

**CITY COUNCIL BUSINESS MEETING AGENDA  
1705 MAIN STREET, DAPHNE, AL  
MAY 2, 2011  
BUSINESS MEETING  
6:30 P.M.**

**1. CALL TO ORDER**

**2. ROLL CALL/INVOCATION /  
PLEDGE OF ALLEGIANCE**

**3. APPROVE MINUTES:** Council meeting minutes / April 18, 2011

**RECOGNITION:** Daphne High School International Baccalaureate Students

**PRESENTATION:** Huntingdon College

**PROCLAMATION:** National Correctional Office Week / May 1-7, 2011

**PROCLAMATION:** National Police Week / May 15-21, 2011

**PROCLAMATION:** American Cancer Society Relay for Life / Paint the Town Purple

**PUBLIC HEARING: *Rezoning: GCD Acquisitions I, L.L.C.***

***Property Located:*** Northwest of the intersection of Anchor Cross Boulevard and U. S. Highway 90,  
Lot 2A of the re-subdivision of Lot 2, Medical Office Building and Cancer  
Center of Malbis

***Present Zoning:*** B-2, General Business District

***Requested Zoning:*** R-4, High Density Multi-Family Residential District

***Recommendation:*** No recommendation

**RESCHEDULE EMPLOYEE HEARING DATE**

**4. REPORT STANDING COMMITTEES:**

**A. FINANCE COMMITTEE / Boulware**

**B. BUILDINGS & PROPERTY COMMITTEE- Lake**

**C. PUBLIC SAFETY COMMITTEE – Palumbo**

Review minutes / April 13<sup>th</sup>

**MOTION:** Authorize the Mayor to enter into a contract with Electronic Tracking Systems Services

**D. CODE ENFORCEMENT/ORDINANCE COMMITTEE - Palumbo**

**E. PUBLIC WORKS COMMITTEE / SOLID WASTE AUTHORITY - Yelding**

Review minutes / April 8<sup>th</sup>

a.) **MOTION:** Authorize the Mayor to enter into a contract with the State of Alabama for the state to maintain the area beside BBVA Compass Bank

b.) **MOTION:** Authorize the Mayor to enter into a Cooperative Maintenance Agreement with ALDOT for: Highway 90 - the roadside between US Hwy 98 (Mile Marker 44.40) to eastern city limit boundary (Mile Marker 48.47) – a total of 4.07 miles & Highway 98 - from the northern city limit boundary (Mile Marker 34.09) to the southern city limit boundary (Mile Marker 41.52) – a total of 7.43 miles

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

- A. Board of Zoning Adjustments – Jones**
- B. Downtown Redevelopment Authority – Barnette**  
Review minutes / April 25<sup>th</sup>
- C. Industrial Development Board – Yelding**
- D. Library Board – Lake**
- E. Planning Commission – Barnette**
- F. Recreation Board – Reese**
- G. Utility Board - Scott**

**6. REPORTS OF OFFICERS:**

- A. Mayor’s Report**
  - a.) ABC License / Top of the Bay / 010 – Lounge Retail Liquor – Class I
- B. City Attorney’s Report**
- C. Department Head Comments**

**7. PUBLIC PARTICIPATION:**

**8. RESOLUTIONS & ORDINANCES:**

**RESOLUTIONS:**

**NO RESOLUTIONS**

**ORDINANCES:**

**2<sup>ND</sup> READ**

- a.) Approving Hiring Freeze Exception / Grounds Public Service Worker. . . . . /Ordinance 2011-30
- b.) Appropriation: Mobile Bay National Estuary Program . . . . . /Ordinance 2011-31
- c.) Appropriation: Campbell Swamp Appraisal . . . . . /Ordinance 2011-32
- d.) Appropriation: Library & Recreation HAVC Unit Replacement. . . . . /Ordinance 2011-33
- e.) Appropriation: PW/Used Wheel Loader. . . . . /Ordinance 2011-34

**1<sup>ST</sup> READ**

- f.) Rezone: GCD Property. . . . . /Ordinance 2011-35

**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

**APRIL 18, 2011  
CITY COUNCIL MEETING  
1705 MAIN STREET  
DAPHNE, AL  
6:30 P.M.**

**1. CALL TO ORDER**

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

**2. ROLL CALL/INVOCATION/PLEDGE OF ALLEGIANCE**

Invocation was given by Councilman Boulware.

**COUNCIL MEMBERS PRESENT:** Bailey Yelding; Cathy Barnette; John Lake; Kelly Reese; Ron Scott; Derek Boulware; August Palumbo arrived at 6:34 p.m.

Also present: David Cohen, City Clerk; Rebecca Hayes, Assistant City Clerk; Jay Ross, City Attorney; James White, Fire Chief; David McKelroy, Recreation Director; Tonja Young, Library Director; Kim Briley, Finance Director; Vickie Hinman, Human Resource Director; David Carpenter, Police Chief; Margaret Thigpen, Civic Center Director; Jane Ellis, Mayors Assistant; Ashley Campbell, Environmental Programs Manager; Officer Houston Sanders, Police Department; Willie Robison, BZA; Joe Lemoine, Planning Commission.

Absent: Mayor Small; Adrienne Jones, Planning Director; Richard Johnson, Public Works Director; Richard Merchant, Building Official.

**3. APPROVE MINUTES**

**MOTION BY Councilman Boulware to adopt the April 4, 2011 Council meeting minutes.  
*Seconded by Councilman Scott.***

**AYE ALL IN FAVOR                      NAY NONE OPPOSED                      MOTION CARRIED**

**MOTION BY Councilman Boulware to adopt the April 11, 2011 Council Work Session minutes.  
*Seconded by Councilman Scott.***

**AYE ALL IN FAVOR                      NAY NONE OPPOSED                      MOTION CARRIED**

**4. REPORT OF STANDING COMMITTEES:**

**NOTE:** Councilman Palumbo arrived at 6:34 p.m.



d.) Reject Bids: 2011-P-Recr/Parks Extended Cab Truck and purchase from State Bid List

**MOTION BY Councilman Scott to reject Bids: 2011-P-Recr/Parks Extended Cab Truck and purchase from State Bid List. *Secoded by Councilman Yelding.***

**AYE** Yelding, Reese, Scott, Boulware, Palumbo, Barnette

**NAY** Lake

**MOTION CARRIED**

**Treasurers Report:**

**MOTION BY Councilman Boulware to accept the Treasurer's Report as of March 31, 2011, in the amount of \$21,590,791.28. *Secoded by Councilman Yelding.***

**AYE ALL IN FAVOR**

**NAY NONE OPPOSED**

**MOTION CARRIED**

The next meeting will be May 9<sup>th</sup> in the Executive Conference room.

Councilman Scott reported that Mrs. Briley has brought forth the preliminary figures for 2010. He is very happy to report that they added to the reserves, and if you remember when three of the current council members and the mayor came on board there was approximately \$4 million in reserves. At the end of 2010 there is over \$12 million, and they added almost \$400,000 to the reserves last year. Even though they had budgeted to use some of the reserves, through a great effort by the staff, by Mrs. Briley, the Mayor and by the will of this council things ended up better than they thought they would last year.

**B. BUILDINGS AND PROPERTY COMMITTEE – Lake**

The minutes for the March 7<sup>th</sup> and April 4<sup>th</sup> meetings are in the packet. No other report.

**C. PUBLIC SAFETY COMMITTEE – Palumbo**

Councilman Palumbo stated that the committee had considered in the past an Electronic Tracking Systems Services agreement, and had sent it to council, but it has not been on the agenda. He said that this agreement will be on the next council agenda.

**D. CODE ENFORCEMENT/ORDINANCE COMMITTEE – Palumbo**

No report.

**E. PUBLIC WORKS COMMITTEE/SOLID WASTE AUTHORITY – Yelding**

The minutes for the January 18<sup>th</sup>, February 21<sup>st</sup> and March 21<sup>st</sup> meetings are in the packet. Councilman Yelding handed out the Public Works Director's report. Councilman Yelding reported that the TimberCreek Boulevard preconstruction meeting was held April 13<sup>th</sup>, and work will be scheduled to begin April 25<sup>th</sup>. Lake Forest Road Project work has begun, and full mobilization began today. The slab has been poured for the bathrooms at Park City Park.

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

**A. Board of Zoning Adjustments – Mrs. Jones**

Mr. Willie Robison reported that the board met April 7<sup>th</sup> to consider two (2) appeals. The first one they approved the rebuilding of the apartment building at Lake Forest Apartments. The second one withdrew his appeal, and will seek rezoning of R-4, High Density. There will not be a meeting in May.

**B. Downtown Redevelopment Authority – Barnette**

The next meeting will be Monday at 5:15 p.m.

**C. Industrial Development Board – Yelding**

The minutes for the March 28<sup>th</sup> meeting are in the packet. The Baldwin County Alliance updated the board on some projects around the area which are the HK Automobile Plant is currently working on its financing, and will know in the next 90 days whether this project is viable, the EADS has purchased a Canadian helicopter repair facility in Andalusia which continues the expansion in the area and Austal's expansion of 2,000 additional employees which will have an impact on Daphne.

**D. Library Board – Lake**

The minutes for the January 6<sup>th</sup>, February 3<sup>rd</sup> and March 3<sup>rd</sup> meetings are in the packet. Councilman Lake mentioned the usage of the community room and computer room has doubled from last year.

**F. Planning Commission – Barnette**

The Site Review meeting has been rescheduled for the 25<sup>th</sup> at 9:00 a.m., and the regular Planning Commission meeting will be next Thursday at 5:00 p.m.

**F. Recreation Board – Reese**

No report. The meetings are only on an as needed basis. Councilman Reese stated that the city calendar should be updated with this new schedule.

**G. Utility Board – Scott**

The minutes from the February 23<sup>rd</sup> meeting are in the packet. He will leave the audited financial statement for September 30 2010, and the March 30<sup>th</sup> packet in the council work room for review. Daphne Utilities was again awarded special recognition for the many achievements in the area of the

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Alabama Rural Water Association. Also, ADEM recognized Daphne Utilities in their Wall of Fame. The next meeting will be the last Wednesday of the month at 5:00 p.m. in the council chambers.

Councilman Lake asked Councilman Scott if the bridge he read about in the paper was being paid for with Utility Funds.

Councilman Scott answered no that it was being paid for by Utility employees, and by volunteers and donations of product. He thinks that the Public Works Department is assisting in the construction.

Councilman Yelding asked Councilman Scott for an update on the bridge.

Councilman Scott stated that there was a death a couple of years ago of a young lady, and her body was left on the edge of the Utility property on Main Street near Alligator Alley. People have been placing flowers there as a tribute for some time, and it is a little bit dangerous where they are putting the flowers, because that is the main waste water treatment plant, and they have vehicles coming in and out. Some of the employees thought it would be good to have some type of memorial for Ms. Parrish, and they designed a bridge that goes to nowhere. It is like a life unfinished, just like the bridge is unfinished. They had a ground breaking Thursday evening, and it was covered by the local press. The family was there, and they were very gracious in talking about what a great area, and what a great community Daphne is.

**6. REPORTS OF THE OFFICERS:**

***A. Mayor's Report***

- a.) ABC License / Dollar General / 050 – Retail Beer (Off Premises Only) / 070 – Retail Table Wine (Off Premises Only)
- b.) ABC License / Champy Famous Fried Chicken / 040 – Retail Beer (On or Off Premises) / 060 Retail Table Wine (On or Off Premises)
- c.) Parade Permit / Daphne United Methodist Church / Annual 5K and Fun Run / April 23, 2011

**MOTION BY Councilman Boulware to approve:**

- a.) ABC License / Dollar General / 050 – Retail Beer (Off Premises Only) / 070 – Retail Table Wine (Off Premises Only)**
- b.) ABC License / Champy Famous Fried Chicken / 040 – Retail Beer (On or Off Premises) / 060 Retail Table Wine (On or Off Premises)**
- c.) Parade Permit / Daphne United Methodist Church / Annual 5K and Fun Run / April 23, 2011**

*Seconded by Councilman Palumbo.*

**AYE ALL IN FAVOR**

**NAY NONE OPPOSED**

**MOTION CARRIED**

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***B. City Attorney Report***

Mr. Ross reported that there was one item that needs attention. There is an employee appeal from a termination by action of the mayor. Council has 15 days to schedule a hearing which will be May 9<sup>th</sup>. As done in the past it becomes a matter of going into Executive Session under the Open Meetings Act of a Quasai Judicial Proceeding. He felt it would take a couple of hours. Council needs to schedule the hearing sometime between now and May 9<sup>th</sup>.

**MOTION BY Councilman Scott to schedule a Special Called Council meeting for May 27, 2011 at 6:30 p.m. for an Employee Hearing. *Seconded by Councilman Palumbo.***

**Councilman Palumbo stated for the record that he may not be available at that time.**

**AYE** Yelding, Lake, Reese, Scott, Boulware, Barnette

**NAY** Palumbo

**MOTION CARRIED**

***C. Department Head Comments***

***Margaret Thigpen – Civic Center Director*** – reported that there were 219 tickets sold for the Ballroom Dance, and Zydeco is May 20<sup>th</sup>.

***David McKelroy – Recreation Director*** - reported that the Easter Egg Hunt was last Saturday. The restrooms at Trione will be ready by the end of the month. May 14<sup>th</sup> and 15<sup>th</sup> the Mobile Spring Soccer tournament will be using all the fields. Last year they had 104 teams registered. There will be a softball tournament May 21<sup>st</sup> and 22<sup>nd</sup>, and they already have 24 teams registered. He congratulated the Daphne baseball team for winning the Area 3 Championship, and will host Baldwin County Friday night at 4:00 p.m. and 7:00 p.m. Spanish Fort won the area championship, and will be host Faith Academy Friday at 4:00 p.m. and 6:30 p.m.

***Tonja Young - Library Director*** – reported that the Library now has Rosetta Stone Spanish, French, Italian and German. They are in the process of developing a new website.

***Ashley Campbell - Environmental Programs Manager – Reporting for Building Official*** - reported that the building report is in the packet. She voiced her support for ordinance 2011-31 for the Mobile National Estuary Program. She mentioned that they are having a field trip to one of the sites causing problems for the D'Olive Watershed, and invited council to come along.

**7. PUBLIC PARTICIPATION**

***Mr. Kevin Spriggs – Owner of businesses in Daphne*** –spoke regarding the sign ordinance saying that it is detrimental to the businesses in the City of Daphne.

Councilman Palumbo requested that Scenic Alabama be on the next Work Session agenda.

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*Mr. Willie Robison – 560 Stuart Street* – alerted council that he will be coming forth with a request asking for a contribution of \$5,000 to help military families of servicemen overseas.

Council President Barnette suggested that he take this to the Finance Committee for their next meeting.

**8. RESOLUTIONS, ORDINANCES, ORDERS AND OTHER BUSINESS**

**RESOLUTIONS:**

- a.) **Bid Award: PW/Used Wheel Loader / Caterpillar Financial Services Corp (Thompson Tractor)...../Resolution 2011-34**
- b.) **Bid Award: Concrete Pipe / Hanson Pipe & Precast...../Resolution 2011-35**
- c.) **Bid Award: Skid Steel Loader / Thompson Tractor Co ...../Resolution 2011-36**
- d.) **Garbage Truck Lease Financing / Hancock Bank ...../Resolution 2011-37**
- e.) **Declaring Certain Property Surplus ...../Resolution 2011-38**
- f.) **Agreement: Daphne Volunteer Firefighters Assoc. Inc. / FD Burn Building Training Center / Fire Truck & Equipment ...../Resolution 2011-39**
- g.) **Community Contributions: Lake Forest Yacht Club 2011 Sailboat Race ...../Resolution 2011-40**
- h.) **Ennis Property Acquisition...../Resolution 2011-41**

**MOTION BY Councilman Scott to waive the reading of Resolutions 2011-34, 2011-35, 2011-36, 2011-37, 2011-38, 2011-39, 2011-40 and 2011-41. *Seconded by Councilman Boulware.***

**AYE ALL IN FAVOR                      NAY NONE OPPOSED                      MOTION CARRIED**

**MOTION BY Councilman Scott to adopt Resolutions 2011-34, 2011-35 and 2011-36. *Seconded by Councilman Boulware.***

**AYE ALL IN FAVOR                      NAY NONE OPPOSED                      MOTION CARRIED**

MOTION BY Councilman Scott to adopt Resolution 2011-37. *Seconded by Councilman Boulware.*

AYE ALL IN FAVOR            NAY NONE OPPOSED            **MOTION CARRIED**

MOTION BY Councilman Scott to adopt Resolution 2011-38. *Seconded by Councilman Yelding.*

AYE Yelding, Reese, Scott, Boulware, Palumbo, Barnette            NAY Lake

**MOTION CARRIED**

MOTION BY Councilman Scott to adopt Resolution 2011-39. *Seconded by Councilman Yelding.*

AYE ALL IN FAVOR            NAY NONE OPPOSED            **MOTION CARRIED**

MOTION BY Councilman Boulware to adopt Resolution 2011-40. *Seconded by Councilman Scott.*

AYE ALL IN FAVOR            NAY NONE OPPOSED            **MOTION CARRIED**

MOTION BY Councilman Boulware to adopt Resolution 2011-41. *Seconded by Council Lake.*

AYE ALL IN FAVOR            NAY NONE OPPOSED            **MOTION CARRIED**

**ORDINANCES:**

**1<sup>ST</sup> READ**

- a.) Approving Hiring Freeze Exception / Grounds Public Service Worker. .... /Ordinance 2011-30
- b.) Appropriation: Mobile Bay National Estuary Program. .... /Ordinance 2011-31
- c.) Appropriation: Campbell Swamp Appraisal ..... /Ordinance 2011-32
- d.) Appropriation: Library & Recreation HAVC Unit Replacement. .... /Ordinance 2011-33
- e.) Appropriation: PW/Used Wheel Loader. .... /Ordinance 2011-34

**ORDINANCES 2011-30, 2011-31, 2011-32, 2011-33, 2011-34 WERE MADE 1<sup>ST</sup> READ.**

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**8. COUNCIL COMMENTS**

*Councilman Lake* said that he was going to continue to press the issue of buying Daphne.

*Councilman Scott* stated that they have had the ongoing discussion of when they balanced this year's budget they had to find \$300,000 someplace which was what they have been referring to as the hiring freeze, and the genesis of that was that they looked at what open positions they were able to save money on over the last few years, and it was roughly \$300,000. He thinks that council has acted wisely in looking at these positions and replacing the ones they feel are critical, and he thinks they have replaced almost all of them except, maybe, one (1) or two (2). Through the first five (5) months of the fiscal year they have saved approximately \$140,000 in open positions, so with those open positions, and they will continue to be open, that is just the nature of this beast. He feels like they are in good shape toward that, and the fact that they are almost \$500,000 ahead of sales and use tax budget. He feels like that they have had five (5) consecutive months where the percentages of collection of sales tax over 2010 have all been positive, and have increased each month percentage wise.

*Councilman Boulware* recognized Mr. Bill Eady who passed away this past week. He was with the city of Daphne for over 18 years. Their thoughts and prayers are with the Eady family. He should be honored for his service to the City of Daphne. He commented on the city's financial picture, and he has a slightly different slant from Councilman Scott. The city is looking good on collections above projections for 2011, but his concern is that they started the year by pulling \$800,000 from reserves. Of course, \$500,000 was in the form of an ordinance for road repairs. They made an ordinance that they would budget \$500,000 a year for road repairs and road improvements, and in fact they are looking at \$800,000 that they have to get back just to get to zero. Currently, as Councilman Scott says, they are almost \$500,000 above projection, but that is not getting the city in the black, that is getting the city closer to getting out of the red. Of course, they established the budget based on certain elements that would allow them to get to that point. They have put those elements in place in hopes that they would, and one of those was the hiring freeze. It has its flaws, and it is not a perfect plan, but it is the plan that they agreed on. He believes that they need to adhere to those plans, and have the resolve to hold tight to them. There is nothing to say that they won't end the year better than they had hoped, and there is nothing to say that they won't end the year worse than they thought. That is crystal ball stuff they do not know what the future is going to hold. All they know is what is front of them. What they have is historic record, and they base projections off what they know, and the facts. Some have said that it is becoming politically incorrect to stand firm on something whenever it seems like the majority is going away from you on that, and maybe it is. It is not what they are here to do, they are here to represent Daphne to the best of their ability. The best of his ability is to say that they have a plan, and they have got to stay on course and ride this thing out. Next year for 2012 they will have a new plan, and he would like to see them to make some changes, but for this year he would encourage the council to hold fast, and see this thing through, and learn what they need to learn from mistakes that they have made, and not make them again.

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*Council President Barnette* reported that Mrs. Jane Ellis has been working to reestablish the May Day Celebration. They are starting small this year, and are looking to combine it with the May Brown Bag by the Bay series, and also do the Guarisco dedication on that date. Posters and information will be forth coming. She appreciates Mrs. Ellis’s work in reinvigorating that celebration. For those that have been in Daphne a long time, they do not know if they will have a queen. They are looking forward to getting volunteers that want to build the celebration to what it used to be for Daphne.

**9. ADJOURN**

**MOTION BY Councilman Scott to adjourn. *Seconded by Councilman Yelding.***

**AYE ALL IN FAVOR                      NAY NONE OPPOSED                      MOTION CARRIED**

**There being no further business to discuss the meeting adjourned at 7:40 p.m.**

Respectfully submitted by,

\_\_\_\_\_  
David L. Cohen,  
City Clerk, MMC

Certification by Presiding Officer:

\_\_\_\_\_  
Cathy S. Barnette,  
Council President

Office of the Mayor  
Daphne, Alabama

## RECOGNITION

### *DAPHNE HIGH SCHOOL INTERNATIONAL BACCALAUREATE STUDENTS*

*WHEREAS, the City of Daphne recognizes the importance of education in today's world; and*

*WHEREAS, the City of Daphne supports the International Baccalaureate Program at Daphne High School; and*

*WHEREAS, the Internal Baccalaureate Program is considered the premier high school curriculum for college preparation, and maintains the highest level of respect and rigor known internationally; and*

*WHEREAS, Daphne High School students have completed college level courses in six different subjects during their junior and senior years comprising 13 high school credits out of their 31 credits; and*

*WHEREAS, these students complete an independent research paper of 4,000 words, and earned a minimum of 150 hours of community service.*

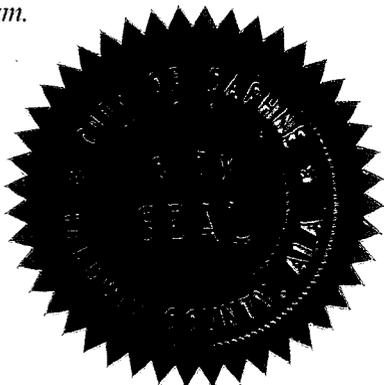
*NOW, THEREFORE, the Mayor and City Council of the City of Daphne do hereby recognize the achievements attained through the International Baccalaureate Program by the following students:*

*Robert Allen  
Russell Beason  
Matthew Brown  
Nicholas Burt  
O'Keshia Cooks  
Kenneth Corley  
Daphne Gautier  
Alexandria Gomez*

*Amanda Hein  
José Hernández  
Veronica Jackson  
Cody John  
Michael Miskovski  
Tiffany Nabors  
Dillon Nettles  
David Ouellet*

*Dalton Pierce  
Cherilyn Ramsey  
Megan Rider  
Hails Seawell  
Kelvin Sinha  
Brenna Smith  
Lauren Walmsley  
Perrin Windham*

*The Mayor and City Council are confident that the International Baccalaureate Program has prepared each one of these students to face the future prepared for success, and congratulates them for completion of this program.*



*Fred Small, Mayor*

**ATTEST:**

*David L. Cohen, City Clerk, MMC*

**City of Daphne, Alabama  
Office of Mayor**

**PROCLAMATION**

**NATIONAL CORRECTIONAL OFFICER WEEK  
May 1, 2011 – May 7, 2011**

**WHEREAS**, on May 1, 2011 through May 7, 2011 will be celebrated across the United States as "*National Correctional Officer Week*," and

**WHEREAS**, our Correction Officers are on the job 24 hours a day, 7 days a week, and whatever emergency might occur, they are there; and

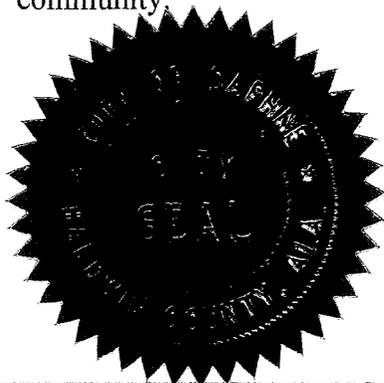
**WHEREAS**, the week will be dedicated to increasing the public awareness of the excellent job performed by the Correction Officers of the Daphne Police Department, and their efforts to protect public safety; and

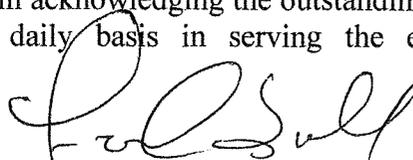
**WHEREAS**, other criminal justice agencies and members of the public are encouraged to acknowledge the important role the Correction Officers of the Daphne Police Department perform in the protection and service to the City of Daphne and its citizens.

**Now, Therefore**, the Mayor and City Council of the City of Daphne do hereby proclaim the week of May 1 through May 7, 2011 as:

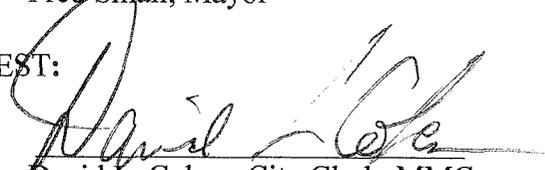
***NATIONAL CORRECTIONAL OFFICER WEEK***

And encourage the citizens of Daphne to share in acknowledging the outstanding job the correction professionals perform on a daily basis in serving the entire community.



  
Fred Small, Mayor

ATTEST:

  
David L. Cohen, City Clerk, MMC

City of Daphne, Alabama  
Office of the Mayor

**PROCLAMATION**  
**National Police Week – May 15 – 21, 2011**

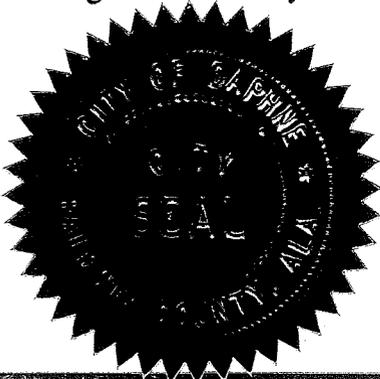
**Whereas**, The Congress and President of the United States have designated May 15 as Peace Officers' Memorial Day, and the week in which May 15<sup>th</sup> falls as National Police week; and

**Whereas**, the members of the law enforcement agency of the City of Daphne play an essential role in safeguarding the rights and freedoms of the City of Daphne; and

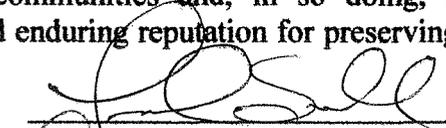
**Whereas**, it is important that all citizens know and understand the duties, responsibilities, hazards, and sacrifices of their law enforcement agency, and that members of our law enforcement agency recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; and

**Whereas**, the men and women of the law enforcement agency of the City of Daphne unceasingly provide a vital public service;

**Now, therefore**, I, Mayor of the City of Daphne, call upon all citizens of Daphne and upon all patriotic, civic and educational organizations to observe the week of May 15-21, 2011, as Police Week and observe Sunday, May 15<sup>th</sup>, as Peace Officers' Memorial Day with appropriate ceremonies and observances in which all of our people may join in commemorating law enforcement officers, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their communities and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.



ATTEST:

  
Fred Small, Mayor

  
David L. Cohen, City Clerk, MMC

*City of Daphne*

## **PROCLAMATION**

### **AMERICAN CANCER SOCIETY RELAY FOR LIFE**

*Paint the Town Purple!*

**WHEREAS**, the American Cancer Society is continually seeking funding and resources to support a cure for cancer.

**WHEREAS**, each year for over twenty years, the American Cancer Society has sponsored "*Relay For Life*".

**WHEREAS**, this event is a culmination of fundraising, teambuilding, support, networking and helping our fellow neighbors all coming together for a night of fun, excitement, tears and joy.

**WHEREAS**, the "*Relay for Life of the Eastern Shore*" is special in that we pull together and as a community show our strength in the fight against cancer and build toward a stronger future.

**WHEREAS**, "*Relay For Life*" represents the hope that those lost to cancer will never be forgotten, that those who face cancer will be supported and that one day cancer will be eliminated; and

**NOW THEREFORE BE IT PROCLAIMED**, that the City of Daphne is a supporter of the American Cancer Society's mission and the Relay for Life of the Eastern Shore event to be held on May 13, 2011 at Daphne High School. The City of Daphne declares this date as "*Relay for Life Day in Daphne*". We hereby encourage each resident of the City of Daphne to support the American Cancer Society, the Relay For Life Event and join us in our efforts in turning the City of Daphne purple during "Paint the Town Purple" month.



\_\_\_\_\_  
Mayor Fred Small

**PUBLIC HEARING LIST  
FOR COUNCIL MEETING**

**MAY 2, 2011**

**TO CONSIDER:**

**Rezone:** *GCD Acquisitions I, L.L.C.*

**Property Located:** Northwest of the intersection of Anchor Cross Boulevard and U. S. Highway 90, Lot 2A of the re-subdivision of Lot 2, Medical Office Building and Cancer Center of Malbis

**Present Zoning:** B-2, General Business District

**Requested Zoning:** R-4, High Density Multi-Family Residential District

**Recommendation:** No recommendation

To: Office of the City Clerk  
From: Adrienne D. Jones, Director of Community Development  
Subject: GCD Acquisitions I, L.L.C.  
Zoning Amendment Review  
Date: March 25, 2011

## MEMORANDUM

**PRESENT ZONING:** B-2, General Business

**PROPOSED ZONING:** R-4, High Density Multi-Family Residential

**LOCATION:** Northwest of the intersection of Anchor Cross Boulevard and U. S. Highway 90, Lot 2A of the Resubdivision of Lot 2, Medical Office Building and Cancer Center of Malbis

**RECOMMENDATION:** At the Thursday, March 24, 2011, regular meeting of the Daphne Planning Commission, nine members were present and the motion to set forth an unfavorable recommendation failed. Five members voted in the affirmative and four dissented. Although the majority of those present voted in favor of the motion, a super majority would have been necessary for an unfavorable recommendation.

The appropriate documentation and action of the Daphne Planning Commission has been provided to the City Attorney for preparation of the ordinance. Upon receipt of said documentation, please place on the appropriate City Council agenda to set the public hearing for on Monday, April 4, 2011.

Thank you,  
ADJ/jd

cc: file

attachment(s)

1. Community Development Report
2. Petition
3. Legal description
4. Map of property
5. Conceptual Site Plan Map
6. Adjacent property owners' list
7. Typical building elevation

# COMMUNITY DEVELOPMENT ZONING AMENDMENT REVIEW

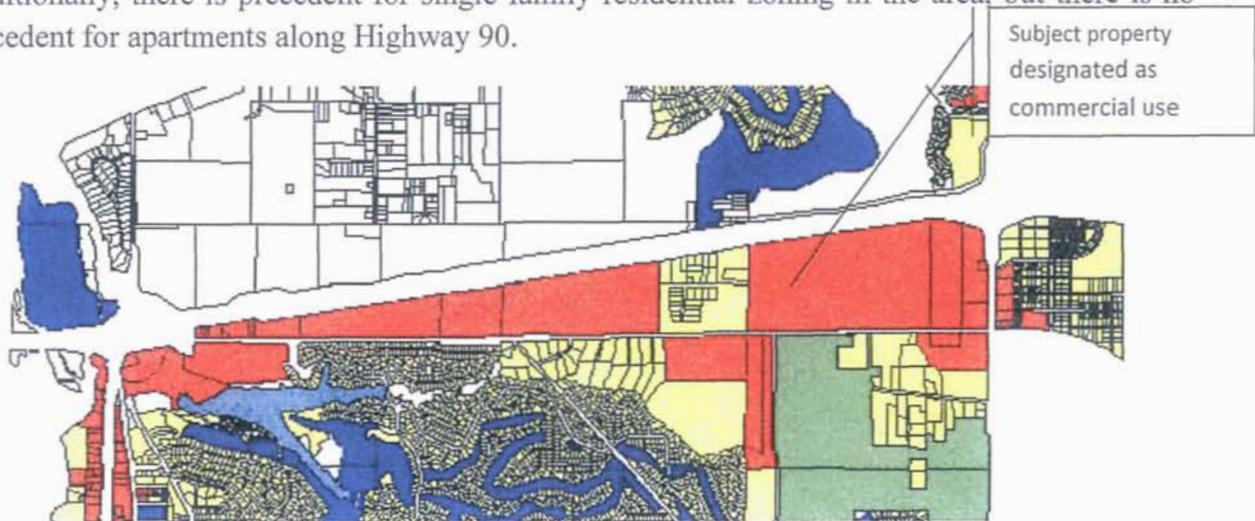
GCD Acquisitions I, L.L.C

## B-2 TO R-4

GCD Acquisitions, LLC proposes to rezone Lot 2A of the Resubdivision of Lot 2, Medical Office Building and Cancer Center of Malbis, an 11 acre site located northeast of the intersection of Highway 90 and County Road 13. The property is currently zoned B-2, General Business. The applicant proposes to rezone the site to R-4 High Density Multi-family Residential for apartments. The site abuts the Cancer Center of Malbis to the south, the proposed interchange to Interstate 10 right-of-way to the west, and the undeveloped right-of-way for Anchor Cross Boulevard to the east. Other than the Cancer Center, all neighboring properties are undeveloped sites with B-2 zoning designation.

### Excerpt from Future Land Use Map

The Future Land Use Map designates the subject property as commercial. The current zoning is consistent with the comprehensive plan, whereas, the R-4 multi-family proposal is not. Additionally, there is precedent for single family residential zoning in the area, but there is no precedent for apartments along Highway 90.



### Excerpt from the Comprehensive Plan

“...a future land use map... was produced to guide growth and development. The land use plan for the City of Daphne is for retail commercial development to be clustered along major arterial roads and major intersections, while office-commercial uses are concentrated in the Daphne Avenue and downtown areas. Residential development forms a hierarchal pattern, with higher density residential uses abutting commercial areas. One intent of this pattern is to preserve the cohesiveness and stability of low density neighborhoods while allowing convenient access from major and minor arterial roads to high density residential areas.”

**Zoning Recommendation:** The Comprehensive plan says that “*higher density residential uses should abut commercial areas, and that high density residential areas should be permitted in locations with convenient access from major and minor arterial roads.*” The question to consider is whether or not the City promotes the integration of high density residential uses into this area.

Staff Recommendation-DENIAL

**THE CITY OF DAPHNE**  
**PLANNING DEPARTMENT**  
**APPLICATION FOR ZONING AMENDMENT**

Application Number: Z11-01 Date Plat Submitted: 2/24/11

Date Presented: 3/24/11

Name of Owner: GCD Acquisitions I, LLC

Address: 3328 Peachtree Rd, Ste 300 Atlanta, GA 30326 Telephone# 404-442-7888  
(Street or P.O. Box) (City) (State) (Zip Code)

Name of Authorized Agent, if other than owner: Markes & Williams, LLC

Address: Two Midtown Plaza, Ste 1150, 1349 W. Peachtree St, Atlanta, GA Telephone# 404-892-3999  
(Street or P.O. Box) (City) (State) (Zip Code) 30309

Subdivision: Medical Office Buid

Lot(s): 2A Unit \_\_\_\_\_

- Two (2) copies of legal description of the subject property.
- Two (2) copies of subdivision plat or site plan drawn to scale, (28" x 36").
- List of the names and mailing addresses for the adjacent property owners (Date Submitted: 02/24/11).

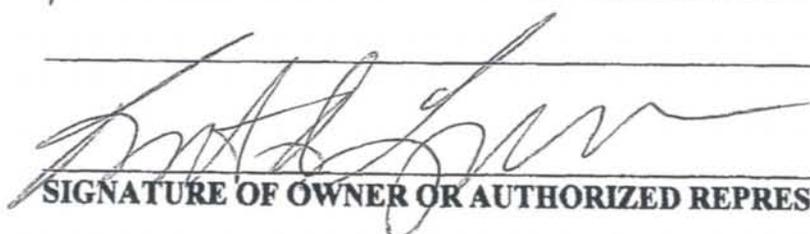
Meeting Dates:

Planning Commission: 3/24/11

City Council: \_\_\_\_\_

Reason(s) for requesting the Zoning Amendment:

Need property rezoned from B-2 to R-4 Multi-family to allow 14 units per acre.

  
\_\_\_\_\_  
**SIGNATURE OF OWNER OR AUTHORIZED REPRESENTATIVE**

(Application for a Zoning Amendment information shall be that of the owner of the subject property).

APPLICATION FOR ZONING AMENDMENT

STATE OF ALABAMA)  
COUNTY OF BALDWIN)  
CITY OF DAPHNE)

This is to certify that I (we) the undersigned am the owner(s) of said property and do hereby request the City of Daphne to grant a Zoning Amendment for said property for the reasons outlined herein:

1) Description of property for which amendment is requested:

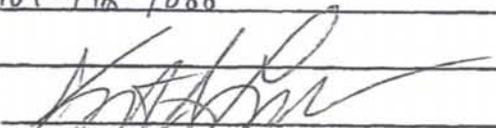
- a) Address \_\_\_\_\_
- b) Name of Subdivision Medical Office Build
- c) Lot numbers involved in change Lot 2A
- d) Total acreage of change ~11 acres
- e) Recorded in Map Book \_\_\_\_\_ Page 1166 439
- f) Owned in whole by the undersigned? Yes.
- g) If owned in part, name(s) of co-owner(s):  
\_\_\_\_\_  
\_\_\_\_\_

2) Zoning change requested:

- a) Present classification of property B-2
- b) Reclassification desired B-4 Multi-Family
- c) Character of neighborhood \_\_\_\_\_

3) Certifications:

- a) Owner's Name GCD Acquisitions I, LLC
- b) Address 3328 Peachtree Rd, Ste 300, Atlanta, GA 30326
- c) Telephone Number 404-442-7888
- d) Date \_\_\_\_\_

  
\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Signature of Property Owner

GCD ACQUISITIONS I, L.L.C.  
ZONING AMENDMENT REVIEW

NORTHWEST OF THE INTERSECTION  
OF U.S. HIGHWAY 90 AND ANCHOR CROSSING BOULEVARD

EXHIBIT "A"

(LOT 2A, THE RESUBDIVISION OF LOT 2, MEDICAL OFFICE AND CANCER  
CENTER SUBDIVISION)

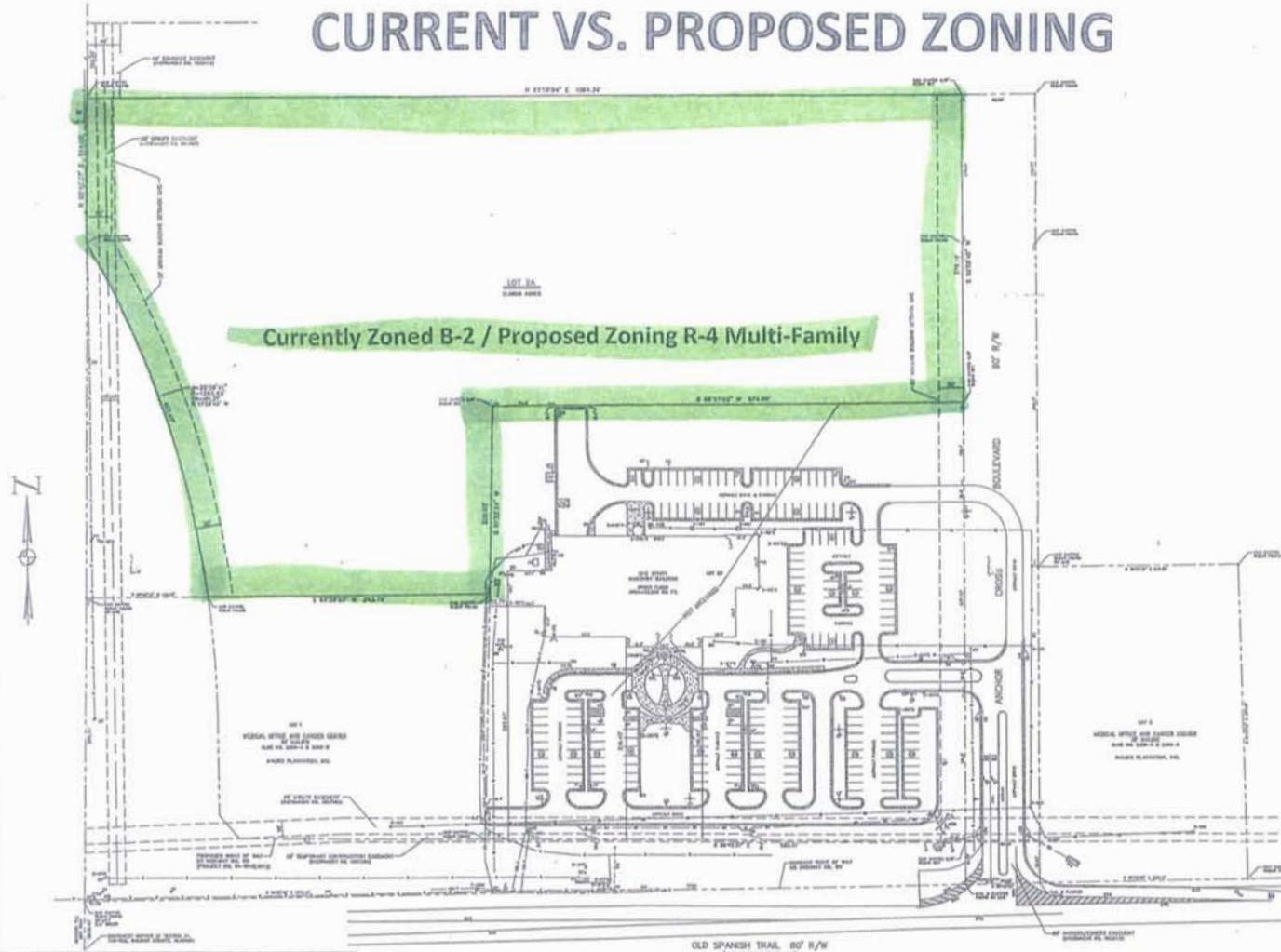
STATE OF ALABAMA)  
COUNTY OF BALDWIN)

LEGAL DESCRIPTION:

LOT 2A, RESUBDIVISION OF LOT 2, MEDICAL OFFICE BUILDING AND CANCER CENTER OF MALBIS, AS PER PLAT RECORDED IN THE BALDWIN COUNTY PROBATE COURT RECORDS SLIDE No. 2411-B. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH WEST CORNER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 2 EAST BALDWIN COUNTY, RUN N 00° 45' 37" E 2,938.43 FEET MORE OR LESS, TO THE INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY 90, THENCE RUN N 89° 02' 24" E 1,075.10 FEET TO THE INTERSECTION OF THE WEST RIGHT OF WAY LINE OF ANCHOR CROSS BOULEVARD, AS RECORDED IN THE BALDWIN COUNTY PROBATE COURT RECORDS SLIDE No. 2368-A. THENCE RUN N 00° 08' 46" E 54.79 FEET TO A POINT, THENCE RUN N 00° 08' 46" E 537.46 FEET TO THE POINT OF BEGINNING; THENCE RUN S 89° 37' 02" W 574.08 FEET TO A POINT; THENCE RUN S 01° 22' 24" W 230.62 FEET TO A POINT; THENCE RUN S 89° 30' 23" W 343.74 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF COUNTY ROAD 13, SAID POINT BEING ON THE ARC OF A CURVE THAT IS CONCAVE SOUTHWESTWARDLY HAVING A CENTRAL ANGLE OF 20°59'41" AND A RADIUS OF 1,265.92 FEET; THENCEALON THE ARC OF SAID CURVE RUN NORTHWESTWARDLY 463.87 FEET TO A POINT, SAID POINT BEARS N 17°58'43" W 461.27 FEET FROM THE LAST DESCRIBED POINT; THENCE RUN N 00° 45' 37" E 174.20 FEET TO A POINT; THENCE RUN N 89° 58' 04" E 1,154.34 FEET TO A POINT ON THE AFOREMENTIONED WEST RIGHT OF WAY LINE OF ANCHOR CROSS DRIVE; THE NC RUN S 00° 08' 46" W 376.19 FEET ALONG TO THE POINT OF BEGINNING AND CONTAINING: 11.0061 ACRES.

# CURRENT VS. PROPOSED ZONING



Currently Zoned B-2 / Proposed Zoning R-4 Multi-Family

ZONING			
EXISTING ZONINGS			
100	100	100	100
101	101	101	101
102	102	102	102
103	103	103	103
104	104	104	104
105	105	105	105
106	106	106	106
107	107	107	107
108	108	108	108
109	109	109	109
110	110	110	110
111	111	111	111
112	112	112	112
113	113	113	113
114	114	114	114
115	115	115	115
116	116	116	116
117	117	117	117
118	118	118	118
119	119	119	119
120	120	120	120



GCD ACQUISITIONS I  
ZONING AMENDMENT  
EXHIBIT "B"

**RECAPITULATION**  
 LOT 2A, RECONSTRUCTION OF LOT 2, MEDICAL OFFICE BUILDING AND GARAGE CENTER OF BUILDING, AS PER PLAN REVISION NO. 02, DATED 08/14/2018, IN THE CITY OF MOBILE, ALABAMA.

**NO. 02, PLAN REVISION NO. 02, DATED 08/14/2018**  
 REVISIONS TO THE ORIGINAL PLAN:  
 1. REVISED THE ZONING FROM B-2 TO R-4 MULTI-FAMILY.  
 2. REVISED THE LOT AREA FROM 1.25 ACRES TO 1.15 ACRES.  
 3. REVISED THE LOT DIMENSIONS FROM 100' X 100' TO 100' X 115'.

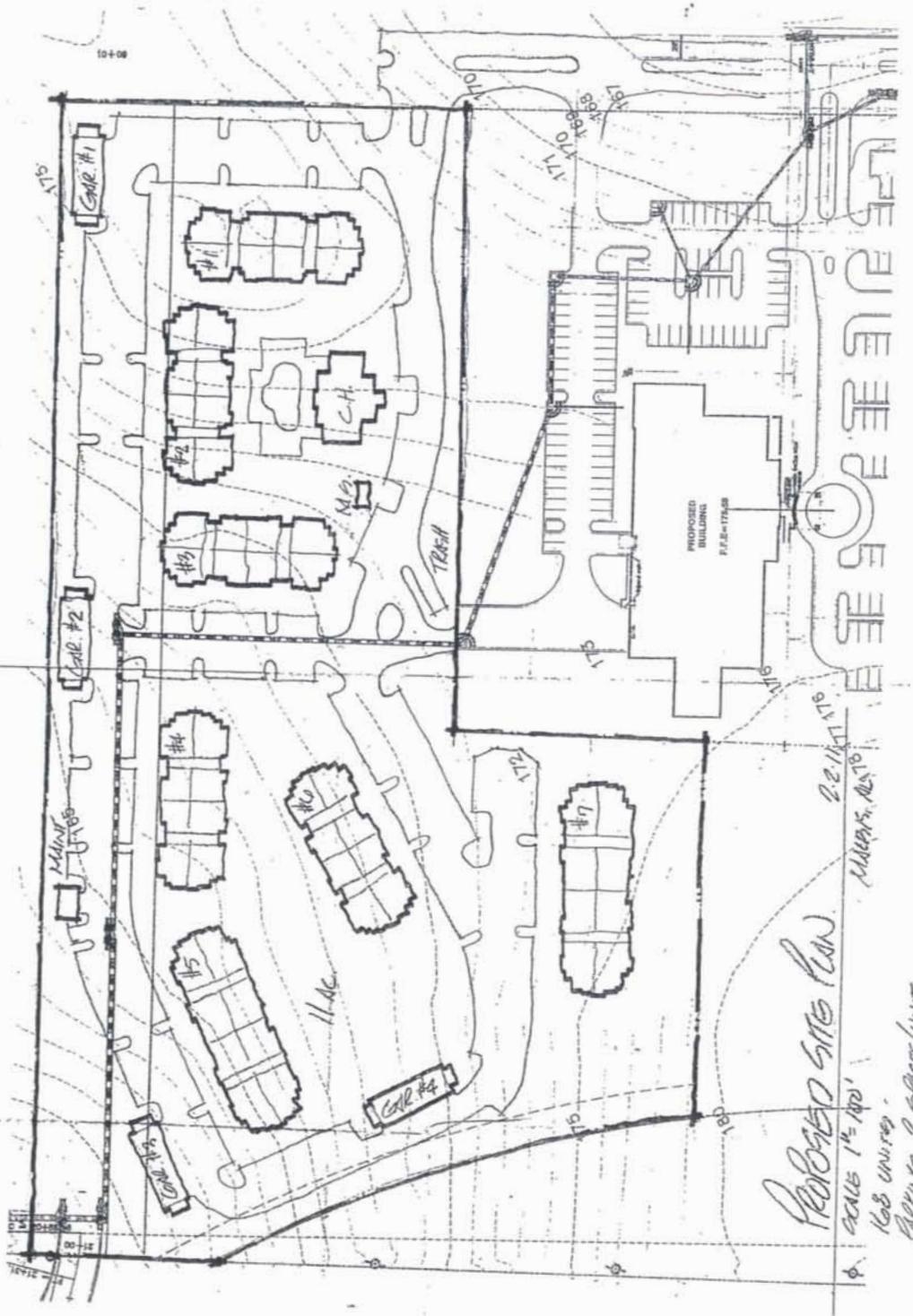
**REVISIONS TO THE ORIGINAL PLAN:**  
 1. REVISED THE ZONING FROM B-2 TO R-4 MULTI-FAMILY.  
 2. REVISED THE LOT AREA FROM 1.25 ACRES TO 1.15 ACRES.  
 3. REVISED THE LOT DIMENSIONS FROM 100' X 100' TO 100' X 115'.

**REVISIONS TO THE ORIGINAL PLAN:**  
 1. REVISED THE ZONING FROM B-2 TO R-4 MULTI-FAMILY.  
 2. REVISED THE LOT AREA FROM 1.25 ACRES TO 1.15 ACRES.  
 3. REVISED THE LOT DIMENSIONS FROM 100' X 100' TO 100' X 115'.

ALTA/ACSM LAND TITLE SURVEY  
 FOR  
 HAINES CANNON CENTER, LLC  
 LOT 2A  
 RECONSTRUCTION OF LOT 2, MEDICAL OFFICE BUILDING  
 AND GARAGE CENTER OF BUILDING  
 MOBILE, AL, TRS-02, SURVIVOR LOCATED, ALABAMA

RESTER AND COLEMAN  
 ENGINEERS, INC.  
 60 WESTERN PARK WEST, MOBILE, ALABAMA 36688-0148  
 TELEPHONE NO. (251) 478-9148  
 FAX NO. (251) 478-8552

DATE	BY	REVISIONS	SCALE
08/14/2018	JK	01	1"=50'
08/14/2018	JK	02	1"=50'
08/14/2018	JK	03	1"=50'
08/14/2018	JK	04	1"=50'
08/14/2018	JK	05	1"=50'
08/14/2018	JK	06	1"=50'
08/14/2018	JK	07	1"=50'
08/14/2018	JK	08	1"=50'
08/14/2018	JK	09	1"=50'
08/14/2018	JK	10	1"=50'
08/14/2018	JK	11	1"=50'
08/14/2018	JK	12	1"=50'
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08/14/2018	JK	95	1"=50'
08/14/2018	JK	96	1"=50'
08/14/2018	JK	97	1"=50'
08/14/2018	JK	98	1"=50'
08/14/2018	JK	99	1"=50'
08/14/2018	JK	100	1"=50'



PROPOSED SITE PLAN  
 SCALE 1" = 40'  
 108 UNITS  
 PARKING & SPACES UNIT  
 D.H.C.

**Adjacent Property Owners  
Names & Mailing Address  
February 24, 2011**

Malbis Cancer Center, LLC  
29653 Anchor Cross Rd  
Daphne, AL 36526

Malbis Plantation, Inc  
29470 St Hwy 181  
Daphne, AL 36526



1 BUILDING TYPE A FRONT ELEVATION  
SCALE 1" = 20'-0"



2 BUILDING TYPE A REAR ELEVATION  
SCALE 1" = 20'-0"



4-01-09

Easlan Prototype

MILLER/PLAYER & ASSOCIATES  
ARCHITECTS AND PLANNERS, LTD.  
1010 east north street, greenville, s.c.  
(864) 242-0177

**CITY OF DAPHNE, ALABAMA  
ORDINANCE NO. 2011-**

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**Ordinance to Rezone Property Located  
Northwest of intersection of Anchor Cross Blvd. and U.S. Hwy. 90**

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**WHEREAS**, GCD Acquisitions I, L.L.C., as the owner of certain real property located within the City of Daphne, Alabama, has requested that said property be rezoned from B-2, General Business to R-4, High Density Multi-Family Residential; and,

**WHEREAS**, said real property is Northwest of the intersection of U.S. Highway 90 and Anchor Crossing Boulevard, and more particularly described as follows:

Lot 2A, Resubdivision of Lot 2, Medical Office Building and Cancer Center of Malbis, as per plat recorded in the Baldwin County Probate Court records Slide No. 2411-B. Being more particularly described as follows:

Commencing at the Southwest Corner of Section 34, Township 4 South, Range 2 East Baldwin County, Run N 0045'37"E 2,938.43 feet more or less, to the intersection of the North right of way line of U. S. Highway 90, thence run N 8902'24"E 1,075.10 feet to the intersection of the West right of way line of Anchor Cross Boulevard, as recorded in the Baldwin County Probate Court records Slide No. 2368-A. Thence run N 0008'46"E 54.79 feet to a point, thence run N0008'46"E 537.46 feet to the Point of Beginning; thence run S8937'02"W 574.08 feet to a point; thence run S0f22'24"W 230.62 feet to a point; thence run S8930'23"W 343.74 feet to a point on the East right of way line of County Road 13, said point being on the arc of a curve that is concave Southwestwardly having a central angle of 2059'41" and a radius of 1,265.92 feet; thence along the arc of said curve run Northwestwardly 463.87 feet to a point, said point bears N1758'43"W 461.27 feet from the last described point; thence run N0045'37"E 174.20 feet to a point; thence run N8958'04"E 1,154.34 feet to a point on the aforementioned West right of way line of Anchor Cross Drive; the NC run S0008'46"W 376.19 feet along to the Point of Beginning and containing 11.0061 acres.

**WHEREAS**, at the City of Daphne Planning Commission meeting on March 24, 2011, the Commission considered said request and set forth no recommendation to the City Council of the City of Daphne regarding said property rezoning request; and,

**WHEREAS**, due notice of said proposed rezoning has been provided to the public as required by law through publication and open display at the Daphne Public Library and City Hall, a public hearing was held before the City Council on May 2, 2011; and,

**WHEREAS**, the City Council of the City of Daphne after due consideration and upon consideration of the recommendation of the Planning Commission, deemed that said application for rezoning of the above described real property is proper and in the best interest of the health, safety and welfare of the citizens of the City of Daphne, Alabama; and

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

**SECTION I: ZONING**

That above described real property is hereby rezoned from B-2, General Business to R-4, High Density Multi-Family Residential, and that the zoning ordinance and zoning map be amended to reflect the said zoning change.

**SECTION II: REPEALER.**

All other City Ordinances or parts thereof in conflict with the provisions of this Ordinance, in so far as they conflict, are hereby repealed.

**SECTION III: SEVERABILITY.**

The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence, or part thereof shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of said Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence, and part thereof separately and independently of each other.

**SECTION IV: 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 after publication as required by law.

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS \_\_\_\_\_ day of \_\_\_\_\_, 2011.**

\_\_\_\_\_  
**Cathy S. Barnette,**  
**Council President**

\_\_\_\_\_  
**Fred Small,**  
**Mayor**

**ATTEST:**

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

**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**

## **Public Safety Committee**

*Wednesday, April 13, 2011*

Councilman Gus Palumbo, Chairman  
Councilman Derek Boulware  
Councilman Kelly Reese  
Fire Chief James White

Police Chief David Carpenter  
Captain Scott Taylor  
Captain Daniel Bell  
Tracy Bishop - Secretary

### **Committee Members Attending:**

Councilman Gus Palumbo, Councilman Derek Boulware, Councilman Kelly Reese, Chief David Carpenter, Lt. Ric Yelding, Chief James White, and Melvin McCarley.

### **CALL TO ORDER**

Councilman Palumbo **convened** the meeting at 4:35 p.m.

**PUBLIC PARTICIPATION** – Jennifer Miller was in attendance to request a crosswalk at Hwy 181 & Urgent Care Dr. There are sidewalks across the street in the shopping center but no way to access the shopping opportunities due to a lack of a crosswalk. She was advised that there had been some big changes in ALDOT personnel and change in our public works director since we last looked at this issue. Jennifer advised that in 2009 she first made contact with the council about this issue. There was no advocate for the project. Chief Carpenter asked if she got any accident statistics from Fairhope or Foley where crosswalks are already in place because he stated that the statistics show that when a crosswalk is put across a major highway that there are many more pedestrian accidents. That would be our only fear. Chief Carpenter reiterated that he is not against it by any means; he is just worried about the safety of the pedestrians. Jennifer said it would have to be very heavily marked to grab the drivers' attention. She attached a location map showing the proposed crosswalk. Palumbo forwarded to Jennifer a letter from Richard Johnson from ALDOT. Mr. Palumbo promised that we would keep this on the front burner. Jennifer stated that if she could help in any way or gather more information to give her a call.

### **APPROVAL OF MINUTES FROM PREVIOUS MEETING**

Minutes from March 2011 – Councilman Boulware made a motion to adopt the minutes; the motion was seconded by Councilman Palumbo. Motion passed.

### **POLICE DEPARTMENT**

- A. **New Business** –Chief Carpenter went over the stats. Lt. Yelding explained the Electronic Tracking Systems. It is an electronic money pack that the teller gives the robber. This tracking system will enable the police department to track the money on computers and portable GPS that will be provided at no cost to the city. Banks and ETS will be working together to cut down on robberies. Mobile County is using them and Spanish Fort is working on getting set up to use it also. Eric Bussey edited just a few minor items on the contract to our advantage, and advised that we are good to go. Councilman Palumbo made a motion to send the contract to the council. The council can

authorize the Mayor to enter into contract with ETS, LLC. Councilman Reese seconded the motion. Motion passed.

Councilman Reese was concerned with talking publicly about bank security. Mr. Bussey stated to send the council a brief by email to have no conversation during the council meeting. Ask the council not to CC: everyone on their list.

**B. Old Business – None**

**FIRE DEPARTMENT**

- A. New Business** – Chief reviewed his stats and stated that they have had a large number of medical calls for FY to date. They have ordered the radio equipment on the grant and are waiting to hear from the tower people. Public broadcast owns the tower and wants us to pay a rental fee per foot on the tower which would be around \$8400 per year. The cost would be divided between all entities on the radio system.
- B. Old Business** - Palumbo asked about the panhandling problem at I-10 and Exit 38. Chief advised this has been forwarded to Kenny Hempfleng so he can keep a close eye on the situation. Councilman Palumbo asked if they need a permit and Chief said they needed no permit to beg.

Bids opened on the Tahoes. No locals came within 3% of the state bid. Georgia dealership had the lowest bid. It reverted back to the State Bid which is Capital in Montgomery, Alabama.

**OTHER BUSINESS**

**ADJOURN**

There being no further business to discuss, Mr. Palumbo adjourned the meeting at 5:15 p.m. The next meeting will be Wednesday, May 11, 2011 at 4:30 p.m. at City Hall Council Chambers.

Respectfully submitted,  
Daphne Public Safety Committee

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Patrol Division	Detective Division:	JAIL:	Animal Control	Crimes Reported This Month:
(Capt. Bell/Lt. Hempfleng)	(Capt. Bell/Lt. Beedy)	(Capt. Taylor/Lt. Yelding)	(Capt. Taylor/Lt. Yelding)	
# Complaints	1,001 # New Cases Received:	Total Arrestees Received & Processed:	YTD	
# Misd. Arrests	66 # Previous Unsolved Cases:	176	868	Arson 0
# Felony Arrests	6 # Cases Solved:	Arrestees by Agency:		Burglary - Commercial 2
DUI Arrests	18 Resulting in Total Arrests:	Daphne PD		Burglary - Residence 8
Alias Warrant Arrests	31 Felonies:	BCSO		Burglary - Vehicle 1
Citations	261 Misdemeanors:	Spanish Fort PD		Criminal Mischief 6
Close Patrols	578 Houses Searched	Silverhill PD		Disorderly Conduct 0
Warnings	208	Troopers		Domestic Disturbance 19
Motorist Assists	223	Other Agencies		False Info to Police 2
Roadway Accidents	56			Felony Assault 3
Private Property Accidents	11	Warrants:		Felony Theft 12
Traffic Homicide	1	Bethel Served		Harassment 10
		Agency Assists		Identity Theft 6
		Recalls (Pd Fines)		Indecent Exposure 0
		Total Warrants Served		Kidnaping 0
				Menacing 0
<b>DRUG REPORT</b>				Misdemeanor Assault 0
<b>ROUTINE PATROL/SPECIAL OPS</b>				Misdemeanor Theft 9
# Misd. Marijuana Arrest	2	Sex Offender:		Murder 1
# Felony Marijuana Arrest	2	New Registration:		Other Death Investigations 4
# Controlled Substance Arrest:	1	Contact Verification		Public Intoxication 1
# Drug Paraphernalia Arrest	4	Total # registered in Daphne		Public Lewdness 0
Vehicles Searched	28	DARE:		Receiving Stolen Property 0
		# Hours Report Writing:		Reckless Endangerment 0
		# Students Instructed SRO		Resisting Arrest 1
		# Students Instructed DARE		Robbery 0
Drugs Seized:	0	# Police Reports by SRO		Sex Crime Investigations 0
Type:	0	# Arrest by SRO		Suicide 0
Money Seized	0			Suicide, attempted 0
Vehicles Seized	0			Theft of Services 0
		<b>CODE ENFORCEMENT:</b>		Unauthorized Use of Services 0
		Warnings:		Weapon Offenses 1
Commercial Vehicle Inspections	4	Citations		White Collar Crimes 3
		Warning Compliance		
		Follow - Up		

*David Carpenter*

**CITY OF DAPHNE  
FIRE DEPARTMENT MONTHLY REPORT**

**Report Period: February 2011**

	<b>Current:</b>	<b>FY to Date:</b>
<b>Suppression:</b>		
<b>1-Fire/Explosion:</b>	-	-
10-Fire, Other	0	0
11-Structure Fire/Commercial	0	0
11-Structure Fire/Residential	1	6
12-Fire in Mobile Property used as fixed structure	0	1
13-Mobile Property (vehicle) Fire	1	1
14-Natural Vegetation Fire	2	3
15-Outside Rubbish Fire	0	1
16-Special Outside Fire	0	0
17-Cultivated Vegetable Crop Fire	0	0
<b>Overpressure Rupture:</b>	0	0
<b>3-Rescue Call and Emergency Medical Service Incidents:</b>	138	284
<b>4-Hazardous Conditions (No fire):</b>	4	9
<b>5-Service Call:</b>	10	20
<b>6-Good Intent Call:</b>	16	32
<b>7-False Alarm &amp; False Call:</b>	18	35
<b>8-Severe Weather &amp; Natural Disaster:</b>	0	0
<b>9-Other Situation:</b>	0	2
<b>Total Emergency Calls:</b>	<b>186</b>	<b>382</b>
<b>Monthly Total Calls:</b>	<b>190</b>	<b>392</b>
<b>Highest:</b>		
	18	18
<b>Lowest:</b>		
	<1	<1
<b>Average (Minutes/Seconds) :</b>		
	4:52	4:52
<b>Miscellaneous Reports:</b>		
<b>Training Hours</b>	69	120.42
<b>Property Loss - \$</b>	500	145,502
<b>Fire Personnel Injuries by Fire/Civillan Injuries by Fire</b>	0	0
<b>Advance Life Support Rescues</b>	90	198
<b>Number of Patients Treated</b>	139	285
<b>Child Passenger Safety Seat Inspections/Installations</b>	8	24
<b>Classes</b>		
	4	6
<b>Persons Attending</b>		
	191	233
<b>Plan Reviews</b>		
	2	4
<b>Final/Certificate of Occupancy</b>		
	0	0
<b>General/Annual Inspections</b>		
	49	83
<b>General/Re-Inspections (Violation Follow-up - Annual)</b>		
	4	4
<b>Business Licenses</b>		
	2	20
<b>Consultations-</b>		
	0	0
<b>All Other/Misc. Activities</b>		
	0	0
<b>Total Activities:</b>	<b>57</b>	<b>111</b>

Authorized by:

*James White*

Chief James White

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# ELECTRONIC TRACKING SYSTEMS

## SERVICES AGREEMENT (CITY)

This AGREEMENT ("Agreement") is entered as of \_\_\_\_\_, (the "Effective Date") by and between the **CITY OF DAPHNE**, a governmental agency ("City") and **ELECTRONIC TRACKING SYSTEMS, L.L.C.**, a Delaware Limited Liability Company, located at 2545 Tarpley Road, Carrollton, TX 75006 (hereafter "ETS"). The following schedules are hereby incorporated into this Agreement:

**Schedule A** – General Terms & Conditions

**Schedule B** – Scope of Services; Obligations of the Parties

**Schedule C** – Term

**Schedule D** – Service Fees, Invoices and Payment Terms

City and ETS (collectively, the "Parties" and each a "Party") have caused this Agreement to be executed and warrant that their respective signatories are authorized to execute this Agreement as of the Effective Date.

### ELECTRONIC TRACKING SYSTEMS, L.L.C.

By: \_\_\_\_\_  
Name: Jon J. Gergen  
Title: President and CEO  
Date: \_\_\_\_\_

Address for Notices:

Electronic Tracking Systems, L.L.C.  
2545 Tarpley Road  
Carrollton, TX 75006  
Attention: Vice President, Contract Administrations  
Telephone: (469) 574-4024  
Fax: (469) 574-4001

### CITY OF DAPHNE

By: \_\_\_\_\_  
Name: Fred Small  
Title: Mayor  
Date: \_\_\_\_\_

Address for Notices:

Daphne Police Department  
1502 Highway 98  
Daphne, AL 36526  
Attention: Lt. Ric Yelding  
Telephone: 251.621.9100  
Fax: 251.621.2826

## SCHEDULE A: GENERAL TERMS AND CONDITIONS

**A-1 DEFINITIONS:** As used herein, the following terms shall be defined as set forth below. All capitalized terms in this Agreement not otherwise defined in this Section A-1 shall have the meanings assigned in the part of this Agreement in which they appear.

- A. Area Wide Monitor (AWM) – computer with ETS proprietary software installed at police dispatch for use with the installed RF Tracking System.
- B. ATM Tag – a transmitter that is housed in a plastic case the size of a deck of playing cards, is powered by a 9V battery, and has a 13-inch wire antenna. An external plug is connected to a three-foot extension that provides enable/disable functions by insertion or removal of the pin. An ATM Tag is activated by motion sensing switches.
- C. AWM-Plus – computer with ETS proprietary software installed at police dispatch for use with the ETS TracPac-Plus System.
- D. Cable Tester – test equipment used to check interconnect cables and antenna cables for opens, shorts, power connection and correct antenna placement (left, right, front).
- E. ETS WebTracker – is a web-based application that provides live geo-location and tracking information to law enforcement agency dispatchers utilizing data from the TracPac-Plus Tracking Devices. When deployed, ETS WebTracker is an integral part of the TracPac-Plus System.
- F. Fixed Site Beacon – a low power transmitter typically located near the Primary Location that allows the operator to confirm the proper operation of, and calibrate, a Vehicle Receiver and Vehicle Display.
- G. Host Agency – an agency that is designated to host the AWM in the RF Tracking System.
- H. Installation Kit – a kit used to outfit a vehicle with cabling to allow the use of a Vehicle Receiver and Vehicle Display in that vehicle, consisting of an Interconnect Cable, three color-coded antenna cables, antennas and a receiver rack.
- I. Motion Beacon (RF) – A transmitter that is housed in a plastic case the size of a deck of playing cards, powered by a 9V battery, and that has a 13-inch wire antenna. A Motion Beacon is activated by motion sensing switches.
- J. New Area – a geographical area, denoted by jurisdictional limits (or geographical area within a jurisdiction) or other geographical area, not covered by the ETS TracPac Services at the Effective Date, but which, by agreement of the Parties, is added by ETS and becomes covered by ETS' TracPac Services during the term of this Agreement or any extension to this Agreement.
- K. Order – a purchase order, work order, electronic transmission or City verbal request that is documented in writing within thirty (30) days after the date such request is made. A "Service Acknowledgment" form that is signed by or on behalf of City at the time of delivery of Services shall be deemed to be an Order and an acknowledgment that the Services were performed.
- L. Party – City or ETS.
- M. Person – any individual, corporation, partnership, limited liability company, trust, association, agency or other entity.
- N. Pocket Beacon – A small portable handheld device that has a low-powered transmitter, and runs off a 9V battery. It is used to check the operation of any receiving equipment.
- O. Pocket Detector or Handheld Tracker – portable, handheld equipment that is able to receive transmissions from, and track the location of, an ETS Tracking Device.

- P. Primary Location – the precinct headquarters or similar central office of the City.
- Q. Product(s) – any ETS Tracking Service and/or Devices or other ETS equipment utilized therein or other personal property separately sold or leased to City as the case may be.
- R. Rat Trap – a plastic box with a magnetic plate affixed inside that deactivates a TracPac when it is placed in the box.
- S. Remote Receiver – a device that is able to receive transmissions from RF Tracking Devices within the System Coverage Area and transmits information to the AWM by telephone, microwave or other data transmission medium to enable the recipient to determine a general location of the Tracking Device.
- T. Representative – an officer, employee, director, manager, agent or other representative of a Party hereto.
- U. Service Acknowledgment Form (SA) – a form used by ETS to document proper installation, de-installation and other service visits which serves as an Order and is incorporated into this Agreement once executed by City.
- V. Service Fee – a fee charged by ETS for the services provided for City’s use of ETS Tracking Devices.
- W. Services – includes, without limitation, all professional, management, labor and general services, together with any materials, supplies, tangible items, or other goods furnished or used by ETS in connection with the operation and maintenance of the TracPac or TracPac-Plus Systems, as further described in Schedule B.
- X. Spare Parts Kit – includes two Interconnect Cables, two sets of vehicle antennas and cables, three strips of loop Velcro, eight antenna whips, five antenna mounting nuts, five antenna bushing nuts, five antenna “O” rings and five silicon lubricant packs.
- Y. Stake-out Tracking Devices – a wireless radio signal transmitter or LBS Tracking Device, powered by a battery, and used by the City, concealed or housed in a medium to allow the tracking of products, vehicles or persons.
- Z. Sting Operations – joint efforts by law enforcement, customers and ETS to fight serial bank robbery or other local crime through the installation of additional Tracking Devices in commercial locations in the System Coverage Area for a limited time period.
- AA. System Coverage Area – the geographical area determined by ETS prior to TracPac System installation within which a radio signal transmitted by a TracPac is received by at least one fixed Remote Receiver from a non-stationary transmitting TracPac or other Tracking Device located outside of an installed facility.
- AB. Test Transmitter – a portable 12VDC powered transmitter with a fixed attenuation of -26dB, output is through a magnetically mounted antenna with a 13-inch whip. The transmitter is the equivalent of an average output of an RF TracPac. This device is the standard test unit for all receiver range tests.
- AC. Tracking Device – a transmitting component of the ETS TracPac System (for example, TracPacs, TracPac-Plus, TracPac-ATM, TracPac-Pharmacy).
- AD. TracPac Monitor – an installed facility-specific device that (i) identifies conditions under which a Tracking Device begins its transmission, (ii) tracks the elapsed time that a Tracking Device has been in a transmitting mode, and (iii) communicates that status to participating law enforcement agencies and any additional programmed recipients.

- AE. TracPac-Pharmacy – a wireless radio transmitter powered by a battery, disguised and packaged under multiple controlled substance bottles. The TracPac-Pharmacy is a component of the TracPac System.
- AF. TracPac-Plus – a component of the TracPac-Plus System that utilizes a LBS (Location Based Services) transmitter that combines GPS, cellular trilateration, cell sector, and RF technologies, and is powered by a rechargeable battery.
- AG. TracPac-Plus-Motion – is a small Location Based Services (LBS) device designed for concealment in contraband and bait items used in Sting and Stake Out operations by law enforcement. It is comprised of a GPS/cell communications module, an RF transmitter, an accelerometer-based motion sensor, and a rechargeable battery.
- AH. TracPac-Plus-Pharmacy – a LBS transmitter that combines GPS, cellular trilateration, cell sector and RF technologies, and that is powered by a rechargeable battery. The device is disguised and packaged under multiple controlled substance bottles. The TracPac-Plus-Pharmacy is a component of the TracPac-Plus System.
- AI. TracPac-Plus System – a system built upon advanced, multi-layered location and tracking technologies including Global Positioning System (GPS), cellular networks, and Radio Frequency (RF) homing beacon. It is designed to establish and/or track the approximate location of TracPac-Plus Tracking Devices without geographic, but with law enforcement jurisdiction, constraints.
- AJ. TracPac System – a wireless system designed to establish and/or track the approximate location of TracPacs within a defined geographic area.
- AK. Training Tag – a wireless radio signal transmitter powered by a battery used for training purposes. It may transmit on either the standard or practice frequency used by a TracPac System. It may or may not include the capabilities of the TracPac-Plus System.
- AL. User Components – AWM, Vehicle Receivers, Pocket Detectors, Stake-out Tags, Installation Kits, Handheld Trackers, Vehicle Displays, Fixed Site Beacons, Training Tags, Pocket Beacons, Cable Testers, Remote Receivers, Test Transmitters and Rat Traps.
- AM. Vehicle Display – a device typically installed on the dash of a vehicle that receives information from a Vehicle Receiver and indicates the direction and relative signal strength of a transmitting RF Tracking Device within range of the Vehicle Receiver.
- AN. Vehicle Receiver – a device typically installed in the trunk of a vehicle that is able to receive transmissions from a RF Tracking Device and, along with other TracPac System components, is able to track to the location of the Tracking Device.

**A-2 CONFIDENTIAL INFORMATION:**

- A. Each Party shall hold in strict confidence any information relating to (i) the contents of this Agreement, (ii) the customer records of Client; (iii) the practices and procedures used by ETS in performing the Services, (iv) the relationships of ETS with any law enforcement or governmental agency, or (v) the business, sales methods or plans of either Party in performing this Agreements (collectively (i)-(v) is the “Confidential Information”).
- B. The Recipient of Confidential Information agrees not to disclose the information to third parties, without the permission of the disclosing party. Confidential Information must only be disclosed to employees or agents with a “need to know” in order to fulfill this Agreement. Additionally, the Recipient agrees not to use the Confidential Information for any purpose other than that set forth in the Agreement.
- C. Each party will take reasonable steps to ensure that written agreements to maintain the protected status of the Confidential Information are entered into with any Representative,

consultant, or third party to whom this Confidential Information is disclosed that provide protections similar to the protections set forth in Section A-2. If a subpoena or other legal process seeking Confidential Information of the other Party is served, the receiving Party shall notify the other and cooperate, in any lawful effort to stop or limit the disclosure.

- D. Upon any termination of this Agreement, each Party shall return to the other any Confidential Information in its possession regarding the other Party, no later than thirty days after termination.
- E. Notwithstanding the terms in this paragraph A-2, ETS shall have the right to disclose any Confidential Information to any law enforcement agency if ETS believes that disclosure may assist in increasing safety for Client or the public. ETS agrees to notify City of any and all confidential information it plans to disclose to area law enforcement agencies at least fourteen (14) days in advance of its doing so.

**A-3 NO UNAUTHORIZED DISCLOSURE; INJUNCTIVE RELIEF:** Neither Party shall advertise or publicly release any information (other than any Permitted Disclosure by ETS) regarding the existence of this Agreement or the Services to be provided hereunder without the prior written approval of the other Party. City acknowledges and agrees that the effectiveness of the Services provided to City and other clients of ETS depends, in part, upon the absence of public knowledge regarding the Services and the business processes of the products of ETS, and further acknowledges that any improper disclosure of the business processes of ETS could materially and adversely affect the business operations of ETS. Therefore, the Parties further agree that because monetary damages alone may not be sufficient to compensate a Party for the loss of its Confidential Information, that either Party, in addition to any other legal and equitable remedies that it may have, shall be entitled to injunctive or equitable relief against the breach or threatened breach of this Agreement by the other Party.

**A-4 RELATIONSHIP OF THE PARTIES:** The Parties are independent contractors.

**A-5 PROVISION OF SERVICES:** ETS shall be obligated to commence work only upon receipt of a properly executed written Order from City.

**A-6 WARRANTIES OF ETS:** Subject to the limitation in Section A-7 hereof, ETS warrants to and covenants with City as follows:

- A. The Services shall be performed by ETS in a timely and professional manner and shall conform to or exceed in all material respects the service specifications described herein, and any equipment provided by ETS to support the Services supplied hereunder shall be free of material defects in workmanship.
- B. The sale, license, or use of any product in the performance of Services furnished under this Agreement, including but not limited to software, system design, equipment, or documentation, does not infringe upon any patent, copyright, trade secret, or other proprietary right of any third party. ETS' indemnification obligations shall exclude any claim of infringement resulting from City's unauthorized modification of Services, software or equipment used in performance of Services. For any occurrence for which City may make a claim for indemnification, it shall cooperate with ETS in any appeals, negotiations, and any settlement or compromise thereof; provided that ETS shall have sole control over the defense or settlement of the claim and shall have sole authority to accept or reject the terms of any proposed settlement or compromise. A complete list of patents and patents pending is available upon request.

**A-7 WARRANTY DISCLAIMER; LIMITATION OF LIABILITY:**

- A. **THE EXPRESS WARRANTIES IN SECTION A-6 OF THIS AGREEMENT SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**
- B. **ETS' MAXIMUM AGGREGATE LIABILITY TO CITY ARISING HEREUNDER SHALL BE LIMITED TO A MAXIMUM OF \$50,000.00.**

- C. **EXCEPT FOR THE PAYMENT OF INVOICES FOR THE SERVICES AND PROVISION OF EQUIPMENT UNDER THIS AGREEMENT, CITY'S MAXIMUM AGGREGATE LIABILITY TO ETS ARISING HEREUNDER SHALL BE LIMITED TO A MAXIMUM OF \$50,000.00.**
- D. **ETS IS NOT, AND DOES NOT REPRESENT OR WARRANT THAT EITHER ETS, OR ANY OF ITS PERSONNEL, IS TRAINED IN ANY WAY IN THE PRACTICE OF LAW ENFORCEMENT, AND ETS IS NOT RESPONSIBLE IN ANY WAY FOR THE PERFORMANCE OF LAW ENFORCEMENT OR USE BY LAW ENFORCEMENT OF ETS EQUIPMENT.**
- E. **NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
- F. **THE PROVISIONS OF THIS SECTION A-7 SET FORTH EACH PARTY'S ENTIRE LIABILITY AND THE SOLE AND EXCLUSIVE REMEDY OF THE OTHER PARTY WITH RESPECT TO ANY MONETARY CLAIM UNDER THIS AGREEMENT.**

**A-8 FORCE MAJEURE:** No failure, delay, or default in performance of any obligation of a Party to this Agreement shall constitute an event of default or breach of the Agreement to the extent that such failure to perform, delay, or default arises out of a cause, existing or future, that is beyond the control of the non-performing party.

**A-9 EVENT OF DEFAULT; TERMINATION:** An "Event of Default" shall occur if (a) either Party fails to pay any amount payable hereunder within thirty (30) days of the date such payment is due, (b) either Party materially breaches any term or condition of this Agreement (other than any payment obligation addressed in the preceding clause (a)) and such breach is not cured within thirty (30) days (or such longer period as may reasonably be required to cure such breach, so long as the breaching Party diligently pursues such cure) of such Party's receipt of written notice of such breach from the non-breaching Party, (c) a voluntary or involuntary petition is filed by or against either Party under the U. S. Bankruptcy Code (Title 11, U.S. Code, the "Bankruptcy Code"), or (d) either Party becomes insolvent, or should any material part of either Party's property be subject to any levy, seizure, assignment, application, or sale for or by any creditor or governmental agency that is not dismissed within thirty (30) days. Upon any Event of Default, the non-defaulting Party may pursue any and all remedies available at law or in equity against the defaulting Party, whether at law, in equity or in accordance with the provision of Section A-12. Further, in addition to and not in limitation of any other available remedies, the non-defaulting party may terminate this Agreement upon written notice to the defaulting Party. Within thirty (30) days after the effective date of any termination, City shall pay any unpaid invoices to ETS.

**A-10 REMOVAL OF PROPERTY:** Upon an Event of Default by City or any termination of this Agreement, City shall cooperate with ETS and allow only ETS to remove its property from all City Locations.

**A-11 ARBITRATION:**

- A. Any controversy or claim between or among the Parties, including but not limited to, those arising out of or relating to this Agreement, and any claim based on or arising from an alleged tort, shall at the written request of any Party, be determined by arbitration. The arbitration shall be conducted under the administration and rules of the American Arbitration Association then in effect for commercial disputes, with a three member panel. Each party shall bear its own attorneys' fees and expenses, and the cost of the arbitration shall be split equally. The prevailing Party, of which there shall only be one, and which must be designated by the panel, will be entitled to such amounts its attorneys' fees, costs, and expenses, including expert fees as shall be determined by the panel based upon the reasonableness of the positions taken by the Parties.
- B. This Section in no way limits the right of a Party to obtain provisional or ancillary remedies from a court of competent jurisdiction before, after, or during the pendency of any arbitration.

**A-12 NON-ASSIGNMENT:** Neither party may assign this Agreement or any of its rights hereunder without the prior written consent of the other Party; provided that this Agreement may be assigned without the consent of the other Party to any Person acquiring all or substantially all of the equity interests, assets or business of a Party. This Agreement shall be binding upon each of the Parties and their respective successors and assigns.

**A-13 INDEMNITY:** SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION A-7, EACH PARTY SHALL BE LIABLE FOR AND AGREES TO INDEMNIFY AND HOLD THE OTHER HARMLESS FROM ANY AND ALL LIABILITY, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), COSTS, DAMAGES, SETTLEMENTS OR OBLIGATIONS RESULTING FROM (I) THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH PARTY OR ITS REPRESENTATIVES OR (II) ITS OBLIGATIONS UNDER OR BREACH OF SECTION A-2 OR A-3. NO ACTION ARISING OUT OF THE PERFORMANCE UNDER THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN TWO (2) YEARS AFTER THE DATE SUCH CAUSE OF ACTION OCCURS.

**A-14 MISCELLANEOUS:**

- A. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under this Agreement shall operate to limit, impair, preclude, cancel, waive, or otherwise affect such right or remedy. Wherever this Agreement requires either Party's approval, consent, or satisfaction, the response shall not be unreasonably or arbitrarily withheld or delayed.
- B. If any provision of this Agreement is held invalid, illegal, or unenforceable at the request of a Party, the validity, legality, or enforceability of the remaining provisions shall in no way be affected or impaired thereby unless the remaining Agreement is materially altered to the detriment of the other Party.
- C. In the event of a dispute between or among the Parties arising under or relating to this Agreement that results in arbitration or litigation, the prevailing Party, of which there shall only be one, and which must be designated by the Court or arbitrators, shall be entitled to such amounts of its attorneys' fees, costs, and necessary disbursements determined by the Court or panel based upon the reasonableness of the positions taken by the Parties.
- D. This Agreement shall be governed by the internal laws of the state of Alabama, and not by the laws regarding conflicts of laws. Exclusive venue of any dispute, legal or equitable, contract or tort, related in any way to this Agreement shall be in Baldwin County, Alabama.

**A-15 ENTIRE AGREEMENT:** This Agreement, with the documents incorporated herein, is the final, full, and exclusive expression of the Agreement of the Parties and supersedes all prior agreements, understandings, writings, proposals, representations, and communications, oral or written, of either Party with respect to the subject matter hereof and the transactions contemplated hereby. If any conflict exists or arises between the terms of Schedule A and any other term, Exhibit or Schedule, Schedule A and then Schedule B shall prevail, in that order. The terms of this Agreement shall prevail over any conflicting terms on any Schedule, Order or Service Acknowledgment of an Order.

## **SCHEDULE B: SCOPE OF SERVICES: OBLIGATIONS OF THE PARTIES**

**B-1 General Outline of Services:** The risk mitigation, apprehension, and recovery service provided by ETS has several components and involves several constituencies creating a community coalition. This coalition is committed to working together in a community effort to reduce robberies and other related crimes for all community members, including those individual commercial entities which are not yet participating in the coalition. Coalition success is measured by this reduction in robberies and the positive changes such a reduction brings to a community.

- A. Commercial Users – An integral and necessary element of the functioning of an ETS TracPac Service is the community of users. There must first be a commitment to a reduction in robbery crimes within the community. There must also be a commitment to deployment. In the first instance, there must be deployment in a sufficient number of commercial facilities so as to create a statistical probability of a reduction in the number of robberies within the community. Secondly, the deployment must be in such a fashion so as to mitigate the risk of a robbery suspect discovering the existence of the ETS Tracking Device in a short period of time. And, thirdly, there must be a commitment to the training of those employees who will be in contact with the Tracking Device, both for purposes of maintaining its steady state and in the delivery of the Tracking Device to a robbery suspect in such a fashion as to not arouse his or her suspicion.
- B. Law Enforcement Agency (“LEA”) – Neither the commercial entities’ personnel nor the ETS technology will arrest the robbery suspect or recover the stolen assets. Thus the role that the participating LEA plays is critical. Commitment to the System, ongoing training, and a strategic and adhered to deployment and response plan (Standard Operating Procedure – “SOP”) are critical to the System’s success.
- C. ETS System Technology – ETS, in consultation with the coalition constituencies, designs each System utilizing the type or types of technology deemed to be most advantageous for that community of users. The technology types include radio frequency (“RF”) and Location Based Services (“LBS”) which combines Global Positioning System (“GPS”), cellular trilateration, cell sector and radio frequency. ETS then installs its patented technologies and service offerings in support of the community coalition’s goal of reducing robberies. Each uniquely designed System will include a variety of tracking receivers, examples of which are fixed remote receivers, and vehicle, airborne and handheld trackers. Each System installation also includes System type specific proprietary software that is installed for use by personnel in the Police Communications center, or online via a secured logon to ETS WebTracker.
- D. ETS Local Representation and Coalition Management – ETS designs, installs, and then locally maintains and manages each TracPac System as part of the provision of its TracPac Services. This includes using its expertise gained in almost thirty (30) years of tracking experience working individually with each Client to determine Tracking Device type and number requirements, as well as appropriate packaging of Tracking Devices with proper concealment.

**B-2 ETS Provision of Services:** During the term of this Agreement, ETS shall:

- A. Deliver the User Components to City in good operating condition for use in the TracPac System.
- B. Train personnel designated by City on the installation of the portable vehicle trackers.
- C. Install the Sentry software link on an existing City computer with internet access for City access to ETS Sentry/WebTracker.
- D. Train personnel designated by City as instructors in the operation of the Tracking System.
- E. Perform preventive maintenance, in accordance with current policies, on all Tracking System components.

- F. Use reasonable efforts to repair and/or replace all User Components so that same may be return shipped within two (2) business days, at ETS' sole cost and expense if the repair or replacement is necessitated by ordinary wear and tear, or because of a defect in the User Component. Repaired and replaced equipment will be returned by ETS to the address on the equipment repair form via common carrier (location dependent); provided that City may request (subject to the reasonable approval of ETS) that ETS return any such equipment by overnight delivery of parts critical to the functioning of the Tracking System.
- G. Replace antenna whips as reasonably necessary from time to time for City vehicles; however, if such replacements are the result of events or circumstances other than ordinary wear and tear, such replacement shall be at the expense of City.
- H. Provide a Troubleshooting Guide to City to allow City personnel to troubleshoot the User Components before returning the User Components to ETS for repair.
- I. Provide technical assistance either by telephone or in person.
- J. Participate in an annual review of the Tracking System's operations. The annual review will be held within the jurisdiction of City, and will include the following:
  - 1. Prior year bank robbery data and statistics.
  - 2. ETS System performance following robberies of ETS-installed locations.
  - 3. Any City issues operating the ETS System (for example: training, deployment, inventory reconciliation).
- K. Coordinate the use of Tracking Devices by commercial users in the Tracking System with City, and provide training of such users in the use of the Tracking Devices and the operation of the Tracking System.
- L. Provide City with a Tracking Device for use in initial officer training on the use of the Tracking System, and on an as-needed short term basis for future training requirements.

**B-3 ETS Contact Persons:** ETS hereby appoints the following person(s) to serve as direct interface to City on the matters involving:

Financial matters or Agreement Issues: Vice President-Chief Financial Officer  
 2545 Tarpley Road  
 Carrollton, TX 75006  
 (469) 574-2000

Operational matters: Chief Operating Officer  
 2545 Tarpley Road  
 Carrollton, TX 75006  
 (469) 574-2000

**B-4 City Installation Obligations:** City agrees to the following:

- A. Designate a member of the Command Staff with specific and sufficient authority to coordinate and direct the efforts of all divisions within the City as the ETS Liaison and coalition representative, and a contact point person for ETS personnel.
- B. Provide training facilities in which to train City instructors and personnel on the use of the Tracking System.
- C. Develop and prepare written departmental policies and procedures for each division involved in the operation/utilization of the Tracking System. Policy and procedures should be designed to ensure the safety of City's officers utilizing the System.

- D. Develop and prepare a tactical plan for use of the Tracking System to ensure coverage within the Tracking System twenty-four (24) hours per day, seven (7) days per week.
- E. Provide a member of City's IT staff to liaise with ETS regarding internet connectivity requirements in the police communications center for ETS Sentry/WebTracker.
- F. Designate and make available an appropriate number of City personnel to be trained by ETS as instructors to enable City personnel to train other personnel in sufficient numbers to provide optimum and safe utilization of the Tracking System on an ongoing basis.
- G. City will utilize ETS-trained instructors to train patrol, any designated special squads, communications, installers and other persons involved in the Tracking System on its use.
- H. Ensure the participation of patrol, any appropriate special squads and communications personnel in Tracking System testing and training prior to the activation of the Tracking System to ensure optimum and safe utilization of the Tracking System.
- I. Create a training plan for future training for:
  - 1. New personnel who may operate the User Components.
  - 2. Periodic retraining of previously trained officers and communications personnel.
  - 3. Scenario training with the operational Tracking System.
- J. Provide personnel and/or communications to assist in final training and testing of the Tracking System.

**B-5 City System Operations Obligations:** City shall perform the following during the term of this Agreement:

- A. Trackers and Displays – Troubleshoot with Troubleshooting Guide provided by ETS to determine problem. If a problem is found with the equipment, return it to ETS (in Carrollton, TX) for repair after acquiring the required Return Material Authorization (RMA) number from ETS.
- B. Pocket Detectors
  - 1. Replace 9 volt batteries as needed.
  - 2. Troubleshoot with Troubleshooting Guide if functionality is impaired. If a problem is identified with the equipment, return it to ETS for repair after acquiring the required RMA number from ETS.
- C. Other Obligations
  - 1. Cause no less than 50% of vehicles equipped with Vehicle Receivers/Vehicle Displays to be deployed at all times.
  - 2. Schedule and perform officer training as needed in the City so that adequate numbers of officers are well trained in the safe use of the tracking equipment and System.
  - 3. Ensure that there are smooth transitions when personnel changes require changes in the Liaison position in the City.
  - 4. Maintain all User Components and return defective User Components to ETS for repair or replacement.
  - 5. In the event that User Components that have been provided City by ETS to operate the Tracking System are lost or negligently damaged, reimbursement by City to ETS for the lost or negligently damaged item(s) will be in accordance with the then current retail prices for each type of User Component.

D. Return Procedures

1. Obtain from ETS a RMA number before returning equipment to ETS (in Carrollton, Texas).
2. Complete ETS Equipment Repair Form and send it to ETS with the equipment requiring repair.
3. Pack and ship equipment to ETS' Carrollton, TX facility via common carrier with an air waybill provided by ETS.

**B-6 Robbery Information:** City shall promptly notify ETS of any robbery of an ETS customer location. City shall also provide ETS, as soon as possible after the end of each calendar year, a report on the total number of robberies within the Tracking System during that previous calendar year at all financial institutions, whether serviced by the Tracking System or not. All such information is subject to Section A-2 "Confidential Information" in this Agreement.

**B-7 Maintenance Visits:** All User Component maintenance visits shall be planned and scheduled by ETS, subject to the reasonable approval of City, and City shall be responsible for distributing to its personnel notice of such maintenance sessions and for ensuring that User Components are made available to ETS personnel for maintenance.

## SCHEDULE C: TERM

The establishment of a successful deterrent and apprehension system involves many factors and numerous entities working together. Therefore it is desirable, and often necessary for the term of any Agreement to extend over many years. Indeed, Clients often discover that the benefits of the Agreement increase in direct relation to the number of years they have had Trac-Pac Systems deployed.

- C-1 Initial Term And Renewal:** The term of this Agreement shall continue for a minimum of three (3) years from the Effective Date (the "Initial Term") and shall be automatically renewed for two-year periods annually thereafter unless notification by either Party to the other is given no less than one (1) year prior to the expiration of the initial term or any renewal term. Notwithstanding the foregoing, ETS may terminate this Agreement at any time without liability upon ninety (90) days written notice to City if ETS is unable to provide the Services to City or ETS customers in a geographical area due to causes beyond the reasonable control of ETS.

## **SCHEDULE D: Service and Other Fees, Invoices and Payment Terms**

- D-1 Service Fees:** Annual service fees for additional User Components and Tracking Devices will be quoted to City at then current ETS law enforcement retail prices at the time of the request for additional equipment or for Tracking Devices. Prices quoted exclude all taxes, assessments and duties of any kind that ETS is required to pay with respect to the provision of Services pursuant to this Agreement. City shall pay or reimburse ETS for any sales, use, or business property taxes, where applicable, and any other governmental charges levied, imposed, or assessed on Products or Services furnished to City. A Service Acknowledgment form that is executed by or on behalf of City upon delivery of additional User Components or Tracking Devices will be incorporated into this Agreement as an Order for TracPac Services.
- D-2 Invoices:** Any ETS invoices shall be submitted to City at the address for notices to City, unless City specifies another address in writing to ETS.
- D-3 Payment Terms:** All invoices are to be paid within sixty (60) days upon the invoice receipt. Past-due amounts are subject to a finance charge of 1.5% per month or the maximum amount allowed by applicable law, whichever is less. Additional payments will be required for any lost equipment as outlined in B-5, C.5.

**CITY OF DAPHNE**  
**PUBLIC WORKS COMMITTEE MEETING**  
**Time: 5:00 PM on April 18, 2011**  
**Location: City Hall Council Chambers**

CHAIRMAN - Councilman Bailey Yelding, District 1  
Councilwoman Cathy Barnette, District 2  
Councilman John Lake, District 3

**I. CALL TO ORDER**

The March meeting of the Public Works Committee was called to order at 5:00 PM

Present: Councilman Bailey Yelding, Councilman John Lake, Councilwoman Cathy Barnette, Melvin McCarley-Public Works Superintendent, Sandra Cushway-Public Works Assistant, Ashley Campbell-Environmental Project Manager, Jaye Robertson-HMR, Elaine Mead-Daphne Citizen, Frances Harrell-Daphne Citizen, Guy Grimes-AMA Lighting

**II. PUBLIC PARTICIPATION & CORRESPONDENCE**

- A. **Work Request Report** – March 2011 reports reviewed
- B. **Vehicle/Equipment Maintenance Report** – March 2011 report reviewed. Melvin noted that the PD non-routine was high due to the replacement of two transmissions. Garbage was high due to replacement of brakes and tires (still using old trucks). He added that the nature of running garbage routes with constant stop and go activity wears brakes down. Municipal Court purchased a Taurus about a year ago using Court money.
- C. **Correspondence** – Letter from Daphne Public Library – Spring into Reading. Letter of appreciation for PW employees Tracey Miller and Candice Bishop’s participation.
- D. **Correspondence** – Letter from Town of Silverhill – Appreciation of appreciation for assistance with debris removal after tornadoes. Approximately 8-10 loads were moved by the City. Some was taken to the landfill, though most of the vegetative debris was brought to Public Works for mulching.
- E. **Public Participation** – Guy Grimes, LC (AMA Lighting – Re: LED Lighting). AMA Lighting has been in business for 45 years. Mr. Grimes is here today to share information regarding LED Lighting. He passed out a brochure for LEDway. He noted that this was the lighting that the new Daphne Central Utilities would be using behind their new facility. The product that will be used in the front of the building is called Sun Valley. These products save 30-50% in energy and have a 50-100K hours life. More decorative lighting products from Phillips is LEDlife, which has a 75K hour life. Lumec makes the poles and Phillips manufactures the lights. Lights can be set to dim incrementally to dim over the course of the evening and then brighten back up as dawn approaches. Councilman Lake asked if these products can be retrofitted on existing fixtures in the City. Mr. Grimes will provide information on which lights within the City can be retrofitted. He commented that retrofitting works best with open fixtures. Gulf Power lighting team conducted a study on their Essentia product used in many Churches with high ceilings. It uses a 500W fixture and contains 500 LEDS, has 50K hours of lamp life and is also dimmable. The payback on this product is approximately 5 years. A retro-fit rebate is in the works and should be available soon. Councilwoman Barnette asked about pricing. Mr. Grimes stated that a small light would run approximately \$450, \$1,300 with higher wattage. Approximately \$500 for decorative lights. Councilman Lake commented that we are currently paying a flat fee of \$10 per month per street light. He asked if they give any type of discounts for using LED lighting. Melvin McCarley commented that Riviera owns most of the City’s lights with the exception of the decorative ones. We just pay a flat fee. Councilman Yelding suggested that we check with the City of Foley and/or conduct a study. Mr. Grimes noted that there is currently a rebate available on interior

lighting. He state that Gulf Power charges about the same rate, slightly higher on an LED product. Councilwoman Barnette asked if LED lighting was harsher than traditional lighting. Mr. Grimes responded that some are more harsh, but that you can use different bulbs for interior (3,0000 kelvin). The color shift of light over time is minimal. You cannot tell the difference between new lights installed and older ones. Councilman Lake suggested that these lights would work well in the City's parks, walkways and sports complex. He asked about the usage of solar lighting for remote locations. Mr. Grimes stated that they have products specifically for remote locations. Councilman Lake requested additional copies of brochures and handouts for the Buildings and Properties Committee.

- F. **Public Participation** – Frances Harrell & Elaine Mead (Sidewalks on Randall Avenue). Public Works Director, Richard Johnson has information on sidewalk and will not be in attendance at this meeting due to attending Hurricane Conference. Mrs. Harrell and Mrs. Mead were invited to attend the next Public Works Committee Meeting on Monday – May 16, 2011 at 5:00 PM.

### III. OLD BUSINESS

- A. **Minutes** – March 21, 2011 **Councilman Lake made a motion to accept the minutes from the March 21, 2011 Public Works Committee meeting. Motion was seconded by Councilwoman Barnette.**
- B. **Mosquito Reports** – No Activity. Councilwoman Barnette asked when the mosquito spraying would begin. Melvin stated that it should be soon and that he would check with that department to find out exactly when.
- C. **Street Sweeper Reports** – March 2011 reports reviewed. Councilman Lake noted that his street was only swept once during the reported month. He asked how often they swept and what type of schedule they were on.
- D. **Cooperative Maintenance Agreement** – All State Roads in the City. Councilman Yelding stated that Public Works Director sent a recommendation that the agreement be contingent on annexation. Ashley Campbell stated that they require that the grass be mowed at 6" height. Councilman Yelding requested that the topic be tabled for discussion pending Richard Johnson providing more information at the next Council work session.
- E. **Update on May Day Launch** – Launch is filling in with sand. The contractor left debris around and under launch. It has since been cleaned out. Consultant hired feels that the debris is inhibiting the natural flow and that the launch was improperly engineered. Melvin stated that the plan is to dig down beside the launch and left the sand fill in where it was trenched out. Councilman Lake asked what would be done with the sand that was taken out. Ashley responded that it would be moved to properties north of the launch. Councilman Yelding asked who inspected the launch when it was completed. Melvin responded that A.C. Thompson inspected it. Councilwoman Barnette feels that Thompson needs to use their insurance to rectify the problem. We need to research whether we have recourse and need to know what the costs will be. Melvin stated that it would not be a big project. It would take 3-4 days and several crew members. Ashley stated that it needs to be inspected quarterly. Councilman Yelding asked whether the boulders that were causing boat damage were removed. Melvin responded that Public Works removed them. Councilman Lake commented that Thompson started out as a testing firm then moved into an engineering position. Councilwoman Barnette stated that we need to pull together a legal brief on all research, costs and studies. Councilman Lake added that we need to track costs on any work that we do in the meantime. Councilwoman Barnette would like for the City to be reimbursed. We need to get this to Jay Ross as soon as possible.

#### IV. NEW BUSINESS

- A. **City Costs to Complete Sidewalk on CR13** – Currently the sidewalk ends before Rand Avenue. The City wanted to extend the sidewalk to Rand, but ran out of funds. The sidewalk extends beyond all houses except one and there are no children at that house. Richard provided a draft of what it would cost to extend the road to Rand. Councilwoman Barnette feels that the cost is too high to take the sidewalk all the way to CR64. Councilman Yelding asked if a study had been completed. Jaye Robertson (HMR) stated that a study had been completed. He will scan and email a copy of the study to Councilman Yelding. The committee opted to table further discussion and will revisit with Richard Johnson at next month's meeting.
- B. **Agreement for Grading and/or Landscaping on Hwy 98 Right-of-Way (BBVA Compass)** – The state wants to be able to contract to have the area at malfunction junction (at BBVA Compass Bank) contracted to be cleaned. There would be no cost to the City. They just want the City's approval to maintain this area using contractors. **Councilwoman Barnette made a motion to enter into an agreement for the state to contract to maintain the area beside BBVA Compass. Motion seconded by Councilman Lake.**
- C. **Ditch at Santa Rosa Avenue and Old County Road** – Jaye passed out copies of plat and cost estimate. On the south side of Santa Rosa is the elementary school. Currently the water drains from the south side to the west. They are proposing to remove pine trees (5' trees in ditch). Councilman Yelding asked if that was the school's ROW or the City's. Melvin stated that it was the school's ROW. Jaye stated that it shouldn't be a problem with the school. The plan is to connect at Bryant Gulley and build two boxes 24-30' deep. Ashley asked if it would be possible to put in a detention. Councilwoman Barnette stated that we need to be careful due to problems we had with the Methodist Church building. Councilman Yelding stated that we need to meet with school administrators. Councilman Lake questioned what would be the logistics of putting in retention ponds. Jaye replied that we have the space, they would just need liners. Councilwoman Barnette said that would drive costs up. **Councilwoman Barnette made a motion that the committee needs to obtain a copy of the study and research that has already been done and bring to the next council work session. Motion seconded by Councilman Lake.** Councilman Lake asked whether this would qualify as a NRCS project. Ashley replied that it did not since it was not an "event". Councilman Yelding stated that this gully needs to be addressed. It has been going on for 15 years.
- D. **Captain O'Neal FEMA Drainage Project – Dead Tree Removal (Ashley Campbell)** Ashley stated that there are 13 dead trees that need to be removed. Richard Johnson has stated that Public Works does not have the manpower or equipment to handle. The cost to have a contractor (Chris Francis) come cut them down would be \$2,500. That would include dropping the trees and cutting them into moveable sizes and transported back to Public Works for mulching. Councilwoman Barnette stated that we would be violating our own Trash Ordinance. It states that if a contractor cuts down a tree that they are responsible for removing it from the premises. Councilman Yelding stated that we could work out the specifics regarding the Trash Ordinance. He stated that we need to move forward with this issue. **Councilwoman Barnette made a motion to send to the Finance committee to approve appropriation of \$2,500 to remove 13 dead trees from Captain O'Neal drainage. Motion seconded by Councilman Lake.**

#### V. DIRECTOR'S REPORT

- A. **Traffic Counter System Upgrade (Pricing Comparison)** Current equipment no longer functioning and replacement parts are no longer available to repair existing equipment. The model we are using has been discontinued and replaced with the NC200 model. Sandi to research other options available and whether leasing is possible. To revisit at the

next meeting in May.

- B. **Bridge Inspection Update** – Melvin reported that all the bridges passed inspection. All necessary work needed can be done in-house. Reports enclosed in packet detail deficiencies and suggested remedies.

**VI. SOLID WASTE AUTHORITY**

- A. **Monthly Equipment Use Report** (February 28, 2011 – April 1, 2011) We had a good month in recycling. \$24K total. \$8K was from the damaged aluminum bleachers.
- B. **Monthly Recycle Tonnage Report** (Last Quarter Tonnage Comparison) Tonnage was up. Councilman Lake stated that he would like to see smaller cans for people who recycle. He also suggested that we charge less for people who use a smaller garbage cart and are using a recycling cart. Councilman Yelding stated that we need to get creative and educate more people about the benefits of recycling.

**VII. MUSEUM COMMITTEE**

- A. Minutes – March 14, 2011. Minutes reviewed.

**VIII. BEAUTIFICATION COMMITTEE**

- A. Minutes – March 4, 2011 and April 1, 2011 minutes reviewed
- B. DBC Update – Not present.
- C. **Beautification Logo – Councilwoman Barnette approved adding the tagline to the log on Public Works Vehicles that says “Beautification in Progress.” Councilman Lake seconded the motion.**

**IX. ENGINEER REPORT**

- A. **HMR Update** – Lake Forest update. Clearing trees, layout for curbs, removing sawed areas. Update meeting is held weekly at HMR’s off on Main Street at 1:30 PM. Anyone who has questions or concerns is welcome to attend.
- B. **HMR Update** – Timber Creek project expected to start on April 21<sup>st</sup>.
- C. **Volkert Update** – Not Present

**V. FUTURE BUSINESS**

- A. Next Meeting – May 16, 2011

**XI. ADJOURNMENT**

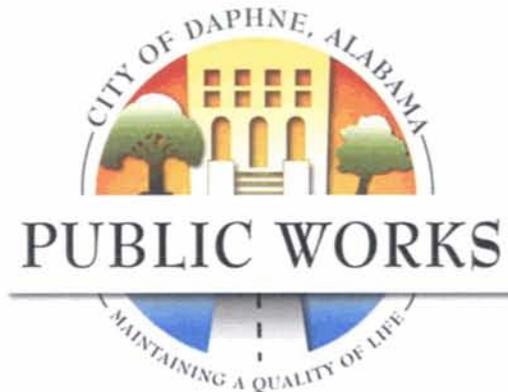
The meeting adjourned at 6:25 PM.

Fred Small  
Mayor

David Cohen  
City Clerk

Kimberly Briley  
Finance Director/Treasurer

Richard D. Johnson, P.E.  
Director of Public Works



Bailey Yelding, Jr.  
District 1

Cathy Barnette  
District 2

John L. Lake  
District 3

Kelly D. Reese  
District 4

Ronald Scott  
District 5

Derek Boulware  
District 6

August Palumbo  
District 7

To: Honorable Mayor Fred Small

Cc: City Clerk

From: Richard D. Johnson, P.E.  
Public Works Director

Date: April 27, 2011

**Re: U.S. Highways 90 & 98 Cooperative Maintenance Agreement with ALDOT**

Mr. Mayor

Attached is the proposed ALDOT Agreement for the Cooperative Maintenance of Public Rights of Way for U.S. Highways 90 & 98. The Public Works Committee has reviewed the request for a motion to the full council authorizing you to enter into the attached Maintenance Agreement including an additional 5.84 miles of State Highway 181.

The consideration of the Cooperative Maintenance for State Highway 181 is still premature. However, the delay on the two attached roadway's agreement is causing subsequent delays in permitting ALDOT improvement projects along the U.S. Highway corridor. There is no controversy or dispute to the City's role in maintaining these two roadways; we have been performing that function for years.

It is my recommendation that the full Council moves to authorize the execution of Cooperative Maintenance Agreements for the two highways at their next schedule meeting.

The Council then can be deliberate in the proceedings and consideration of the additional 5.84 miles of State Highway 181.

Yours,

RDJ

Attachments (1)

**ALABAMA DEPARTMENT OF TRANSPORTATION  
AGREEMENT FOR THE COOPERATIVE MAINTENANCE  
OF PUBLIC RIGHT OF WAY**

Permit No. \_\_\_\_\_

DIVISION Ninth (9th) DISTRICT Two (2)

THIS AGREEMENT, entered into this the 1st day of April, 2011, between the Alabama Department of Transportation acting by and through its Transportation Director hereinafter referred to as the STATE and City of Daphne - thru Public Works Department herein referred to as the APPLICANT in an effort to secure a more pleasing appearance on the roadside between From US Hwy 98 (Mile Marker 44.40) to eastern City Limit boundary  
(Mile Marker 48.47) - a total of 4.07 miles.

on Route US Hwy 90, the APPLICANT agrees to maintain the vegetative cover in the ROW - Shoulders and Medians by means of mowing with a flail or rotary mower and hand trimming such that a clean and attractive appearance is obtained. Mowing operations shall be conducted when the height of the vegetative cover reaches Six (6) inches and rescheduled in accordance with the planned frequency. In the event that shrubs and/or minor trees are planted within the area, trimming around the plant materials shall be done in conjunction with mowing to obtain a clean and attractive appearance. Clippings or other incidental debris (such as branches, trash, etc.) shall be removed if mounting of the clippings or other incidental debris occurs.

In accepting the above, the Department of Transportation and the APPLICANT agree to do the following:

1. The APPLICANT will see that adequate sight distances are maintained for maximum public safety; otherwise the Department of Transportation reserves the right to remedy this situation in the most expedient manner.

2. The Department of Transportation is not responsible for the safety of the individual involved or taking part in this work during maintenance operations. Signs used must be in accordance with the latest version of the MUTCD currently in use by ALDOT.
3. If Department of Transportation construction (repair of drainage and traffic structures, crossovers and other minor construction) is done in the subject area, it will be the responsibility of the Department of Transportation to establish a stand of vegetative cover if deemed necessary by the Department of Transportation and then the APPLICANT's responsibility to maintain the vegetative cover as stipulated herein. In the event of major construction in the subject area, this Agreement shall be voided at a time designated by the Department of Transportation.
4. The APPLICANT will provide litter pick up as needed to insure a pleasing appearance along the roadside.
5. All work shall be subject to the inspection and approval of the Alabama Department of Transportation. Description of the proposed work must accompany this and any associated proposal. If the maintenance is not conducted as specified herein, the Department of Transportation shall assume maintenance and this Agreement will be invalid. A copy of this Agreement must be kept by all parties that sign the Agreement. The State of Alabama does not grant applicant any right, title, or claim on any highway right-of-way.
6. The APPLICANT agrees to store no equipment, branches, mounds of clippings or plant debris of any kind or any other material on the shoulders of pavement and in the case of multi-lane highways, in the median strips. The pavement will be kept free from waste (clippings, mud and other debris) and equipment.
7. The APPLICANT shall be solely responsible for and hold harmless the Alabama Department of Transportation for any claim for damage done to existing private property, public utility, or the traveling public.
8. This Agreement is executed with the understanding that it is not valid until the APPLICANT has complied with all existing ordinances, laws and zoning boards that have jurisdiction in the county, city or municipality.
9. Failure of the APPLICANT to conform to the provisions of this Agreement will be cause to terminate this Agreement. Notification prior to termination will be made by the Department of Transportation.
10. To the fullest extent permitted by law, the APPLICANT shall defend, indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, and its agents, servants, employees and/or facilities from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts

or omissions of the APPLICANT, anyone directly or indirectly employed by the APPLICANT or anyone for whose acts APPLICANT may be liable.

- a. The term "hold harmless" includes the obligation of the APPLICANT to pay damages awarded against and legally recoverable from the State of Alabama, or the Alabama Department of Transportation, or its officers, agents, servants, and/or employees in both individual and official capacities whose acts or omissions that were the basis of the liability were performed within the course and scope of their employment.

The above conditions are agreed upon:

Name of APPLICANT: City of Daphne, Alabama

BY Honorable Fred Small - Mayor \_\_\_\_\_  
Name and Title Date

BY \_\_\_\_\_  
Name and Title Date

BY \_\_\_\_\_  
Name and Title Date

(251) 621-9000

Telephone Number

For the Alabama Department of Transportation:

\_\_\_\_\_  
District Manager Date

\_\_\_\_\_  
Division Engineer Date

\_\_\_\_\_  
Maintenance Engineer Date

**ALABAMA DEPARTMENT OF TRANSPORTATION  
AGREEMENT FOR THE COOPERATIVE MAINTENANCE  
OF PUBLIC RIGHT OF WAY**

Permit No. \_\_\_\_\_

DIVISION Ninth (9th) DISTRICT Two (2)

THIS AGREEMENT, entered into this the 1st day of April, 2011, between the Alabama Department of Transportation acting by and through its Transportation Director hereinafter referred to as the STATE and City of Daphne - thru Public Works Department herein referred to as the APPLICANT in an effort to secure a more pleasing appearance on the roadside between From the northern City Limit Boundary (Mile Marker 34.09) to  
the southern City Limit boundary (Mile Marker 41.52) - a total of 7.43 miles. (See  
Attached Map)

on Route US Hwy 98, the APPLICANT agrees to maintain the vegetative cover in the ROW - Shoulders and Medians by means of mowing with a flail or rotary mower and hand trimming such that a clean and attractive appearance is obtained. Mowing operations shall be conducted when the height of the vegetative cover reaches Six (6) inches and rescheduled in accordance with the planned frequency. In the event that shrubs and/or minor trees are planted within the area, trimming around the plant materials shall be done in conjunction with mowing to obtain a clean and attractive appearance. Clippings or other incidental debris (such as branches, trash, etc.) shall be removed if mounting of the clippings or other incidental debris occurs.

In accepting the above, the Department of Transportation and the APPLICANT agree to do the following:

1. The APPLICANT will see that adequate sight distances are maintained for maximum public safety; otherwise the Department of Transportation reserves the right to remedy this situation in the most expedient manner.

2. The Department of Transportation is not responsible for the safety of the individual involved or taking part in this work during maintenance operations. Signs used must be in accordance with the latest version of the MUTCD currently in use by ALDOT.
3. If Department of Transportation construction (repair of drainage and traffic structures, crossovers and other minor construction) is done in the subject area, it will be the responsibility of the Department of Transportation to establish a stand of vegetative cover if deemed necessary by the Department of Transportation and then the APPLICANT's responsibility to maintain the vegetative cover as stipulated herein. In the event of major construction in the subject area, this Agreement shall be voided at a time designated by the Department of Transportation.
4. The APPLICANT will provide litter pick up as needed to insure a pleasing appearance along the roadside.
5. All work shall be subject to the inspection and approval of the Alabama Department of Transportation. Description of the proposed work must accompany this and any associated proposal. If the maintenance is not conducted as specified herein, the Department of Transportation shall assume maintenance and this Agreement will be invalid. A copy of this Agreement must be kept by all parties that sign the Agreement. The State of Alabama does not grant applicant any right, title, or claim on any highway right-of-way.
6. The APPLICANT agrees to store no equipment, branches, mounds of clippings or plant debris of any kind or any other material on the shoulders of pavement and in the case of multi-lane highways, in the median strips. The pavement will be kept free from waste (clippings, mud and other debris) and equipment.
7. The APPLICANT shall be solely responsible for and hold harmless the Alabama Department of Transportation for any claim for damage done to existing private property, public utility, or the traveling public.
8. This Agreement is executed with the understanding that it is not valid until the APPLICANT has complied with all existing ordinances, laws and zoning boards that have jurisdiction in the county, city or municipality.
9. Failure of the APPLICANT to conform to the provisions of this Agreement will be cause to terminate this Agreement. Notification prior to termination will be made by the Department of Transportation.
10. To the fullest extent permitted by law, the APPLICANT shall defend, indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, and its agents, servants, employees and/or facilities from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts

or omissions of the APPLICANT, anyone directly or indirectly employed by the APPLICANT or anyone for whose acts APPLICANT may be liable.

- a. The term "hold harmless" includes the obligation of the APPLICANT to pay damages awarded against and legally recoverable from the State of Alabama, or the Alabama Department of Transportation, or its officers, agents, servants, and/or employees in both individual and official capacities whose acts or omissions that were the basis of the liability were performed within the course and scope of their employment.

The above conditions are agreed upon:

Name of APPLICANT: City of Daphne, Alabama

BY Honorable Fred Small - Mayor \_\_\_\_\_  
Name and Title Date

BY \_\_\_\_\_  
Name and Title Date

BY \_\_\_\_\_  
Name and Title Date

(251) 621-9000

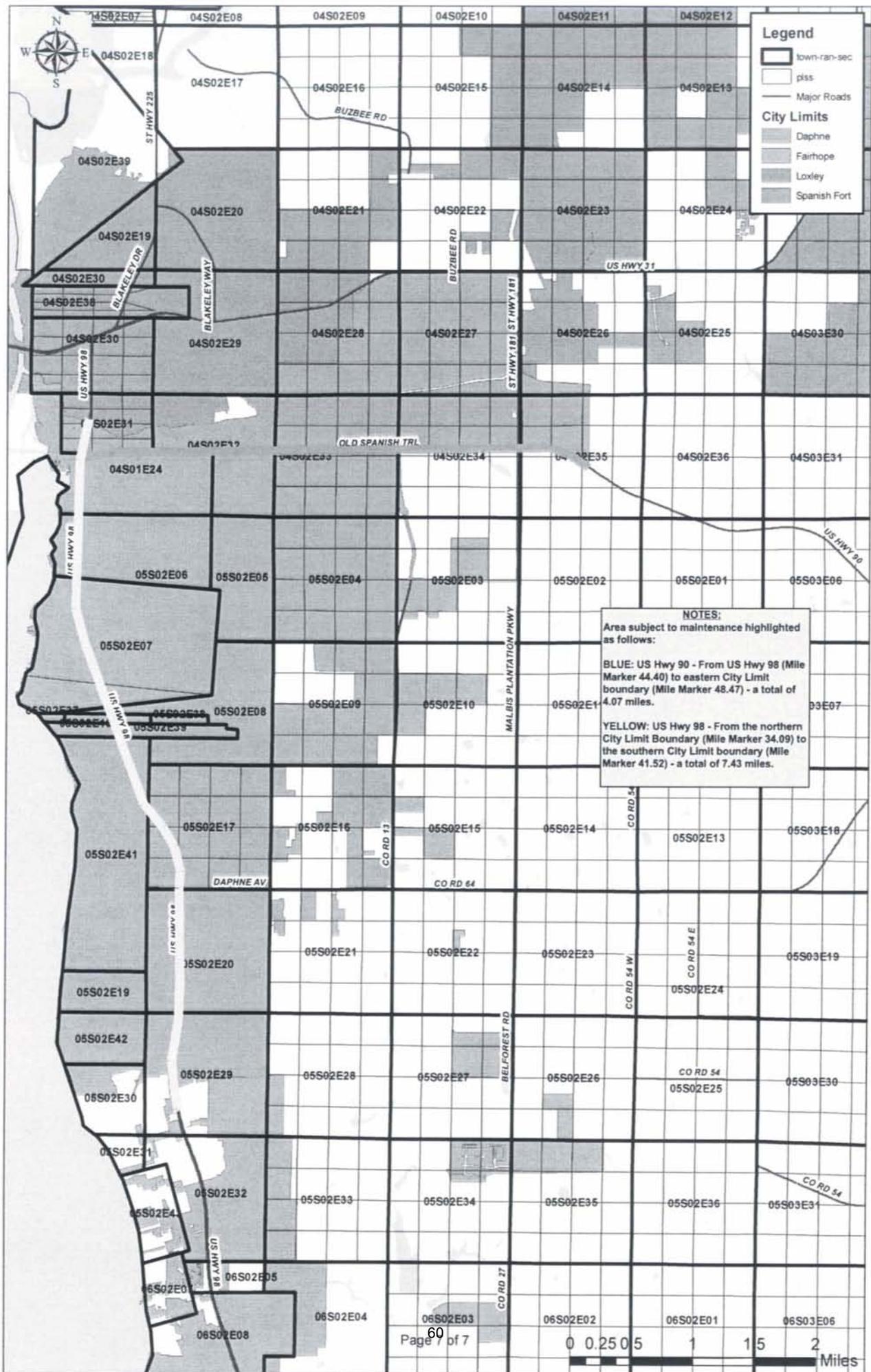
Telephone Number

For the Alabama Department of Transportation:

\_\_\_\_\_  
District Manager Date

\_\_\_\_\_  
Division Engineer Date

\_\_\_\_\_  
Maintenance Engineer Date



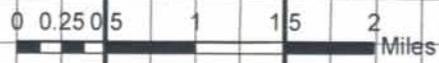
**Legend**

- town-ran-sec
- piss
- Major Roads

**City Limits**

- Daphne
- Fairhope
- Loxley
- Spanish Fort

**NOTES:**  
 Area subject to maintenance highlighted as follows:  
 BLUE: US Hwy 90 - From US Hwy 98 (Mile Marker 44.40) to eastern City Limit boundary (Mile Marker 48.47) - a total of 4.07 miles.  
 YELLOW: US Hwy 98 - From the northern City Limit Boundary (Mile Marker 34.09) to the southern City Limit boundary (Mile Marker 41.52) - a total of 7.43 miles.



**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:**

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**DOWNTOWN REDEVELOPMENT AUTHORITY  
DAPHNE, AL  
1705 MAIN STREET  
APRIL 25, 2011  
5:15 P.M.**

**DRAFT**

**1. CALL TO ORDER/ROLLCALL**

Casey Zito called the meeting to order at 5:27 p.m.

**Members Present:** Casey Zito; Ronald Nero; Ken Balme.

**ABSENT:** Doug Bailey; Kelly Hughes; Mary Beth Mantiply.

Also present: Rebecca Hayes, recording secretary; Cathy Barnette, council liaison; Dorothy Morrison, Beautification Committee.

**2. CRIS SMITH / SOUTH AL SCHOOL OF CONTINUING EDUCATION**

Cris gave an overview of what the college offers, and he wanted to increase awareness that citizens of Baldwin County do not have to go to Mobile to finish their degree. There is a campus in Fairhope. He wants people to know that the college has great technology in the classroom where you can be in a classroom in Fairhope, and have visual and audio contact with a classroom in Mobile. He also wants to raise awareness that they have a scholarship program for adults who want to finish their degree, maybe all they need is a semester or two, but budget wise cannot afford to finish, they can help them out with the cost.

**3. WEBSITE**

Marcus Neto with Blue Fish Design Studio gave a presentation on what his company has to offer regarding web design. He mentioned the first thing to be done was for the members to create a budget, and a list of what they want on the website. Then he can give a quote on the design.

Members want the web page to convey a sense of place.

**4. ADOPT MINUTES / MARCH 28, 2011**

**MOTION BY Ken Balme to approve the March 28, 2011 meeting minutes. *Seconded by Ronald Nero.***

**AYE ALL IN FAVOR                      NAY NONE OPPOSED                      MOTION CARRIED**

**5. PLAQUE**

Doug was not present to report on his conversation with Jeff Hudson about the design of the plaque. The members had decided to do a plaque like the one for city hall, low on the ground, and to place it in one of the flower beds in front of the fountain so as not to detract from the fountain and statue.

**1705 MAIN STREET  
APRIL 25, 2011  
5:00 P.M.**

***DRAFT***

**6. TREASURERS REPORT**

Casey reported that there is \$32,173.08 in the DRA fund.

Councilwoman Barnette reported that she spoke with Mrs. Briley regarding the Improvement Fund, and she thought that it would be appropriate to establish this fund. Mrs. Briley mentioned that it would be best if the Authority set up a bank account for their funds.

**MOTION BY Ronald Nero to authorize Casey Zito to open a bank account for the Downtown Redevelopment funds. *Seconded by Ken Balme.***

**AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED**

**7. REPORT ON BEAUTIFICATION PROJECTS / DOROTHY MORRISON**

Dorothy said that the gazebo at Centennial Park is still in a holding pattern, and the sidewalk in front of Flowers Etc. is not complete.

**8. NEXT MEETING**

The next meeting will be May 22<sup>nd</sup>, 2011 at 5:15 p.m.

**9. ADJOURN**

The meeting adjourned at 6:30 p.m.

Respectfully submitted,

Downtown Redevelopment Authority

**CITY COUNCIL MEETING  
MAYOR'S REPORT**

**NOTES:**

CASE NO. 2011-2

ABC LICENSE ROUTING

DATE RECEIVED BY REVENUE DIV. 2-17-11 (initial) KS

DATE FORWARDED TO POLICE DEPT. 2-17-11 KS

DATE RECEIVED BY POLICE DEPT. 2-21-11 JG

DATE: APPROVED (✓ 4-20-11) DISAPPROVED (✓ 3-22-11)

POLICE DEPT SIGNATURE [Signature] Judson BEEDT

DATE RETURNED TO REVENUE DIV. 3-22-11 4-20-11 JG

DATE FORWARDED TO CITY CLERK 4-21-11

DATE RECEIVED BY CITY CLERK 4-21-11 RH

SCHEDULED DATE ON AGENDA 5-02-11 RH

Council Action: APPROVED DISAPPROVED TABLED

COMMENTS: \_\_\_\_\_

Rescheduled for Council Agenda Date: \_\_\_\_\_

Council Action: APPROVED DISAPPROVED TABLED

COMMENTS: \_\_\_\_\_

DATE RETURNED TO REVENUE DIV.: \_\_\_\_\_

DATE RETURNED TO TAXPAYER \_\_\_\_\_  
OR TO ABC FIELD OFFICE \_\_\_\_\_ (per taxpayer request)



**STATE OF ALABAMA**  
**ALCOHOLIC BEVERAGE CONTROL BOARD**  
**ALCOHOL LICENSE APPLICATION**  
**Confirmation Number: 20110421080342652**



**Type License:** 010 - LOUNGE RETAIL LIQUOR - CLASS I      **State:**      **County:**  
**Type License:**      **State:**      **County:**  
**Trade Name:** TOP OF THE BAY      **Filing Fee:**  
**Applicant:** TOP OF THE BAY LLC      **Transfer Fee:** \$50.00  
**Location Address:** 29049 HWY 98    DAPHNE, AL 36526  
**Mailing Address:** 29049 HWY 98    DAPHNE, AL 36526  
**County:** BALDWIN    **Tobacco sales:** YES      **Tobacco Vending Machines:** 1  
**Sale of Products Containing Ephedrine:** NO      **Type Ownership:** LLC  
**Book, Page, or Document info:** INST 1243057      **Do you sell Draft Beer:** Y  
**Date Incorporated:** 07/22/2010    **State incorporated:** AL      **County Incorporated:** BALDWIN  
**Date of Authority:** 07/22/2010      **Alabama State Sales Tax ID:** R007400708

**Name:**      **Title:**      **Date and Place of Birth:**    **Residence Address:**

JUSTIN CHRISTOPHER DUFFY 6891304 - AL	OWNER	07/29/1982 VOLVLSIA, FL	126 MICHAEL LOOP DAPHNE, AL 36526
GEORGE EDWARD DUFFY 6202330 - AL	OWNER	10/07/1958 DUVAL, FL	126 MICHAEL LOOP DAPHNE, AL 36526

Has applicant complied with financial responsibility ABC RR 20-X-5-.14? YES  
 Does ABC have any actions pending against the current licensee? NO  
 Has anyone, including manager or applicant, had a Federal/State permit or license suspended or revoked? NO  
 Has a liquor, wine, malt or brewed license for these premises ever been denied, suspended, or revoked? NO  
 Are the applicant(s) named above, the only person(s), in any manner interested in the business sought to be licensed? YES  
 Are any of the applicants, whether individual, member of a partnership or association, or officers and directors of cooperation itself, in any manner monetarily interested, either directly or indirectly, in the profits of any other class of business regulated under authority of this act? NO  
 Does applicant own or control, directly or indirectly, hold lien against any real or personal property which is rented, leased or used in the conduct of business by the holder of any vinous, malt or brewed beverage, or distilled liquors permit or license issued under authority of this act? NO  
 Is applicant receiving, either directly or indirectly, any loan, credit, money, or the equivalent thereof from or through a subsidiary or affiliate or other licensee, or from any firm, association or corporation operating under or regulated by the authority of this act? NO

**Contact Person:** GEORGE DUFFY      **Home Phone:** 251-604-4378  
**Business Phone:** 251-621-1177      **Cell Phone:** 251-604-4378  
**Fax:**      **E-mail:** DUFFYG@BELLSOUTH.NET

**PREVIOUS LICENSE INFORMATION:**      **Previous License Number(s)**  
**Trade Name:** TOP OF THE BAY      **License 1:** 001296302  
**Applicant:** MICHELLE KRISTEN CLAPROOD      **License 2:**



**STATE OF ALABAMA**  
**ALCOHOLIC BEVERAGE CONTROL BOARD**  
**ALCOHOL LICENSE APPLICATION**  
**Confirmation Number: 20110421080342652**



If applicant is leasing the property, is a copy of the lease agreement attached? **YES**  
 Name of Property owner/lessor and phone number: **MEILYN-VILAI, LLC 251-626-4055**  
 What is lessors primary business? **REAL ESTATE**  
 Is lessor involved in any way with the alcoholic beverage business? **NO**  
 Is there any further interest, or connection with, the licensee's business by the lessor? **NO**

Does the premise have a fully equipped kitchen? **NO**  
 Is the business used to habitually and principally provide food to the public? **NO**  
 Does the establishment have restroom facilities? **YES**  
 Is the premise equipped with services and facilities for on premises consumption of alcoholic beverages? **YES**

Will the business be operated primarily as a package store? **NO**  
 Building Dimensions Square Footage: **5000** Display Square Footage:  
 Building seating capacity: **100** Does Licensed premises include a patio area? **NO**  
 License Structure: **ONE STORY** License covers: **ENTIRE STRUCTURE**  
 Number of licenses in the vicinity: **6** Nearest: **.5**  
 Nearest school: **2 miles** Nearest church: **2 miles** Nearest residence: **2 miles**  
 Location is within: **CITY LIMITS** Police protection: **CITY**

Has any person(s) with any interest, including manager, whether as sole applicant, officer, member, or partner been charged (whether convicted or not) of any law violation(s)?

Name:	Violation & Date:	Arresting Agency:	Disposition:



**STATE OF ALABAMA  
ALCOHOLIC BEVERAGE CONTROL BOARD  
ALCOHOL LICENSE APPLICATION  
Confirmation Number: 20110421080342652**



**Initial each**

**Signature page**

In reference to law violations, I attest to the truthfulness of the responses given within the application.

In reference to the Lease/property ownership, I attest to the truthfulness of the responses given within the application.

In reference to ACT No. 80-529, I understand that if my application is denied or discontinued, I will not be refunded the filing fee required by this application.

In reference to Special Retail or Special Events retail license, I agree to comply with all applicable laws and regulations concerning this class of license, and to observe the special terms and conditions as indicated within the application.

In reference to the Club Application information, I attest to the truthfulness of the responses given within the application.

In reference to the transfer of license/location, I attest to the truthfulness of the information listed on the attached transfer agreement.

In accordance with Alabama Rules & Regulations 20-X-5-.01(4), any social security number disclosed under this regulation shall be used for the purpose of investigation or verification by the ABC Board and shall not be a matter of public record.

The undersigned agree, if a license is issued as herein applied for, to comply at all times with and to fully observe all the provisions of the Alabama Alcoholic Beverage Control Act, as appears in Code of Alabama, Title 28, and all laws of the State of Alabama relative to the handling of alcoholic beverages.

The undersigned, if issued a license as herein requested, further agrees to obey all rules and regulations promulgated by the board relative to all alcoholic beverages received in this State. The undersigned, if issued a license as herein requested, also agrees to allow and hereby invites duly authorized agents of the Alabama Alcoholic Beverage Control Board and any duly commissioned law enforcement officer of the State, County or Municipality in which the license premises are located to enter and search without a warrant the licensed premises or any building owned or occupied by him or her in connection with said licensed premises. The undersigned hereby understands that he or she violate any provisions of the aforementioned laws his or her license shall be subject to revocation and no license can be again issued to said licensee for a period of one year. The undersigned further understands and agrees that no changes in the manner of operation and no deletion or discontinuance of any services or facilities as described in this application will be allowed without written approval of the proper governing body and the Alabama Alcoholic Beverage Control Board.

I hereby swear and affirm that I have read the application and all statements therein and facts set forth are true and correct, and that the applicant is the only person interested in the business for which the license is required.

Applicant Name (print): *George Edward Duffy*

Signature of Applicant: *George E. Duffy*

Notary Name (print): *Betty G. Dean*

Notary Signature: *Betty G. Dean*

Commission expires: *1/10/15*

Application Taken: *4-21-11* App. Inv. Completed:

Submitted to Local Government:

Forwarded to District Office:  
Received from Local Government:

Received in District Office: Reviewed by Supervisor:

Forwarded to Central Office:



**STATE OF ALABAMA**  
**ALCOHOLIC BEVERAGE CONTROL BOARD**  
 Confirmation Number: 20110421080342652



**NOTICE OF TRANSFER OF ABC LICENSED BUSINESS**

**NOTE: A Copy of Operating Agreement Must be Attached To Application**

CURRENT LICENSEE:  
 MICHELLE KRISTEN CLAPROOD  
 Address: 29049 HWY 98  
           DAPHNE, AL 36526  
 Telephone: 251-621-1177

NEW APPLICANT:  
 TOP OF THE BAY LLC  
 Address: 29049 HWY 98  
           DAPHNE, AL 36526  
 Telephone: 251-621-1177

Current License No: 001296302

LICENSED PREMISES ADDRESS: 29049 HWY 98    DAPHNE, AL 36526

**THE AFORENAMED HEREBY SERVE NOTICE TO THE ABC BOARD OF THE ATTACHED CONTRACTUAL AGREEMENT GOVERNING THE CONTINUATION OF SALES OF ALCOHOLIC BEVERAGES ON THE LICENSED PREMISES.**

The Parties to this agreement hereby acknowledge and affirm that the New (Applicant) Licensee will, at all times, act as the AGENT for the Current (Named) Licensee, and the Current Licensee shall act as PRINCIPAL for the purposes of the attached Agreement. The Principal shall be bound by all acts and/or omissions of the Agent in the operation of the licensed premises.

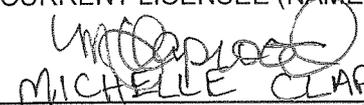
The Current Licensee is now and shall remain liable for any violations of ABC Rules and Regulations or other Alabama Law for the duration of the attached Agreement; and, further, that the Current Licensee has the right and authority, under Alabama Law, to surrender the ABC License to the ABC Board at any time.

The parties acknowledge that the operation of the licensed premises shall remain subject to inspection by ABC Enforcement, and must comply with all State and Local regulations and Laws, and that the local ABC Enforcement District Office must be immediately notified of any change in the attached Agreement.

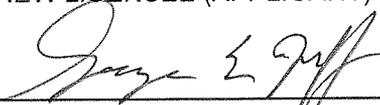
**THE CURRENT LICENSE WILL NOT BE RENEWED.**

WITNESS our hands and seals on this the 21<sup>st</sup> day of April, 2014.

CURRENT LICENSEE (NAMED ON LICENSE)

  
MICHELLE CLAPLOOD  
 Print Name: MICHELLE CLAPLOOD  
 Title: OWNER

NEW LICENSEE (APPLICANT)

 Top of the Bay Corporation  
George E. Duffy  
 Print Name: George E. Duffy  
 Title: Member

WITNESS: (By ABC Enforcement)  
 Revised 9/08

See Lance #146

Receipt Confirmation Page

Receipt Confirmation Number: **20110421080342652**  
Application Payment Confirmation Number: **145998**

Payment Summary	
Payment Item	Fee
Transfer Fee for License 010	\$50.00
<b>Total Amount to be Charged</b>	<b>\$50.00</b>

**Application Type**

Application Type: TRANSFER

**Applicant Information**

License Type 1: 010 - LOUNGE RETAIL LIQUOR - CLASS I  
License Type 2:  
License County: BALDWIN  
Business Type: LLC  
Trade Name: **TOP OF THE BAY**  
Applicant Name: **TOP OF THE BAY LLC**  
Location Address: 29049 HWY 98  
                            DAPHNE, AL 36526  
  
Mailing Address: 29049 HWY 98  
                            DAPHNE, AL 36526  
  
Contact Person: GEORGE DUFFY  
Contact Home Phone: 251-604-4378  
Contact Business Phone: 251-621-1177  
Contact Fax:  
Contact Cell Phone: 251-604-4378  
Contact Email Address:  
Contact Web Address:

**CITY ATTORNEY'S REPORT**

**NOTES:**

**DEPARTMENT HEAD'S COMMENTS**

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

**NOTES:**

RECOMMENDATIONS

**COUNCIL COMMENTS:**

**ORDINANCE 2011-30**

**AN ORDINANCE APPROVING HIRING FREEZE EXCEPTION:  
Grounds Public Service Worker**

**WHEREAS**, Ordinance 2010-71 as adopted on December 20, 2010 imposed a hiring freeze on all Fiscal 2011 vacant positions unless the City Council gives express approval for the position to be filled; and

**WHEREAS**, the Public Works Director submitted a request to the Mayor to fill the recently vacated position of Grounds Public Service Worker; and

**WHEREAS**, the Mayor did approve such request and has requested that the City Council favorably approve the advertisement and hiring of a Grounds Public Service Worker.

**NOW, THEREFORE**, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that an amendment to the section of Ordinance 2010-71 regarding the hiring freeze is hereby approved for the filling of the Grounds Public Service Worker position that was recently vacated (estimated annual cost, including benefits, for entry level \$ 31,130-\$ 33,137); and

**FURTHERMORE**, that the position shall be filled in accordance with all provisions of the Employee Handbook and the related Employee Pay Scale.

**APPROVED AND ADOPTED** by the Mayor and City Council of the City of Daphne, Alabama, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Cathy S. Barnette, Council President**

\_\_\_\_\_  
**Fred Small, Mayor**

**ATTEST:**

\_\_\_\_\_  
David L. Cohen, City Clerk, MMC

**ORDINANCE 2011-31**

**Mobile Bay National Estuary Program**

**WHEREAS**, Ordinance 2010-71 approved and adopted the Fiscal Year 2011 Budget on December 20, 2010; and

**WHEREAS**, subsequent to the adoption of the Fiscal Year 2011 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2011 budget; and

**WHEREAS**, the adopted budget does not include an appropriation to the Mobile Bay National Estuary Program (MBNEP); and

**WHEREAS**, the MBNEP is instrumental in addressing environmental challenges in Daphne through its various programs; and

**WHEREAS**, the City Council has determined it to be in the best interest of the City to make a \$ 10,000 contribution to the MBNEP.

**NOW, THEREFORE**, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that the Fiscal Year 2011 Budget is hereby amended to include a General Fund appropriation in the amount of \$ 10,000 for a contribution to the MBNEP. Furthermore, the Mayor is authorized to execute an agreement, on behalf of the City of Daphne, as necessary for such purpose.

**APPROVED AND ADOPTED** by the Mayor and City Council of the City of Daphne, Alabama, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Cathy S. Barnette, Council President**

\_\_\_\_\_  
**Fred Small, Mayor**

**ATTEST:**

\_\_\_\_\_  
David L. Cohen, City Clerk, MMC

**ORDINANCE 2011-32**

**Campbell's Swamp Appraisal Appropriation**

**WHEREAS**, Ordinance 2010-71 approved and adopted the Fiscal Year 2011 Budget on December 20, 2010; and

**WHEREAS**, subsequent to the adoption of the Fiscal Year 2011 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2011 budget; and

**WHEREAS**, the City Council is aware of the environmental impact the various swamps and wetlands in Daphne have to the vitality of Mobile Bay; and

**WHEREAS**, Campbell's Swamp is a part of the Mobile Bay Watershed; and

**WHEREAS**, the City Council wishes to obtain an appraisal of Campbell's Swamp for informational purposes.

**NOW, THEREFORE**, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that the Fiscal Year 2011 Budget is hereby amended to include a Lodging Tax appropriation in an amount not to exceed \$ 1,500 for the appraisal of Campbell's Swamp.

**APPROVED AND ADOPTED** by the Mayor and City Council of the City of Daphne, Alabama, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Cathy S. Barnette, Council President**

\_\_\_\_\_  
**Fred Small, Mayor**

**ATTEST:**

\_\_\_\_\_  
David L. Cohen, City Clerk MMC

**ORDINANCE 2011-33**

**(3) Library & (1) Recreation HVAC Unit Replacements**

**WHEREAS**, Ordinance 2010-71 approved and adopted the Fiscal Year 2011 Budget on December 20, 2010; and

**WHEREAS**, subsequent to the adoption of the Fiscal Year 2011 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2011 budget; and

**WHEREAS**, the adopted budget does not include an appropriation for HVAC Unit replacements for the Library and Recreation Center; and

**WHEREAS**, the current units needing replacement are twelve years old and the cost of maintenance cost increases each year.

**NOW, THEREFORE**, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that: the Fiscal Year 2011 Budget is hereby amended to include a General Fund appropriation in the amount of \$35,358 for the (3) Library and (1) Recreation HVAC Units.

**APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS \_\_\_\_\_ day of \_\_\_\_\_, 2011.**

\_\_\_\_\_  
**Cathy S. Barnette, Council President**

\_\_\_\_\_  
**Fred Small, Mayor**

**ATTEST:**

\_\_\_\_\_  
David L. Cohen, City Clerk, MMC

**ORDINANCE 2011-34**

**PW/Used Wheel Loader**

**WHEREAS**, Ordinance 2010-71 approved and adopted the Fiscal Year 2011 Budget on December 20, 2010; and

**WHEREAS**, subsequent to the adoption of the Fiscal Year 2011 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2011 budget; and

**WHEREAS**, in prior fiscal years, the City has leased a Wheel Loader for use in the Public Works Department; and

**WHEREAS**, such operating lease will expire April, 2011; and

**WHEREAS**, it was determined that it would be less costly over the life of the equipment to purchase a used wheel loader rather than continue to lease a new one; and

**WHEREAS**, the FY 11 budget does include \$21,600 to continue leasing the wheel loader and an additional appropriation of \$38,565 will allow for the purchase of a used wheel loader.

**NOW, THEREFORE**, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that: the Fiscal Year 2011 Budget is hereby amended to include a General Fund appropriation in the amount of \$38,565 for the purchase of a used wheel loader. *(Cost of used wheel loader - \$60,165 – [\$21,600 FY11 Budget])*

**APPROVED AND ADOPTED** by the Mayor and City Council of the City of Daphne, Alabama, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Cathy S. Barnette, Council President**

\_\_\_\_\_  
**Fred Small, Mayor**

**ATTEST:**

\_\_\_\_\_  
David L. Cohen, City, Clerk MMC

**CITY OF DAPHNE, ALABAMA  
ORDINANCE NO. 2011-35**

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**Ordinance to Rezone Property Located  
Northwest of intersection of Anchor Cross Blvd. and U.S. Hwy. 90**

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**WHEREAS**, GCD Acquisitions I, L.L.C., as the owner of certain real property located within the City of Daphne, Alabama, has requested that said property be rezoned from B-2, General Business to R-4, High Density Multi-Family Residential; and,

**WHEREAS**, said real property is Northwest of the intersection of U.S. Highway 90 and Anchor Crossing Boulevard, and more particularly described as follows:

Lot 2A, Resubdivision of Lot 2, Medical Office Building and Cancer Center of Malbis, as per plat recorded in the Baldwin County Probate Court records Slide No. 2411-B. Being more particularly described as follows:

Commencing at the Southwest Corner of Section 34, Township 4 South, Range 2 East Baldwin County, Run N 0045'37"E 2,938.43 feet more or less, to the intersection of the North right of way line of U. S. Highway 90, thence run N 8902'24"E 1,075.10 feet to the intersection of the West right of way line of Anchor Cross Boulevard, as recorded in the Baldwin County Probate Court records Slide No. 2368-A. Thence run N 0008'46"E 54.79 feet to a point, thence run N0008'46"E 537.46 feet to the Point of Beginning; thence run S8937'02"W 574.08 feet to a point; thence run S0122'24"W 230.62 feet to a point; thence run S8930'23"W 343.74 feet to a point on the East right of way line of County Road 13, said point being on the arc of a curve that is concave Southwestwardly having a central angle of 2059'41" and a radius of 1,265,92 feet; thence along the arc of said curve run Northwestwardly 463.87 feet to a point, said point bears N1758'43"W 461.27 feet from the last described point; thence run N0045'37"E 174.20 feet to a point; thence run N8958'04"E 1,154.34 feet to a point on the aforementioned West right of way line of Anchor Cross Drive; the NC run S0008'46"W 376.19 feet along to the Point of Beginning and containing 11.0061 acres.

**WHEREAS**, at the City of Daphne Planning Commission meeting on March 24, 2011, the Commission considered said request and set forth no recommendation to the City Council of the City of Daphne regarding said property rezoning request; and,

**WHEREAS**, due notice of said proposed rezoning has been provided to the public as required by law through publication and open display at the Daphne Public Library and City Hall, a public hearing was held before the City Council on May 2, 2011; and,

**WHEREAS**, the City Council of the City of Daphne after due consideration and upon consideration of the recommendation of the Planning Commission, deemed that said application for rezoning of the above described real property is proper and in the best interest of the health, safety and welfare of the citizens of the City of Daphne, Alabama; and

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

**SECTION I: ZONING**

That above described real property is hereby rezoned from B-2, General Business to R-4, High Density Multi-Family Residential, and that the zoning ordinance and zoning map be amended to reflect the said zoning change.

**SECTION II: REPEALER.**

All other City Ordinances or parts thereof in conflict with the provisions of this Ordinance, in so far as they conflict, are hereby repealed.

**SECTION III: SEVERABILITY.**

The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence, or part thereof shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of said Ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence, and part thereof separately and independently of each other.

**SECTION IV: 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 after publication as required by law.

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS \_\_\_\_\_ day of \_\_\_\_\_, 2011.**

\_\_\_\_\_  
**Cathy S. Barnette,**  
**Council President**

\_\_\_\_\_  
**Fred Small,**  
**Mayor**

**ATTEST:**  
  
\_\_\_\_\_  
**David L. Cohen**  
**City Clerk, MMC**

GCD ACQUISITIONS I, L.L.C.  
ZONING AMENDMENT REVIEW

NORTHWEST OF THE INTERSECTION  
OF U.S. HIGHWAY 90 AND ANCHOR CROSSING BOULEVARD

EXHIBIT "A"

(LOT 2A, THE RESUBDIVISION OF LOT 2, MEDICAL OFFICE AND CANCER  
CENTER SUBDIVISION)

STATE OF ALABAMA)  
COUNTY OF BALDWIN)

LEGAL DESCRIPTION:

LOT 2A, RESUBDIVISION OF LOT 2, MEDICAL OFFICE BUILDING AND CANCER CENTER OF MALBIS, AS PER PLAT RECORDED IN THE BALDWIN COUNTY PROBATE COURT RECORDS SLIDE No. 2411-B. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH WEST CORNER OF SECTION 34, TOWNSHIP 4 SOUTH, RANGE 2 EAST BALDWIN COUNTY, RUN N 00° 45' 37" E 2,938.43 FEET MORE OR LESS, TO THE INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY 90, THENCE RUN N 89° 02' 24" E 1,075.10 FEET TO THE INTERSECTION OF THE WEST RIGHT OF WAY LINE OF ANCHOR CROSS BOULEVARD, AS RECORDED IN THE BALDWIN COUNTY PROBATE COURT RECORDS SLIDE No. 2368-A. THENCE RUN N 00° 08' 46" E 54.79 FEET TO A POINT, THENCE RUN N 00° 08' 46" E 537.46 FEET TO THE POINT OF BEGINNING; THENCE RUN S 89° 37' 02" W 574.08 FEET TO A POINT; THENCE RUN S 01° 22' 24" W 230.62 FEET TO A POINT; THENCE RUN S 89° 30' 23" W 343.74 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF COUNTY ROAD 13, SAID POINT BEING ON THE ARC OF A CURVE THAT IS CONCAVE SOUTHWESTWARDLY HAVING A CENTRAL ANGLE OF 20°59'41" AND A RADIUS OF 1,265.92 FEET; THENCEALON THE ARC OF SAID CURVE RUN NORTHWESTWARDLY 463.87 FEET TO A POINT, SAID POINT BEARS N 17°58'43" W 461.27 FEET FROM THE LAST DESCRIBED POINT; THENCE RUN N 00° 45' 37" E 174.20 FEET TO A POINT; THENCE RUN N 89° 58' 04" E 1,154.34 FEET TO A POINT ON THE AFOREMENTIONED WEST RIGHT OF WAY LINE OF ANCHOR CROSS DRIVE; THE NC RUN S 00° 08' 46" W 376.19 FEET ALONG TO THE POINT OF BEGINNING AND CONTAINING: 11.0061 ACRES.

