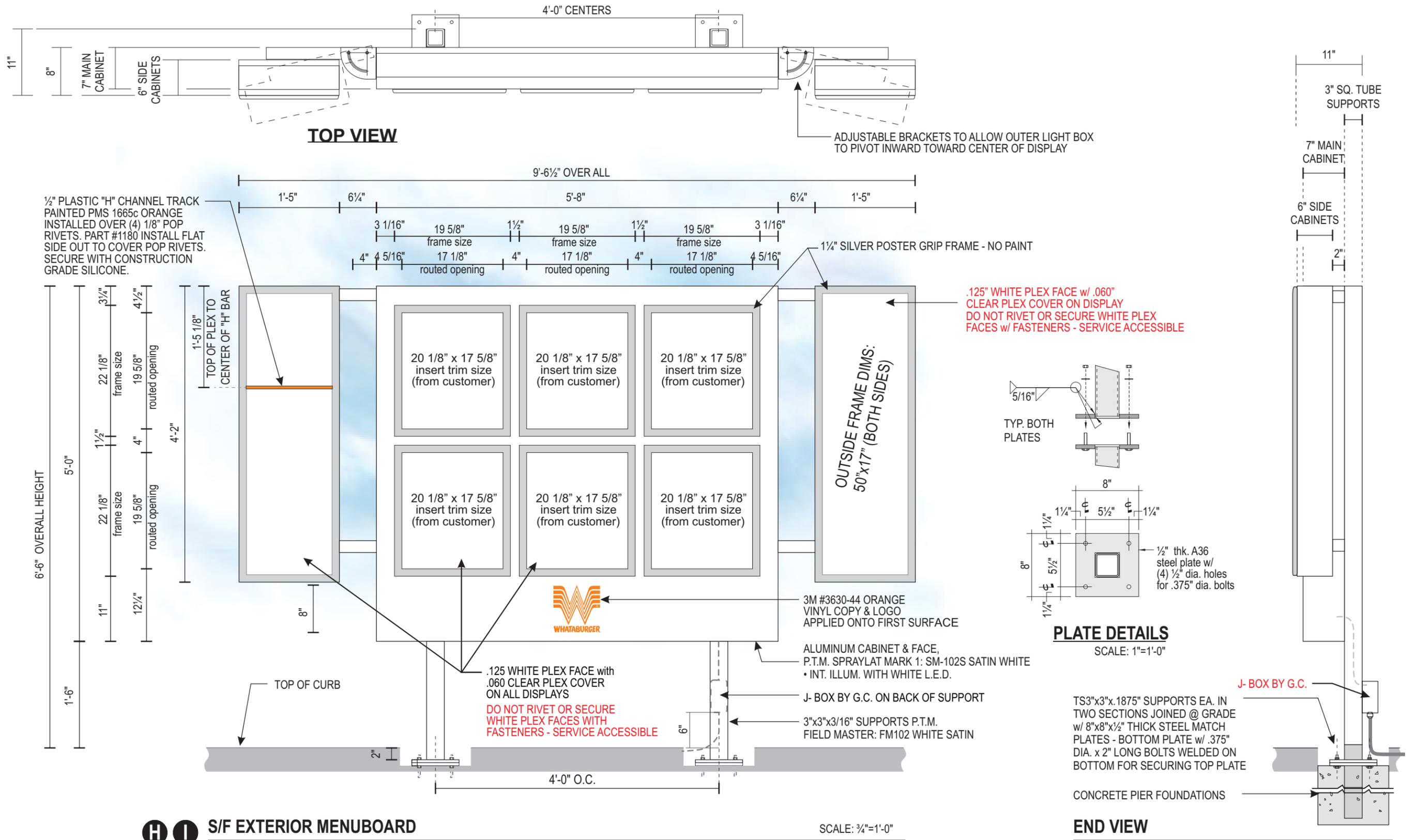
PAGE SIZE: 11" x 17"

Approvals:

Sales: \_\_\_\_\_ Date: \_\_\_\_\_  
P.M.: \_\_\_\_\_ Date: \_\_\_\_\_  
Design: \_\_\_\_\_ Date: \_\_\_\_\_  
Client: \_\_\_\_\_ Date: \_\_\_\_\_

**CID314327**

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Sheet: 9 of 12



**H I S/F EXTERIOR MENUBOARD**

SCALE: 3/4"=1'-0"

46.66 SQ. FT.

**END VIEW**



Client: **WHATABURGER**  
 Address: **NEQ HWY 98 AND LAVENDER LANE**  
 City/State: **DAPHNE, AL 36526**  
 Sales: **HOUSE** Designer: **IP**  
 Date: **09.03.20** PM **LS**

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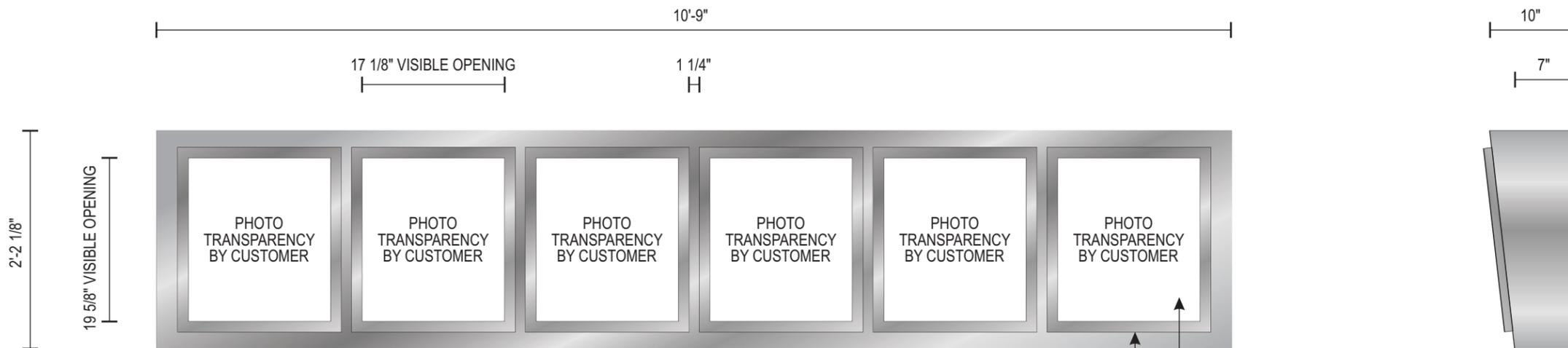
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 Sales: \_\_\_\_\_ Date: \_\_\_\_\_  
 P.M.: \_\_\_\_\_ Date: \_\_\_\_\_  
 Design: \_\_\_\_\_ Date: \_\_\_\_\_  
 Client: \_\_\_\_\_ Date: \_\_\_\_\_

**CID314327**  
 Sheet: 10 of 12



ON/OFF SWITCH LOCATED INSIDE THE DISPLAY NEAR THE POWER SUPPLIES ON THE LEFT END (REMOVE THE FACE TO ACCESS THE SWITCH).

**J 6 PANEL S/F INTERIOR MENUBOARD**

Scale: 3/4"=1'-0"

(1) REQUIRED - MANUFACTURE AND INSTALL

24.20 SQ. FT.

- FABRICATED 18 GA. BRUSHED (HORIZONTAL GRAIN) STAINLESS STEEL CABINET AND RETURNS, with .080 ALUMINUM BACK PAINTED WHITE.
- SIX (6) ROUTED OUT MENU OPENINGS with 1 1/4" POSTER GRIP RETAINER FRAMES ALUM. SATIN FINISH.
- .125" 2447 WHITE DIFFUSER ACRYLIC BACK PANEL AND .020" CLEAR LEXAN PROTECTIVE COVER IN POSTER GRIP FRAME. **NOTE:** SERVICE ACCESS THROUGH DIFFUSER FACE - DO NOT RIVET OR SECURE DIFFUSER ACRYLIC WITH FASTENERS.
- INTERNALLY ILLUMINATED WITH WHITE L.E.D.
- FILE ALL SHARP FINISHED EDGES ON ANY EXTERIOR JOINTS

**END VIEW**

**NOTE: DELIVER TO SITE ONLY FOR INSTALL BY OTHERS.**

**EXCERPTS FROM THE MINUTES OF A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA HELD ON OCTOBER 5, 2020**

The City Council of the City of Daphne, Alabama met at the City Hall in the City of Daphne on October 5, 2020 at 6:30 p.m., Central Time. The following members of the City Council of the City of Daphne, Alabama were:

PRESENT

ABSENT

\_\_\_\_\_ acted as Chairman of the meeting and Candace G. Antinarella, City Clerk, acted as Clerk of the meeting. The chairman stated that a quorum was present and declared the meeting open for the transaction of business.

\* \* \* \* \*

The Chairman then stated that it would be appropriate to consider a resolution providing for the early call and redemption of certain of the City's outstanding debt obligations. The following resolution and order was thereupon introduced in writing by Councilmember \_\_\_\_\_:

**CITY OF DAPHNE  
RESOLUTION 2020-57**

**A RESOLUTION CALLING FOR THE REDEMPTION OF THE CITY'S GENERAL  
OBLIGATION WARRANT, SERIES 2017**

**BE IT RESOLVED** by the City Council of the City of Daphne, Alabama (the "Council"), as follows:

**Section 1. Findings of Fact.** The Council has determined and hereby finds and declares that the following facts are true and correct:

(a) The City has heretofore issued, pursuant to an Ordinance adopted by the Council on April 20, 2017 (the "2017 Ordinance"), its City of Daphne General Obligation Warrant, Series 2017, dated April 14, 2017, originally issued in the aggregate principal amount of \$12,000,000 (the "Series 2017 Warrant").

(b) The Series 2017 Warrant are currently outstanding in the aggregate principal amount of \$11,556,000.

(c) The City desires to refund all of the outstanding Series 2017 Warrant.

(d) The City is not in default in the payment of principal of or interest on the Series 2017 Warrant or under the 2017 Ordinance.

**Section 2. Call for Redemption of the Series 2017 Warrants.** Acting pursuant to the provisions of the Series 2017 Warrant and the 2017 Ordinance, the City does hereby elect to redeem and pay, and does hereby call for redemption and payment on November 5, 2020 (the "2020 Call Date") \$11,556,000 in aggregate principal amount of the Series 2017 Warrant (being all of the Series 2017 Warrant outstanding), the redemption of which shall be effected at a redemption price equal to 100% of the principal amount of Series 2017 Warrant called for redemption plus accrued interest thereon to the 2020 Call Date.

**Section 3. Provisions for Notice for the Series 2017 Warrants.** The Mayor of the City is hereby directed to cause written notice of such redemption and prepayment to be given in the manner and at the time prescribed in the 2017 Ordinance.

**Section 4. Authorization to Call.** The Mayor of the City, the City Clerk of the City and the City Treasurer of the City are each hereby authorized and directed to take or cause to be taken, in the name and behalf of the City, all of the actions required by the provisions of the 2017 Ordinance under which the Series 2017 Warrant was issued to be taken in order to effect the redemption of the Series 2017 Warrant as herein called for.

Councilmember \_\_\_\_\_ moved that the forgoing resolution be adopted and spread upon the minutes of this meeting, which motion was seconded by Councilmember \_\_\_\_\_, and, on roll call the following vote was registered:

YEAS

NAYS

The Chairman thereupon announced that said resolution had been carried by \_\_\_\_\_ vote of the Council present.

**ADOPTED AND APPROVE BY THE CITY COUNCIL OF THE CITY OF DAPHNE,  
ALABAMA** this 5th day of October, 2020.

\_\_\_\_\_  
**Robin LeJeune, Council President**

\_\_\_\_\_  
**Dane Haygood, Mayor**

[SEAL]

**ATTEST:**

\_\_\_\_\_  
**Candace G. Antinarella, City Clerk**

**CITY OF DAPHNE, ALABAMA  
ORDINANCE 2020-33**

**DRAINAGE IMPROVEMENTS ENGINEERING FEES FOR: NORTH MAIN STREET  
FIRE STATION AND LAKESHORE DRIVE**

**WHEREAS**, Ordinance 2020-32 approved and adopted the Fiscal Year 2021 Budget on September 21, 2019; and

**WHEREAS**, subsequent to the adoption of the Fiscal Year 2021 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2021 budget; and

**WHEREAS**, Drainage improvements at North Main Street Fire Station and Lakeshore Drive are being reviewed; and

**WHEREAS**, engineering services in the amount of \$49,400 (Survey, Design & Letting) is required to evaluate the project for drainage improvements; and

**WHEREAS**, the City Council has determined it to be in the best interest of the City to evaluate these projects.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, that**

1. Funds from the General Fund are hereby appropriated and made a part of the Fiscal Year 2020 budget in the amount of \$9,400 for engineering for the North Main Street Fire Station Drainage project
2. Funds in the amount of \$40,000 for engineering for the Lakeshore Drive Drainage Improvements project
3. The Mayor is hereby authorized to execute any and all documents required in order for the City of Daphne to participate in such projects.

**APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2020.**

\_\_\_\_\_  
**Dane Haygood, Mayor**

ATTEST:

\_\_\_\_\_  
**Candace G. Antinarella, CMC, City Clerk**

**CITY OF DAPHNE, ALABAMA  
ORDINANCE 2020-34**

**ADDITIONAL APPROPRIATION OF FUNDS TO RESOLVE A PENDING CLAIM**

**WHEREAS**, Ordinance 2019-43 approved and adopted the Fiscal Year 2020 Budget on October 1, 2019; and

**WHEREAS**, subsequent to the adoption of the Fiscal Year 2020 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2020 budget; and

**WHEREAS**, an additional appropriation is needed for the resolution of the claim of Nathan Cox which is not covered by Alabama Municipal Insurance Corporation.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA**, that monies from the **General Fund** in the amount of **\$15,000.00** are hereby appropriated for the above-stated purpose and made a part of the Fiscal Year 2020 Budget and to authorize the Mayor to execute such settlement documents as necessary to conclude the pending claim.

**APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS \_\_day of October, 2020.**

\_\_\_\_\_  
**Dane Haygood, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Candace G. Antinarella, CMC, City Clerk**

\* \* \* \* \*

The Chairman then stated that it would be appropriate to consider the issuance of the City's General Obligation Refunding Warrants, Series 2020-A (Bank Qualified) (the "Series 2020-A Warrants"), in conjunction with the City's General Obligation Refunding Warrants, Series 2020-B, for the purpose of refunding certain of the City's outstanding general obligation indebtedness and paying the expenses of issuing the Series 2020-A Warrants. The following ordinance was thereupon introduced in writing by Councilmember \_\_\_\_\_:

**ORDINANCE NO. 2020-35**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF  
GENERAL OBLIGATION REFUNDING  
WARRANTS, SERIES 2020-A**

**BE IT ORDAINED** by the City Council of the City of Daphne, Alabama, as follows:

**ARTICLE I**

**DEFINITIONS, USE OF WORDS AND  
PHRASES, AND FINDINGS BY THE CITY**

**Section 1.1 Definitions.** The following words and phrases and others evidently intended as the equivalent thereof shall, in the absence of clear implication herein otherwise, be given the following respective interpretations:

“**Bank**” means The Bank of New York Mellon Trust Company, N.A., in its role as Warrant Registrar and Paying Agent.

“**Business Day**” means any day other than a Saturday, Sunday or day on which banking institutions are required or authorized to close in the city in which the designated corporate trust agency office of the Bank is located, or on which the Federal Reserve Bank is closed.

“**City**” means the municipal corporation in the State of Alabama known as the City of Daphne, Alabama, as it now exists, and any political subdivision resulting from any merger or consolidation thereof with any other political subdivision.

“**City Clerk**” means the city clerk of the City, or any person acting in such capacity for purposes of the issuance of the Warrants.

“**Code**” means the Internal Revenue Code of 1986 as amended.

“**Council**” or “**City Council**” means the governing body of the City as from time to time constituted.

“**Government Obligations**” means direct obligations of the United States of America and obligations unconditionally guaranteed by the United States of America.

“**Interest Payment Date**” means, with respect to the Warrants, any January 1 or July 1, prior to payment thereof.

**“Overdue Interest”** means interest due but not paid on the Interest Payment Date on which such interest is required to be paid.

**“Principal Payment Date”** means, when used with respect to any Warrant, the date specified in such Warrant as the fixed date on which the principal of such Warrant is due and payable.

**“Record Date”** means, as to any Interest Payment Date, the December 15 or June 15 immediately preceding such Interest Payment Date.

**“Redemption Date”** means the date for redemption of the Warrants determined pursuant to the terms of this Ordinance and provided in the notice provided for in Section 5.2.

**“Redemption Price”** means the price for redemption of the Warrants determined pursuant to the terms of this Ordinance and provided in the notice provided for in Section 5.2.

**“Refunded Warrants”** shall mean the Series 2017 Warrants, with a portion of the Series 2017 Warrants being refunded by the Series 2020-A Warrants, and with the balance of the Series 2017 Warrants being refunded by the Series 2020-B Warrants.

**“Securities Depository”** has the meaning given that term in Section 3.5 hereof.

**“Series 2017 Warrants”** means the City’s General Obligation Warrant, Series 2017 dated April 14, 2017, originally issued in the aggregate principal amount of \$12,000,000.

**“Series 2020-B Warrants”** has the meaning given that term in Section 1.3(d) hereof.

**“Treasurer”** shall mean the treasurer or any assistant treasurer of the City.

**“Warrant Authorizing Law”** means Section 2, Chapter 47 of Title 11 and Section 4, Chapter 81 of Title 11 Code of Alabama, 1975, as amended.

**“Warrant Fund”** means the special account created pursuant to Section 8.2 hereof.

**“Warrant Holder”** or **“Holder”** means the registered holder, from time to time, of any of the Warrants.

**“Warrants”** unless otherwise indicated, means the City's General Obligation Refunding Warrants, Series 2020-A (Bank Qualified), authenticated and delivered pursuant to this ordinance, and as more particularly described in Article II hereof and issued hereunder.

**Section 1.2 Use of Words and Phrases.** The following provisions shall be applied wherever appropriate herein:

Whenever used herein, any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

"Hereby", "herein", "hereinafter", "hereof", "hereunder" and other equivalent words refer to this Ordinance as a whole and not solely to any particular portion thereof in which any such word is used.

The definitions set forth in Section 1.1 hereof shall be deemed applicable whether the words defined are herein used in the singular or plural.

**Section 1.3 Findings of Council.** Having made due and proper investigation of the matters hereinafter referred to, the Council hereby finds and determines:

- (a) The City has heretofore issued the Series 2017 Warrant pursuant to an Ordinance adopted by the Council on April 20, 2017 (the "2017 Ordinance").
- (b) The City is not in default on the payment of the principal of and the interest on the Series 2017 Warrants.
- (c) By a resolution previously adopted, the City has called all of the outstanding Series 2017 Warrants for redemption.
- (d) Contemporaneously with the issuance of the Series 2020-A Warrants, the City will issue its General Obligation Warrants, Series 2020-B (Federally Taxable) (the "Series 2020-B Warrants") which, together with the Series 2020-A Warrants, will provide funds sufficient to refund the Refunded Warrants.
- (e) Pursuant to the Warrant Authorizing Law the City is authorized to issue its warrants, in order to refund outstanding indebtedness of the City.
- (f) It is necessary, advisable and in the interest of the public that the City issue the Warrants to refund the Refunded Warrants and to pay costs of issuance and sale of such Warrants.
- (g) Neither the City nor any "subordinate entity" or "on behalf of issuer", as such terms are used in Section 265(b) of the Internal Revenue Code of 1986, as amended, has issued in 2020, or expects to issue within the remainder of 2020, tax-exempt obligations in an amount in excess of \$10,000,000.

## ARTICLE II

### AUTHORIZATION, DESCRIPTION, EXECUTION, PAYMENT AND FORM OF THE WARRANTS

**Section 2.1 Authorization of the Warrants.** Pursuant to the applicable provisions of the constitution and laws of the State of Alabama, and for the purposes of refunding all of the Refunded Warrants and paying the costs of issuance thereof, there is hereby authorized to be issued by the City a series of warrants entitled “General Obligation Refunding Warrants, Series 2020-A” (herein called the “Warrants”).

#### **Section 2.2 Description of the Warrants.**

- (a) Subject to Section 9.3, the aggregate principal amount of the Warrants that may be authenticated and delivered and outstanding shall be as described in the Definitive Terms Certificate.
- (b) The Warrants shall be issued only in fully registered form, without coupons, shall be dated as the date of their delivery, shall be issued in principal amounts of \$5,000 or any integral multiple thereof, and shall be numbered from R-1 upwards in the order of their issuance and delivery.
- (c) The Warrants shall be dated as of the date set forth in the Definitive Terms Certificate and mature on July 1 in the years more particularly described in the Definitive Terms Certificate. Subject to Section 9.3, the principal amount of the Warrants maturing on each Principal Payment Date and the applicable rate of interest for the Warrants of each maturity shall be set forth in the Definitive Terms Certificate.
- (d) The Warrants shall bear interest from the date of their delivery (or in the case of a Warrant registered in the name of a Holder after the date of their delivery from the Interest Payment Date next preceding the date of such registration or, if the date of such registration is an Interest Payment Date, from the date of registration) at the rates set forth in the Definitive Terms Certificate (calculated on the basis of a 360-day year of twelve 30-day months), payable on each January 1 and July 1 until payment of the principal amount thereof, beginning January 1, 2021, subject to the redemption provisions set forth in the Definitive Terms Certificate.
- (e) Section 9.3 sets forth the parameters for the amount and terms of the Warrants. The Mayor of the City is hereby authorized and directed to execute and deliver in the name and on behalf of the City a certificate substantially in the form set forth in Exhibit 2.2(e) that establishes, within the parameters set forth in Section 9.3, the definitive amount and terms of the Warrants, with such changes or additions to such certificate or deletions to such certificate as the Mayor of the City shall approve, which approval shall be conclusively evidenced by his execution of such certificate (the “Definitive Terms Certificate”). In setting the definitive amount and terms of the Warrants reflected

in the Definitive Terms Certificate, the Mayor of the City may rely upon the advice and recommendations of the employees of and advisors to the City.

**Section 2.3 Execution of the Warrants.** The Warrants shall be executed in the name of the City by the manual or facsimile signatures of the Mayor of the City and its City Clerk inscribed or printed or otherwise reproduced thereon (it being herein provided that a condition to the validity of each Warrant is the manual execution on behalf of the Bank of the Registration Certificate endorsed on each Warrant). The Warrants shall be registered by the Treasurer of the City, in the records maintained by the Treasurer, as a claim against the City and the Warrant Fund, which registration shall be made simultaneously as to all the Warrants. The certificate of registration on each of the Warrants shall be executed by the manual or facsimile signature of the Treasurer of the City. The official seal of the City shall be impressed or printed or otherwise reproduced thereon and shall be attested by the aforementioned signature of the City Clerk. The said officers are hereby directed to cause the Warrants to be executed, sealed and registered in the manner provided by this section. Anything herein to the contrary notwithstanding, any assistant city clerk shall be empowered to execute any Warrant in the absence or unavailability of the City Clerk and any assistant treasurer of the City shall be empowered to execute any Warrant in the absence or unavailability of the Treasurer.

**Section 2.4 Places and Medium of Payment of the Warrants.** Principal of and interest on the Warrants shall be payable in lawful money of the United States of America. The principal of the Warrants shall be payable at the designated corporate trust agency office of the Bank, upon presentation and surrender of the Warrants as the same become due and payable. Interest on the Warrants shall be payable by check or draft mailed by the Bank to the lawful holders of the Warrants at the address shown on the registry books of the Bank pertaining to the Warrants as of the Record Date and shall be deemed timely made if so mailed on the Interest Payment Date (or if such Interest Payment Date is not a Business Day, on the Business Day next following such Interest Payment Date).

**Section 2.5 Forms of the Warrants and Related Certificates.** The Warrants, the certificate of registration thereof, the registration thereof as a claim against the Warrant Fund, and the form of assignment thereof shall be in substantially the following forms, with appropriate changes therein to conform to the applicable provisions hereof:

*[Remainder of Page Intentionally Left Blank]*

(Form of Series 2020-A Warrant)

[FORM OF CAPTION FOR WARRANTS HELD IN BOOK ENTRY FORM]

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City of Daphne or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. R-\_\_\_\_\_ \$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF ALABAMA  
CITY OF DAPHNE  
GENERAL OBLIGATION REFUNDING WARRANT  
SERIES 2020-A (BANK QUALIFIED)

MATURITY DATE

CUSIP NUMBER

INTEREST RATE

THE CITY OF DAPHNE, ALABAMA, a municipal corporation in the State of Alabama (the "City"), for value received, hereby acknowledges that it is indebted in the principal sum of

\_\_\_\_\_ DOLLARS

and hereby directs the Treasurer of the City to pay such principal sum to

\_\_\_\_\_

or registered assigns, on the maturity date specified above or such earlier date as this Warrant may be called for redemption, and to pay (but solely out of the Warrant Fund) interest on such principal sum from the date hereof (or in the case of a Warrant registered in the name of the registered Holder hereof on or after the date hereof, as evidenced by the Certificate of Registration attached hereto, from the Interest Payment Date next preceding the date of such registration or, if the date of such registration is an Interest Payment Date, from the date of registration), until such principal sum shall become due and payable, at the per annum rate of interest specified above. Interest shall be payable on January 1 and July 1 in each year, beginning January 1, 2021 (each such date herein called an "Interest Payment Date"), and shall be computed on the basis of a 360-day year with 12

months of 30 days each. Interest shall be payable on overdue principal (and premium, if any) on this Warrant and (to the extent legally enforceable) on any overdue installment of interest on this Warrant at the rate borne hereby.

The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Authorizing Ordinance hereinafter described, be paid to the person in whose name this Warrant is registered at the close of business on the 15th day of the month next preceding such Interest Payment Date.

The Warrants are being issued by means of a book-entry system with no physical distribution of warrant certificates to be made except as provided in the Authorizing Ordinance (as hereinafter defined). One warrant certificate, in the aggregate principal amount of each maturity of the Warrants, registered in the name of Cede & Co. as nominee of the DTC, is being issued and required to be deposited with DTC (or an authorized banking institution acceptable to DTC) and immobilized in its custody. The book-entry system will evidence ownership of the Warrants, with transfers of ownership effected on the records of DTC and its participants pursuant to rules and procedures established by DTC and its participants. Transfer of principal, interest and any redemption premium payments to beneficial owners of the Warrants by participants of DTC will be the responsibility of such participants and other nominees of such beneficial owners. The City will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by DTC, and to participants or persons acting through such participants. While Cede & Co. is the registered owner of this Warrant, notwithstanding the provisions hereinabove contained, payments of principal, interest and any redemption premium on this Warrant will be made in accordance with the existing arrangements between the Paying Agent and DTC.

Subject to the foregoing paragraph, payment of interest on this Warrant due on each Interest Payment Date shall be made by check or draft mailed by the Paying Agent to the person entitled thereto at his address appearing in the Warrant Register maintained with respect to the Warrants. Such payments of interest shall be deemed timely made if so mailed on the Interest Payment Date (or, if such Interest Payment Date is not a business day, on the business day next following such Interest Payment Date). Payment of the principal of (and premium, if any, on) this Warrant and payment of accrued interest on this Warrant due upon redemption shall be made only upon surrender of this Warrant at the designated corporate trust agency office of the hereinafter described Bank. Upon the terms and conditions provided in the Authorizing Ordinance, the Holder of any Warrant or Warrants in an aggregate principal amount of not less than \$100,000 may request that payment of interest on such Warrant or Warrants be made by wire transfer to an account of such Holder maintained at a bank in the continental United States or by any other method providing for same-day funds that is acceptable to the Bank. All such payments shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

This Warrant is one of the duly authorized issue of warrants of the City, aggregating \$\_\_\_\_\_ in principal amount, entitled "General Obligation Refunding Warrants, Series 2020-A" (the "Warrants") and issued under and pursuant to an ordinance duly adopted by the governing body of the City (the "Authorizing Ordinance") and the constitution and laws of the State of Alabama, including particularly Section 4, Chapter 81 of Title 11 and Section 2, Chapter 47 of Title 11 of the Code of Alabama, 1975. Capitalized terms not otherwise defined herein shall have the meanings assigned in the Authorizing Ordinance.

The Authorizing Ordinance provides that The Bank of New York Mellon Trust Company, N.A. (the "Bank"), will serve as Paying Agent and Registrar with respect to the Warrants unless and until a successor is appointed pursuant to the terms and conditions of the Authorizing Ordinance. For purposes of this Warrant and the Authorizing Ordinance, the principal office of the Bank shall mean the office where the Bank maintains its designated corporate trust agency office, as shall be designated by the Bank by written notice to the City and the Holders of the Warrants.

The indebtedness evidenced by the Warrants is a general obligation of the City for the payment of which the full faith and credit of the City have been irrevocably pledged, pro rata and without preference or priority of one Warrant over another.

Pursuant to the Authorizing Ordinance, the City has established a special fund for the payment of debt service on the Warrants (the "Warrant Fund") that will be held by the Bank. The City has obligated itself to pay or cause to be paid into the Warrant Fund from the taxes, revenues or other funds of the City sums sufficient to provide for the payment of debt service on the Warrants as the same becomes due and payable.

The Warrants, maturing on or after \_\_\_\_\_, 20\_\_\_ are subject to redemption prior to their maturity, at the option of the City, in whole or in part, on \_\_\_\_\_, 20\_\_\_, and on any date thereafter (in principal amounts of \$5,000 and any integral multiple thereof and if less than all of the Warrants are to be redeemed, those maturities or portions thereof to be called for redemption shall be selected by the City in its discretion, and if less than all the Warrants of a single maturity are to be redeemed, those to be called for redemption shall be selected by lot), at and for a redemption price equal to 100% of the principal amount of each Warrant or portion thereof redeemed, plus accrued interest to the date fixed for redemption.

Written notice of the call for redemption of this Warrant (or portion of the principal thereof) shall be forwarded by United States registered or certified mail to the registered owner hereof, not less than thirty (30) days prior to the date fixed for redemption. Such notice of redemption relative to the Warrants shall state that it is conditioned on there being sufficient money on deposit to pay the full redemption price of the Warrants on the redemption date. In the event that less than all the outstanding principal of this Warrant is to be redeemed, the registered Holder hereof shall surrender this Warrant to the Bank in exchange for a new Warrant of like tenor herewith except in a principal amount equal to the unredeemed portion hereof. Upon the giving of notice of redemption in accordance with the provisions of the Authorizing Ordinance, the Warrants (or principal portions thereof) so called for redemption and prepayment shall become due and payable

on the date specified in such notice, anything herein or in the Authorizing Ordinance to the contrary notwithstanding, and the Holders thereof shall then and there surrender them for payment, and all future interest on the Warrants (or principal portion thereof) so called for prepayment shall cease to accrue after the date specified in such notice, whether or not the Warrants are so presented.

This Warrant is transferable by the registered holder hereof, in person or by authorized attorney, only on the books of the Bank, as Registrar and Transfer Agent of the City, and only upon surrender of this Warrant to such Registrar for cancellation, and upon any such transfer a new Warrant of like tenor herewith will be issued to the transferee in exchange therefor, all as more particularly described in the Authorizing Ordinance. Each Holder hereof, by receiving or accepting this Warrant, shall consent and agree and shall be estopped to deny that this Warrant may be transferred only in accordance with the provisions of the Authorizing Ordinance. Provision is also made in the Authorizing Ordinance for the exchange of Warrants for a like aggregate principal amount and in authorized denominations, all upon the terms and subject to the conditions set forth in the Authorizing Ordinance.

The Registrar shall not be required to transfer or exchange this Warrant during the period of fifteen (15) days next preceding any interest payment date; and, in the event that this Warrant (or any principal portion hereof) is duly called for redemption and prepayment, the Registrar shall not be required to register or transfer this Warrant during the period of sixty (60) days next preceding the date fixed for such redemption and prepayment.

Registration, transfer and exchange of Warrants, other than to replace mutilated, lost, stolen or destroyed Warrants, shall be without expense to the Holder or transferee, but the Holder shall pay all taxes and other governmental charges, if any, required to be paid in connection with such transfer, registration or exchange.

It has been ascertained and found, and it is hereby certified and recited, that all conditions, actions and things required by the constitution and laws of Alabama to exist, be performed or happen precedent to or in the issuance of this Warrant and the creation of the indebtedness evidenced and ordered paid, hereby exist, have been performed and have happened, that such indebtedness has been registered as a claim against the Warrant Fund and is lawfully due without condition, and that the indebtedness evidenced and ordered paid by this Warrant, together with all other indebtedness of the City, was when incurred and is now within every debt and other limit prescribed by the constitution and laws of Alabama.

Unless the Registration Certificate hereon has been executed by the Bank, as Registrar for the Warrants, by manual signature, this Warrant shall not be entitled to any benefit under the Authorizing Ordinance or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the City has caused this Warrant to be executed in its behalf by the Mayor and by the City Clerk of the City, each of whom have caused their facsimile signatures to be hereunto imprinted, has caused the official seal of the City to be imprinted hereon, and has caused this Warrant to be dated \_\_\_\_\_, 2020.

CITY OF DAPHNE, ALABAMA

(SEAL)

By \_\_\_\_\_  
Its Mayor

ATTEST:

By \_\_\_\_\_  
City Clerk

\* \* \* \* \*

(Form of Registration as Claim against Warrant Fund)

I hereby certify that this Warrant has been registered by me as a claim against the Warrant Fund referred to in this Warrant.

\_\_\_\_\_  
Treasurer of the  
City of Daphne, Alabama

[Form of Registration Certificate]

This Warrant was registered in the name of the above-registered owner on the date hereinafter set forth.

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.

By \_\_\_\_\_  
Its Authorized Officer

DATE OF REGISTRATION: \_\_\_\_\_

(Form of Assignment)

For value received \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_ the within Warrant and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_, as attorney and Warrant Registrar and Transfer Agent, with full power of substitution in the premises, to transfer the Warrant on the books of the within mentioned Bank.

Dated this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
NOTE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Warrant in every particular, without alteration, enlargement or change whatsoever.

Signature guaranteed:  
(Bank, Trust company or Firm)

By: \_\_\_\_\_  
(Authorized Officer)

Its Medallion Number \_\_\_\_\_

Signature(s) must be guaranteed by an eligible guarantor institution which is a member of a recognized signature guarantee program, i.e., Securities Transfer Agents Medallion Program (STAMP), Stock Exchanges Medallion Program (SEMP), or New York Stock Exchange Medallion Signature Program (MSP)

**ARTICLE III**  
**FURTHER PROVISIONS WITH RESPECT TO**  
**WARRANTS**

**Section 3.1 Home Office Payment Agreement.** Upon the written request of the Holder of any Warrant or Warrants in an aggregate principal amount of not less than \$100,000, the Bank will make payment of interest due on such Warrant or Warrants upon any Interest Payment Date by wire transfer to an account of such Holder maintained at a bank in the continental United States or by any other method providing for payment in same-day funds that is acceptable to the Bank, provided that payment of the principal of and redemption premium (if any) on such Warrant or Warrants shall be made only upon surrender of such Warrant or Warrants to the Bank, as Paying Agent.

**Section 3.2 Interest After Payment Due Date.** The Warrants, any premiums thereon and, to the extent legally enforceable, overdue installments of interest thereon, shall bear interest after the maturity dates thereof or such earlier date as they may be called for redemption, until paid or until money sufficient for the payment thereof shall have been deposited for that purpose with the Bank, at the respective rates borne thereby.

Any provision hereof to the contrary notwithstanding, Overdue Interest shall not be payable to the Warrant Holder solely by reason of such Warrant Holder having been the Holder on the Record Date next preceding the Interest Payment Date on which such interest became due and payable, but shall be payable by the Bank as follows:

- (a) Not less than ten (10) days following receipt by the Bank of immediately available funds in an amount sufficient to enable the Bank to pay all Overdue Interest, the Bank shall fix an Overdue Interest Payment Date for payment of such Overdue Interest, which date shall be not more than twenty (20) days following the expiration of the ten-day period after receipt of funds by the Bank;
- (b) Overdue Interest shall be paid by check or draft mailed by the Bank to the persons in whose names the Warrants were registered in the registry books of the Bank pertaining to the Warrants on the Overdue Interest Payment Date.

Payment of Overdue Interest in the manner herein prescribed to the persons in whose names the Warrants were registered on the Overdue Interest Payment Date shall fully discharge and satisfy all liability for the same.

**Section 3.3 Temporary Certificates.** Pending the preparation of definitive Warrants the City may execute, and upon request of the City, the Bank shall register and deliver, temporary certificates which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Warrants in lieu of which they are issued, but numbered from R-1 upwards, without other identification numbers, and with such other appropriate insertions, omissions, substitutions and other variations as the officers

executing such temporary certificates may determine, as evidenced by their execution of such temporary certificates.

Any such temporary certificates shall be executed by the manual signatures of the appropriate officers of the City as required in Article II of this Ordinance and be executed and attested by the City Clerk. All such temporary certificates shall have impressed thereon the seal of the City.

If temporary Warrants are issued, the City will cause definitive Warrants to be prepared without unreasonable delay. After the preparation of definitive Warrants, the temporary Warrants shall be exchangeable for definitive Warrants upon surrender of the temporary Warrants at the principal office of the Bank, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Warrants the City shall execute and the Bank shall authenticate and deliver in exchange therefor a like principal amount of definitive Warrants of like tenor, and in authorized denominations. Until so exchanged, temporary Warrants shall in all respects be entitled to the security and benefits of this Ordinance.

**Section 3.4 Payments Due on a Day Other Than a Business Day.** If any payment on the Warrants is due on a day which is not a Business Day, such payment shall be made on the first succeeding date which is a Business Day with the same effect as if made on the day such payment was due.

**Section 3.5 Book Entry System.** The City may from time to time enter into, and discontinue, an agreement with a “clearing agency” (securities depository) registered under Section 17A of the Securities Exchange Act of 1934, as amended (a “Securities Depository”), which is the owner of the Warrants, to establish procedures with respect to the Warrants, not inconsistent with the provisions of this Ordinance; provided, however, that any such agreement may provide:

- (a) that such Securities Depository is not required to present a Warrant to the Paying Agent in order to receive partial payment of principal;
- (b) that a legend shall appear on each Warrant so long as the Warrants are subject to such agreement; and
- (c) that different provisions for notice to such Securities Depository may be set forth therein.

So long as an agreement with a Securities Depository is in effect, the City, the Bank and any paying agent or bond registrar shall not have any responsibility or liability with respect to the payment of principal, purchase price, premium, if any, or interest on the Warrants to the beneficial owners or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests or any payments made to such beneficial owners.

## ARTICLE IV

### GENERAL OBLIGATION; PROVISION FOR PAYMENT OF OBLIGATIONS

**Section 4.1 General Obligation.** The indebtedness evidenced by the Warrants is and shall be a general obligation of the City and the full faith and credit of the City are hereby irrevocably pledged to the payment of the principal thereof and interest thereon.

**Section 4.2 Continued Levy of Taxes; Maintenance of Warrant Fund.** The City agrees that, so long as the principal of or interest on any of the Warrants remains unpaid, the City will annually levy and collect taxes, insofar as such taxes may be permitted by the present or any future provisions of the Constitution of Alabama, in such amounts as may be necessary to provide for the payment of the principal of and interest on the Warrants. The City further agrees that so long as the principal of or interest on any of the Warrants remains unpaid it will deposit in the Warrant Fund with respect to such Warrants, not later than the 25th day of the month next preceding an Interest Payment Date, an amount which, when added to the amounts then on deposit in such Warrant Fund, will equal the principal, interest and redemption premium (if any) to come due with respect to the Warrants on such Interest Payment Date.

**Section 4.3 Provision for Payment.** (a) If the principal of and interest and redemption premium (if any) on the Warrants is paid in accordance with the terms thereof and this Ordinance, then all covenants, agreements and other obligations of the City to the Holders of such Warrants shall thereupon cease, terminate and become void and be discharged and satisfied. In the event the Warrants are so paid the Bank shall pay to the City any surplus remaining in the Warrant Fund.

(b) Warrants shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this Section 4.3 if

- (1) the City and the Bank (or another bank acting as trustee) enter into an appropriate trust agreement under which there shall be deposited, for payment or redemption of such Warrants and for payment of the interest to accrue thereon until maturity or redemption, and any redemption premium thereon, Government Obligations and cash or any combination of cash and Government Obligations which, together with the income to be derived from such, will produce monies sufficient to provide for the payment, redemption and retirement of such Warrants as and when the same become due;
- (2) the City shall have adopted all necessary proceedings providing for the redemption of any such Warrants that are required to be redeemed prior to their respective maturities and shall have instructed the Bank or other trustee under the aforesaid trust agreement to provide such notices of redemption as are required under this Ordinance;

- (3) the City and the Bank shall have been furnished with an opinion of nationally recognized bond counsel to the effect that the creation of any such trust will not result in subjecting to federal income taxation the interest on any of the Warrants that are to be paid in accordance with such trust; and
- (4) the City and the Bank shall have been furnished a certificate of a firm of certified public accountants satisfactory to the Bank stating that such trust will produce monies sufficient to provide for the full payment and retirement of such Warrants as and when the principal of and interest and redemption premium (if any) on such Warrants shall come due.

**Section 4.4. Retention of Moneys for Payment of Warrants.** The amounts held by the Bank for the payment of the principal of and interest on any Warrants due on any date shall, pending such payment, be held in trust by the Bank for the holders of the Warrants entitled thereto, and for the purposes of this Ordinance the principal of and interest on such Warrants shall no longer be considered to be unpaid. All liability of the City to the Holders of such Warrants and all rights of such Holders against the City under the Warrants or under this Ordinance shall thereupon cease and terminate, and the sole right of such Holders shall thereafter be against such funds. If any Warrant shall not be presented for payment within a period of five (5) years following the date when such Warrant becomes due, whether by maturity, redemption or otherwise, or if the check or draft providing for any payment of interest on any Warrant shall not have been negotiated within such period, the Bank shall return to the City any moneys theretofore held by it for payment of such Warrant or such interest, subject to applicable laws of escheat.

## ARTICLE V

### REDEMPTION PROVISIONS

**Section 5.1 Optional Redemption.** Subject to Section 9.3, the Warrants shall be subject to redemption in accordance with the redemption provisions set forth in Section 2.2(e), the Definitive Terms Certificate, and the terms of this article.

**Section 5.2 Procedure for Redemption; Resolution Authorizing Redemption.** Not less than thirty (30) days prior to the Redemption Date, the City (or the Bank on behalf of the City) shall give, or cause to be given, written notice of such redemption and prepayment by United States mail, registered or certified, to the Holders of each of the Warrants to be redeemed, in whole or in part, at the address of such registered Holder as such address appears on the registry books of the Registrar, stating that the Warrants (or principal portions thereof) have been called for redemption and will become due and payable at the Redemption Price, on a specified Redemption Date and that all interest thereon will cease to accrue after the Redemption Date. Such notice of redemption relative to the Warrants shall state that it is conditioned on there being sufficient money on deposit on the redemption date to pay the full redemption price of the Warrants so called for redemption

on the redemption date. The holders of any of the Warrants to be redeemed may waive the requirements for notice with respect to the Warrants held by them without affecting the validity of the call for redemption of any other Warrants. The City shall cause to be paid and made available at the office of the Bank, on or prior to the Redemption Date, the total Redemption Price of the Warrants (or portions thereof) so called for redemption on such date. Out of the moneys so deposited with it, the Bank shall make provision for payment of the Warrants (or principal portions thereof) so called for redemption at the Redemption Price and on the Redemption Date.

In addition to the foregoing notice, further notice shall be given by the City to all registered securities depositories and to one or more national information services that disseminate notices of redemption of obligations such as the Warrants. No defect in the further notice required in this paragraph, and no failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as described in the first paragraph of this Section 5.2.

Any optional redemption or prepayment of the Warrants or any portion thereof shall be effected upon a call by the City, as evidenced by a resolution of the Council, for redemption and prepayment of the Warrants to be so redeemed. Any such resolution pertaining to the Warrants shall state (i) that the City is not in default in the payment of the principal of or interest on any of the Warrants to be redeemed or (ii) that all of the Warrants then outstanding are to be retired on the Redemption Date.

**Section 5.3 Result of Redemption of Warrants.** Upon compliance with the requirements set forth in this Article V, and if the City is not on the Redemption Date in default in the payment of the principal of or interest on the Warrants, the Warrants (or principal portions thereof) called for redemption shall become due and payable at the Redemption Price and on the Redemption Date specified in the notice provided for in Section 5.2, and the Holders thereof shall then and there surrender them for redemption; provided, however, that in the event that less than all of the outstanding principal of any Warrant is to be redeemed, the registered Holder thereof shall surrender the Warrant that is to be prepaid in part to the Bank in exchange, without expense to the Holder, for a new Warrant of like tenor except in a principal amount equal to the unredeemed portion thereof. All future interest on the Warrants (or principal portions thereof) so called for redemption shall cease to accrue after the Redemption Date.

## ARTICLE VI

### REGISTRATION AND TRANSFER OF THE WARRANTS

**Section 6.1 Registration and Transfer of the Warrants.** The Warrants shall be registered as to both principal and interest. Each Warrant shall have endorsed thereon a registration certificate substantially in the form provided in Section 2.5 hereof, and a condition to the validity of each Warrant shall be the manual execution of such certificate on behalf of the Bank. The Bank is hereby appointed as the Registrar and Transfer Agent for the Warrants, and shall be authorized to keep at its designated corporate trust agency office proper registry books in which it shall register the Warrants, as to both principal and interest, noting the registry on the Warrants so presented. Such registration shall conclusively designate the Warrant Holder as the sole person to whom or on whose order the payment of the principal of and interest on the Warrants so registered may be made. After such registration no transfer of a Warrant so registered shall be valid unless it is presented at the said office with written power to transfer, properly stamped if required, in form and with guaranty of signature satisfactory to the Registrar, and such new registration noted thereon by the Registrar. The Registrar shall not be required to transfer or exchange such Warrant during the period of fifteen (15) days next preceding any interest payment date. If any Warrant shall be duly called for redemption pursuant to the provisions hereof, the Registrar shall not be required to transfer such Warrant during the period of sixty (60) days next preceding the date fixed for its redemption.

**Section 6.2 Exchange of Warrants.** Upon request of the Holder of any Warrant, the City shall execute, and the Bank shall register and deliver, upon surrender to the Bank of the Warrant or Warrants, in exchange therefor, a Warrant or Warrants of the same tenor in different authorized principal amounts (of \$5,000 or integral multiples thereof), together aggregating the same principal amount as the then unpaid principal of the Warrant or Warrants so surrendered, all as may be requested by the persons surrendering such Warrant or Warrants.

**Section 6.3 Costs of Registration, Transfer and Exchange.** The registration, transfer and exchange of Warrants (other than pursuant to Section 6.5 hereof) shall be without expense to the Holder or transferee. In every case involving a transfer, registration or exchange, such Holder shall pay all taxes and other governmental charges, if any, required to be paid in connection with such transfer, registration or exchange.

**Section 6.4 Effect of Registration.** The City, the Registrar, and the Paying Agent may deem and treat the person in whose name a Warrant is registered on the books of the Registrar as the absolute owner thereof for all purposes; they shall not be affected by notice to the contrary; and all payments by any of them to the person in whose name a Warrant is registered shall, to the extent of such payment, fully discharge all liability thereof.

**Section 6.5 Replacement of Mutilated, Lost, Stolen or Destroyed Warrants.** In the event that any Warrant is mutilated, lost, stolen or destroyed, the City may execute and deliver a new Warrant of like tenor as that mutilated, lost, stolen or destroyed; provided, that (a) in the case of any such mutilated Warrant, such Warrant is first surrendered to the City and the Bank, and (b) in the case of any such lost, stolen or destroyed Warrant, there is first furnished to the City and the Bank evidence of such loss, theft or destruction satisfactory to each of them, together with indemnity satisfactory to each of them. The City may charge the Holder with the expense of issuing any such new Warrant.

**Section 6.6 Provisions with Respect to Bank.** (a) Appointment of Bank and Acceptance of Duties. The Bank is herein designated and appointed and shall act as registrar, transfer agent and payment agent with respect to the Warrants. By its acceptance of such duties hereunder, the Bank shall accept and agree to perform the duties required by this Ordinance, subject, however, to the following conditions:

- (i) The Bank shall undertake to perform such duties and only such duties as are specifically set forth in this Ordinance, and no implied covenants or obligations shall be read into this Ordinance against the Bank.
- (ii) In the absence of bad faith or negligence on its part, the Bank may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Bank and conforming to the requirements of this Ordinance; provided, however, that in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Bank, the Bank shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Ordinance.
- (iii) The Bank shall not be answerable for other than its gross negligence or willful default and the Bank may act through its agents and attorneys with respect to any of its duties hereunder.
- (iv) No provision of this Ordinance shall be construed to relieve the Bank from liability for its own gross negligence or willful misconduct, except that no provision of this Ordinance shall require the Bank to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.
- (v) The Bank may consult counsel on any matters connected herewith and shall not be answerable for any action taken or failure to take any action in good faith on the advice of counsel, provided that its action or inaction is not contrary to any express provision hereof.
- (vi) The Bank need not recognize a Holder of a Warrant as such without the satisfactory

establishment of his title to such Warrant.

- (vii) Any action taken by the Bank at the request of and with the consent of the Holder of a Warrant will bind all subsequent Holders of the same Warrant and any Warrant issued hereunder in lieu thereof.
- (viii) The Bank may be a Holder or a pledgee of any of the Warrants as if not the Bank hereunder.
- (ix) The Bank shall not be liable for the proper application of any moneys other than those that may be paid to or deposited with it.
- (x) The Bank shall not be liable to pay or allow interest on any moneys to be held by it under this Ordinance or otherwise to invest any such moneys, except as specifically required by this Ordinance or as may be required by law or other written agreement between the City and the Bank.
- (xi) The Bank may make any investments permitted or required hereby through its own investment department, and any eligible investments issued or held by it hereunder shall be deemed investments and not deposits.
- (xii) The Bank shall, upon reasonable written request, inform the City of the amount at the time on deposit in any of the special funds or accounts created hereunder.
- (xiii) The recitals of fact herein and in the Warrants are statements by the City and not by the Bank, and the Bank is in no way responsible for the validity or security of the Warrants or the validity of the security afforded hereby.

(b) **Resignation by Bank.** The Bank and any successor Bank may resign and be discharged from the duties under this Ordinance by causing written notice specifying the effective date of such resignation to be delivered by United States registered or certified mail, postage prepaid, to the City and to every Holder of a Warrant. Unless the effective date of the Bank's resignation shall coincide with the appointment of a successor Bank by the Holders of the Warrants as herein provided, such date shall be at least sixty (60) days after the date on which notice to the City and the Holders of the Warrants shall have been mailed.

(c) **Removal of Bank.** The Bank may be removed with thirty (30) days written notice at any time by an instrument or concurrent instruments in writing delivered to the Bank and to the City and signed by the Holders of a majority in aggregate principal amount of the Warrants then outstanding.

(d) **Appointment of Successor Bank; Interim Bank.** In case the Bank shall resign, be removed, be dissolved, be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers or of a receiver appointed by a court, a successor may be appointed by Holders of a majority in aggregate principal amount of Warrants then outstanding through an instrument or concurrent

instruments in writing signed by such Holders. In case of any such resignation or event which causes the Bank to be incapable of acting, the City, by an instrument signed by the Mayor, shall appoint an interim Bank to serve until a successor Bank shall be appointed by the Holders of a majority in aggregate principal amount of the Warrants, as provided above. Whenever necessary to avoid or fill a vacancy in the office of Bank, the City will appoint an interim Bank in order that there shall at all times be a Bank hereunder. Any interim Bank so appointed by the City shall immediately and without further act be superseded by the Bank appointed by the holders of the Warrants.

The City shall cause notice of the appointment of an interim Bank, in the event that such an appointment is made, to be forwarded by United States registered or certified mail, postage prepaid, to every Holder of a Warrant. When the appointment of a successor Bank, as selected by the Holders of a majority in principal amount of the Warrants then outstanding, becomes effective, the City shall also cause notice of that fact to be given in the manner provided above for the notice required to be given upon the appointment of an interim Bank. Every interim or successor Bank appointed pursuant to this Section shall be a trust company or bank which is qualified to perform all duties of the Bank under this Ordinance and which has, at the time of its acceptance of such appointment, capital, surplus and undivided profits of not less than \$25,000,000, if there be such an institution willing, qualified and able to accept appointment as Bank upon reasonable or customary terms.

(e) Concerning any Successor Bank. Every successor Bank shall execute, acknowledge and deliver to its predecessor and also to the City an instrument in writing accepting its appointment as Bank hereunder, and thereupon such successor Bank, without any further act, deed or conveyance, shall become fully vested with all the rights, powers and duties of its predecessor. Such predecessor shall nevertheless, on the written request of the City or such successor Bank, execute and deliver an instrument transferring to such successor Bank all rights, powers and interests of such predecessor hereunder; and every predecessor Bank shall deliver all securities and moneys held by it as Bank hereunder to its successor.

(f) Merger or Consolidation of Bank. Any corporation into which the bank may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Bank shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Bank, shall be the successor of the Bank hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case the registration certificates with respect to any Warrants shall have been executed by the Bank then in office, any successor by merger or consolidation to such Bank may adopt the registration of such Warrants and deliver such Warrants with the same effect as if such successor Bank had itself registered such Warrants.

(g) Compensation of Bank. Subject to the provisions of any separate agreement with the Bank, the City shall pay to the Bank from time to time reasonable compensation for all services rendered by it under this Ordinance, including its services as registrar and paying agent for the Warrants, and also all its reasonable expenses, charges, counsel fees, costs and expenses and other disbursements and those of its attorneys, agents and employees, incurred in and about the

performance of its duties hereunder.

(h) **Extraordinary Expenses.** If the Bank is required by a governmental agency or court proceeding initiated by a third party to undertake efforts beyond that which is set forth herein but related thereto (other than due to the Bank's negligence or willful misconduct), the Bank shall notify the City of the same in writing and the City shall promptly pay the Bank for such extraordinary fees, costs and expenses (including reasonable attorney's fees, costs and expenses) reasonably and necessarily incurred in connection therewith.

## ARTICLE VII

### EXECUTION AND DELIVERY OF THE WARRANTS; APPROVAL OF SALE; USE OF PROCEEDS THEREFROM

**Section 7.1 Authority to Execute and Deliver the Warrants.** The Mayor of the City, the City Clerk and the Treasurer are hereby authorized and directed to cause the Warrants to be executed, sealed, attested and registered as a claim against the City and the Warrant Fund as provided herein and delivered to the purchaser thereof upon payment to the City of the sale price therefor.

**Section 7.2 Application of Proceeds of Sale; Additional Sums.** The gross proceeds derived from the sale of the Warrants shall be used solely for the following purposes:

- (i) Paying the issuance expenses of issuing the Warrants in accordance with a Closing Memorandum to be prepared by Piper Sandler & Co., and the Mayor of the City is hereby authorized and directed to pay such issuance expenses.
- (ii) To provide for the refunding of the Refunded Warrants.

## ARTICLE VIII

### CREATION OF WARRANT FUND; COVENANTS WITH RESPECT TO WARRANT PROCEEDS, DESIGNATION OF WARRANTS

**Section 8.1 Warrant Fund.** There is hereby created a special account, the full name of which shall be the "City of Daphne Warrant Fund, Series 2020-A" (the "Warrant Fund"). The Warrant Fund shall be maintained as a separate fund until payment in full of the principal of and interest on the Warrants. The Bank is hereby designated as the custodian of the Warrant Fund.

On or before the 25th day of the month next preceding any Interest Payment Date, the City shall deposit into the Warrant Fund an amount which, when added to the amounts already on deposit therein, will be sufficient to provide for the payment of all principal of and interest and

redemption premium on the Warrants coming due on such Interest Payment Date. Monies deposited in the Warrant Fund shall be used by the Bank for the payment of principal, interest and redemption premium (if any) on, the Warrants, and for no other purpose until the payment in full of the Warrants.

**Section 8.2 Investment of Moneys in Warrant Fund.** Pending the expenditure of moneys in the Warrant Fund for any other purpose, the City shall have the privilege at any time and from time to time of investing and reinvesting, or causing to be invested and reinvested, all or part of the moneys at any time on deposit in such account, in Government Obligations or in money market funds of the Bank consisting of Government Obligations. The City shall have the privilege at any time and from time to time of investing and reinvesting, or causing to be invested and reinvested, all or part of the moneys at any time on deposit in such account in Government Obligations, money market funds of the Bank consisting of Government Obligations, or certificates of deposit issued by banks or trust companies having at the time of the deposit combined capital, surplus and undivided profits of not less than \$5,000,000.

The Bank is hereby directed to invest and reinvest such amounts promptly upon receipt of, and in accordance with, the written instructions of the City. The Bank may conclusively rely upon the City's written instructions as to both the suitability and legality of the directed investments. In the absence of written investment instructions from the City, the Bank shall not be responsible or liable for keeping the moneys held by it hereunder fully invested. The Bank shall not be liable for any losses from such directed investments.

**Section 8.3 Security for Funds.** Any money on deposit in any fund or account or held by the Bank pursuant to this Ordinance shall, unless invested as provided herein or secured by the Federal Deposit Insurance Corporation (or any successor agency of the United States of America) or under the State of Alabama Security for Alabama Funds Enhancement Program, be secured for the benefit of the City and the Holders by holding on deposit as collateral security direct obligations of the United States of America or obligations unconditionally guaranteed by the United States of America, or other marketable securities eligible as security for the deposit of public funds under the regulations of the Office of the Comptroller of the Currency, having a market value (exclusive of accrued interest) not less than the amount of money being secured.

**Section 8.4 Covenants with Respect to Exemption of Interest from Federal Income Taxation; Non-Arbitrage Covenant.** The City acknowledges and agrees that the Warrants are to be issued in compliance with the conditions necessary for the interest income thereon to be exempt from federal income taxation pursuant to the relevant provisions of the Code. The City hereby covenants and agrees as follows:

- (a) It will not use or apply the proceeds of the Warrants or direct the investment of moneys in any funds or accounts established or maintained with respect to the Warrants in such manner as to constitute any Warrant an "arbitrage bond" within the meaning of Section 148 of the Code;

- (b) It will make timely rebate payments to the United States of America with respect to any "excess" arbitrage profits as required by Section 148(f) of the Code;
- (c) It will maintain all records required by Section 148(f) of the Code and the applicable regulations thereunder and shall furnish such data or information regarding compliance with Section 148(f) of the Code as any Holder shall reasonably request in writing, which records shall be furnished to any Holder upon its request;
- (d) It will, within 60 days after a written request of the Bank therefor, furnish to the Bank and to any Holder a certificate by an independent certified public accountant or opinion of nationally recognized bond counsel stating that as of such date it had made all rebate payments to the United States of America necessary to prevent the Warrants from becoming "arbitrage bonds" under Section 148(f) of the Code;
- (e) It will comply with the terms of the City's Tax Certificate and Agreement with regard to use of proceeds of the Warrants in any private business use; payment of the Warrants shall not be secured by, or derived from, property used in a private business use; proceeds of the Warrants shall not be used to make or finance loans to persons other than governmental units; and proceeds of the Warrants shall not be used in any manner that would cause the Warrants to be or become private activity bonds, as defined in Section 141 of the Code;
- (f) It will not cause or permit the Warrants to be federally guaranteed, within the meaning of Section 149(b) of the Code; and
- (g) It will not in any other way cause or permit the proceeds of the Warrants to be used in a manner which would cause the interest on the Warrants to lose the exemption from federal income taxation as provided under the Code and the applicable regulations thereunder and will comply with all applicable provisions of the Code (including, without limitation, the provisions relating to post-issuance actions affecting tax exemption) to the extent necessary for interest on the Warrants to be excludable from gross income of the holders thereof.

- (h) It has in place procedures providing for compliance with each of the matters described above and for keeping records with respect to such compliance.
- (i) The City does not reasonably anticipate that the City, or any other subordinate entities thereto, will issue more than \$10,000,000 of “tax-exempt obligations” in calendar year 2020. The Warrants are hereby designated as a portion of the maximum of \$10,000,000 of “qualified tax-exempt obligations” to be issued by the City during calendar year 2020, within the meaning and for the purposes of Section 265(b)(3) of the Code.

## ARTICLE IX

### APPROVAL OF OFFICIAL STATEMENT; AUTHORIZATION OF CONTINUING DISCLOSURE AGREEMENT; AUTHORIZATION OF DISCLOSURE DISSEMINATION AGREEMENT; APPROVAL OF SALE; PARAMETERS; MISCELLANEOUS PROVISIONS

**Section 9.1 Approval of Preliminary Official Statement.** The governing body of the City does hereby approve and authorize the preliminary official statement (the “Preliminary Official Statement”) in substantially the form presented to the City Council at this meeting and attached hereto as Exhibit 9.1, which preliminary official statement is hereby "deemed final" within the meaning of Rule 15c2-12 of the United States Securities and Exchange Commission. The final Preliminary Official Statement with respect to the Warrants shall be in substantially the same form as the Preliminary Official Statement herein approved, with such additions, insertions, omissions or other changes as may be approved by the Mayor of the City, and the Mayor of the City is hereby authorized and directed to deem the Preliminary Official Statement final with such additions, insertions, omissions or other changes approved by the Mayor as shall be necessary to conform to the provisions of this Ordinance authorizing the Warrants. The preparation and distribution of such Preliminary Official Statement on behalf of the City by Piper Sandler & Co. is hereby ratified and approved. The final official statement shall be in substantially the same form as the Preliminary Official Statement herein approved, with such additions, insertions, omissions or other changes as may be approved by the Mayor of the City and the execution of the final official statement by the Mayor of the City as hereby authorized shall be conclusive evidence of any such approval.

**Section 9.2 Authorization of Continuing Disclosure Agreement.** Upon delivery of the Warrants to the purchaser thereof, the Mayor and Finance Director of the City are hereby authorized and directed to execute and deliver for and on behalf of the City, the Continuing Disclosure Agreement in substantially the form presented at the meeting of the Council at which this Ordinance is adopted and attached hereto as Exhibit 9.2, with such additions, insertions, omissions or other changes as may be approved by the Mayor of the City. The City hereby

covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Ordinance, failure of the City to comply with the Continuing Disclosure Agreement shall not be considered a default hereunder or with respect to the Warrants; provided, however, any Holder or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Section 9.2. For purposes of this Section, "Beneficial Owner" means any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Warrants (including persons holding Warrants through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Warrants for federal income tax purposes.

**Section 9.3 Sale of Warrants.** The City does hereby authorize (i) the sale of the Warrants to Piper Sandler & Co. on the terms and a conditions set forth in the Definitive Terms Certificate and the Purchase Agreement, and (ii) the execution of the Purchase Agreement between the City and Piper Sandler & Co. in substantially the form presented at the meeting at which this Ordinance is adopted and attached hereto as Exhibit 9.3, with such additions, insertions, omissions or other changes as may be approved by the Mayor of the City. The Warrants shall be sold pursuant to the Purchase Agreement. In order to provide for the sale of the Warrants, the Mayor of the City is hereby authorized and directed to execute and deliver the Purchase Agreement for an in the name and behalf of the City. Notwithstanding the foregoing provisions of this paragraph, the Mayor of the City shall not execute and deliver the Purchase Agreement unless (1) the principal amount of the Warrants does not exceed \$8,230,000; (2) the final maturity date for the Warrants is not later than July 1, 2038; (3) the interest rate for any maturity of the Warrants does not exceed 4.00%; (4) the weighted average maturity of the Warrants does not exceed fifteen (15) years; (5) the period of time between the date of the Warrants and the first date on which the Warrants are subject to optional redemption, at par and with no premium, is no later than ten (10) years from the dated date and the Warrants may include term Warrants; (6) the all-in total interest cost for the Warrants (that is, taking into account accrued interest, any original issue discount or original issue premium, the underwriter's discount, any premiums or fees for credit enhancement paid proceeds of the Warrants, and any other costs of issuance paid from proceeds of the Warrants) is not greater than 2.50%; (7) the purchase price of the Warrants is not less than 97% or more than 115% of the par amount thereof; (8) the underwriter's discount reflected in the Purchase Agreement does not exceed \$7.50 per thousand dollars of the principal amount of the Warrants, and (9) the net present value savings produced by the issuance of the Warrants and the Series 2020-B Warrants and the refunding of the Refunded Warrants is at least \$1,000,000. The Mayor's execution and delivery of the Purchase Agreement and the Definitive Terms Certificate shall constitute his approval of the final pricing terms of the Warrants.

**Section 9.4 Further Acts.** From and after the execution and delivery of the documents hereinabove authorized, the proper officers, directors, agents and employees of the City are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of said documents as executed and are further authorized to take any and all further actions and execute and deliver any and all other documents as may be necessary in the issuance of the Warrants and in the delivery of the Official Statement or as contemplated by this Ordinance.

The Mayor and City Clerk are authorized and directed to prepare and furnish to the purchaser of the Warrants, when the Warrants are issued, certified copies of all the proceedings and records of the Council relating to the Warrants, and such other affidavits and certificates as may be required to show the facts relating to the legality and marketability of the Warrants as such facts appear from the books and records in such officers' custody and control or as otherwise known to them.

**Section 9.5 Contractual Provisions.** The provisions of this Ordinance shall constitute a contract between the City and the Holders at any time of the Warrants. Upon payment in full of the principal of and interest on the Warrants the obligations of the City hereunder shall cease with respect thereto.

**Section 9.6 Warrants Payable at Par.** Each bank at which the Warrants may at any time be payable, by acceptance of its duties as Paying Agent therefor, shall be construed to have agreed thereby with the Holders of the Warrants that all remittances made by it on the Warrants shall be made in bankable funds at par and without deduction for exchange, fees or expenses.

**Section 9.7 Severability.** The various provisions of this Ordinance are hereby declared to be severable. In the event any provisions hereof shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect any other portion of this Ordinance.

**Section 9.8 Repeal of Conflicting Provisions.** All resolutions, orders or parts thereof in conflict with this Ordinance are to the extent of such conflict hereby repealed.

**Exhibit 2.2(e)**

**Form Definitive Terms Certificate**

The undersigned, being the duly appointed Mayor of City of Daphne, a municipal corporation organized under the laws of the State of Alabama (the “City”), does hereby certify as follows:

1. This certificate is being delivered in connection with the issuance by the City of its \$\_\_\_\_\_ General Obligation Warrants, Series 2020-A (Bank Qualified) (the “Series 2020-A Warrants”) under and pursuant to Ordinance No. 2020-\_\_\_ duly adopted by the governing body of the City on \_\_\_\_\_, 2020 (the “Warrant Ordinance”). Capitalized terms not otherwise defined herein shall have the meanings assigned in the Warrant Ordinance.

2. Section 9.3 of the Warrant Ordinance sets forth the parameters for the amount and terms of the Series 2020-A Warrants. Section 2.2(e) of the Warrant Ordinance authorizes and directs the undersigned officer of the City to execute and deliver in the name and on behalf of the City a certificate that establishes, within the parameters set forth in Section 9.3 of the Warrant Ordinance, the definitive amount and terms of the Series 2020-A Warrants (the “Definitive Terms Certificate”). This certificate constitutes the Definitive Terms Certificate contemplated by the Warrant Ordinance.

3. Pursuant to the authority granted by the City set forth in Section 2.2(e) of the Warrant Ordinance, the undersigned officer hereby establishes the following definitive amount and terms of the Series 2020-A Warrants:

(a) The aggregate principal amount of the Series 2020-A Warrants which may be authenticated and delivered and Outstanding is limited to \$\_\_\_\_\_.

(b) The Series 2020-A Warrants shall be dated \_\_\_\_\_ and shall mature on \_\_\_\_\_1 in the years \_\_\_\_\_ through \_\_\_\_\_ (each such maturity date being herein called a “Principal Payment Date. The principal amount and applicable interest rate of 2020-A Warrants maturing on each Principal Payment Date (subject to adjustment as provided above) is as follows:

	Series 2020-A Amount	Interest
<u>Maturity Date</u>	<u>Maturing</u>	<u>Rate</u>
July 1, 2021	\$	%
July 1, 2022		
July 1, 2023		
July 1, 2024		
July 1, 2025		
July 1, 2026		
July 1, 2027		
July 1, 2028		
July 1, 2029		
July 1, 2030		
July 1, 2031		
July 1, 2032		
July 1, 2033		
July 1, 2034		
July 1, 2035		
July 1, 2036		
July 1, 2037		

July 1, 2038

(c) The Series 2020-A Warrants are subject to redemption prior to maturity as set forth on Annex 1 hereto.

4. The undersigned officer of the City hereby certifies that the definitive amount and terms of the Series 2020-A Warrants set forth above are in conformity with the parameters set forth in the Warrant Ordinance and in support thereof hereby certifies that: (a) the principal amount of the Series 2020-A Warrants is \$\_\_\_\_\_; (b) the final maturity date for the Series 2020-A Warrants is \_\_\_\_\_; (c) the interest rate for any maturity of the Series 2020-A Warrants does not exceed \_\_\_\_\_%; (d) the weighted average maturity of the Series 2020-A Warrants is \_\_\_\_\_ years; (e) the period of time between the date of the Series 2020-A Warrants and the first date on which the 2020-A Warrants are subject to optional redemption is \_\_\_\_\_ years, and there is no premium payable on the Series 2020-A Warrants in connection with any such optional redemption; (f) the all-in total interest cost for the Series 2020-A Warrants (that is, taking into account accrued interest, any original issue discount or original issue premium, the underwriter's discount, any premiums or fees for credit enhancement paid from proceeds of the Series 2020-A Warrants, and any other costs of issuance paid from proceeds of the 2020-A Warrants) is \_\_\_\_\_%; (g) the purchase price of the Series 2020-A Warrants is not less than 97% or more than 115% of the par amount thereof; (h) the underwriter's discount reflected in the Purchase Agreement is \$\_\_\_\_\_ per thousand dollars of the principal amount of the Series 2020-A Warrants, and (i) the net present value savings produced by the issuance of the Series 2020-A Warrants and the Series 2020-B Warrants and the refunding of the Refunded Warrants is at least \$1,000,000.

5. The undersigned, being the Mayor of the City, holds such position as of the date hereof.

**IN WITNESS WHEREOF**, this certificate has been executed on behalf of the City by the undersigned officer.

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Annex 1**  
**Provisions Relating to Redemption Prior to Maturity**

The Series 2020-A Warrants are subject to redemption prior to maturity as follows:

*Optional Redemption.* Series 2020-A Warrants maturing on \_\_\_\_\_ 1, \_\_\_\_\_ or thereafter will be subject to redemption prior to their maturity, at the option of the City, in whole or in part, on \_\_\_\_\_ and on any date thereafter (in principal amounts of \$5,000 and any integral multiple thereof and if less than all of the Series 2020-A Warrants are to be redeemed, those maturities or portions thereof to be called for redemption shall be selected by the City in its discretion, and if less than all the Series 2020-A Warrants of a single maturity are to be redeemed, those to be called for redemption shall be selected by lot), at and for a redemption price equal to 100% of the principal amount of each Series-A 2020 Warrant or portion thereof redeemed, plus accrued interest to the date fixed for redemption.

*Mandatory Redemption.* [Insert mandatory redemption terms, if applicable]

**Exhibit 9.1**

**Preliminary Official Statement**

**(See Attached)**

This Preliminary Official Statement and the information contained therein are subject to completion or amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.



# PRELIMINARY OFFICIAL STATEMENT DATED \_\_\_\_\_, 2020

## NEW ISSUE-BOOK ENTRY ONLY

**Rating: Standard & Poor's:[AA+]  
([Stable] Outlook)  
(See "RATING" herein)**

*In the opinion of Bond Counsel, under existing law, interest on the Series 2020-A Warrants (i) will be excludable from gross income for federal income tax purposes if the City complies with all requirements of the Internal Revenue Code that must be satisfied subsequent to the issuance of the Series 2020-A Warrants in order that interest thereon be and remain excludable from gross income, and (ii) will not be an item of tax preference for purposes of the federal alternative minimum tax on individuals and corporations. In the further opinion of Bond Counsel, under existing law, interest on the Series 2020-B Warrants will not be excludable from gross income of the holders thereof for purposes of federal income taxation. Bond Counsel is also of the opinion that, under existing law, interest on the Series 2020-A Warrants and the Series 2020-B Warrants will be exempt from State of Alabama income taxation. See "TAX MATTERS SERIES 2020-A WARRANTS", and "TAX MATTERS SERIES 2020-B WARRANTS" herein for further information and certain other tax consequences arising with respect to the Series 2020-A Warrants and the Series 2020-B Warrants.*

### CITY OF DAPHNE, ALABAMA

\$7,410,000\*  
General Obligation Refunding Warrants,  
Series 2020-A (Bank Qualified)

\$3,535,000\*  
General Obligation Refunding Warrants,  
Series 2020-B (Federally Taxable)

**Dated: Date of Issuance**

**Due: As shown  
on the inside cover**

The Series 2020-A Warrants and the Series 2020-B Warrants constitute separate series and are together referred to in this Official Statement as the "Series 2020 Warrants" or the "Warrants". Interest on the Series 2020 Warrants is payable on January 1 and July 1 of each year, commencing January 1, 2021. The Series 2020 Warrants when issued will be issued in the name of and held by Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository for the Series 2020 Warrants. Purchases of beneficial interest in the Series 2020 Warrants will be made in book-entry form, in denominations of \$5,000 or any integral multiple thereof. Except as herein described, purchasers will not receive certificates representing their beneficial interests in the Series 2020 Warrants. So long as DTC or its nominee, Cede & Co. is the registered owner of the Series 2020 Warrants, payments of principal and interest will be made directly to DTC or to such nominee. Disbursement of such payments to Direct Participants is the responsibility of DTC, and disbursement of such payments to the beneficial owners is the responsibility of Direct Participants and Indirect Participants of DTC, all as more fully described herein.

The Series 2020 Warrants are subject to redemption prior to maturity as more fully described herein.

**See inside front cover for information on maturity dates, principal amounts, interest rates, yields and prices.**

This cover page contains certain information for quick reference only. It is not a summary of this issue. Investors must read the entire Official Statement to obtain information essential to an informed investment decision.

The Series 2020 Warrants are offered when, as and if issued by the City of Daphne, Alabama, at the respective offering prices set forth herein, subject to the approving opinion of Adams & Reese LLP, Mobile, Alabama, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the City by its counsel, Adams & Reese LLP, Mobile, Alabama. Certain legal matters will be passed upon for the Underwriter by its counsel, Ezell Law, LLC, Birmingham, Alabama. It is expected that the Series 2020 Warrants in definitive form will be available for delivery through DTC in New York, New York on or about October 14, 2020.

Date: \_\_\_\_\_.



\*Preliminary; Subject to Change.

**MATURITIES, AMOUNTS, RATES, PRICES, AND CUSIP NUMBERS**

**\$7,410,000\***

**CITY OF DAPHNE, ALABAMA**

**General Obligation Refunding Warrants, Series 2020-A (Bank Qualified)**

<u>Maturity Date</u>	Series 2020-A Amount <u>Maturing*</u>	Interest <u>Rate</u>	<u>Yield</u>	<u>Cusip***</u>
July 1, 2021	\$	%	%	
July 1, 2022				
July 1, 2023				
July 1, 2024				
July 1, 2025				
July 1, 2026				
July 1, 2027				
July 1, 2028				
July 1, 2029				
July 1, 2030				
July 1, 2031				
July 1, 2032				
July 1, 2033				
July 1, 2034				
July 1, 2035				
July 1, 2036				
July 1, 2037				
July 1, 2038				

\*\* Yield computed to first optional redemption date: \_\_\_\_\_.

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\* Preliminary; Subject to Change

**\$3,535,000\***  
**CITY OF DAPHNE, ALABAMA**  
**General Obligation Refunding Warrants, Series 2020-B (Federally Taxable)**

<u>Maturity Date</u>	Series 2020-B Amount <u>Maturing*</u>	Interest <u>Rate</u>	<u>Yield</u>	<u>Cusip***</u>
July 1, 2021	\$	%	%	
July 1, 2022				
July 1, 2023				
July 1, 2024				
July 1, 2025				
July 1, 2026				
July 1, 2027				
July 1, 2028				

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\* Preliminary; Subject to Change

**CITY OF DAPHNE, ALABAMA**

**Mayor**

**Dane Haygood**

**City Council Members**

**Tommie Conaway, District 1**  
**Pat Rudicell, Council President, District 2**  
**Joel Coleman, District 3**  
**Doug Goodlin, District 4**  
**Ron Scott, District 5**  
**Robin LeJeune, District 6**  
**Angie Phillips, District 7**

**City Clerk**

**Candace Antinarella**

**Finance Director**

**Kelli Kichler Reid**

**Counsel to the City**

**Adams & Reese LLP**  
**Mobile, Alabama**

**Bond Counsel**

**Adams & Reese LLP**  
**Mobile, Alabama**

**Underwriter**

**Piper Sandler & Co.**  
**Birmingham, Alabama**

In connection with the sale of the Series 2020 Warrants herein described, no person has been authorized to give any information or to make any representation not contained in this Official Statement and, if given or made, such information or representation must not be relied upon as having been authorized by the City of Daphne, Alabama. The information in this Official Statement has been obtained from the City and other sources which are considered dependable and which are customarily relied upon in the preparation of similar official statements, but such information is not guaranteed as to accuracy or completeness. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy any of such Series 2020 Warrants, nor shall there be any sale of such Series 2020 Warrants by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information herein is subject to change without notice, and neither the delivery of this Official Statement nor any sale of the Series 2020 Warrants shall under any circumstances create any implication that there has been no change in the affairs of the City of Daphne, Alabama, since the date hereof.

This Official Statement is intended to reflect information as of its date. The delivery of this Official Statement does not imply that the information contained herein is correct on any date subsequent to the date hereof.

In connection with the offering of the Series 2020 Warrants, the Underwriter may over allot or effect transactions that stabilize or maintain the market prices of the Series 2020 Warrants at levels above those that might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time.

**THIS PRELIMINARY OFFICIAL STATEMENT HAS BEEN DEEMED TO BE FINAL AS OF ITS DATE WITHIN THE MEANING OF RULE 15c2-12 UNDER THE SECURITIES EXCHANGE ACT OF 1934, EXCEPT FOR THE OMISSIONS OF THE OFFERING PRICES(S), INTEREST RATE(S), SELLING COMPENSATION, AGGREGATE PRINCIPAL AMOUNTS, PRINCIPAL MATURITY, DELIVERY DATE, RATINGS AND OTHER TERMS OF THE SERIES 2020 WARRANTS DEPENDING ON SUCH MATTERS, ALL OF WHICH ARE PERMITTED OMISSIONS UNDER RULE 15c2-12.**

Certain statements contained in this Official Statement including, without limitation, statements containing the words "estimates," "believes," "anticipates," "expects," and words of similar import, constitute forward-looking statements. Such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance or achievements of the City or other entities to which the forward-looking statements relate to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements.

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Appendix A -	Financial and Statistical Data Relative to the City of Daphne, Alabama
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Appendix C -	Proposed Form of Bond Counsel Opinion Series 2020-A Warrants
Appendix D -	Proposed Form of Bond Counsel Opinion Series 2020-B Warrants

**OFFICIAL STATEMENT**  
**CITY OF DAPHNE, ALABAMA**

**Regarding**  
**\$7,410,000\* General Obligation Refunding Warrants, Series 2020-A (Bank Qualified)**  
**and**  
**\$3,535,000\* General Obligation Refunding Warrants, Series 2020-B (Federally Taxable)**

**INTRODUCTION**

This Official Statement provides certain information in connection with the sale and issuance by the City of Daphne, Alabama (the "**City**") of the Series 2020-A Warrants referred to above (the "**Series 2020-A Warrants**") and the Series 2020-B Warrants referred to above (the "**Series 2020-B Warrants**"). The Series 2020-A Warrants and the Series 2020-B Warrants are hereinafter collectively referred to as the "**Series 2020 Warrants**" or the "Warrants." The Series 2020 Warrants will be issued pursuant to the Constitution and laws of the State of Alabama and the Series 2020-A Warrants will be issued pursuant to an ordinance (the "**Series 2020-A Warrant Ordinance**") adopted by the governing body of the City (the "**City Council**") and the Series 2020-B Warrants will be issued pursuant to an ordinance (the "**Series 2020-B Warrant Ordinance**") adopted by the City Council. The Series 2020-A Warrant Ordinance and the Series 2020-B Warrant Ordinance are hereinafter collectively referred to as the "**Warrant Ordinances**"). The Warrant Ordinances will constitute a contract with the holders of the Series 2020 Warrants.

The information contained in this Official Statement does not purport to be comprehensive or definitive. All references herein to, or summaries of, the Warrant Ordinances or any contract, indenture, ordinance, resolution or other document or official act related to the Series 2020 Warrants are qualified in their entirety by the exact terms of such documents or official acts which are items of public record available from the City. All references herein to, or summaries of, the Series 2020 Warrants are qualified in their entirety by the definitive form thereof and the information with respect thereto included in the Warrant Ordinances.

**PURPOSES OF THE SERIES 2020 WARRANTS**

The City has determined to issue the Series 2020 Warrants for the purposes of (i) refunding certain outstanding debt of the City; and (ii) paying the expenses of issuing the Series 2020 Warrants.

**Refunding Plan**

The City has heretofore issued its \$12,000,000 General Obligation Warrants, Series 2017 (the "**Series 2017 Warrants**"), which are outstanding in the aggregate principal amount of \$11,556,000. The Series 2017 Warrants (the "**Refunded Warrants**") will be refunded on a current basis with a portion of the Series 2020 Warrants.

*[Remainder of page intentionally left blank.]*

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\* Preliminary; Subject to Change.



Warrants and will be reflected in the final Official Statement. Such actual information will vary from the estimates.

Investors should check under the heading “INTRODUCTION – Changes to the Preliminary Official Statement” in the final Official Statement for guidance regarding information dependent on pricing of the Series 2020 Warrants and for guidance regarding other information that is changed between the date of this Preliminary Official Statement and the date of the final Official Statement.

## **THE SERIES 2020 WARRANTS**

### **Description of the Series 2020 Warrants**

The Series 2020 Warrants will be fully registered warrants issued initially in the denomination of \$5,000 or any integral multiple thereof and subject to exchange as hereinafter provided. The Series 2020 Warrants will be dated the date of their initial issuance and delivery, will bear interest payable semiannually on each January 1 and July 1, commencing January 1, 2021, at the rates set forth on the inside cover hereof, and will mature on the dates and in the principal amounts set forth on the inside cover hereof. So long as the Series 2020 Warrants are in book-entry-only form payments will be made as described below in “Book-Entry System.”

The principal of and the premium, if any, on the Series 2020 Warrants will be payable, with par clearance guaranteed, at the designated corporate trust office of The Bank of New York Mellon Trust Company, N.A. in Birmingham, Alabama, the registrar, transfer agent and paying agent for the Series 2020 Warrants (said bank acting in such capacity, together with any successor thereto, being herein called the “Registrar” or “Paying Agent”). The interest payable on the Series 2020 Warrants on each interest payment date will be paid by check or draft mailed by the Registrar to the registered holders thereof on such interest payment date. If any interest payment date shall fall on a Saturday, Sunday or legal holiday on which the Registrar is not open for business, such payment shall be made on the next following business day.

The Warrant Ordinances make special provision for payment of overdue interest which may be paid to a holder other than the registered holder of a Series 2020 Warrant at the time such overdue interest becomes due and payable.

### **Book-Entry System**

The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the Series 2020 Warrants. The Series 2020 Warrants will be issued as fully-registered warrants in the name of Cede & Co., (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Warrant certificate will be issued for each maturity of the Series 2020 Warrants and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments from over 100 countries that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations

and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks and trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (the “Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of Series 2020 Warrants under the DTC system must be made by and through Direct Participants, which will receive a credit for the Series 2020 Warrants on DTC’s records. The ownership interest of each actual purchaser of each Warrant (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of their transactions, as well as periodic statements of their holdings, from the Direct or Indirect Participants through which the Beneficial Owners entered into the transaction. Transfers of ownership interests in the Series 2020 Warrants are to be accomplished by entries made on the books of DTC Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2020 Warrants, except in the event that the use of the book-entry system for the Series 2020 Warrants is discontinued.

To facilitate subsequent transfers, all Series 2020 Warrants deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Series 2020 Warrants with DTC and their registration in the name of Cede & Co. or such other nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2020 Warrants; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Series 2020 Warrants are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the Series 2020 Warrants are being redeemed, DTC’s practice is to determine by lot the amount of the beneficial interest of each Direct Participant in such Series 2020 Warrants to be redeemed.

Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to Series 2020 Warrants unless authorized by a Direct Participant in accordance with DTC’s Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts the Series 2020 Warrants are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal and premium, if any, and interest payments on the Series 2020 Warrants will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC’s practice is to credit Direct Participants’ accounts, upon DTC’s receipt of funds and corresponding detailed information from the City or the Paying Agent on the payable date in accordance with their respective holdings shown on DTC’s records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers

in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC (nor its nominee), the City or the Paying Agent, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the City and Paying Agent; disbursement of such payments to Direct Participants is the responsibility of DTC; and disbursement of such payments to the Beneficial Owners is the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series 2020 Warrants at any time by giving reasonable notice to the City or Paying Agent. Under such circumstances, in the event that a successor securities depository is not obtained, warrant certificates are required to be printed and delivered. In addition, the City may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, warrant certificates will be printed and delivered as described below.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources (including DTC) that the City believes to be reliable, but the City and the Underwriter take no responsibility for the accuracy thereof.

None of the City, the Underwriter or the Paying Agent has any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial interests in any global Warrant or for maintaining, supervising or reviewing any records relating to such beneficial interests.

#### **Discontinuation of Book-Entry System**

In the event the book-entry system is discontinued, Warrant certificates in fully registered form would be delivered to, and registered in the names of, the Direct Participants, or such other persons as such Direct Participants may specify (which may be the Indirect Participants or Beneficial Owners), in denominations of \$5,000 or any integral multiple thereof. The ownership of the Series 2020 Warrants so delivered (and any Series 2020 Warrants thereafter delivered upon a transfer or exchange described below) would be registered in the registration books to be kept by the Paying Agent as the Warrant Registrar for the City. Except as provided in the Warrant Ordinances, the City and the Paying Agent are entitled to treat the registered owners of such Series 2020 Warrants, as their names appear in such registration books as of the appropriate dates, as the owners thereof for all purposes described herein and in the Warrant Ordinances. See "CERTAIN PROVISIONS RESPECTING REGISTRATION AND TRANSFER OF THE SERIES 2020 WARRANTS" below.

#### **Certain Provisions Respecting Registration and Transfer of the Series 2020 Warrants**

The Series 2020 Warrants shall be registered as to both principal and interest and may be transferred only on the registry books of the Paying Agent pertaining to the Series 2020 Warrants. No transfer of the Series 2020 Warrants shall be permitted except upon presentation and surrender of such Warrant at the office of the Paying Agent with written power to transfer signed by the registered owner thereof in person or by a duly authorized attorney in form and with guaranty of signature satisfactory to the Paying Agent. The Paying Agent will not be required to register or transfer any Warrant during the period of fifteen (15) calendar days next preceding any interest payment date and shall not be required to transfer or exchange any Warrant during the period of sixty (60) calendar days next preceding the date for redemption or prepayment of any Warrant. The holder of one or more of the Series 2020 Warrants may, upon request, and upon the surrender to the Paying Agent of such Warrant, exchange such Warrant for Series 2020 Warrants of other authorized denominations of the same series, maturity and interest rate and together aggregating the same principal amount as the Series 2020 Warrant so surrendered. Any registration, transfer and exchange of Series 2020 Warrants shall be without expense to the holder thereof, except that the holder shall pay all taxes and other governmental charges, if any, required to be paid in connection with such transfer, registration or exchange.

The holder of any Warrant will be required to pay any expenses incurred in connection with the replacement of a mutilated, lost, stolen or destroyed Warrant.

The Warrant Ordinances provide that each holder of the Series 2020 Warrants, by receiving or accepting the Series 2020 Warrants, consents and agrees and is estopped to deny that, insofar as the City and the Paying Agent are concerned, the Series 2020 Warrants may be transferred only in accordance with the provisions of the Warrant Ordinances. The Warrant Ordinances also provide that each transferee of the Series 2020 Warrants takes them subject to all principal and interest payments in fact made with respect to the Series 2020 Warrants.

No transfer of any Series 2020 Warrant will be valid except upon presentation and surrender of such Series 2020 Warrant at the principal corporate trust office of the Registrar with written power to transfer signed by the registered owner in person or by duly authorized attorney. Upon the proper transfer of any Series 2020 Warrant, the City will execute a new Series 2020 Warrant, and the Registrar will deliver to the transferee such new Series 2020 Warrant registered in the name of such transferee.

Any holder of one or more of the Series 2020 Warrants may, upon the surrender thereof to the Registrar, exchange such Series 2020 Warrant or Warrants for other Series 2020 Warrants, in the denomination of \$5,000 or any integral multiple thereof, of the same maturity and interest rate and together aggregating the same principal amount as the Series 2020 Warrant or Warrants so surrendered.

#### **Authority for Issuance**

The Series 2020 Warrants are issued by the City under authority of the Constitution and laws of the State of Alabama, including particularly Title 11, Chapter 47, Section 2 and Title 11, Chapter 81, Section 4 of the Code of Alabama (1975), as amended and pursuant to authorization contained in the Warrant Ordinances.

#### **Redemption Prior to Maturity\***

*Series 2020-A Warrants.* The Series 2020-A Warrants are subject to redemption prior to their maturity as follows:

*Optional Redemption.* The Series 2020-A Warrants maturing on or after [\_\_\_\_\_] will be subject to redemption prior to their maturity, at the option of the City, in whole or in part, on [\_\_\_\_\_] and on any date thereafter (in principal amounts of \$5,000 and any integral multiple thereof and if less than all of the Series 2020-A Warrants are to be redeemed, those maturities or portions thereof to be called for redemption shall be selected by the City in its discretion, and if less than all the Series 2020-A Warrants of a single maturity are to be redeemed, those to be called for redemption shall be selected by lot), at and for a redemption price equal to 100% of the principal amount of each Series-A 2020 Warrant or portion thereof redeemed, plus accrued interest to the date fixed for redemption.

*Series 2020-B Warrants.* The Series 2020-B Warrants are not subject to optional redemption prior to their maturity.

*Other Matters Related to Redemption Prior to Maturity.* Notice of any such redemption is required to be given, not less than thirty (30) days prior to the date fixed for redemption, by United States registered or certified mail to the registered holder of any Series 2020 Warrants called for redemption. Such notice of redemption relative to the Series 2020 Warrants called for redemption shall state that it is conditioned on

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\* Preliminary; Subject to Change.

there being sufficient money on deposit to pay the full redemption price of the Series 2020 Warrants called for redemption on the redemption date.

## SECURITY

### General

The Series 2020 Warrants will be general obligations of the City for the payment of which the full faith and credit of the City will be irrevocably pledged. Revenues of the City legally available for payment of the principal of and the interest and premium (if any) on the Series 2020 Warrants will include ad valorem taxes, gross receipts taxes, privilege license taxes and other taxes, and other general revenues of the City.

### Application of Tax Revenues and Creation of Funds

*General.* The Series 2020-A Warrant Ordinance will provide for the maintenance of a special fund designated the “City of Daphne Warrant Fund, Series 2020-A” (the “*Series 2020-A Warrant Fund*”). The Series 2020-B Warrant Ordinance will provide for the maintenance of a special fund designated the “City of Daphne Warrant Fund, Series 2020-B” (the “*Series 2020-B Warrant Fund*”). The Bank of New York Mellon Trust Company, N.A. will be designated in the Warrant Ordinances as the depository, custodian and disbursing agent for the Series 2020-A Warrant Fund and the Series 2020-B Warrant Fund.

*The Series 2020-A Warrant Fund.* The City will be required to transfer to the Series 2020-A Warrant Fund, on or before the business day next preceding each January 1 and July 1, commencing January 1, 2021, an amount equal to the sum of (i) the semiannual installment of interest that will mature with respect to the Series 2020-A Warrants on the then next succeeding interest payment date, plus (ii) the principal, if any, of the Series 2020-A Warrants that will mature on the then next succeeding interest payment date. Moneys on deposit in the Series 2020-A Warrant Fund are to be used for the payment of the principal of and interest on the Series 2020-A Warrants.

*The Series 2020-B Warrant Fund.* The City will be required to transfer to the Series 2020-B Warrant Fund, on or before the business day next preceding each January 1 and July 1, commencing January 1, 2021, an amount equal to the sum of (i) the semiannual installment of interest that will mature with respect to the Series 2020-B Warrants on the then next succeeding interest payment date, plus (ii) the principal, if any, of the Series 2020-B Warrants that will mature on the then next succeeding interest payment date. Moneys on deposit in the Series 2020-B Warrant Fund are to be used for the payment of the principal of and interest on the Series 2020-B Warrants.

*Investment of Funds.* The City may, at its option, from time to time cause any or all of the moneys on deposit in the Series 2020-A Warrant Fund and the Series 2020-B Warrant Fund to be invested in Federal Obligations (as hereinafter defined) having a specified maturity, or being redeemable at the option of the holder, prior to the date when it is anticipated by the City that such moneys will be needed. In the event of any such investment of moneys in the Series 2020-A Warrant Fund and the Series 2020-B Warrant Fund, the Federal Obligations in which such investment shall be made, together with all income therefrom, shall become a part of said fund and shall be held by the Paying Agent to the same extent as if they were moneys on deposit therein. As used in this Official Statement, the term "Federal Obligations" means securities that are direct obligations of the United States of America or that are unconditionally guaranteed by the United States of America as to the payment of both principal and interest (including money market funds investing solely in such obligations of the United States of America).

## **Bankruptcy**

Chapter 9 of the United States Bankruptcy Code permits political subdivisions and public agencies or instrumentalities that are insolvent or unable to meet their debts to file petitions for relief in a federal bankruptcy court if authorized by state law. Alabama law as presently construed authorizes the City and other political subdivisions in Alabama to file petitions for relief under the Bankruptcy Code.

Bankruptcy proceedings by the City could have significant adverse effects on the holders of the Series 2020 Warrants, including (a) delay in the enforcement of their remedies, (b) subordination of their claims to the claims of those supplying goods and services to the City after the initiation of bankruptcy proceedings and to the administrative expenses of bankruptcy proceedings or to other claims of creditors of the City, (c) subordination of liens, (d) avoidance of liens or preferential transfers, and (e) imposition without their consent of a plan for the adjustment of the City's debts that may modify the rights of creditors generally, including the rights of the owners of the Series 2020 Warrants. The Bankruptcy Code permits the use of a plan for the adjustment of debts of a political subdivision which is binding upon all creditors who had notice or knowledge of the plan and which discharges all claims against such political subdivision provided for in the plan, subject to certain requirements and conditions. The effect of these and other provisions of the Bankruptcy Code cannot be predicted with any certainty and may be significantly affected by judicial interpretation or future action of the Congress of the United States or the Alabama Legislature.

## **RISK FACTORS**

An investment in the Series 2020 Warrants involves certain risks which should be carefully considered by investors. Prospective investors should carefully examine this Official Statement and their own financial condition in order to make a judgment as to their ability to bear the economic risk of such an investment and whether or not the Series 2020 Warrants are an appropriate investment for them. The sufficiency of general fund moneys to pay debt service on the Series 2020 Warrants may be affected by events and conditions relating generally to, among other things, the assessed value of taxable property in the City, the value of retail sales in the City, and population trends and economic developments, the exact nature and extent of which are not presently determinable.

The following is a discussion of certain risk factors that should be considered, in addition to other matters set forth herein, in evaluating the investment quality of the Series 2020 Warrants. This discussion is not comprehensive or definitive and does not summarize all risks that may be associated with the Series 2020 Warrants.

### **Limitations on Rights of Holders of the Series 2020 Warrants/Limitations on City Revenue Increases**

Holders of the Series 2020 Warrants should be aware that their rights and the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights and the exercise of judicial discretion in appropriate cases, including the law-imposed requirement that the City may first use its taxes and other revenues to pay the expenses of providing necessary governmental services before paying debt service on the Series 2020 Warrants.

Holders of the Series 2020 Warrants also should be aware that, under present law, the rates at which Alabama property taxes are levied may be increased only after approval by the legislature and a majority vote of the qualified electors of the affected jurisdiction, and that, under applicable judicial precedents, neither Alabama general sales and use taxes nor Alabama business license taxes may be levied at rates that are confiscatory or unreasonable.

## **The United States Bankruptcy Code**

Information describing the applicability of the United States Bankruptcy Code to the City and the Series 2020 Warrants is set forth in this Official Statement under the caption “SECURITY – BANKRUPTCY”.

## **Hurricanes and Other Severe Weather**

The Gulf Coast region is subject to occurrences of severe weather, including hurricanes, in which winds and tidal surges are powerful enough to cause severe destruction. The City, which is located in a coastal area, is particularly susceptible to such storms and their effects. While the City’s property and equipment is insured against damage from such weather hazards in amounts the City’s management believes to be reasonable, the City is not insured against risks like business interruption or loss of taxes and other revenues that could result from such weather hazards. There can be no assurance that the City has provided adequate financial reserve funds against such uninsured risks.

## **COVID-19 and Other Public Health Epidemics or Outbreaks**

As has been widely reported, the worldwide 2019-2020 coronavirus pandemic ("Covid-19") is presently ongoing in the United States and in many other areas of the world. On March 13, 2020, President Trump proclaimed the Covid-19 outbreak a national emergency. On April 3, 2020, Governor of Alabama Kay Ivey issued a wide-ranging "stay at home order," which effectively closed most "non-essential" businesses through the end of April, 2020. On April 28, 2020, the Governor announced a less restrictive, though still limiting, "safer at home" order under which certain businesses remained closed until May 15, 2020, and other businesses were required to operate at reduced capacity. The "safer at home" order is presently scheduled to expire on October 2, 2020. As of August 27, 2020, the Alabama Department of Health reported 112,794 confirmed cases of Covid-19 in Alabama with 1,990 deaths. As of the same date, State of Alabama public health officials reported 4,199 cases in Baldwin County with 34 deaths.

For the fiscal year ended September 30, 2020, the year-to-date results for the City’s General Fund through June 30 showed a surplus of approximately \$4 million, as compared to the budget, due to an increase in revenues over the prior fiscal year and expenditures less than the budgeted amounts. Nonetheless, the City cannot at this time predict whether or to what extent Covid-19 will affect the operations or financial condition of the City. The continued spread of Covid-19 could have a material adverse effect on the City's operations and its financial condition, including a reduction in the City's collections of sales and use taxes and other taxes and fees necessary for the operation of the City. Additionally, indirect effects of the pandemic – such as the nationwide economic slowdown, significantly increased unemployment, particularly unemployment lasting beyond the expiration of state and federal unemployment assistance programs, volatility in financial markets, various business closures and quarantining or "shelter in place" initiatives enacted in an effort to combat spread of the virus – could, over the long-term, have a material adverse impact on the City and its finances. The extent to which Covid-19 impacts the City's operations and its financial condition will depend on future developments, which are highly uncertain and cannot be predicted with confidence, including the duration of the outbreak, new information which may emerge concerning the severity of Covid-19 and the actions to contain it or treat its impact, among others.

## **Tax-Exempt Status of Series 2020-A Warrants**

It is expected that the Series 2020-A Warrants will qualify as tax-exempt obligations for federal income tax purposes as of the date of issuance. See “TAX MATTERS”. It is anticipated that Bond Counsel will render an opinion substantially in the form attached hereto as APPENDIX C, which should be read in its entirety for a complete understanding of the scope of the opinions and the conclusions expressed therein. A legal opinion expresses the professional judgment of the attorney rendering the opinion as to the legal issues explicitly addressed therein. By rendering a legal opinion, the opinion giver does not become an insurer or

guarantor of that expression of professional judgment, of the transaction opined upon, or of the future performance of parties to the transaction. Nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

The tax status of the Series 2020-A Warrants could be affected by post-issuance events. There are various requirements of the Internal Revenue Code of 1986, as amended, that must be observed or satisfied after the issuance of the Series 2020-A Warrants in order for the Series 2020-A Warrants to qualify for, and retain, tax-exempt status. These requirements include appropriate use of the proceeds of the Series 2020-A Warrants, use of the facilities financed by the Series 2020-A Warrants, investment of warrant proceeds, and the rebate of so-called excess arbitrage earnings. Compliance with these requirements is the responsibility of the City.

The Internal Revenue Service conducts an audit program to examine compliance with the requirements regarding tax-exempt status. Under current IRS procedures, in the initial stages of an audit with respect to the Series 2020-A Warrants, the City would be treated as the taxpayer, and the owners of the Series 2020-A Warrants may have limited rights to participate in the audit process. The initiation of an audit with respect to the Series 2020-A Warrants could adversely affect the market value and liquidity of the Series 2020-A Warrants, even though no final determination about the tax-exempt status has been made. If an audit results in a final determination that the Series 2020-A Warrants do not qualify as tax-exempt obligations, such a determination could be retroactive in effect to the date of issuance of the Series 2020-A Warrants.

In addition to post-issuance compliance, a change in law after the date of issuance of the Series 2020-A Warrants could affect the tax-exempt status of the Series 2020-A Warrants or the effect of investing in the Series 2020-A Warrants. For example, the United States Congress could eliminate or limit the exemption for interest on the Series 2020-A Warrants, or it could reduce or eliminate the federal income tax, or it could adopt a so-called flat tax. It cannot be predicted whether or in what form any such change in law may be enacted or whether, if enacted, any such change in law would apply to the Series 2020-A Warrants.

The Series 2020-A Warrant Ordinance does not require the City to redeem the Series 2020-A Warrants and does not provide for the payment of any additional interest or penalty if a determination is made that the Series 2020-A Warrants do not comply with the existing requirements of the Internal Revenue Code of 1986, as amended, or if a subsequent change in law adversely affects the tax-exempt status of the Series 2020-A Warrants or the effect of investing in the Series 2020-A Warrants.

### **Risk of Future Legislative Changes and/or Court Decisions**

The Legislation affecting tax-exempt obligations is regularly considered by the United States Congress and may also be considered by the State legislature. Court proceedings may also be filed, the outcome of which could modify the tax treatment of obligations such as the Series 2020-A Warrants. There can be no assurance that legislation enacted or proposed, or actions by a court, after the date of issuance of the Series 2020-A Warrants will not have an adverse effect on the tax status of interest on the Series 2020-A Warrants or the market value or marketability of the Series 2020 Warrants. These adverse effects could result, for example, from changes to federal or state income tax rates, changes in the structure of federal or state income taxes (including replacement with another type of tax), or repeal (or reduction in the benefit) of the exclusion of interest on the Series 2020-A Warrants from gross income for federal or state income tax purposes for all or certain taxpayers. In all such events, the market value of the Series 2020-A Warrants may be affected and the ability of holders to sell their Series 2020-A Warrants in the secondary market may be reduced. The Series 2020-A Warrants are not subject to special mandatory redemption, and the interest rates on the Series 2020-A Warrants are not subject to adjustment, in the event of any such change in the tax treatment of interest on the Series 2020-A Warrants. Investors should consult their own financial and tax advisors to analyze the importance of these risks.

## **Ratings on the Series 2020 Warrants**

The ratings of the Series 2020 Warrants may be lowered or withdrawn depending on various factors, including the ratings agencies' assessment of the City's financial strength.

The ratings of the Series 2020 Warrants are not a recommendation to purchase, hold or sell the Series 2020 Warrants, and the ratings do not comment on the market price or suitability of the Series 2020 Warrants for a particular investor. The ratings of the Series 2020 Warrants may not remain for a given period of time and may be lowered or withdrawn depending on, among other things, each rating agency's assessment of the City's financial strength and changes in each rating agency's methodology in assigning a credit rating to the Series 2020 Warrants. The City is not required to maintain a specified rating in respect to the Series 2020 Warrants.

## **Suitability of the Series 2020 Warrants for Investment**

No dealer, broker, salesman or other person has been authorized by the City or the Underwriter to give any information or make any representations, other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by either of the foregoing.

## **CONTINUING DISCLOSURE**

### **General**

Pursuant to Rule 15c2-12 (the "**Rule**") promulgated by the Securities and Exchange Commission, the City will, upon issuance of the Series 2020 Warrants, enter into a Continuing Disclosure Agreement wherein the City will covenant for the benefit of the holders and beneficial owners of the Series 2020 Warrants to provide its audited financial statements and certain financial information and operating data relating to the City by not later than June 30 of the City's succeeding fiscal year (the "**Annual Report**"), commencing with the report for the 2020 Fiscal Year, and to provide notices of the occurrence of certain enumerated events as described below. The Annual Report and notices of material events will be filed by the City with the Electronic Municipal Market Access System ("**EMMA**") maintained by the Municipal Securities Rulemaking Board.

### **Annual Reports**

Each Annual Report will include an audited financial statement of the City and certain annual financial information and operating data of the kind set forth in the Official Statement under the caption "CITY DEBT", "CITY REVENUES" and "APPENDIX A – Other Post Employment Benefits and Top Ten Taxpayers of the City." If the audited financial statements are not available by the time the Annual Report is due, it is required to be filed when available, provided, in such event unaudited financial statements are required to be delivered as part of the Annual Report.

### **Material Events Notices**

Notices of the following events will be provided in a timely manner not in excess of 10 business days after the occurrence of the event:

- Principal and interest payment delinquencies
- Non-payment related defaults, if material

- Unscheduled draws on any reserve funds reflecting financial difficulties
- Unscheduled draws on credit enhancements reflecting financial difficulties
- Substitution of credit or liquidity providers, or their failure to perform
- Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability. Notice of Proposed Issue (IRS Form 5701 TEB) or other material notices or determinations with respect to the tax status of the Warrants, or other material events affecting the tax status of the Warrants
- Modifications to rights of Warrantholders, if material
- Warrant calls, if material, and tender offers
- Defeasances
- Release, substitution or sale of property securing repayment of the Series 2020 Warrants, if material
- Rating changes
- Bankruptcy, insolvency, receivership or similar event with respect to the City
- The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material
- Appointment of a successor or additional trustee or the change of the name of a trustee, if material
- Incurrence of a financial obligation (as defined for purposes of the Rule) of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the City, any of which affect Warrant holders, if material
- Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation (as defined for purposes of the Rule) of the City, any of which reflect financial difficulties

In addition, the City must give notice of any failure to file its required Annual Report on or before the date specified in the Continuing Disclosure Agreement.

The City may from time to time choose to provide notice of the occurrence of certain other events, in addition to those listed above if, in the judgment of the City, such other events are material with respect to the Series 2020 Warrants, but the City does not undertake to commit to provide any such notice of the occurrence of any material event except those events listed above.

#### **Other Provisions of Continuing Disclosure Agreement**

The City reserves the right to modify from time to time the specific types of information provided or the format of the presentation of such information, to the extent necessary or appropriate in the judgment of

the City; provided, that the City agrees that any such modification will be done in a manner consistent with the Rule. The City reserves the right to terminate its obligations to provide annual financial information and notices of material events, as set forth above, if and when the City no longer remains an obligated person with respect to the Series 2020 Warrants within the meaning of the Rule. The City acknowledges that its undertaking, pursuant to the Rule described under this heading is intended to be for the benefit of beneficial owners of the Series 2020 Warrants and that the City's obligations may be enforced by any beneficial owner of the Series 2020 Warrants; provided, that the beneficial owner's right to enforce the provisions of this undertaking shall be limited to a right to obtain specific enforcement of the City's obligations under the Continuing Disclosure Agreement and any failure by the City to comply with the provisions of such undertaking shall not be in event of default with respect to the Series 2020 Warrants.

### **Digital Assurance Certification**

In order to provide certain continuing disclosure in compliance with the Rule, the City has entered into a Disclosure Dissemination Agent Agreement (the "Disclosure Dissemination Agreement") with Digital Assurance Certification, L.L.C. ("DAC"), under which the City has designated DAC as Disclosure Dissemination Agent.

DAC has only the duties specifically set forth in the Disclosure Dissemination Agreement. DAC's obligation to deliver the information at the times and with the contents described in the Disclosure Dissemination Agreement is limited to the extent the City has provided such information to DAC as required by the Disclosure Dissemination Agreement. DAC has no duty with respect to the content of any disclosures or notice made pursuant to the terms of the Disclosure Dissemination Agreement. DAC has no duty or obligation to review or verify any information in any Annual Report, audited financial statement, Material Event Notice or voluntary report, or any other information, disclosures or notices provided to it by the City and shall not be deemed to be acting in any fiduciary capacity for the City, the Holders of the Series 2020 Warrants or any other party. DAC has no responsibility for the City's failure to report to DAC a Notice Event or a duty to determine the materiality thereof. DAC shall have no duty to determine or liability for failing to determine whether the City has complied with the Disclosure Dissemination Agreement. DAC may conclusively rely upon certifications of the City at all times.

### **Compliance with Continuing Disclosure Obligations**

During the past five years the City has filed all continuing disclosure reports currently required by its prior undertakings under the Rule.

## **CITY DEBT**

### **General Obligation Indebtedness**

The City's outstanding long-term indebtedness after the issuance of the Series 2020 Warrants will be as follows:

<u>Issue</u>	<u>Principal Amount Outstanding</u>
General Obligation Refunding and Improvement Warrants, Series 2019	\$ 9,410,000
Limited Obligation Revenue Warrants, Series 2002**	907,208
General Obligation Refunding and Improvement Warrants, Series 2012	515,000
General Obligation Refunding and Improvement Warrants, Series 2014	7,260,000
General Obligation Refunding and Improvement Warrants, Series 2016	3,775,000
General Obligation Refunding Warrants, Series 2020	<u>10,945,000*</u>
TOTAL	\$32,812,208*

### Other Indebtedness

In addition to the long-term indebtedness shown above, the City has a loan entered into September 27, 2018 in favor of First Security Finance, Inc., currently outstanding in the principal amount of approximately \$595,495 and maturing on October 15, 2022 (the “2018 Loan”), and capital leases for the purchase of vehicles, currently outstanding in the amount of \$1,180,689.

The City has no authorized but unissued debt outstanding. The City does not expect to incur additional long-term indebtedness, other than the Series 2020 Warrants within the next 12 months.

### Subordinate Entity Debt

As of September 30, 2019, the Utilities Board of the City of Daphne, a public corporation which was incorporated by the City and has a five-member board of directors, has outstanding principal indebtedness (including State Revolving Fund loans) in the amount of \$14,279,771.

### Debt Service Requirements

The following table presents the annual debt service on the Series 2020 Warrants, the Series 2019 Warrants, the 2018 Loan, the Series 2016 Warrants, the Series 2014 Warrants and the Series 2012 Warrants after the issuance of the Series 2020 Warrants:

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\* Preliminary; Subject to Change.

\*\* Payments are solely made from related business sales tax revenues.

<u>Fiscal Year</u>	<u>Series 2020 Warrants*</u>	<u>Series 2019 Warrants</u>	<u>2018 Loan</u>	<u>Series 2016 Warrants</u>	<u>Series 2014 Warrants</u>	<u>Series 2012 Warrants</u>	<u>Total Debt Service*</u>
2021	\$414,411	\$334,700	\$214,382	\$1,036,725	\$362,245	\$521,438	\$2,883,901
2022	766,936	846,900	214,382	418,275	982,245		3,228,738
2023	768,100	851,000	214,382	418,675	980,380		3,232,537
2024	773,628	849,575		412,200	986,833		3,022,236
2025	773,282	844,850		418,600	981,560		3,018,292
2026	772,333	841,650		414,400	979,995		3,008,378
2027	770,053	842,550		414,700	981,518		3,008,821
2028	771,860	837,550		419,300	976,075		3,004,785
2029	769,100	853,350		418,200	978,993		3,019,643
2030	770,300	839,050					1,609,350
2031	770,500	840,850					1,611,350
2032	769,700	836,550					1,606,250
2033	766,300	677,500					1,443,800
2034	767,700	678,900					1,446,600
2035	768,800	674,775					1,443,575
2036	774,600	680,050					1,454,650
2037	775,000						775,000
2038	770,100						770,100
<b>TOTAL</b>	<b>\$13,512,703</b>	<b>\$12,329,800</b>	<b>\$643,146</b>	<b>\$4,371,075</b>	<b>\$8,209,844</b>	<b>\$521,438</b>	<b>\$39,588,006</b>

### Constitutional Limitation on Debt of City

*General Limitation.* Section 225 of the Constitution of Alabama provides that cities having a population of six thousand or more may not become indebted in an amount in excess of 20% of the assessed valuation of the property situated therein (the “*General Debt Limit*”). The Constitution exempts from this General Debt Limit several categories of indebtedness, including (i) temporary loans, to be paid in one year, made in anticipation of the collection of taxes and not exceeding one-fourth of the general revenues; (ii) bonds or other obligations issued for the purpose of acquiring, providing or constructing schoolhouses, water works and sewers; and (iii) obligations incurred and bonds issued for street or sidewalk improvements where the cost of the same, in whole or in part, is to be assessed against the property abutting said improvements. The Constitution also provides for a separate debt limit for certain economic development projects issued pursuant to Section 94.01 of the Constitution (the “*Economic Development Debt Limit*”) and not against the General Debt Limit. As of September 30, 2019, the City has outstanding \$1,311,660 of obligations for Sewer Projects and thus not chargeable to its General Debt Limit.

The General Debt Limit is based on assessed value of real and personal property of \$453,371,598 as of October 1, 2019 is computed as follows:

General & Limited Obligation Debt	\$38,226,866
Debt Chargeable to 20% Debt Limit	\$34,563,180
Debt Limit (20% of Assessed Value)	\$90,674,320
Debt Margin	\$56,111,140
Debt to Assessed Valuation	8.43%
2019 Population of City	26,506
Total Debt Per Capita	1,442

\* Preliminary; Subject to Change.

## **CITY REVENUES**

### **General**

The City operates on a fiscal year basis beginning October 1 and ending September 30. The City prepares a detailed budget for each fiscal year that is approved by the City Council prior to October 1 and all departments are required by City policy to operate within their respective budgets. There is no constitutional requirement that the budget be balanced each year, but the City has, as a matter of policy, required a balanced budget.

The significant accounting practices for City finances are summarized in the audited financial statements of the City. A copy of the audited financial statements of the City for the fiscal year which ended September 30, 2019, is included as APPENDIX B to this Official Statement including statements of revenues, expenditures and changes in fund balances. The General Fund finances substantially all current operations. These financial statements should be reviewed by prospective purchasers of the Series 2020 Warrants.

### **Summary of Primary Sources of Revenues and Expenditures**

The following table sets forth the primary sources of General Fund revenues, as well as primary categories of expenditures, for the fiscal years ended September 30, 2015 through 2019:

*[Remainder of page intentionally left blank.]*

**GENERAL FUND  
STATEMENT OF REVENUES, EXPENDITURES,  
AND CHANGES IN GENERAL FUND BALANCE  
FOR THE FISCAL YEAR ENDING SEPTEMBER 30**

<b><u>REVENUES</u></b>	<b><u>2019</u></b>	<b><u>2018</u></b>	<b><u>2017</u></b>	<b><u>2016</u></b>	<b><u>2015</u></b>
Taxes:					
Sales, use, luxury	\$18,721,240	\$17,641,013	\$16,374,881	\$15,703,733	\$14,683,837
Property	<u>6,190,619</u>	<u>5,712,928</u>	<u>5,490,960</u>	<u>5,209,599</u>	<u>4,499,713</u>
Total Taxes	24,911,859	23,353,941	21,865,841	20,913,332	19,183,550
Licenses & Permits	3,290,913	3,160,105	2,811,350	2,674,035	2,654,101
Payments in Lieu of Taxes	2,652,300	2,652,495	2,563,873	2,455,818	2,502,967
Fines	341,115	330,761	331,029	385,482	366,045
Charges for Services	692,487	363,094	342,786	360,456	343,525
Intergovernmental	419,062	358,441	373,838	288,590	271,556
Grants	442,612	492,590	406,162	1,431,603	164,801
Interests/Investment Earnings	458,592	52,694	21,152	184,660	211,928
Contributions and Donations	112,312	121,522	81,565	369,869	321,918
Miscellaneous	<u>176,535</u>	<u>74,944</u>	<u>125,193</u>	<u>193,919</u>	<u>50,969</u>
<b>Total Revenues</b>	<b><u>33,497,787</u></b>	<b><u>30,960,587</u></b>	<b><u>28,922,789</u></b>	<b><u>29,257,764</u></b>	<b><u>26,071,360</u></b>
<b><u>EXPENDITURES</u></b>					
Current:					
General Government	4,707,270	5,023,529	4,138,844	3,771,952	3,410,801
Public Safety	11,307,601	10,818,961	10,166,139	9,903,728	9,599,095
Public Works	4,187,278	4,029,139	4,190,915	4,998,649	3,838,102
Recreation and Library	2,349,964	2,063,789	1,836,500	1,816,295	1,773,455
Hurricane Nate		20,487			
Capital Outlay	2,570,040	1,833,138	1,814,769	2,317,944	1,507,216
Debt Service:					
Principal					
Interest					
Cost of Debt Issuance					
<b>Total Expenditures</b>	<b><u>25,122,153</u></b>	<b><u>23,789,043</u></b>	<b><u>22,147,167</u></b>	<b><u>22,808,568</u></b>	<b><u>20,128,669</u></b>
Excess (deficiency of revenues over (under) expenditures	<u>8,375,634</u>	<u>7,171,544</u>	<u>6,775,622</u>	<u>6,449,196</u>	<u>5,942,691</u>
<b><u>OTHER FINANCING SOURCES (USES)</u></b>					
Transfers In					
Transfers Out	(7,648,101)	(6,714,173)	(7,117,149)	(5,584,820)	(5,321,830)
Issuance of Debt	<u>805,355</u>	<u>293,038</u>	<u>570,560</u>	<u>1,285,397</u>	<u>481,289</u>
Total other financing sources (uses)	<b><u>(6,842,746)</u></b>	<b><u>(6,421,135)</u></b>	<b><u>(6,546,589)</u></b>	<b><u>(4,299,423)</u></b>	<b><u>(4,840,541)</u></b>
Net change in fund balances	<u>1,532,888</u>	<u>750,409</u>	<u>229,033</u>	<u>2,149,773</u>	<u>1,102,150</u>
Fund Balance, Beginning	14,710,073	13,959,664	13,730,631	11,580,858	10,141,607
Prior Period Adjustment	_____	_____	_____	_____	337,101
End Balance, Ending	<b><u>16,242,961</u></b>	<b><u>\$14,710,073</u></b>	<b><u>\$13,959,664</u></b>	<b><u>\$13,730,631</u></b>	<b><u>\$11,580,858</u></b>

## Sales Taxes

The City levies a privilege license tax at the rate of 2.5% pursuant to Ordinance No. 1977-3, as amended by Ordinance No. 1989-13, on persons, corporations and others engaging in the business of selling at retail tangible personal property or conducting places of amusement (the said tax being measured by the gross proceeds or gross receipts of the said business) to the extent that the said tax is levied with respect to business conducted within the corporate limits of the City. Such privilege license tax is herein referred to as the "Sales Tax."

Collections of the Sales Taxes have been as follows for the past five fiscal years:

<u>Fiscal Year</u>	<u>Collection</u>
2018-19	\$19,263,337
2017-18	18,180,419
2016-17	16,777,248
2015-16	16,090,539
2014-15	13,381,388

## Business License Fee

The City levies, under general authority granted by the Legislature of the State of Alabama, a business license fee on the privilege of engaging in certain businesses and professions within the corporate limits of the City and its police jurisdiction. Businesses and professions are charged a fee based on gross receipts of the prior year, subject to certain limitations with respect to rate. The business license fee is collected by the City's Revenue Department.

Collections of the City's Business License Fee have been as follows for the last five fiscal years indicated:

<u>Fiscal Year</u>	<u>Collection</u>
2018-19	\$2,418,955
2017-18	2,324,471
2016-17	2,227,395
2015-16	2,106,216
2014-15	1,995,923

## Property Taxes

The levy and collection of ad valorem taxes in Alabama are subject to the provisions of the Alabama Constitution as amended, which, among other things, fix the percentage of market value at which property can be assessed for taxation, limit the rates of municipal taxation that can be levied against property and provide a maximum value for the aggregate ad valorem taxes that can be levied by all taxing authorities on any property in any tax year.

The amount of any specific ad valorem tax in Alabama is computed by multiplying the tax rate by the assessed value of the taxable property. The assessed value of taxable property is a specified percentage (ranging from 10% to 20%) of its fair and reasonable market value or, in certain circumstances, its current use value. Ad valorem tax rates are generally stated in terms of mills (one-thousandth of a dollar) per dollar of assessed value. Thus, for any given ad valorem tax, each mill in the rate of taxation represents a tax on property equal to one-tenth of one percent of the assessed value of such property.

The following taxes (expressed in mills) are currently levied on taxable property situated in the City, but except for the City's tax, are levied by other taxing authorities:

<u>Taxing Entity</u>	<u>Mills</u>
State of Alabama	6.5
City of Daphne	15.0
Baldwin County:	
General	5.0
Schools	9.0
Road & Bridges	2.5
Special School District	3.0
Fire	1.5
Health Department	<u>0.5</u>
	<u>43.0</u>

There are, therefore, 43 mills currently being levied on taxable property situated in the City.

The following classifications of taxable property and corresponding ratios of assessed value to fair and reasonable market value are established pursuant to amendments (the "**1978 Amendments**") to the Alabama Constitution for all ad valorem taxation (state and local), subject to certain exceptions stated below:

Class I -Property of utilities used in their business - 30%

Class II -Property not otherwise classified (generally, business or commercial property, including railroad property) - 20%

Class III -Agricultural, forest and single-family owner-occupied residential property and historical buildings and sites - 10%; and

Class IV -Private passenger automobiles and small trucks for personal use - 15%

All property, other than utility property, is now assessed at a lower ratio under the 1978 Amendments than under prior law.

The 1978 Amendments provide that all ad valorem taxes payable to the State and to all counties, municipalities and other taxing authorities with respect to any items of taxable property shall not exceed the following percentage of the fair and reasonable market value of such property in any single tax year: 2% in the case of Class I property; 1-1/2% in the case of Class II property; 1% in the case of Class III property; and 1-1/4% in the Class IV property. The limitations are not exceeded as to any class of property in the City.

The total assessed values of taxable real and personal property (including motor vehicles) located in the City as assessed for ad valorem taxation (net of exemptions) for the tax year which ended on September 30, 2019 was \$453,371,598.

The following table sets forth the total real property assessed valuation within the corporate limits of the City, the ad valorem taxes levied and the percentage collected:

<u>Tax Year</u>	<u>Assessed Valuation</u>	<u>Taxes Due</u>	<u>Tax Collected</u>	<u>Total</u>
2012	\$335,467,376	\$4,411,487	\$4,407,784	99.85%
2013	\$345,316,918	\$4,513,658	\$4,508,357	97.99%
2014	\$358,662,928	\$4,740,854	\$4,738,364	99.95%
2015	\$374,493,002	\$4,898,061	\$4,893,036	99.90%
2016	\$394,407,722	\$5,185,562	\$5,182,604	99.94%
2017	\$414,197,104	\$5,464,020	\$5,460,494	99.94%
2018	\$435,853,834	\$5,813,829	\$5,793,495	99.65%
2019	\$453,371,598	\$6,081,780	\$5,652,624	92.94%*

Source: City of Daphne, Alabama

\* Collections through August 31, 2020. The City expects the collection rate to be consistent with prior years prior to the end of the year.

Property taxes are generally collected and received by municipalities by February 1 of each fiscal year. For purposes of ad valorem taxation, taxes are due and payable in the fiscal year following the fiscal year in which the assessment and levy is made. Ad valorem taxes on taxable properties (except motor vehicles) in the City are required to be collected by the Tax Collector of Baldwin County. Ad valorem taxes on motor vehicles in the City are collected by the Judge of Probate of Baldwin County.

### **Payments in Lieu of Taxes**

Certain entities that are otherwise exempt from tax have agreed to make payments in lieu of taxes. Such payments have been as follows for the last five fiscal years indicated:

<u>Fiscal Year</u>	<u>Amount Received</u>
2018-19	\$2,652,300
2017-18	2,625,495
2016-17	2,563,873
2015-16	2,455,818
2014-15	2,502,967

### **Lodging Taxes**

The City levies a lodging tax for renting or furnishing rooms, lodgings or accommodations and for renting or furnishing space for accommodation of trailers at a rate based upon percentage of charges. Collections of the lodging tax for the last five years have been as follows:

<u>Fiscal Year</u>	<u>Collection</u>
2018-19	\$1,241,568
2017-18	1,229,247
2016-17	1,212,988
2015-16	1,127,457
2014-15	1,150,070

## Other Taxes

Along with miscellaneous other taxes, the City also levies a beer tax, a liquor tax, a gasoline tax and a tobacco tax, the revenues of which for the last three fiscal years were as follows:

<u>Fiscal Year</u>	<u>Beer Tax Collections</u>	<u>Liquor Tax Collections</u>	<u>Gasoline Tax Collections</u>	<u>Tobacco Tax Collections</u>
2018-19	\$289,115	\$89,643	\$218,772	\$138,072
2017-18	282,088	85,691	227,979	126,380
2016-17	301,667	78,999	202,720	123,953
2015-16	298,871	80,216	191,906	117,909
2014-15	301,095	68,110	192,497	111,124

## LITIGATION

There is no litigation pending or, to the knowledge of the City, threatened contesting the validity of the Series 2020 Warrants or relating to the organization or boundaries of the City, the incumbency of any of the City's officers, or the issuance or sale of the Series 2020 Warrants. Simultaneously with the delivery of the Series 2020 Warrants, the City will deliver a certificate to the effect that no such litigation is pending or, to the knowledge of the City, threatened.

The City is not a defendant in any lawsuits or other pending litigation which it believes would have a materially adverse effect upon its financial condition.

Recent court decisions have substantially eroded the immunity from tort liability formerly enjoyed by local governmental units in Alabama. Chapter 93 of Title 11 of the Code of Alabama 1975, as amended, now prescribes certain maximum limits on the liability of local governmental units (such as the City) for bodily injury, sickness, disease or death sustained by a person and for injury or destruction of tangible property. However, Chapter 93 has no application to causes of action under Section 1983 of Title 42 of the United States Code. Municipalities and other local governmental units throughout the country have been increasingly subject to lawsuits, many of which claim damages in large amounts for alleged denials of civil rights under the provisions of Section 1983. The City has procured liability insurance coverage from the Alabama Municipal Insurance Corporation which does afford, within limits, coverage and costs of defense for such lawsuits brought pursuant to federal law.

Legal counsel is currently representing the City of Daphne in various legal proceedings arising principally in the normal course of operations of a city government. In the opinion of the city officials and its legal counsel, the outcome of the remaining legal proceedings is not likely to have a material adverse effect on the financial condition of the City.

## TAX MATTERS

### Series 2020-A Warrants

#### General

In the opinion of Bond Counsel, under existing law, interest on the Series 2020-A Warrants will be excludable from gross income for federal income tax purposes if the City complies with all requirements of the Internal Revenue Code that must be satisfied subsequent to the issuance of the Series 2020-A Warrants in order that interest thereon be and remain excludable from gross income. Failure to comply with certain of

such requirements could cause the interest on the Series 2020-A Warrants to be included in gross income, retroactive to the date of issuance of the Series 2020-A Warrants. The City has covenanted to comply with all such requirements.

Bond Counsel is also of the opinion that, under existing law, interest on the Series 2020-A Warrants will not be an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, it should be noted that, with respect to corporations, such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on such corporations.

Bond Counsel is also of the opinion that the Series 2020-A Warrants are “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Internal Revenue Code, and, in the case of financial institutions (as defined in Section 265(b)(5) of the Internal Revenue Code), a deduction is allowed for 80% of that portion of such financial institution’s interest expense allocable to interest on the Series 2020-A Warrants.

Bond Counsel will express no opinion regarding federal tax consequences arising with regard to the Series 2020-A Warrants other than the opinions expressed in the three preceding paragraphs. The form of Bond Counsel’s opinion is expected to be substantially as set forth in APPENDIX C to this Official Statement.

Prospective purchasers of the Series 2020-A Warrants should be aware that ownership of the Series 2020-A Warrants may result in collateral and federal and state tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, certain S corporations with “excess net passive income”, foreign corporations subject to a branch profits tax and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry the Series 2020-A Warrants. Bond Counsel will not express any opinion as to such collateral tax consequences. Prospective purchasers of the Series 2020-A Warrants should consult their tax advisors as to collateral tax consequences.

Bond Counsel is also of the opinion that, under existing law, interest on the Series 2020-A Warrants will be exempt from State of Alabama income taxation.

#### **Tax Treatment of Original Issue Discount\***

Certain of the Series 2020-A Warrants are sold at an original issue discount (collectively, the “OID Warrants”). The difference between the initial public offering price, as set forth on the inside cover page hereof, of the OID Warrants and their stated principal amount payable at maturity constitutes original issue discount treated as interest which is excluded from gross income for federal income tax purposes and which is exempt from all taxation in the State of Alabama subject to the caveats and provisions described above under “TAX MATTERS – SERIES 2020-A WARRANTS - GENERAL.”

In the case of an owner of an OID Warrant, the amount of original issue discount which is treated as having accrued with respect to such OID Warrant, is added to the cost basis of the owner in determining, for federal income tax purposes, gain or loss upon disposition of such OID Warrant (including its sale, redemption or payment at maturity). Amounts received upon disposition of such an OID Warrant which are attributable to accrued original issue discount will be treated as tax-exempt interest, rather than as taxable gain, for federal income tax purposes.

Original issue discount is treated as compounding semiannually, at a rate determined by reference to the yield to maturity of each individual OID Warrant, on days which are determined by reference to the maturity date of such OID Warrant. The amount treated as original issue discount on such OID Warrant for

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\* Preliminary; Subject to Change.

a particular semiannual period is equal to (i) the product of (a) the yield to maturity for such OID Warrant and (b) the amount which would have been the tax basis of such OID Warrant at the beginning of the particular semiannual period if held by the original purchaser, (ii) less the amount of any payments on such OID Warrant during the semiannual period. The tax basis is determined by adding to the initial public offering price on such OID Warrant the sum of the amounts which would have been treated as original issue discount for such purposes during all prior periods. If such an OID Warrant is sold between compounding dates, original issue discount which would have accrued for that semiannual compounding period for federal income tax purposes is to be apportioned in equal amounts among the days in such compounding period.

Owners of OID Warrants should consult their own tax advisors with respect to the determination for federal income tax purposes of original issue discount accrued with respect to such OID Warrants as of any date, with respect to the accrual of original issue discount for such OID Warrants purchased on the secondary markets and with respect to the state and local tax consequences of owning such OID Warrants.

### **Original Issue Premium\***

The initial public offering price to be paid for certain of the Series 2020-A Warrants (the "*Original Issue Premium Warrants*") is greater than the principal amount thereof. Under existing law, any owner who has purchased an Original Issue Premium Warrant in the initial public offering of the Series 2020-A Warrants is required to reduce his basis in such Original Issue Premium Warrant by the amount of premium allocable to periods during which he holds such Original Issue Premium Warrant, and the amount of premium allocable to each accrual period will be applied to reduce the amount of interest received by the owner during each such period. All owners of Original Issue Premium Warrants should consult their own tax advisors with respect to the determination for federal, state and local income tax purposes of interest accrued upon redemption, sale or other disposition of such Original Issue Premium Warrant and with respect to the federal, state, local and foreign tax consequences of the purchase, ownership, redemption, sale, gift or other disposition of such Original Issue Premium Warrant.

### **Bank Qualification**

The City has designated the Series 2020-A Warrants as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code. In the case of certain financial institutions (within the meaning of Section 265(b)(5) of the Code), a deduction is allowed for 80% of that portion of such financial institution's interest expense allocable to interest on the Series 2020-A Warrants.

### **Series 2020-B Warrants**

#### **General**

Interest on the Series 2020-B Warrants is not excludable from gross income of the holders thereof for federal income tax purposes under the Internal Revenue Code. Thus, owners of the Series 2020-B Warrants generally must include interest (including original issue discount, if any) on the Series 2020-B Warrants in gross income for federal income tax purposes. Bond Counsel is also of the opinion that, under existing law, interest on the Series 2020-B Warrants will be exempt from State of Alabama income taxation.

Bond Counsel will express no opinion regarding federal tax consequences arising with regard to the Series 2020-B Warrants other than the opinions expressed in the preceding paragraph. The form of Bond Counsel's opinion is expected to be substantially as set forth in APPENDIX D to this Official Statement.

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\* Preliminary; Subject to Change.

Each prospective purchaser of the Series 2020-B Warrants should seek advice based on the prospective purchaser's particular circumstances from an independent tax advisor.

### UNDERWRITING\*

The Series 2020-A Warrants will be purchased by Piper Sandler & Co. (the "*Underwriter*") at a purchase price of \$\_\_\_\_\_, which reflects an underwriter's discount of \$\_\_\_\_\_ and original issue premium of \$\_\_\_\_\_, less \$\_\_\_\_\_ of net original issue discount. The initial public offering prices set forth on the cover page may be changed by the Underwriter, and the Underwriter may offer and sell the Series 2020-A Warrants to certain dealers (including dealers depositing the Series 2020-A Warrants into investment trusts) and others at prices lower than the offering price set forth on the cover page. The Underwriter will purchase all the Series 2020-A Warrants if any are purchased. The Underwriter is obligated to purchase and pay for all the Series 2020-A Warrants in cash.

The Series 2020-B Warrants will be purchased by the Underwriter at a purchase price of \$\_\_\_\_\_, which reflects an underwriter's discount of \$\_\_\_\_\_ and original issue premium of \$\_\_\_\_\_. The initial public offering prices set forth on the cover page may be changed by the Underwriter, and the Underwriter may offer and sell the Series 2020-B Warrants to certain dealers (including dealers depositing the Series 2020-B Warrants into investment trusts) and others at prices lower than the offering price set forth on the cover page. The Underwriter will purchase all the Series 2020-B Warrants if any are purchased. The Underwriter is obligated to purchase and pay for all the Series 2020-B Warrants in cash.

The Underwriter has entered into a distribution agreement (the "*Distribution Agreement*") with Charles Schwab & Co., Inc. ("*CS&Co.*") for the retail distribution of certain securities offerings, including the Series 2020 Warrants, at the original issue prices. Pursuant to the Distribution Agreement, CS&Co. will purchase Series 2020 Warrants from the Underwriter at the original issue price less a negotiated portion of the selling concession applicable to any Series 2020 Warrants that CS&Co. sells.

### RATING

S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC ("*S&P*") is expected to assign a rating to the Series 2020-A Warrants and Series 2020-B Warrants as indicated on the cover page. Any definitive explanation of the significance of any such ratings may be obtained only from S&P. There is no assurance that any such rating will remain in effect for any given period of time or that any such rating will not be lowered or withdrawn entirely if, in the judgment of S&P, circumstances should warrant such action. Any such downward revision or withdrawal of any rating assigned to the Series 2020 Warrants could have an adverse effect on their market price.

### LEGAL MATTERS

The legality and validity of the Series 2020 Warrants will be approved by Adams & Reese LLP, of Mobile, Alabama, Bond Counsel, whose approving opinion will be delivered at the time of the delivery of the Series 2020 Warrants. It is anticipated that the opinion of Bond Counsel will be in substantially the form attached hereto as APPENDIX C for the Series 2020-A Warrants and APPENDIX D for the Series 2020-B Warrants. Certain matters will be passed upon for the City by its counsel, Adams & Reese LLP, Mobile, Alabama, and for the Underwriter by its counsel, Ezell Law, LLC, Birmingham, Alabama.

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\* Preliminary; Subject to Change.

**INFORMATION IN THE APPENDICES**

The Comprehensive Annual Financial Report for the Year Ended September 30, 2019, of the City attached hereto as APPENDIX B has been examined by Avizo Group, Inc., Certified Public Accountants, Fairhope, Alabama, independent auditors, to the extent and for the periods indicated in their report which appears in such Appendix. Such financial statements have been included in reliance upon such report.

**MISCELLANEOUS**

Any statements made in this Official Statement involving matters of opinion or estimates, whether or not expressly so stated, are intended as such and not as representations of fact. No representation is made that any of such statements will be realized.

References herein to the Alabama Constitution and all legislative acts referred to herein are intended to be only brief outlines of certain provisions of each thereof and do not purport to summarize or describe all provisions thereof.

The distribution of this Official Statement and its use in the offering and sale of the Series 2020 Warrants have been approved by the governing body of the City.

CITY OF DAPHNE, ALABAMA

By: \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

APPENDIX A

**FINANCIAL AND STATISTICAL DATA  
RELATIVE TO THE CITY OF DAPHNE, ALABAMA**

**General**

The City of Daphne, Alabama (the “City”), was founded in 1927, and is the largest city in Baldwin County, comprising 17.71 square miles. It is located on the eastern shore of Mobile Bay and is adjacent to Interstate 10, a major east/west thoroughfare. The City is 39 miles west of Pensacola, Florida and 9 miles east of Mobile, Alabama. The City is primarily a residential area with its residents working on the eastern shore of Baldwin County or in the Mobile or Pensacola areas.

**Population**

The following table sets forth population statistics for the State of Alabama, the City, Baldwin County and the United States for the years indicated.

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
State of Alabama	4,830,081	4,841,799	4,852,347	4,863,525	4,874,486	4,887,681	4,903,185
City of Daphne*	23,372	24,138	24,613	25,565	26,006	26,504	26,869
Baldwin County*	194,885	199,183	202,939	207,601	212,521	217,855	223,234
United States	315,993,715	318,301,008	320,635,163	322,941,311	324,985,539	326,687,501	328,239,523

Source: U.S. Department of Commerce, Bureau of Census, Population Estimates Division, July 2019 Release. Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2019. \*May 2020 Release.

**Governmental Organization and Administration**

The City is a municipal corporation incorporated under the Constitution and laws of the State of Alabama. The City is governed by an elected Mayor and a City Council. The Mayor, elected at large for a four-year term, is the chief administrative officer of the City and is responsible for the daily management of the City and supervision of its employees. The members of the City Council serve part-time and along with the Mayor are responsible for adopting all legislative ordinances and setting the policies of the City, including the appropriation of money. The City Clerk and City Treasurer are each appointed for a four-year term by the City Council and are responsible for managing the official records of the City and managing the fiscal affairs of the City, respectively. The present Mayor and the members of the City Council are as follows:

The City's governing body consists of the following officers:

<u>Name</u>	<u>Office</u>	<u>Occupation</u>
Dane Haygood	Mayor	Owner/ H Properties LLC
Tommie Conaway	Council Member, District 1	Retired/Teacher
Pat Rudicell	Council Member, District 2	Retired/Alabama National Guard
Joel Coleman	Council Member, District 3	Land Development/D.R. Horton Retired Air Force Lt. Colonel
Doug Goodlin	Council Member, District 4	AF JROTC Instructor/Daphne High School
Ron Scott	Council Member, District 5	Retired/Tameron Eastern Shore Honda
Robin LeJune	Council Member, District 6	Owner/Market by the Bay
Angie Phillips	Council Member, District 7	Teacher/Spanish Fort High School
Candance Antinarella	City Clerk	
Kelli Kichler Reid	Finance Director	

The current terms of said officers expire October 1, 2020. The City Clerk and Finance Director serve at the pleasure of the City Council.

## **Personnel and Retirement System**

The City employed approximately 318 full-time and part-time persons in its several departments as of September 30, 2019. The benefits and compensation for all employees of the City's several departments are established by the City Council and are paid from the City's general fund revenues. The City participates in a retirement system established by the Alabama Legislature known as the Employee's Retirement System of Alabama, to which contributions are made by both the employees and the City. See the Audited Financial Statements of the City in APPENDIX B attached hereto for a description of the City's obligations with respect to the Employee's Retirement System of Alabama.

No employees of the City are represented by labor unions or similar employee organizations, and the City does not bargain collectively with any labor unions or employee organizations. The City considers its relations with its employees to be generally good.

## **Other Post Employment Benefits**

The City of Daphne offers certain Post Employment Benefits to employees under the age of 65 who meet the criteria for retirement as set by the Retirement System of Alabama. Medical and Dental benefits are provided through a comprehensive plan and life insurance coverage is provided with a \$5,000 cap. Employees do not contribute to their post employment benefits until they retire and begin receiving those benefits. The City of Daphne's Annual Required Contribution rate is actuarially determined in accordance with GASB 45 and totals \$450,958 as of September 30, 2019. The total OPEB liability is 6,385,489.

## **Utilities**

The water and sanitary sewer service is supplied by the Utilities Board of the City of Daphne (the "Utilities Board"), a public corporation, the directors of which are appointed by the City Council. The Utilities Board also provides gas service. Electrical service is supplied by the Utilities Board of the City of Foley.

## **Education**

The County Board of Education of Baldwin County, Alabama provides public school facilities for the County's students in the City. The County Board of Education has located a high school, a middle school and three elementary schools in the City. For 2019, it is estimated that approximately 96.3% of the population of the City are high school graduates and 42.8% are college graduates. State averages are 85.8% and 24.9%, respectively.

Four institutions of higher learning located in Mobile County, which are accessible to residents of the City, are University of Mobile, Spring Hill College, Bishop State Community College and the University of South Alabama. Coastal Alabama Community College, whose main campus is located in Bay Minette, Alabama, is also nearby. Pensacola, Florida, located approximately thirty-five miles from the City, also provides certain educational opportunities

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Source: Baldwin County Economic Development Alliance

**Income Level**

There are two basic methods of measuring annual income: per capita income, which is the total income of all families and individuals in a given area divided by the total population of the area, and median family income above and below which there are an equal number of family incomes.

The following tables present comparative information regarding income levels in the City, Baldwin County, the State of Alabama, and the United States:

**Per Capita Income**

<u>Year</u>	<u>City of Daphne</u>	<u>Baldwin County</u>	<u>State of Alabama</u>	<u>United States</u>
2018	\$33,237	\$31,203	\$26,846	\$32,621
2017	\$32,323	\$29,364	\$25,746	\$31,177
2016	\$31,135	\$28,069	\$24,736	\$29,829
2015	\$29,623	\$27,317	\$24,091	\$28,930
2014	\$31,778	\$26,851	\$23,936	\$28,555

**Median Family Income**

<u>Year</u>	<u>City of Daphne</u>	<u>Baldwin County</u>	<u>State of Alabama</u>	<u>United States</u>
2018	\$84,243	\$71,951	\$62,030	\$73,965
2017	\$81,627	\$67,732	\$59,115	\$70,850
2016	\$78,797	\$64,020	\$56,828	\$67,871
2015	\$73,451	\$62,271	\$55,341	\$66,011
2014	\$74,762	\$61,621	\$54,724	\$65,443

Source: U.S. Census Bureau, 2014-2018 American Community Survey Five-year Estimates.

The percentage of all ages in the City, in Baldwin County, in the State of Alabama and in the United States with income below the poverty level in 2018 is as follows:

Daphne, Alabama	11.3%
Baldwin County	10.6%
State of Alabama	17.5%
United States	14.1%

Sources: U.S. Census Bureau, 2014-2018 American Community Survey Five-year Estimates.

**Employment**

The following table sets forth labor force estimates, employment, unemployment and unemployment rates for Daphne-Fairhope-Foley, Alabama Metropolitan Area on the dates indicated:

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>Feb 2019*</u>
Civilian Labor Force	83,755	84,645	86,818	89,018	90,001	92,494	93,580
Employment	78,313	79,906	81,969	84,342	87,006	89,401	90,112
Unemployment	5442	4739	4849	4676	2995	3093	3468
Rate	6.5%	5.6%	5.6%	5.3%	3.3%	3.3%	3.7%

Source: U.S. Department of Labor, Bureau of Labor Statistics; Not Seasonally Adjusted.

\*February, 2019; Preliminary; subject to change.

The following table sets forth comparative unemployment rates for Baldwin County, the State of Alabama and the United States in each of the years indicated:

<b>Calendar Year</b>	<b>Baldwin County (%)</b>	<b>State of Alabama (%)</b>	<b>United States (%)</b>
2019*	N/A	2.1	3.8
2018**	3.2	3.9	3.6
2017	4.0	4.4	4.4
2016	5.4	5.9	4.9
2015	5.5	6.1	5.3
2014	6.1	6.8	6.2
2013	6.6	7.2	7.3
2012	7.5	8.0	8.1

Source: U.S. Department of Labor, Bureau of Labor Statistics; Not Seasonally Adjusted.  
\*February 2019, \*\*May 2018; Preliminary; subject to change.

### **Labor Force Characteristics**

The following table sets forth annual 2017 estimated employment and wages employment statistics for Baldwin County:

<b>Baldwin County Employment by Industry</b>			
	<b><u>Number Employed</u></b>	<b><u>Total Wages</u></b>	<b><u>%</u></b>
Health Care and Social Assistance	8,813	\$376,473,814	14.1
Retail Trade	13,681	369,474,975	21.8
Manufacturing	4,197	201,632,324	6.7
Accommodation and Food Services	13,756	265,290,589	22.0
Administrative and Waste Services	3,158	85,920,693	5.0
Construction	3,729	179,095,708	6.0
Professional and Technical Services	1,950	110,082,099	3.1
Transportation and Warehousing	1,495	71,562,218	2.4
Wholesale Trade	1,760	105,061,396	2.8
Other Services, Ex. Public Admin.	1,910	63,095,166	3.1
Finance and Insurance	1,875	107,405,575	3.0
Real Estate, Rental and Leasing	1,974	69,308,324	3.1
Educational Services	979	38,438,669	1.6
Information	359	17,447,411	0.6
Arts, Entertainment and Recreation	1,480	28,704,064	2.3
Utilities	306	21,095,161	0.5
Management of Companies and Enterprises	292	16,406,609	0.5
Agriculture, Forestry, Fishing & Hunting	819	27,177,196	1.3
Mining	74	4,676,562	0.1
<b>Total wage and salary employees</b>	<b>62,607</b>	<b>\$2,158,348,553</b>	<b>100</b>

Source: Alabama Department of Labor– Labor Market Division. Estimates prepared by the U.S. Department of Labor, Bureau of Labor Statistics. Estimates adjusted to a 2017 benchmark; Alabama Department of Labor.

## **Major Employers**

The top ten (10) manufacturing and nonmanufacturing employers in Baldwin County, their principal activity and the number of employees of each are as follows:

Top Manufacturers in Baldwin County

<b>Company</b>	<b>Industry</b>	<b>Employed</b>
Collins Aerospace	Thrust Reversers, Cowlings, and Nacelle Components	1,160
Standard Furniture	Bedroom and Dining Furniture	520
Ace Hardware Support Center	Hardware Distribution Support Center	300
Vulcan, Inc.	Aluminum & Steel Products	270
Quincy Compressors	Air Compressors	220
Bon Secour Fisheries	Seafood Processing	150
Segers Aerospace	Aerospace and Defense MRO	140
Quality Filters	Air Filters	130
International Paper	Paper Products	130
Ascend Materials	Fibers and Resins	100
Dental EZ	Medical Instruments	100

Top Non-Manufacturers in Baldwin County

Company	Industry	Employed
Baldwin County Board of Education	Education	3,900
Wal-Mart	Retail	1,700
Infirmiry Health	Medical Care	1,250
Columbia Southern University	Education	1,050
South Baldwin Regional Medical Center	Medical Care	860
Marriott Grand Hotel	Hotel & Country Club	800
Baldwin County Commission	Government	650
Publix	Retail	560
Brett/Robinson Gulf Corp.	Vacation Rental Management	520
S.H. Enterprises	Vacation Rental Management	320

Source: Baldwin County Economic Development Alliance; December 2019

City's Major Employers

<u>Employers</u>	<u>Number of Employees</u>
Baldwin County Board of Education	400
City of Daphne	318
Wal-Mart Super Center	306
Lowe's	200
Eastern Shore Toyota/Hyundai	186
Publix	150
Bayside Academy	136
Thomas Hospital/Infirmiry	130
Chris Myers	125
The Brennty	119

Source: City of Daphne, Alabama.

## Top Ten Taxpayers of the City - 2019

<u>Taxpayers</u>	<u>Assessed Value (000's)</u>	<u>Taxes Paid</u>	<u>City Taxes Paid</u>
Audubon 344, LLC	\$6,850,980	\$293,614	\$102,765
Jubilee Square, LLC	6,826,280	292,554	102,394
Colonnade at Eastern Shore	5,005,680	214,529	75,085
Esfahani Real Estate Holding of AL	4,440,580	190,311	66,609
Ashley Gates - Brookfield LLC	4,180,300	179,157	62,705
Myers Family Limited Partnership	3,575,520	153,237	53,633
OCP Whispering Pines LLC	3,245,000	139,071	48,675
Palladian at Daphne	2,728,460	116,934	40,927
Jubilee Ridge LLC	2,489,460	106,677	37,337
Daphne 451 I LLC	2,454,540	103,909	36,368

Source: City of Daphne, Alabama. Data only available for top ten organizations.

\*Includes state, county and school taxes.

## Housing

The U.S. Department of Commerce, U.S. Census Bureau reports that the median value of owner-occupied houses in the City, 2014-2018 was \$190,900.

## Transportation

The City is located along a 3 mile stretch of Interstate 10 approximately 9 miles east of Mobile, Alabama. Interstate 10 is the southernmost transcontinental highway in the American Interstate Highway System. The 2,460 mile Interstate 10 highway spans from Santa Monica, California to Jacksonville, Florida.

Additionally, Interstate Highway 65, which runs northward from Mobile, Alabama through Nashville, Tennessee, is located approximately 30 miles north of the City where it passes through Baldwin County. The City is served by two major north/south corridors in U.S. Highway 98 and State Highway 181. Both highways allow access to Daphne from Interstate 10 and run south through U.S. Highway 90 and County Highway 64 which connect to the City to the east.

*Bus.* Nationwide bus service is available. Greyhound, Trailways and Megabus Bus Lines provides bus service to the Baldwin and Mobile Counties.

*Water.* The Port of Mobile is the largest and best equipped gulf port located close to deep water. The Port's major waterfront facilities are located along the lower five miles of the Mobile River at the head of Mobile Bay just across the bay from Baldwin County. The harbor is situated about thirty miles north of the Bay entrance from the Gulf of Mexico. The present depth-controlling entrance to the inner harbor is 40 feet. The Port is authorized for 55 feet south of the I-10 tunnels.

The Intracoastal Waterway traverses South Baldwin County. It is 12 feet deep and accommodates all types of barge traffic. The waterway extends along the lower end of Mobile Bay and Gulf Coast for 1,100 miles. An extensive system of Alabama inland waterways, with docking facilities, is tributary to the Port of Mobile, permitting barge traffic as far north as Birmingham.

APPENDIX B  
FINANCIAL STATEMENTS OF  
THE CITY OF DAPHNE

APPENDIX C

**FORM OF LEGAL OPINION**

City of Daphne  
Post Office Box 400  
Daphne, Alabama 36526

RE: \$7,410,000 City of Daphne, Alabama General Obligation Refunding Warrants, Series 2020-A

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance of the referenced warrants (the "Warrants") and as such have examined certified copies of proceedings of the City Council (the "City Council") of City of Daphne, Alabama (the "City") in connection therewith, including the ordinance of such City dated \_\_\_\_\_ (the "Authorizing Ordinance"), and other documents submitted to us pertaining to the authorization, sale and issuance of the Warrants. Capitalized terms not otherwise defined herein shall have the meanings defined in the Authorizing Ordinance.

We have examined (i) the provisions of the Constitution and statutes of the State, (ii) a transcript of the proceedings of the City relating to the issuance of the Warrants, including the Authorizing Ordinance, and (iii) such other documents, instruments, proofs and matters of law as we have deemed relevant to the issuance of the Warrants and necessary for the purpose of this opinion. As to questions of fact material to our opinion, we have relied upon representations of the City and the City Council contained in the Authorizing Ordinance and in certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

We have not passed upon any matters relating to the business, properties, affairs or condition, financial or otherwise, of the City, and no inference should be drawn that we have expressed an opinion on matters relating to the financial ability of the City to perform its obligations under the contracts described herein.

Based upon the aforesaid examinations, we are of the opinion, under existing law, as follows:

1. The Warrants have been duly authorized and issued and constitute valid orders on the City Treasurer of the City for the payment thereof as therein provided, and that the indebtedness ordered paid by the Warrants is a valid general obligation of the City for the payment of the principal of and interest on which the full faith and credit of the City have been validly and irrevocably pledged.

2. The interest on the Warrants is excluded from gross income for federal income tax purposes. In addition, interest on the Warrants will not be included as an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, except that, for the purpose of computing the alternative minimum tax imposed on corporations (as defined

for federal income tax purposes), such interest is taken into account in determining adjusted current earnings. The Warrants have been designated as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986 (the "Code"), and in the case of certain financial institutions (within the meaning of Section 265(b)(5) of the Code), a deduction will be allowed for 80% of that portion of such financial institution's interest expense allocable to interest on the Warrants. The opinions set forth above are subject to the condition that the City comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Warrants in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The City has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest on the Warrants in gross income for federal income tax purposes to be retroactive to the date of issuance of the Warrants. We express no opinion regarding other federal tax consequences arising with respect to the Warrants.

3. Under existing law, the interest on the Warrants is exempt from State of Alabama income taxation.

In rendering the opinions expressed above, we have relied on representations of the City and the City Council with respect to questions of fact material to our opinion without undertaking to verify the same by independent investigation, and we have assumed continuing compliance with the covenants contained in the Authorizing Ordinance pertaining to those sections of the Internal Revenue Code which affect the exclusion from gross income of interest on the Warrants for federal income tax purposes. In the event that such representations are determined to be inaccurate or incomplete or the City fails to comply with such covenants, interest on the Warrants could become includable in gross income from the date of original delivery, regardless of the date on which the events causing such inclusion occur.

The opinions hereinabove expressed respecting the Warrants are subject to all applicable bankruptcy, insolvency, moratorium and all other laws respecting the enforcement of creditors' rights, including specifically, but without limitation, the provisions of Chapter 9 of the United States Bankruptcy Code as amended, relating to the adjustment of debts of political subdivisions and public agencies and instrumentalities of the several states, and by equitable principles, whether considered at law or in equity. In addition, enforcement of remedies with respect to the Warrants may also be subject to the exercise of judicial discretion in appropriate cases.

We express no opinion herein as to the accuracy, adequacy or completeness of the Official Statement relating to the Warrants.

The scope of our engagement has not extended beyond the examinations and the rendering of the opinions expressed herein. Except as stated in paragraphs 2 and 3 above, we express no opinion as to any federal, state or local tax consequences resulting from the ownership of, receipt of interest on, or disposition of the Warrants. The opinions expressed herein are based upon existing law as of the date hereof and we express no opinion herein as of any subsequent date or with respect to any pending legislation and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur. No one other than the addressees hereof shall be entitled to rely upon this opinion without our prior written approval. This opinion is not offered, and will not be construed, as a guaranty or warranty.

Very truly yours,

ADAMS AND REESE LLP

APPENDIX D

**FORM OF LEGAL OPINION**

City of Daphne  
Post Office Box 400  
Daphne, Alabama 36526

RE: \$3,535,000 City of Daphne, Alabama General Obligation Refunding Warrants, Series 2020-B

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance of the referenced warrants (the "Warrants") and as such have examined certified copies of proceedings of the City Council (the "City Council") of City of Daphne, Alabama (the "City") in connection therewith, including the ordinance of such City dated \_\_\_\_\_ (the "Authorizing Ordinance"), and other documents submitted to us pertaining to the authorization, sale and issuance of the Warrants. Capitalized terms not otherwise defined herein shall have the meanings defined in the Authorizing Ordinance.

We have examined (i) the provisions of the Constitution and statutes of the State, (ii) a transcript of the proceedings of the City relating to the issuance of the Warrants, including the Authorizing Ordinance, and (iii) such other documents, instruments, proofs and matters of law as we have deemed relevant to the issuance of the Warrants and necessary for the purpose of this opinion. As to questions of fact material to our opinion, we have relied upon representations of the City and the City Council contained in the Authorizing Ordinance and in certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

We have not passed upon any matters relating to the business, properties, affairs or condition, financial or otherwise, of the City, and no inference should be drawn that we have expressed an opinion on matters relating to the financial ability of the City to perform its obligations under the contracts described herein.

Based upon the aforesaid examinations, we are of the opinion, under existing law, as follows:

1. The Warrants have been duly authorized and issued and constitute valid orders on the City Treasurer of the City for the payment thereof as therein provided, and that the indebtedness ordered paid by the Warrants is a valid general obligation of the City for the payment of the principal of and interest on which the full faith and credit of the City have been validly and irrevocably pledged.
2. The interest on the Warrants is not excludable from the gross income of the recipients thereof for federal income tax purposes.
3. Under existing law, the interest on the Warrants is exempt from State of Alabama income taxation.

In rendering the opinions expressed above, we have relied on representations of the City and the City Council with respect to questions of fact material to our opinion without undertaking to verify the same by independent investigation.

The opinions hereinabove expressed respecting the Warrants are subject to all applicable bankruptcy, insolvency, moratorium and all other laws respecting the enforcement of creditors' rights, including specifically, but without limitation, the provisions of Chapter 9 of the United States Bankruptcy Code as amended, relating to the adjustment of debts of political subdivisions and public agencies and instrumentalities of the several states, and by equitable principles, whether considered at law or in equity. In addition, enforcement of remedies with respect to the Warrants may also be subject to the exercise of judicial discretion in appropriate cases.

We express no opinion herein as to the accuracy, adequacy or completeness of the Official Statement relating to the Warrants.

The scope of our engagement has not extended beyond the examinations and the rendering of the opinions expressed herein. Except as stated in paragraphs 2 and 3 above, we express no opinion as to any federal, state or local tax consequences resulting from the ownership of, receipt of interest on, or disposition of the Warrants. The opinions expressed herein are based upon existing law as of the date hereof and we express no opinion herein as of any subsequent date or with respect to any pending legislation and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur. No one other than the addressees hereof shall be entitled to rely upon this opinion without our prior written approval. This opinion is not offered, and will not be construed, as a guaranty or warranty.

Very truly yours,

ADAMS AND REESE LLP

## Exhibit 9.2

### Form Continuing Disclosure Agreement

#### CITY OF DAPHNE, ALABAMA GENERAL OBLIGATION REFUNDING WARRANTS SERIES 2020-A

This Continuing Disclosure Agreement (the “Disclosure Agreement”) is executed and delivered by the City of Daphne, Alabama (the “Issuer”) in connection with its issuance of its \$\_\_\_\_\_ General Obligation Refunding and Improvement Warrants Series 2020-A (the “Warrants”). The Issuer is the “obligated person” within the meaning of the hereinafter defined Rule. The Issuer covenants and agrees as follows:

##### SECTION 1. Purpose of the Disclosure Agreement.

(a) This Disclosure Agreement is being executed and delivered by the Issuer for the benefit of the Warrant Holders and the Beneficial Owners and in order to assist the Participating Underwriter in complying with subsection (b)(5) of the Rule.

(b) In consideration of the purchase and acceptance of any and all of the Warrants by those who shall hold the same or shall own beneficial ownership interests therein from time to time, this Disclosure Agreement shall be deemed to be and shall constitute a contract between the Issuer and the Warrant Holders and Beneficial Owners from time to time of the Warrants, and the covenants and agreements herein set forth to be performed on behalf of the Issuer shall be for the benefit of the Warrant Holders and Beneficial Owners of any and all of the Warrants.

SECTION 2. Definitions. The following capitalized terms shall have the following meanings in this Disclosure Agreement:

“Annual Report” shall mean any Annual Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Audited Financial Report” shall mean the Issuer’s Comprehensive Annual Financial Report (CAFR).

“Beneficial Owner” shall mean any person who has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Warrants (including persons holding Warrants through nominees, depositories or other intermediaries).

“Dissemination Agent” shall mean Digital Assurance Certification, LLC, or any successor Dissemination Agent appointed in writing by the Issuer and that has filed with the Issuer a written acceptance of such appointment.

“EMMA” shall mean the Electronic Municipal Market Access system of the MSRB. As of the date of this Disclosure Agreement, the EMMA Internet Web site address is <http://www.emma.msrb.org>.

“GAAP” shall mean generally accepted accounting principles, as such principles are prescribed, in part, by the Financial Accounting Standards Board and modified by the Government Accounting Standards Board and in effect from time to time.

“Issuer” shall mean the City of Daphne, Alabama.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board, which has been designated by the Securities and Exchange Commission as the single centralized repository for the collection and availability of continuing disclosure documents for purpose of the Rule. The continuing disclosure documents must be provided to the MSRB in searchable portable document format (PDF) to the following:

Municipal Securities Rulemaking Board  
Electronic Municipal Market Access Center  
[www.emma.msrb.org](http://www.emma.msrb.org)

“1934 Act” shall mean the Securities Exchange Act of 1934, as amended.

“Official Statement” shall mean the final Official Statement for the Warrants dated \_\_\_\_\_.

“Participating Underwriter” shall mean any of the original underwriters of the Warrants required to comply with the Rule in connection with the primary offering of the Warrants.

“Rule” shall mean Rule 15c2-12 promulgated by the SEC pursuant to the 1934 Act, as the same may be amended from time to time, together with all interpretive guidances or other official interpretations or explanations thereof that are promulgated by the SEC.

“SEC” shall mean the Securities and Exchange Commission.

“Securities Counsel” shall mean legal counsel expert in federal securities law.

“State” shall mean the State of Alabama.

“Warrant Holders” when used with reference to a bond or Warrants, shall mean the registered owner of any Outstanding bond or Warrants.

### SECTION 3. Provision of Annual Reports.

(a) Each year, the Issuer shall provide, or shall cause the Dissemination Agent to provide, not later than June 30<sup>th</sup>, commencing with the Issuer’s Annual Report for its fiscal year ending September 30, 2020, to the MSRB an Annual Report for the preceding fiscal year that is consistent with the requirements of Section 4 of this Disclosure Agreement. Not later than five (5) business days prior to said date, the Issuer shall provide the Annual Report to the Dissemination Agent (if other than the Issuer). In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package and may include by specific reference other information as provided in Section 4 of this Disclosure Agreement. If the Issuer’s Audited Financial Statements are not available at the time the Annual Report is required to be filed, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the Audited Financial Statements shall be filed in the same manner as the Annual Report when they become available;

(b) If the Issuer is unable to provide to the MSRB an Annual Report by the date required in subsection (a), the Issuer shall send a notice, in a timely manner, to the MSRB, in substantially the form attached as Exhibit A.

(c) If the Issuer's fiscal year changes, the Issuer shall send written notice of such change to the MSRB, in substantially the form attached as Exhibit B.

(d) The Dissemination Agent shall, if the Dissemination Agent is other than the Issuer, file a report with the Issuer certifying that the Annual Report has been provided pursuant to this Disclosure Agreement and stating the date it was provided.

(e) In connection with providing the Annual Report, the Dissemination Agent (if other than the Issuer) is not obligated or responsible under this Disclosure Agreement to determine the sufficiency of the content of the Annual Report for purposes of the Rule or any other state or federal securities law, rule, regulation, or administrative order.

SECTION 4. Content of Annual Reports. The Issuer's Annual Report shall contain or include by reference the following:

(a) The Audited Financial Statements of the Issuer for its fiscal year immediately preceding the due date of the Annual Report.

(b) The accounting principles pursuant to which the Audited Financial Statements were prepared.

(c) The operating and financial information set forth in the Official Statement, including in the sections titled: "CITY DEBT," "CITY REVENUES" and Appendix A.

The Issuer's financial statements shall be audited and prepared in accordance with GAAP with such changes as may be required from time to time in accordance with State law.

The Issuer reserves the right to cross-reference any or all such annual financial information and operating data to other documents to be provided to the MSRB.

The Issuer reserves the right to modify, from time to time, the specific types of information provided or the format of the presentations of such information, to the extent necessary or appropriate in the judgment of the Issuer; provided however, that the Issuer agrees that any modifications will be made consistent with Section 9.

Any or all of the items listed above may be included by specific reference to other documents available to the public on the MSRB's Internet Web site or filed with the SEC. The Issuer shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Significant Events.

(a) The Issuer covenants to provide, or cause to be provided, to the MSRB notice of the occurrence of any of the following events with respect to the Warrants, in a timely manner not in excess of ten (10) business days after the occurrence of the event. Each notice shall be so captioned and shall prominently state the date, title and CUSIP numbers of the Warrants.

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults, if material;

- (3) unscheduled draws on debt service reserves, if any, reflecting financial difficulties;
- (4) unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions, the issuance by the internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Warrants, or other material events affecting the tax status of the Warrants;
- (7) modifications to rights of Warrant Holders, if material;
- (8) Warrant calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution, or sale of property, if any, securing repayment of the Warrants, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership, or similar event of the Issuer;<sup>1</sup>
- (13) the consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) appointment of a successor or additional trustee or the change of name of a trustee, if material; and
- (15) incurrence of a Financial Obligation (as defined for purposes of the Rule) of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar

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<sup>1</sup> For the purposes of this event, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Issuer in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if such jurisdiction has been assumed by leaving the existing government body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer.

terms of a Financial Obligation of the City, any of which affect Warrant Holders, if material; and

- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the Financial Obligation (as defined for purposes of the Rule) of the City, any of which reflect financial difficulties.

(b) In connection with providing a notice of the occurrence of a Listed Event, the Dissemination Agent (if other than the Issuer), solely in its capacity as such, is not obligated or responsible under this Disclosure Agreement to determine the sufficiency of the content of the notice for purposes of the Rule or any other state or federal securities law, rule, regulation, or administrative order.

(c) The Issuer acknowledges that the “rating changes” referred to above in Section 5(a)(11) of this Disclosure Agreement may include, without limitation, any change in any rating on the Warrants.

(d) The Issuer acknowledges that it is not required to provide a notice of a Listed Event with respect to credit enhancement when the credit enhancement is added after the primary offering of the Warrants, the Issuer does not apply for or participate in obtaining such credit enhancement, and such credit enhancement is not described in the Official Statement.

(e) As of the date of this Disclosure Agreement, the Listed Events described in subsections (a)(3), (4), (5), and (10) are not applicable to the Warrants.

#### SECTION 6. Mandatory Electronic Filing with EMMA.

All filings with the MSRB under this Disclosure Agreement shall be made by electronically transmitting such filings through the EMMA Dataport at <http://www.emma.msrb.org>, as provided by the amendments to the Rule adopted by the SEC in Securities Exchange Release No. 59062 on December 5, 2008.

#### SECTION 7. Termination of Reporting Obligation.

(a) The Issuer’s obligations under this Disclosure Agreement shall terminate upon the legal defeasance of the Warrants or the prior redemption or payment in full of all of the Warrants.

(b) This Disclosure Agreement, or any provision hereof, shall be null and void in the event that the Issuer (i) receives an opinion of Securities Counsel, addressed to the Issuer, to the effect that those portions of the Rule that require such provisions of this Disclosure Agreement, do not or no longer apply to the Warrants, whether because such portions of the Rule are invalid, have been repealed, amended, or modified, or are otherwise deemed to be inapplicable to the Warrants, as shall be specified in such opinion and (ii) files notice to such effect with the MSRB.

SECTION 8. Dissemination Agent. The Issuer, from time to time, may appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The initial Dissemination Agent shall be Digital Assurance Certification, LLC. Except as otherwise provided in this Disclosure Agreement, the Dissemination Agent (if

other than the Issuer) shall not be responsible in any manner for the content of any notice or report prepared by the Issuer pursuant to this Disclosure Agreement.

SECTION 9. Amendment; Waiver.

(a) Notwithstanding any other provision of this Disclosure Agreement, this Disclosure Agreement may be amended, and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(1) if the amendment or waiver relates to the provisions of Section 3(a), (b), (c), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, a change in law or a change in the identity, nature, or status of the Issuer or the type of business conducted by the Issuer;

(2) this Disclosure Agreement, as so amended or taking into account such waiver, would, in the opinion of Securities Counsel, have complied with the requirements of the Rule at the time of the original issuance of the Warrants, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(3) the amendment or waiver does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Warrant Holders or Beneficial Owners.

(b) In the event of any amendment to, or waiver of a provision of, this Disclosure Agreement, the Issuer shall describe such amendment or waiver in the next Annual Report and shall include an explanation of the reason for such amendment or waiver. In particular, if the amendment results in a change to the annual financial information required to be included in the Annual Report pursuant to Section 4 of this Disclosure Agreement, the first Annual Report that contains the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of such change in the type of operating data or financial information being provided. Further, if the annual financial information required to be provided in the Annual Report can no longer be generated because the operations to which it related have been materially changed or discontinued, a statement to that effect shall be included in the first Annual Report that does not include such information.

(c) If the amendment results in a change to the accounting principles to be followed in preparing financial statements as set forth in Section 4 of this Disclosure Agreement, the Annual Report for the year in which the change is made shall include a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of such differences and the impact of the changes on the presentation of the financial information. To the extent reasonably feasible, the comparison shall also be quantitative. A notice of the change in accounting principles shall be filed by the Issuer or the Dissemination Agent (if other than the Issuer) at the written direction of the Issuer, with the MSRB.

SECTION 10. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event,

in addition to that which is required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 11. Failure to Comply. In the event of a failure of the Issuer or the Dissemination Agent (if other than the Issuer) to comply with any provision of this Disclosure Agreement, any Warrant Holder or Beneficial Owner may bring an action to obtain specific performance of the obligations of the Issuer or the Dissemination Agent (if other than the Issuer) under this Disclosure Agreement, but no person or entity shall be entitled to recover monetary damages hereunder under any circumstances, and any failure to comply with the obligations under this Disclosure Agreement shall not constitute a default with respect to the Warrants or under the Warrant Resolution.

SECTION 12. Duties of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement.

SECTION 13. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Dissemination Agent, the Participating Underwriter, the Warrant Holders, and the Beneficial Owners, and shall create no rights in any other person or entity.

SECTION 14. Transmission of Information and Notices. Unless otherwise required by law or this Disclosure Agreement and, in the sole determination of the Issuer or the Dissemination Agent, as applicable, subject to technical and economic feasibility, the Issuer or the Dissemination Agent, as applicable, shall employ such methods of information and notice transmission as shall be requested or recommended by the herein designated recipients of such information and notices.

SECTION 15. Additional Disclosure Obligations. The Issuer acknowledges and understands that other State and federal laws, including, without limitation, the Securities Act of 1933, as amended, and Rule 10b-5 promulgated by the SEC pursuant to the 1934 Act, may apply to the Issuer, and that under some circumstances, compliance with this Disclosure Agreement, without additional disclosures or other action, may not fully discharge all duties and obligations of the Issuer under such laws.

SECTION 16. Governing Law. This Disclosure Agreement shall be construed and interpreted in accordance with the laws of the State, and any suits and actions arising out of this Disclosure Agreement shall be instituted in a court of competent jurisdiction in the State. Notwithstanding the foregoing, to the extent this Disclosure Agreement addresses matters of federal securities laws, including the Rule, this Disclosure Agreement shall be construed and interpreted in accordance with such federal securities laws and official interpretations thereof.

CITY OF DAPHNE, ALABAMA

By: \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

**EXHIBIT A**

**NOTICE OF FAILURE TO FILE ANNUAL REPORT**

Name of Obligated Person: City of Daphne, Alabama

Name of Issuer: City of Daphne, Alabama

Name of Warrant Issue: \$\_\_\_\_\_ General Obligation Refunding and Improvement  
Warrants Series 2020-A

Date of Warrants:

NOTICE IS HEREBY GIVEN that the City of Daphne, Alabama has not provided an Annual Report with respect to the above-named Warrants as required by Section 3 of its Continuing Disclosure Agreement with respect to the Warrants. The City of Daphne, Alabama anticipates that the Annual Report will be filed by \_\_\_\_\_.

CITY OF DAPHNE, ALABAMA

By: \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

**EXHIBIT B**

NOTICE OF CHANGE IN ISSUER'S FISCAL YEAR

Name of Obligated Person: City of Daphne, Alabama

Name of Issuer: City of Daphne, Alabama

Name of Warrant Issue: \$\_\_\_\_\_ General Obligation Refunding and Improvement  
Warrants Series 2020-A

Date of Warrants:

NOTICE IS HEREBY GIVEN that the fiscal year of the City of Daphne, Alabama changed. Previously, the Issuer's fiscal year ended on \_\_\_\_\_. It now ends on \_\_\_\_\_.

CITY OF DAPHNE, ALABAMA

By: \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

**Exhibit 9.3**

**Warrant Purchase Agreement**

**(See Attached)**

**WARRANT PURCHASE AGREEMENT**

**between**

**CITY OF DAPHNE, ALABAMA**

**and**

**PIPER SANDLER & CO.**

**relating to**

**City of Daphne, Alabama**  
**\$\_\_\_\_\_ General Obligation Refunding Warrants,**  
**Series 2020-A (Bank Qualified)**

**\$\_\_\_\_\_ General Obligation Refunding Warrants,**  
**Series 2020-B (Federally Taxable)**

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## WARRANT PURCHASE AGREEMENT

### 1. Parties and Relevant Dates

*Issuer:* City of Daphne, an Alabama municipality

*Underwriter:* Piper Sandler & Co.

*Securities:* \$\_\_\_\_\_ principal amount  
General Obligation Refunding Warrants, Series 2020-A (Bank  
Qualified) (the “Series 2020-A Warrants”), and

\$\_\_\_\_\_ principal amount General Obligation Refunding  
Warrants, Series 2020-B (Federally Taxable) (the “Series 2020-B  
Warrants”)

*Acceptance Deadline:* October \_\_, 2020, 5:00 p.m., Central time

*Effective Date and Time of Formal Award:* October \_\_, 2020, \_\_\_\_ p.m., Central time

*Closing Date:* October \_\_, 2020

### 2. Defined Terms

*All capitalized terms used in this Agreement and not otherwise defined are used as defined in the Authorizing Ordinance or the Official Statement:*

*Acceptance Deadline:* The date set forth in Section 1, being the date and time by which the Issuer must accept this Agreement.

*Act:* Sections 11-47-2 and 11-81-4. of the Code of Alabama 1975, as amended.

*Agreement:* This Warrant Purchase Agreement, dated the Effective Date, including **Schedule I** attached hereto.

*Authorizing Ordinance:* The Ordinance enacted by the Issuer’s governing body on October \_\_, 2020, authorizing the issuance of the Securities, as amended and supplemented to the Closing Date.

*Bond Counsel:* Adams & Reese, LLP, Mobile, Alabama.

*Bond Insurer:* The issuer of the Policy, if any, identified in this Agreement.

*Closing Date:* The date set forth in Section 1 of this Agreement, being the date of the issuance and delivery of the Securities.

*Continuing Disclosure Undertaking:* The continuing disclosure undertaking or agreement, if any, entered into by the Issuer with respect to the Securities in accordance with

Rule 15c2-12 (which may be a separate document or may be included in the Authorizing Ordinance or another Issuer Document).

*Creditors' Rights Laws:* Limitations on enforceability as may result from bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally from time to time in effect and from the application of general principles of equity and from public policy limitations on the exercise of any rights to indemnification and contribution.

*DTC:* The Depository Trust Company.

*Effective Date and Time:* The date and time that this Agreement is effective, as set forth in Section 1 of this Agreement.

*End of the Underwriting Period:* The later of (i) the Closing Date or (ii) when the Underwriter no longer retains an unsold balance of the Securities.

*Exchange Act:* The Securities Exchange Act of 1934, as amended.

*Excluded Sections:* For purposes of the representations and warranties of the Issuer set forth in Section 9(a)(viii), the indemnification provisions set forth in Section 16 and the opinion of Issuer's Counsel required pursuant to Section 13, the "Excluded Sections" of the Preliminary Official Statement and the Official Statement shall be: (i) the section describing DTC and its book-entry-only procedures, (ii) any information provided by the Bond Insurer expressly for use in the Official Statement, and (iii) the section captioned "Underwriting" if provided in writing by the Underwriter.

*Issuer:* The Issuer of the Securities, identified in Section 1.

*Issuer Documents:* All financing documents to which the Issuer is a party relating to the issuance of and security for the Securities, as such documents are amended and supplemented to the Closing Date, including, but not limited to:

- (i) this Agreement,
- (ii) any Continuing Disclosure Undertaking, if contained separately or in the Authorizing Ordinance,
- (iii) the Authorizing Ordinance and other applicable financing or operative documents to which the Issuer is a party, as such documents are amended and supplemented to the Closing Date, including any trust indenture, loan agreement, security instrument, and remarketing agreement, and any agreement with the Bond Insurer.

*Issuer's Counsel:* Adams & Reese, LLP, Mobile, Alabama.

*MSRB:* Municipal Securities Rulemaking Board.

*Official Statement:* Official Statement dated October \_\_, 2020, relating to the Securities, together with all appendices or exhibits, any materials incorporated by reference therein and any amendments or supplements thereto.

*Paying Agent:* The Bank of New York Mellon Trust Company, N.A., acting as registrar and/or paying agent for the Securities.

*Policy:* A municipal bond insurance policy, if any, issued by the Bond Insurer, insuring the payment when due of the principal of and interest on the Securities, as identified in this Agreement.

*Preliminary Official Statement:* Preliminary Official Statement dated October \_\_, 2020, relating to the Securities, together with all appendices or exhibits, any materials incorporated by reference therein and any amendments or supplements thereto.

*Primary Offering Disclosure Period:* The period commencing with the first submission to an underwriter of an order for the purchase of the Securities or the purchase of such Securities from the Issuer, whichever first occurs, and ending 25 days after the final delivery by the Issuer or its agent of all Securities to or through the underwriting syndicate or sole underwriter.

*Purchase Price:* The aggregate amount specified in Section 5 as the Purchase Price to be paid by the Underwriter at the Closing for the purchase of the Securities on the Closing Date.

*Rule 15c2-12:* Rule 15c2-12 promulgated by the SEC under the Exchange Act.

*SEC:* Securities and Exchange Commission of the United States.

*Securities:* The Securities identified in Section 1 on the first page of this Agreement, as more specifically described in **Schedule I**.

*Securities Act:* The Securities Act of 1933, as amended.

*State:* State of Alabama.

*Trust Indenture Act:* Trust Indenture Act of 1939, as amended.

*Underwriter:* The firm identified as such in Section 1 of this Agreement.

*Underwriter's Counsel:* Ezell Law, LLC.

### **3. Offer to Purchase the Securities; Execution of Terms and Acceptance**

The Issuer and the Underwriter are entering into this Warrant Purchase Agreement (the “*Agreement*”), to provide for the purchase and sale of the Securities. The Securities are further described in **Schedule I**.

The Underwriter hereby offers to purchase all (but not less than all) of the Securities from, and to enter into this Agreement with, the Issuer. This offer is subject to acceptance by the Issuer by the Acceptance Deadline and, if not so accepted, will be subject to withdrawal by the

Underwriter by written notice delivered to the Issuer at any time prior to acceptance. The Issuer shall accept this Agreement by its execution hereof. Upon such execution, the Agreement will be binding upon the Underwriter and the Issuer. This Agreement is effective as of the Effective Date and Time.

#### **4. Purchase of the Securities**

The Underwriter shall purchase from the Issuer, and the Issuer shall sell to the Underwriter, all (but not less than all) of the Securities on the Closing Date at the aggregate Purchase Price set forth below, plus accrued interest, if any. The Securities shall bear interest at the rates per annum, mature on the dates, be sold to the public at the prices and be subject to optional and mandatory sinking fund redemption prior to maturity and to such other terms and provisions, all as set forth in **Schedule I**. The Securities otherwise shall be as described in the Official Statement, the Authorizing Ordinance and the Issuer Documents. The Underwriter's agreement to purchase the Securities from the Issuer is made in reliance upon the Issuer's representations, covenants and warranties and on the terms and conditions set forth in this Agreement.

The Issuer acknowledges and agrees that: (i) the primary role of the Underwriter is to purchase securities for resale to investors in an arms-length commercial transaction between the Issuer and the Underwriter and that the Underwriter has financial and other interests that differ from those of the Issuer, (ii) the Underwriter is not acting as a municipal advisor, financial advisor or fiduciary to the Issuer or any other person or entity with respect to the transaction contemplated in this Agreement and has not assumed any advisory or fiduciary responsibility to the Issuer with respect to the transaction contemplated in this Agreement and the discussions, undertakings and proceedings leading (irrespective of whether the Underwriter has provided other services or is currently providing other services to the Issuer on other matters), (iii) the only obligations the Underwriter has to the Issuer with respect to the transaction contemplated hereby expressly are set forth in this Agreement, and (iv) the Issuer has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate in connection with the transaction contemplated herein.

#### **5. Purchase Price**

The Purchase Price applicable to the Series 2020-A Warrants is \$\_\_\_\_\_ (representing the principal amount of the Series 2020-A Warrants, less an underwriter's discount of \$\_\_\_\_\_, and plus net original issue premium of \$\_\_\_\_\_). The Purchase Price applicable to the Series 2020-B Warrants is \$\_\_\_\_\_ (representing the principal amount of the Series 2020-B Warrants, less an underwriter's discount of \$\_\_\_\_\_). The aggregate Purchase Price shall be payable on the Closing Date by the Underwriter to or as directed by the Issuer by wire transfer in immediately available funds or as otherwise agreed by the Issuer and the Underwriter. In accordance with Section 18, the Underwriter also will be reimbursed for those out-of-pocket expenses described therein.

## **6. Public Offering**

The Underwriter agrees to make a bona fide initial public offering of all the Securities in compliance with federal and state securities laws, at a price not in excess of the initial offering price set forth in the Official Statement. Subject to Section 14, the Underwriter may change the initial offering price or prices as it deems necessary in connection with the offering of the Securities without any requirement of prior notice, and may offer and sell the Securities to certain institutions at prices lower than those stated in the Official Statement. Upon the request of Bond Counsel, the Underwriter shall execute and deliver prior to the Closing an issue price certificate or similar certificate in form and substance reasonably satisfactory to Bond Counsel and the Underwriter.

## **7. Good Faith Deposit**

No Good Faith Deposit will be delivered.

## **8. Official Statement**

The Issuer hereby consents to and ratifies the use and distribution by the Underwriter of the Preliminary Official Statement in connection with the public offering of the Securities by the Underwriter, and further confirms the authority of the Underwriter to use, and consents to the use of, the final Official Statement with respect to the Securities in connection with the public offering and sale of the Securities. The Issuer hereby represents and warrants that the Preliminary Official Statement previously furnished to the Underwriter was “deemed final” by the Issuer as of its date for purposes of Rule 15c2-12, except for permitted omissions.

(a) The Issuer, at its cost, shall provide, or cause to be provided, to the Underwriter within seven business days after the date of this Agreement (or within such shorter period as may be approved by the Underwriter or required by applicable rule) such number of copies of a final Official Statement as reasonably requested by the Underwriter, but in sufficient quantity to permit the Underwriter to comply with paragraph (b)(4) of Rule 15c2-12, and Rule G-32 and any other applicable rules of the SEC and the MSRB.

(b) The Issuer authorizes the Underwriter to file, to the extent required by any applicable SEC or MSRB rule, and the Underwriter agrees to so file, the Official Statement with the MSRB or its designee. If an amended Official Statement is prepared during the “primary offering disclosure period,” and if required by any applicable SEC or MSRB rule, the Underwriter also shall make the required filings of the amended Official Statement. The Issuer shall provide the Underwriter with the information necessary to complete MSRB Form G-32 for all filings to be made under this Section 8.

(c) The Preliminary Official Statement and the Official Statement may be delivered in printed and a “designated electronic format” as defined in the MSRB’s Rule G-32 and as may be agreed by the Issuer and the Underwriter. If the Official Statement has been prepared in electronic form, the Issuer hereby confirms that it does not object to distribution of the Official Statement in electronic form.

(d) The Issuer shall not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without the prior written consent of the Underwriter. The Issuer covenants to notify the Underwriter promptly if, on or prior to the 25th day after the End of the Underwriting Period, (or such other period as may be agreed to by the Issuer and the Underwriter) any event shall occur, or information comes to the attention of the Issuer, that is reasonably likely to cause the Official Statement (whether or not previously supplemented or amended) to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and if in the opinion of the Underwriter such event requires the preparation and distribution of a supplement or amendment to the Official Statement, to prepare and furnish to the Underwriter, at the Issuer's expense, such number of copies of the supplement or amendment to the Official Statement, in (i) a "designated electronic format" consistent with the requirements of the MSRB's Rule G-32 and (ii) a printed format form in substance mutually agreed upon by the Issuer and the Underwriter, as the Underwriter may reasonably request. If such notification shall be given subsequent to the Closing Date, the Issuer also shall furnish, or cause to be furnished, such additional legal opinions, certificates, instruments and other documents as the Underwriter may reasonably deem necessary to evidence the truth and accuracy of any such supplement or amendment to the Official Statement.

## **9. Representations and Warranties**

(a) Representations and Warranties of the Issuer. The Issuer hereby agrees with, and makes the following representations and warranties to, the Underwriter, as of the date hereof and as of the Closing Date, which representations and warranties shall survive the Closing:

(i) The Issuer is duly created and existing under the constitution and laws of the State and has full legal right, power and authority under the constitution and laws of the State, including the Act, to adopt the Authorizing Ordinance, to execute and deliver the Issuer Documents and the Official Statement, to issue, sell and deliver the Securities as provided herein, and to carry out and to consummate the transactions contemplated by the Authorizing Ordinance, the Issuer Documents and the Official Statement.

(ii) By all necessary official action of the Issuer prior to or concurrently with the acceptance hereof, the Issuer has duly authorized and approved (A) the distribution of the Preliminary Official Statement and the execution, delivery and distribution of the Official Statement for use by the Underwriter in connection with the public offering of the Securities, (B) the issuance and sale of the Securities upon the terms set forth herein and as contemplated by the Authorizing Ordinance, the Issuer Documents and the Official Statement and (C) the execution and delivery of, and the performance by the Issuer of the obligations on its part contained in, the Securities, the Authorizing Ordinance and the Issuer Documents.

(iii) The Securities will be issued in conformity with and entitled to the benefit and security of the Authorizing Ordinance and the Issuer Documents, including the pledge of the full faith and credit of the Issuer.

(iv) This Agreement constitutes a legal, valid and binding obligation of the Issuer enforceable in accordance with its terms; the other Issuer Documents, when duly executed

and delivered, will constitute the legal, valid and binding obligations of the Issuer enforceable in accordance with their respective terms; and the Securities, when issued, authenticated and delivered in accordance with the Issuer Documents and sold to the Underwriter as provided herein, will be the legal, valid and binding obligations of the Issuer enforceable in accordance with their terms; in all cases, except as the enforceability of this Agreement, the other Issuer Documents and the Securities may be limited by application of Creditors' Rights Laws.

(v) Except as may be described in the Preliminary Official Statement or the Official Statement, the Issuer is not in breach of or default in any material respect under (if applicable) its charter documents, its articles of incorporation or its bylaws or under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or to which the Issuer is or any of its property or assets are otherwise subject, and no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a material default or event of default by the Issuer under any of the foregoing.

(vi) The adoption, execution and delivery of the Securities, the Authorizing Ordinance and the Issuer Documents, and compliance with the provisions on the Issuer's part contained therein, will not conflict with or constitute a breach of or default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or to which the Issuer or any of its property or assets are otherwise subject, and such adoption, execution, delivery or compliance will not result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature upon the property or assets, if any, of the Issuer to be pledged to secure the Securities or under the terms of any such law, regulation or instrument, except as provided by the Securities, the Authorizing Ordinance and the Issuer Documents.

(vii) All authorizations, approvals, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect, the issuance of the Securities or the due performance by the Issuer of its obligations under the Authorizing Ordinance, the Issuer Documents and the Securities have been duly obtained or will be obtained prior to the Closing, except for: (A) such authorizations, approvals, consents and orders, if any, as may be required under the Blue Sky or securities laws of any jurisdiction in connection with the offering and sale of the Securities, and (B) authorizations, approvals, consents and orders that are required to be obtained or renewed periodically, such as budgets, licenses and permits.

(viii) The Preliminary Official Statement as of its date did not, and the Official Statement as of its date does not and as of the Closing Date will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, the Issuer makes no statement as to the Excluded Sections of the Preliminary Official Statement or the Official Statement.

(ix) The financial statements of the Issuer contained in the Preliminary Official Statement and the Official Statement fairly present the financial position and results of operations of the Issuer as of the dates and for the periods therein set forth in accordance with generally accepted accounting principles consistently applied, and, since the date thereof, there has been no material adverse change in the financial position or results of operations of the Issuer.

(x) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, agency, public board or body, pending or, to the knowledge of the Issuer, threatened against the Issuer: (A) affecting the existence of the Issuer or the titles of its officers to their respective offices, (B) seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Securities or the collection by the Issuer of any tax proceeds payable to it or the making of any required deposits with respect to the Securities, (C) in any way contesting or affecting the validity or enforceability of, or the power or authority of the Issuer to issue, adopt or to enter into (as applicable), the Securities, the Authorizing Ordinance or the Issuer Documents, (D) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement, or any amendment or supplement thereto, (E) except as disclosed in the Official Statement, wherein an unfavorable decision, ruling or finding would materially adversely affect the financial position or condition of the Issuer or would result in any material adverse change in the ability of the Issuer to apply its tax proceeds or other revenues to pay debt service on the Securities, or (F) contesting the status of the interest on the Series 2020-A Warrants as excludable from gross income for federal income tax purposes or the status of the interest on either series of the Securities as exempt from any applicable state tax, in each case as described in the Official Statement.

(xi) The Issuer has received all licenses, permits or other regulatory approvals required, if any, for the collection and/or application by the Issuer of the tax proceeds payable to it and the Issuer is not in material default, and no event has occurred which would constitute or result in a material default, under any such licenses, permits or approvals.

(xii) The Issuer has entered or will enter into the Continuing Disclosure Undertaking and, except for the failures described in the Official Statement, the Issuer has not failed during the previous five years to comply in all material respects with any previous undertakings in a written continuing disclosure contract or agreement under Rule 15c2-12.

(xiii) The Authorizing Ordinance, the Issuer Documents and the Securities conform to the description thereof contained in the Official Statement.

(xiv) The Issuer has the legal authority to apply proceeds of the Securities for the purposes contemplated by the Authorizing Ordinance and the Issuer Documents, including for the payment or reimbursement of incidental expenses in connection with the marketing, issuance and delivery of the Securities to the extent required by this Agreement and in compliance with applicable law.

(b) Covenants of the Issuer. The Issuer hereby covenants with the Underwriter that:

(i) Prior to the Closing Date, except as otherwise contemplated by the Official Statement, the Issuer shall not create, assume or guarantee any general obligation indebtedness (other than obligations incurred with respect to the reasonable and necessary expenses of the Issuer's normal operations), or pledge or otherwise encumber any of its tax proceeds or other revenues, assets, properties, funds or interests that are expected to be available as security for the Securities.

(ii) The Issuer shall cooperate with the Underwriter in the qualification of the Securities for offering and sale and the determination of their eligibility for investment under the laws of such jurisdictions, to the extent applicable, as the Underwriter may request; provided that the Issuer shall not be required to qualify as a foreign corporation in, or submit to the general jurisdiction of, any other state or to file any general or special consents to service of process under the laws of any jurisdiction.

(iii) The Issuer shall not knowingly take or omit to take any action that, under existing law, may adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Series 2020-A Warrants, or the exemption from any applicable state tax of the interest on either series of the Securities.

(c) Representations and Warranties of the Underwriter. The Underwriter hereby agrees with, and makes the following representations and warranties to, the Issuer, as of the date hereof and as of the Closing Date, which representations and warranties shall survive the Closing:

(i) The Underwriter is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

(ii) This Agreement has been duly authorized, executed and delivered by the Underwriter and, assuming the due authorization, execution and delivery by the Issuer, is the legal, valid and binding obligation of the Underwriter enforceable in accordance with its terms, except as the enforceability of this Agreement may be limited by application of Creditors' Rights Laws.

(iii) The Underwriter represents that it is licensed by and registered with the Financial Industry Regulatory Authority as a broker-dealer and the MSRB as a municipal securities dealer.

## **10. Third-Party Credit Enhancement or Support**

No Policy or Support Facility will be provided with respect to the Securities.

## **11. Ratings**

The following ratings on the Securities shall be in effect on the Closing Date:

Moody's: None

S&P: AA+ (stable outlook)  
Fitch: None

## 12. Closing

(a) The delivery of and payment for the Securities shall be the “Closing” for the Securities and shall occur at or prior to 1:00 p.m., New York City time, on the Closing Date, or at such other time or on such other date as may be mutually agreed by the Underwriter and the Issuer. The location of the Closing shall be at such place as shall be mutually acceptable to the Issuer and the Underwriter.

(b) At the Closing, the Issuer shall deliver or cause to be delivered the Securities to DTC or to the Paying Agent on behalf of the Underwriter, as further described in paragraph (c) below. The Securities shall be delivered in definitive form, duly executed by the Issuer and authenticated by the Paying Agent, together with the other documents identified in Section 13. Subject to satisfaction of the conditions contained in this Agreement, the Underwriter will accept delivery of the Securities as described above and pay the Purchase Price, plus accrued interest, if any, on the Securities from their dated date to, but not including, the Closing Date, in immediately available funds, payable to the order of the Paying Agent or as otherwise directed by the Issuer.

(c) Delivery of the definitive Securities shall be made through the facilities of DTC’s book-entry-only system in New York, New York, or at such other location as may be designated by the Underwriter prior to the Closing. The Securities will be delivered as fully-registered warrants, bearing CUSIP numbers, with a single warrant for each maturity of each series of the Securities (or, if so provided in **Schedule I**, for each separate interest rate within a maturity), and registered in the name of Cede & Co., as nominee of DTC, which will act as securities depository for the Securities. Unless otherwise requested by the Underwriter, the Securities will be delivered under DTC’s FAST delivery system.

## 13. Closing Conditions

The Underwriter shall receive on the Closing Date, in form and substance satisfactory to Bond Counsel and to the Underwriter, each item specified below, unless waived by the Underwriter:

(i) The approving opinion of Bond Counsel, addressed to the Underwriter (or addressed to the Issuer with a reliance letter addressed to the Underwriter), dated the Closing Date, and in substantially the form included as an appendix to the Official Statement.

(ii) The supplemental opinion of Bond Counsel, addressed to the Underwriter and the Issuer, dated the Closing Date, to the effect that:

(A) this Agreement has been duly authorized, executed and delivered by the Issuer and constitutes the legal, valid and binding agreement of the Issuer, enforceable against the Issuer in accordance with its terms, except as such enforceability may be limited by Creditors’ Rights Laws;

(B) the statements and information contained in the Preliminary Official Statement as of its date and the Official Statement, as of its date and as of the date of such opinion, relating to the Securities, the security and sources of payment for the Securities and the tax status of the Securities fairly and accurately summarize the provisions of the documents or matters of law indicated therein, as of such dates, and the statements describing the Authorizing Ordinance and the Issuer Documents contained in the Official Statement, as of its date and as of the date of such opinion, fairly and accurately summarize the provisions of such documents purported to be summarized as of such dates; and

(C) the Securities are exempt from registration pursuant to the Securities Act and the Authorizing Ordinance is exempt from qualification as an indenture pursuant to the Trust Indenture Act.

(iii) The opinion of Issuer's Counsel, addressed to the Underwriter and the Issuer, dated the Closing Date, to the effect that:

(A) the Issuer is duly created and existing under the constitution and laws of the State and has full legal right, power and authority under the constitution and laws of the State, including the Act, to adopt the Authorizing Ordinance, to execute and deliver the Issuer Documents and the Official Statement, and to issue the Securities and apply the proceeds thereof pursuant to the Authorizing Ordinance and the Issuer Documents, and compliance with the provisions of each thereof will not conflict with or constitute a violation or breach of or default under any existing law or administrative rule or regulation, or, to the best of the knowledge of such counsel, any court order or decree, or any agreement, contract or other instrument to which the Issuer is a party or is otherwise subject or bound;

(B) by all necessary official action of the Issuer, the Issuer has duly authorized and approved (1) the distribution of the Preliminary Official Statement and the execution, delivery and distribution of the Official Statement, (2) the issuance and sale of the Securities upon the terms set forth in the Authorizing Ordinance, the Issuer Documents and the Official Statement and (3) the execution and delivery of, and the performance by the Issuer of the obligations on its part contained in, the Securities, the Authorizing Ordinance and the Issuer Documents;

(C) the Authorizing Ordinance and any other ordinances or resolutions of the Issuer approving and authorizing the issuance and sale of the Securities, the distribution of the Preliminary Official Statement and the execution and delivery of the Issuer Documents and the Official Statement were duly adopted at one or more meetings of the governing body of the Issuer that were called and held pursuant to all applicable laws and regulations, and with all public notice required by all applicable laws and regulations and at which a quorum was present and acting throughout;

(D) there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, agency, public board or body pending, or, to the knowledge of such counsel, threatened against the Issuer: (1) affecting the existence of the Issuer or the titles of its officers to their respective offices, (2) seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Securities or the collection by the Issuer of any tax proceeds payable to it

or the making of any required deposits with respect to the Securities, (3) in any way contesting or affecting the validity or enforceability of, or the power or authority of the Issuer to issue, adopt or to enter into (as applicable), the Securities, the Authorizing Ordinance or the Issuer Documents, (4) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement, or any amendment or supplement thereto, (5) except as disclosed in the Official Statement, wherein an unfavorable decision, ruling or finding would materially adversely affect the financial position or condition of the Issuer or would result in any material adverse change in the ability of the Issuer to apply its tax proceeds or other revenues to pay debt service on the Securities, or (6) contesting the status of the interest on the Series 2020-A Warrants as excludable from gross income for federal income tax purposes or the status of the interest on either series of the Securities as exempt from any applicable state tax, in each case as described in the Official Statement;

(E) the distribution of the Preliminary Official Statement and the execution, delivery and distribution of the Official Statement have been duly authorized by the Issuer; nothing has come to the attention of such counsel that would lead them to believe that the information and statements in the Preliminary Official Statement as of its date and the Official Statement, as of its date and as of the date of such opinion, contained or contain any untrue statement of a material fact or omitted or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, no view need be expressed as to the financial statements of the Issuer, any other financial, forecast, technical or statistical data or as to the Excluded Sections of the Preliminary Official Statement and the Official Statement; and

(F) all authorizations, approvals, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect, the due performance by the Issuer of its obligations under the Authorizing Ordinance, the Issuer Documents and the Securities have been duly obtained, except for: (1) such approvals, consents and orders as may be required under the Blue Sky or securities laws of any jurisdiction in connection with the offering and sale of the Securities and (2) authorizations, approvals, consents and orders that are required to be obtained or renewed periodically, such as budgets, licenses and permits.

(iv) The opinion of Underwriter's Counsel, addressed to the Underwriter, dated the Closing Date, to the effect that: (A) the Securities are exempt from registration under the Securities Act and the Authorizing Ordinance is exempt from qualification under the Trust Indenture Act and (B) the Continuing Disclosure Undertaking meets the requirements of Rule 15c2-12. In addition, such counsel shall state in its letter containing the foregoing opinion or in a separate letter addressed to the Underwriter that, without having undertaken to determine independently, or to assume responsibility for, the accuracy, completeness or fairness thereof, and based solely on their participation in meetings and telephone conferences at which representatives of the Issuer, Bond Counsel and the Underwriter were at various times present, nothing has come to the attention of such counsel that would lead them to believe that the information and statements in the Preliminary Official Statement as of its date and the Official Statement, as of its date and as of the date of such letter, contained or contain any untrue statement of a material fact or omitted or omit to state a material fact necessary in order to make

the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, no view need be expressed as to the financial statements of the Issuer, any other financial, forecast, technical or statistical data, and any information in the Preliminary Official Statement and the Official Statement respecting the Bond Insurer and DTC.

(v) A certificate dated the Closing Date of an authorized officer of the Issuer to the effect that:

(A) the representations and warranties of the Issuer contained in this Agreement are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date;

(B) the Issuer has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied at or prior to the Closing;

(C) no event affecting the Issuer has occurred since the date of the Official Statement which either makes untrue or incorrect in any material respect as of the Closing Date any statement or information contained in the Preliminary Official Statement or the Official Statement or is not reflected in the Official Statement but should be reflected therein in order to make the statements and information therein not misleading in any material respect; and

(D) there is no action, suit, proceeding or investigation before or by any court or public board or body pending or threatened against the Issuer to restrain or enjoin the issuance, execution or delivery of the Securities or in any manner questioning the proceedings or authority for the issuance of the Securities or affecting directly or indirectly the validity of the Securities or of any provisions made or authorized for their payment or contesting the existence of the Issuer or the title of any of its officers to their respective offices.

(vi) Written evidence that the rating(s) on the Securities by the applicable rating services, as set forth in Section 0, are in effect as of the Closing Date.

(vii) A certificate of an officer of the Paying Agent, acceptable to the Underwriter, dated the Closing Date, to the effect that the Issuer Documents and other financing or operative documents relating to the Securities to which the Paying Agent is a party have been duly authorized, executed and delivered by the Paying Agent, and the Securities have been authenticated in accordance with the Authorizing Ordinance and the Issuer Documents by a duly authorized officer or signatory of the Paying Agent; and an incumbency certificate of the Paying Agent, in form and content acceptable to the Underwriter and Bond Counsel, dated the Closing Date, with respect to the officers or other signatories of the Paying Agent who have executed, authenticated and delivered the Securities, the Issuer Documents to which the Paying Agent is a party, and all other financing or operative documents relating to the Securities to be signed by the Paying Agent

(viii) A tax certificate or tax regulatory agreement, executed by a duly authorized officer of the Issuer, in form and substance satisfactory to Bond Counsel, setting forth, among other things, in the manner permitted by the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the reasonable expectations of the Issuer as of the Closing Date as to the use of proceeds of the Series 2020-A Warrants and of any other funds of the Issuer

expected to be used to pay debt service on the Series 2020-A Warrants and the facts and estimates on which such expectations are based, and stating that, to the best of knowledge and belief of such certifying officer, the expectations set forth therein are reasonable.

(ix) An Information Return for Tax-Exempt Governmental Obligations (Internal Revenue Service Form 8038-G), in a form satisfactory to Bond Counsel for filing, executed by a duly authorized officer of the Issuer.

(x) A copy of the Blanket Letter of Representations to DTC relating to the Securities signed by the Issuer.

(xi) True and complete copies of all opinions, certificates and other documents delivered to the Paying Agent under the Authorizing Ordinance and the Issuer Documents; and such additional legal opinions, certificates, instruments and other documents as the Underwriter or Bond Counsel reasonably may request, in form and substance satisfactory to the Underwriter or Bond Counsel, as the case may be, to evidence (A) compliance by the Issuer with legal requirements reasonably relating to the transactions contemplated by the Official Statement and this Agreement, (B) the truth and completeness, as of the date thereof, of the statements and information contained in the Preliminary Official Statement, (C) the truth and completeness, as of the date thereof and as of the time of the Closing, of the statements and information contained in the Official Statement, (D) the truth and completeness, as of the time of the Closing, of the representations and warranties of the Issuer contained in this Agreement and the certificates and other documents referred to in this Agreement, and (E) the due performance or satisfaction by the Issuer at or prior to the Closing of all agreements then to be satisfied.

#### **14. Issue Price Certificate**

(a) The Underwriter agrees to assist the Issuer in establishing the issue price of the Series 2020-A Warrants and shall execute and deliver to the Issuer at Closing an “issue price” or similar certificate, together with the supporting pricing wires or equivalent communications, in the such form as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the Issuer and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Series 2020-A Warrants.

(b) Except as otherwise set forth in Schedule II attached hereto, the Issuer will treat the first price at which 10% of each maturity of the Series 2020-A Warrants (the “10% test”) is sold to the public as the issue price of that maturity. At or promptly after the execution of this Warrant Purchase Agreement, the Underwriter shall report to the Issuer the price or prices at which it has sold to the public each maturity of the Series 2020-A Warrants. If at that time the 10% test has not been satisfied as to any maturity of the Series 2020-A Warrants, the Underwriter agrees to promptly report to the Issuer the prices at which it sells the unsold Series 2020-A Warrants of that maturity to the public. That reporting obligation shall continue, whether or not the Closing Date has occurred, until either (i) the Underwriter has sold all Series 2020-A Warrants of that maturity or (ii) the 10% test has been satisfied as to the Series 2020-A Warrants of that maturity, provided that the Underwriter’s reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Issuer or bond counsel. For purposes of this Section, if Series 2020-A Warrants mature on the same date but

have different interest rates, each separate CUSIP number within that maturity will be treated as a separate maturity of the Series 2020-A Warrants.

(c) The Underwriter confirms that it has offered the Series 2020-A Warrants to the public on or before the date of this Warrant Purchase Agreement at the offering price or prices (the “initial offering price”), or at the corresponding yield or yields, set forth in Schedule II attached hereto, except as otherwise set forth therein. Schedule II also sets forth, as of the date of this Warrant Purchase Agreement, the maturities, if any, of the Series 2020-A Warrants for which the 10% test has not been satisfied and for which the Issuer and the Underwriter agree that the restrictions set forth in the next sentence shall apply, which will allow the Issuer to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Series 2020-A Warrants, the Underwriter will neither offer nor sell unsold Series 2020-A Warrants of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

- (1) the close of the fifth (5<sup>th</sup>) business day after the sale date; or
- (2) the date on which the Underwriter has sold at least 10% of that maturity of the Series 2020-A Warrants to the public at a price that is no higher than the initial offering price to the public.

The Underwriter will advise the Issuer promptly after the close of the fifth (5<sup>th</sup>) business day after the sale date whether it has sold 10% of that maturity of the Series 2020-A Warrants to the public at a price that is no higher than the initial offering price to the public.

(d) The Underwriter confirms that:

(i) any selling group agreement and any third-party distribution agreement relating to the initial sale of the Series 2020-A Warrants to the public, together with the related pricing wires, contains or will contain language obligating each dealer who is a member of the selling group and each broker-dealer that is a party to such third-party distribution agreement, as applicable:

(A) to report the prices at which it sells to the public the unsold Series 2020-A Warrants of each maturity allotted to it, whether or not the Closing Date has occurred, until either all Series 2020-A Warrants of that maturity allocated to it have been sold or it is notified by the Underwriter that the 10% test has been satisfied as to the Series 2020-A Warrants of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter and (ii) to comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter,

(B) to promptly notify the Underwriter of any sales of Series 2020-A Warrants that, to its knowledge, are made to a purchaser who is a related party to an

underwriter participating in the initial sale of the Series 2020-A Warrants to the public (each such term being used as defined below), and

(C) to acknowledge that, unless otherwise advised by the dealer or broker-dealer, the Underwriter shall assume that each order submitted by the dealer or broker-dealer is a sale to the public.

(ii) any selling group agreement relating to the initial sale of the Series 2020-A Warrants to the public, together with the related pricing wires, contains or will contain language obligating each dealer that is a party to a third-party distribution agreement to be employed in connection with the initial sale of the Series 2020-A Warrants to the public to require each broker-dealer that is a party to such third-party distribution agreement to (A) report the prices at which it sells to the public the unsold Series 2020-A Warrants of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Series 2020-A Warrants of that maturity allocated to it have been sold or it is notified by the Underwriter or the dealer that the 10% test has been satisfied as to the Series 2020-A Warrants of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter or the dealer, and (B) comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter or the dealer and as set forth in the related pricing wires.

(e) The Issuer acknowledges that, in making the representations set forth in this section, the Underwriter will rely on (i) in the event a selling group has been created in connection with the initial sale of the Series 2020-A Warrants to the public, the agreement of each dealer who is a member of the selling group to comply with the requirements for establishing issue price of the Series 2020-A Warrants, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2020-A Warrants, as set forth in a selling group agreement and the related pricing wires, and (ii) in the event that a third-party distribution agreement was employed in connection with the initial sale of the Series 2020-A Warrants to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the requirements for establishing issue price of the Series 2020-A Warrants, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2020-A Warrants, as set forth in the third-party distribution agreement and the related pricing wires. The Issuer further acknowledges that the Underwriter shall not be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement to comply with the requirements for establishing issue price of the Series 2020-A Warrants, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2020-A Warrants.

(f) The Underwriter acknowledges that sales of any Series 2020-A Warrants to any person that is a related party to an underwriter participating in the initial sale of the Series 2020-A Warrants to the public (each such term being used as defined herein) shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(i) “public” means any person other than an underwriter or a related party,

- (ii) “underwriter” means (A) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Series 2020-A Warrants to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the applicable series of the Series 2020-A Warrants to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Series 2020-A Warrants to the public),
- (iii) a purchaser of any of the Series 2020-A Warrants is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (A) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (B) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (C) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and
- (iv) “sale date” means the date of execution of this Warrant Purchase Agreement by all parties.

(g) Upon request of Bond Counsel, the Underwriter shall execute and deliver on the Closing Date an issue price or similar certificate with respect to the Series 2020-A Warrants pursuant to this Section, in form and substance reasonably satisfactory to the Issuer, Bond Counsel and the Underwriter.

## **15. Accountants’ Letter**

No Accountants’ letters will be delivered in connection with the issuance of the Securities.

## **16. Indemnification and Contribution**

(a) The Issuer agrees to indemnify and hold harmless the Underwriter, and each person, if any, who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) the Underwriter, and their directors, officers, agents and employees, against any and all losses, claims, damages, liabilities and expenses to which the Underwriter may become subject, insofar as such losses, claims, damages, liabilities or expenses (or actions in respect thereof), arise out of or are based upon (i) a claim in connection with the public offering of the Securities to the effect that the Securities or any related security are required to be registered under the Securities Act or any indenture is required to be qualified under the Trust Indenture Act, or (ii) any statement or information in the Preliminary Official Statement or in the

Official Statement that is or is alleged to be untrue or incorrect in any material respect, or any omission or alleged omission of any statement or information in the Preliminary Official Statement or the Official Statement (other than in the Excluded Sections) which is necessary in order to make the statements therein not misleading. The foregoing indemnity agreement shall be in addition to any liability that the Issuer otherwise may have.

(b) The Underwriter will indemnify and hold harmless the Issuer, each of its members, directors, officers and employees, and each person who controls the Issuer within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, to the same extent as the foregoing indemnity from the Issuer to the Underwriter, but only with reference to the statements under the caption “Underwriting” in the Preliminary Official Statement and the Official Statement.

(c) In case any claim shall be made or action brought against an indemnified party for which indemnity may be sought against any indemnifying party, as provided above, the indemnified party shall promptly notify the indemnifying party in writing setting forth the particulars of such claim or action; but the omission to so notify the indemnifying party (i) shall not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) shall not relieve it from any liability which it may have to any indemnified party except as otherwise stated under paragraph (a) or (b) above. The indemnifying party shall assume the defense thereof, including the retention of counsel acceptable to such indemnified party and the payment of all expenses and shall have the right to negotiate and consent to settlement. An indemnified party shall have the right to retain separate counsel in any such action and to participate in the defense thereof but the fees and expenses of such counsel shall be at the expense of such indemnified party unless the employment of such counsel has been specifically authorized by the indemnifying party or the indemnifying party shall not have employed counsel reasonably acceptable to the indemnified party to have charge of the defense of such action or proceeding or the indemnified party shall have reasonably concluded that there may be defenses available to it which are different from or additional to those available to the indemnifying party (in which case the indemnifying party shall not have the right to direct the defense of such action or proceeding on behalf of the indemnified party), in any of which events, such legal or other expenses shall be borne by the indemnifying party. No party shall be liable for any settlement of any action effected without its consent, but if settled with the consent of the indemnifying party or if there is a final judgment for the plaintiff in any action with or without written consent of the indemnifying party, the indemnifying party agrees to indemnify and hold harmless the indemnified parties to the extent of the indemnities set forth above from and against any loss or liability by reason of such settlement or judgment. Any such settlement must include an unconditional release of each indemnified party from all liability arising out of such action.

(d) If the indemnification provided for above is unenforceable, or is unavailable to an indemnified party in respect of any losses, claims, damages or liabilities (or actions in respect thereof) of the type subject to indemnification herein, then the indemnifying party shall, in lieu of indemnifying such person, contribute to the amount paid or payable by such person as a result of such losses, claims, damages, or liabilities (or actions in respect thereof). In the case of the Issuer and the Underwriter, contribution shall be in such proportion as is appropriate to reflect

the relative benefits received by the Issuer, on the one hand, and the Underwriter, on the other, from the sale of the Securities. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then the indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Issuer, on the one hand, and the Underwriter, on the other, in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or action in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Issuer on the one hand and the Underwriter on the other shall be deemed to be in the same proportion as the total net proceeds of sale of the Securities paid to the Issuer pursuant to this Agreement (before deducting expenses) bear to the underwriting discount or commission received by the Underwriter. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Issuer or the Underwriter and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Issuer and the Underwriter agree that it would not be just and equitable if contribution pursuant to this paragraph were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this paragraph. The amount paid or payable by any person as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above shall be deemed to include any legal or other expenses reasonably incurred by such person in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this paragraph, however, the Underwriter shall not be required to contribute an amount in excess of the amount of the underwriting discount or commission applicable to the purchase of the Securities. No person guilty of fraudulent misrepresentation (within the meaning of Section 10(b) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

## **17. Termination**

The Underwriter shall have the right to cancel its obligation to purchase the Securities and to terminate this Agreement by written notice to the Issuer if, between the Effective Date to and including the Closing Date, in the Underwriter's sole and reasonable judgment any of the following events shall occur (each a "Termination Event"):

(a) the market price or marketability of the Securities, or the ability of the Underwriter to enforce contracts for the sale of the Securities, shall be materially adversely affected by any of the following events:

(i) legislation shall have been enacted by the Congress of the United States or the legislature of the State or shall have been favorably reported out of committee of either body or be pending in committee of either body, or shall have been recommended to the Congress for passage by the President of the United States or a member of the President's Cabinet, or a decision shall have been rendered by a court of the United States or the State or the Tax Court of the United States, or a ruling, resolution, regulation or temporary regulation, release or announcement shall have been made or shall have been proposed to be made by the Treasury Department of the United States or the Internal Revenue Service, or other federal or state

authority with appropriate jurisdiction, with respect to federal or state taxation upon interest received on obligations of the general character of the Securities; or

(ii) there shall have occurred (1) an outbreak or escalation of hostilities or the declaration by the United States of a national emergency or war or (2) any other calamity or crisis in the financial markets of the United States or elsewhere; or

(iii) a general suspension of trading on the New York Stock Exchange or other major exchange shall be in force, or minimum or maximum prices for trading shall have been fixed and be in force, or maximum ranges for prices for securities shall have been required and be in force on any such exchange, whether by virtue of determination by that exchange or by order of the SEC or any other governmental authority having jurisdiction; or

(iv) legislation shall have been enacted by the Congress of the United States or shall have been favorably reported out of committee or be pending in committee, or shall have been recommended to the Congress for passage by the President of the United States or a member of the President's Cabinet, or a decision by a court of the United States shall be rendered, or a ruling, regulation, proposed regulation or statement by or on behalf of the SEC or other governmental agency having jurisdiction of the subject matter shall be made, to the effect that any obligations of the general character of the Securities, the Authorizing Ordinance or the Issuer Documents, or any comparable securities of the Issuer, are not exempt from the registration, qualification or other requirements of the Securities Act or the Trust Indenture Act or otherwise, or would be in violation of any provision of the federal securities laws; or

(v) except as disclosed in or contemplated by the Official Statement, any material adverse change in the affairs of the Issuer shall have occurred; or

(vi) any rating on either (1) securities of the Issuer which are secured by a pledge of its full faith and credit or (2) the Bond Insurer is reduced or withdrawn or placed on credit watch with negative outlook by any major credit rating agency (including any rating to be accorded the Securities); or

(b) any event or circumstance shall exist that either makes untrue or incorrect in any material respect any statement or information in the Official Statement (other than any statement provided by the Underwriter) or is not reflected in the Official Statement but should be reflected therein in order to make the statements therein, in the light of the circumstances under which they were made, not misleading and, in either such event, the Issuer refuses to permit the Official Statement to be supplemented to supply such statement or information, or the effect of the Official Statement as so supplemented is to materially adversely affect the market price or marketability of the Securities or the ability of the Underwriter to enforce contracts for the sale of the Securities; or

(c) a general banking moratorium shall have been declared by federal or State authorities having jurisdiction and be in force; or

(d) a material disruption in securities settlement, payment or clearance services affecting the Securities shall have occurred; or

(e) any new restriction on transactions in securities materially affecting the market for securities (including the imposition of any limitation on interest rates) or the extension of credit by, or a charge to the net capital requirements of, underwriters shall have been established by the New York Stock Exchange, the SEC, any other federal or State agency or the Congress of the United States, or by Executive Order; or

(f) a decision by a court of the United States shall be rendered, or a stop order, release, regulation or no-action letter by or on behalf of the SEC or any other governmental agency having jurisdiction of the subject matter shall have been issued or made, to the effect that the issuance, offering or sale of the Securities, including the underlying obligations as contemplated by this Agreement or by the Official Statement, or any document relating to the issuance, offering or sale of the Securities, is or would be in violation of any provision of the federal securities laws at the Closing Date, including the Securities Act, the Exchange Act and the Trust Indenture Act.

Upon the occurrence of a Termination Event and the termination of this Agreement by the Underwriter, all obligations of the Issuer and the Underwriter under this Agreement shall terminate, without further liability, except that the Issuer and the Underwriter shall pay their respective expenses as set forth in Section 18.

## **18. Payment of Expenses**

(a) The Underwriter shall be under no obligation to pay, and the Issuer shall pay from available funds or direct the Paying Agent under the Authorizing Ordinance and the Issuer Documents to pay from the proceeds of the Securities (to the extent permitted under applicable law) or from other funds of the Issuer, all expenses that are incidental to the performance of the Issuer's obligations under this Agreement, including but not limited to: all expenses in connection with the printing of the Preliminary Official Statement, the Official Statement and any amendment or supplement to either; all expenses in connection with the printing, issuance and delivery of the Securities; the fees and expenses of Bond Counsel, Issuer's Counsel and Underwriter's Counsel; the fees of the Bond Insurer and the fees and expenses of its counsel, if any; the fees and expenses of the Issuer's financial advisors, Accountants, any verification consultant and all other consultants; the fees and disbursements of any Paying Agent and any escrow agent, and their respective counsel; all expenses in connection with obtaining a rating or ratings for the Securities; all expenses of the Issuer in connection with the preparation, printing, execution and delivery, and any recording or filing, of the Authorizing Ordinance, any Issuer Document or any other instrument; the Issuer's administrative fees; and all other expenses and costs of the Issuer incident to its obligations in connection with the authorization, issuance, sale and distribution of the Securities. Unless the Issuer and the Underwriter otherwise agree, the Issuer shall pay for all incidental costs (including, but not limited to, transportation, lodging, meals and entertainment of Issuer personnel) incurred by or on behalf of the Issuer in connection with the marketing, issuance and delivery of the Securities.

(b) The Underwriter shall pay the costs of qualifying the Securities for sale in the various states chosen by the Underwriter, all advertising expenses in connection with the public offering of the Securities and all other expenses incurred by the Underwriter in connection with the public offering and distribution of the Securities.

## **19. Notices**

Any notice or other communication to be given to the Issuer under this Agreement may be given by certified mail or by delivering the same in writing to the Issuer at the following address:

City of Daphne  
1705 Main Street  
Daphne, Alabama 36526  
Attention: Mayor

and any notice or other communication to be given to the Underwriter under this Purchase Agreement may be given by delivering the same in writing to the Underwriter, at the following address:

Piper Sandler & Co.  
2100 Southbridge Parkway, Suite 650  
Birmingham, Alabama 35209  
Attention: Walter Lewis

or to such other addresses as one party shall furnish the other in writing for receipt of notice.

## **20. Governing Law**

This Agreement shall be governed by the laws of the State of Alabama.

## **21. Miscellaneous**

This Agreement is made solely for the benefit of the signatories hereto (including the Underwriter and its successors or assigns) and no other person shall acquire or have any right hereunder or by virtue hereof. Neither the Issuer nor the Underwriter may assign this Agreement. The term "successor" shall not include any holder of any Securities merely by virtue of such holding. All representations, warranties, agreements and indemnities contained in this Agreement shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of the Underwriter, and shall survive the delivery of and payment for the Securities and any termination of this Agreement. Section headings have been included in this Agreement as a matter of convenience of reference only and are not to be used in the interpretation of any provisions of this Agreement. If any provision of this Agreement is, or is held or deemed to be, invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, because it conflicts with any provisions of any constitution, statute, rule of public policy or for any other reason, such circumstances shall not make the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or make any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

**22. Counterparts**

This Agreement may be executed in one or more counterparts with the same force and effect as if all signatures appeared on a single instrument.

**23. Signatures**

Upon execution by the Issuer and the Underwriter, this Agreement shall be binding upon the Issuer and the Underwriter as of the Effective Date and Time.

**ACCEPTED AND AGREED:**

ISSUER:

CITY OF DAPHNE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PIPER SANDLER & CO.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Schedule I**  
**TERMS OF THE SECURITIES**

**SERIES 2020-A WARRANTS**

Maturity Date	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>	<u>Price</u>	CUSIP
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\_\_\_\_\_  
\*Calculated to first call date:

**Mandatory Sinking Fund Schedule:**

Series 2020-A Warrants maturing on \_\_\_\_\_:

Date	Principal
(_____1)	<u>Amount</u>

**Optional Redemption:**

Those of the Series 2020-A Warrants having stated maturities after \_\_\_\_\_, will be subject to redemption, at the option of the City, as a whole or in part, and, if in part, in such maturities as the City shall specify, on \_\_\_\_\_, and on any date thereafter, at a redemption price for each Series 2020-A Warrant (or portion thereof) called for redemption equal to the principal amount thereof plus accrued interest to the date fixed for redemption.

**SERIES 2020-B WARRANTS**

Due	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>	<u>Price</u>	CUSIP
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**Mandatory Sinking Fund Schedule:**

Series 2020-B Warrants maturing on \_\_\_\_\_:

<u>Date (1)</u>	<u>Principal Amount</u>
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SCHEDULE II

SALE PRICES OF THE GENERAL RULE MATURITIES AND  
INITIAL OFFERING PRICES OF THE HOLD-THE-OFFERING-PRICE MATURITIES

**General Rule Maturities**

Maturity Date <u>(1)</u>	Principal <u>Amount</u>	Interest <u>Rate</u>	<u>Yield</u>	<u>Price</u>	CUSIP
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\_\_\_\_\_

\*Computed to first optional redemption date:

**Hold-the-Offering-Price Maturities**

Maturity Date <u>(1)</u>	Principal <u>Amount</u>	Interest <u>Rate</u>	<u>Yield</u>	<u>Price</u>	CUSIP
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\_\_\_\_\_

\*Computed to first optional redemption date:

After discussion, Councilmember \_\_\_\_\_ moved that the foregoing ordinance and order be adopted and spread upon the minutes of this meeting, which motion was seconded by Councilmember \_\_\_\_\_, and, on roll call the following vote was registered:

YEAS

NAYS

The Chairman thereupon announced that the said ordinance had been carried by unanimous vote of the Council present.

\* \* \* \* \*

The Chairman then stated that it would be appropriate to consider the issuance of the City's General Obligation Refunding Warrants, Series 2020-B (Federally Taxable) (the "Series 2020-B Warrants"), in conjunction with the Series 2020-A Warrants, for the purpose of refunding certain of the City's outstanding general obligation indebtedness and paying the expenses of issuing the Series 2020-B Warrants. The following ordinance was thereupon introduced in writing by Councilmember \_\_\_\_\_:

**ORDINANCE NO. 2020-36**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF  
GENERAL OBLIGATION REFUNDING  
WARRANTS, SERIES 2020-B**

**BE IT ORDAINED** by the City Council of the City of Daphne, Alabama, as follows:

**ARTICLE I**

**DEFINITIONS, USE OF WORDS AND  
PHRASES, AND FINDINGS BY THE CITY**

**Section 1.1 Definitions.** The following words and phrases and others evidently intended as the equivalent thereof shall, in the absence of clear implication herein otherwise, be given the following respective interpretations:

“**Bank**” means The Bank of New York Mellon Trust Company, N.A., in its role as Warrant Registrar and Paying Agent.

“**Business Day**” means any day other than a Saturday, Sunday or day on which banking institutions are required or authorized to close in the city in which the designated corporate trust agency office of the Bank is located, or on which the Federal Reserve Bank is closed.

“**City**” means the municipal corporation in the State of Alabama known as the City of Daphne, Alabama, as it now exists, and any political subdivision resulting from any merger or consolidation thereof with any other political subdivision.

“**City Clerk**” means the city clerk of the City, or any person acting in such capacity for purposes of the issuance of the Warrants.

“**Code**” means the Internal Revenue Code of 1986 as amended.

“**Council**” or “**City Council**” means the governing body of the City as from time to time constituted.

“**Government Obligations**” means direct obligations of the United States of America and obligations unconditionally guaranteed by the United States of America.

“**Interest Payment Date**” means, with respect to the Warrants, any January 1 or July 1, prior to payment thereof.

**“Overdue Interest”** means interest due but not paid on the Interest Payment Date on which such interest is required to be paid.

**“Principal Payment Date”** means, when used with respect to any Warrant, the date specified in such Warrant as the fixed date on which the principal of such Warrant is due and payable.

**“Record Date”** means, as to any Interest Payment Date, the December 15 or June 15 immediately preceding such Interest Payment Date.

**“Refunded Warrants”** shall mean the Series 2017 Warrants, with a portion of the Series 2017 Warrants being refunded by the Series 2020-B Warrants, and with the balance of the Series 2017 Warrants being refunded by the Series 2020-A Warrants.

**“Securities Depository”** has the meaning given that term in Section 3.5 hereof.

**“Series 2017 Warrants”** means the City’s General Obligation Warrant, Series 2017 dated April 14, 2017, originally issued in the aggregate principal amount of \$12,000,000.

**“Series 2020-A Warrants”** has the meaning given that term in Section 1.3 hereof.

**“Treasurer”** shall mean the treasurer or any assistant treasurer of the City.

**“Warrant Authorizing Law”** means Section 2, Chapter 47 of Title 11 and Section 4, Chapter 81 of Title 11, Code of Alabama, 1975, as amended.

**“Warrant Fund”** means the special account created pursuant to Section 8.3 hereof.

**“Warrant Holder”** or **“Holder”** means the registered holder, from time to time, of any of the Warrants.

**“Warrants”** unless otherwise indicated, means the City's General Obligation Refunding Warrants, Series 2020-B (Federally Taxable), authenticated and delivered pursuant to the ordinance, and as more particularly described in Article II hereof and issued hereunder.

**Section 1.2 Use of Words and Phrases.** The following provisions shall be applied wherever appropriate herein:

Whenever used herein, any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

"Hereby", "herein", "hereinafter", "hereof", "hereunder" and other equivalent words refer to this Ordinance as a whole and not solely to any particular portion thereof in which any such word is used.

The definitions set forth in Section 1.1 hereof shall be deemed applicable whether the words defined are herein used in the singular or plural.

**Section 1.3 Findings of Council.** Having made due and proper investigation of the matters hereinafter referred to, the Council hereby finds and determines:

- (a) The City has heretofore issued the Series 2017 Warrant pursuant to an Ordinance adopted by the Council on April 20, 2017 (the “2017 Ordinance”).
- (b) The City is not in default on the payment of the principal of and the interest on the Series 2017 Warrants.
- (c) By a resolution previously adopted, the City has called all of the outstanding Series 2017 Warrants for redemption.
- (d) Contemporaneously with the issuance of the Series 2020-B Warrants, the City will issue its General Obligation Warrants, Series 2020-A (Bank Qualified) (the “Series 2020-A Warrants”) which, together with the Series 2020-B Warrants, will provide funds sufficient to refund the Refunded Warrants.
- (e) Pursuant to the Warrant Authorizing Law the City is authorized to issue its warrants, in order to refund outstanding indebtedness of the City.
- (f) It is necessary, advisable and in the interest of the public that the City issue the Warrants to refund the Refunded Warrants and to pay costs of issuance and sale of such Warrants.

## **ARTICLE II**

### **AUTHORIZATION, DESCRIPTION, EXECUTION, PAYMENT AND FORM OF THE WARRANTS**

**Section 2.1 Authorization of the Warrants.** Pursuant to the applicable provisions of the constitution and laws of the State of Alabama, and for the purposes of refunding all of the Refunded Warrants and paying the costs of issuance thereof, there is hereby authorized to be issued by the City a series of warrants entitled “General Obligation Refunding Warrants, Series 2020-B (Federally Taxable)” (hereinafter called “Warrants”).

**Section 2.2 Description of the Warrants.**

- (a) Subject to Section 9.3, the aggregate principal amount of the Warrants that may be authenticated and delivered and outstanding shall be as described in the Definitive Terms Certificate.
- (b) The Warrants shall be issued only in fully registered form, without coupons, shall be dated as the date of their delivery, shall be issued in principal amounts of \$5,000 or any

integral multiple thereof, and shall be numbered from R-1 upwards in the order of their issuance and delivery.

- (c) The Warrants shall be dated as of the date set forth in the Definitive Terms Certificate and mature on July 1 in the years more particularly described in the Definitive Terms Certificate. Subject to Section 9.3, the principal amount of the Warrants maturing on each Principal Payment Date and the applicable rate of interest for the Warrants of each maturity shall be set forth in the Definitive Terms Certificate.
- (d) The Warrants shall bear interest from the date of their delivery (or in the case of a Warrant registered in the name of a Holder after the date of their delivery from the Interest Payment Date next preceding the date of such registration or, if the date of such registration is an Interest Payment Date, from the date of registration) at the rates set forth in the Definitive Terms Certificate (calculated on the basis of a 360-day year of twelve 30-day months), payable on each January 1 and July 1 until payment of the principal amount thereof, beginning January 1, 2021.
- (e) Section 9.3 sets forth the parameters for the amount and terms of the Warrants. The Mayor of the City is hereby authorized and directed to execute and deliver in the name and on behalf of the City a certificate substantially in the form set forth in Exhibit 2.2(e) that establishes, within the parameters set forth in Section 9.3, the definitive amount and terms of the Warrants, with such changes or additions to such certificate or deletions to such certificate as the Mayor of the City shall approve, which approval shall be conclusively evidenced by his execution of such certificate (the “Definitive Terms Certificate”). In setting the definitive amount and terms of the Warrants reflected in the Definitive Terms Certificate, the Mayor of the City may rely upon the advice and recommendations of the employees of and advisors to the City.

**Section 2.3 Execution of the Warrants.** The Warrants shall be executed in the name of the City by the manual or facsimile signatures of the Mayor of the City and its City Clerk inscribed or printed or otherwise reproduced thereon (it being herein provided that a condition to the validity of each Warrant is the manual execution on behalf of the Bank of the Registration Certificate endorsed on each Warrant). The Warrants shall be registered by the Treasurer of the City, in the records maintained by the Treasurer, as a claim against the City and the Warrant Fund, which registration shall be made simultaneously as to all the Warrants. The certificate of registration on each of the Warrants shall be executed by the manual or facsimile signature of the Treasurer of the City. The official seal of the City shall be impressed or printed or otherwise reproduced thereon and shall be attested by the aforementioned signature of the City Clerk. The said officers are hereby directed to cause the Warrants to be executed, sealed and registered in the manner provided by this section. Anything herein to the contrary notwithstanding, any assistant city clerk shall be empowered to execute any Warrant in the absence or unavailability of the City Clerk and any assistant treasurer of the City shall be empowered to execute any Warrant in the absence or unavailability of the Treasurer.

**Section 2.4 Places and Medium of Payment of the Warrants.** Principal of and interest on the Warrants shall be payable in lawful money of the United States of America. The principal of the Warrants shall be payable at the designated corporate trust agency office of the Bank, upon presentation and surrender of the Warrants as the same become due and payable. Interest on the Warrants shall be payable by check or draft mailed by the Bank to the lawful holders of the Warrants at the address shown on the registry books of the Bank pertaining to the Warrants as of the Record Date and shall be deemed timely made if so mailed on the Interest Payment Date (or if such Interest Payment Date is not a Business Day, on the Business Day next following such Interest Payment Date).

**Section 2.5 Forms of the Warrants and Related Certificates.** The Warrants, the certificate of registration thereof, the registration thereof as a claim against the Warrant Fund, and the form of assignment thereof shall be in substantially the following forms, with appropriate changes therein to conform to the applicable provisions hereof:

*[Remainder of Page Intentionally Left Blank]*

(Form of Series 2020-B Warrant)

[FORM OF CAPTION FOR WARRANTS HELD IN BOOK ENTRY FORM]

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City of Daphne or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. R-\_\_\_\_\_ \$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF ALABAMA  
CITY OF DAPHNE  
GENERAL OBLIGATION REFUNDING WARRANT  
SERIES 2020-B (FEDERALLY TAXABLE)

MATURITY DATE

CUSIP NUMBER

INTEREST RATE

THE CITY OF DAPHNE, ALABAMA, a municipal corporation in the State of Alabama (the "City"), for value received, hereby acknowledges that it is indebted in the principal sum of

\_\_\_\_\_ DOLLARS

and hereby directs the Treasurer of the City to pay such principal sum to

\_\_\_\_\_

or registered assigns, on the maturity date specified above, and to pay (but solely out of the Warrant Fund) interest on such principal sum from the date hereof (or in the case of a Warrant registered in the name of the registered Holder hereof on or after the date hereof, as evidenced by the Certificate of Registration attached hereto, from the Interest Payment Date next preceding the date of such registration or, if the date of such registration is an Interest Payment Date, from the date of registration), until such principal sum shall become due and payable, at the per annum rate of interest specified above. Interest shall be payable on January 1 and July 1 in each year, beginning January 1, 2021 (each such date herein called an "Interest Payment Date"), and shall be computed on the basis of a 360-day year with 12 months of 30 days each. Interest shall be payable on overdue

principal (and premium, if any) on this Warrant and (to the extent legally enforceable) on any overdue installment of interest on this Warrant at the rate borne hereby.

The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Authorizing Ordinance hereinafter described, be paid to the person in whose name this Warrant is registered at the close of business on the 15th day of the month next preceding such Interest Payment Date.

The Warrants are being issued by means of a book-entry system with no physical distribution of warrant certificates to be made except as provided in the Authorizing Ordinance (as hereinafter defined). One warrant certificate, in the aggregate principal amount of each maturity of the Warrants, registered in the name of Cede & Co. as nominee of the DTC, is being issued and required to be deposited with DTC (or an authorized banking institution acceptable to DTC) and immobilized in its custody. The book-entry system will evidence ownership of the Warrants, with transfers of ownership effected on the records of DTC and its participants pursuant to rules and procedures established by DTC and its participants. Transfer of principal and interest payments to beneficial owners of the Warrants by participants of DTC will be the responsibility of such participants and other nominees of such beneficial owners. The City will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by DTC, and to participants or persons acting through such participants. While Cede & Co. is the registered owner of this Warrant, notwithstanding the provisions hereinabove contained, payments of principal and interest on this Warrant will be made in accordance with the existing arrangements between the Paying Agent and DTC.

Subject to the foregoing paragraph, payment of interest on this Warrant due on each Interest Payment Date shall be made by check or draft mailed by the Paying Agent to the person entitled thereto at his address appearing in the Warrant Register maintained with respect to the Warrants. Such payments of interest shall be deemed timely made if so mailed on the Interest Payment Date (or, if such Interest Payment Date is not a business day, on the business day next following such Interest Payment Date). Upon the terms and conditions provided in the Authorizing Ordinance, the Holder of any Warrant or Warrants in an aggregate principal amount of not less than \$100,000 may request that payment of interest on such Warrant or Warrants be made by wire transfer to an account of such Holder maintained at a bank in the continental United States or by any other method providing for same-day funds that is acceptable to the Bank. All such payments shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

This Warrant is one of the duly authorized issue of warrants of the City, aggregating \$\_\_\_\_\_ in principal amount, entitled "General Obligation Refunding Warrants, Series 2020-B" (the "Warrants") and issued under and pursuant to an ordinance duly adopted by the governing body of the City (the "Authorizing Ordinance") and the constitution and laws of the State of Alabama, including particularly Section 4, Chapter 81 of Title 11 and Section 2, Chapter 47 of Title 11 of the Code of Alabama, 1975. Capitalized terms not otherwise defined herein shall have the meanings assigned in the Authorizing Ordinance.

The Authorizing Ordinance provides that The Bank of New York Mellon Trust Company, N.A. (the "Bank"), will serve as "Paying Agent" and Registrar with respect to the Warrants unless and until a successor is appointed pursuant to the terms and conditions of the Authorizing Ordinance. For purposes of this Warrant and the Authorizing Ordinance, the principal office of the Bank shall mean the office where the Bank maintains its designated corporate trust agency office, as shall be designated by the Bank by written notice to the City and the Holders of the Warrants.

The indebtedness evidenced by the Warrants is a general obligation of the City for the payment of which the full faith and credit of the City have been irrevocably pledged, pro rata and without preference or priority of one Warrant over another.

Pursuant to the Authorizing Ordinance, the City has established a special fund for the payment of debt service on the Warrants (the "Warrant Fund") that will be held by the Bank. The City has obligated itself to pay or cause to be paid into the Warrant Fund from the taxes, revenues or other funds of the City sums sufficient to provide for the payment of debt service on the Warrants as the same becomes due and payable.

This Warrant is transferable by the registered holder hereof, in person or by authorized attorney, only on the books of the Bank, as Registrar and Transfer Agent of the City, and only upon surrender of this Warrant to such Registrar for cancellation, and upon any such transfer a new Warrant of like tenor herewith will be issued to the transferee in exchange therefor, all as more particularly described in the Authorizing Ordinance. Each Holder hereof, by receiving or accepting this Warrant, shall consent and agree and shall be estopped to deny that this Warrant may be transferred only in accordance with the provisions of the Authorizing Ordinance. Provision is also made in the Authorizing Ordinance for the exchange of Warrants for a like aggregate principal amount and in authorized denominations, all upon the terms and subject to the conditions set forth in the Authorizing Ordinance.

The Registrar shall not be required to transfer or exchange this Warrant during the period of fifteen (15) days next preceding any interest payment date.

Registration, transfer and exchange of Warrants, other than to replace mutilated, lost, stolen or destroyed Warrants, shall be without expense to the Holder or transferee, but the Holder shall pay all taxes and other governmental charges, if any, required to be paid in connection with such transfer, registration or exchange.

It has been ascertained and found, and it is hereby certified and recited, that all conditions, actions and things required by the constitution and laws of Alabama to exist, be performed or happen precedent to or in the issuance of this Warrant and the creation of the indebtedness evidenced and ordered paid, hereby exist, have been performed and have happened, that such indebtedness has been registered as a claim against the Warrant Fund and is lawfully due without condition, and that the indebtedness evidenced and ordered paid by this Warrant, together with all other indebtedness of the City, was when incurred and is now within every debt and other limit prescribed by the constitution and laws of Alabama.

Unless the Registration Certificate hereon has been executed by the Bank, as Registrar for the Warrants, by manual signature, this Warrant shall not be entitled to any benefit under the Authorizing Ordinance or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the City has caused this Warrant to be executed in its behalf by the Mayor and by the City Clerk of the City, each of whom have caused their facsimile signatures to be hereunto imprinted, has caused the official seal of the City to be imprinted hereon, and has caused this Warrant to be dated \_\_\_\_\_, 2020.

CITY OF DAPHNE, ALABAMA

(SEAL)

By \_\_\_\_\_  
Its Mayor

ATTEST:

By \_\_\_\_\_  
City Clerk

\* \* \* \* \*

(Form of Registration as Claim against Warrant Fund)

I hereby certify that this Warrant has been registered by me as a claim against the Warrant Fund referred to in this Warrant.

\_\_\_\_\_  
Treasurer of the  
City of Daphne, Alabama

[Form of Registration Certificate]

This Warrant was registered in the name of the above-registered owner on the date hereinafter set forth.

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.

By \_\_\_\_\_  
Its Authorized Officer

DATE OF REGISTRATION: \_\_\_\_\_  
(Form of Assignment)

For value received \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_ the within Warrant and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_, as attorney and Warrant Registrar and Transfer Agent, with full power of substitution in the premises, to transfer the Warrant on the books of the within mentioned Bank.

Dated this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

NOTE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Warrant in every particular, without alteration, enlargement or change whatsoever.

Signature guaranteed:  
(Bank, Trust company or Firm)

By: \_\_\_\_\_  
(Authorized Officer)

Its Medallion Number \_\_\_\_\_

Signature(s) must be guaranteed by an eligible guarantor institution which is a member of a recognized signature guarantee program, i.e., Securities Transfer Agents Medallion Program (STAMP), Stock Exchanges Medallion Program (SEMP), or New York Stock Exchange Medallion Signature Program (MSP)

**ARTICLE III**  
**FURTHER PROVISIONS WITH RESPECT TO**  
**WARRANTS**

**Section 3.1 Home Office Payment Agreement.** Upon the written request of the Holder of any Warrant or Warrants in an aggregate principal amount of not less than \$100,000, the Bank will make payment of interest due on such Warrant or Warrants upon any Interest Payment Date by wire transfer to an account of such Holder maintained at a bank in the continental United States or by any other method providing for payment in same-day funds that is acceptable to the Bank, provided that payment of the principal of and redemption premium (if any) on such Warrant or Warrants shall be made only upon surrender of such Warrant or Warrants to the Bank, as Paying Agent.

**Section 3.2 Interest After Payment Due Date.** The Warrants, any premiums thereon and, to the extent legally enforceable, overdue installments of interest thereon, shall bear interest after the maturity dates thereof or such earlier date as they may be called for redemption, until paid or until money sufficient for the payment thereof shall have been deposited for that purpose with the Bank, at the respective rates borne thereby.

Any provision hereof to the contrary notwithstanding, Overdue Interest shall not be payable to the Warrant Holder solely by reason of such Warrant Holder having been the Holder on the Record Date next preceding the Interest Payment Date on which such interest became due and payable, but shall be payable by the Bank as follows:

- (a) Not less than ten (10) days following receipt by the Bank of immediately available funds in an amount sufficient to enable the Bank to pay all Overdue Interest, the Bank shall fix an Overdue Interest Payment Date for payment of such Overdue Interest, which date shall be not more than twenty (20) days following the expiration of the ten-day period after receipt of funds by the Bank;
- (b) Overdue Interest shall be paid by check or draft mailed by the Bank to the persons in whose names the Warrants were registered in the registry books of the Bank pertaining to the Warrants on the Overdue Interest Payment Date.

Payment of Overdue Interest in the manner herein prescribed to the persons in whose names the Warrants were registered on the Overdue Interest Payment Date shall fully discharge and satisfy all liability for the same.

**Section 3.3 Temporary Certificates.** Pending the preparation of definitive Warrants the City may execute, and upon request of the City, the Bank shall register and deliver, temporary certificates which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Warrants in lieu of which they are issued, but numbered from R-1 upwards, without other identification numbers, and with such other appropriate insertions, omissions, substitutions and other variations as the officers

executing such temporary certificates may determine, as evidenced by their execution of such temporary certificates.

Any such temporary certificates shall be executed by the manual signatures of the appropriate officers of the City as required in Article II of this Ordinance and be executed and attested by the City Clerk. All such temporary certificates shall have impressed thereon the seal of the City.

If temporary Warrants are issued, the City will cause definitive Warrants to be prepared without unreasonable delay. After the preparation of definitive Warrants, the temporary Warrants shall be exchangeable for definitive Warrants upon surrender of the temporary Warrants at the principal office of the Bank, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Warrants the City shall execute and the Bank shall authenticate and deliver in exchange therefor a like principal amount of definitive Warrants of like tenor, and in authorized denominations. Until so exchanged, temporary Warrants shall in all respects be entitled to the security and benefits of this Ordinance.

**Section 3.4 Payments Due on a Day Other Than a Business Day.** If any payment on the Warrants is due on a day which is not a Business Day, such payment shall be made on the first succeeding date which is a Business Day with the same effect as if made on the day such payment was due.

**Section 3.5 Book Entry System.** The City may from time to time enter into, and discontinue, an agreement with a “clearing agency” (securities depository) registered under Section 17A of the Securities Exchange Act of 1934, as amended (a “Securities Depository”), which is the owner of the Warrants, to establish procedures with respect to the Warrants, not inconsistent with the provisions of this Ordinance; provided, however, that any such agreement may provide:

- (a) that such Securities Depository is not required to present a Warrant to the Paying Agent in order to receive partial payment of principal;
- (b) that a legend shall appear on each Warrant so long as the Warrants are subject to such agreement; and
- (c) that different provisions for notice to such Securities Depository may be set forth therein.

So long as an agreement with a Securities Depository is in effect, the City, the Bank and any paying agent or bond registrar shall not have any responsibility or liability with respect to the payment of principal, purchase price, premium, if any, or interest on the Warrants to the beneficial owners or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests or any payments made to such beneficial owners.

## ARTICLE IV

### GENERAL OBLIGATION; PROVISION FOR PAYMENT OF OBLIGATIONS

**Section 4.1 General Obligation.** The indebtedness evidenced by the Warrants is and shall be a general obligation of the City and the full faith and credit of the City are hereby irrevocably pledged to the payment of the principal thereof and interest thereon.

**Section 4.2 Continued Levy of Taxes; Maintenance of Warrant Fund.** The City agrees that, so long as the principal of or interest on any of the Warrants remains unpaid, the City will annually levy and collect taxes, insofar as such taxes may be permitted by the present or any future provisions of the Constitution of Alabama, in such amounts as may be necessary to provide for the payment of the principal of and interest on the Warrants. The City further agrees that so long as the principal of or interest on any of the Warrants remains unpaid it will deposit in the Warrant Fund with respect to such Warrants, not later than the 25th day of the month next preceding an Interest Payment Date, an amount which, when added to the amounts then on deposit in such Warrant Fund, will equal the principal, interest and redemption premium (if any) to come due with respect to the Warrants on such Interest Payment Date.

**Section 4.3 Provision for Payment.** (a) If the principal of and interest and redemption premium (if any) on the Warrants is paid in accordance with the terms thereof and this Ordinance, then all covenants, agreements and other obligations of the City to the Holders of such Warrants shall thereupon cease, terminate and become void and be discharged and satisfied. In the event the Warrants are so paid the Bank shall pay to the City any surplus remaining in the Warrant Fund.

(b) Warrants shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in subsection (a) of this Section 4.3 if

- (1) the City and the Bank (or another bank acting as trustee) enter into an appropriate trust agreement under which there shall be deposited, for payment or redemption of such Warrants and for payment of the interest to accrue thereon until maturity or redemption, and any redemption premium thereon, Government Obligations and cash or any combination of cash and Government Obligations which, together with the income to be derived from such, will produce monies sufficient to provide for the payment, redemption and retirement of such Warrants as and when the same become due;
- (2) the City shall have adopted all necessary proceedings providing for the redemption of any such Warrants that are required to be redeemed prior to their respective maturities and shall have instructed the Bank or other trustee under the aforesaid trust agreement to provide such notices of redemption as are required under this Ordinance;

- (3) the City and the Bank shall have been furnished with an opinion of nationally recognized bond counsel to the effect that the creation of any such trust will not result in subjecting to federal income taxation the interest on any of the Warrants that are to be paid in accordance with such trust; and
- (4) the City and the Bank shall have been furnished a certificate of a firm of certified public accountants satisfactory to the Bank stating that such trust will produce monies sufficient to provide for the full payment and retirement of such Warrants as and when the principal of and interest and redemption premium (if any) on such Warrants shall come due.

**Section 4.4. Retention of Moneys for Payment of Warrants.** The amounts held by the Bank for the payment of the principal of and interest on any Warrants due on any date shall, pending such payment, be held in trust by the Bank for the holders of the Warrants entitled thereto, and for the purposes of this Ordinance the principal of and interest on such Warrants shall no longer be considered to be unpaid. All liability of the City to the Holders of such Warrants and all rights of such Holders against the City under the Warrants or under this Ordinance shall thereupon cease and terminate, and the sole right of such Holders shall thereafter be against such funds. If any Warrant shall not be presented for payment within a period of five (5) years following the date when such Warrant becomes due, whether by maturity, redemption or otherwise, or if the check or draft providing for any payment of interest on any Warrant shall not have been negotiated within such period, the Bank shall return to the City any moneys theretofore held by it for payment of such Warrant or such interest, subject to applicable laws of escheat.

## ARTICLE V

### REDEMPTION PROVISIONS

**Section 5.1 Optional Redemption.** The Warrants shall not be subject to optional redemption.

## ARTICLE VI

### REGISTRATION AND TRANSFER OF THE WARRANTS

**Section 6.1 Registration and Transfer of the Warrants.** The Warrants shall be registered as to both principal and interest. Each Warrant shall have endorsed thereon a registration certificate substantially in the form provided in Section 2.5 hereof, and a condition to the validity of each Warrant shall be the manual execution of such certificate on behalf of the Bank. The Bank is hereby appointed as the Registrar and Transfer Agent for the Warrants, and shall be authorized to keep at its designated corporate trust agency office proper registry books in which it shall register the Warrants, as to both principal and interest, noting the registry on the Warrants so

presented. Such registration shall conclusively designate the Warrant Holder as the sole person to whom or on whose order the payment of the principal of and interest on the Warrants so registered may be made. After such registration no transfer of a Warrant so registered shall be valid unless it is presented at the said office with written power to transfer, properly stamped if required, in form and with guaranty of signature satisfactory to the Registrar, and such new registration noted thereon by the Registrar. The Registrar shall not be required to transfer or exchange such Warrant during the period of fifteen (15) days next preceding any interest payment date. If any Warrant shall be duly called for redemption pursuant to the provisions hereof, the Registrar shall not be required to transfer such Warrant during the period of sixty (60) days next preceding the date fixed for its redemption.

**Section 6.2 Exchange of Warrants.** Upon request of the Holder of any Warrant, the City shall execute, and the Bank shall register and deliver, upon surrender to the Bank of the Warrant or Warrants, in exchange therefor, a Warrant or Warrants of the same tenor in different authorized principal amounts (of \$5,000 or integral multiples thereof), together aggregating the same principal amount as the then unpaid principal of the Warrant or Warrants so surrendered, all as may be requested by the persons surrendering such Warrant or Warrants.

**Section 6.3 Costs of Registration, Transfer and Exchange.** The registration, transfer and exchange of Warrants (other than pursuant to Section 6.5 hereof) shall be without expense to the Holder or transferee. In every case involving a transfer, registration or exchange, such Holder shall pay all taxes and other governmental charges, if any, required to be paid in connection with such transfer, registration or exchange.

**Section 6.4 Effect of Registration.** The City, the Registrar, and the Paying Agent may deem and treat the person in whose name a Warrant is registered on the books of the Registrar as the absolute owner thereof for all purposes; they shall not be affected by notice to the contrary; and all payments by any of them to the person in whose name a Warrant is registered shall, to the extent of such payment, fully discharge all liability thereof.

**Section 6.5 Replacement of Mutilated, Lost, Stolen or Destroyed Warrants.** In the event that any Warrant is mutilated, lost, stolen or destroyed, the City may execute and deliver a new Warrant of like tenor as that mutilated, lost, stolen or destroyed; provided, that (a) in the case of any such mutilated Warrant, such Warrant is first surrendered to the City and the Bank, and (b) in the case of any such lost, stolen or destroyed Warrant, there is first furnished to the City and the Bank evidence of such loss, theft or destruction satisfactory to each of them, together with indemnity satisfactory to each of them. The City may charge the Holder with the expense of issuing any such new Warrant.

**Section 6.6 Provisions with Respect to Bank.** (a) Appointment of Bank and Acceptance of Duties. The Bank is herein designated and appointed and shall act as registrar, transfer agent and payment agent with respect to the Warrants. By its acceptance of such duties hereunder, the Bank shall accept and agree to perform the duties required by this Ordinance, subject, however, to the following conditions:

- (i) The Bank shall undertake to perform such duties and only such duties as are specifically set forth in this Ordinance, and no implied covenants or obligations shall be read into this Ordinance against the Bank.
- (ii) In the absence of bad faith or negligence on its part, the Bank may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Bank and conforming to the requirements of this Ordinance; provided, however, that in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Bank, the Bank shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Ordinance.
- (iii) The Bank shall not be answerable for other than its gross negligence or willful default and the Bank may act through its agents and attorneys with respect to any of its duties hereunder.
- (iv) No provision of this Ordinance shall be construed to relieve the Bank from liability for its own gross negligence or willful misconduct, except that no provision of this Ordinance shall require the Bank to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.
- (v) The Bank may consult counsel on any matters connected herewith and shall not be answerable for any action taken or failure to take any action in good faith on the advice of counsel, provided that its action or inaction is not contrary to any express provision hereof.
- (vi) The Bank need not recognize a Holder of a Warrant as such without the satisfactory establishment of his title to such Warrant.
- (vii) Any action taken by the Bank at the request of and with the consent of the Holder of a Warrant will bind all subsequent Holders of the same Warrant and any Warrant issued hereunder in lieu thereof.
- (viii) The Bank may be a Holder or a pledgee of any of the Warrants as if not the Bank hereunder.
- (ix) The Bank shall not be liable for the proper application of any moneys other than those that may be paid to or deposited with it.
- (x) The Bank shall not be liable to pay or allow interest on any moneys to be held by it under this Ordinance or otherwise to invest any such moneys, except as specifically required by this Ordinance or as may be required by law or other written agreement between the City and the Bank.

- (xi) The Bank may make any investments permitted or required hereby through its own investment department, and any eligible investments issued or held by it hereunder shall be deemed investments and not deposits.
- (xii) The Bank shall, upon reasonable written request, inform the City of the amount at the time on deposit in any of the special funds or accounts created hereunder.
- (xiii) The recitals of fact herein and in the Warrants are statements by the City and not by the Bank, and the Bank is in no way responsible for the validity or security of the Warrants or the validity of the security afforded hereby.

(b) Resignation by Bank. The Bank and any successor Bank may resign and be discharged from the duties under this Ordinance by causing written notice specifying the effective date of such resignation to be delivered by United States registered or certified mail, postage prepaid, to the City and to every Holder of a Warrant. Unless the effective date of the Bank's resignation shall coincide with the appointment of a successor Bank by the Holders of the Warrants as herein provided, such date shall be at least sixty (60) days after the date on which notice to the City and the Holders of the Warrants shall have been mailed.

(c) Removal of Bank. The Bank may be removed with thirty (30) days written notice at any time by an instrument or concurrent instruments in writing delivered to the Bank and to the City and signed by the Holders of a majority in aggregate principal amount of the Warrants then outstanding.

(d) Appointment of Successor Bank; Interim Bank. In case the Bank shall resign, be removed, be dissolved, be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers or of a receiver appointed by a court, a successor may be appointed by Holders of a majority in aggregate principal amount of Warrants then outstanding through an instrument or concurrent instruments in writing signed by such Holders. In case of any such resignation or event which causes the Bank to be incapable of acting, the City, by an instrument signed by the Mayor, shall appoint an interim Bank to serve until a successor Bank shall be appointed by the Holders of a majority in aggregate principal amount of the Warrants, as provided above. Whenever necessary to avoid or fill a vacancy in the office of Bank, the City will appoint an interim Bank in order that there shall at all times be a Bank hereunder. Any interim Bank so appointed by the City shall immediately and without further act be superseded by the Bank appointed by the holders of the Warrants.

The City shall cause notice of the appointment of an interim Bank, in the event that such an appointment is made, to be forwarded by United States registered or certified mail, postage prepaid, to every Holder of a Warrant. When the appointment of a successor Bank, as selected by the Holders of a majority in principal amount of the Warrants then outstanding, becomes effective, the City shall also cause notice of that fact to be given in the manner provided above for the notice required to be given upon the appointment of an interim Bank. Every interim or successor Bank appointed pursuant to this Section shall be a trust company or bank which is qualified to perform all duties of the Bank under this Ordinance and which has, at the time of its acceptance of such

appointment, capital, surplus and undivided profits of not less than \$25,000,000, if there be such an institution willing, qualified and able to accept appointment as Bank upon reasonable or customary terms.

(e) Concerning any Successor Bank. Every successor Bank shall execute, acknowledge and deliver to its predecessor and also to the City an instrument in writing accepting its appointment as Bank hereunder, and thereupon such successor Bank, without any further act, deed or conveyance, shall become fully vested with all the rights, powers and duties of its predecessor. Such predecessor shall nevertheless, on the written request of the City or such successor Bank, execute and deliver an instrument transferring to such successor Bank all rights, powers and interests of such predecessor hereunder; and every predecessor Bank shall deliver all securities and moneys held by it as Bank hereunder to its successor.

(f) Merger or Consolidation of Bank. Any corporation into which the bank may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Bank shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Bank, shall be the successor of the Bank hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case the registration certificates with respect to any Warrants shall have been executed by the Bank then in office, any successor by merger or consolidation to such Bank may adopt the registration of such Warrants and deliver such Warrants with the same effect as if such successor Bank had itself registered such Warrants.

(g) Compensation of Bank. Subject to the provisions of any separate agreement with the Bank, the City shall pay to the Bank from time to time reasonable compensation for all services rendered by it under this Ordinance, including its services as registrar and paying agent for the Warrants, and also all its reasonable expenses, charges, counsel fees, costs and expenses and other disbursements and those of its attorneys, agents and employees, incurred in and about the performance of its duties hereunder.

(h) Extraordinary Expenses. If the Bank is required by a governmental agency or court proceeding initiated by a third party to undertake efforts beyond that which is set forth herein but related thereto (other than due to the Bank's negligence or willful misconduct), the Bank shall notify the City of the same in writing and the City shall promptly pay the Bank for such extraordinary fees, costs and expenses (including reasonable attorney's fees, costs and expenses) reasonably and necessarily incurred in connection therewith.

## ARTICLE VII

### EXECUTION AND DELIVERY OF THE WARRANTS; APPROVAL OF SALE; USE OF PROCEEDS THEREFROM

**Section 7.1 Authority to Execute and Deliver the Warrants.** The Mayor of the City, the City Clerk and the Treasurer are hereby authorized and directed to cause the Warrants to be executed, sealed, attested and registered as a claim against the City and the Warrant Fund as provided herein and delivered to the purchaser thereof upon payment to the City of the sale price therefor.

**Section 7.2 Application of Proceeds of Sale; Additional Sums.** The gross proceeds derived from the sale of the Warrants shall be used solely for the following purposes:

- (i) Paying the issuance expenses of issuing the Warrants in accordance with a Closing Memorandum to be prepared by Piper Sandler & Co., and the Mayor of the City is hereby authorized and directed to pay such issuance expenses.
- (ii) To provide for the refunding of the Refunded Warrants.

## ARTICLE VIII

### CREATION OF WARRANT FUND; COVENANTS WITH RESPECT TO WARRANT PROCEEDS, DESIGNATION OF WARRANTS

**Section 8.1 Warrant Fund.** There is hereby created a special account, the full name of which shall be the "City of Daphne Warrant Fund, Series 2020-B" (the "Warrant Fund"). The Warrant Fund shall be maintained as a separate fund until payment in full of the principal of and interest on the Warrants. The Bank is hereby designated as the custodian of the Warrant Fund.

On or before the 25th day of the month next preceding any Interest Payment Date, the City shall deposit into the Warrant Fund an amount which, when added to the amounts already on deposit therein, will be sufficient to provide for the payment of all principal of and interest on the Warrants coming due on such Interest Payment Date. Monies deposited in the Warrant Fund shall be used by the Bank for the payment of principal and interest on, the Warrants, and for no other purpose until the payment in full of the Warrants.

**Section 8.2 Investment of Moneys in Warrant Fund.** Pending the expenditure of moneys in the Warrant Fund for any other purpose, the City shall have the privilege at any time and from time to time of investing and reinvesting, or causing to be invested and reinvested, all or part of the moneys at any time on deposit in such account, in Government Obligations or in money

market funds of the Bank consisting of Government Obligations. The City shall have the privilege at any time and from time to time of investing and reinvesting, or causing to be invested and reinvested, all or part of the moneys at any time on deposit in such account in Government Obligations, money market funds of the Bank consisting of Government Obligations, or certificates of deposit issued by banks or trust companies having at the time of the deposit combined capital, surplus and undivided profits of not less than \$5,000,000.

The Bank is hereby directed to invest and reinvest such amounts promptly upon receipt of, and in accordance with, the written instructions of the City. The Bank may conclusively rely upon the City's written instructions as to both the suitability and legality of the directed investments. In the absence of written investment instructions from the City, the Bank shall not be responsible or liable for keeping the moneys held by it hereunder fully invested. The Bank shall not be liable for any losses from such directed investments.

**Section 8.3 Security for Funds.** Any money on deposit in any fund or account or held by the Bank pursuant to this Ordinance shall, unless invested as provided herein or secured by the Federal Deposit Insurance Corporation (or any successor agency of the United States of America) or under the State of Alabama Security for Alabama Funds Enhancement Program, be secured for the benefit of the City and the Holders by holding on deposit as collateral security direct obligations of the United States of America or obligations unconditionally guaranteed by the United States of America, or other marketable securities eligible as security for the deposit of public funds under the regulations of the Office of the Comptroller of the Currency, having a market value (exclusive of accrued interest) not less than the amount of money being secured.

## ARTICLE IX

### APPROVAL OF OFFICIAL STATEMENT; AUTHORIZATION OF CONTINUING DISCLOSURE AGREEMENT; AUTHORIZATION OF DISCLOSURE DISSEMINATION AGREEMENT; APPROVAL OF SALE; PARAMETERS MISCELLANEOUS PROVISIONS

**Section 9.1 Approval of Official Statement.** The governing body of the City does hereby approve and authorize the preliminary official statement (the "Preliminary Official Statement") in substantially the form presented to the City Council at this meeting and attached hereto as Exhibit 9.1, which preliminary official statement is hereby "deemed final" within the meaning of Rule 15c2-12 of the United States Securities and Exchange Commission. The final Preliminary Official Statement with respect to the Warrants shall be in substantially the same form as the Preliminary Official Statement herein approved, with such additions, insertions, omissions or other changes as may be approved by the Mayor of the City, and the Mayor of the City is hereby authorized and directed to deem the Preliminary Official Statement final with such additions, insertions, omissions or other changes approved by the Mayor as shall be necessary to conform to the provisions of this Ordinance authorizing the Warrants. The preparation and distribution of such Preliminary Official Statement on behalf of the City by Piper Sandler & Co. is hereby ratified and approved. The final official statement shall be in substantially the same form as the Preliminary Official Statement herein approved, with such additions, insertions, omissions or other changes as may be approved

by the Mayor of the City and the execution of the final official statement by the Mayor of the City as hereby authorized shall be conclusive evidence of any such approval.

**Section 9.2 Authorization of Continuing Disclosure Agreement.** Upon delivery of the Warrants to the purchaser thereof, the Mayor and Finance Director of the City are hereby authorized and directed to execute and deliver for and on behalf of the City, the Continuing Disclosure Agreement in substantially the form presented at the meeting of the Council at which this Ordinance is adopted and attached hereto as Exhibit 9.2, with such additions, insertions, omissions or other changes as may be approved by the Mayor of the City. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Ordinance, failure of the City to comply with the Continuing Disclosure Agreement shall not be considered a default hereunder or with respect to the Warrants; provided, however, any Holder or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Section 9.2. For purposes of this Section, "Beneficial Owner" means any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Warrants (including persons holding Warrants through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Warrants for federal income tax purposes.

**Section 9.3 Sale of Warrants.** The City does hereby authorize (i) the sale of the Warrants to Piper Sandler & Co. on the terms and a conditions set forth in the Definitive Terms Certificate and the Purchase Agreement, and (ii) the execution of the Purchase Agreement between the City and Piper Sandler & Co. in substantially the form presented at the meeting at which this Ordinance is adopted and attached hereto as Exhibit 9.3, with such additions, insertions, omissions or other changes as may be approved by the Mayor of the City. The Warrants shall be sold pursuant to the Purchase Agreement. In order to provide for the sale of the Warrants, the Mayor of the City is hereby authorized and directed to execute and deliver the Purchase Agreement for an in the name and behalf of the City. Notwithstanding the foregoing provisions of this paragraph, the Mayor of the City shall not execute and deliver the Purchase Agreement unless (1) the principal amount of the Warrants does not exceed \$3,700,000; (2) the final maturity date for the Warrants is not later than July 1, 2028; (3) the interest rate for any maturity of the Warrants does not exceed 4.00%; (4) the weighted average maturity of the Warrants does not exceed ten (10) years; (5) the all-in total interest cost for the Warrants (that is, taking into account accrued interest, any original issue discount or original issue premium, the underwriter's discount, any premiums or fees for credit enhancement paid proceeds of the Warrants, and any other costs of issuance paid from proceeds of the Warrants) is not greater than 2.25%; (6) the purchase price of the Warrants is not less than 97% or more than 105% of the par amount thereof; (7) the underwriter's discount reflected in the Purchase Agreement does not exceed \$7.50 per thousand dollars of the principal amount of the Warrants, and (8) the net present value savings produced by the issuance of the Warrants and the Series 2020-A Warrants and the refunding of the Refunded Warrants is at least \$1,000,000. They Mayor's execution and delivery of the Purchase Agreement and the Definitive Terms Certificate shall constitute his approval of the final pricing terms of the Warrants.

**Section 9.4 Further Acts.** From and after the execution and delivery of the documents hereinabove authorized, the proper officers, directors, agents and employees of the City are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of said documents as executed and are further authorized to take any and all further actions and execute and deliver any and all other documents as may be necessary in the issuance of the Warrants and in the delivery of the Official Statement or as contemplated by this Ordinance.

The Mayor and City Clerk are authorized and directed to prepare and furnish to the purchaser of the Warrants, when the Warrants are issued, certified copies of all the proceedings and records of the Council relating to the Warrants, and such other affidavits and certificates as may be required to show the facts relating to the legality and marketability of the Warrants as such facts appear from the books and records in such officers' custody and control or as otherwise known to them.

**Section 9.5 Contractual Provisions.** The provisions of this Ordinance shall constitute a contract between the City and the Holders at any time of the Warrants. Upon payment in full of the principal of and interest on the Warrants the obligations of the City hereunder shall cease with respect thereto.

**Section 9.6 Warrants Payable at Par.** Each bank at which the Warrants may at any time be payable, by acceptance of its duties as Paying Agent therefor, shall be construed to have agreed thereby with the Holders of the Warrants that all remittances made by it on the Warrants shall be made in bankable funds at par and without deduction for exchange, fees or expenses.

**Section 9.7 Severability.** The various provisions of this Ordinance are hereby declared to be severable. In the event any provisions hereof shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect any other portion of this Ordinance.

**Section 9.8 Repeal of Conflicting Provisions.** All resolutions, orders or parts thereof in conflict with this Ordinance are to the extent of such conflict hereby repealed.

## Exhibit 2.2(e)

### Form Definitive Terms Certificate

The undersigned, being the duly appointed Mayor of City of Daphne, a municipal corporation organized under the laws of the State of Alabama (the “City”), does hereby certify as follows:

1. This certificate is being delivered in connection with the issuance by the City of its \$\_\_\_\_\_ General Obligation Warrants, Series 2020-B (the “Series 2020-B Warrants”) under and pursuant to Ordinance No. 2020-\_\_\_ duly adopted by the governing body of the City on \_\_\_\_\_, 2020 (the “Warrant Ordinance”). Capitalized terms not otherwise defined herein shall have the meanings assigned in the Warrant Ordinance.

2. Section 9.3 of the Warrant Ordinance sets forth the parameters for the amount and terms of the Series 2020-B Warrants. Section 2.2(e) of the Warrant Ordinance authorizes and directs the undersigned officer of the City to execute and deliver in the name and on behalf of the City a certificate that establishes, within the parameters set forth in Section 9.3 of the Warrant Ordinance, the definitive amount and terms of the Series 2020-B Warrants (the “Definitive Terms Certificate”). This certificate constitutes the Definitive Terms Certificate contemplated by the Warrant Ordinance.

3. Pursuant to the authority granted by the City set forth in Section 2.2(e) of the Warrant Ordinance, the undersigned officer hereby establishes the following definitive amount and terms of the Series 2020-A Warrants:

(a) The aggregate principal amount of the Series 2020-B Warrants which may be authenticated and delivered and Outstanding is limited to \$\_\_\_\_\_.

(b) The Series 2020-B Warrants shall be dated \_\_\_\_\_ and shall mature on \_\_\_\_\_1 in the years \_\_\_\_\_ through \_\_\_\_\_ (each such maturity date being herein called a “Principal Payment Date. The principal amount and applicable interest rate of 2020-B Warrants maturing on each Principal Payment Date (subject to adjustment as provided above) is as follows:

<u>Maturity Date</u>	Series 2020-B Amount <u>Maturing</u>	Interest <u>Rate</u>
July 1, 2021	\$	%
July 1, 2022		
July 1, 2023		
July 1, 2024		
July 1, 2025		
July 1, 2026		
July 1, 2027		
July 1, 2028		

(c) The Series 2020-B Warrants not subject to mandatory redemption prior to maturity as set forth on Annex 1 hereto.

4. The undersigned officer of the City hereby certifies that the definitive amount and terms of the Series 2020-A Warrants set forth above are in conformity with the parameters set forth in the Warrant Ordinance and in support thereof hereby certifies that: (a) the principal amount of the Series 2020-A Warrants is \$\_\_\_\_\_; (b) the final maturity date for the Series 2020-B Warrants is \_\_\_\_\_; (c) the

interest rate for any maturity of the Series 2020-B Warrants does not exceed \_\_\_\_%; (d) the weighted average maturity of the Series 2020-B Warrants is \_\_\_\_ years; (e) the all-in total interest cost for the Series 2020-B Warrants (that is, taking into account accrued interest, any original issue discount or original issue premium, the underwriter's discount, any premiums or fees for credit enhancement paid from proceeds of the Series 2020-B Warrants, and any other costs of issuance paid from proceeds of the 2020-B Warrants) is \_\_\_\_%; (f) the purchase price of the Series 2020-B Warrants is not less than 97% or more than 105% of the par amount thereof; (g) the underwriter's discount reflected in the Purchase Agreement is \$\_\_\_\_ per thousand dollars of the principal amount of the Series 2020-B Warrants, and (h) the net present value savings produced by the issuance of the Series 2020-A Warrants and the Series 2020-B Warrants and the refunding of the Refunded Warrants is at least \$1,000,000.

5. The undersigned, being the Mayor of the City, holds such position as of the date hereof.

IN WITNESS WHEREOF, this certificate has been executed on behalf of the City by the undersigned officer.

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Annex 1**  
**Provisions Relating to Mandatory Redemption Prior to Maturity**

The Series 2020-B Warrants are subject to mandatory redemption prior to maturity as follows:

*Mandatory Redemption.* [Insert mandatory redemption terms, if applicable]

**Exhibit 9.1**  
**Preliminary Official Statement**  
**(See Attached)**

This Preliminary Official Statement and the information contained therein are subject to completion or amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.



# PRELIMINARY OFFICIAL STATEMENT DATED \_\_\_\_\_, 2020

## NEW ISSUE-BOOK ENTRY ONLY

**Rating: Standard & Poor's:[AA+]  
([Stable] Outlook)  
(See "RATING" herein)**

*In the opinion of Bond Counsel, under existing law, interest on the Series 2020-A Warrants (i) will be excludable from gross income for federal income tax purposes if the City complies with all requirements of the Internal Revenue Code that must be satisfied subsequent to the issuance of the Series 2020-A Warrants in order that interest thereon be and remain excludable from gross income, and (ii) will not be an item of tax preference for purposes of the federal alternative minimum tax on individuals and corporations. In the further opinion of Bond Counsel, under existing law, interest on the Series 2020-B Warrants will not be excludable from gross income of the holders thereof for purposes of federal income taxation. Bond Counsel is also of the opinion that, under existing law, interest on the Series 2020-A Warrants and the Series 2020-B Warrants will be exempt from State of Alabama income taxation. See "TAX MATTERS SERIES 2020-A WARRANTS", and "TAX MATTERS SERIES 2020-B WARRANTS" herein for further information and certain other tax consequences arising with respect to the Series 2020-A Warrants and the Series 2020-B Warrants.*

### CITY OF DAPHNE, ALABAMA

\$7,410,000\*  
General Obligation Refunding Warrants,  
Series 2020-A (Bank Qualified)

\$3,535,000\*  
General Obligation Refunding Warrants,  
Series 2020-B (Federally Taxable)

**Dated: Date of Issuance**

**Due: As shown  
on the inside cover**

The Series 2020-A Warrants and the Series 2020-B Warrants constitute separate series and are together referred to in this Official Statement as the "Series 2020 Warrants" or the "Warrants". Interest on the Series 2020 Warrants is payable on January 1 and July 1 of each year, commencing January 1, 2021. The Series 2020 Warrants when issued will be issued in the name of and held by Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository for the Series 2020 Warrants. Purchases of beneficial interest in the Series 2020 Warrants will be made in book-entry form, in denominations of \$5,000 or any integral multiple thereof. Except as herein described, purchasers will not receive certificates representing their beneficial interests in the Series 2020 Warrants. So long as DTC or its nominee, Cede & Co. is the registered owner of the Series 2020 Warrants, payments of principal and interest will be made directly to DTC or to such nominee. Disbursement of such payments to Direct Participants is the responsibility of DTC, and disbursement of such payments to the beneficial owners is the responsibility of Direct Participants and Indirect Participants of DTC, all as more fully described herein.

The Series 2020 Warrants are subject to redemption prior to maturity as more fully described herein.

**See inside front cover for information on maturity dates, principal amounts, interest rates, yields and prices.**

This cover page contains certain information for quick reference only. It is not a summary of this issue. Investors must read the entire Official Statement to obtain information essential to an informed investment decision.

The Series 2020 Warrants are offered when, as and if issued by the City of Daphne, Alabama, at the respective offering prices set forth herein, subject to the approving opinion of Adams & Reese LLP, Mobile, Alabama, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the City by its counsel, Adams & Reese LLP, Mobile, Alabama. Certain legal matters will be passed upon for the Underwriter by its counsel, Ezell Law, LLC, Birmingham, Alabama. It is expected that the Series 2020 Warrants in definitive form will be available for delivery through DTC in New York, New York on or about October 14, 2020.

Date: \_\_\_\_\_.



\*Preliminary; Subject to Change.

**MATURITIES, AMOUNTS, RATES, PRICES, AND CUSIP NUMBERS**

**\$7,410,000\***

**CITY OF DAPHNE, ALABAMA**

**General Obligation Refunding Warrants, Series 2020-A (Bank Qualified)**

<u>Maturity Date</u>	Series 2020-A Amount <u>Maturing*</u>	Interest <u>Rate</u>	<u>Yield</u>	<u>Cusip***</u>
July 1, 2021	\$	%	%	
July 1, 2022				
July 1, 2023				
July 1, 2024				
July 1, 2025				
July 1, 2026				
July 1, 2027				
July 1, 2028				
July 1, 2029				
July 1, 2030				
July 1, 2031				
July 1, 2032				
July 1, 2033				
July 1, 2034				
July 1, 2035				
July 1, 2036				
July 1, 2037				
July 1, 2038				

\*\* Yield computed to first optional redemption date: \_\_\_\_\_.

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\* Preliminary; Subject to Change

**\$3,535,000\***  
**CITY OF DAPHNE, ALABAMA**  
**General Obligation Refunding Warrants, Series 2020-B (Federally Taxable)**

<u>Maturity Date</u>	Series 2020-B Amount <u>Maturing*</u>	Interest <u>Rate</u>	<u>Yield</u>	<u>Cusip***</u>
July 1, 2021	\$	%	%	
July 1, 2022				
July 1, 2023				
July 1, 2024				
July 1, 2025				
July 1, 2026				
July 1, 2027				
July 1, 2028				

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\* Preliminary; Subject to Change

**CITY OF DAPHNE, ALABAMA**

**Mayor**

**Dane Haygood**

**City Council Members**

**Tommie Conaway, District 1**  
**Pat Rudicell, Council President, District 2**  
**Joel Coleman, District 3**  
**Doug Goodlin, District 4**  
**Ron Scott, District 5**  
**Robin LeJeune, District 6**  
**Angie Phillips, District 7**

**City Clerk**

**Candace Antinarella**

**Finance Director**

**Kelli Kichler Reid**

**Counsel to the City**

**Adams & Reese LLP**  
**Mobile, Alabama**

**Bond Counsel**

**Adams & Reese LLP**  
**Mobile, Alabama**

**Underwriter**

**Piper Sandler & Co.**  
**Birmingham, Alabama**

In connection with the sale of the Series 2020 Warrants herein described, no person has been authorized to give any information or to make any representation not contained in this Official Statement and, if given or made, such information or representation must not be relied upon as having been authorized by the City of Daphne, Alabama. The information in this Official Statement has been obtained from the City and other sources which are considered dependable and which are customarily relied upon in the preparation of similar official statements, but such information is not guaranteed as to accuracy or completeness. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy any of such Series 2020 Warrants, nor shall there be any sale of such Series 2020 Warrants by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information herein is subject to change without notice, and neither the delivery of this Official Statement nor any sale of the Series 2020 Warrants shall under any circumstances create any implication that there has been no change in the affairs of the City of Daphne, Alabama, since the date hereof.

This Official Statement is intended to reflect information as of its date. The delivery of this Official Statement does not imply that the information contained herein is correct on any date subsequent to the date hereof.

In connection with the offering of the Series 2020 Warrants, the Underwriter may over allot or effect transactions that stabilize or maintain the market prices of the Series 2020 Warrants at levels above those that might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time.

**THIS PRELIMINARY OFFICIAL STATEMENT HAS BEEN DEEMED TO BE FINAL AS OF ITS DATE WITHIN THE MEANING OF RULE 15c2-12 UNDER THE SECURITIES EXCHANGE ACT OF 1934, EXCEPT FOR THE OMISSIONS OF THE OFFERING PRICES(S), INTEREST RATE(S), SELLING COMPENSATION, AGGREGATE PRINCIPAL AMOUNTS, PRINCIPAL MATURITY, DELIVERY DATE, RATINGS AND OTHER TERMS OF THE SERIES 2020 WARRANTS DEPENDING ON SUCH MATTERS, ALL OF WHICH ARE PERMITTED OMISSIONS UNDER RULE 15c2-12.**

Certain statements contained in this Official Statement including, without limitation, statements containing the words "estimates," "believes," "anticipates," "expects," and words of similar import, constitute forward-looking statements. Such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause the actual results, performance or achievements of the City or other entities to which the forward-looking statements relate to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements.

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**OFFICIAL STATEMENT**  
**CITY OF DAPHNE, ALABAMA**

**Regarding**  
**\$7,410,000\* General Obligation Refunding Warrants, Series 2020-A (Bank Qualified)**  
**and**  
**\$3,535,000\* General Obligation Refunding Warrants, Series 2020-B (Federally Taxable)**

**INTRODUCTION**

This Official Statement provides certain information in connection with the sale and issuance by the City of Daphne, Alabama (the "**City**") of the Series 2020-A Warrants referred to above (the "**Series 2020-A Warrants**") and the Series 2020-B Warrants referred to above (the "**Series 2020-B Warrants**"). The Series 2020-A Warrants and the Series 2020-B Warrants are hereinafter collectively referred to as the "**Series 2020 Warrants**" or the "Warrants." The Series 2020 Warrants will be issued pursuant to the Constitution and laws of the State of Alabama and the Series 2020-A Warrants will be issued pursuant to an ordinance (the "**Series 2020-A Warrant Ordinance**") adopted by the governing body of the City (the "**City Council**") and the Series 2020-B Warrants will be issued pursuant to an ordinance (the "**Series 2020-B Warrant Ordinance**") adopted by the City Council. The Series 2020-A Warrant Ordinance and the Series 2020-B Warrant Ordinance are hereinafter collectively referred to as the "**Warrant Ordinances**"). The Warrant Ordinances will constitute a contract with the holders of the Series 2020 Warrants.

The information contained in this Official Statement does not purport to be comprehensive or definitive. All references herein to, or summaries of, the Warrant Ordinances or any contract, indenture, ordinance, resolution or other document or official act related to the Series 2020 Warrants are qualified in their entirety by the exact terms of such documents or official acts which are items of public record available from the City. All references herein to, or summaries of, the Series 2020 Warrants are qualified in their entirety by the definitive form thereof and the information with respect thereto included in the Warrant Ordinances.

**PURPOSES OF THE SERIES 2020 WARRANTS**

The City has determined to issue the Series 2020 Warrants for the purposes of (i) refunding certain outstanding debt of the City; and (ii) paying the expenses of issuing the Series 2020 Warrants.

**Refunding Plan**

The City has heretofore issued its \$12,000,000 General Obligation Warrants, Series 2017 (the "**Series 2017 Warrants**"), which are outstanding in the aggregate principal amount of \$11,556,000. The Series 2017 Warrants (the "**Refunded Warrants**") will be refunded on a current basis with a portion of the Series 2020 Warrants.

*[Remainder of page intentionally left blank.]*

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\* Preliminary; Subject to Change.



Warrants and will be reflected in the final Official Statement. Such actual information will vary from the estimates.

Investors should check under the heading “INTRODUCTION – Changes to the Preliminary Official Statement” in the final Official Statement for guidance regarding information dependent on pricing of the Series 2020 Warrants and for guidance regarding other information that is changed between the date of this Preliminary Official Statement and the date of the final Official Statement.

## **THE SERIES 2020 WARRANTS**

### **Description of the Series 2020 Warrants**

The Series 2020 Warrants will be fully registered warrants issued initially in the denomination of \$5,000 or any integral multiple thereof and subject to exchange as hereinafter provided. The Series 2020 Warrants will be dated the date of their initial issuance and delivery, will bear interest payable semiannually on each January 1 and July 1, commencing January 1, 2021, at the rates set forth on the inside cover hereof, and will mature on the dates and in the principal amounts set forth on the inside cover hereof. So long as the Series 2020 Warrants are in book-entry-only form payments will be made as described below in “Book-Entry System.”

The principal of and the premium, if any, on the Series 2020 Warrants will be payable, with par clearance guaranteed, at the designated corporate trust office of The Bank of New York Mellon Trust Company, N.A. in Birmingham, Alabama, the registrar, transfer agent and paying agent for the Series 2020 Warrants (said bank acting in such capacity, together with any successor thereto, being herein called the “Registrar” or “Paying Agent”). The interest payable on the Series 2020 Warrants on each interest payment date will be paid by check or draft mailed by the Registrar to the registered holders thereof on such interest payment date. If any interest payment date shall fall on a Saturday, Sunday or legal holiday on which the Registrar is not open for business, such payment shall be made on the next following business day.

The Warrant Ordinances make special provision for payment of overdue interest which may be paid to a holder other than the registered holder of a Series 2020 Warrant at the time such overdue interest becomes due and payable.

### **Book-Entry System**

The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the Series 2020 Warrants. The Series 2020 Warrants will be issued as fully-registered warrants in the name of Cede & Co., (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Warrant certificate will be issued for each maturity of the Series 2020 Warrants and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments from over 100 countries that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations

and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks and trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (the “Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of Series 2020 Warrants under the DTC system must be made by and through Direct Participants, which will receive a credit for the Series 2020 Warrants on DTC’s records. The ownership interest of each actual purchaser of each Warrant (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of their transactions, as well as periodic statements of their holdings, from the Direct or Indirect Participants through which the Beneficial Owners entered into the transaction. Transfers of ownership interests in the Series 2020 Warrants are to be accomplished by entries made on the books of DTC Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2020 Warrants, except in the event that the use of the book-entry system for the Series 2020 Warrants is discontinued.

To facilitate subsequent transfers, all Series 2020 Warrants deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Series 2020 Warrants with DTC and their registration in the name of Cede & Co. or such other nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2020 Warrants; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Series 2020 Warrants are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the Series 2020 Warrants are being redeemed, DTC’s practice is to determine by lot the amount of the beneficial interest of each Direct Participant in such Series 2020 Warrants to be redeemed.

Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to Series 2020 Warrants unless authorized by a Direct Participant in accordance with DTC’s Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts the Series 2020 Warrants are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal and premium, if any, and interest payments on the Series 2020 Warrants will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC’s practice is to credit Direct Participants’ accounts, upon DTC’s receipt of funds and corresponding detailed information from the City or the Paying Agent on the payable date in accordance with their respective holdings shown on DTC’s records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers

in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC (nor its nominee), the City or the Paying Agent, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the City and Paying Agent; disbursement of such payments to Direct Participants is the responsibility of DTC; and disbursement of such payments to the Beneficial Owners is the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series 2020 Warrants at any time by giving reasonable notice to the City or Paying Agent. Under such circumstances, in the event that a successor securities depository is not obtained, warrant certificates are required to be printed and delivered. In addition, the City may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, warrant certificates will be printed and delivered as described below.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources (including DTC) that the City believes to be reliable, but the City and the Underwriter take no responsibility for the accuracy thereof.

None of the City, the Underwriter or the Paying Agent has any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial interests in any global Warrant or for maintaining, supervising or reviewing any records relating to such beneficial interests.

#### **Discontinuation of Book-Entry System**

In the event the book-entry system is discontinued, Warrant certificates in fully registered form would be delivered to, and registered in the names of, the Direct Participants, or such other persons as such Direct Participants may specify (which may be the Indirect Participants or Beneficial Owners), in denominations of \$5,000 or any integral multiple thereof. The ownership of the Series 2020 Warrants so delivered (and any Series 2020 Warrants thereafter delivered upon a transfer or exchange described below) would be registered in the registration books to be kept by the Paying Agent as the Warrant Registrar for the City. Except as provided in the Warrant Ordinances, the City and the Paying Agent are entitled to treat the registered owners of such Series 2020 Warrants, as their names appear in such registration books as of the appropriate dates, as the owners thereof for all purposes described herein and in the Warrant Ordinances. See "CERTAIN PROVISIONS RESPECTING REGISTRATION AND TRANSFER OF THE SERIES 2020 WARRANTS" below.

#### **Certain Provisions Respecting Registration and Transfer of the Series 2020 Warrants**

The Series 2020 Warrants shall be registered as to both principal and interest and may be transferred only on the registry books of the Paying Agent pertaining to the Series 2020 Warrants. No transfer of the Series 2020 Warrants shall be permitted except upon presentation and surrender of such Warrant at the office of the Paying Agent with written power to transfer signed by the registered owner thereof in person or by a duly authorized attorney in form and with guaranty of signature satisfactory to the Paying Agent. The Paying Agent will not be required to register or transfer any Warrant during the period of fifteen (15) calendar days next preceding any interest payment date and shall not be required to transfer or exchange any Warrant during the period of sixty (60) calendar days next preceding the date for redemption or prepayment of any Warrant. The holder of one or more of the Series 2020 Warrants may, upon request, and upon the surrender to the Paying Agent of such Warrant, exchange such Warrant for Series 2020 Warrants of other authorized denominations of the same series, maturity and interest rate and together aggregating the same principal amount as the Series 2020 Warrant so surrendered. Any registration, transfer and exchange of Series 2020 Warrants shall be without expense to the holder thereof, except that the holder shall pay all taxes and other governmental charges, if any, required to be paid in connection with such transfer, registration or exchange.

The holder of any Warrant will be required to pay any expenses incurred in connection with the replacement of a mutilated, lost, stolen or destroyed Warrant.

The Warrant Ordinances provide that each holder of the Series 2020 Warrants, by receiving or accepting the Series 2020 Warrants, consents and agrees and is estopped to deny that, insofar as the City and the Paying Agent are concerned, the Series 2020 Warrants may be transferred only in accordance with the provisions of the Warrant Ordinances. The Warrant Ordinances also provide that each transferee of the Series 2020 Warrants takes them subject to all principal and interest payments in fact made with respect to the Series 2020 Warrants.

No transfer of any Series 2020 Warrant will be valid except upon presentation and surrender of such Series 2020 Warrant at the principal corporate trust office of the Registrar with written power to transfer signed by the registered owner in person or by duly authorized attorney. Upon the proper transfer of any Series 2020 Warrant, the City will execute a new Series 2020 Warrant, and the Registrar will deliver to the transferee such new Series 2020 Warrant registered in the name of such transferee.

Any holder of one or more of the Series 2020 Warrants may, upon the surrender thereof to the Registrar, exchange such Series 2020 Warrant or Warrants for other Series 2020 Warrants, in the denomination of \$5,000 or any integral multiple thereof, of the same maturity and interest rate and together aggregating the same principal amount as the Series 2020 Warrant or Warrants so surrendered.

#### **Authority for Issuance**

The Series 2020 Warrants are issued by the City under authority of the Constitution and laws of the State of Alabama, including particularly Title 11, Chapter 47, Section 2 and Title 11, Chapter 81, Section 4 of the Code of Alabama (1975), as amended and pursuant to authorization contained in the Warrant Ordinances.

#### **Redemption Prior to Maturity\***

*Series 2020-A Warrants.* The Series 2020-A Warrants are subject to redemption prior to their maturity as follows:

*Optional Redemption.* The Series 2020-A Warrants maturing on or after [\_\_\_\_\_] will be subject to redemption prior to their maturity, at the option of the City, in whole or in part, on [\_\_\_\_\_] and on any date thereafter (in principal amounts of \$5,000 and any integral multiple thereof and if less than all of the Series 2020-A Warrants are to be redeemed, those maturities or portions thereof to be called for redemption shall be selected by the City in its discretion, and if less than all the Series 2020-A Warrants of a single maturity are to be redeemed, those to be called for redemption shall be selected by lot), at and for a redemption price equal to 100% of the principal amount of each Series-A 2020 Warrant or portion thereof redeemed, plus accrued interest to the date fixed for redemption.

*Series 2020-B Warrants.* The Series 2020-B Warrants are not subject to optional redemption prior to their maturity.

*Other Matters Related to Redemption Prior to Maturity.* Notice of any such redemption is required to be given, not less than thirty (30) days prior to the date fixed for redemption, by United States registered or certified mail to the registered holder of any Series 2020 Warrants called for redemption. Such notice of redemption relative to the Series 2020 Warrants called for redemption shall state that it is conditioned on

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\* Preliminary; Subject to Change.

there being sufficient money on deposit to pay the full redemption price of the Series 2020 Warrants called for redemption on the redemption date.

## SECURITY

### General

The Series 2020 Warrants will be general obligations of the City for the payment of which the full faith and credit of the City will be irrevocably pledged. Revenues of the City legally available for payment of the principal of and the interest and premium (if any) on the Series 2020 Warrants will include ad valorem taxes, gross receipts taxes, privilege license taxes and other taxes, and other general revenues of the City.

### Application of Tax Revenues and Creation of Funds

*General.* The Series 2020-A Warrant Ordinance will provide for the maintenance of a special fund designated the “City of Daphne Warrant Fund, Series 2020-A” (the “*Series 2020-A Warrant Fund*”). The Series 2020-B Warrant Ordinance will provide for the maintenance of a special fund designated the “City of Daphne Warrant Fund, Series 2020-B” (the “*Series 2020-B Warrant Fund*”). The Bank of New York Mellon Trust Company, N.A. will be designated in the Warrant Ordinances as the depository, custodian and disbursing agent for the Series 2020-A Warrant Fund and the Series 2020-B Warrant Fund.

*The Series 2020-A Warrant Fund.* The City will be required to transfer to the Series 2020-A Warrant Fund, on or before the business day next preceding each January 1 and July 1, commencing January 1, 2021, an amount equal to the sum of (i) the semiannual installment of interest that will mature with respect to the Series 2020-A Warrants on the then next succeeding interest payment date, plus (ii) the principal, if any, of the Series 2020-A Warrants that will mature on the then next succeeding interest payment date. Moneys on deposit in the Series 2020-A Warrant Fund are to be used for the payment of the principal of and interest on the Series 2020-A Warrants.

*The Series 2020-B Warrant Fund.* The City will be required to transfer to the Series 2020-B Warrant Fund, on or before the business day next preceding each January 1 and July 1, commencing January 1, 2021, an amount equal to the sum of (i) the semiannual installment of interest that will mature with respect to the Series 2020-B Warrants on the then next succeeding interest payment date, plus (ii) the principal, if any, of the Series 2020-B Warrants that will mature on the then next succeeding interest payment date. Moneys on deposit in the Series 2020-B Warrant Fund are to be used for the payment of the principal of and interest on the Series 2020-B Warrants.

*Investment of Funds.* The City may, at its option, from time to time cause any or all of the moneys on deposit in the Series 2020-A Warrant Fund and the Series 2020-B Warrant Fund to be invested in Federal Obligations (as hereinafter defined) having a specified maturity, or being redeemable at the option of the holder, prior to the date when it is anticipated by the City that such moneys will be needed. In the event of any such investment of moneys in the Series 2020-A Warrant Fund and the Series 2020-B Warrant Fund, the Federal Obligations in which such investment shall be made, together with all income therefrom, shall become a part of said fund and shall be held by the Paying Agent to the same extent as if they were moneys on deposit therein. As used in this Official Statement, the term "Federal Obligations" means securities that are direct obligations of the United States of America or that are unconditionally guaranteed by the United States of America as to the payment of both principal and interest (including money market funds investing solely in such obligations of the United States of America).

## **Bankruptcy**

Chapter 9 of the United States Bankruptcy Code permits political subdivisions and public agencies or instrumentalities that are insolvent or unable to meet their debts to file petitions for relief in a federal bankruptcy court if authorized by state law. Alabama law as presently construed authorizes the City and other political subdivisions in Alabama to file petitions for relief under the Bankruptcy Code.

Bankruptcy proceedings by the City could have significant adverse effects on the holders of the Series 2020 Warrants, including (a) delay in the enforcement of their remedies, (b) subordination of their claims to the claims of those supplying goods and services to the City after the initiation of bankruptcy proceedings and to the administrative expenses of bankruptcy proceedings or to other claims of creditors of the City, (c) subordination of liens, (d) avoidance of liens or preferential transfers, and (e) imposition without their consent of a plan for the adjustment of the City's debts that may modify the rights of creditors generally, including the rights of the owners of the Series 2020 Warrants. The Bankruptcy Code permits the use of a plan for the adjustment of debts of a political subdivision which is binding upon all creditors who had notice or knowledge of the plan and which discharges all claims against such political subdivision provided for in the plan, subject to certain requirements and conditions. The effect of these and other provisions of the Bankruptcy Code cannot be predicted with any certainty and may be significantly affected by judicial interpretation or future action of the Congress of the United States or the Alabama Legislature.

## **RISK FACTORS**

An investment in the Series 2020 Warrants involves certain risks which should be carefully considered by investors. Prospective investors should carefully examine this Official Statement and their own financial condition in order to make a judgment as to their ability to bear the economic risk of such an investment and whether or not the Series 2020 Warrants are an appropriate investment for them. The sufficiency of general fund moneys to pay debt service on the Series 2020 Warrants may be affected by events and conditions relating generally to, among other things, the assessed value of taxable property in the City, the value of retail sales in the City, and population trends and economic developments, the exact nature and extent of which are not presently determinable.

The following is a discussion of certain risk factors that should be considered, in addition to other matters set forth herein, in evaluating the investment quality of the Series 2020 Warrants. This discussion is not comprehensive or definitive and does not summarize all risks that may be associated with the Series 2020 Warrants.

### **Limitations on Rights of Holders of the Series 2020 Warrants/Limitations on City Revenue Increases**

Holders of the Series 2020 Warrants should be aware that their rights and the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights and the exercise of judicial discretion in appropriate cases, including the law-imposed requirement that the City may first use its taxes and other revenues to pay the expenses of providing necessary governmental services before paying debt service on the Series 2020 Warrants.

Holders of the Series 2020 Warrants also should be aware that, under present law, the rates at which Alabama property taxes are levied may be increased only after approval by the legislature and a majority vote of the qualified electors of the affected jurisdiction, and that, under applicable judicial precedents, neither Alabama general sales and use taxes nor Alabama business license taxes may be levied at rates that are confiscatory or unreasonable.

## **The United States Bankruptcy Code**

Information describing the applicability of the United States Bankruptcy Code to the City and the Series 2020 Warrants is set forth in this Official Statement under the caption “SECURITY – BANKRUPTCY”.

## **Hurricanes and Other Severe Weather**

The Gulf Coast region is subject to occurrences of severe weather, including hurricanes, in which winds and tidal surges are powerful enough to cause severe destruction. The City, which is located in a coastal area, is particularly susceptible to such storms and their effects. While the City’s property and equipment is insured against damage from such weather hazards in amounts the City’s management believes to be reasonable, the City is not insured against risks like business interruption or loss of taxes and other revenues that could result from such weather hazards. There can be no assurance that the City has provided adequate financial reserve funds against such uninsured risks.

## **COVID-19 and Other Public Health Epidemics or Outbreaks**

As has been widely reported, the worldwide 2019-2020 coronavirus pandemic ("Covid-19") is presently ongoing in the United States and in many other areas of the world. On March 13, 2020, President Trump proclaimed the Covid-19 outbreak a national emergency. On April 3, 2020, Governor of Alabama Kay Ivey issued a wide-ranging "stay at home order," which effectively closed most "non-essential" businesses through the end of April, 2020. On April 28, 2020, the Governor announced a less restrictive, though still limiting, "safer at home" order under which certain businesses remained closed until May 15, 2020, and other businesses were required to operate at reduced capacity. The "safer at home" order is presently scheduled to expire on October 2, 2020. As of August 27, 2020, the Alabama Department of Health reported 112,794 confirmed cases of Covid-19 in Alabama with 1,990 deaths. As of the same date, State of Alabama public health officials reported 4,199 cases in Baldwin County with 34 deaths.

For the fiscal year ended September 30, 2020, the year-to-date results for the City’s General Fund through June 30 showed a surplus of approximately \$4 million, as compared to the budget, due to an increase in revenues over the prior fiscal year and expenditures less than the budgeted amounts. Nonetheless, the City cannot at this time predict whether or to what extent Covid-19 will affect the operations or financial condition of the City. The continued spread of Covid-19 could have a material adverse effect on the City's operations and its financial condition, including a reduction in the City's collections of sales and use taxes and other taxes and fees necessary for the operation of the City. Additionally, indirect effects of the pandemic – such as the nationwide economic slowdown, significantly increased unemployment, particularly unemployment lasting beyond the expiration of state and federal unemployment assistance programs, volatility in financial markets, various business closures and quarantining or "shelter in place" initiatives enacted in an effort to combat spread of the virus – could, over the long-term, have a material adverse impact on the City and its finances. The extent to which Covid-19 impacts the City's operations and its financial condition will depend on future developments, which are highly uncertain and cannot be predicted with confidence, including the duration of the outbreak, new information which may emerge concerning the severity of Covid-19 and the actions to contain it or treat its impact, among others.

## **Tax-Exempt Status of Series 2020-A Warrants**

It is expected that the Series 2020-A Warrants will qualify as tax-exempt obligations for federal income tax purposes as of the date of issuance. See “TAX MATTERS”. It is anticipated that Bond Counsel will render an opinion substantially in the form attached hereto as APPENDIX C, which should be read in its entirety for a complete understanding of the scope of the opinions and the conclusions expressed therein. A legal opinion expresses the professional judgment of the attorney rendering the opinion as to the legal issues explicitly addressed therein. By rendering a legal opinion, the opinion giver does not become an insurer or

guarantor of that expression of professional judgment, of the transaction opined upon, or of the future performance of parties to the transaction. Nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

The tax status of the Series 2020-A Warrants could be affected by post-issuance events. There are various requirements of the Internal Revenue Code of 1986, as amended, that must be observed or satisfied after the issuance of the Series 2020-A Warrants in order for the Series 2020-A Warrants to qualify for, and retain, tax-exempt status. These requirements include appropriate use of the proceeds of the Series 2020-A Warrants, use of the facilities financed by the Series 2020-A Warrants, investment of warrant proceeds, and the rebate of so-called excess arbitrage earnings. Compliance with these requirements is the responsibility of the City.

The Internal Revenue Service conducts an audit program to examine compliance with the requirements regarding tax-exempt status. Under current IRS procedures, in the initial stages of an audit with respect to the Series 2020-A Warrants, the City would be treated as the taxpayer, and the owners of the Series 2020-A Warrants may have limited rights to participate in the audit process. The initiation of an audit with respect to the Series 2020-A Warrants could adversely affect the market value and liquidity of the Series 2020-A Warrants, even though no final determination about the tax-exempt status has been made. If an audit results in a final determination that the Series 2020-A Warrants do not qualify as tax-exempt obligations, such a determination could be retroactive in effect to the date of issuance of the Series 2020-A Warrants.

In addition to post-issuance compliance, a change in law after the date of issuance of the Series 2020-A Warrants could affect the tax-exempt status of the Series 2020-A Warrants or the effect of investing in the Series 2020-A Warrants. For example, the United States Congress could eliminate or limit the exemption for interest on the Series 2020-A Warrants, or it could reduce or eliminate the federal income tax, or it could adopt a so-called flat tax. It cannot be predicted whether or in what form any such change in law may be enacted or whether, if enacted, any such change in law would apply to the Series 2020-A Warrants.

The Series 2020-A Warrant Ordinance does not require the City to redeem the Series 2020-A Warrants and does not provide for the payment of any additional interest or penalty if a determination is made that the Series 2020-A Warrants do not comply with the existing requirements of the Internal Revenue Code of 1986, as amended, or if a subsequent change in law adversely affects the tax-exempt status of the Series 2020-A Warrants or the effect of investing in the Series 2020-A Warrants.

### **Risk of Future Legislative Changes and/or Court Decisions**

The Legislation affecting tax-exempt obligations is regularly considered by the United States Congress and may also be considered by the State legislature. Court proceedings may also be filed, the outcome of which could modify the tax treatment of obligations such as the Series 2020-A Warrants. There can be no assurance that legislation enacted or proposed, or actions by a court, after the date of issuance of the Series 2020-A Warrants will not have an adverse effect on the tax status of interest on the Series 2020-A Warrants or the market value or marketability of the Series 2020 Warrants. These adverse effects could result, for example, from changes to federal or state income tax rates, changes in the structure of federal or state income taxes (including replacement with another type of tax), or repeal (or reduction in the benefit) of the exclusion of interest on the Series 2020-A Warrants from gross income for federal or state income tax purposes for all or certain taxpayers. In all such events, the market value of the Series 2020-A Warrants may be affected and the ability of holders to sell their Series 2020-A Warrants in the secondary market may be reduced. The Series 2020-A Warrants are not subject to special mandatory redemption, and the interest rates on the Series 2020-A Warrants are not subject to adjustment, in the event of any such change in the tax treatment of interest on the Series 2020-A Warrants. Investors should consult their own financial and tax advisors to analyze the importance of these risks.

## **Ratings on the Series 2020 Warrants**

The ratings of the Series 2020 Warrants may be lowered or withdrawn depending on various factors, including the ratings agencies' assessment of the City's financial strength.

The ratings of the Series 2020 Warrants are not a recommendation to purchase, hold or sell the Series 2020 Warrants, and the ratings do not comment on the market price or suitability of the Series 2020 Warrants for a particular investor. The ratings of the Series 2020 Warrants may not remain for a given period of time and may be lowered or withdrawn depending on, among other things, each rating agency's assessment of the City's financial strength and changes in each rating agency's methodology in assigning a credit rating to the Series 2020 Warrants. The City is not required to maintain a specified rating in respect to the Series 2020 Warrants.

## **Suitability of the Series 2020 Warrants for Investment**

No dealer, broker, salesman or other person has been authorized by the City or the Underwriter to give any information or make any representations, other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by either of the foregoing.

## **CONTINUING DISCLOSURE**

### **General**

Pursuant to Rule 15c2-12 (the "**Rule**") promulgated by the Securities and Exchange Commission, the City will, upon issuance of the Series 2020 Warrants, enter into a Continuing Disclosure Agreement wherein the City will covenant for the benefit of the holders and beneficial owners of the Series 2020 Warrants to provide its audited financial statements and certain financial information and operating data relating to the City by not later than June 30 of the City's succeeding fiscal year (the "**Annual Report**"), commencing with the report for the 2020 Fiscal Year, and to provide notices of the occurrence of certain enumerated events as described below. The Annual Report and notices of material events will be filed by the City with the Electronic Municipal Market Access System ("**EMMA**") maintained by the Municipal Securities Rulemaking Board.

### **Annual Reports**

Each Annual Report will include an audited financial statement of the City and certain annual financial information and operating data of the kind set forth in the Official Statement under the caption "CITY DEBT", "CITY REVENUES" and "APPENDIX A – Other Post Employment Benefits and Top Ten Taxpayers of the City." If the audited financial statements are not available by the time the Annual Report is due, it is required to be filed when available, provided, in such event unaudited financial statements are required to be delivered as part of the Annual Report.

### **Material Events Notices**

Notices of the following events will be provided in a timely manner not in excess of 10 business days after the occurrence of the event:

- Principal and interest payment delinquencies
- Non-payment related defaults, if material

- Unscheduled draws on any reserve funds reflecting financial difficulties
- Unscheduled draws on credit enhancements reflecting financial difficulties
- Substitution of credit or liquidity providers, or their failure to perform
- Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability. Notice of Proposed Issue (IRS Form 5701 TEB) or other material notices or determinations with respect to the tax status of the Warrants, or other material events affecting the tax status of the Warrants
- Modifications to rights of Warrantholders, if material
- Warrant calls, if material, and tender offers
- Defeasances
- Release, substitution or sale of property securing repayment of the Series 2020 Warrants, if material
- Rating changes
- Bankruptcy, insolvency, receivership or similar event with respect to the City
- The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material
- Appointment of a successor or additional trustee or the change of the name of a trustee, if material
- Incurrence of a financial obligation (as defined for purposes of the Rule) of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the City, any of which affect Warrant holders, if material
- Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation (as defined for purposes of the Rule) of the City, any of which reflect financial difficulties

In addition, the City must give notice of any failure to file its required Annual Report on or before the date specified in the Continuing Disclosure Agreement.

The City may from time to time choose to provide notice of the occurrence of certain other events, in addition to those listed above if, in the judgment of the City, such other events are material with respect to the Series 2020 Warrants, but the City does not undertake to commit to provide any such notice of the occurrence of any material event except those events listed above.

#### **Other Provisions of Continuing Disclosure Agreement**

The City reserves the right to modify from time to time the specific types of information provided or the format of the presentation of such information, to the extent necessary or appropriate in the judgment of

the City; provided, that the City agrees that any such modification will be done in a manner consistent with the Rule. The City reserves the right to terminate its obligations to provide annual financial information and notices of material events, as set forth above, if and when the City no longer remains an obligated person with respect to the Series 2020 Warrants within the meaning of the Rule. The City acknowledges that its undertaking, pursuant to the Rule described under this heading is intended to be for the benefit of beneficial owners of the Series 2020 Warrants and that the City's obligations may be enforced by any beneficial owner of the Series 2020 Warrants; provided, that the beneficial owner's right to enforce the provisions of this undertaking shall be limited to a right to obtain specific enforcement of the City's obligations under the Continuing Disclosure Agreement and any failure by the City to comply with the provisions of such undertaking shall not be in event of default with respect to the Series 2020 Warrants.

### **Digital Assurance Certification**

In order to provide certain continuing disclosure in compliance with the Rule, the City has entered into a Disclosure Dissemination Agent Agreement (the "Disclosure Dissemination Agreement") with Digital Assurance Certification, L.L.C. ("DAC"), under which the City has designated DAC as Disclosure Dissemination Agent.

DAC has only the duties specifically set forth in the Disclosure Dissemination Agreement. DAC's obligation to deliver the information at the times and with the contents described in the Disclosure Dissemination Agreement is limited to the extent the City has provided such information to DAC as required by the Disclosure Dissemination Agreement. DAC has no duty with respect to the content of any disclosures or notice made pursuant to the terms of the Disclosure Dissemination Agreement. DAC has no duty or obligation to review or verify any information in any Annual Report, audited financial statement, Material Event Notice or voluntary report, or any other information, disclosures or notices provided to it by the City and shall not be deemed to be acting in any fiduciary capacity for the City, the Holders of the Series 2020 Warrants or any other party. DAC has no responsibility for the City's failure to report to DAC a Notice Event or a duty to determine the materiality thereof. DAC shall have no duty to determine or liability for failing to determine whether the City has complied with the Disclosure Dissemination Agreement. DAC may conclusively rely upon certifications of the City at all times.

### **Compliance with Continuing Disclosure Obligations**

During the past five years the City has filed all continuing disclosure reports currently required by its prior undertakings under the Rule.

## **CITY DEBT**

### **General Obligation Indebtedness**

The City's outstanding long-term indebtedness after the issuance of the Series 2020 Warrants will be as follows:

<u>Issue</u>	<u>Principal Amount Outstanding</u>
General Obligation Refunding and Improvement Warrants, Series 2019	\$ 9,410,000
Limited Obligation Revenue Warrants, Series 2002**	907,208
General Obligation Refunding and Improvement Warrants, Series 2012	515,000
General Obligation Refunding and Improvement Warrants, Series 2014	7,260,000
General Obligation Refunding and Improvement Warrants, Series 2016	3,775,000
General Obligation Refunding Warrants, Series 2020	<u>10,945,000*</u>
TOTAL	\$32,812,208*

### Other Indebtedness

In addition to the long-term indebtedness shown above, the City has a loan entered into September 27, 2018 in favor of First Security Finance, Inc., currently outstanding in the principal amount of approximately \$595,495 and maturing on October 15, 2022 (the “2018 Loan”), and capital leases for the purchase of vehicles, currently outstanding in the amount of \$1,180,689.

The City has no authorized but unissued debt outstanding. The City does not expect to incur additional long-term indebtedness, other than the Series 2020 Warrants within the next 12 months.

### Subordinate Entity Debt

As of September 30, 2019, the Utilities Board of the City of Daphne, a public corporation which was incorporated by the City and has a five-member board of directors, has outstanding principal indebtedness (including State Revolving Fund loans) in the amount of \$14,279,771.

### Debt Service Requirements

The following table presents the annual debt service on the Series 2020 Warrants, the Series 2019 Warrants, the 2018 Loan, the Series 2016 Warrants, the Series 2014 Warrants and the Series 2012 Warrants after the issuance of the Series 2020 Warrants:

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\* Preliminary; Subject to Change.

\*\* Payments are solely made from related business sales tax revenues.

<u>Fiscal Year</u>	<u>Series 2020 Warrants*</u>	<u>Series 2019 Warrants</u>	<u>2018 Loan</u>	<u>Series 2016 Warrants</u>	<u>Series 2014 Warrants</u>	<u>Series 2012 Warrants</u>	<u>Total Debt Service*</u>
2021	\$414,411	\$334,700	\$214,382	\$1,036,725	\$362,245	\$521,438	\$2,883,901
2022	766,936	846,900	214,382	418,275	982,245		3,228,738
2023	768,100	851,000	214,382	418,675	980,380		3,232,537
2024	773,628	849,575		412,200	986,833		3,022,236
2025	773,282	844,850		418,600	981,560		3,018,292
2026	772,333	841,650		414,400	979,995		3,008,378
2027	770,053	842,550		414,700	981,518		3,008,821
2028	771,860	837,550		419,300	976,075		3,004,785
2029	769,100	853,350		418,200	978,993		3,019,643
2030	770,300	839,050					1,609,350
2031	770,500	840,850					1,611,350
2032	769,700	836,550					1,606,250
2033	766,300	677,500					1,443,800
2034	767,700	678,900					1,446,600
2035	768,800	674,775					1,443,575
2036	774,600	680,050					1,454,650
2037	775,000						775,000
2038	770,100						770,100
<b>TOTAL</b>	<b>\$13,512,703</b>	<b>\$12,329,800</b>	<b>\$643,146</b>	<b>\$4,371,075</b>	<b>\$8,209,844</b>	<b>\$521,438</b>	<b>\$39,588,006</b>

### Constitutional Limitation on Debt of City

*General Limitation.* Section 225 of the Constitution of Alabama provides that cities having a population of six thousand or more may not become indebted in an amount in excess of 20% of the assessed valuation of the property situated therein (the “*General Debt Limit*”). The Constitution exempts from this General Debt Limit several categories of indebtedness, including (i) temporary loans, to be paid in one year, made in anticipation of the collection of taxes and not exceeding one-fourth of the general revenues; (ii) bonds or other obligations issued for the purpose of acquiring, providing or constructing schoolhouses, water works and sewers; and (iii) obligations incurred and bonds issued for street or sidewalk improvements where the cost of the same, in whole or in part, is to be assessed against the property abutting said improvements. The Constitution also provides for a separate debt limit for certain economic development projects issued pursuant to Section 94.01 of the Constitution (the “*Economic Development Debt Limit*”) and not against the General Debt Limit. As of September 30, 2019, the City has outstanding \$1,311,660 of obligations for Sewer Projects and thus not chargeable to its General Debt Limit.

The General Debt Limit is based on assessed value of real and personal property of \$453,371,598 as of October 1, 2019 is computed as follows:

General & Limited Obligation Debt	\$38,226,866
Debt Chargeable to 20% Debt Limit	\$34,563,180
Debt Limit (20% of Assessed Value)	\$90,674,320
Debt Margin	\$56,111,140
Debt to Assessed Valuation	8.43%
2019 Population of City	26,506
Total Debt Per Capita	1,442

\* Preliminary; Subject to Change.

## **CITY REVENUES**

### **General**

The City operates on a fiscal year basis beginning October 1 and ending September 30. The City prepares a detailed budget for each fiscal year that is approved by the City Council prior to October 1 and all departments are required by City policy to operate within their respective budgets. There is no constitutional requirement that the budget be balanced each year, but the City has, as a matter of policy, required a balanced budget.

The significant accounting practices for City finances are summarized in the audited financial statements of the City. A copy of the audited financial statements of the City for the fiscal year which ended September 30, 2019, is included as APPENDIX B to this Official Statement including statements of revenues, expenditures and changes in fund balances. The General Fund finances substantially all current operations. These financial statements should be reviewed by prospective purchasers of the Series 2020 Warrants.

### **Summary of Primary Sources of Revenues and Expenditures**

The following table sets forth the primary sources of General Fund revenues, as well as primary categories of expenditures, for the fiscal years ended September 30, 2015 through 2019:

*[Remainder of page intentionally left blank.]*

**GENERAL FUND  
STATEMENT OF REVENUES, EXPENDITURES,  
AND CHANGES IN GENERAL FUND BALANCE  
FOR THE FISCAL YEAR ENDING SEPTEMBER 30**

<b><u>REVENUES</u></b>	<b><u>2019</u></b>	<b><u>2018</u></b>	<b><u>2017</u></b>	<b><u>2016</u></b>	<b><u>2015</u></b>
Taxes:					
Sales, use, luxury	\$18,721,240	\$17,641,013	\$16,374,881	\$15,703,733	\$14,683,837
Property	<u>6,190,619</u>	<u>5,712,928</u>	<u>5,490,960</u>	<u>5,209,599</u>	<u>4,499,713</u>
Total Taxes	24,911,859	23,353,941	21,865,841	20,913,332	19,183,550
Licenses & Permits	3,290,913	3,160,105	2,811,350	2,674,035	2,654,101
Payments in Lieu of Taxes	2,652,300	2,652,495	2,563,873	2,455,818	2,502,967
Fines	341,115	330,761	331,029	385,482	366,045
Charges for Services	692,487	363,094	342,786	360,456	343,525
Intergovernmental	419,062	358,441	373,838	288,590	271,556
Grants	442,612	492,590	406,162	1,431,603	164,801
Interests/Investment Earnings	458,592	52,694	21,152	184,660	211,928
Contributions and Donations	112,312	121,522	81,565	369,869	321,918
Miscellaneous	<u>176,535</u>	<u>74,944</u>	<u>125,193</u>	<u>193,919</u>	<u>50,969</u>
<b>Total Revenues</b>	<b><u>33,497,787</u></b>	<b><u>30,960,587</u></b>	<b><u>28,922,789</u></b>	<b><u>29,257,764</u></b>	<b><u>26,071,360</u></b>
<b><u>EXPENDITURES</u></b>					
Current:					
General Government	4,707,270	5,023,529	4,138,844	3,771,952	3,410,801
Public Safety	11,307,601	10,818,961	10,166,139	9,903,728	9,599,095
Public Works	4,187,278	4,029,139	4,190,915	4,998,649	3,838,102
Recreation and Library	2,349,964	2,063,789	1,836,500	1,816,295	1,773,455
Hurricane Nate		20,487			
Capital Outlay	2,570,040	1,833,138	1,814,769	2,317,944	1,507,216
Debt Service:					
Principal					
Interest					
Cost of Debt Issuance					
<b>Total Expenditures</b>	<b><u>25,122,153</u></b>	<b><u>23,789,043</u></b>	<b><u>22,147,167</u></b>	<b><u>22,808,568</u></b>	<b><u>20,128,669</u></b>
Excess (deficiency of revenues over (under) expenditures	<u>8,375,634</u>	<u>7,171,544</u>	<u>6,775,622</u>	<u>6,449,196</u>	<u>5,942,691</u>
<b><u>OTHER FINANCING SOURCES (USES)</u></b>					
Transfers In					
Transfers Out	(7,648,101)	(6,714,173)	(7,117,149)	(5,584,820)	(5,321,830)
Issuance of Debt	<u>805,355</u>	<u>293,038</u>	<u>570,560</u>	<u>1,285,397</u>	<u>481,289</u>
Total other financing sources (uses)	<b><u>(6,842,746)</u></b>	<b><u>(6,421,135)</u></b>	<b><u>(6,546,589)</u></b>	<b><u>(4,299,423)</u></b>	<b><u>(4,840,541)</u></b>
Net change in fund balances	<u>1,532,888</u>	<u>750,409</u>	<u>229,033</u>	<u>2,149,773</u>	<u>1,102,150</u>
Fund Balance, Beginning	14,710,073	13,959,664	13,730,631	11,580,858	10,141,607
Prior Period Adjustment	_____	_____	_____	_____	337,101
End Balance, Ending	<b><u>16,242,961</u></b>	<b><u>\$14,710,073</u></b>	<b><u>\$13,959,664</u></b>	<b><u>\$13,730,631</u></b>	<b><u>\$11,580,858</u></b>

## Sales Taxes

The City levies a privilege license tax at the rate of 2.5% pursuant to Ordinance No. 1977-3, as amended by Ordinance No. 1989-13, on persons, corporations and others engaging in the business of selling at retail tangible personal property or conducting places of amusement (the said tax being measured by the gross proceeds or gross receipts of the said business) to the extent that the said tax is levied with respect to business conducted within the corporate limits of the City. Such privilege license tax is herein referred to as the "Sales Tax."

Collections of the Sales Taxes have been as follows for the past five fiscal years:

<u>Fiscal Year</u>	<u>Collection</u>
2018-19	\$19,263,337
2017-18	18,180,419
2016-17	16,777,248
2015-16	16,090,539
2014-15	13,381,388

## Business License Fee

The City levies, under general authority granted by the Legislature of the State of Alabama, a business license fee on the privilege of engaging in certain businesses and professions within the corporate limits of the City and its police jurisdiction. Businesses and professions are charged a fee based on gross receipts of the prior year, subject to certain limitations with respect to rate. The business license fee is collected by the City's Revenue Department.

Collections of the City's Business License Fee have been as follows for the last five fiscal years indicated:

<u>Fiscal Year</u>	<u>Collection</u>
2018-19	\$2,418,955
2017-18	2,324,471
2016-17	2,227,395
2015-16	2,106,216
2014-15	1,995,923

## Property Taxes

The levy and collection of ad valorem taxes in Alabama are subject to the provisions of the Alabama Constitution as amended, which, among other things, fix the percentage of market value at which property can be assessed for taxation, limit the rates of municipal taxation that can be levied against property and provide a maximum value for the aggregate ad valorem taxes that can be levied by all taxing authorities on any property in any tax year.

The amount of any specific ad valorem tax in Alabama is computed by multiplying the tax rate by the assessed value of the taxable property. The assessed value of taxable property is a specified percentage (ranging from 10% to 20%) of its fair and reasonable market value or, in certain circumstances, its current use value. Ad valorem tax rates are generally stated in terms of mills (one-thousandth of a dollar) per dollar of assessed value. Thus, for any given ad valorem tax, each mill in the rate of taxation represents a tax on property equal to one-tenth of one percent of the assessed value of such property.

The following taxes (expressed in mills) are currently levied on taxable property situated in the City, but except for the City's tax, are levied by other taxing authorities:

<u>Taxing Entity</u>	<u>Mills</u>
State of Alabama	6.5
City of Daphne	15.0
Baldwin County:	
General	5.0
Schools	9.0
Road & Bridges	2.5
Special School District	3.0
Fire	1.5
Health Department	<u>0.5</u>
	<u>43.0</u>

There are, therefore, 43 mills currently being levied on taxable property situated in the City.

The following classifications of taxable property and corresponding ratios of assessed value to fair and reasonable market value are established pursuant to amendments (the "**1978 Amendments**") to the Alabama Constitution for all ad valorem taxation (state and local), subject to certain exceptions stated below:

Class I -Property of utilities used in their business - 30%

Class II -Property not otherwise classified (generally, business or commercial property, including railroad property) - 20%

Class III -Agricultural, forest and single-family owner-occupied residential property and historical buildings and sites - 10%; and

Class IV -Private passenger automobiles and small trucks for personal use - 15%

All property, other than utility property, is now assessed at a lower ratio under the 1978 Amendments than under prior law.

The 1978 Amendments provide that all ad valorem taxes payable to the State and to all counties, municipalities and other taxing authorities with respect to any items of taxable property shall not exceed the following percentage of the fair and reasonable market value of such property in any single tax year: 2% in the case of Class I property; 1-1/2% in the case of Class II property; 1% in the case of Class III property; and 1-1/4% in the Class IV property. The limitations are not exceeded as to any class of property in the City.

The total assessed values of taxable real and personal property (including motor vehicles) located in the City as assessed for ad valorem taxation (net of exemptions) for the tax year which ended on September 30, 2019 was \$453,371,598.

The following table sets forth the total real property assessed valuation within the corporate limits of the City, the ad valorem taxes levied and the percentage collected:

<u>Tax Year</u>	<u>Assessed Valuation</u>	<u>Taxes Due</u>	<u>Tax Collected</u>	<u>Total</u>
2012	\$335,467,376	\$4,411,487	\$4,407,784	99.85%
2013	\$345,316,918	\$4,513,658	\$4,508,357	97.99%
2014	\$358,662,928	\$4,740,854	\$4,738,364	99.95%
2015	\$374,493,002	\$4,898,061	\$4,893,036	99.90%
2016	\$394,407,722	\$5,185,562	\$5,182,604	99.94%
2017	\$414,197,104	\$5,464,020	\$5,460,494	99.94%
2018	\$435,853,834	\$5,813,829	\$5,793,495	99.65%
2019	\$453,371,598	\$6,081,780	\$5,652,624	92.94%*

Source: City of Daphne, Alabama

\* Collections through August 31, 2020. The City expects the collection rate to be consistent with prior years prior to the end of the year.

Property taxes are generally collected and received by municipalities by February 1 of each fiscal year. For purposes of ad valorem taxation, taxes are due and payable in the fiscal year following the fiscal year in which the assessment and levy is made. Ad valorem taxes on taxable properties (except motor vehicles) in the City are required to be collected by the Tax Collector of Baldwin County. Ad valorem taxes on motor vehicles in the City are collected by the Judge of Probate of Baldwin County.

### **Payments in Lieu of Taxes**

Certain entities that are otherwise exempt from tax have agreed to make payments in lieu of taxes. Such payments have been as follows for the last five fiscal years indicated:

<u>Fiscal Year</u>	<u>Amount Received</u>
2018-19	\$2,652,300
2017-18	2,625,495
2016-17	2,563,873
2015-16	2,455,818
2014-15	2,502,967

### **Lodging Taxes**

The City levies a lodging tax for renting or furnishing rooms, lodgings or accommodations and for renting or furnishing space for accommodation of trailers at a rate based upon percentage of charges. Collections of the lodging tax for the last five years have been as follows:

<u>Fiscal Year</u>	<u>Collection</u>
2018-19	\$1,241,568
2017-18	1,229,247
2016-17	1,212,988
2015-16	1,127,457
2014-15	1,150,070

## Other Taxes

Along with miscellaneous other taxes, the City also levies a beer tax, a liquor tax, a gasoline tax and a tobacco tax, the revenues of which for the last three fiscal years were as follows:

<u>Fiscal Year</u>	<u>Beer Tax Collections</u>	<u>Liquor Tax Collections</u>	<u>Gasoline Tax Collections</u>	<u>Tobacco Tax Collections</u>
2018-19	\$289,115	\$89,643	\$218,772	\$138,072
2017-18	282,088	85,691	227,979	126,380
2016-17	301,667	78,999	202,720	123,953
2015-16	298,871	80,216	191,906	117,909
2014-15	301,095	68,110	192,497	111,124

## LITIGATION

There is no litigation pending or, to the knowledge of the City, threatened contesting the validity of the Series 2020 Warrants or relating to the organization or boundaries of the City, the incumbency of any of the City's officers, or the issuance or sale of the Series 2020 Warrants. Simultaneously with the delivery of the Series 2020 Warrants, the City will deliver a certificate to the effect that no such litigation is pending or, to the knowledge of the City, threatened.

The City is not a defendant in any lawsuits or other pending litigation which it believes would have a materially adverse effect upon its financial condition.

Recent court decisions have substantially eroded the immunity from tort liability formerly enjoyed by local governmental units in Alabama. Chapter 93 of Title 11 of the Code of Alabama 1975, as amended, now prescribes certain maximum limits on the liability of local governmental units (such as the City) for bodily injury, sickness, disease or death sustained by a person and for injury or destruction of tangible property. However, Chapter 93 has no application to causes of action under Section 1983 of Title 42 of the United States Code. Municipalities and other local governmental units throughout the country have been increasingly subject to lawsuits, many of which claim damages in large amounts for alleged denials of civil rights under the provisions of Section 1983. The City has procured liability insurance coverage from the Alabama Municipal Insurance Corporation which does afford, within limits, coverage and costs of defense for such lawsuits brought pursuant to federal law.

Legal counsel is currently representing the City of Daphne in various legal proceedings arising principally in the normal course of operations of a city government. In the opinion of the city officials and its legal counsel, the outcome of the remaining legal proceedings is not likely to have a material adverse effect on the financial condition of the City.

## TAX MATTERS

### Series 2020-A Warrants

#### General

In the opinion of Bond Counsel, under existing law, interest on the Series 2020-A Warrants will be excludable from gross income for federal income tax purposes if the City complies with all requirements of the Internal Revenue Code that must be satisfied subsequent to the issuance of the Series 2020-A Warrants in order that interest thereon be and remain excludable from gross income. Failure to comply with certain of

such requirements could cause the interest on the Series 2020-A Warrants to be included in gross income, retroactive to the date of issuance of the Series 2020-A Warrants. The City has covenanted to comply with all such requirements.

Bond Counsel is also of the opinion that, under existing law, interest on the Series 2020-A Warrants will not be an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, it should be noted that, with respect to corporations, such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on such corporations.

Bond Counsel is also of the opinion that the Series 2020-A Warrants are “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Internal Revenue Code, and, in the case of financial institutions (as defined in Section 265(b)(5) of the Internal Revenue Code), a deduction is allowed for 80% of that portion of such financial institution’s interest expense allocable to interest on the Series 2020-A Warrants.

Bond Counsel will express no opinion regarding federal tax consequences arising with regard to the Series 2020-A Warrants other than the opinions expressed in the three preceding paragraphs. The form of Bond Counsel’s opinion is expected to be substantially as set forth in APPENDIX C to this Official Statement.

Prospective purchasers of the Series 2020-A Warrants should be aware that ownership of the Series 2020-A Warrants may result in collateral and federal and state tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, certain S corporations with “excess net passive income”, foreign corporations subject to a branch profits tax and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry the Series 2020-A Warrants. Bond Counsel will not express any opinion as to such collateral tax consequences. Prospective purchasers of the Series 2020-A Warrants should consult their tax advisors as to collateral tax consequences.

Bond Counsel is also of the opinion that, under existing law, interest on the Series 2020-A Warrants will be exempt from State of Alabama income taxation.

#### **Tax Treatment of Original Issue Discount\***

Certain of the Series 2020-A Warrants are sold at an original issue discount (collectively, the “OID Warrants”). The difference between the initial public offering price, as set forth on the inside cover page hereof, of the OID Warrants and their stated principal amount payable at maturity constitutes original issue discount treated as interest which is excluded from gross income for federal income tax purposes and which is exempt from all taxation in the State of Alabama subject to the caveats and provisions described above under “TAX MATTERS – SERIES 2020-A WARRANTS - GENERAL.”

In the case of an owner of an OID Warrant, the amount of original issue discount which is treated as having accrued with respect to such OID Warrant, is added to the cost basis of the owner in determining, for federal income tax purposes, gain or loss upon disposition of such OID Warrant (including its sale, redemption or payment at maturity). Amounts received upon disposition of such an OID Warrant which are attributable to accrued original issue discount will be treated as tax-exempt interest, rather than as taxable gain, for federal income tax purposes.

Original issue discount is treated as compounding semiannually, at a rate determined by reference to the yield to maturity of each individual OID Warrant, on days which are determined by reference to the maturity date of such OID Warrant. The amount treated as original issue discount on such OID Warrant for

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\* Preliminary; Subject to Change.

a particular semiannual period is equal to (i) the product of (a) the yield to maturity for such OID Warrant and (b) the amount which would have been the tax basis of such OID Warrant at the beginning of the particular semiannual period if held by the original purchaser, (ii) less the amount of any payments on such OID Warrant during the semiannual period. The tax basis is determined by adding to the initial public offering price on such OID Warrant the sum of the amounts which would have been treated as original issue discount for such purposes during all prior periods. If such an OID Warrant is sold between compounding dates, original issue discount which would have accrued for that semiannual compounding period for federal income tax purposes is to be apportioned in equal amounts among the days in such compounding period.

Owners of OID Warrants should consult their own tax advisors with respect to the determination for federal income tax purposes of original issue discount accrued with respect to such OID Warrants as of any date, with respect to the accrual of original issue discount for such OID Warrants purchased on the secondary markets and with respect to the state and local tax consequences of owning such OID Warrants.

### **Original Issue Premium\***

The initial public offering price to be paid for certain of the Series 2020-A Warrants (the "*Original Issue Premium Warrants*") is greater than the principal amount thereof. Under existing law, any owner who has purchased an Original Issue Premium Warrant in the initial public offering of the Series 2020-A Warrants is required to reduce his basis in such Original Issue Premium Warrant by the amount of premium allocable to periods during which he holds such Original Issue Premium Warrant, and the amount of premium allocable to each accrual period will be applied to reduce the amount of interest received by the owner during each such period. All owners of Original Issue Premium Warrants should consult their own tax advisors with respect to the determination for federal, state and local income tax purposes of interest accrued upon redemption, sale or other disposition of such Original Issue Premium Warrant and with respect to the federal, state, local and foreign tax consequences of the purchase, ownership, redemption, sale, gift or other disposition of such Original Issue Premium Warrant.

### **Bank Qualification**

The City has designated the Series 2020-A Warrants as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code. In the case of certain financial institutions (within the meaning of Section 265(b)(5) of the Code), a deduction is allowed for 80% of that portion of such financial institution's interest expense allocable to interest on the Series 2020-A Warrants.

### **Series 2020-B Warrants**

#### **General**

Interest on the Series 2020-B Warrants is not excludable from gross income of the holders thereof for federal income tax purposes under the Internal Revenue Code. Thus, owners of the Series 2020-B Warrants generally must include interest (including original issue discount, if any) on the Series 2020-B Warrants in gross income for federal income tax purposes. Bond Counsel is also of the opinion that, under existing law, interest on the Series 2020-B Warrants will be exempt from State of Alabama income taxation.

Bond Counsel will express no opinion regarding federal tax consequences arising with regard to the Series 2020-B Warrants other than the opinions expressed in the preceding paragraph. The form of Bond Counsel's opinion is expected to be substantially as set forth in APPENDIX D to this Official Statement.

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\* Preliminary; Subject to Change.

Each prospective purchaser of the Series 2020-B Warrants should seek advice based on the prospective purchaser's particular circumstances from an independent tax advisor.

### UNDERWRITING\*

The Series 2020-A Warrants will be purchased by Piper Sandler & Co. (the "*Underwriter*") at a purchase price of \$\_\_\_\_\_, which reflects an underwriter's discount of \$\_\_\_\_\_ and original issue premium of \$\_\_\_\_\_, less \$\_\_\_\_\_ of net original issue discount. The initial public offering prices set forth on the cover page may be changed by the Underwriter, and the Underwriter may offer and sell the Series 2020-A Warrants to certain dealers (including dealers depositing the Series 2020-A Warrants into investment trusts) and others at prices lower than the offering price set forth on the cover page. The Underwriter will purchase all the Series 2020-A Warrants if any are purchased. The Underwriter is obligated to purchase and pay for all the Series 2020-A Warrants in cash.

The Series 2020-B Warrants will be purchased by the Underwriter at a purchase price of \$\_\_\_\_\_, which reflects an underwriter's discount of \$\_\_\_\_\_ and original issue premium of \$\_\_\_\_\_. The initial public offering prices set forth on the cover page may be changed by the Underwriter, and the Underwriter may offer and sell the Series 2020-B Warrants to certain dealers (including dealers depositing the Series 2020-B Warrants into investment trusts) and others at prices lower than the offering price set forth on the cover page. The Underwriter will purchase all the Series 2020-B Warrants if any are purchased. The Underwriter is obligated to purchase and pay for all the Series 2020-B Warrants in cash.

The Underwriter has entered into a distribution agreement (the "*Distribution Agreement*") with Charles Schwab & Co., Inc. ("*CS&Co.*") for the retail distribution of certain securities offerings, including the Series 2020 Warrants, at the original issue prices. Pursuant to the Distribution Agreement, CS&Co. will purchase Series 2020 Warrants from the Underwriter at the original issue price less a negotiated portion of the selling concession applicable to any Series 2020 Warrants that CS&Co. sells.

### RATING

S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC ("*S&P*") is expected to assign a rating to the Series 2020-A Warrants and Series 2020-B Warrants as indicated on the cover page. Any definitive explanation of the significance of any such ratings may be obtained only from S&P. There is no assurance that any such rating will remain in effect for any given period of time or that any such rating will not be lowered or withdrawn entirely if, in the judgment of S&P, circumstances should warrant such action. Any such downward revision or withdrawal of any rating assigned to the Series 2020 Warrants could have an adverse effect on their market price.

### LEGAL MATTERS

The legality and validity of the Series 2020 Warrants will be approved by Adams & Reese LLP, of Mobile, Alabama, Bond Counsel, whose approving opinion will be delivered at the time of the delivery of the Series 2020 Warrants. It is anticipated that the opinion of Bond Counsel will be in substantially the form attached hereto as APPENDIX C for the Series 2020-A Warrants and APPENDIX D for the Series 2020-B Warrants. Certain matters will be passed upon for the City by its counsel, Adams & Reese LLP, Mobile, Alabama, and for the Underwriter by its counsel, Ezell Law, LLC, Birmingham, Alabama.

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\* Preliminary; Subject to Change.

**INFORMATION IN THE APPENDICES**

The Comprehensive Annual Financial Report for the Year Ended September 30, 2019, of the City attached hereto as APPENDIX B has been examined by Avizo Group, Inc., Certified Public Accountants, Fairhope, Alabama, independent auditors, to the extent and for the periods indicated in their report which appears in such Appendix. Such financial statements have been included in reliance upon such report.

**MISCELLANEOUS**

Any statements made in this Official Statement involving matters of opinion or estimates, whether or not expressly so stated, are intended as such and not as representations of fact. No representation is made that any of such statements will be realized.

References herein to the Alabama Constitution and all legislative acts referred to herein are intended to be only brief outlines of certain provisions of each thereof and do not purport to summarize or describe all provisions thereof.

The distribution of this Official Statement and its use in the offering and sale of the Series 2020 Warrants have been approved by the governing body of the City.

CITY OF DAPHNE, ALABAMA

By: \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

APPENDIX A

**FINANCIAL AND STATISTICAL DATA  
RELATIVE TO THE CITY OF DAPHNE, ALABAMA**

**General**

The City of Daphne, Alabama (the “City”), was founded in 1927, and is the largest city in Baldwin County, comprising 17.71 square miles. It is located on the eastern shore of Mobile Bay and is adjacent to Interstate 10, a major east/west thoroughfare. The City is 39 miles west of Pensacola, Florida and 9 miles east of Mobile, Alabama. The City is primarily a residential area with its residents working on the eastern shore of Baldwin County or in the Mobile or Pensacola areas.

**Population**

The following table sets forth population statistics for the State of Alabama, the City, Baldwin County and the United States for the years indicated.

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
State of Alabama	4,830,081	4,841,799	4,852,347	4,863,525	4,874,486	4,887,681	4,903,185
City of Daphne*	23,372	24,138	24,613	25,565	26,006	26,504	26,869
Baldwin County*	194,885	199,183	202,939	207,601	212,521	217,855	223,234
United States	315,993,715	318,301,008	320,635,163	322,941,311	324,985,539	326,687,501	328,239,523

Source: U.S. Department of Commerce, Bureau of Census, Population Estimates Division, July 2019 Release. Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2019. \*May 2020 Release.

**Governmental Organization and Administration**

The City is a municipal corporation incorporated under the Constitution and laws of the State of Alabama. The City is governed by an elected Mayor and a City Council. The Mayor, elected at large for a four-year term, is the chief administrative officer of the City and is responsible for the daily management of the City and supervision of its employees. The members of the City Council serve part-time and along with the Mayor are responsible for adopting all legislative ordinances and setting the policies of the City, including the appropriation of money. The City Clerk and City Treasurer are each appointed for a four-year term by the City Council and are responsible for managing the official records of the City and managing the fiscal affairs of the City, respectively. The present Mayor and the members of the City Council are as follows:

The City's governing body consists of the following officers:

<u>Name</u>	<u>Office</u>	<u>Occupation</u>
Dane Haygood	Mayor	Owner/ H Properties LLC
Tommie Conaway	Council Member, District 1	Retired/Teacher
Pat Rudicell	Council Member, District 2	Retired/Alabama National Guard
Joel Coleman	Council Member, District 3	Land Development/D.R. Horton Retired Air Force Lt. Colonel
Doug Goodlin	Council Member, District 4	AF JROTC Instructor/Daphne High School
Ron Scott	Council Member, District 5	Retired/Tameron Eastern Shore Honda
Robin LeJune	Council Member, District 6	Owner/Market by the Bay
Angie Phillips	Council Member, District 7	Teacher/Spanish Fort High School
Candance Antinarella	City Clerk	
Kelli Kichler Reid	Finance Director	

The current terms of said officers expire October 1, 2020. The City Clerk and Finance Director serve at the pleasure of the City Council.

## **Personnel and Retirement System**

The City employed approximately 318 full-time and part-time persons in its several departments as of September 30, 2019. The benefits and compensation for all employees of the City's several departments are established by the City Council and are paid from the City's general fund revenues. The City participates in a retirement system established by the Alabama Legislature known as the Employee's Retirement System of Alabama, to which contributions are made by both the employees and the City. See the Audited Financial Statements of the City in APPENDIX B attached hereto for a description of the City's obligations with respect to the Employee's Retirement System of Alabama.

No employees of the City are represented by labor unions or similar employee organizations, and the City does not bargain collectively with any labor unions or employee organizations. The City considers its relations with its employees to be generally good.

## **Other Post Employment Benefits**

The City of Daphne offers certain Post Employment Benefits to employees under the age of 65 who meet the criteria for retirement as set by the Retirement System of Alabama. Medical and Dental benefits are provided through a comprehensive plan and life insurance coverage is provided with a \$5,000 cap. Employees do not contribute to their post employment benefits until they retire and begin receiving those benefits. The City of Daphne's Annual Required Contribution rate is actuarially determined in accordance with GASB 45 and totals \$450,958 as of September 30, 2019. The total OPEB liability is 6,385,489.

## **Utilities**

The water and sanitary sewer service is supplied by the Utilities Board of the City of Daphne (the "Utilities Board"), a public corporation, the directors of which are appointed by the City Council. The Utilities Board also provides gas service. Electrical service is supplied by the Utilities Board of the City of Foley.

## **Education**

The County Board of Education of Baldwin County, Alabama provides public school facilities for the County's students in the City. The County Board of Education has located a high school, a middle school and three elementary schools in the City. For 2019, it is estimated that approximately 96.3% of the population of the City are high school graduates and 42.8% are college graduates. State averages are 85.8% and 24.9%, respectively.

Four institutions of higher learning located in Mobile County, which are accessible to residents of the City, are University of Mobile, Spring Hill College, Bishop State Community College and the University of South Alabama. Coastal Alabama Community College, whose main campus is located in Bay Minette, Alabama, is also nearby. Pensacola, Florida, located approximately thirty-five miles from the City, also provides certain educational opportunities

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Source: Baldwin County Economic Development Alliance

**Income Level**

There are two basic methods of measuring annual income: per capita income, which is the total income of all families and individuals in a given area divided by the total population of the area, and median family income above and below which there are an equal number of family incomes.

The following tables present comparative information regarding income levels in the City, Baldwin County, the State of Alabama, and the United States:

**Per Capita Income**

<u>Year</u>	<u>City of Daphne</u>	<u>Baldwin County</u>	<u>State of Alabama</u>	<u>United States</u>
2018	\$33,237	\$31,203	\$26,846	\$32,621
2017	\$32,323	\$29,364	\$25,746	\$31,177
2016	\$31,135	\$28,069	\$24,736	\$29,829
2015	\$29,623	\$27,317	\$24,091	\$28,930
2014	\$31,778	\$26,851	\$23,936	\$28,555

**Median Family Income**

<u>Year</u>	<u>City of Daphne</u>	<u>Baldwin County</u>	<u>State of Alabama</u>	<u>United States</u>
2018	\$84,243	\$71,951	\$62,030	\$73,965
2017	\$81,627	\$67,732	\$59,115	\$70,850
2016	\$78,797	\$64,020	\$56,828	\$67,871
2015	\$73,451	\$62,271	\$55,341	\$66,011
2014	\$74,762	\$61,621	\$54,724	\$65,443

Source: U.S. Census Bureau, 2014-2018 American Community Survey Five-year Estimates.

The percentage of all ages in the City, in Baldwin County, in the State of Alabama and in the United States with income below the poverty level in 2018 is as follows:

Daphne, Alabama	11.3%
Baldwin County	10.6%
State of Alabama	17.5%
United States	14.1%

Sources: U.S. Census Bureau, 2014-2018 American Community Survey Five-year Estimates.

**Employment**

The following table sets forth labor force estimates, employment, unemployment and unemployment rates for Daphne-Fairhope-Foley, Alabama Metropolitan Area on the dates indicated:

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>Feb 2019*</u>
Civilian Labor Force	83,755	84,645	86,818	89,018	90,001	92,494	93,580
Employment	78,313	79,906	81,969	84,342	87,006	89,401	90,112
Unemployment	5442	4739	4849	4676	2995	3093	3468
Rate	6.5%	5.6%	5.6%	5.3%	3.3%	3.3%	3.7%

Source: U.S. Department of Labor, Bureau of Labor Statistics; Not Seasonally Adjusted.

\*February, 2019; Preliminary; subject to change.

The following table sets forth comparative unemployment rates for Baldwin County, the State of Alabama and the United States in each of the years indicated:

<b>Calendar Year</b>	<b>Baldwin County (%)</b>	<b>State of Alabama (%)</b>	<b>United States (%)</b>
2019*	N/A	2.1	3.8
2018**	3.2	3.9	3.6
2017	4.0	4.4	4.4
2016	5.4	5.9	4.9
2015	5.5	6.1	5.3
2014	6.1	6.8	6.2
2013	6.6	7.2	7.3
2012	7.5	8.0	8.1

Source: U.S. Department of Labor, Bureau of Labor Statistics; Not Seasonally Adjusted.  
\*February 2019, \*\*May 2018; Preliminary; subject to change.

### **Labor Force Characteristics**

The following table sets forth annual 2017 estimated employment and wages employment statistics for Baldwin County:

<b>Baldwin County Employment by Industry</b>			
	<b><u>Number Employed</u></b>	<b><u>Total Wages</u></b>	<b><u>%</u></b>
Health Care and Social Assistance	8,813	\$376,473,814	14.1
Retail Trade	13,681	369,474,975	21.8
Manufacturing	4,197	201,632,324	6.7
Accommodation and Food Services	13,756	265,290,589	22.0
Administrative and Waste Services	3,158	85,920,693	5.0
Construction	3,729	179,095,708	6.0
Professional and Technical Services	1,950	110,082,099	3.1
Transportation and Warehousing	1,495	71,562,218	2.4
Wholesale Trade	1,760	105,061,396	2.8
Other Services, Ex. Public Admin.	1,910	63,095,166	3.1
Finance and Insurance	1,875	107,405,575	3.0
Real Estate, Rental and Leasing	1,974	69,308,324	3.1
Educational Services	979	38,438,669	1.6
Information	359	17,447,411	0.6
Arts, Entertainment and Recreation	1,480	28,704,064	2.3
Utilities	306	21,095,161	0.5
Management of Companies and Enterprises	292	16,406,609	0.5
Agriculture, Forestry, Fishing & Hunting	819	27,177,196	1.3
Mining	74	4,676,562	0.1
<b>Total wage and salary employees</b>	<b>62,607</b>	<b>\$2,158,348,553</b>	<b>100</b>

Source: Alabama Department of Labor– Labor Market Division. Estimates prepared by the U.S. Department of Labor, Bureau of Labor Statistics. Estimates adjusted to a 2017 benchmark; Alabama Department of Labor.

## **Major Employers**

The top ten (10) manufacturing and nonmanufacturing employers in Baldwin County, their principal activity and the number of employees of each are as follows:

Top Manufacturers in Baldwin County

<b>Company</b>	<b>Industry</b>	<b>Employed</b>
Collins Aerospace	Thrust Reversers, Cowlings, and Nacelle Components	1,160
Standard Furniture	Bedroom and Dining Furniture	520
Ace Hardware Support Center	Hardware Distribution Support Center	300
Vulcan, Inc.	Aluminum & Steel Products	270
Quincy Compressors	Air Compressors	220
Bon Secour Fisheries	Seafood Processing	150
Segers Aerospace	Aerospace and Defense MRO	140
Quality Filters	Air Filters	130
International Paper	Paper Products	130
Ascend Materials	Fibers and Resins	100
Dental EZ	Medical Instruments	100

Top Non-Manufacturers in Baldwin County

Company	Industry	Employed
Baldwin County Board of Education	Education	3,900
Wal-Mart	Retail	1,700
Infirmiry Health	Medical Care	1,250
Columbia Southern University	Education	1,050
South Baldwin Regional Medical Center	Medical Care	860
Marriott Grand Hotel	Hotel & Country Club	800
Baldwin County Commission	Government	650
Publix	Retail	560
Brett/Robinson Gulf Corp.	Vacation Rental Management	520
S.H. Enterprises	Vacation Rental Management	320

Source: Baldwin County Economic Development Alliance; December 2019

City's Major Employers

<u>Employers</u>	<u>Number of Employees</u>
Baldwin County Board of Education	400
City of Daphne	318
Wal-Mart Super Center	306
Lowe's	200
Eastern Shore Toyota/Hyundai	186
Publix	150
Bayside Academy	136
Thomas Hospital/Infirmiry	130
Chris Myers	125
The Brennty	119

Source: City of Daphne, Alabama.

## Top Ten Taxpayers of the City - 2019

<u>Taxpayers</u>	<u>Assessed Value (000's)</u>	<u>Taxes Paid</u>	<u>City Taxes Paid</u>
Audubon 344, LLC	\$6,850,980	\$293,614	\$102,765
Jubilee Square, LLC	6,826,280	292,554	102,394
Colonnade at Eastern Shore	5,005,680	214,529	75,085
Esfahani Real Estate Holding of AL	4,440,580	190,311	66,609
Ashley Gates - Brookfield LLC	4,180,300	179,157	62,705
Myers Family Limited Partnership	3,575,520	153,237	53,633
OCP Whispering Pines LLC	3,245,000	139,071	48,675
Palladian at Daphne	2,728,460	116,934	40,927
Jubilee Ridge LLC	2,489,460	106,677	37,337
Daphne 451 I LLC	2,454,540	103,909	36,368

Source: City of Daphne, Alabama. Data only available for top ten organizations.

\*Includes state, county and school taxes.

## Housing

The U.S. Department of Commerce, U.S. Census Bureau reports that the median value of owner-occupied houses in the City, 2014-2018 was \$190,900.

## Transportation

The City is located along a 3 mile stretch of Interstate 10 approximately 9 miles east of Mobile, Alabama. Interstate 10 is the southernmost transcontinental highway in the American Interstate Highway System. The 2,460 mile Interstate 10 highway spans from Santa Monica, California to Jacksonville, Florida.

Additionally, Interstate Highway 65, which runs northward from Mobile, Alabama through Nashville, Tennessee, is located approximately 30 miles north of the City where it passes through Baldwin County. The City is served by two major north/south corridors in U.S. Highway 98 and State Highway 181. Both highways allow access to Daphne from Interstate 10 and run south through U.S. Highway 90 and County Highway 64 which connect to the City to the east.

*Bus.* Nationwide bus service is available. Greyhound, Trailways and Megabus Bus Lines provides bus service to the Baldwin and Mobile Counties.

*Water.* The Port of Mobile is the largest and best equipped gulf port located close to deep water. The Port's major waterfront facilities are located along the lower five miles of the Mobile River at the head of Mobile Bay just across the bay from Baldwin County. The harbor is situated about thirty miles north of the Bay entrance from the Gulf of Mexico. The present depth-controlling entrance to the inner harbor is 40 feet. The Port is authorized for 55 feet south of the I-10 tunnels.

The Intracoastal Waterway traverses South Baldwin County. It is 12 feet deep and accommodates all types of barge traffic. The waterway extends along the lower end of Mobile Bay and Gulf Coast for 1,100 miles. An extensive system of Alabama inland waterways, with docking facilities, is tributary to the Port of Mobile, permitting barge traffic as far north as Birmingham.

APPENDIX B  
FINANCIAL STATEMENTS OF  
THE CITY OF DAPHNE

APPENDIX C

**FORM OF LEGAL OPINION**

City of Daphne  
Post Office Box 400  
Daphne, Alabama 36526

RE: \$7,410,000 City of Daphne, Alabama General Obligation Refunding Warrants, Series 2020-A

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance of the referenced warrants (the "Warrants") and as such have examined certified copies of proceedings of the City Council (the "City Council") of City of Daphne, Alabama (the "City") in connection therewith, including the ordinance of such City dated \_\_\_\_\_ (the "Authorizing Ordinance"), and other documents submitted to us pertaining to the authorization, sale and issuance of the Warrants. Capitalized terms not otherwise defined herein shall have the meanings defined in the Authorizing Ordinance.

We have examined (i) the provisions of the Constitution and statutes of the State, (ii) a transcript of the proceedings of the City relating to the issuance of the Warrants, including the Authorizing Ordinance, and (iii) such other documents, instruments, proofs and matters of law as we have deemed relevant to the issuance of the Warrants and necessary for the purpose of this opinion. As to questions of fact material to our opinion, we have relied upon representations of the City and the City Council contained in the Authorizing Ordinance and in certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

We have not passed upon any matters relating to the business, properties, affairs or condition, financial or otherwise, of the City, and no inference should be drawn that we have expressed an opinion on matters relating to the financial ability of the City to perform its obligations under the contracts described herein.

Based upon the aforesaid examinations, we are of the opinion, under existing law, as follows:

1. The Warrants have been duly authorized and issued and constitute valid orders on the City Treasurer of the City for the payment thereof as therein provided, and that the indebtedness ordered paid by the Warrants is a valid general obligation of the City for the payment of the principal of and interest on which the full faith and credit of the City have been validly and irrevocably pledged.

2. The interest on the Warrants is excluded from gross income for federal income tax purposes. In addition, interest on the Warrants will not be included as an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, except that, for the purpose of computing the alternative minimum tax imposed on corporations (as defined

for federal income tax purposes), such interest is taken into account in determining adjusted current earnings. The Warrants have been designated as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986 (the "Code"), and in the case of certain financial institutions (within the meaning of Section 265(b)(5) of the Code), a deduction will be allowed for 80% of that portion of such financial institution's interest expense allocable to interest on the Warrants. The opinions set forth above are subject to the condition that the City comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Warrants in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The City has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest on the Warrants in gross income for federal income tax purposes to be retroactive to the date of issuance of the Warrants. We express no opinion regarding other federal tax consequences arising with respect to the Warrants.

3. Under existing law, the interest on the Warrants is exempt from State of Alabama income taxation.

In rendering the opinions expressed above, we have relied on representations of the City and the City Council with respect to questions of fact material to our opinion without undertaking to verify the same by independent investigation, and we have assumed continuing compliance with the covenants contained in the Authorizing Ordinance pertaining to those sections of the Internal Revenue Code which affect the exclusion from gross income of interest on the Warrants for federal income tax purposes. In the event that such representations are determined to be inaccurate or incomplete or the City fails to comply with such covenants, interest on the Warrants could become includable in gross income from the date of original delivery, regardless of the date on which the events causing such inclusion occur.

The opinions hereinabove expressed respecting the Warrants are subject to all applicable bankruptcy, insolvency, moratorium and all other laws respecting the enforcement of creditors' rights, including specifically, but without limitation, the provisions of Chapter 9 of the United States Bankruptcy Code as amended, relating to the adjustment of debts of political subdivisions and public agencies and instrumentalities of the several states, and by equitable principles, whether considered at law or in equity. In addition, enforcement of remedies with respect to the Warrants may also be subject to the exercise of judicial discretion in appropriate cases.

We express no opinion herein as to the accuracy, adequacy or completeness of the Official Statement relating to the Warrants.

The scope of our engagement has not extended beyond the examinations and the rendering of the opinions expressed herein. Except as stated in paragraphs 2 and 3 above, we express no opinion as to any federal, state or local tax consequences resulting from the ownership of, receipt of interest on, or disposition of the Warrants. The opinions expressed herein are based upon existing law as of the date hereof and we express no opinion herein as of any subsequent date or with respect to any pending legislation and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur. No one other than the addressees hereof shall be entitled to rely upon this opinion without our prior written approval. This opinion is not offered, and will not be construed, as a guaranty or warranty.

Very truly yours,

ADAMS AND REESE LLP

APPENDIX D

**FORM OF LEGAL OPINION**

City of Daphne  
Post Office Box 400  
Daphne, Alabama 36526

RE: \$3,535,000 City of Daphne, Alabama General Obligation Refunding Warrants, Series 2020-B

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance of the referenced warrants (the "Warrants") and as such have examined certified copies of proceedings of the City Council (the "City Council") of City of Daphne, Alabama (the "City") in connection therewith, including the ordinance of such City dated \_\_\_\_\_ (the "Authorizing Ordinance"), and other documents submitted to us pertaining to the authorization, sale and issuance of the Warrants. Capitalized terms not otherwise defined herein shall have the meanings defined in the Authorizing Ordinance.

We have examined (i) the provisions of the Constitution and statutes of the State, (ii) a transcript of the proceedings of the City relating to the issuance of the Warrants, including the Authorizing Ordinance, and (iii) such other documents, instruments, proofs and matters of law as we have deemed relevant to the issuance of the Warrants and necessary for the purpose of this opinion. As to questions of fact material to our opinion, we have relied upon representations of the City and the City Council contained in the Authorizing Ordinance and in certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

We have not passed upon any matters relating to the business, properties, affairs or condition, financial or otherwise, of the City, and no inference should be drawn that we have expressed an opinion on matters relating to the financial ability of the City to perform its obligations under the contracts described herein.

Based upon the aforesaid examinations, we are of the opinion, under existing law, as follows:

1. The Warrants have been duly authorized and issued and constitute valid orders on the City Treasurer of the City for the payment thereof as therein provided, and that the indebtedness ordered paid by the Warrants is a valid general obligation of the City for the payment of the principal of and interest on which the full faith and credit of the City have been validly and irrevocably pledged.
2. The interest on the Warrants is not excludable from the gross income of the recipients thereof for federal income tax purposes.
3. Under existing law, the interest on the Warrants is exempt from State of Alabama income taxation.

In rendering the opinions expressed above, we have relied on representations of the City and the City Council with respect to questions of fact material to our opinion without undertaking to verify the same by independent investigation.

The opinions hereinabove expressed respecting the Warrants are subject to all applicable bankruptcy, insolvency, moratorium and all other laws respecting the enforcement of creditors' rights, including specifically, but without limitation, the provisions of Chapter 9 of the United States Bankruptcy Code as amended, relating to the adjustment of debts of political subdivisions and public agencies and instrumentalities of the several states, and by equitable principles, whether considered at law or in equity. In addition, enforcement of remedies with respect to the Warrants may also be subject to the exercise of judicial discretion in appropriate cases.

We express no opinion herein as to the accuracy, adequacy or completeness of the Official Statement relating to the Warrants.

The scope of our engagement has not extended beyond the examinations and the rendering of the opinions expressed herein. Except as stated in paragraphs 2 and 3 above, we express no opinion as to any federal, state or local tax consequences resulting from the ownership of, receipt of interest on, or disposition of the Warrants. The opinions expressed herein are based upon existing law as of the date hereof and we express no opinion herein as of any subsequent date or with respect to any pending legislation and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur. No one other than the addressees hereof shall be entitled to rely upon this opinion without our prior written approval. This opinion is not offered, and will not be construed, as a guaranty or warranty.

Very truly yours,

ADAMS AND REESE LLP

## Exhibit 9.2

### Continuing Disclosure Agreement

#### CITY OF DAPHNE, ALABAMA GENERAL OBLIGATION REFUNDING WARRANTS SERIES 2020-B

This Continuing Disclosure Agreement (the “Disclosure Agreement”) is executed and delivered by the City of Daphne, Alabama (the “Issuer”) in connection with its issuance of its \$\_\_\_\_\_ General Obligation Refunding and Improvement Warrants Series 2020-B (Federally Taxable) (the “Warrants”). The Issuer is the “obligated person” within the meaning of the hereinafter defined Rule. The Issuer covenants and agrees as follows:

##### SECTION 1. Purpose of the Disclosure Agreement.

(a) This Disclosure Agreement is being executed and delivered by the Issuer for the benefit of the Warrant Holders and the Beneficial Owners and in order to assist the Participating Underwriter in complying with subsection (b)(5) of the Rule.

(b) In consideration of the purchase and acceptance of any and all of the Warrants by those who shall hold the same or shall own beneficial ownership interests therein from time to time, this Disclosure Agreement shall be deemed to be and shall constitute a contract between the Issuer and the Warrant Holders and Beneficial Owners from time to time of the Warrants, and the covenants and agreements herein set forth to be performed on behalf of the Issuer shall be for the benefit of the Warrant Holders and Beneficial Owners of any and all of the Warrants.

SECTION 2. Definitions. The following capitalized terms shall have the following meanings in this Disclosure Agreement:

“Annual Report” shall mean any Annual Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Audited Financial Report” shall mean the Issuer’s Comprehensive Annual Financial Report (CAFR).

“Beneficial Owner” shall mean any person who has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Warrants (including persons holding Warrants through nominees, depositories or other intermediaries).

“Dissemination Agent” shall mean Digital Assurance Certification, LLC, or any successor Dissemination Agent appointed in writing by the Issuer and that has filed with the Issuer a written acceptance of such appointment.

“EMMA” shall mean the Electronic Municipal Market Access system of the MSRB. As of the date of this Disclosure Agreement, the EMMA Internet Web site address is <http://www.emma.msrb.org>.

“GAAP” shall mean generally accepted accounting principles, as such principles are prescribed, in part, by the Financial Accounting Standards Board and modified by the Government Accounting Standards Board and in effect from time to time.

“Issuer” shall mean the City of Daphne, Alabama.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board, which has been designated by the Securities and Exchange Commission as the single centralized repository for the collection and availability of continuing disclosure documents for purpose of the Rule. The continuing disclosure documents must be provided to the MSRB in searchable portable document format (PDF) to the following:

Municipal Securities Rulemaking Board  
Electronic Municipal Market Access Center  
[www.emma.msrb.org](http://www.emma.msrb.org)

“1934 Act” shall mean the Securities Exchange Act of 1934, as amended.

“Official Statement” shall mean the final Official Statement for the Warrants dated \_\_\_\_\_.

“Participating Underwriter” shall mean any of the original underwriters of the Warrants required to comply with the Rule in connection with the primary offering of the Warrants.

“Rule” shall mean Rule 15c2-12 promulgated by the SEC pursuant to the 1934 Act, as the same may be amended from time to time, together with all interpretive guidances or other official interpretations or explanations thereof that are promulgated by the SEC.

“SEC” shall mean the Securities and Exchange Commission.

“Securities Counsel” shall mean legal counsel expert in federal securities law.

“State” shall mean the State of Alabama.

“Warrant Holders” when used with reference to a bond or Warrants, shall mean the registered owner of any Outstanding bond or Warrants.

### SECTION 3. Provision of Annual Reports.

(a) Each year, the Issuer shall provide, or shall cause the Dissemination Agent to provide, not later than June 30<sup>th</sup>, commencing with the Issuer’s Annual Report for its fiscal year ending September 30, 2020, to the MSRB an Annual Report for the preceding fiscal year that is consistent with the requirements of Section 4 of this Disclosure Agreement. Not later than five (5) business days prior to said date, the Issuer shall provide the Annual Report to the Dissemination Agent (if other than the Issuer). In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package and may include by specific reference other information as provided in Section 4 of this Disclosure Agreement. If the Issuer’s Audited Financial Statements are not available at the time the Annual Report is required to be filed, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the Audited Financial Statements shall be filed in the same manner as the Annual Report when they become available;

(b) If the Issuer is unable to provide to the MSRB an Annual Report by the date required in subsection (a), the Issuer shall send a notice, in a timely manner, to the MSRB, in substantially the form attached as Exhibit A.

(c) If the Issuer's fiscal year changes, the Issuer shall send written notice of such change to the MSRB, in substantially the form attached as Exhibit B.

(d) The Dissemination Agent shall, if the Dissemination Agent is other than the Issuer, file a report with the Issuer certifying that the Annual Report has been provided pursuant to this Disclosure Agreement and stating the date it was provided.

(e) In connection with providing the Annual Report, the Dissemination Agent (if other than the Issuer) is not obligated or responsible under this Disclosure Agreement to determine the sufficiency of the content of the Annual Report for purposes of the Rule or any other state or federal securities law, rule, regulation, or administrative order.

SECTION 4. Content of Annual Reports. The Issuer's Annual Report shall contain or include by reference the following:

(a) The Audited Financial Statements of the Issuer for its fiscal year immediately preceding the due date of the Annual Report.

(b) The accounting principles pursuant to which the Audited Financial Statements were prepared.

(c) The operating and financial information set forth in the Official Statement, including in the sections titled: "CITY DEBT," "CITY REVENUES" and Appendix A.

The Issuer's financial statements shall be audited and prepared in accordance with GAAP with such changes as may be required from time to time in accordance with State law.

The Issuer reserves the right to cross-reference any or all such annual financial information and operating data to other documents to be provided to the MSRB.

The Issuer reserves the right to modify, from time to time, the specific types of information provided or the format of the presentations of such information, to the extent necessary or appropriate in the judgment of the Issuer; provided however, that the Issuer agrees that any modifications will be made consistent with Section 9.

Any or all of the items listed above may be included by specific reference to other documents available to the public on the MSRB's Internet Web site or filed with the SEC. The Issuer shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Significant Events.

(a) The Issuer covenants to provide, or cause to be provided, to the MSRB notice of the occurrence of any of the following events with respect to the Warrants, in a timely manner not in excess of ten (10) business days after the occurrence of the event. Each notice shall be so captioned and shall prominently state the date, title and CUSIP numbers of the Warrants.

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults, if material;

- (3) unscheduled draws on debt service reserves, if any, reflecting financial difficulties;
- (4) unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions, the issuance by the internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Warrants, or other material events affecting the tax status of the Warrants;
- (7) modifications to rights of Warrant Holders, if material;
- (8) Bond calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution, or sale of property, if any, securing repayment of the Warrants, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership, or similar event of the Issuer;<sup>1</sup>
- (13) the consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) appointment of a successor or additional trustee or the change of name of a trustee, if material; and
- (15) incurrence of a Financial Obligation (as defined for purposes of the Rule) of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar

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<sup>1</sup> For the purposes of this event, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Issuer in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if such jurisdiction has been assumed by leaving the existing government body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer.

terms of a Financial Obligation of the City, any of which affect Warrant Holders, if material; and

- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the Financial Obligation (as defined for purposes of the Rule) of the City, any of which reflect financial difficulties.

(b) In connection with providing a notice of the occurrence of a Listed Event, the Dissemination Agent (if other than the Issuer), solely in its capacity as such, is not obligated or responsible under this Disclosure Agreement to determine the sufficiency of the content of the notice for purposes of the Rule or any other state or federal securities law, rule, regulation, or administrative order.

(c) The Issuer acknowledges that the “rating changes” referred to above in Section 5(a)(11) of this Disclosure Agreement may include, without limitation, any change in any rating on the Warrants.

(d) The Issuer acknowledges that it is not required to provide a notice of a Listed Event with respect to credit enhancement when the credit enhancement is added after the primary offering of the Warrants, the Issuer does not apply for or participate in obtaining such credit enhancement, and such credit enhancement is not described in the Official Statement.

(e) As of the date of this Disclosure Agreement, the Listed Events described in subsections (a)(3), (4), (5), and (10) are not applicable to the Warrants.

#### SECTION 6. Mandatory Electronic Filing with EMMA.

All filings with the MSRB under this Disclosure Agreement shall be made by electronically transmitting such filings through the EMMA Dataport at <http://www.emma.msrb.org>, as provided by the amendments to the Rule adopted by the SEC in Securities Exchange Release No. 59062 on December 5, 2008.

#### SECTION 7. Termination of Reporting Obligation.

(a) The Issuer’s obligations under this Disclosure Agreement shall terminate upon the legal defeasance of the Warrants or the prior redemption or payment in full of all of the Warrants.

(b) This Disclosure Agreement, or any provision hereof, shall be null and void in the event that the Issuer (i) receives an opinion of Securities Counsel, addressed to the Issuer, to the effect that those portions of the Rule that require such provisions of this Disclosure Agreement, do not or no longer apply to the Warrants, whether because such portions of the Rule are invalid, have been repealed, amended, or modified, or are otherwise deemed to be inapplicable to the Warrants, as shall be specified in such opinion and (ii) files notice to such effect with the MSRB.

SECTION 8. Dissemination Agent. The Issuer, from time to time, may appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The initial Dissemination Agent shall be Digital Assurance Certification, LLC. Except as otherwise provided in this Disclosure Agreement, the Dissemination Agent (if

other than the Issuer) shall not be responsible in any manner for the content of any notice or report prepared by the Issuer pursuant to this Disclosure Agreement.

SECTION 9. Amendment; Waiver.

(a) Notwithstanding any other provision of this Disclosure Agreement, this Disclosure Agreement may be amended, and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(1) if the amendment or waiver relates to the provisions of Section 3(a), (b), (c), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, a change in law or a change in the identity, nature, or status of the Issuer or the type of business conducted by the Issuer;

(2) this Disclosure Agreement, as so amended or taking into account such waiver, would, in the opinion of Securities Counsel, have complied with the requirements of the Rule at the time of the original issuance of the Warrants, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(3) the amendment or waiver does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Warrant Holders or Beneficial Owners.

(b) In the event of any amendment to, or waiver of a provision of, this Disclosure Agreement, the Issuer shall describe such amendment or waiver in the next Annual Report and shall include an explanation of the reason for such amendment or waiver. In particular, if the amendment results in a change to the annual financial information required to be included in the Annual Report pursuant to Section 4 of this Disclosure Agreement, the first Annual Report that contains the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of such change in the type of operating data or financial information being provided. Further, if the annual financial information required to be provided in the Annual Report can no longer be generated because the operations to which it related have been materially changed or discontinued, a statement to that effect shall be included in the first Annual Report that does not include such information.

(c) If the amendment results in a change to the accounting principles to be followed in preparing financial statements as set forth in Section 4 of this Disclosure Agreement, the Annual Report for the year in which the change is made shall include a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of such differences and the impact of the changes on the presentation of the financial information. To the extent reasonably feasible, the comparison shall also be quantitative. A notice of the change in accounting principles shall be filed by the Issuer or the Dissemination Agent (if other than the Issuer) at the written direction of the Issuer, with the MSRB.

SECTION 10. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event,

in addition to that which is required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 11. Failure to Comply. In the event of a failure of the Issuer or the Dissemination Agent (if other than the Issuer) to comply with any provision of this Disclosure Agreement, any Warrant Holder or Beneficial Owner may bring an action to obtain specific performance of the obligations of the Issuer or the Dissemination Agent (if other than the Issuer) under this Disclosure Agreement, but no person or entity shall be entitled to recover monetary damages hereunder under any circumstances, and any failure to comply with the obligations under this Disclosure Agreement shall not constitute a default with respect to the Warrants or under the Warrant Resolution.

SECTION 12. Duties of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement.

SECTION 13. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Dissemination Agent, the Participating Underwriter, the Warrant Holders, and the Beneficial Owners, and shall create no rights in any other person or entity.

SECTION 14. Transmission of Information and Notices. Unless otherwise required by law or this Disclosure Agreement and, in the sole determination of the Issuer or the Dissemination Agent, as applicable, subject to technical and economic feasibility, the Issuer or the Dissemination Agent, as applicable, shall employ such methods of information and notice transmission as shall be requested or recommended by the herein designated recipients of such information and notices.

SECTION 15. Additional Disclosure Obligations. The Issuer acknowledges and understands that other State and federal laws, including, without limitation, the Securities Act of 1933, as amended, and Rule 10b-5 promulgated by the SEC pursuant to the 1934 Act, may apply to the Issuer, and that under some circumstances, compliance with this Disclosure Agreement, without additional disclosures or other action, may not fully discharge all duties and obligations of the Issuer under such laws.

SECTION 16. Governing Law. This Disclosure Agreement shall be construed and interpreted in accordance with the laws of the State, and any suits and actions arising out of this Disclosure Agreement shall be instituted in a court of competent jurisdiction in the State. Notwithstanding the foregoing, to the extent this Disclosure Agreement addresses matters of federal securities laws, including the Rule, this Disclosure Agreement shall be construed and interpreted in accordance with such federal securities laws and official interpretations thereof.

CITY OF DAPHNE, ALABAMA

By: \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

**EXHIBIT A**

**NOTICE OF FAILURE TO FILE ANNUAL REPORT**

Name of Obligated Person: City of Daphne, Alabama

Name of Issuer: City of Daphne, Alabama

Name of Warrant Issue: \$\_\_\_\_\_ General Obligation Refunding and Improvement  
Warrants Series 2020-B

Date of Warrants:

NOTICE IS HEREBY GIVEN that the City of Daphne, Alabama has not provided an Annual Report with respect to the above-named Warrants as required by Section 3 of its Continuing Disclosure Agreement with respect to the Warrants. The City of Daphne, Alabama anticipates that the Annual Report will be filed by \_\_\_\_\_.

CITY OF DAPHNE, ALABAMA

By: \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

**EXHIBIT B**

NOTICE OF CHANGE IN ISSUER'S FISCAL YEAR

Name of Obligated Person: City of Daphne, Alabama

Name of Issuer: City of Daphne, Alabama

Name of Warrant Issue: \$\_\_\_\_\_ General Obligation Refunding and Improvement  
Warrants Series 2020-B

Date of Warrants:

NOTICE IS HEREBY GIVEN that the fiscal year of the City of Daphne, Alabama changed. Previously, the Issuer's fiscal year ended on \_\_\_\_\_. It now ends on \_\_\_\_\_.

CITY OF DAPHNE, ALABAMA

By: \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

**Exhibit 9.3**

**Warrant Purchase Agreement**

**(See Attached)**

**WARRANT PURCHASE AGREEMENT**

**between**

**CITY OF DAPHNE, ALABAMA**

**and**

**PIPER SANDLER & CO.**

**relating to**

**City of Daphne, Alabama**  
**\$\_\_\_\_\_ General Obligation Refunding Warrants,**  
**Series 2020-A (Bank Qualified)**

**\$\_\_\_\_\_ General Obligation Refunding Warrants,**  
**Series 2020-B (Federally Taxable)**

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## WARRANT PURCHASE AGREEMENT

### 1. Parties and Relevant Dates

*Issuer:* City of Daphne, an Alabama municipality

*Underwriter:* Piper Sandler & Co.

*Securities:* \$\_\_\_\_\_ principal amount  
General Obligation Refunding Warrants, Series 2020-A (Bank  
Qualified) (the “Series 2020-A Warrants”), and

\$\_\_\_\_\_ principal amount General Obligation Refunding  
Warrants, Series 2020-B (Federally Taxable) (the “Series 2020-B  
Warrants”)

*Acceptance Deadline:* October \_\_, 2020, 5:00 p.m., Central time

*Effective Date and Time of Formal Award:* October \_\_, 2020, \_\_\_\_ p.m., Central time

*Closing Date:* October \_\_, 2020

### 2. Defined Terms

*All capitalized terms used in this Agreement and not otherwise defined are used as defined in the Authorizing Ordinance or the Official Statement:*

*Acceptance Deadline:* The date set forth in Section 1, being the date and time by which the Issuer must accept this Agreement.

*Act:* Sections 11-47-2 and 11-81-4. of the Code of Alabama 1975, as amended.

*Agreement:* This Warrant Purchase Agreement, dated the Effective Date, including **Schedule I** attached hereto.

*Authorizing Ordinance:* The Ordinance enacted by the Issuer’s governing body on October \_\_, 2020, authorizing the issuance of the Securities, as amended and supplemented to the Closing Date.

*Bond Counsel:* Adams & Reese, LLP, Mobile, Alabama.

*Bond Insurer:* The issuer of the Policy, if any, identified in this Agreement.

*Closing Date:* The date set forth in Section 1 of this Agreement, being the date of the issuance and delivery of the Securities.

*Continuing Disclosure Undertaking:* The continuing disclosure undertaking or agreement, if any, entered into by the Issuer with respect to the Securities in accordance with

Rule 15c2-12 (which may be a separate document or may be included in the Authorizing Ordinance or another Issuer Document).

*Creditors' Rights Laws:* Limitations on enforceability as may result from bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally from time to time in effect and from the application of general principles of equity and from public policy limitations on the exercise of any rights to indemnification and contribution.

*DTC:* The Depository Trust Company.

*Effective Date and Time:* The date and time that this Agreement is effective, as set forth in Section 1 of this Agreement.

*End of the Underwriting Period:* The later of (i) the Closing Date or (ii) when the Underwriter no longer retains an unsold balance of the Securities.

*Exchange Act:* The Securities Exchange Act of 1934, as amended.

*Excluded Sections:* For purposes of the representations and warranties of the Issuer set forth in Section 9(a)(viii), the indemnification provisions set forth in Section 16 and the opinion of Issuer's Counsel required pursuant to Section 13, the "Excluded Sections" of the Preliminary Official Statement and the Official Statement shall be: (i) the section describing DTC and its book-entry-only procedures, (ii) any information provided by the Bond Insurer expressly for use in the Official Statement, and (iii) the section captioned "Underwriting" if provided in writing by the Underwriter.

*Issuer:* The Issuer of the Securities, identified in Section 1.

*Issuer Documents:* All financing documents to which the Issuer is a party relating to the issuance of and security for the Securities, as such documents are amended and supplemented to the Closing Date, including, but not limited to:

- (i) this Agreement,
- (ii) any Continuing Disclosure Undertaking, if contained separately or in the Authorizing Ordinance,
- (iii) the Authorizing Ordinance and other applicable financing or operative documents to which the Issuer is a party, as such documents are amended and supplemented to the Closing Date, including any trust indenture, loan agreement, security instrument, and remarketing agreement, and any agreement with the Bond Insurer.

*Issuer's Counsel:* Adams & Reese, LLP, Mobile, Alabama.

*MSRB:* Municipal Securities Rulemaking Board.

*Official Statement:* Official Statement dated October \_\_, 2020, relating to the Securities, together with all appendices or exhibits, any materials incorporated by reference therein and any amendments or supplements thereto.

*Paying Agent:* The Bank of New York Mellon Trust Company, N.A., acting as registrar and/or paying agent for the Securities.

*Policy:* A municipal bond insurance policy, if any, issued by the Bond Insurer, insuring the payment when due of the principal of and interest on the Securities, as identified in this Agreement.

*Preliminary Official Statement:* Preliminary Official Statement dated October \_\_, 2020, relating to the Securities, together with all appendices or exhibits, any materials incorporated by reference therein and any amendments or supplements thereto.

*Primary Offering Disclosure Period:* The period commencing with the first submission to an underwriter of an order for the purchase of the Securities or the purchase of such Securities from the Issuer, whichever first occurs, and ending 25 days after the final delivery by the Issuer or its agent of all Securities to or through the underwriting syndicate or sole underwriter.

*Purchase Price:* The aggregate amount specified in Section 5 as the Purchase Price to be paid by the Underwriter at the Closing for the purchase of the Securities on the Closing Date.

*Rule 15c2-12:* Rule 15c2-12 promulgated by the SEC under the Exchange Act.

*SEC:* Securities and Exchange Commission of the United States.

*Securities:* The Securities identified in Section 1 on the first page of this Agreement, as more specifically described in **Schedule I**.

*Securities Act:* The Securities Act of 1933, as amended.

*State:* State of Alabama.

*Trust Indenture Act:* Trust Indenture Act of 1939, as amended.

*Underwriter:* The firm identified as such in Section 1 of this Agreement.

*Underwriter's Counsel:* Ezell Law, LLC.

### **3. Offer to Purchase the Securities; Execution of Terms and Acceptance**

The Issuer and the Underwriter are entering into this Warrant Purchase Agreement (the “*Agreement*”), to provide for the purchase and sale of the Securities. The Securities are further described in **Schedule I**.

The Underwriter hereby offers to purchase all (but not less than all) of the Securities from, and to enter into this Agreement with, the Issuer. This offer is subject to acceptance by the Issuer by the Acceptance Deadline and, if not so accepted, will be subject to withdrawal by the

Underwriter by written notice delivered to the Issuer at any time prior to acceptance. The Issuer shall accept this Agreement by its execution hereof. Upon such execution, the Agreement will be binding upon the Underwriter and the Issuer. This Agreement is effective as of the Effective Date and Time.

#### **4. Purchase of the Securities**

The Underwriter shall purchase from the Issuer, and the Issuer shall sell to the Underwriter, all (but not less than all) of the Securities on the Closing Date at the aggregate Purchase Price set forth below, plus accrued interest, if any. The Securities shall bear interest at the rates per annum, mature on the dates, be sold to the public at the prices and be subject to optional and mandatory sinking fund redemption prior to maturity and to such other terms and provisions, all as set forth in **Schedule I**. The Securities otherwise shall be as described in the Official Statement, the Authorizing Ordinance and the Issuer Documents. The Underwriter's agreement to purchase the Securities from the Issuer is made in reliance upon the Issuer's representations, covenants and warranties and on the terms and conditions set forth in this Agreement.

The Issuer acknowledges and agrees that: (i) the primary role of the Underwriter is to purchase securities for resale to investors in an arms-length commercial transaction between the Issuer and the Underwriter and that the Underwriter has financial and other interests that differ from those of the Issuer, (ii) the Underwriter is not acting as a municipal advisor, financial advisor or fiduciary to the Issuer or any other person or entity with respect to the transaction contemplated in this Agreement and has not assumed any advisory or fiduciary responsibility to the Issuer with respect to the transaction contemplated in this Agreement and the discussions, undertakings and proceedings leading (irrespective of whether the Underwriter has provided other services or is currently providing other services to the Issuer on other matters), (iii) the only obligations the Underwriter has to the Issuer with respect to the transaction contemplated hereby expressly are set forth in this Agreement, and (iv) the Issuer has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate in connection with the transaction contemplated herein.

#### **5. Purchase Price**

The Purchase Price applicable to the Series 2020-A Warrants is \$\_\_\_\_\_ (representing the principal amount of the Series 2020-A Warrants, less an underwriter's discount of \$\_\_\_\_\_, and plus net original issue premium of \$\_\_\_\_\_). The Purchase Price applicable to the Series 2020-B Warrants is \$\_\_\_\_\_ (representing the principal amount of the Series 2020-B Warrants, less an underwriter's discount of \$\_\_\_\_\_). The aggregate Purchase Price shall be payable on the Closing Date by the Underwriter to or as directed by the Issuer by wire transfer in immediately available funds or as otherwise agreed by the Issuer and the Underwriter. In accordance with Section 18, the Underwriter also will be reimbursed for those out-of-pocket expenses described therein.

## **6. Public Offering**

The Underwriter agrees to make a bona fide initial public offering of all the Securities in compliance with federal and state securities laws, at a price not in excess of the initial offering price set forth in the Official Statement. Subject to Section 14, the Underwriter may change the initial offering price or prices as it deems necessary in connection with the offering of the Securities without any requirement of prior notice, and may offer and sell the Securities to certain institutions at prices lower than those stated in the Official Statement. Upon the request of Bond Counsel, the Underwriter shall execute and deliver prior to the Closing an issue price certificate or similar certificate in form and substance reasonably satisfactory to Bond Counsel and the Underwriter.

## **7. Good Faith Deposit**

No Good Faith Deposit will be delivered.

## **8. Official Statement**

The Issuer hereby consents to and ratifies the use and distribution by the Underwriter of the Preliminary Official Statement in connection with the public offering of the Securities by the Underwriter, and further confirms the authority of the Underwriter to use, and consents to the use of, the final Official Statement with respect to the Securities in connection with the public offering and sale of the Securities. The Issuer hereby represents and warrants that the Preliminary Official Statement previously furnished to the Underwriter was “deemed final” by the Issuer as of its date for purposes of Rule 15c2-12, except for permitted omissions.

(a) The Issuer, at its cost, shall provide, or cause to be provided, to the Underwriter within seven business days after the date of this Agreement (or within such shorter period as may be approved by the Underwriter or required by applicable rule) such number of copies of a final Official Statement as reasonably requested by the Underwriter, but in sufficient quantity to permit the Underwriter to comply with paragraph (b)(4) of Rule 15c2-12, and Rule G-32 and any other applicable rules of the SEC and the MSRB.

(b) The Issuer authorizes the Underwriter to file, to the extent required by any applicable SEC or MSRB rule, and the Underwriter agrees to so file, the Official Statement with the MSRB or its designee. If an amended Official Statement is prepared during the “primary offering disclosure period,” and if required by any applicable SEC or MSRB rule, the Underwriter also shall make the required filings of the amended Official Statement. The Issuer shall provide the Underwriter with the information necessary to complete MSRB Form G-32 for all filings to be made under this Section 8.

(c) The Preliminary Official Statement and the Official Statement may be delivered in printed and a “designated electronic format” as defined in the MSRB’s Rule G-32 and as may be agreed by the Issuer and the Underwriter. If the Official Statement has been prepared in electronic form, the Issuer hereby confirms that it does not object to distribution of the Official Statement in electronic form.

(d) The Issuer shall not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without the prior written consent of the Underwriter. The Issuer covenants to notify the Underwriter promptly if, on or prior to the 25th day after the End of the Underwriting Period, (or such other period as may be agreed to by the Issuer and the Underwriter) any event shall occur, or information comes to the attention of the Issuer, that is reasonably likely to cause the Official Statement (whether or not previously supplemented or amended) to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and if in the opinion of the Underwriter such event requires the preparation and distribution of a supplement or amendment to the Official Statement, to prepare and furnish to the Underwriter, at the Issuer's expense, such number of copies of the supplement or amendment to the Official Statement, in (i) a "designated electronic format" consistent with the requirements of the MSRB's Rule G-32 and (ii) a printed format form in substance mutually agreed upon by the Issuer and the Underwriter, as the Underwriter may reasonably request. If such notification shall be given subsequent to the Closing Date, the Issuer also shall furnish, or cause to be furnished, such additional legal opinions, certificates, instruments and other documents as the Underwriter may reasonably deem necessary to evidence the truth and accuracy of any such supplement or amendment to the Official Statement.

## **9. Representations and Warranties**

(a) Representations and Warranties of the Issuer. The Issuer hereby agrees with, and makes the following representations and warranties to, the Underwriter, as of the date hereof and as of the Closing Date, which representations and warranties shall survive the Closing:

(i) The Issuer is duly created and existing under the constitution and laws of the State and has full legal right, power and authority under the constitution and laws of the State, including the Act, to adopt the Authorizing Ordinance, to execute and deliver the Issuer Documents and the Official Statement, to issue, sell and deliver the Securities as provided herein, and to carry out and to consummate the transactions contemplated by the Authorizing Ordinance, the Issuer Documents and the Official Statement.

(ii) By all necessary official action of the Issuer prior to or concurrently with the acceptance hereof, the Issuer has duly authorized and approved (A) the distribution of the Preliminary Official Statement and the execution, delivery and distribution of the Official Statement for use by the Underwriter in connection with the public offering of the Securities, (B) the issuance and sale of the Securities upon the terms set forth herein and as contemplated by the Authorizing Ordinance, the Issuer Documents and the Official Statement and (C) the execution and delivery of, and the performance by the Issuer of the obligations on its part contained in, the Securities, the Authorizing Ordinance and the Issuer Documents.

(iii) The Securities will be issued in conformity with and entitled to the benefit and security of the Authorizing Ordinance and the Issuer Documents, including the pledge of the full faith and credit of the Issuer.

(iv) This Agreement constitutes a legal, valid and binding obligation of the Issuer enforceable in accordance with its terms; the other Issuer Documents, when duly executed

and delivered, will constitute the legal, valid and binding obligations of the Issuer enforceable in accordance with their respective terms; and the Securities, when issued, authenticated and delivered in accordance with the Issuer Documents and sold to the Underwriter as provided herein, will be the legal, valid and binding obligations of the Issuer enforceable in accordance with their terms; in all cases, except as the enforceability of this Agreement, the other Issuer Documents and the Securities may be limited by application of Creditors' Rights Laws.

(v) Except as may be described in the Preliminary Official Statement or the Official Statement, the Issuer is not in breach of or default in any material respect under (if applicable) its charter documents, its articles of incorporation or its bylaws or under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or to which the Issuer is or any of its property or assets are otherwise subject, and no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a material default or event of default by the Issuer under any of the foregoing.

(vi) The adoption, execution and delivery of the Securities, the Authorizing Ordinance and the Issuer Documents, and compliance with the provisions on the Issuer's part contained therein, will not conflict with or constitute a breach of or default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or to which the Issuer or any of its property or assets are otherwise subject, and such adoption, execution, delivery or compliance will not result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature upon the property or assets, if any, of the Issuer to be pledged to secure the Securities or under the terms of any such law, regulation or instrument, except as provided by the Securities, the Authorizing Ordinance and the Issuer Documents.

(vii) All authorizations, approvals, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect, the issuance of the Securities or the due performance by the Issuer of its obligations under the Authorizing Ordinance, the Issuer Documents and the Securities have been duly obtained or will be obtained prior to the Closing, except for: (A) such authorizations, approvals, consents and orders, if any, as may be required under the Blue Sky or securities laws of any jurisdiction in connection with the offering and sale of the Securities, and (B) authorizations, approvals, consents and orders that are required to be obtained or renewed periodically, such as budgets, licenses and permits.

(viii) The Preliminary Official Statement as of its date did not, and the Official Statement as of its date does not and as of the Closing Date will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, the Issuer makes no statement as to the Excluded Sections of the Preliminary Official Statement or the Official Statement.

(ix) The financial statements of the Issuer contained in the Preliminary Official Statement and the Official Statement fairly present the financial position and results of operations of the Issuer as of the dates and for the periods therein set forth in accordance with generally accepted accounting principles consistently applied, and, since the date thereof, there has been no material adverse change in the financial position or results of operations of the Issuer.

(x) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, agency, public board or body, pending or, to the knowledge of the Issuer, threatened against the Issuer: (A) affecting the existence of the Issuer or the titles of its officers to their respective offices, (B) seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Securities or the collection by the Issuer of any tax proceeds payable to it or the making of any required deposits with respect to the Securities, (C) in any way contesting or affecting the validity or enforceability of, or the power or authority of the Issuer to issue, adopt or to enter into (as applicable), the Securities, the Authorizing Ordinance or the Issuer Documents, (D) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement, or any amendment or supplement thereto, (E) except as disclosed in the Official Statement, wherein an unfavorable decision, ruling or finding would materially adversely affect the financial position or condition of the Issuer or would result in any material adverse change in the ability of the Issuer to apply its tax proceeds or other revenues to pay debt service on the Securities, or (F) contesting the status of the interest on the Series 2020-A Warrants as excludable from gross income for federal income tax purposes or the status of the interest on either series of the Securities as exempt from any applicable state tax, in each case as described in the Official Statement.

(xi) The Issuer has received all licenses, permits or other regulatory approvals required, if any, for the collection and/or application by the Issuer of the tax proceeds payable to it and the Issuer is not in material default, and no event has occurred which would constitute or result in a material default, under any such licenses, permits or approvals.

(xii) The Issuer has entered or will enter into the Continuing Disclosure Undertaking and, except for the failures described in the Official Statement, the Issuer has not failed during the previous five years to comply in all material respects with any previous undertakings in a written continuing disclosure contract or agreement under Rule 15c2-12.

(xiii) The Authorizing Ordinance, the Issuer Documents and the Securities conform to the description thereof contained in the Official Statement.

(xiv) The Issuer has the legal authority to apply proceeds of the Securities for the purposes contemplated by the Authorizing Ordinance and the Issuer Documents, including for the payment or reimbursement of incidental expenses in connection with the marketing, issuance and delivery of the Securities to the extent required by this Agreement and in compliance with applicable law.

(b) Covenants of the Issuer. The Issuer hereby covenants with the Underwriter that:

(i) Prior to the Closing Date, except as otherwise contemplated by the Official Statement, the Issuer shall not create, assume or guarantee any general obligation indebtedness (other than obligations incurred with respect to the reasonable and necessary expenses of the Issuer's normal operations), or pledge or otherwise encumber any of its tax proceeds or other revenues, assets, properties, funds or interests that are expected to be available as security for the Securities.

(ii) The Issuer shall cooperate with the Underwriter in the qualification of the Securities for offering and sale and the determination of their eligibility for investment under the laws of such jurisdictions, to the extent applicable, as the Underwriter may request; provided that the Issuer shall not be required to qualify as a foreign corporation in, or submit to the general jurisdiction of, any other state or to file any general or special consents to service of process under the laws of any jurisdiction.

(iii) The Issuer shall not knowingly take or omit to take any action that, under existing law, may adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Series 2020-A Warrants, or the exemption from any applicable state tax of the interest on either series of the Securities.

(c) Representations and Warranties of the Underwriter. The Underwriter hereby agrees with, and makes the following representations and warranties to, the Issuer, as of the date hereof and as of the Closing Date, which representations and warranties shall survive the Closing:

(i) The Underwriter is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

(ii) This Agreement has been duly authorized, executed and delivered by the Underwriter and, assuming the due authorization, execution and delivery by the Issuer, is the legal, valid and binding obligation of the Underwriter enforceable in accordance with its terms, except as the enforceability of this Agreement may be limited by application of Creditors' Rights Laws.

(iii) The Underwriter represents that it is licensed by and registered with the Financial Industry Regulatory Authority as a broker-dealer and the MSRB as a municipal securities dealer.

## **10. Third-Party Credit Enhancement or Support**

No Policy or Support Facility will be provided with respect to the Securities.

## **11. Ratings**

The following ratings on the Securities shall be in effect on the Closing Date:

Moody's: None

S&P: AA+ (stable outlook)  
Fitch: None

## 12. Closing

(a) The delivery of and payment for the Securities shall be the “Closing” for the Securities and shall occur at or prior to 1:00 p.m., New York City time, on the Closing Date, or at such other time or on such other date as may be mutually agreed by the Underwriter and the Issuer. The location of the Closing shall be at such place as shall be mutually acceptable to the Issuer and the Underwriter.

(b) At the Closing, the Issuer shall deliver or cause to be delivered the Securities to DTC or to the Paying Agent on behalf of the Underwriter, as further described in paragraph (c) below. The Securities shall be delivered in definitive form, duly executed by the Issuer and authenticated by the Paying Agent, together with the other documents identified in Section 13. Subject to satisfaction of the conditions contained in this Agreement, the Underwriter will accept delivery of the Securities as described above and pay the Purchase Price, plus accrued interest, if any, on the Securities from their dated date to, but not including, the Closing Date, in immediately available funds, payable to the order of the Paying Agent or as otherwise directed by the Issuer.

(c) Delivery of the definitive Securities shall be made through the facilities of DTC’s book-entry-only system in New York, New York, or at such other location as may be designated by the Underwriter prior to the Closing. The Securities will be delivered as fully-registered warrants, bearing CUSIP numbers, with a single warrant for each maturity of each series of the Securities (or, if so provided in **Schedule I**, for each separate interest rate within a maturity), and registered in the name of Cede & Co., as nominee of DTC, which will act as securities depository for the Securities. Unless otherwise requested by the Underwriter, the Securities will be delivered under DTC’s FAST delivery system.

## 13. Closing Conditions

The Underwriter shall receive on the Closing Date, in form and substance satisfactory to Bond Counsel and to the Underwriter, each item specified below, unless waived by the Underwriter:

(i) The approving opinion of Bond Counsel, addressed to the Underwriter (or addressed to the Issuer with a reliance letter addressed to the Underwriter), dated the Closing Date, and in substantially the form included as an appendix to the Official Statement.

(ii) The supplemental opinion of Bond Counsel, addressed to the Underwriter and the Issuer, dated the Closing Date, to the effect that:

(A) this Agreement has been duly authorized, executed and delivered by the Issuer and constitutes the legal, valid and binding agreement of the Issuer, enforceable against the Issuer in accordance with its terms, except as such enforceability may be limited by Creditors’ Rights Laws;

(B) the statements and information contained in the Preliminary Official Statement as of its date and the Official Statement, as of its date and as of the date of such opinion, relating to the Securities, the security and sources of payment for the Securities and the tax status of the Securities fairly and accurately summarize the provisions of the documents or matters of law indicated therein, as of such dates, and the statements describing the Authorizing Ordinance and the Issuer Documents contained in the Official Statement, as of its date and as of the date of such opinion, fairly and accurately summarize the provisions of such documents purported to be summarized as of such dates; and

(C) the Securities are exempt from registration pursuant to the Securities Act and the Authorizing Ordinance is exempt from qualification as an indenture pursuant to the Trust Indenture Act.

(iii) The opinion of Issuer's Counsel, addressed to the Underwriter and the Issuer, dated the Closing Date, to the effect that:

(A) the Issuer is duly created and existing under the constitution and laws of the State and has full legal right, power and authority under the constitution and laws of the State, including the Act, to adopt the Authorizing Ordinance, to execute and deliver the Issuer Documents and the Official Statement, and to issue the Securities and apply the proceeds thereof pursuant to the Authorizing Ordinance and the Issuer Documents, and compliance with the provisions of each thereof will not conflict with or constitute a violation or breach of or default under any existing law or administrative rule or regulation, or, to the best of the knowledge of such counsel, any court order or decree, or any agreement, contract or other instrument to which the Issuer is a party or is otherwise subject or bound;

(B) by all necessary official action of the Issuer, the Issuer has duly authorized and approved (1) the distribution of the Preliminary Official Statement and the execution, delivery and distribution of the Official Statement, (2) the issuance and sale of the Securities upon the terms set forth in the Authorizing Ordinance, the Issuer Documents and the Official Statement and (3) the execution and delivery of, and the performance by the Issuer of the obligations on its part contained in, the Securities, the Authorizing Ordinance and the Issuer Documents;

(C) the Authorizing Ordinance and any other ordinances or resolutions of the Issuer approving and authorizing the issuance and sale of the Securities, the distribution of the Preliminary Official Statement and the execution and delivery of the Issuer Documents and the Official Statement were duly adopted at one or more meetings of the governing body of the Issuer that were called and held pursuant to all applicable laws and regulations, and with all public notice required by all applicable laws and regulations and at which a quorum was present and acting throughout;

(D) there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, agency, public board or body pending, or, to the knowledge of such counsel, threatened against the Issuer: (1) affecting the existence of the Issuer or the titles of its officers to their respective offices, (2) seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Securities or the collection by the Issuer of any tax proceeds payable to it

or the making of any required deposits with respect to the Securities, (3) in any way contesting or affecting the validity or enforceability of, or the power or authority of the Issuer to issue, adopt or to enter into (as applicable), the Securities, the Authorizing Ordinance or the Issuer Documents, (4) contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement, or any amendment or supplement thereto, (5) except as disclosed in the Official Statement, wherein an unfavorable decision, ruling or finding would materially adversely affect the financial position or condition of the Issuer or would result in any material adverse change in the ability of the Issuer to apply its tax proceeds or other revenues to pay debt service on the Securities, or (6) contesting the status of the interest on the Series 2020-A Warrants as excludable from gross income for federal income tax purposes or the status of the interest on either series of the Securities as exempt from any applicable state tax, in each case as described in the Official Statement;

(E) the distribution of the Preliminary Official Statement and the execution, delivery and distribution of the Official Statement have been duly authorized by the Issuer; nothing has come to the attention of such counsel that would lead them to believe that the information and statements in the Preliminary Official Statement as of its date and the Official Statement, as of its date and as of the date of such opinion, contained or contain any untrue statement of a material fact or omitted or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, no view need be expressed as to the financial statements of the Issuer, any other financial, forecast, technical or statistical data or as to the Excluded Sections of the Preliminary Official Statement and the Official Statement; and

(F) all authorizations, approvals, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect, the due performance by the Issuer of its obligations under the Authorizing Ordinance, the Issuer Documents and the Securities have been duly obtained, except for: (1) such approvals, consents and orders as may be required under the Blue Sky or securities laws of any jurisdiction in connection with the offering and sale of the Securities and (2) authorizations, approvals, consents and orders that are required to be obtained or renewed periodically, such as budgets, licenses and permits.

(iv) The opinion of Underwriter's Counsel, addressed to the Underwriter, dated the Closing Date, to the effect that: (A) the Securities are exempt from registration under the Securities Act and the Authorizing Ordinance is exempt from qualification under the Trust Indenture Act and (B) the Continuing Disclosure Undertaking meets the requirements of Rule 15c2-12. In addition, such counsel shall state in its letter containing the foregoing opinion or in a separate letter addressed to the Underwriter that, without having undertaken to determine independently, or to assume responsibility for, the accuracy, completeness or fairness thereof, and based solely on their participation in meetings and telephone conferences at which representatives of the Issuer, Bond Counsel and the Underwriter were at various times present, nothing has come to the attention of such counsel that would lead them to believe that the information and statements in the Preliminary Official Statement as of its date and the Official Statement, as of its date and as of the date of such letter, contained or contain any untrue statement of a material fact or omitted or omit to state a material fact necessary in order to make

the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, no view need be expressed as to the financial statements of the Issuer, any other financial, forecast, technical or statistical data, and any information in the Preliminary Official Statement and the Official Statement respecting the Bond Insurer and DTC.

(v) A certificate dated the Closing Date of an authorized officer of the Issuer to the effect that:

(A) the representations and warranties of the Issuer contained in this Agreement are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date;

(B) the Issuer has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied at or prior to the Closing;

(C) no event affecting the Issuer has occurred since the date of the Official Statement which either makes untrue or incorrect in any material respect as of the Closing Date any statement or information contained in the Preliminary Official Statement or the Official Statement or is not reflected in the Official Statement but should be reflected therein in order to make the statements and information therein not misleading in any material respect; and

(D) there is no action, suit, proceeding or investigation before or by any court or public board or body pending or threatened against the Issuer to restrain or enjoin the issuance, execution or delivery of the Securities or in any manner questioning the proceedings or authority for the issuance of the Securities or affecting directly or indirectly the validity of the Securities or of any provisions made or authorized for their payment or contesting the existence of the Issuer or the title of any of its officers to their respective offices.

(vi) Written evidence that the rating(s) on the Securities by the applicable rating services, as set forth in Section 0, are in effect as of the Closing Date.

(vii) A certificate of an officer of the Paying Agent, acceptable to the Underwriter, dated the Closing Date, to the effect that the Issuer Documents and other financing or operative documents relating to the Securities to which the Paying Agent is a party have been duly authorized, executed and delivered by the Paying Agent, and the Securities have been authenticated in accordance with the Authorizing Ordinance and the Issuer Documents by a duly authorized officer or signatory of the Paying Agent; and an incumbency certificate of the Paying Agent, in form and content acceptable to the Underwriter and Bond Counsel, dated the Closing Date, with respect to the officers or other signatories of the Paying Agent who have executed, authenticated and delivered the Securities, the Issuer Documents to which the Paying Agent is a party, and all other financing or operative documents relating to the Securities to be signed by the Paying Agent

(viii) A tax certificate or tax regulatory agreement, executed by a duly authorized officer of the Issuer, in form and substance satisfactory to Bond Counsel, setting forth, among other things, in the manner permitted by the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the reasonable expectations of the Issuer as of the Closing Date as to the use of proceeds of the Series 2020-A Warrants and of any other funds of the Issuer

expected to be used to pay debt service on the Series 2020-A Warrants and the facts and estimates on which such expectations are based, and stating that, to the best of knowledge and belief of such certifying officer, the expectations set forth therein are reasonable.

(ix) An Information Return for Tax-Exempt Governmental Obligations (Internal Revenue Service Form 8038-G), in a form satisfactory to Bond Counsel for filing, executed by a duly authorized officer of the Issuer.

(x) A copy of the Blanket Letter of Representations to DTC relating to the Securities signed by the Issuer.

(xi) True and complete copies of all opinions, certificates and other documents delivered to the Paying Agent under the Authorizing Ordinance and the Issuer Documents; and such additional legal opinions, certificates, instruments and other documents as the Underwriter or Bond Counsel reasonably may request, in form and substance satisfactory to the Underwriter or Bond Counsel, as the case may be, to evidence (A) compliance by the Issuer with legal requirements reasonably relating to the transactions contemplated by the Official Statement and this Agreement, (B) the truth and completeness, as of the date thereof, of the statements and information contained in the Preliminary Official Statement, (C) the truth and completeness, as of the date thereof and as of the time of the Closing, of the statements and information contained in the Official Statement, (D) the truth and completeness, as of the time of the Closing, of the representations and warranties of the Issuer contained in this Agreement and the certificates and other documents referred to in this Agreement, and (E) the due performance or satisfaction by the Issuer at or prior to the Closing of all agreements then to be satisfied.

#### **14. Issue Price Certificate**

(a) The Underwriter agrees to assist the Issuer in establishing the issue price of the Series 2020-A Warrants and shall execute and deliver to the Issuer at Closing an “issue price” or similar certificate, together with the supporting pricing wires or equivalent communications, in the such form as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the Issuer and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Series 2020-A Warrants.

(b) Except as otherwise set forth in Schedule II attached hereto, the Issuer will treat the first price at which 10% of each maturity of the Series 2020-A Warrants (the “10% test”) is sold to the public as the issue price of that maturity. At or promptly after the execution of this Warrant Purchase Agreement, the Underwriter shall report to the Issuer the price or prices at which it has sold to the public each maturity of the Series 2020-A Warrants. If at that time the 10% test has not been satisfied as to any maturity of the Series 2020-A Warrants, the Underwriter agrees to promptly report to the Issuer the prices at which it sells the unsold Series 2020-A Warrants of that maturity to the public. That reporting obligation shall continue, whether or not the Closing Date has occurred, until either (i) the Underwriter has sold all Series 2020-A Warrants of that maturity or (ii) the 10% test has been satisfied as to the Series 2020-A Warrants of that maturity, provided that the Underwriter’s reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Issuer or bond counsel. For purposes of this Section, if Series 2020-A Warrants mature on the same date but

have different interest rates, each separate CUSIP number within that maturity will be treated as a separate maturity of the Series 2020-A Warrants.

(c) The Underwriter confirms that it has offered the Series 2020-A Warrants to the public on or before the date of this Warrant Purchase Agreement at the offering price or prices (the “initial offering price”), or at the corresponding yield or yields, set forth in Schedule II attached hereto, except as otherwise set forth therein. Schedule II also sets forth, as of the date of this Warrant Purchase Agreement, the maturities, if any, of the Series 2020-A Warrants for which the 10% test has not been satisfied and for which the Issuer and the Underwriter agree that the restrictions set forth in the next sentence shall apply, which will allow the Issuer to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Series 2020-A Warrants, the Underwriter will neither offer nor sell unsold Series 2020-A Warrants of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

- (1) the close of the fifth (5<sup>th</sup>) business day after the sale date; or
- (2) the date on which the Underwriter has sold at least 10% of that maturity of the Series 2020-A Warrants to the public at a price that is no higher than the initial offering price to the public.

The Underwriter will advise the Issuer promptly after the close of the fifth (5<sup>th</sup>) business day after the sale date whether it has sold 10% of that maturity of the Series 2020-A Warrants to the public at a price that is no higher than the initial offering price to the public.

(d) The Underwriter confirms that:

(i) any selling group agreement and any third-party distribution agreement relating to the initial sale of the Series 2020-A Warrants to the public, together with the related pricing wires, contains or will contain language obligating each dealer who is a member of the selling group and each broker-dealer that is a party to such third-party distribution agreement, as applicable:

(A) to report the prices at which it sells to the public the unsold Series 2020-A Warrants of each maturity allotted to it, whether or not the Closing Date has occurred, until either all Series 2020-A Warrants of that maturity allocated to it have been sold or it is notified by the Underwriter that the 10% test has been satisfied as to the Series 2020-A Warrants of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter and (ii) to comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter,

(B) to promptly notify the Underwriter of any sales of Series 2020-A Warrants that, to its knowledge, are made to a purchaser who is a related party to an

underwriter participating in the initial sale of the Series 2020-A Warrants to the public (each such term being used as defined below), and

(C) to acknowledge that, unless otherwise advised by the dealer or broker-dealer, the Underwriter shall assume that each order submitted by the dealer or broker-dealer is a sale to the public.

(ii) any selling group agreement relating to the initial sale of the Series 2020-A Warrants to the public, together with the related pricing wires, contains or will contain language obligating each dealer that is a party to a third-party distribution agreement to be employed in connection with the initial sale of the Series 2020-A Warrants to the public to require each broker-dealer that is a party to such third-party distribution agreement to (A) report the prices at which it sells to the public the unsold Series 2020-A Warrants of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Series 2020-A Warrants of that maturity allocated to it have been sold or it is notified by the Underwriter or the dealer that the 10% test has been satisfied as to the Series 2020-A Warrants of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter or the dealer, and (B) comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter or the dealer and as set forth in the related pricing wires.

(e) The Issuer acknowledges that, in making the representations set forth in this section, the Underwriter will rely on (i) in the event a selling group has been created in connection with the initial sale of the Series 2020-A Warrants to the public, the agreement of each dealer who is a member of the selling group to comply with the requirements for establishing issue price of the Series 2020-A Warrants, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2020-A Warrants, as set forth in a selling group agreement and the related pricing wires, and (ii) in the event that a third-party distribution agreement was employed in connection with the initial sale of the Series 2020-A Warrants to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the requirements for establishing issue price of the Series 2020-A Warrants, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2020-A Warrants, as set forth in the third-party distribution agreement and the related pricing wires. The Issuer further acknowledges that the Underwriter shall not be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement to comply with the requirements for establishing issue price of the Series 2020-A Warrants, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2020-A Warrants.

(f) The Underwriter acknowledges that sales of any Series 2020-A Warrants to any person that is a related party to an underwriter participating in the initial sale of the Series 2020-A Warrants to the public (each such term being used as defined herein) shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(i) “public” means any person other than an underwriter or a related party,

- (ii) “underwriter” means (A) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Series 2020-A Warrants to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the applicable series of the Series 2020-A Warrants to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Series 2020-A Warrants to the public),
- (iii) a purchaser of any of the Series 2020-A Warrants is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (A) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (B) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (C) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and
- (iv) “sale date” means the date of execution of this Warrant Purchase Agreement by all parties.

(g) Upon request of Bond Counsel, the Underwriter shall execute and deliver on the Closing Date an issue price or similar certificate with respect to the Series 2020-A Warrants pursuant to this Section, in form and substance reasonably satisfactory to the Issuer, Bond Counsel and the Underwriter.

## **15. Accountants’ Letter**

No Accountants’ letters will be delivered in connection with the issuance of the Securities.

## **16. Indemnification and Contribution**

(a) The Issuer agrees to indemnify and hold harmless the Underwriter, and each person, if any, who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) the Underwriter, and their directors, officers, agents and employees, against any and all losses, claims, damages, liabilities and expenses to which the Underwriter may become subject, insofar as such losses, claims, damages, liabilities or expenses (or actions in respect thereof), arise out of or are based upon (i) a claim in connection with the public offering of the Securities to the effect that the Securities or any related security are required to be registered under the Securities Act or any indenture is required to be qualified under the Trust Indenture Act, or (ii) any statement or information in the Preliminary Official Statement or in the

Official Statement that is or is alleged to be untrue or incorrect in any material respect, or any omission or alleged omission of any statement or information in the Preliminary Official Statement or the Official Statement (other than in the Excluded Sections) which is necessary in order to make the statements therein not misleading. The foregoing indemnity agreement shall be in addition to any liability that the Issuer otherwise may have.

(b) The Underwriter will indemnify and hold harmless the Issuer, each of its members, directors, officers and employees, and each person who controls the Issuer within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, to the same extent as the foregoing indemnity from the Issuer to the Underwriter, but only with reference to the statements under the caption “Underwriting” in the Preliminary Official Statement and the Official Statement.

(c) In case any claim shall be made or action brought against an indemnified party for which indemnity may be sought against any indemnifying party, as provided above, the indemnified party shall promptly notify the indemnifying party in writing setting forth the particulars of such claim or action; but the omission to so notify the indemnifying party (i) shall not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) shall not relieve it from any liability which it may have to any indemnified party except as otherwise stated under paragraph (a) or (b) above. The indemnifying party shall assume the defense thereof, including the retention of counsel acceptable to such indemnified party and the payment of all expenses and shall have the right to negotiate and consent to settlement. An indemnified party shall have the right to retain separate counsel in any such action and to participate in the defense thereof but the fees and expenses of such counsel shall be at the expense of such indemnified party unless the employment of such counsel has been specifically authorized by the indemnifying party or the indemnifying party shall not have employed counsel reasonably acceptable to the indemnified party to have charge of the defense of such action or proceeding or the indemnified party shall have reasonably concluded that there may be defenses available to it which are different from or additional to those available to the indemnifying party (in which case the indemnifying party shall not have the right to direct the defense of such action or proceeding on behalf of the indemnified party), in any of which events, such legal or other expenses shall be borne by the indemnifying party. No party shall be liable for any settlement of any action effected without its consent, but if settled with the consent of the indemnifying party or if there is a final judgment for the plaintiff in any action with or without written consent of the indemnifying party, the indemnifying party agrees to indemnify and hold harmless the indemnified parties to the extent of the indemnities set forth above from and against any loss or liability by reason of such settlement or judgment. Any such settlement must include an unconditional release of each indemnified party from all liability arising out of such action.

(d) If the indemnification provided for above is unenforceable, or is unavailable to an indemnified party in respect of any losses, claims, damages or liabilities (or actions in respect thereof) of the type subject to indemnification herein, then the indemnifying party shall, in lieu of indemnifying such person, contribute to the amount paid or payable by such person as a result of such losses, claims, damages, or liabilities (or actions in respect thereof). In the case of the Issuer and the Underwriter, contribution shall be in such proportion as is appropriate to reflect

the relative benefits received by the Issuer, on the one hand, and the Underwriter, on the other, from the sale of the Securities. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then the indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Issuer, on the one hand, and the Underwriter, on the other, in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or action in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Issuer on the one hand and the Underwriter on the other shall be deemed to be in the same proportion as the total net proceeds of sale of the Securities paid to the Issuer pursuant to this Agreement (before deducting expenses) bear to the underwriting discount or commission received by the Underwriter. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Issuer or the Underwriter and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Issuer and the Underwriter agree that it would not be just and equitable if contribution pursuant to this paragraph were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this paragraph. The amount paid or payable by any person as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above shall be deemed to include any legal or other expenses reasonably incurred by such person in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this paragraph, however, the Underwriter shall not be required to contribute an amount in excess of the amount of the underwriting discount or commission applicable to the purchase of the Securities. No person guilty of fraudulent misrepresentation (within the meaning of Section 10(b) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

## **17. Termination**

The Underwriter shall have the right to cancel its obligation to purchase the Securities and to terminate this Agreement by written notice to the Issuer if, between the Effective Date to and including the Closing Date, in the Underwriter's sole and reasonable judgment any of the following events shall occur (each a "Termination Event"):

(a) the market price or marketability of the Securities, or the ability of the Underwriter to enforce contracts for the sale of the Securities, shall be materially adversely affected by any of the following events:

(i) legislation shall have been enacted (i) by the Congress of the United States or the legislature of the State or shall have been favorably reported out of committee of either body or be pending in committee of either body, or shall have been recommended to the Congress for passage by the President of the United States or a member of the President's Cabinet, or a decision shall have been rendered by a court of the United States or the State or the Tax Court of the United States, or a ruling, resolution, regulation or temporary regulation, release or announcement shall have been made or shall have been proposed to be made by the Treasury Department of the United States or the Internal Revenue Service, or other federal or state

authority with appropriate jurisdiction, with respect to federal or state taxation upon interest received on obligations of the general character of the Securities; or

(ii) there shall have occurred (1) an outbreak or escalation of hostilities or the declaration by the United States of a national emergency or war or (2) any other calamity or crisis in the financial markets of the United States or elsewhere; or

(iii) a general suspension of trading on the New York Stock Exchange or other major exchange shall be in force, or minimum or maximum prices for trading shall have been fixed and be in force, or maximum ranges for prices for securities shall have been required and be in force on any such exchange, whether by virtue of determination by that exchange or by order of the SEC or any other governmental authority having jurisdiction; or

(iv) legislation shall have been enacted by the Congress of the United States or shall have been favorably reported out of committee or be pending in committee, or shall have been recommended to the Congress for passage by the President of the United States or a member of the President's Cabinet, or a decision by a court of the United States shall be rendered, or a ruling, regulation, proposed regulation or statement by or on behalf of the SEC or other governmental agency having jurisdiction of the subject matter shall be made, to the effect that any obligations of the general character of the Securities, the Authorizing Ordinance or the Issuer Documents, or any comparable securities of the Issuer, are not exempt from the registration, qualification or other requirements of the Securities Act or the Trust Indenture Act or otherwise, or would be in violation of any provision of the federal securities laws; or

(v) except as disclosed in or contemplated by the Official Statement, any material adverse change in the affairs of the Issuer shall have occurred; or

(vi) any rating on either (1) securities of the Issuer which are secured by a pledge of its full faith and credit or (2) the Bond Insurer is reduced or withdrawn or placed on credit watch with negative outlook by any major credit rating agency (including any rating to be accorded the Securities); or

(b) any event or circumstance shall exist that either makes untrue or incorrect in any material respect any statement or information in the Official Statement (other than any statement provided by the Underwriter) or is not reflected in the Official Statement but should be reflected therein in order to make the statements therein, in the light of the circumstances under which they were made, not misleading and, in either such event, the Issuer refuses to permit the Official Statement to be supplemented to supply such statement or information, or the effect of the Official Statement as so supplemented is to materially adversely affect the market price or marketability of the Securities or the ability of the Underwriter to enforce contracts for the sale of the Securities; or

(c) a general banking moratorium shall have been declared by federal or State authorities having jurisdiction and be in force; or

(d) a material disruption in securities settlement, payment or clearance services affecting the Securities shall have occurred; or

(e) any new restriction on transactions in securities materially affecting the market for securities (including the imposition of any limitation on interest rates) or the extension of credit by, or a charge to the net capital requirements of, underwriters shall have been established by the New York Stock Exchange, the SEC, any other federal or State agency or the Congress of the United States, or by Executive Order; or

(f) a decision by a court of the United States shall be rendered, or a stop order, release, regulation or no-action letter by or on behalf of the SEC or any other governmental agency having jurisdiction of the subject matter shall have been issued or made, to the effect that the issuance, offering or sale of the Securities, including the underlying obligations as contemplated by this Agreement or by the Official Statement, or any document relating to the issuance, offering or sale of the Securities, is or would be in violation of any provision of the federal securities laws at the Closing Date, including the Securities Act, the Exchange Act and the Trust Indenture Act.

Upon the occurrence of a Termination Event and the termination of this Agreement by the Underwriter, all obligations of the Issuer and the Underwriter under this Agreement shall terminate, without further liability, except that the Issuer and the Underwriter shall pay their respective expenses as set forth in Section 18.

## **18. Payment of Expenses**

(a) The Underwriter shall be under no obligation to pay, and the Issuer shall pay from available funds or direct the Paying Agent under the Authorizing Ordinance and the Issuer Documents to pay from the proceeds of the Securities (to the extent permitted under applicable law) or from other funds of the Issuer, all expenses that are incidental to the performance of the Issuer's obligations under this Agreement, including but not limited to: all expenses in connection with the printing of the Preliminary Official Statement, the Official Statement and any amendment or supplement to either; all expenses in connection with the printing, issuance and delivery of the Securities; the fees and expenses of Bond Counsel, Issuer's Counsel and Underwriter's Counsel; the fees of the Bond Insurer and the fees and expenses of its counsel, if any; the fees and expenses of the Issuer's financial advisors, Accountants, any verification consultant and all other consultants; the fees and disbursements of any Paying Agent and any escrow agent, and their respective counsel; all expenses in connection with obtaining a rating or ratings for the Securities; all expenses of the Issuer in connection with the preparation, printing, execution and delivery, and any recording or filing, of the Authorizing Ordinance, any Issuer Document or any other instrument; the Issuer's administrative fees; and all other expenses and costs of the Issuer incident to its obligations in connection with the authorization, issuance, sale and distribution of the Securities. Unless the Issuer and the Underwriter otherwise agree, the Issuer shall pay for all incidental costs (including, but not limited to, transportation, lodging, meals and entertainment of Issuer personnel) incurred by or on behalf of the Issuer in connection with the marketing, issuance and delivery of the Securities.

(b) The Underwriter shall pay the costs of qualifying the Securities for sale in the various states chosen by the Underwriter, all advertising expenses in connection with the public offering of the Securities and all other expenses incurred by the Underwriter in connection with the public offering and distribution of the Securities.

## **19. Notices**

Any notice or other communication to be given to the Issuer under this Agreement may be given by certified mail or by delivering the same in writing to the Issuer at the following address:

City of Daphne  
1705 Main Street  
Daphne, Alabama 36526  
Attention: Mayor

and any notice or other communication to be given to the Underwriter under this Purchase Agreement may be given by delivering the same in writing to the Underwriter, at the following address:

Piper Sandler & Co.  
2100 Southbridge Parkway, Suite 650  
Birmingham, Alabama 35209  
Attention: Walter Lewis

or to such other addresses as one party shall furnish the other in writing for receipt of notice.

## **20. Governing Law**

This Agreement shall be governed by the laws of the State of Alabama.

## **21. Miscellaneous**

This Agreement is made solely for the benefit of the signatories hereto (including the Underwriter and its successors or assigns) and no other person shall acquire or have any right hereunder or by virtue hereof. Neither the Issuer nor the Underwriter may assign this Agreement. The term "successor" shall not include any holder of any Securities merely by virtue of such holding. All representations, warranties, agreements and indemnities contained in this Agreement shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of the Underwriter, and shall survive the delivery of and payment for the Securities and any termination of this Agreement. Section headings have been included in this Agreement as a matter of convenience of reference only and are not to be used in the interpretation of any provisions of this Agreement. If any provision of this Agreement is, or is held or deemed to be, invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, because it conflicts with any provisions of any constitution, statute, rule of public policy or for any other reason, such circumstances shall not make the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or make any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

**22. Counterparts**

This Agreement may be executed in one or more counterparts with the same force and effect as if all signatures appeared on a single instrument.

**23. Signatures**

Upon execution by the Issuer and the Underwriter, this Agreement shall be binding upon the Issuer and the Underwriter as of the Effective Date and Time.

**ACCEPTED AND AGREED:**

ISSUER:

CITY OF DAPHNE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PIPER SANDLER & CO.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Schedule I**  
**TERMS OF THE SECURITIES**

**SERIES 2020-A WARRANTS**

Maturity Date	Principal <u>Amount</u>	Interest <u>Rate</u>	<u>Yield</u>	<u>Price</u>	CUSIP
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\_\_\_\_\_  
\*Calculated to first call date:

**Mandatory Sinking Fund Schedule:**

Series 2020-A Warrants maturing on \_\_\_\_\_:

Date (_____1)	Principal <u>Amount</u>
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**Optional Redemption:**

Those of the Series 2020-A Warrants having stated maturities after \_\_\_\_\_, will be subject to redemption, at the option of the City, as a whole or in part, and, if in part, in such maturities as the City shall specify, on \_\_\_\_\_, and on any date thereafter, at a redemption price for each Series 2020-A Warrant (or portion thereof) called for redemption equal to the principal amount thereof plus accrued interest to the date fixed for redemption.

**SERIES 2020-B WARRANTS**

Due	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>	<u>Price</u>	CUSIP
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**Mandatory Sinking Fund Schedule:**

Series 2020-B Warrants maturing on \_\_\_\_\_:

<u>Date (1)</u>	<u>Principal Amount</u>
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SCHEDULE II

SALE PRICES OF THE GENERAL RULE MATURITIES AND  
INITIAL OFFERING PRICES OF THE HOLD-THE-OFFERING-PRICE MATURITIES

**General Rule Maturities**

Maturity Date <u>(1)</u>	Principal <u>Amount</u>	Interest <u>Rate</u>	<u>Yield</u>	<u>Price</u>	CUSIP
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\_\_\_\_\_

\*Computed to first optional redemption date:

**Hold-the-Offering-Price Maturities**

Maturity Date <u>(1)</u>	Principal <u>Amount</u>	Interest <u>Rate</u>	<u>Yield</u>	<u>Price</u>	CUSIP
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\_\_\_\_\_

\*Computed to first optional redemption date:

After discussion, Councilmember \_\_\_\_\_ moved that the foregoing ordinance and order be adopted and spread upon the minutes of this meeting, which motion was seconded by Councilmember \_\_\_\_\_, and, on roll call the following vote was registered:

YEAS

NAYS

The Chairman thereupon announced that the said ordinances had been carried by unanimous vote of the Council present.

\* \* \* \* \*

There being no further business to come before the meeting, the meeting was, upon motion duly made, seconded and unanimously carried, adjourned.

\_\_\_\_\_  
Robin LeJeune, Council President

\_\_\_\_\_  
Dane Haygood, Mayor

[SEAL]

ATTEST:

\_\_\_\_\_  
Candace G. Antinarella, City Clerk

CLERK'S CERTIFICATE

I, Candace G. Antinarella, City Clerk of the City of Daphne, Alabama, DO HEREBY CERTIFY that the foregoing pages of typewritten material constitute excerpts from the minutes of a regular meeting of the City Council of Daphne, Alabama, held on \_\_\_\_\_, pertaining to the City's General Obligation Refunding Warrants, Series 2020, which meeting was called and assembled and was open to the public and at which a quorum was present and acting throughout, and that the original of said minutes appears of record in the minute books of the City Council of Daphne, Alabama, which are in my custody and control.

Given under my hand and the seal of the City of Daphne, Alabama, this \_\_\_\_ day of \_\_\_\_\_, 2020.

[SEAL]

\_\_\_\_\_  
City Clerk of the City of Daphne, Alabama