

**CITY OF DAPHNE
CITY COUNCIL ORGANIZATIONAL MEETING
AGENDA
1705 MAIN STREET,DAPHNE, AL
6:30 P.M.**

1. CALL TO ORDER
2. INVOCATION / PLEDGE OF ALLEGIANCE
3. OATHS OF OFFICE ADMINISTERED BY JUDGE TOM DOYLE

Fred Small	Mayor-Elect
Bailey Yelding	District #1
Cathy Barnette	District #2
Greg Burnam	District #4
Ron Scott	District #5
Derek Boulware	District #6
August A. Palumbo	District #7

- OATH OF OFFICE ADMINISTRED BY JUDGE PAM BASCHAB

John Lake	District #3
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4. ROLL CALL
5. ELECT COUNCIL PRESIDENT
6. ELECT COUNCIL PRESIDENT PRO-TEM
7. **MOTION:** Establish time and place of regular meetings to be held each month.(1st & 3rd Monday at 6:30 p.m. contained in Council Rules of Procedure)
8. **MOTION:** Adopt Rules of Procedure / **Ordinance 2008-62 / 1st READ**
9. RETAIN OFFICERS & EMPLOYEES / **Resolution 2008-56**
10. RATIFY USE OF PRESENT BANK DEPOSITORIES AND SIGNATORIES TO THE CITY ACCOUNTS / **ORDINANCE 2008-63/ 1ST READ**
11. ADJOURN TO REGULAR SCHEDULED BUSINESS MEETING

RESOLUTION NO. 2008-56

Retaining Officers & Employees

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, IN THE STATE OF ALABAMA:

SECTION 1: That all classified officers and employees of the City of Daphne so designated under the merit system, are continued by virtue of law; that all other officers and employees of the City paid out of the General Fund of the City are hereby continued in such positions upon the terms and upon the basis of compensation heretofore existing as may be hereafter modified, such to serve at the will of the City Council, or its designee.

SECTION 2: That David L. Cohen, an appointed employee, is elected and appointed to continue as City Clerk of the City of Daphne upon the basis of compensation heretofore existing.

SECTION 3: That David Carpenter, an appointed employee, is elected and appointed to continue as Chief of Police of the City of Daphne upon the basis of compensation heretofore existing.

SECTION 4: That James “Bo” White, an appointed employee, is elected and appointed to continue as Fire Chief of the City of Daphne upon the basis of compensation heretofore existing.

SECTION 5: That Kimberly Briley, an appointed employee, is elected and appointed to continue as Treasurer of the City of Daphne upon the basis of compensation heretofore existing.

SECTION 6: That Jay Ross, an appointed employee, is elected and appointed to continue as City Attorney of the City of Daphne upon the basis of compensation heretofore existing.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA on this ____ day of _____, 2008.

Council President

Fred Small
Mayor

ATTEST:

David L. Cohen
City Clerk, MMC

=====
CITY OF DAPHNE
ORDINANCE NO. 2004-62
=====

=====
AN ORDINANCE ADOPTING THE RULES OF PROCEDURE IN ALL INSTANCES
FOR MEETINGS OF THE CITY COUNCIL
=====

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA that the Order Procedure In All Instances For Meetings of the City Council shall be as follows:

SECTION I:

That the Rules of Procedure herein contained shall govern the liberations and meetings of all of the Council of the City of Daphne, Alabama.

SECTION II

That the regular meetings of the City Council shall be held on the first and third Monday of each month, which meeting shall convene at 6:30 p.m. at the City Hall Council Chamber and all meetings, regular and special, shall be opened to the public, except when Council meets in executive session as authorized by State law.

SECTION III:

That special meetings may be held at the call of the presiding officer by serving notice on each member of the Council not less than twenty fours before the time set for such special call meeting. All special meetings may be held as provided by Section 11-43-50 Code of Alabama, 1975, (as amended). Furthermore, any two (2) Council members shall have the right to call for a special meeting. Notice of all special meetings shall be posted on a bulletin board and appropriate customary media notified is accessible to the public twenty-four hours prior to such scheduled meeting.

SECTION IV:

A Quorum shall be determined as provided by Section 11-43-40, Code of Alabama, 1975, (as amended).

SECTION V:

That the order of business of each council meeting shall be as follows:

1. Call to Order
2. Role Call/Invocation/Pledge of Allegiance
3. Approval of the Minutes of the Previous Meeting(s)
4. Reports of Standing Committees:
 - A. Finance Committee
 - B. Building/Property Committee
 - C. Planning/ Zoning Code Enforcement Committee
 - D. Public Safety/Ordinance Committee
 - E. Public Works/Solid Waste Committee
5. Reports of Special Boards and Commissions
 - A. Board of Zoning Adjustment
 - B. Downtown Redevelopment Authority
 - C. Industrial Development Board
 - D. Library Board
 - E. Planning Commission
 - F. Recreation Board
 - G. Utility Board
6. Report of Officers:
 - A. Mayors Report
 - B. City Attorney Report
 - C. Department Heads Report
7. Public Participation
8. Resolution Ordinances and Other Business
9. Council Comments
10. Adjournment

SECTION VI:

No member shall speak more than twice on the same subject without permission of the presiding officer, and after all other council members have had the opportunity to speak.

SECTION VII:

That no individual who is not a member of the City Council or the Mayor shall be allowed to address the same while in session without permission of the presiding officer and for not more than three minutes, unless approved by the presiding officer. No person shall be allowed to address the Council on any matter which shall be the subject of a public hearing scheduled by the Council until the meeting under which the public hearing on that matter is scheduled to be heard.

SECTION VIII:

That motions to reconsider must be made by a council member who voted with the majority and at the same or next succeeding meeting of the Council.

SECTION IX:

That whenever it shall be required by one or more members, that the “ayes” and the “nays” shall be recorded and any member may call for a division on any question.

SECTION X:

That all questions of order shall be decided by the presiding officer of the Council with the right of appeal to the Council.

SECTION XI:

That the presiding officer of the Council may at his or her discretion, call any member to take the chair, to allow him or her to address the Council or make a motion or discuss any other matter at issue.

SECTION XII:

That motions to lay any matter on the table shall be first in order, and on all questions, the last amendment, the most distant day, and the largest sum shall be first put.

SECTION XIII:

That Council may meet in executive session only for purposes authorized by State law. When a council person makes a motion for executive session for an enumerated purpose, the presiding officer shall put a motion to vote. If the majority of the council shall vote in favor of the motion for executive session the body shall then move into executive session for discussion of the matter for which executive session was called. No action may be taken in an executive session. When the discussion has been completed, the council shall resume its deliberations in public.

SECTION XIV:

That a motion for adjournment shall always be in order.

SECTION XV:

That the rules of the Council may be amended in the same manner as any other ordinance of general or permanent nature.

SECTION XVI:

That the rules of the Council may be temporarily suspended by vote of two-thirds of the members present.

SECTION XVII:

That the chair of each respective committee, or the council member acting for him or her, shall submit and make report to the Council when so requested by the presiding officer or any member of the Council or at the request of the Mayor.

SECTION XVIII:

That all ordinances, resolutions or propositions submitted to Council which require the expenditure of money will lie over until the next Council meeting; provided that such ordinance, resolution or propositions may be considered earlier by unanimous consent of the Council members present at such meeting by roll call vote and provided further that this rule shall not apply to the current expenses of, or contracts previously made with, or regular salaries of officers, or wages of employees of the city.

SECTION XIX:

That all motions, resolutions, ordinances or other business required to be in writing shall be prepared and supplied to all Council members by twelve noon one full city work day before the Council meeting in which it is to be presented. (e.g. if city offices are not open, the Friday

before the Monday council meeting, then the writings and documentation shall be supplied to each city council member by placing same in each member's mailbox at City Hall by noon Thursday).

- a. It is desired that information be supplied to the City Clerk in time to be made part of the agenda packet.

- b. When a work session is called or scheduled between two council meetings, all motions, resolutions, ordinances or other business required to be in writing shall be presented in substantially the same form as that which is required for presentation at council meeting.

- c. Notwithstanding Sections a. and b. here and above, in the situation of an actual emergency sections a. and b. here and above shall not apply. For purposes herein an actual emergency exist from failure to act will result in an immediate and irrefutable harm to the City or any of its citizens and or otherwise it was physically impossible to comply with a notice requirements set forth herein as the same may be determined by the presiding officer of the Council.

SECTION XX:

That the City Clerk, City Engineer, City Attorney, Chief of Police and Fire Chief and all and such other officers and employees shall, when requested, attend all meetings of the City Council shall otherwise remain in the Council Chamber for such length of time as the Council, presiding officer or Mayor may direct.

SECTION XXI:

That no ordinance, resolution or motion of a permanent and general nature shall be adopted at the meeting at which it is first introduced unless unanimous consent be obtained for the immediate consideration of such ordinance, resolution or motion, and such consent shall be by roll call vote of the council members present at such meeting.

SECTION XXII:

That Roberts' Rules of Order be and is hereby adopted as the rules of procedure for this Council in those situations which cannot be resolved by the rules set forth in this Ordinance.

SECTION XXIII:

That City of Daphne Ordinance 1996-25, 1998-31, 2000-32, 2001-27 and 2002-29 be and are hereby repealed in its entirety and that all of the ordinances or parts thereof conflicting with provisions of this Ordinance be and are hereby repealed.

SECTION XXIV:

That the provisions of this Ordinance are severable. If any provision, section, paragraph, sentence are part thereof shall be held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not effect or impair the remainder of this Ordinance, it being the legislative intent to ordain and act each provision section, paragraph, sentence and part thereof separately and independently of each other.

SECTION XXV:

This Ordinance shall take effect and be enforced from and after approval by the City Council of the City of Daphne upon publication required by law.

ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA on this the _____ day of _____, 2008.

CITY OF DAPHNE, AN ALABAMA MUNICIPAL CORPORATION

COUNCIL PRESIDENT

**FRED SMALL
MAYOR**

ATTEST:

**DAVID L. COHEN
CITY CLERK, MMC**

ORDINANCE NO. 2008-63

An Ordinance setting forth the authorization of certain City Officials as designated signatories on various accounts of the City of Daphne, Alabama.

BE IT ORDAINED BY THE CITY COUNCIL OF DAPHNE, ALABAMA AS FOLLOWS:

SECTION 1: The following Officers of the City of Daphne, Alabama, be and hereby are officially designated as the appropriate and authorized signatories on the various City accounts of the City of Daphne, Alabama:

Mayor	Fred Small
Treasurer/Finance Director	Kimberly Briley
Council President	
Council President-Pro Tem	

SECTION 2: All checks, drafts, and all other financial transfers shall be signed by two (2) of the above-designated signatories.

SECTION 3: Any ordinance or resolution previously adopted which in any way conflicts with this Ordinance is hereby deemed repealed in its entirety with the exclusion of Resolution 2007-67 which prescribes signatories for the Confiscated Funds account.

SECTION 4: The provisions of this Ordinance are severable. If any part of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, such declaration shall not affect the remaining parts.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, THIS
_____ day of _____, 2008.

Council President

Fred Small, Mayor

ATTEST:

David L. Cohen, City Clerk, MMC

STATE OF ALABAMA)
COUNTY OF BALDWIN)

**CITY COUNCIL BUSINESS MEETING AGENDA
1705 MAIN STREET, DAPHNE, AL
NOVEMBER 3, 2008
BUSINESS MEETING
7:00 P.M.**

- 1. CALL TO ORDER**
- 2. ROLL CALL/INVOCATION
PLEDGE OF ALLEGIANCE**

- 3. APPROVE MINUTES:** Council minutes meeting held October 20, 2008
Council Work Session Minutes meeting held October 16, 2008

PRESENTATION: Introduce New Firefighters / Chief White

PROCLAMATION: Animal Shelter Week / November 2–8, 2008

CERTIFICATE OF APPRECIATION: Dr. Albert Corte

4. REPORT STANDING COMMITTEES:

- A. FINANCE COMMITTEE / Scott**
- B. BUILDINGS & PROPERTY - Lake**
- C. PUBLIC SAFETY - Burnam**
- D. CODE ENFORCEMENT/ORDINANCE COMMITTEE - Palumbo**
- E. PUBLIC WORKS COMMITTEE / SOLID WASTE AUTHORITY - Yelding**

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

- A. Board of Zoning Adjustments - Eady**
- B. Downtown Redevelopment Authority - Barnette**
- C. Industrial Development Board – Yelding**
Review minutes meeting held September 22nd
IDB Nomination:
 - a.) Dennis Kearney
- D. Library Board - Lake**
MOTION: Authorize the Mayor to enter into an agreement with Hatch McDonald for alterations and additions to the Daphne Library
- E. Planning Commission – Barnette**
- F. Recreation Board - Palumbo**
- G. Utility Board - Scott**

6. REPORTS OF OFFICERS:

- A. Mayors Report**
 - a.) **MOTION:** Authorize the Mayor to enter into an agreement between the City of Daphne and Larry Jackson / Mowing Services (No Cost to City)

B. City Attorney's Report

C. Department Head Comments

7. PUBLIC PARTICIPATION:

8. RESOLUTIONS & ORDINANCES:

RESOLUTIONS:

NO RESOLUTIONS

ORDINANCES:

2ND READ

- a.) **Regulating Erosion and Sedimane Control for Residential Dewllings and Other Land Distrubance/Ordinance 2008-54**
- b.) **Lodging Tax Appropriation: D'Olive Creek Pedestrian Bridge Crossing. /Ordinance 2008-60**
- c.) **MS4 Monitoring Plan. /Ordinance 2008-61**
- d.) **Amending Renaissance Assessment Agreement. /Ordinance 2008-64**

9. COUNCIL COMMENTS

10. ADJOURN

**CITY OF DAPHNE
CITY COUNCIL MEETING**

ROLL CALL

CITY COUNCIL:

CALL VOTES

COUNCILMAN YELDING

PRESENT__ ABSENT__ __

COUNCILWOMAN BARNETTE

PRESENT__ ABSENT__

COUNCILMAN LAKE

PRESENT__ ABSENT__ __

COUNCILMAN BURNAM

PRESENT__ ABSENT__ __

COUNCILMAN SCOTT

PRESENT__ ABSENT__ __

COUNCILMAN BOULWARE

PRESENT__ ABSENT__ __

COUNCILMAN PALUMBO

PRESENT__ ABSENT__ __

MAYOR

MAYOR SMALL

PRESENT__ ABSENT__ __

CITY CLERK:

DAVID L. COHEN

PRESENT__ ABSENT__

CITY ATTORNEY:

CITY ATTORNEY JAY ROSS

PRESENT__ ABSENT

MINUTE NOTES:

**CITY COUNCIL MEETING
MINUTES**

NOTES:

COMMITTEE RECOMMENDATIONS

OCTOBER 20, 2008
CITY COUNCIL MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.

1

1. CALL TO ORDER

Council President Burnam called the meeting to order at 6:30 p.m.

2. ROLL CALL/INVOCATION/PLEDGE OF ALLEGIANCE

Councilman John Lake gave the invocation.

COUNCIL MEMBERS PRESENT: Bailey Yelding; Cathy Barnette; John Lake; Greg Burnam; Ron Scott; Eric Nager; August Palumbo.

Also present: David Cohen, City Clerk; Rebecca Hayes, Assistant City Clerk; Jay Ross, City Attorney; Kim Briley, Finance Director; Bill Eady, Planning Department Director; Sharon Cureton, Human Resource Director; Tonja Young, Library Director; David Carpenter, Police Chief; Richard Merchant, Building Official; James White, Fire Chief; Sandra Morse, Civic Center Director; Melvin McCarley, Interim Public Works Director; David McKelroy, Recreation Director; Jane Robbins, Mayor's Assistant; Al Guarisco, Village Point Foundation; Starke Irvine, DRA; Ron Allen, Library Board; Derek Boulware, IDB; Toni Fassbender, IDB.

Absent: Mayor Fred Small;

3. APPROVE MINUTES:

MOTION BY Councilwoman Barnette to adopt the Council meeting minutes meeting held October 6, 2008. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilwoman Barnette to adopt the Special Council meeting minutes meeting held October 10, 2008 with the amendment to change the time of meeting in header from 6:30 p.m. to 9:30 a.m. *Seconded by Councilman Yelding.*

AYE Yelding, Barnette, Lake, Nager, Palumbo, Burnam ABSTAINED Scott

NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilwoman Barnette to adopt the Special Called Council meeting minutes meeting held October 14, 2008. *Seconded by Councilman Yelding.*

AYE Yelding, Barnette, Lake, Nager, Palumbo, Burnam ABSTAINED Scott

NAY NONE OPPOSED MOTION CARRIED

PRESENTATION: Bookmark Awards / Tonja Young

Ms. Young presented the awards to the winners of the Library's bookmark contest.

MOTION: To increase employee participation for Blue Cross/Blue Shield medical insurance

MOTION BY Councilwoman Barnette to increase the employee participation for Blue Cross/Blue Shield medical insurance to \$175.00 for family, \$25.00 for individual and \$25.00 for dental. *Seconded by Councilman Palumbo.*

AYE Yelding, Barnette, Scott, Nager, Palumbo, Burnam

NAY Lake

MOTION CARRIED

MOTION: Cell phones for Council members

MOTION BY Councilwoman Barnette to designate Sprint as the carrier with the Simply Everything Plan and purchasing the Sprint Blackberry phone for each Council member. *Seconded by Councilman Palumbo.*

AYE Yelding, Barnette, Lake, Nager, Palumbo, Burnam

NAY Scott

MOTION CARRIED

4.REPORT OF STANDING COMMITTEES:

A. FINANCE COMMITTEE / Scott

The minutes for the October 13th meeting are in the packet.

Treasurers Report

MOTION BY Councilman Scott to accept the Treasurers report ending September 30, 2008 with a balance of \$20,581,673.67. *Seconded by Councilman Yelding.*

AYE ALL IN FAVOR

NAY NONE OPPOSED

MOTION CARRIED

Sales and Use Tax Collections / August 31, 2008

Collections were \$10,000 more than in 2007. Year-to-date shortfall is \$622,000.

Lodging Tax Collections August 31, 2008

Collections for the month of August, 2008 were \$55,000 as compared to \$43,000 collected in 2007

The next meeting will be the second Monday in November at 4:00 p.m.

Mrs. Briley asked the Council to make a motion designating the first pay period in November to reflect the changes for employee participation for medical insurance.

MOTION BY Councilwoman Barnette to designate the first pay period in November to reflect the new changes in employee participation for medical insurance. Seconded by Councilman Scott.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

B. BUILDINGS AND PROPERTY COMMITTEE – Lake

No report.

C. PUBLIC SAFETY COMMITTEE – Burnam

The minutes for the October 8th meeting are in the packet.

- a.) **MOTION:** Amend October 9, 2005 motion hiring five (5) part-time firefighters to work over-time shifts to increase the hiring to ten (10) firefighters.

MOTION BY Councilman Palumbo to amend the October 9, 2005 motion authorizing hiring five (5) part-time firefighters to work overtime shifts be amended to increase the hiring to ten (10) firefighters for overtime shifts. No second needed / recommended by committee.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

The next meeting will be November 5th.

D. CODE ENFORCEMENT/ORDINANCE COMMITTEE – Palumbo

No report. Next meeting will be November 5th.

E. PUBLIC WORKS COMMITTEE/SOLID WASTE AUTHORITY – Yelding

- a.) **MOTION:** Approve sending feasibility survey to citizens on whether to cut services or increase fees.

MOTION BY Councilman Yelding to approve sending a feasibility survey to citizens to determine whether citizens would prefer to keep twice a week garbage service or be subject to rate increase of a minimum of \$1.00 due to the increase of fuel and maintenance costs. Seconded by Councilwoman Barnette.

Council discussed the language of the motion and felt it need some adjustments.

Councilman Yelding withdrew is motion. Councilwoman Barnette withdrew her second.

Councilman Yelding stated that he will take the suggestion back to the committee to clean up the language.

Council discussed those who are not paying their garbage fees, and asked the City Attorney to research the protocol for proceeding on collection of back fees.

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

A. Board of Zoning Adjustments – Eady

No meeting for October or November.

B. Downtown Redevelopment Authority – Barnette

There was no meeting in October. Mrs. Hayes is working with some folks to have a meeting to discuss the lodging tax, and hopefully, to bring forth some ideas to Council.

C. Industrial Development Board – Yelding

Appoint new members:

MOTION BY Councilman Yelding to appoint Tom Byrne and William Groeschell to the Industrial Development Board. *Seconded by Councilman Lake.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

Councilman Scott stated that he had distributed a resume of Mr. Dennis Kearney for consideration of appointment, and wondered why it was not on the agenda. He asked that Mr. Kearney's name be on the next agenda for consideration for appointment.

D. Library Board – Lake

No report. The next meeting will be November 6th.

E. Planning Commission – Barnette

There is a work session meeting scheduled for Wednesday morning, and the regular Planning Commission meeting is Thursday, October 23rd at 6:00 p.m in the Council Chambers.

F. Recreation Board – Palumbo

The minutes for the October 8th meeting are in the packet. The Youth Lacrosse Association has requested the use of the fields in Daphne. The next meeting will be Wednesday November 12th at the Recreation Center at 6:30 p.m.

G. Utility Board – Scott

The next meeting will be the last Wednesday of the month.

6. REPORTS OF THE OFFICERS:

A. *Mayor's Report*

- a.) *Parade Permit / Mystic Oder of Persepohne / Mardi Gras Parade / February 20, 2009 / Rain Date February 22, 2009*

MOTION BY Councilwoman Barnette to approve the parade Permit for Apollo's Mystic Ladies / Mardi Gras Parade / February 20, 2009 / Rain Date February 22, 2009. *Secoded by Councilman Yelding.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

- b.) *Parade Permit / Daphne Elementary School / Fun Run / November 1, 2008*

MOTION BY Councilwoman Barnette to approve the Parade Permit for *Daphne Elementary School / Fun Run / November 1, 2008. Secoded by Councilman Lake.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

- c.) *NLC Voting Delegate / Orlando, FL*

MOTION BY Councilman Palumbo to appoint Councilman Lake as the voting delegate for the NLC Conference in Orlando, FL. *Secoded by Councilwoman Barnette.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

B. City Attorney's Report

Mr. Ross stated that an Executive Session is needed to discuss pending litigation, and procedure for the Special Called Council meeting on October 27th, and threatened litigation. The session should last about 30 minutes.

C. Department Head Comments

David McKelroy – Recreation Director – congratulated the girls Volleyball team at Daphne High School for placing third in the regionals, and they will be participating in the sub-state that the Band Jamboree will be tomorrow at Daphne High School at 6:00 p.m.

James White – Fire Chief - thanked Council for expanding the part-time firefighters to ten (10) to cut down on over-time.

Sandra Morse – Civic Center Director – announced that next month on the 7th and 8th there will be back to back events. On the 7th the Tip Tops will be playing at the Civic Center, and on the 8th will be Ball Room Dance.

Tonja Young – Library Director – reported that on the 31st the Library will have alternative Halloween activities from 4:00 – 6:00 p.m.

Bill Eady – Planning Director – reported on the Highway 64 & 98 traffic study saying that he has a meeting with Jonathan Kyzer tomorrow at 10:00 a.m. he is with Neil Shaffer out of Pensacola, to look at the intersection. He just finished the design for Magnolia Shopping Center with an update of that shopping center. He also knows Wayne Curry, who is the traffic engineer for ALDOT, and he is going to talk with him, and the three of them are going to have a discussion about what the possibilities may be, and all this at no cost to the city. Melvin measured the width of Highway 64, and it is 52 feet wide, and it may be possible, a very slim chance, but may be possible, to do some re-stripping and get the turn lane there, and that will be one thing he will discuss with the traffic engineers. The only thing they have to be careful with is that the alignment of the lanes fit the alignment of the lanes on the west side of the road so that there is not a big zigzag under the light. He will get an opinion from them, and get some idea of what it will cost to do a study if Council chooses to do so.

7. PUBLIC PARTICIPATION

Mrs. Dorothy Morrison – 727 Oak Bluff Drive - spoke regarding a flyer advertising Gator Alley.

8. RESOLUTIONS, ORDINANCES, ORDERS AND OTHER BUSINESS

RESOLUTIONS:

- a.) Bid Award: D'Olive Creek Pedestrian Bridge Crossing...../Resolution 2008-54
- b.) Prepaid Travel / Cohen...../Resolution 2008-55

MOTION BY Councilwoman Barnette to waive the reading of Resolution 2008-54 and 2008-55. *Seconded by Councilman Lake.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilwoman Barnette to adopt Resolution 2008-54. *Seconded by Councilman Lake.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilwoman Barnette to adopt Resolution 2008-55. *Seconded by Councilman Lake.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

ORDINANCE

1ST READ

- a.) Police Vehicle Replacement...../Ordinance 2008-59
- b.) Lodging Tax Appropriation: D'Olive Creek
Pedestrian Bridge Crossing...../Ordinance 2008-60
- c.) MS4 Monitoring Plan...../Ordinance 2008-61

MOTION BY Councilman Scott to suspend the rules for Ordinance 2008-59. *Seconded by Councilwoman Barnette.*

ROLL CALL VOTE

Yelding	Aye	Nager	Aye
Barnette	Aye	Palumbo	Aye
Lake	Aye	Burnam	Aye
Scott	Aye		

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilwoman Barnette to waive the reading of Ordinance 2008-59. *Seconded by Councilman Yelding.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilwoman Barnette to adopt Ordinance 2008-59. *Seconded by Councilman Yelding.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

ORDINANCES 2008-60 AND 2008-61 WERE MADE 1ST READ.

8. COUNCIL COMMENTS

Councilwoman Barnette thanked Councilman Nager for his service to the City of Daphne, and appreciates his service and contribution to the city.

Councilman Lake commented on bike safety in the city, and would like to start a bike ride on Saturdays to educate people on bike safety.

Councilman Nager stated that he has enjoyed serving on the City Council, and will continue to watch as a informed citizen. He will look for Council to reduce business license for the smaller businesses, continue to support the Chamber of Commerce and using the reserve for paving roads.

OCTOBER 20, 2008
CITY COUNCIL MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.

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Councilman Palumbo thanked Councilman Nager for his service to the city. He stated that he has brought fresh ideas, and represented District 6 well. He hopes that he will stay involved. He also reminded Council that the budget is balanced, and is bare bones, but there is not a cost of living increase for the employees. He said that Council should consider some kind of COLA for employees.

MOTION BY Councilman Yelding to enter into Executive Session to discuss pending litigation, and procedure for the Special Called Council meeting on October 27th, and threatened litigation. The session should last about 30 minutes. The City Attorney certified that the stated reason for entering into Executive Session is appropriate according to the Open Meetings Act.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTIOIN CARRIED

Council entered into Executive Session at 8:00 p.m.

Council returned from Executive Session at 8:49 p.m.

10. ADJOURN

MOTION BY Councilwoman Barnette to adjourn. *Seconded by Councilman Lake.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

THERE BEING NO FURTHER BUSINESS TO DISCUSS, THE MEETING ADJOURNED AT 8:49 P.M.

Respectfully submitted by,

David L. Cohen,
City Clerk, MMC

Certification by Presiding Officer:

Greg Burnam
Council President

Date & Time Signed: _____

**OCTOBER 16, 2008
CITY COUNCIL WORK SESSION
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

COUNCIL MEMBERS PRESENT: Cathy Barnette; John Lake; Greg Burnam; Ron Scott; Eric Nager; August Palumbo.

ABSENT: Bailey Yelding.

Also present: Mayor Small; David Cohen, City Clerk; Rebecca Hayes, Assistant City Clerk; Kim Briley, Finance Director; Sharon Cureton, Human Resource Director, Cornell Smith, Revenue Officer; Suzanne Henson, Senior Accountant; Toni Fassbender, IDB; Derek Boulware, IDB; Robert Ingram Baldwin County Economic Development Alliance.

Absent: Jay Ross, City Attorney

Council President Greg Burnam called the meeting to order at 6:34 p.m.

1. Renaissance Center Agreement/Phil Hunt/Preston Bolt

Mr. Hunt explained that the amendment is to correct some language that was inadvertently left out of the original agreement. They want to add administrative expenses can be paid out of the sales tax collected in the district.

Consensus of Council was to have the change put in an ordinance. Mr. Ross will prepare the ordinance for the November 3rd Council meeting.

2. IDB / Incentive Package / Toni Fassbender / Robert Ingram

Mrs. Fassbender spoke regarding the proposed Incentive package, and asked Council for an increase in funding in order to purchase property to use as an incentive to bring businesses to Daphne.

Mr. Robert Ingram, Baldwin County Economic Development Alliance, discussed with Council five ways to attract businesses to a city:

1. Powers of an IDB
2. Property Tax Abatement
3. Sales and Use Taxes
4. Other Incentives
5. Capital Tax Credit

Council asked Mr. Ingram questions, but did not come to a consensus.

3. Traffic Study / Highway 64 & 98

Mr. Eady reported that a traffic study was done by Volkert, and every recommendation that they had was done except the right turn lane on Highway 64. Mr. Eady said that he has measured everything and thinks he can put a turn lane on Highway 64, but the only problem is

**OCTOBER 16, 2008
CITY COUNCIL WORK SESSION
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

that they do not know where the utility lines are on the embankment. He also said that he has looked at the accident reports for that area, and all of the accidents that occurred were due to driver error (most were running into the back of the car stopped for the traffic light). He said that he might get some help from some traffic engineers, possibly at no cost to the city, before they expend funds for a traffic study.

Consensus of Council was for Mr. Eady to pursue talking with the traffic engineers and report the recommendations to Council.

4. Budget / Blue Cross / Cell Phones

1.) Cell Phones

Mr. Cohen stated that the best deal for Council cell phones was with Sprint. The cost is \$500 above what was budgeted, and the cost would be \$89.99 per month with unlimited services, all inclusive. The phones purchased would be Blackberry's, and the price of the phones would be \$49.99.

Consensus of Council was to go with Sprint as the cell phone carrier, and recommended that they purchase insurance on the phones. Council will make a motion Monday night at the Council meeting to accept Sprint as the carrier.

2.) Blue Cross

Council discussed the options for covering the increase in premiums for employee medical insurance with some favoring a 75/25 split with employees to cover the increase, and some leaning toward a 50/50 split.

Consensus of Council was to make a motion Monday night at the Council meeting deciding then which option to choose.

Consensus of Council was to come up with a percentage that as insurance cost go up the amount the employee pays automatically goes up so that they will not have to revisit this every time there is an increase in premiums.

3.) Budget

Mayor Small and Council discussed the 2009 Fiscal Year Budget. The Mayor commented on items in the budget that he wanted Council to think about. Council asked the mayor questions on different items.

No consensus of Council.

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5. ADJOURN

There being no further business to discuss the meeting adjourned at 9:20 p.m.

Respectfully submitted by,

**David L. Cohen,
City Clerk, MMC**

Certification of Presiding Officer:

**Greg Burnam
Council President**

Date & Time Signed: _____

City of Daphne, Alabama

Proclamation

“Animal Shelter Appreciation Week”

November 2 – 8, 2008

WHEREAS, there are more than 73 million cats and 68 million dogs living in more than 63 million households across the United States, and The Baldwin County shelter took in 10,938 animals in 2007. The Daphne shelter took in 888 animals in 2007, total stats for Baldwin County/ Daphne;

WHEREAS, the irresponsibility of some pet owners has resulted in animals running loose and unsupervised, causing a threat to public health and safety;

WHEREAS, indiscriminate breeding allowed by irresponsible pet owners who have not had their companion animals spayed or neutered has contributed to pet overpopulation;

WHEREAS, animal shelter employees, like police officers and emergency medical personnel, must respond to these community problems and crises;

WHEREAS, animal shelters act as safe havens for homeless and abused animals, providing them with comfort and care;

WHEREAS, animal shelters help both animals and people in many ways: by returning lost pets to their owners, enforcing animal control laws, rescuing injured animals, educating the public, and matching up families with new animal companions;

WHEREAS, the work of animal shelters and the important services they provide often go unnoticed and underappreciated by the citizens;

NOW THEREFORE, be it resolved by Mayor Fred Small, that November 2-8, is designated **“Animal Shelter Appreciation Week”** in the City of Daphne, in recognition of Daphne Animal Shelter for providing lifesaving services to animals and people in our community.

Fred Small, Mayor

November 3, 2008

City of Daphne
Office of the Mayor

CERTIFICATE OF APPRECIATION

presented to

DR. ALBERT CORTE, JR.

WHEREAS, in consideration of Dr. Albert Corte, the City of Daphne would like to thank him for his almost forty years of service to the citizens; and

WHEREAS, he served twenty years caring for Daphne's sick, injured, stray, and lost animals; and

WHEREAS, after the Albert Corte, Jr. Animal Shelter was established in 1989 he continues his support with his leadership and guidance; and

WHEREAS, it was Dr. Corte's assistance that was vital in helping the Daphne Police Department get the shelter built and set up and it has been expanded several times due to the growth of the city and it's animal population; and

NOW THEREFORE, the Mayor and City Council thank Dr. Albert Corte for his enthusiasm, energy and tireless dedication for serving all of us in Daphne;

This Certificate of Appreciation is presented by the City of Daphne, Alabama on this 3rd day of November, 2008.

Fred Small
Mayor

**CITY COUNCIL MEETING
STANDING COMMITTEE RECOMMENDATIONS:**

FINANCE COMMITTEE REPORT

BUILDINGS & PROPERTY COMMITTEE REPORT

PLANNING/ZONING/CODE ENFORCEMENT COMMITTEE REPORT

PUBLIC SAFETY/ORDINANCE COMMITTEE REPORT

PUBLIC WORKS/BEAUTIFICATION/MUSEUM COMMITTEE REPORT

**September 22, 2008
CITY OF DAPHNE, AL
INDUSTRIAL DEVELOPMENT BOARD MEETING 6:00 P.M. at U.S. Hwy 98, Daphne,
AL in conference room.**

1. CALL TO ORDER/ROLL CALL

Members present – Pokey Miller, Dan Romanchuck, Derick Boulware, Phillip Ellis and Toni Fassibender

Also present – David Cohen, Robert Ingram, Josh Thorton and Mayor Fred Small

2. OLD BUSINESS

a. August 25, 2008 IDB Board Minutes

**Motion by Mr. Romanchuck Seconded by Mr. Boulware To approve the
August 25, 2008 IDB Board Minutes**

ALL IN FAVOR NONE OPPOSED MOTION CARRIED

3. TREASURERS REPORT

**Mr. Boulware reported that the total balance at this time was \$138,693.01 minus
\$1000 For Site One for website development.**

**Motion by Mr. Ellis Seconded by Mr. Romanchuck To approve the
treasures report.**

ALL IN FAVOR NONE OPPOSED MOTION CARRIED

4. OTHER BUSINESS

**a. Resolution establishing guidelines for Economic Development Incentives To Be
Discussed at City Council Work Session October 16, 2008**

**b. Baldwin County Alliance Neal Wade ADO September 25, 2008 at Orange Beach
Caribe.**

5. ADJOURN

Motion by Mr. Romanchuck Seconded by Mr. Boulware To adjourn.

ALL IN FAVOR NONE OPPOSED MOTION CARRIED

**THERE BEING NO FURTHER BUSINESS TO DISCUSS THE MEETING
ADJOURNED AT 6:55 P.M.**

Respectfully Submitted,

David L. Cohen, Secretary

Approved:

Toni Fassbender, Chairman

Task 5 – Construction Administration – (In Office)

\$18,200.00

The CA Phase shall consist of the normal professional services provided by each discipline at this stage and shall provide administration of the Contract between the Owner and the Contractor as set forth in the Contract Documents. The Architect shall be a representative of and shall advise and consult with the Owner during this phase and will provide supplemental information to the Contractor in response to requests for information and review shop drawings.

Task 6 – Site Visits and Coordination

TBD

Site visits and meetings during the construction phase shall be provided on an hourly basis per HMM’s 2008 Hourly Rates.

Task 7 – Civil Engineering Services

\$ 8,500.00

This task will involve preparation of construction plans, specifications, and bid documents necessary for site amenities related to site grading, drainage, utilities and coordination with authorities.

Total Estimated Fee for Tasks 1 - 5 = \$72,950.00
(not including normal reimbursable expenses and Task 6 costs)

Total Estimated Fee for Task 7 = \$ 8,500.00

Please note that the above fee estimates do not include any permit review fees, impact fees, etc. that are made payable to the various reviewing agencies in order to obtain project approval. This proposal does not include geotechnical, existing site surveying or environmental services that may be required in order to design structures or obtain project approval. This proposal is based on the client providing all necessary topographic and boundary surveys in electronic format suitable for our use.

Please notify us of your acceptance of this proposal by signing in the space provided below on both of the originals provided. Return one of the originals and keep one for your records. Upon receipt of the proposal acceptance we will forward to you our standard contract.

We look forward to providing professional Architectural and Engineering services on this project. We will strive to provide you with timely and quality service. We will begin work immediately upon acceptance of our proposal and obtaining a fully executed contract for services. Thank you for the opportunity to be of service.

Sincerely,

Jeff B. Hudson III, AIA
Senior Associate

By: _____

Date: July ____, 2008

Michael K. Broussard, PE
Hatch Mott MacDonald Alabama, LLC
Senior Vice-President

City of Daphne

Proposal Accepted and HMM is Authorized to Proceed

By: _____

Fred Small

Title: Mayor _____

Date: July ____, 2008

ARCHITECTURAL SERVICES AGREEMENT

AGREEMENT made as of the **twenty first** day of **July** in the year **2008**

BETWEEN the Architect's client identified as the Owner:

City of Daphne, Alabama
P.O. Box 400
Daphne, Alabama 36526

And the Architect:

Hatch Mott MacDonald Alabama, LLC
P.O. Box 1290
805 Daphne Avenue
Daphne, Alabama 36526

For the following Project:

Phase 1 of the alterations and additions to the existing Daphne Public Library at Hwy 98 and Whispering Pines Road in Daphne, Alabama. Phase 2 and 3 will be later and generally follow the proposed Master Plan dated May 2007 developed by HMM for the Library Board.

PROJECT DESCRIPTION:

Phase 1 of the Project will be a new two story addition to the west side of the existing staff work room and consist of a van type delivery area, workrooms, storage room, an elevator, stairwell and minor interior renovations to the existing office areas as well as an add alternate for a Seniors Bookstore space. The attached proposal "Exhibit "A" further describes the scope of work. The work will require minor civil engineering services as well as the normal architectural and engineering disciplines.

ARTICLE 1 - ARCHITECT'S RESPONSIBILITIES

The Owner and Architect agree as follows:

1.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Articles 2, 3 and 12.

1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's review a schedule for the performance of the Architect's services that may be adjusted as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. The Architect or Owner will strive to not exceed time limits established by this schedule.

1.3 The Architect designates Jeff Hudson and/or Forrest McCaughn as a representative authorized to act on behalf of the Architect with respect to the Project.

1.4 The services covered by this Agreement are subject to the time limitations contained in Section 11.5.1.

ARTICLE 2 - SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

The Architect's Basic Services consist of those described in Sections 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal civil, structural, mechanical, plumbing and electrical engineering services. The Architect's schedule for providing Basic Services shall be as described in "Exhibit A" attached.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Section 5.2.1.

2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components. The Architect shall provide color renderings of the site plan, floor plan and two (2) exterior views as part of the Schematic Design Phase.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

2.4.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

2.4.3 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

2.5 BIDDING OR NEGOTIATION PHASE

The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

2.6 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates 18 months later.

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the General Conditions of the Contract for Construction, current as of the date of this Agreement, unless otherwise provided in this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

2.6.3 Duties, responsibilities and limitations of authority of the Architect under this Section 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld.

2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner during the administration of the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

2.6.5 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 12, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

2.6.6 The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

2.6.7 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.8 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

2.6.9 CERTIFICATES FOR PAYMENT

2.6.9.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts.

2.6.9.2 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

2.6.9.3 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

2.6.10 The Architect shall have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith

either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

2.6.11 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.6.12 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in Sections 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

2.6.14 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

2.6.15 The Architect shall interpret and decide matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

2.6.16 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

2.6.17 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

2.6.18 The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in Section 2.6.17, shall be subject to mediation as provided in this Agreement and in the Contract Documents.

3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

3.4 OPTIONAL ADDITIONAL SERVICES

3.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project.

3.4.2 Providing financial feasibility or other special studies.

3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.

3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

3.4.5 Providing services relative to future facilities, systems and equipment.

3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.

3.4.8 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

3.4.9 Providing services in connection with the work of a construction manager or separate consultants retained by the Owner.

3.4.10 Providing detailed estimates of Construction Cost.

3.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor.

3.4.12 Providing analyses of owning and operating costs.

3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

3.4.14 Providing services for planning tenant or rental spaces.

3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

3.4.16 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

3.4.18 Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.

3.4.19 Providing services of consultants for other than architectural, civil, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.

3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 4 - OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. The Owner shall furnish to the Architect, within 15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

4.2 The Owner shall establish and periodically update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

4.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such designated representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services. The Owner's Representative shall be the Mayor of the City of Daphne.

4.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

4.5 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

4.6 The Owner shall furnish the services of consultants other than those designated in Section 4.5 when such services are requested by the Architect and are reasonably required by the scope of the Project.

4.7 The Owner shall furnish structural, mechanical, and chemical tests; tests for air and water pollution; tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

4.8 The Owner shall furnish all legal, accounting and insurance services that may be necessary at any time for the Project to meet the Owner's needs and interests. Such services shall include auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

4.9 The services, information, surveys and reports required by Sections 4.4 through 4.8 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

4.10 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

ARTICLE 5 - CONSTRUCTION COST

5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of

management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

5.1.3 Construction Cost does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner as provided in Article 4.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 The Owner shall employ a professional construction estimator or contractor to provide all estimates of construction cost for the project.

5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget by the Owner.

5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry.

5.2.4 Should the construction cost of the project as identified by the Owner's professional construction estimator or contractor exceed the Owner's construction budget, the Architect will modify the construction documents as directed by the Owner to reduce the construction cost. Such work will be considered as additional services to the contract with compensation to the Architect as per Section 11.3.

ARTICLE 6 - USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

6.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

6.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

6.3 Except for the licenses granted in Section 6.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 6.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 7 - DISPUTE RESOLUTION

7.1 MEDIATION

7.1.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as described below in paragraph 7.1.2. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice prior to resolution of the matter by binding mediation.

7.1.2 The Owner and Architect shall resolve claims, disputes and other matters in question between them by binding mediation which, unless the parties mutually agree otherwise, shall be conducted before a private dispute resolution service such as JAMS. Request for mediation shall be filed in writing with the other party to this Agreement

7.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

7.2 CLAIMS FOR CONSEQUENTIAL DAMAGES

7.2.1 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 8.

7.2.2 The Owner agrees to indemnify, defend and hold harmless the Architect and its consultants, officers, agents and employees from and against any and all claims, damages, losses and expenses, against and from all suits and costs of every description, including but not limited to legal fees and related expenses, which are incurred as a result of the negligent acts, errors or omissions of Owner or its consultants, agents, officers, directors and employees in the performance of their services under their Architectural Services Agreement.

7.2.3 The Architect agrees to indemnify, defend and hold harmless the Owner and its consultants, agents, officers, directors and employees from and against any and all claims, losses and expenses, against and from all suits and costs of every description, including but not limited to legal fees and related expenses, which are incurred as a result of the negligent acts, errors or omissions of the Architect or its consultants, agents, officers, directors and employees in the performance of their services under this Architectural Services Agreement.

7.2.4 Notwithstanding anything to the contrary contained in this Agreement, Architect and Owner agree that the Architect's liability under this Agreement (whether by reason of breach of contract, tort or otherwise, including liability under the foregoing indemnification provision) shall be limited to the greater of: (a) the amount of compensation paid to Architect pursuant to this Agreement; or (b) One Million Dollars (\$1,000,000.00).

ARTICLE 8 - TERMINATION OR SUSPENSION

8.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 8.7.

8.7 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

ARTICLE 9 - MISCELLANEOUS PROVISIONS

9.1 This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Article 12.

9.2 Terms in this Agreement shall have the same meaning as those in the General Conditions of the Contract for Construction.

9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

9.4 To the extent damages are covered by property insurance during construction, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

9.6 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

9.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

9.8 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

9.9 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

9.10 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

ARTICLE 10 - PAYMENTS TO THE ARCHITECT

10.1 DIRECT PERSONNEL EXPENSE

Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

10.2 REIMBURSABLE EXPENSES

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- .1** transportation in connection with the Project, authorized out of town travel and subsistence, and electronic communications;
- .2** fees paid for securing approval of authorities having jurisdiction over the Project;
- .3** reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4** expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5** models, renderings and mock-ups requested by the Owner;
- .6** expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .7** reimbursable expenses as designated in Article 12;
- .8** other similar direct Project-related expenditures.

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

10.3.1 An initial payment as set forth in Section 11.1 is the minimum payment under this Agreement.

10.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Section 11.2.2.

10.3.3 If and to the extent that the time initially established in Section 11.5.1 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Section 11.3.2.

10.3.4 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.2.2, based on (1)

the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

10.5 PAYMENTS WITHHELD

No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

10.6 ARCHITECT'S ACCOUNTING RECORDS

Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 11 BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

11.1 An Initial Payment of zero dollars (\$0) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

11.2 BASIC COMPENSATION

11.2.1 For Basic Services, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

See "EXHIBIT A" attached for additional description of Professional Services.

Tasks 1 – 5 = \$72,950.00
 Task 6 = Hourly per HMM's 2008 Hourly Rates
 Task 7 = \$ 8,500.00

~~11.2.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, for the purpose of budgeting progress payments for Basic Services in each phase, the anticipated fee shall generally total the following percentages of the total Basic Compensation payable. Progress payments will be made for actual work expended in each phase regardless of the percentage of fee allocated to the phase:~~

Schematic Design Phase:	Fifteen percent	(15%)	=
Design Development Phase:	Twenty percent	(20%)	=
Construction Documents Phase:	Forty percent	(40%)	=
Bidding or Negotiation Phase:	Five percent	(5%)	=
Construction Phase:	Twenty percent	(20%)	=
<hr/>			
Total Basic Compensation	One Hundred Percent	(100%)	=

11.3 COMPENSATION FOR ADDITIONAL SERVICES

11.3.1 For Project Representation Beyond Basic Services, as described in Section 3.2, compensation shall be computed as follows:

If any other project representation is required, such additional services will be approved by the Owner in writing and the compensation for such additional services shall be the amount negotiated by the parties at the time.

11.3.2 For Additional Services of the Architect, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Section 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:

Such additional services will be approved by the Owner in writing and the compensation for such additional services shall be the amount negotiated by the parties at that time.

11.3.3 For Additional Services of Consultants, including additional civil, structural, mechanical and electrical engineering services and those provided under Section 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of one point one (1.10) times the amounts billed to the Architect for such services.

Such additional fee is for coordination of the additional services work.

11.4 REIMBURSABLE EXPENSES

For Reimbursable Expenses, as described in Section 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of one point one (1.10) times the expenses incurred by the Architect, the Architect's employees and consultants directly related to the Project.

11.5 ADDITIONAL PROVISIONS

11.5.1 If the Basic Services covered by this Agreement have not been completed within twelve (12) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Sections 10.3.3 and 11.3.2.

11.5.2 Payments are due and payable thirty (30) days from the date of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

Interest rate for unpaid amount in excess of thirty (30) days shall bear interest at a rate of twelve percent (12%) per annum.

11.5.3 The rates and multiples set forth for Additional Services shall be adjusted in accordance with the normal salary review practices of the Architect. See attached Exhibit "B" for HMM's 2008 Standard Hourly Rate Schedule.

ARTICLE 12 OTHER CONDITIONS OR SERVICES

12.1 ADDITIONAL SERVICES (not a part of Basic Services)

- 12.1.1 Landscape design, specifications and construction administration services.
- 12.1.2 Computer, closed circuit television and telecommunication systems design.
- 12.1.3 Security system design.
- 12.1.4 Coordination, selection and procurement of furniture, fixtures and equipment.

12.2 The Owner shall provide a geotechnical report and an existing building, utility, boundary and topographic survey.

12.3 A contingency amount of eight percent (8%) of the Cost of the Work shall be included in the Owners Budget for changes in the Work during construction.

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

EXHIBIT "B"

Hatch Mott MacDonald 2008 Hourly Rate Schedule

Hour*

Principal	\$215.00
Principal Project Manager / Principal Architect / Principal Engineer / Principal Landscape Architect	\$200.00
Sr. Project Engineer / Sr. Project Architect / Sr. Project Manager / Sr. Landscape Architect	\$170.00
Project Manager	\$140.00
Project Engineer	\$125.00
Project Architect	\$120.00
Engineer III/IV / Architect III/IV	\$100.00
Engineer I/II / Architect I/II	\$ 92.00
Sr. Specialist	\$110.00
Specialist V/ Designer V	\$105.00
Specialist IV/Designer IV	\$100.00
Specialist III /Designer III.	\$ 85.00
Technician II	\$ 75.00
Technician I	\$ 65.00
Inspector V	\$ 95.00
Inspector IV	\$ 90.00
Inspector III	\$ 80.00
Inspector II/Specialist II	\$ 60.00
Inspector I/Specialist I	\$ 50.00
Senior Surveyor	\$140.00
Surveyor V.	\$115.00
Surveyor IV.	\$ 90.00
Surveyor III	\$ 70.00
Surveyor II	\$ 50.00
Surveyor I	\$ 45.00
Administrative Assistant III & IV	\$ 65.00
Administrative Assistant I & II	\$ 45.00
1 – Person with robotic equipment	\$ 85.00
2 – Person Survey Crew	\$125.00
3 – Person Survey Crew	\$150.00
4 – Person Survey Crew	\$175.00

Notes

- * Hourly rates for special consultations and services in conjunction with litigation are available on request.
- * Rates are for straight time hours. Rates multiplied by 1.5 for overtime hours for applicable personnel.
- * Rates for additional personnel can be provided upon request.

EXPENSES

Mileage @ IRS Rate	\$0.505 / mile
All Other Direct Cost	Direct + 10%

January 1, 2008

**CITY COUNCIL MEETING
REPORTS OF SPECIAL COMMITTEES**

NOTES:

BOARD OF ZONING ADJUSTMENTS REPORT:

DOWNTOWN REDEVELOPMENT AUTHORITY REPORT:

INDUSTRIAL DEVELOPMENT BOARD:

LIBRARY BOARD:

PLANNING COMMISSION REPORT:

RECREATION BOARD REPORT:

UTILITY BOARD REPORT:

**CITY COUNCIL MEETING
MAYOR'S REPORT**

NOTES:

**AGREEMENT BETWEEN THE CITY OF DAPHNE AND LARRY JACKSON FOR
THE LANDSCAPING MAINTENANCE OF CITY OF DAPHNE REAL PROPERTY
LOCATED AT 26435 PUBLIC WORKS ROAD**

RECITALS

THIS LANDSCAPING MAINTENANCE AGREEMENT, hereinafter referred to as ("Agreement"), is made and entered into as of its adoption by the City Council of the City of Daphne, Alabama, on this the ____ day of _____, 2008, (the "Effective Date"), by and between THE CITY OF DAPHNE, an Alabama municipal corporation (hereinafter called "*CITY*") located at 1705 Main St., Daphne, Alabama, 36526, and LARRY JACKSON (hereinafter called "*JACKSON*") who resides at 26378A County Road 13, Daphne, Alabama, 36526.

WITNESSETH:

WHEREAS, *CITY* is an Alabama municipal corporation owning certain real property (hereinafter called "*FIELD*"), located between the *CITY'S* Public Works and Sports Complex buildings, located within the *CITY* limits at 26435 Public Works Road; and

WHEREAS, *JACKSON* is an individual over nineteen (19) years of age and desires to perform landscaping maintenance to the *FIELD* in exchange for keeping all debris and clippings for personal use; and

WHEREAS, the *CITY* desires to have all *CITY* real property maintain a manicured and presentable appearance,

NOW THEREFORE, for and in consideration of the mutual covenants and promises as are hereinafter set forth and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, the *CITY* and *JACKSON* hereby agree as follows:

**SECTION 1
Definitions**

1.1 The CITY/JACKSON Agreement means the agreement entered into between the *CITY* and *JACKSON* whereby *JACKSON* has agreed to perform needed landscaping maintenance to the *FIELD* in exchange for keeping all debris and clippings for personal use.

1.2 Landscaping means the modifying of a natural landscape by clearing, grading, or mowing.

1.3 Maintenance means required labor in order to perform all necessary landscaping duties under this agreement

SECTION 2
JACKSON'S Rights and Obligations

2.1 General Engagement *JACKSON* hereby engages the *CITY* and *JACKSON* hereby agrees to perform all necessary landscaping maintenance functions to the *FIELD* so that *JACKSON* may retain all debris and clippings for personal use. *JACKSON* further agrees that he is not entitled to compensation in any form from the *CITY* for services rendered pursuant to the Agreement and is responsible for providing all necessary equipment, fuel, and other materials necessary to complete said landscaping maintenance.

2.2 Liability *JACKSON* assumes any and all liability resulting from or related to the landscaping maintenance services he provides to the *CITY* pursuant to this agreement. *JACKSON* hereby holds *CITY* harmless for any and all damages to person or property or loss of property, including himself, resulting from or related to the landscaping maintenance provided to the *CITY* pursuant to this Agreement. *JACKSON* agrees that he enters into this Agreement freely and voluntarily with the *CITY* and understands and agrees to all provisions contained therewith.

SECTION 3
Compensation

3.1 Payment *JACKSON* shall not be entitled to, nor shall the *CITY* provide in any form, compensation for services rendered pursuant to the Agreement nor shall *JACKSON* be entitled to reimbursement for necessary equipment, fuel, and other materials necessary for services rendered pursuant to the Agreement.

3.2 Entitlement to Grass Removal *JACKSON* shall be entitled to the removal of all debris and clippings from the *FIELD* for his personal use. *JACKSON* agrees that he is responsible for the removal from the *FIELD* of all debris and clippings whether used for his personal use or not. *JACKSON* will leave the *FIELD* in a manicured and presentable appearance after each time he performs landscaping maintenance services pursuant to this Agreement.

SECTION 4
CITY'S Rights and Obligations

4.1 Compensation and Reimbursement The *CITY* possesses no liability nor responsibility to compensate or reimburse *JACKSON* for the landscaping maintenance services pursuant to this Agreement nor is *CITY* responsible for providing necessary equipment, fuel, and/or other materials necessary to complete said landscaping maintenance. The *CITY* shall not act as a surety on behalf of *JACKSON* for the purchase equipment pursuant to this Agreement.

4.2 Liability The *CITY* disowns and disavows all liability for any injury to person, or property, or interest therein resulting in any way directly or indirectly from the performance of landscape maintenance to the *FIELD* by *JACKSON* pursuant to this Agreement so long as *JACKSON* continues to perform said landscape maintenance services.

4.3 Notice The *CITY* shall provide notice to *JACKSON* at all times during the duration of this Agreement whenever it shall desire the *FIELD* to be maintained. The *CITY* and *JACKSON* may develop a landscaping maintenance schedule for the *FIELD* should they desire.

SECTION 5 Term and Termination

5.1 Term The term of this Agreement will commence on the Effective Date and will continue in effect indefinitely until termination appropriate under Section 5.2 of this Agreement.

5.2 Termination This Agreement may be terminated as follows:

- 1) By mutual agreement of the *CITY* and *JACKSON*; or
- 2) By 10 day written notice by either party; or
- 3) By failure of *JACKSON* to perform the landscape maintenance of the *FIELD* pursuant to this agreement within 10 days after notice of the need for his services by the *CITY*; or
- 4) Death, physical incapacity, or sickness rendering *JACKSON* unable to perform the landscape maintenance services pursuant to this Agreement.
- 5) The terms of this agreement are not assignable by *JACKSON*.

SECTION 6 Construction of Agreement

6.1 Relationship of the Parties The relationship of the *CITY* to *JACKSON* is that of an independent contract. Nothing contained herein shall create an employer-employee, principal-agent, or partnership relationship between the *CITY* and *JACKSON*.

6.2 Assignment *JACKSON* may not assign any or all of his rights and responsibilities under this Agreement to any other party or entity, even if entity is controlling or controlled by, or under common control with the *CITY* without prior written consent of the *CITY*, which consent may be unreasonably withheld.

6.3 Amendments This Agreement may be amended only by written agreement signed by the parties hereto.

6.4 Section Headings The headings of sections in this Agreement are for reference only and shall not affect the meaning of this Agreement.

6.5 Entire Agreement This Agreement, inclusive of any and all amendments, attachments and exhibits incorporated herein by reference, constitutes the entire understanding and agreement between the parties with regard to the subject matter hereof. No other prior or

contemporaneous promise, obligation, statement or understanding between the parties, whether written or oral, shall be valid or binding.

6.6 **Binding Effect** this Agreement shall be binding upon and inure to the benefit of each party hereto and their successors and permitted assigns.

6.7 **No Third Party Beneficiary Rights** No individual, entity, nor shall any other third party have any third party beneficiary rights under this Agreement.

6.8 **Compliance with Terms** Failure to insist upon strict compliance with any of the terms or conditions of this Agreement shall not be deemed to be a waiver in the event of any future breach of any term or condition hereunder.

6.9 **Severability** Should any provision (or part thereof) of this Agreement be held to be invalid and/or unenforceable, the remaining provisions shall remain in full force and effect.

6.10 **Governing Law** This Agreement shall be governed by the laws of the State of Alabama, without giving effect to its conflicts of law provisions.

SECTION 7
Effective Date

7.1 **Effective Date** This Agreement shall be in full force and effect upon its adoption by the City Council of the City of Daphne and any publication as required by law.

LARRY JACKSON
Date: _____

FRED SMALL
MAYOR
CITY OF DAPHNE, ALABAMA
Date: _____

ATTEST:

DAVID COHEN
CITY CLERK, MMC

CITY ATTORNEY'S REPORT

NOTES:

DEPARTMENT HEAD'S COMMENTS

**CITY COUNCIL MEETING
RESOLUTIONS, ORDINANCES, ORDERS & OTHER BUSINESS**

NOTES:

RECOMMENDATIONS

COUNCIL COMMENTS:

CITY OF DAPHNE ORDINANCE NO. 2008-54

AN ORDINANCE REGULATING EROSION AND SEDIMENT CONTROL FOR RESIDENTIAL DWELLING AND OTHER LAND DISTURBANCE WITHIN THE CITY OF DAPHNE

WHEREAS, the City Council of the City of Daphne, Alabama deems it to be in the best interest of public health, safety, general welfare and for the benefit of its citizens to establish regulations for erosion and sedimentation control; and,

WHEREAS, it is in the best interest of the citizens of the City of Daphne and the continued development of the area to implement satisfactory controls for sedimentation and erosion for residential dwellings and other land disturbance within the City of Daphne; and,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA AS FOLLOWS:

SECTION I: PURPOSE

The intent of this Ordinance is to provide minimum standards to ensure effective storm water management, drainage management, and erosion and sediment control measures for residential dwellings and any other activity that results in more than one thousand (1000) square feet land disturbance within the City of Daphne other than activities that would require the issuance of a site disturbance permit from the Community Development Department and the exceptions for land disturbances as noted in Section III.

SECTION II: DEFINITIONS

For the purposes of this Ordinance, the following words and phrases shall have the meaning respectively ascribed to them by this section unless taken specific exception to elsewhere in this ordinance:

- 1). **Best Management Practices** means a wide range of methods and procedures to control the addition of pollutants in the environment and to effectively control the quality and/or quantity of storm water runoff and which are implemented and maintained in accordance with established industry standards, good engineering practices, and the Alabama Handbook for Erosion Control, Sediment Control, and Storm Water Management on Construction Sites and Urban Areas, (www.swcc.state.al.us).
- 2). **Building Inspector** means a City employee who under general supervision, performs technical review of plans and building permit applications for completeness and general compliance to State regulations, model codes and local ordinances. Conducts field inspections of building construction, reconstruction and alterations at various stages and at completion to assure compliance with approved plans and specifications.

- 3). **Clearing** any activity that removes the vegetative surface cover.
- 4). **City** means the City of Daphne, Alabama.
- 5). **Code Enforcement Officer** means the City employee who carries out the City's code enforcement program whereby individuals in violation of City codes and related regulations are identified, investigated, and corrected utilizing appropriate enforcement measures.
- 6). **Community Development Director** means the City employee who plans, organizes and reviews the activities and operations of the Community Development Department including planning, and community and neighborhood enhancement.
- 7). **Contractor** means a person or his designee who is responsible for construction or any other type of land disturbing activity.
- 8). **Erosion** means the process by which land surface is worn away by the action of wind, water, ice and/or gravity.
- 9). **Erosion and Sediment Control Plan** means a plan for the control of soil erosion and sediment resulting from a land disturbing activity.
- 10). **Grading** excavation or fill of material, including the resulting conditions thereof.
- 11). **Land Disturbing Activity** means any and all activities which results in more than one thousand (1000) square feet of land disturbance and or change to the existing storm water drainage characteristics of land.
- 12). **Permittee means** any person who obtains a Land Disturbance Permit from the City of Daphne Building Department.
- 13). **Sedimentation** means the process by which eroded material is transported and deposited by the action of wind, water, ice and/or gravity.
- 14). **Site Containment Inspector** means the City employee who under general supervision, performs technical review of Best Management Practices Plans, Erosion and Sediment Control Plans and land disturbance permit applications for completeness and general compliance to State regulations, model codes and local ordinances. Conducts field inspections of permitted land disturbance sites, during construction and at completion to assure compliance with approved plans and specifications.
- 15). **Stabilize** means installing structural measures or soil cover to reduce soil erosion by storm water runoff, wind, ice, gravity or mechanical activity.
- 16). **Storm Water Management** means all natural and man-made elements used to convey storm water from the first point of impact within the construction site to a suitable outlet location.

SECTION III: APPLICABILITY EXCEPTIONS

This Ordinance shall apply to residential dwellings and any other land disturbance within the City of Daphne; and, undertaken by any person on any land within the City of Daphne's city limits except for the following:

- 1). Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
- 2). Any land disturbance which requires a Right-of-Way Permit from the Public Works Department of the City of Daphne.
- 3). Existing nursery, agricultural and silvicultural operations.
- 4). Any land disturbance activity which has a Site Disturbance Permit from the City of Daphne's Community Development Director or his designee.

SECTION IV: EROSION AND SEDIMENT CONTROL: MINIMUM REQUIREMENTS

- 1). Best Management Practices shall be required for all land disturbing activities. It shall be the sole responsibility of the contractor/or permittee to promptly implement effective Best Management Practices in accordance with the contractor's land disturbance permit and submitted Construction Best Management Practices Plan prior to commencing the land disturbing activity. The contractor/or permittee shall be solely responsible for ensuring that all Best Management Practices are implemented and maintained for the entire duration of the land disturbing activity. The contractor/or permittee shall also be solely responsible for ensuring that the Best Management Practices are in accordance with established industry standards, good engineering practices, and all standards as set out in the Alabama Handbook for Erosion and Sediment Control, and Storm Water Management on Construction Sites and Urban Areas, (www.swcc.state.al.us).
- 2). In the event the Best Management Practices are found to be in need of maintenance or improvements, the contractor/or permittee shall commence and implement all necessary maintenance to the Best Management Practices within forty-eight (48) hours of notice or as soon as practical as conditions may allow.
- 3). That in addition to implementing all necessary maintenance or improvements to the Best Management Practices Plan, the contractor/or permittee shall remove any offsite sediments resulting from erosion and/or tracking from the permitted site and stabilize any area disturbed during the removal.
- 4). The contractor and/or permittee shall permanently stabilize any roadside ditches or embankments in right-of-ways to prevent erosion caused by their land disturbing activity.

- 5). The contractor and/or permittee shall provide the necessary measures to ensure that drainage structures important to overall storm water management and control are not adversely affected by clearing, grading, or any other land disturbing activities.
- 6). The contractor and/or permittee shall ensure proper implementation, regular inspection and continual maintenance of effective Best Management Practices to protect the physical, chemical and biological integrity of groundwater and surface waters.
- 7). The contractor and/or permittee shall design, implement and regularly maintain Best Management Practices in order to provide effective treatment of discharges of pollutants in storm water resulting from runoff generated by storm events during the land disturbing activity.
- 8). The contractor and/or permittee shall permanently stabilize areas that were disturbed during construction of site prior to issuance of Certificate of Occupancy.

SECTION V: CONSTRUCTION SITE SOLID WASTE MANAGEMENT; MINIMUM REQUIREMENTS

The contractor and/or permittee shall ensure proper onsite containment and disposal of all construction site trash, debris and any other solid waste, including concrete and brick mortar, in any way resulting from the land disturbing activity.

SECTION VI: PERMIT APPLICATION REQUIRED

- 1). A permit for residential dwellings and other land disturbance within the City of Daphne; shall be required. No person, firm, business or corporation shall engage in any land disturbing activity prior to obtaining a land disturbance permit from the City of Daphne's Building Department. For new construction and additions, the land disturbance permit is incorporated into the building permit and the building permit must be obtained prior to land disturbance.
- 2). A permit shall be issued to either the titled owner of the said real property or the general contractor/or permittee charged with the contractual obligation of the construction activity.
- 3). A fee of fifty dollars (\$50.00) shall be charged and collected by the City of Daphne, Building Department, for the issuance of the land disturbing permit fee.
- 4). When constructing a residential dwelling, all applications for land disturbing permits shall be accompanied by a Best Management Practices Plan. It is not required that the Best Management Practices Plan be prepared by an engineer, but the plan shall meet all minimum requirements set out in Alabama Handbook for Erosion and Sediment Control, and Storm Water Management on Construction Sites and Urban Areas, (www.swcc.state.al.us).

SECTION VII: ENFORCEMENT

Failure or refusal to implement and maintain Best Management Practices shall be sufficient cause for the City of Daphne, through either a Building Inspector, Site Containment Inspector or Code Enforcement Officer, to issue an order suspending all work on the land disturbing site until satisfactory measures are taken to comply with the city code.

This ordinance may also be subject to enforcement by the issuance of a summons and complaint pursuant to Ordinance No. 2005-55, Establish Penalties and Enforcement for Violation of Municipal Ordinances, and Ordinance No. 1993-02, Summons and Compliant Schedule of Fines, as amended from time to time. That each day constitutes a separate violation of this Ordinance.

SECTION VIII: PENALTIES; INJUNCTIVE RELIEF

Any person found to be in violation of any provision of this ordinance shall be punished by a fine of not less than fifty dollars (\$50.00), but not more than five hundred dollars (\$500), or imprisonment not to exceed one-hundred and eighty days (180), or both.

In addition to the other remedies so provided herein, the city retains the right to bring an action for injunctive relief to require the payment of damages for, and/or removal from the City or its police jurisdiction, all sediment which has migrated off-site as a result of erosion due to land disturbing activities or has the potential to migrate off-site.

SECTION IX: REPEALER

Ordinance No. 2007-03 is specifically repealed in its entirety and any other ordinances or parts of ordinances conflicting with the provisions of this ordinance is hereby repealed in so far as they conflict.

SECTION X: SEVERABILITY

Should any section or provision of this article be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of any of the remaining provisions of this ordinance.

SECTION XI: EFFECTIVE DATE.

This Ordinance shall take effect and be in force from and after the date of its approval by the City Council of the City of Daphne and publication as required by law.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS _____ DAY OF _____, 2008.

GREG BURNAM,
CITY COUNCIL PRESIDENT
Date & Time Signed: _____

FRED SMALL, MAYOR
Date & Time Signed: _____

ATTEST:

DAVID COHEN, CITY CLERK, MMC

ORDINANCE 2008 - 60

**Lodging Tax Appropriation:
D'Olive Creek Pedestrian Bridge Crossing**

WHEREAS, the Fiscal Year 2009 budget is being considered; and

WHEREAS, the City Council wishes to consider a Lodging Tax appropriation prior to the adoption of the Fiscal Year 2009 budget;

WHEREAS, pursuant to Ordinance 2000-34, Lodging Tax funds may be used for the purchase, development, and maintenance of beachfront property; and

WHEREAS, certain improvements are necessary at D'Olive Creek.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that Lodging Tax funds in the amount of \$ 82,320 for the D'Olive Creek Pedestrian Bridge Crossing are hereby appropriated and shall be made a part of the Fiscal Year 2009 Budget upon the adoption thereof.

APPROVED AND ADOPTED by the City Council of the City of Daphne, Alabama, this _____ day of _____, 2008.

Date & Time Signed:_____

Fred Small, Mayor
Date & Time Signed:_____

ATTEST:

David L. Cohen, City Clerk MMC

ORDINANCE 2008 - 61

MS4 Monitoring Plan

WHEREAS, the Fiscal Year 2009 budget is being considered; and

WHEREAS, the City Council wishes to consider a General Fund appropriation prior to the adoption of the Fiscal Year 2009 budget;

WHEREAS, on July 21, 2008, the City Council did authorize the Mayor to sign a MS4 Storm Water Monitoring Plan Inter-Jurisdictional Agreement with the Cities of Spanish Fort and Fairhope; and

WHEREAS, such Agreement requires each co-permittee to participate in the hiring of a consultant to design a plan.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that a General Fund appropriation in the amount of \$ 6,250 is hereby approved for the City of Daphne's participation in the hiring of a design consultant for the MS4 Monitoring Plan and such appropriation shall be made a part of the Fiscal Year 2009 Budget upon the adoption thereof.

APPROVED AND ADOPTED by the City Council of the City of Daphne, Alabama, this _____ day of _____, 2008.

Council President
Date & Time Signed: _____

Fred Small, Mayor
Date & Time Signed: _____

ATTEST:

David L. Cohen, City Clerk MMC

**CITY OF DAPHNE, ALABAMA
ORDINANCE NO. 2008-64**

**AN ORDINANCE TO AMEND TO ECONOMIC
DEVELOPMENT AGREEMENT**

WHEREAS, the City of Daphne and Renaissance Center L.L.C. originally entered into a certain Economic Development Agreement on December 3, 2007 ("**Economic Development Agreement**"); and,

WHEREAS, certain amendments to the **Economic Development Agreement** to said **Economic Development Agreement** have been determined to be necessary for the benefit of the project and for clarification of certain rights and responsibilities of the Development; and,

WHEREAS, the City Council of the City of Daphne after due consideration and upon deliberation HAS DETERMINED IT to be in the best interest of the City to approve and pass said **Economic Development Agreement**; and

NOW, THEREFORE, BE IT ORDAINED THAT BY THE CITY COUNCIL OF THE CITY OF DAPHNE as follows:

SECTION 1: That the ATTACHED amendment to the **Economic Development Agreement** by and between the City of Daphne an Alabama Municipal Corporation, (**CITY**) and Renaissance Center LLC. an Alabama Limited Liability Company (**DEVELOPER**) and the Renaissance Improvement District be and hereby approved;

SECTION II: That Mayor Fred Small be and hereby authorized to execute such amendment to the **Economic Development Agreement** on behalf of the City of Daphne.

SECTION III: **EFFECTIVE DATE**: That this Ordinance shall take effect and be in force from and after the date of its approval by the City of Daphne Council and publication as required by law.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA ON THE _____ DAY OF _____, 2008

Council President
Date and Time Signed: _____

Fred Small, Mayor
Date and Time Signed: _____

ATTEST:

David Cohen, City Clerk MMC