

**CITY COUNCIL BUSINESS MEETING AGENDA
1705 MAIN STREET, DAPHNE, AL
FEBRUARY 4, 2013
6:30 P.M.**

1. CALL TO ORDER

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

- 3. APPROVE MINUTES:** Council meeting minutes / January 22, 2013
Special Called Council meeting minutes / January 29, 2013

ATTORNEY GENERAL’S OPINION ON FILLING VACANCY OF MAYOR

4. REPORT STANDING COMMITTEES:

A. FINANCE COMMITTEE / Conaway

- a.) Approve Lease Purchase Agreement with Hancock Bank / Garbage Truck & Mowers /

Resolution 2013-06

B. BUILDINGS & PROPERTY - Haygood

C. PUBLIC SAFETY - LeJeune

D. CODE ENFORCEMENT/ORDINANCE COMMITTEE - Fry

E. PUBLIC WORKS COMMITTEE / SOLID WASTE AUTHORITY - LeJeune

Review minutes / January 22nd

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

A. Board of Zoning Adjustments – Adrienne Jones

B. Downtown Redevelopment Authority - Conaway

Review minutes / November 26, 2012

C. Industrial Development Board - Haygood

Review minutes / January 28th

D. Library Board - Lake

E. Planning Commission – Scott

F. Recreation Board - LeJeune

G. Utility Board - Fry

Review minutes November 28, 2012

Review minutes December 17, 2012 (Special Called)

6. REPORTS OF OFFICERS:

A. Mayors Report

B. City Attorney’s Report

- a.) Jubilee Square Easements / **Ordinance 2013-10**

- b.) Place a moratorium on adult entertainment establishments and tattoo establishments for 6 months or 12 months

C. Department Head Comments

City Clerk Report:

- a.) Parade Permit / Loyal Order of the Fire Truck / February 10, 2013

7. PUBLIC PARTICIPATION:

8. RESOLUTIONS & ORDINANCES:

RESOLUTIONS:

- a.) Approve Lease Purchase Agreement with Hancock Bank /
Garbage Truck & Mowers...../Resolution 2013-06
- b.) Engineering Analysis for City’s Communication Tower/Resolution 2013-07

ORDINANCES:

2ND READ

- a.) Trash Ordinance...../Ordinance 2013-04
- b.) Rezone: GCOF Retreat at Tiawasee, LLC /
Pulled from Agenda per Owner...../Ordinance 2013-05
- c.) Annexation: GCOF Retreat at Tiawasee, LLC
Pulled from Agenda per Owner...../Ordinance 2013-06
- d.) Appropriation of Funds: Bullet Proof Vests Replacement...../Ordinance 2013-07
- e.) Job Reclassification: Mayors Assistant...../Ordinance 2013-08
- f.) Contribution: Blue Print for a Better Tomorrow...../Ordinance 2013-09

1ST READ

- g.) Consenting to the Vacation and Conveyance of Certain Easements
by the Utilities Board of the City of Daphne, Alabama...../Ordinance 2013-10

9. COUNCIL COMMENTS

10. ADJOURN

**CITY OF DAPHNE
CITY COUNCIL MEETING**

ROLL CALL

CITY COUNCIL:

CALL VOTES

COUNCILWOMAN CONAWAY

PRESENT__ ABSENT__ __

COUNCILMAN RUDICELL

PRESENT__ ABSENT__

COUNCILMAN LAKE

PRESENT__ ABSENT__ __

COUNCILMAN FRY

PRESENT__ ABSENT__ __

COUNCILMAN SCOTT

PRESENT__ ABSENT__ __

COUNCILMAN LEJEUNE

PRESENT__ ABSENT__ __

COUNCILMAN HAYGOOD

PRESENT__ ABSENT__ __

MAYOR

MAYOR YELDING

PRESENT__ ABSENT__ __

INTERIM CITY CLERK:

REBECCA HAYES

PRESENT___ ABSENT___

CITY ATTORNEY:

CITY ATTORNEY JAY ROSS

PRESENT__ ABSENT

MINUTE NOTES:

**CITY COUNCIL MEETING
MINUTES**

NOTES:

COMMITTEE RECOMMENDATIONS

**JANUARY 22, 2013
CITY COUNCIL MEETING
BUSINESS MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

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1. CALL TO ORDER

Council President Scott called the meeting to order at 6:32 p.m.

2. ROLL CALL/INVOCATION/PLEDGE OF ALLEGIANCE

Reverend Charles Jackson from the Macedonia Baptist Church gave the invocation.

COUNCIL MEMBERS PRESENT: Tommie Conaway; Pat Rudicell; John Lake Randy Fry; Ron Scott; Robin LeJeune; Dane Haygood.

Also present: Rebecca Hayes, Interim City Clerk; Jay Ross, City Attorney; Adrienne Jones, Planning Director; David Carpenter, Police Chief; James White, Fire Chief; Richard Johnson, Public Works Director; Vickie Hinman, Human Resource Director; Margaret Thigpen, Civic Center Director; Richard Merchant, Building Official; Tonja Young, Library Director; Suzanne Henson, Senior Accountant; Jane Ellis, mayors Assistant; Rick Whitehead, IT; Larry Cooke, BZA; Larry Chason, Planning Commission; Philip Durant, BZA; Bob Segalla, Utility Board; Casey Zito, DRA; Willie Robison, BZA.

Absent: Mayor Yelding; Kim Briley, Finance Director; David McKelroy, Recreation Director.

Council President Scott announced that Mayor Yelding passed away this morning and the funeral will be Friday at the Civic Center. The time has not been determined as yet.

**3. APPROVE MINUTES: JANUARY 7, 2013 COUNCIL MEETING & JANUARY 14, 2013
COUNCIL WORK SESSION MEETING MINUTES**

There were no corrections to the January 7, 2013 council meeting minutes or the January 14, 2013 council work session minutes, and they stand as approved.

PUBLIC HEARING: Rezoning: and Annexation: GCOF Retreat at Tiawasee

Location: Southwest of the intersection of Tiawasee Boulevard and County Road 13
Present Zoning: RSF-2 Single Family District, Baldwin County District 15
Requested Zoning: R-2, High Density Single Family Residential District, City of Daphne

Mrs. Adrienne Jones and Mr. John Avent gave the presentation.

Council President Scott opened the Public Hearing at 6:50 p.m.

Mrs. Mary Beth Bergin – 8838 Lamhatty – represented property owners of Tiawasee Trace Subdivision – spoke in opposition to the rezoning and annexation because of the access not being consistent with the Comprehensive Plan. They would like revisions for the entrance.

Mr. Shane Bergin – 8838 Lamhatty – spoke in opposition to the rezoning and annexation as presented in the master sketch due to the entrance.

Mr. David Preston – Daphne – spoke of his concerns with the access point of the subdivision.

Ms. Ann Strickland – Lamhatty – spoke opposing the rezoning and annexation due to concerns with the access point of the subdivision.

Council President Scott closed the Public Hearing at 7:00 p.m.

MUNICIPAL JUDGE POSITION

NAME	VOTES	TOTAL
Bolin, Christina		0
Brackin, Buddy	Lake, Fry, LeJeune	3
Britt, Brian P.		0
Collins, Patrick	Conaway, Rudicell, Lake, LeJeune	4
Dasinger, Brian A.		0
Dasinger, Michael A.	Conaway, Rudicell, Fry, Haygood, Scott	5
D'Olive, Harry, Jr.		0
Dunagan, D. Greg		0
Hitson, Kenneth A.	Lake	1
Hoyt, Michael J.	Conaway, Rudicell, Haygood, Scott	4
Jordan, Buzz	Lake	1
Moorer, Larry Charles		0
Richerson, BrantleyT.		0
Scully, William E., Jr	Rudicell, Fry, LeJeune	3
Stankoski, D. Robert, Jr.		0
Stankoski, J. Clark		0
Sweet, James H.	Fry, LeJeune, Haygood, Scott	4
York, David P.	Haygood, Scott	2

Council will interview Mr. Patrick Collins, Mr. James Sweet, Mr. Michael Hoyt and Mr. Michael Dassinger.

Council President Scott requested the City Clerk to contact the four selected and set interview times.

4. REPORT OF STANDING COMMITTEES:

A. FINANCE COMMITTEE – Conaway

The minutes for the January 14th meeting are in the packet.

MOTION:

MOTION BY Councilwoman Conaway to continue the City's insurance coverage with Robertson Insurance Agency, Inc. through February 2014 as presented for a total annual cost of \$459,331. Seconded by Councilman Lake.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

Treasurers Report / December 31, 2012

MOTION BY Councilwoman Conaway to accept the Treasurers report in the amount of \$17,997,594.97. Seconded by Councilman Lake.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

Sales & Use Tax Collections / November 30, 2012

Sales & Use Tax	\$ 910,116.86
ES Park Collections	\$ 101,697.10
	\$ 1,011,813.96

Lodging Tax Collections / November 30, 2012

Lodging taxes collected for November 30, 2012 were \$43,459.48. Lodging taxes were down from the last two years.

Back to Municipal Judge Position

MOTION BY Councilwoman Conaway to set a Special Called Council meeting for January 29, 2013 6:30 p.m. to interview for the position of Municipal Judge. Seconded by Councilman Rudicell.

AYE ALL IN FAVOR NAY NONE OPOSED MOTION CARRIED

B. Buildings and Property Committee – Lake

No report.

C. PUBLIC SAFETY COMMITTEE – Rudicell

The minutes for the January 9th meeting are in the packet. The next meeting will be February 13th.

D. CODE ENFORCEMENT/ORDINANCE COMMITTEE – Fry

The minutes for the January 9th meeting are in the packet. They considered complaints of noise by the construction company in the Oldfield subdivision. Code Enforcement is working with the homebuilders to solve the problem and comply with the ordinance. They also considered a request for a one hour extension

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BUSINESS MEETING
1705 MAIN STREET
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of the noise ordinance in June for a wedding reception. The next meeting will follow the Public Safety meeting February 13th.

E. PUBLIC WORKS COMMITTEE/SOLID WASTE AUTHORITY – LeJeune

The minutes for the December 17, 2012 meeting are in the packet. The committee met today before the council meeting, and the Phase II road improvements are moving along. The next meeting will be February 18th.

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

A. Board of Zoning Adjustments – Jones

The minutes for the October 4, 2012 meeting are in the packet along with the report for the January 3, 2013 meeting. A request for a variance was approved. No applications have been received for February.

B. Downtown Redevelopment Authority – Conaway

Ms. Casey Zito, Chariman of the Downtown Redevelopment Authority, gave council an update on the progress of the Authority. She reported that they have given out several grants to downtown businesses to provide assistance with paving projects, and to assist in the printing of an Olde Towne Daphne map which will have an insert listing all the businesses downtown, and these will be distributed to the Chamber, Grand Hotel, etc. in order to promote the downtown area. She reported the Authority's website is almost ready to be launched which will have links to area businesses, have a calendar of events for the downtown area. This will help promote businesses, bring in additional businesses and draw folks to the downtown area. They hope to draw people off I-10 to the downtown area.

C. Industrial Development Board – Haygood

The next meeting will be Monday, January 28th.

D. Library Board – Lake

The board met last week, and the next meeting will be February 14th at 4:00 p.m.

E. Planning Commission – Scott

The Site Review meeting will be tomorrow at 10:00 a.m.

F. Recreation Board - LeJeune

No report.

G. Utility Board – Fry

The next meeting will be January 30th at 5:00 p.m.

6. REPORTS OF THE OFFICERS:

A. *Mayor's Report*

No report.

B. City Attorney's Report

Mr. Ross discussed with council the procedure for filling the vacancy in the office of Mayor. He reported on two provisions in the Alabama Code §11-43-42(a) and §11-44G-2 which conflict with each other. He said he followed §11-44G-2 with the last vacancy. He has been in contact with the Alabama League of Municipalities all day, and there is differing opinions there about which provision to follow. His recommendation was to send for an Attorney General's Opinion for clarification on the matter.

MOTION BY Councilman Haygood to direct the City Attorney to request an Attorney General's Opinion as to which Alabama Code Section the City of Daphne must follow regarding the procedure to fill the vacancy in the office of Mayor occasioned by the untimely death of Mayor Bailey Yelding. Seconded by Councilman Lake.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Fry authorize the Council President Ron Scott to have authority to sign and execute all such documentation as are necessary to carry out all administrative and daily functions of the City of Daphne pending the fulfillment of the vacancy in the office of Mayor Bailey Yelding shall be determined. Seconded by Councilwoman Conaway.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

Mr. Ross requested that the Attorney General's Opinion be added to the agenda for the special called meeting next Tuesday.

MOTION BY Councilman Lake to approve the expenditure of the sum of \$1,000 payable to Lake Forest Property Owners' Association, Inc. (LFPOA) for partial reimbursement of costs incurred by the "LFPOA" for repairs to the Lake Forest lake Dam as the same is deemed to constitute a public purpose by the LFPOA's attempt to maintain water levels in the Lake Forest Lake Dam to reduce erosion to City maintained streets, roads and drainage facilities during significant rain events. Seconded by Councilwoman Conaway.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

C. Department Head Comments

David Carpenter - Police Chief – reported Mardi Gras season is here and several parades are coming up and invited everyone to come out and have a good time and be safe.

Richard Merchant - Building Official – reported that the ISO rating has improved, there were five commercial permits issued and 176 new residential permits issued, and that is up from 122 last year.

Ashley Campbell - Environmental Programs Manager – reported that the Joe's Branch project is near completion, and will report back to council. There will be a meeting January 30th with state and federal representatives on the D'Olive Watershed.

Vickie Hinman – Human Resources Director – reported there is a Public Works Service Worker position open and a GIS Tech position open.

Adrienne Jones – Planning Director – reported the UNA training session will be moved to March 8th and 9th.

7. PUBLIC PARTICIPATION

Mr. Willie Robison – 560 Stuart Street - spoke regarding his appreciation for the audiences participating in the meeting, and spoke very highly of Mayor Yelding and asked everyone to keep his family in their prayers.

Mr. Kevin Spriggs – Business Owner in Daphne – spoke regarding the cost of repaving roads and drainage repair cost suggesting that be added to the road repair database. He is opposed to contributing to the Blue Print for a Better Tomorrow.

Mr. Phil Cusack – past president of the Chamber of Commerce – spoke regarding the benefits of Blue Print for Tomorrow.

Mr. David Preston – Daphne – spoke regarding the city not paying more than a third of the cost for Blue Print for Tomorrow.

8. RESOLUTIONS, ORDINANCES, ORDERS AND OTHER BUSINESS

RESOLUTIONS:

- a.) Authorize the Lease Purchase Financing of 6-Mowers, 1 Z-Track Mower, 1 Garbage Truck and 1 Fire Truck. /Resolution 2013-03
- b.) Bid Award: FD Turnout Gear / Sunbelt Fire Apparatus. /Resolution 2013-04
- c.) Proclaiming January 22-29, 2013 “Mayor Bailey Yelding Week”. /Resolution 2013-05

<p>MOTION BY Councilwoman Conaway to <u>waive the reading</u> of Resolutions 2013-03 and 2013-04. Secoded by Councilman Haygood.</p>		
AYE	ALL IN FAVOR	MOTION CARRIED
NAY	NONE OPPOSED	

<p>MOTION BY Councilwoman Conaway to <u>adopt</u> Resolution 2013-03. Secoded by Councilman Lake.</p>		
AYE	ALL IN FAVOR	MOTION CARRIED
NAY	NONE OPPOSED	

<p>MOTION BY Councilwoman Conaway to <u>adopt</u> Resolution 2013-04. Secoded by Councilman Lake.</p>		
AYE	ALL IN FAVOR	MOTION CARRIED
NAY	NONE OPPOED	

MOTION BY Councilman Haygood to suspend the rules to consider Resolution 2013-05. Seconded by Councilman Lake.

ROLL CALL VOTE

Conaway	Aye	LeJeune	Aye
Rudicell	Aye	Haygood	Aye
Lake	Aye	Scott	Aye
Fry	Aye		

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

The Interim City Clerk read Resolution 2013-05.

MOTION BY Councilman Lake to adopt Resolution 2013-05. Seconded by Councilwoman Conaway.

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

ORDINANCES:

2ND READ

- a.) Consenting to the Lease of Certain Property by the Utilities Board of the City of Daphne to the City of Daphne/Ordinance 2013-01
- b.) Establishing Public Works Equipment Use Policy. /Ordinance 2013-02
- c.) Amending the Land Use and Development Ordinance 2011-54 Article 9, District Provisions – Section 12(g) Accessory Structures and Article 8, Definitions. /Ordinance 2013-03

1ST READ

- d.) Trash Ordinance /Ordinance 2013-04
- e.) Rezone: GCOF Retreat at Tiawasee, LLC /Ordinance 2013-05
- f.) Annexation: GCOF Retreat at Tiawasee, LLC /Ordinance 2013-06
- g.) Appropriation of Funds: Bullet Proof Vests Replacement /Ordinance 2013-07
- h.) Job Reclassification: Mayors Assistant. /Ordinance 2013-08
- i.) Contribution: Blue Print for a Better Tomorrow /Ordinance 2013-09

MOTION BY Councilman Haygood to waive the reading of Ordinances 2013-01, 2013-02 and 2013-03. *Seconded by Councilman Lake.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

MOTION BY Councilman Lake to adopt Ordinance 2013-01, 2013-02 and 2013-03. *Seconded by Councilman Haygood.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

ORDINANCE 2013-04, 2013-05, 2013-06, 2013-07, 2013-08 and 2013-09 REMAIN 1ST READ.

9. COUNCIL COMMENTS

Councilwoman Conaway stated that Mayor Yelding was a leader of the city and will truly be missed, and asked everyone to keep the family in their prayers.

Councilman Rudicell said that Mayor Yelding taught him in High School, and that the Mayor's high principles and standards helped them, and that you don't find that very often today.

Councilman Lake was taught by Mayor Yelding also, and he served with him for 11 years on the council. He said he was a man of honor and class, and wanted the city to move forward. The city lost a great person, and a Mayor of stature.

Councilman Fry offered the family his condolences. He said he learned a few things from the Mayor and was helped by him from their discussions. He said the Mayor was excited about working together with the council, and he will be sorely missed.

Councilman LeJeune asked everyone to pray for the family, friends and for the city.

Councilman Haygood said they have had heavy hearts throughout the day. He has been surprised by how many people the Mayor touched in Fairhope, the county and Daphne. He said the Mayor called him to his office and talked of how he wanted to build a team, Councilman Haygood said the team is still here, even though the leader is not, and they will work to move the city forward as the Mayor wanted.

**JANUARY 22, 2013
CITY COUNCIL MEETING
BUSINESS MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

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10. ADJOURN

MOTION BY Councilman Haygood to adjourn. *Seconded by Councilwoman Conaway.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

THERE BEING NO FURTHER BUSINESS TO DISCUSS, THE MEETING ADJOURNED AT 8:00 P.M.

Respectfully submitted by,

Rebecca A. Hayes,
Interim City Clerk

Certification of Presiding Officer:

Ron Scott,
Council President

**JANUARY 29, 2013
 SPECIAL CITY COUNCIL MEETING
 1705 MAIN STREET
 DAPHNE, AL
 6:30 P.M.**

1. CALL TO ORDER

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

2. ROLL CALL

COUNCIL MEMBERS PRESENT: Tommie Conaway; Pat Rudicell; John Lake; Randy Fry; Ron Scott; Robin LeJeune; Dane Haygood.

Also present: Jane Ellis, Mayors Assistant; Jay Ross, Attorney; Richard Johnson, Public Works Director; Rick Whitehead, IT.

Absent: Rebecca Hayes, Interim City Clerk.

MOTION BY Councilwoman Haygood to amend the agenda to move Public Participation to item #3 before the interviews. *Seconded by Councilwoman Conaway.*

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

3. PUBLIC PARTICIPATION

NO ONE SPOKE

4. MUNICIPAL JUDGE INTERVIEWS

Council interviewed as follows:

6:30 P.M. Mr. Patrick Collins
 6:55 P.M. Mr. Michael A. Dasinger
 7:20 P.M. Mr. Michael J. Hoyt
 7:45 P.M. Mr. James H. Sweet

NAME		VOTES	TOTAL
Collins, Patrick	Rudicell		1
Dasinger, Michael A.	Conaway, Lake, Fry, LeJeune, Haygood		5
Hoyt, J.Michael	Conaway, Rudicell, Lake, Scott, Fry, LeJeune, Haygood		7
Sweet, James H.	Scott		1

Mr. Michael. J. Hoyt is the new Municipal Judge.

**JANUARY 29, 2013
SPECIAL CITY COUNCIL MEETING
1705 MAIN STREET
DAPHNE, AL
6:30 P.M.**

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MOTION BY Councilman Lake to adjourn. Seconded by Councilwoman Conaway.

Seconded by Councilman .

AYE ALL IN FAVOR NAY NONE OPPOSED MOTION CARRIED

There being no further business to discuss the meeting adjourned at 8:00 p.m.

Respectfully submitted by,

Rebecca A. Hayes, Interim City Clerk

Certification of Presiding Officer:

Ron Scott, Council President



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

January 31, 2013

LUTHER STRANGE
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

Honorable Jay M. Ross
Attorney, City of Daphne
Adams and Reese
Post Office Box 1348
Mobile, Alabama 36633-1348

Municipalities – Mayors – Vacancies in
Office – Population – Baldwin County

The City of Daphne must follow the provisions of section 11-44G-2 of the Code of Alabama to fill a vacancy in the office of mayor.

Dear Mr. Ross:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Daphne.

QUESTION

Which provision of the Code, either section 11-43-42(a) or section 11-44G-2 of the Code of Alabama, should be followed for the City of Daphne to fill a vacancy in the office of the mayor?

FACTS AND ANALYSIS

According to your request, the City of Daphne is a class 8 municipality with a population of 12,000 or more. A vacancy has arisen in the office of mayor.

As you point out in your request, section 11-43-42(a) of the Code addresses the filling of a vacancy in the office of mayor in cities with 12,000 or more inhabitants. ALA. CODE § 11-43-42(a) (2008). You also reference section 11-44G-2 of the Code, which covers filling a vacancy in the office of mayor in class 7 and 8 municipalities. ALA. CODE § 11-44G-2 (2008). Because the City of Daphne possesses the characteristics triggering both statutes, a population greater than 12,000 and a class 8 municipality, you question which statute is applicable to the City of Daphne.

This Office has had opportunity to address a similar question previously. In an opinion to Honorable B. J. Meeks, this Office determined that section 11-43-42 of the Code is a general statute relating to absences or vacancies in the position of mayor and that section 11-44G-2 is a specific statute relating to class 7 and 8 municipalities. Opinion to Honorable B. J. Meeks, Mayor, City of Childersburg, dated April 20, 2011, A.G. No. 2011-055. There, this Office concluded that, “[b]ecause specific provisions relating to specific subjects control general provisions relating to general subjects, it is the opinion of this Office that an absence in the position of the mayor in a class 7 or 8 municipality should be handled pursuant to section 11-44G-2 of the Code of Alabama.” *Id.* at 2, *citing, generally, Ex parte Jones Mfg. Co., Inc.*, 589 So. 2d 208, 211 (Ala. 1991).

Additionally, section 11-44G-2 of the Code, adopted in 1997, is the more recently enacted statute. In cases of conflicting statutes on the same subject, the latest expression of the Legislature is the law. *Baldwin County v. Jenkins*, 494 So. 2d 584, 588 (Ala. 1986); *Soles v. State*, 820 So. 2d 163, 165 (Ala. Crim. App. 2001); *Ex parte CSX Transp., Inc.*, 533 So. 2d 613, 617 (Ala. Civ. App. 1987). Accordingly, because section 11-44G-2 of the Code is a specific statute relating to class 7 and 8 municipalities and the more recent expression of the Legislature, section 11-44G-2 of the Code governs the filling of a vacancy in the office of mayor for the City of Daphne.

CONCLUSION

The City of Daphne must follow the provisions of section 11-44G-2 of the Code to fill a vacancy in the office of mayor.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:



BRENDA F. SMITH

Chief, Opinions Division

**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

I. CALL TO ORDER

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

Present:

Councilwoman Tommie Conaway, Councilman John Lake, Councilman Ron Scott, Councilman Robin LeJeune (Chairman), Richard D. Johnson-Director Public Works, Jaye Robertson-HMR Engineers, Dorothy Morrison-Daphne Beautification Committee, Randy Davis-Volkert, and Andrew James-Volkert.

II. PUBLIC PARTICIPATION & CORRESPONDENCE

- A. Work Request Report for December 2012 were reviewed
- B. Vehicle/Equipment Maintenance Reports for December 2012 were reviewed – Director Johnson commented on the heavy non-routine maintenance for the Street Department. Work involved track hoe, tandem axle dump truck, and hydraulics on a flatbed dump truck.
- C. Public Participation – None
- D. Correspondence from W. J. Carroll Intermediate School Re: Playground was reviewed.
- E. Correspondence from ECovery LLC Re: America’s Recycle Day Event in Daphne was reviewed.

III. OLD BUSINESS

- A. Minutes from December 17, 2012 Meeting were reviewed and accepted as written.
- B. Mosquito Report – no report submitted or reviewed.
- C. Street Sweeper Reports for December 2012 were reviewed.
- D. US Hwy 98 Service Road Extension a presentation by Volkert Engineers:

Mr. James and Davis presented three preliminary layouts of an extension and connector of the north U.S. Highway 98 service road from its current terminus projecting to the south and connecting with Van Buren Street. Mr. James discussed design considerations and parameters. The committee actively participated, made suggestions, and asked questions during the design presentation. The option with the proposed round-a-bout was generally favored by the committee. Mr. Davis covered the preliminary rough cost of the project. Construction was estimated in the \$600,000.00-\$650,000.00 range. Survey and design cost would be 10-15% of construction cost and CE&I would be 10-15% as well. The Committee made an affirmative motion authorizing staff and Volkert to meet with the three stakeholders: ALDOT, Dr. Barry Boothe, and the City to discuss cost sharing options, rights-of-way, and other project contingencies. If the project is deemed viable by stakeholders and cost agreements can be made, proposals for survey and design will be brought back to committee.

IV. NEW BUSINESS

- A. Lake Forest Dam Repair (\$1,000) Resolution:

A request for assistance for dam repairs from the LFPOA was reviewed. Director provided general background on the dam and the city’s participation with the LFPOA in anticipating rainfall events and the LFPOA efforts to manage flood stages by opening and closing the gate at the dam. Mr. Scott shared additional background and reiterated the public benefit of an operative and functional gate at the dam. The Director reiterated that contribution must not to

be considered in any way a joint ownership, responsibility, prescriptive easement, future liability, or maintenance burden by the City of Daphne of the PRIVATELY OWNED and PRIVATELY MAINTAINED Lake Forest Lake Dam. This is only a contribution to a repair that has and/or yields a public benefit. The committee made an affirmative motion to the full City Council to pass the resolution granting the \$1,000.00 funding request.

V. DIRECTOR'S REPORT

- A. Lake Forest – Phase III (CEI Services GENERIC & Mayor's Consultant Letter Draft):

The committee reviewed the agreement and draft letter appointing HMR Engineers as the CE&I Consultant for Lake Forest Boulevard, Phase III - Project No. ACOA 59010 ATRP(001). The Director indicated that Finance had reviewed and the agreement is required in order to participate in the ATRIP/Federal Funding. The committee made an affirmative motion to the Finance Committee to place on the February meeting for review and approval.

VI. DAPHNE SOLID WASTE DISPOSAL AUTHORITY

- A. Monthly Equipment Use Report for December 2012 was reviewed.
B. Monthly Recycle Tonnage Report (Tonnage Comparison) for December 2012 was reviewed:

The Director noted tonnage was down but price was significantly up. Chairman LeJeune inquired on the timeline for recycling to become revenue neutral. A general discussion was held and the Director reported that his goal was to cut the deficit by half for FY2013. This led to further discussion about how to increase participation in the recycling program. All committee members had good suggestions and ideas.

- C. Solid Waste New Customer Report for December 2012 was reviewed.

VII. MUSEUM COMMITTEE

- A. Minutes for December 10, 2012 Meeting were reviewed.

VIII. BEAUTIFICATION COMMITTEE

- A. Minutes for January 4, 2013 Meeting were reviewed:

Mrs. Morrison gave additional reports and reminded the committee that Arbor Day in Daphne is February 25, 2013 at the City's Civic Center Complex. She stated that attendance is highly encouraged.

IX. ENVIRONMENTAL ADVISORY COMMITTEE

- A. October Meeting Minutes were reviewed.

X. ENGINEER'S REPORT

- A. HMR gave updates on the following city-wide projects:
i. Main Street Resurfacing.
ii. Profit Drive Extension
iii. Lake Forest Boulevards, Phase II
iv. Lake Forest Boulevards, Phase III
v. Sports Complex
B. Volkert – no additional reports.

XI. FUTURE BUSINESS

- A. Next Meeting for February 18, 2013 was announced.

XII. ADJOURNMENT

Meeting adjourned at approximately 6:05 p.m.

**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:

DOWNTOWN REDEVELOPMENT AUTHORITY**1705 MAIN STREET DAPHNE, AL****NOVEMBER 26, 2012 5:30 P.M.****1. CALL TO ORDER/ROLL CALL**

Casey Zito called the meeting to order at 5:40 p.m.

Members Present: Casey Zito; Ken Balme; Dorothy Morrison; Dayna Oldham; Patricia Vanderpool**Absent:** Mary Beth Mantiply; Doug Bailey; Ronald Nero**Also Present:** Tommie Conaway, Council Liaison; Pat Rudicell, District 5 City Council

Welcome to our new Council Liaison and Councilman Rudicell. Introductions made around the table. Announced that Dorothy Morrison was appointed by the City Council as a full voting member of the DRA.

2. APPROVED MINUTES/OCTOBER 29, 2012**MOTION BY Patricia Vanderpool to approve the October 29, 2012 minutes. Seconded by Dorothy Morrison.****ALL IN FAVOR****NONE OPPOSED****MOTION CARRIED****3. TREASURER'S REPORT**

The balance of funds is \$87,037.07 and \$2,000.00 was paid to Eddie Youngblood Builders, Inc. for paving mini-grant.

4. BEAUTIFICATION REPORT/DOROTHY MORRISON

Focus on gathering information to promote the paving of downtown businesses' parking lots.

5. OLD BUSINESS**A.) Web Page:** Ken Balme suggested looking at Mobile Bay.org and consider utilizing that site to promote Downtown Daphne.**MOTION BY Ken Balme to appoint a Technology/IT Liaison. Seconded by Dorothy Morrison.****AYE All in Favor****Nay None Opposed****Motion Carried**

Keith Rector, Uncorked Fine Wines II requested money for painting of the building located at 1800 Main Street. It was decided to table this request until the other grant money request was brought to closure.

C.) A discussion was had to determine if our Mini-Grant application needed to contain any other language in regard to how the grants are determined and that the conditions are subject to change without notice. Patricia Vanderpool made a motion that the application be rewritten by an attorney. There was no second. However, it was agreed that the application should be reviewed by the City Attorney for his recommendations.

7. NEW BUSINESS

There was no new business to discuss.

8. NEXT MEETING

The next meeting will be on January 19th, 2012 at 8:30 a.m.

9. ADJOURN

The meeting adjourned at approximately 7:45 p.m.

Respectfully Submitted,
Downtown Redevelopment Authority

MINUTES

IDB Meeting - January 28, 2013

In Attendance: Toni Fassbender
Denis Kearney III
Pokey Miller
John R. Cox
Dane Haygood – City Council
Lee Johnson – Baldwin Economic Development
Lee Lawson – Baldwin Economic Development
Ron Scott – City Council
Pat Rudicell – City Council
Danny Lyndall – Daphne Utilities
John Perry Barlow – Algae Systems, LLC
Michael Kang – Algae Systems, LLC
Kenneth Kirkland – Algae Systems, LLC
Kevin Jones – Algae Systems, LLC

Excused: Dan Romanchuk
Doug Bailey
Rebecca Hayes

Not excused: Angela Mayer

Meeting began at 6:00 pm.

There were no minutes to have approved.

The Treasurer's Report was approved unanimously. Denis Kearney made motion, seconded by Pokey Miller. Copy attached.

John Perry Barlow of Algae Systems made a presentation requesting that the IDB abate the sales and use tax on construction materials and equipment. The IDB discussed the project but tabled to next month's meeting to have further input from Lee Lawson of Baldwin Economic Development and to possibly have all board members available for a vote. Copy of request attached.

Motion to adjourn at 7:30 pm made by Denis Kearney and seconded by John Cox. Motion carried unanimously.

Toni Fassbender

Lee Johnson Baldwin Economic Development

Dennis Kearney III

Pokay Miller

John R. Cox

Pat Rudicell

MICHAEL KANG - ALGAE SYSTEMS LLC

KENNETH KIRKLAND - ALGAE SYSTEMS LLC

* JOHN PERRY BARLOW ALGAE SYSTEMS, LLC

KEVIN JONES - ALGAE SYSTEMS LLC

DANNY LYNDALL DAPHNE UTILITIES

Lee Lawson - Baldwin Economic Development Alliance

Dave Haygood

Ron Scott

**DAPHNE
INDUSTRIAL DEVELOPMENT BOARD
JANUARY 25, 2013**

Cash balance	12/31/2012		
		\$ 54,711.45	
		\$ 189,005.62	
Cash total			\$ 243,717.07
Receivables			
	August, September, October, November		<u>\$ 9,621.22</u>
TOTAL			\$ 253,338.29

Overview

The purpose of this document is to notify the Baldwin County Industrial Development Board of planned construction and operations by Algae Systems LLC (“Algae Systems” or “Company”). Algae Systems is *requesting a sales & use tax abatement on construction materials and equipment* for a planned facility located on the Daphne Utility property as well as an abatement to property tax if applicable.

Executive Summary

Algae Systems LLC, <www.algaesystems.com>, is a new American company, founded in 2009 and funded in 2011, with the purpose of transforming municipal wastewater and atmospheric CO₂ into conventional transportation fuels that are carbon negative and location independent. With funding from IHI, one of the oldest and most respected engineering companies in Japan, Algae Systems is presently permitting, siting, and preparing to build a pilot plant in Daphne, Alabama in cooperation with Daphne Utilities.

The ground operations, which will include wastewater treatment, CO₂ extraction, algal dewatering, and biomass-to-fuel conversion, will be located on property leased from Daphne Utilities at 6321 Jordan Road in Daphne. In addition, the company intends to place one to five acres of floating bioreactors atop the waters of Mobile Bay directly adjacent to the land footprint.

Construction is expected to commence in early 2013 and proceed until operations begin in March, 2013. The plant is intended to test at scale and in real world conditions various technologies that have been developed by the company in cooperation with NASA and SRI International. At the end of 2013, Algae Systems intends to expand operations to a commercial demonstration scale, followed by full commercial development. It is presently hoped that both of these expansions will take place in Baldwin County.

Spend

Algae Systems anticipates significant local expenditures, contracting with local companies for construction and operations of the plant.

Item	Estimated Cost
Pilot Plant Equipment	\$2.2 million
Construction (inc. materials & labor)	\$1.5 million
Labor for Pilot Operations (per year)	\$1.7 million



Payroll & Hiring

Algae Systems, or its subsidiary, intends to hire local talent and staff for continued operations of the pilot plant. Current time horizon for the plant is between 2 and 5 years. The Company intends to provide their employees with certain health benefits. Below are the category and groups of potential hires. Algae Systems anticipates the hiring of a 5 to 10 new local staff, including relocating a number of staff to Baldwin County from the San Francisco Bay Area.

Initial hires will take place in 1st and 2nd quarter of 2013. The anticipated new hires through 3rd quarter 2013 are:

- Project Engineer
 - Estimated Annual Salary: \$90,000
- Lead Phycologist
 - Estimated Annual Salary: \$70,000
- Chemical Engineer
 - Estimated Annual Salary: \$60,000
- Assistant Manager
 - Estimated Annual Salary: \$55,000
- Biology lab researcher
 - Estimated Annual Salary: \$50,000
- Operations Worker
 - Estimated Annual Salary: \$40,000
- Plant Maintenance Worker
 - Estimated Annual Salary: \$35,000
- Administrator
 - Estimated Annual Salary: \$35,000

Algae Systems LLC: Industrial Development Board Documentation

Estimated Equipment & Material Purchases*

Item	Amount
Construction material & equipment	\$240,000
Manufacturing equipment	\$1,700,000
Non-manufacturing	\$180,000
TOTAL	\$2,120,000

*Does not include construction labor, fabrication and installation

*Algae Systems intends to: engage in a construction agreement with local stakeholders and to source local materials when possible

Estimated Annual Salary & Headcount

Position	Y1 (2013)	Y2 (2014)	Y3 (2015)
Project Manager	\$90,000	\$90,000	\$90,000
Marine Engineer	\$90,000	\$90,000	\$90,000
Operations Engineer	\$90,000	\$90,000	\$90,000
Downstream Group Leader	\$60,000	\$60,000	\$60,000
Lab Staff	\$50,000	\$50,000	\$50,000
Utility person	\$50,000	\$50,000	\$50,000
Researcher	\$50,000	\$50,000	\$50,000
Operations group worker A	\$40,000	\$40,000	\$40,000
Operations group worker B	\$40,000	\$40,000	\$40,000
Misc. maintenance	\$35,000	\$35,000	\$35,000
Administration	\$35,000	\$35,000	\$35,000
ESTIMATED TOTAL SALARY	\$630,000	\$630,000	\$630,000
ESTIMATED TOTAL HEADCOUNT	11	11	11

Algae Systems LLC

Corporate Address:
 9120 Double Diamond Pkwy
 Suite 4481
 Reno, NV 89521
2012 NAICS CODE: 541712

Local Mailing Address:
 6845 Highway 90 East
 Suite 105 #295
 Daphne, AL 36526

Physical Address:
 6321 Jordan Road
 Daphne, AL 36526

Contact:
 Andrew Septimus
 917.607.0563
aseptimus@algaesystems.com

John Perry Barlow
 917.863.2037
barlow@algaesystems.com



Daphne Utilities

APPROVED MINUTES

Utilities Board Meeting

City of Daphne Council Chambers ♦ November 28, 2012 ♦ 5:00 p.m.

I. Call to Order

The regular November 2012, Board meeting for the Utilities Board of the City of Daphne was held on November 28, 2012 and called to order by Chairman Robert Segalla, at 5:08 p.m.

II. Roll Call

Members Present: Robert Segalla, Chairman
Fenton E. Jenkins, Vice Chairman
Lon Johnston
Randy Fry

Others Absent: Bailey Yelding, Mayor

Others Present: Jerry Speegle – Board Attorney
Rob McElroy – General Manager
Danny Lyndall – Operations Manager
Teresa Logiotatos – Finance Manager
Drew Klumpp – Administrative Services Manager
Deloris Brown – HR Manager
Lori May-Wilson – Executive Assistant
Arlene Ethier – Operations Assistant
Melinda Immel – Volkert & Associates
Ray Moore - HMR

Others Absent:

III. Pledge of Allegiance

The Chairman led the Board and meeting attendees in the Pledge of Allegiance.

IV. Approval of Minutes

A. Utilities Board Minutes from October 31, 2012:

The Chairman inquired if there were any corrections for the submitted Minutes from the October 31, 2012, Utilities Board meeting. No corrections were made.

MOTION BY Lon Johnston to approve the Minutes for October 31, 2012; Seconded by Fenton Jenkins.

AYE: JENKINS, JOHNSTON, SEGALLA, FRY

ABSENT: YELDING

ABSTAIN:

MOTION CARRIED

V. Old Business

Rob McElroy noted that the land lease for the Algae Systems Research Project with the City Council has been approved but are continuing to finalize the Memo of Understanding.

VI. New Business

A. Election of Secretary / Treasurer

MOTION BY Chairman Segalla to nominate Randy Fry for Secretary/Treasurer; Seconded by Mr. Johnston.

AYE: Jenkins, Johnston, Segalla, Fry ABSENT: Yelding ABSTAIN: MOTION CARRIED

VII. BOARD ATTORNEY’S REPORT

Mr. Speegle had nothing to add to his report.

VIII. FINANCIAL REPORT

Teresa Logiotatos highlighted the financial reports for the Board and noted the irrigation was under budget. She noted that the auditors will be preparing the audit in the coming weeks.

IX. GENERAL MANAGER’S REPORT

A. GM Report

Rob McElroy reported positive media coverage due to the research project with Algae Solutions and are in the early stages of planning a formal press conference jointly with Algae Solutions as well as cleaning the maintenance plant so that it will be presentable for the public and the press to walk the property safely. He also pointed out an article in U.S. Business Executive reporting on the Daphne Utilities’ programs. Both Mr. McElroy and Chairman Segalla noted that they are proud of the employees.

Deloris Brown had nothing further to add to her report. Chairman Segalla noted that the company is building up the accident-free hours again. Mr. Jenkins questioned as to when the Employee Evaluations are due. He asked for an Executive Session to be held after the general meeting tonight with the subject of “Personnel”.

MOTION BY Mr. Jenkins for Executive Session after the meeting; Seconded by Mr. Johnston.

AYE: Jenkins, Johnston, Segalla, Fry ABSENT: Yelding ABSTAIN: MOTION CARRIED

Mr. Johnston asked for an updated listing of terms of Board Members for Mr. Fry.

Danny Lyndall had nothing further to add to his report but wanted to make the board aware of a proposed lease with J & F Solutions to place equipment on two of the water tanks. This company provides internet access through a wireless communication signal and would be smaller than any of the equipment that we currently have on our tanks. Chairman Segalla suggested that this is cleared by Mr. Speegle before proceeding with this lease.

Melinda Immel of Volkert & Associates noted that the renovations Bayview Lift Station is on schedule and is slated to be started next week. Chairman Segalla asked about Central Plant. Mrs. Immel stated that this project is progressing.

Ray Moore of HMR had nothing further to add to his report. Mr. Johnston asked that the information on the unsewered areas being prepared for the city be made available to the board.

X. BOARD ACTION –

Accomplished under “New Business”

XI. PUBLIC PARTICIPATION – None.

XII. BOARD COMMENTS – Mr. Fry stated that he is looking forward to serving on the Daphne Utilities board. Mrs. Logiotatos reminded the board that they are converting to the new billing system next week. Mr. McElroy reminded the board that there will be no meeting next month, but board books will be distributed as usual.

The Board adjourned for Executive Session – 5:26 pm

***MOTION BY** Fenton Jenkins to adjourn for Executive Session for the purpose of discussing personnel for approximately 20 minutes; Seconded by Lon Johnston.*

AYE: Jenkins, Johnston, Fry, Segalla, **ABSENT:** Yelding **ABSTAIN:** **MOTION CARRIED**

Executive session ended 5:33 pm.

Mr. Jenkins questioned the process and who approves the raise for the General Manager. Mr. McElroy responded that the board does. Mr. Jenkins asked if there is any type of vote. Chairman Segalla stated that he sends out an email to the board members twice per year asking for input into Mr. McElroy’s Employee Evaluation and percentage of raise. He noted that two board members agree with Chairman Segalla’s recommendation but he doesn’t receive responses back from Mr. Jenkins or the other board member. Mr. Jenkins questioned the legality of not having the board members vote on this recommendation. Mr. Speegle stated that he would investigate a formal procedure and vote for a proposed General Manager raise. Chairman Segalla noted that the pay range was voted on to be changed in August along with the company-wide pay scale. He also made the recommendation that Mr. McElroy’s pay raise be voted on at the next board meeting. Chairman Segalla also stated that he needs feedback on the Employee Evaluation for Mr. McElroy. Mr. Jenkins would like to see a formal procedure and vote from the board.

XIII. ADJOURNMENT –

***MOTION BY** Chairman Segalla to adjourn the meeting; Seconded by Lon Johnston*

AYE: Jenkins, Johnston, Fry, Segalla, **ABSENT:** Yelding **ABSTAIN:** **MOTION CARRIED**

The meeting adjourned at 5:55 pm.



Daphne Utilities

APPROVED MINUTES

Utilities Board Special Meeting

City of Daphne Council Chambers ♦ December 17, 2012 ♦ 5:30 p.m.

I. Call to Order

A Special Meeting of the Utilities Board of the City of Daphne was held on December 17, 2012 and called to order by Chairman Robert Segalla, at 5:27 p.m.

II. Roll Call

Members Present: Robert Segalla, Chairman
Lon Johnston
Randy Fry

Others Absent: Fenton E. Jenkins, Vice Chairman
Bailey Yelding, Mayor

Others Present: Danny Lyndall – Operations Manager
Lori May-Wilson – Executive Assistant

Others Absent: Jerry Speegle – Board Attorney
Rob McElroy – General Manager
Teresa Logiotatos – Finance Manager
Drew Klumpp – Administrative Services Manager
Deloris Brown – HR Manager
Melinda Immel – Volkert & Associates
Ray Moore - HMR

III. Pledge of Allegiance

The Chairman led the Board and meeting attendees in the Pledge of Allegiance.

IV. New Business

A. Communications Site Lease Agreement with JMF Solutions

Danny Lyndall summarized to the Board members present the conditions of the Communications Site Lease Agreement with JMF Solutions and answered questions from the Board members. He explained that the Agreement had been reviewed and approved from the Daphne Utilities' attorney and once approved by the Utilities Board, it will go before the Daphne City Council as well.

V. Board Action

A. Motion to approve Communications Site Lease Agreement with JMF Solutions

MOTION BY Lon Johnston to approve the Communications Site Lease Agreement with JMF Solutions as presented; Seconded by Randy Fry.

AYE: JOHNSTON, SEGALLA, FRY

ABSENT: JENKINS, YELDING

ABSTAIN:

MOTION CARRIED

VI. PUBLIC PARTICIPATION

VII. BOARD COMMENTS

VIII. ADJOURNMENT

The meeting adjourned at 5:34 pm.

**CITY COUNCIL MEETING
MAYOR'S REPORT**

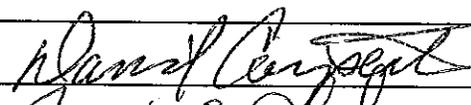
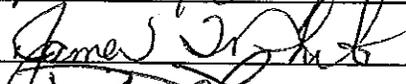
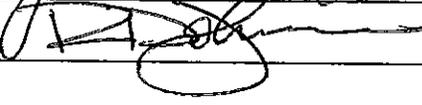
NOTES:

CITY ATTORNEY'S REPORT

NOTES:

DEPARTMENT HEAD'S COMMENTS

CITY OF DAPHNE PARADE PERMIT

ORGANIZATION:	<i>Loyal Order of the Fire Truck</i>
CONTACT PERSON:	<i>Melvin McCarley</i>
ADDRESS:	<i>City of Daphne</i>
PHONE NUMBER (HOME): PHONE NUMBER (BUSINESS): CELL NUMBER:	<i>621-3182</i>
TYPE OF PARADE:	<i>Mardi Gras</i>
DATE OF PARADE:	<i>February 10, 2013 / Sunday</i>
ROUTE TO BE TRAVELED:	<i>Begin at Mayday Park then proceed south on Captain O'Neal Dr. to Maxwell Ave. then north on Main St. to Santa Rosa Ave. then proceed south on Old County Road towards College Avenue for disbanding</i>
APPROXIMATE # OF PEOPLE & CARS:	<i>50 vehicles / 200 people</i>
START TIME:	<i>1:59 p.m.</i>
STOP TIME:	<i>4:00 p.m.</i>
ASSEMBLY AREA/STREET:	<i>May Day Park</i>
ASSEMBLY TIME:	<i>12:00 Noon</i>
SPECIAL REQUEST:	
APPROVAL	
POLICE: Chief David Carpenter:	
FIRE: Chief James White:	
PUBLIC WORKS: Richard Johnson:	
CITY COUNCIL: <i>2-04-13</i>	
SPECIAL INSTRUCTIONS:	
DATE ROUTED:	<i>January 22, 2013</i>
NOTIFICATION OF APPROVAL:	

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

NOTES:

RECOMMENDATIONS

COUNCIL COMMENTS:

AUTHORIZING RESOLUTION 2013-06

COUNCIL MEMBER _____ moved the adoption of the following Resolution and Order:

A RESOLUTION OF THE CITY COUNCIL, THE GOVERNING BODY (“THE COUNCIL”) OF CITY OF DAPHNE , ALABAMA (THE “LESSEE”), FINDING IT NECESSARY TO ACQUIRE EQUIPMENT FOR GOVERNMENTAL OR PROPRIETARY PURPOSES AUTHORIZED BY LAW: FINDING THAT IT WOULD BE IN THE PUBLIC INTEREST TO ACQUIRE SUCH EQUIPMENT UNDER THE TERMS OF A LEASE PURCHASE AGREEMENT: FINDING THAT HANCOCK BANK (THE “LESSOR”) HAS OFFERED TO ACQUIRE SUCH EQUIPMENT, OR TO ACQUIRE FROM AND REIMBURSE THE LESSEE FOR THE COST OF SUCH EQUIPMENT IN THE EVENT THE EQUIPMENT HAS ALREADY BEEN PURCHASED BY THE LESSEE, AND TO LEASE SUCH EQUIPMENT TO LESSEE: FINDING THAT SUCH PROPOSAL IS IN THE INTEREST OF THE LESSEE AND AUTHORIZING AND DIRECTING THE AUTHORIZED OFFICERS (AS HEREINAFTER DEFINED) TO EXECUTE A LEASE PURCHASE AGREEMENT AND SUPPORTING SCHEDULES AND ATTACHMENTS INCLUDING, BUT NOT LIMITED TO, ASSIGNMENTS OF TITLE TO THE EQUIPMENT TO HANCOCK BANK TO THE END THAT THE EQUIPMENT SHALL BE ACQUIRED BY SUCH BANK AND LEASED TO THE LESSEE ON THE TERMS AND CONDITIONS EXPRESSED IN SUCH LEASE.

WHEREAS, the Council has determined that it is necessary to acquire certain items of Equipment (the “Equipment”) for use by the Lessee for purposes authorized by law and

WHEREAS, the Council has by these presents determined that it would be in the public interest to acquire such Equipment through a Lease Purchase Agreement as provided under Section 41-16A-1 *et seq.* of the Code of Alabama, 1975, and

WHEREAS, to the best knowledge and belief of the Board, this lease qualifies as a qualified project bond within the meaning of the Tax Reform Act of 1986; and

WHEREAS, Hancock Bank has proposed to acquire the Equipment at the offered price and to lease the Equipment to the Lessee at a rate of 1.80% per annum.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD AS FOLLOWS:

SECTION 1: The Mayor and City Clerk (hereinafter the “Authorized Officers”) are hereby authorized and directed to execute a Lease Purchase Agreement (also referred to as a “Governmental Lease Purchase Agreement”), either reference being the “Agreement”, and all attachments thereto. Such Agreement shall be in substantially the form attached hereto with such appropriate variations, omissions and insertions as are permitted or required by this Resolution and as are consented to by the Lessee’s representatives (the “Authorized Officers”) executing the Agreement, such consent being evidenced by their signatures.

SECTION 2: The Equipment to be leased pursuant to the Agreement shall be more fully described in a schedule to the Agreement titled “Exhibit D – Description of the Equipment”. Upon delivery and acceptance by the Lessee of the Equipment, the Authorized Officers are authorized and directed to execute a Certificate of Acceptance of such Equipment and, as provided in Section 4.01 of such Lease, the lease term shall commence on the date of acceptance.

SECTION 3: The Authorized Officers are further authorized and directed to execute on behalf of the Lessee a Financing Statement and all other documents as provided for under Section 7.02 of such Lease to establish and maintain the security interest of Hancock Bank in such Equipment.

SECTION 4: The Lessee and the Council understand Section 8.03 of the Agreement (“Provisions Regarding Insurance”) and agree to provide property damage and liability insurance in accordance with the terms of the Agreement.

COUNCIL MEMBER _____ seconded the motion and after a full discussion, the same was put to vote with the following results:

Randy Fry	Voted: _____
Tommie Conway	Voted: _____
John L. Lake	Voted: _____
Pat Rudicell	Voted: _____
Ron Scott	Voted: _____
Robin LeJeune	Voted: _____
Dane Haygood	Voted: _____

The motion, having received an affirmative vote, was carried and the resolution adopted this the _____ day of _____, 2013.

By: _____

Ron Scott

Mayor

{Seal}

Attest: _____

Rebecca A. Hayes

City Clerk

CERTIFICATE OF RECORDING OFFICER

1. I am the duly appointed, qualified and acting City Clerk of City of Daphne, Alabama and keeper of the records thereof, including the minutes of its proceedings;

2. A meeting was duly convened on _____, 2013 in conformity with all applicable requirements; a proper quorum was present throughout said meeting and the instrument hereinafter mentioned was duly proposed, considered and adopted in conformity with applicable requirements; and all other requirements and proceedings incident to the proper adoption of said instrument have been duly fulfilled, carried out and otherwise observed

3. I am duly authorized to execute this Certificate; and

4. The copy of the instrument annexed hereto, entitled:

A RESOLUTION OF THE CITY COUNCIL, THE GOVERNING BODY (“THE COUNCIL”) OF CITY OF DAPHNE, ALABAMA (THE “LESSEE”), FINDING IT NECESSARY TO ACQUIRE EQUIPMENT FOR GOVERNMENTAL OR PROPRIETARY PURPOSES AUTHORIZED BY LAW: FINDING THAT IT WOULD BE IN THE PUBLIC INTEREST TO ACQUIRE SUCH EQUIPMENT UNDER THE TERMS OF A LEASE PURCHASE AGREEMENT: FINDING THAT HANCOCK BANK (THE “LESSOR”) HAS OFFERED TO ACQUIRE SUCH EQUIPMENT, OR TO ACQUIRE FROM AND REIMBURSE THE LESSEE FOR THE COST OF SUCH EQUIPMENT IN THE EVENT THE EQUIPMENT HAS ALREADY BEEN PURCHASED BY THE LESSEE, AND TO LEASE SUCH EQUIPMENT TO LESSEE: FINDING THAT SUCH PROPOSAL IS IN THE INTEREST OF LESSEE.....(continued)....

Is a true, correct and compared copy of the original instrument referred to in said minutes and as finally enacted at said meeting, is in full force and effect and, to the extent required by law, has been duly signed or approved by the proper officer or officers and is on file and of record.

DATED as of this the _____ day of _____, 2013.

CITY OF DAPHNE, ALABAMA

(SEAL)

Rebecca A. Hayes
City Clerk of City of Daphne

\$442,900.00
LEASE PURCHASE FINANCING
SERIES 2013
CITY OF DAPHNE, ALABAMA

ISSUER'S GENERAL CERTIFICATE

We, the undersigned, duly appointed or elected, qualified and acting Mayor and City Council (the "Governing Body") and City Clerk of the City of Daphne, Alabama (the "Lessee"), hereby certify in connection with the authorization, issuance, sale and delivery of the above referenced Lease Purchase Agreement (the "Lessor") that:

1. The persons below are now and were at all times relevant to the issuance of the Lease, the duly elected or appointed and qualified incumbents in the designated offices of the Lessee:

<u>Name</u>	<u>Office</u>
<u>Ron Scott</u>	Board President/Acting Mayor
<u>Tommie Conaway</u>	Board Member
<u>John L. Lake</u>	Board Member
<u>Pat Rudicell</u>	Board Member
<u>Robin LeJuane</u>	Board Member
<u>Dane Haygood</u>	Board Member
<u>Rebecca Hayes</u>	Acting City Clerk

2. The signatures of the Mayor and City Clerk of the Issuer who executed the Lease Purchase Agreement, or who executed the certificates delivered at closing are as follows:

<u>Name</u>	<u>Specimen Signatures</u>	<u>Official Title</u>
Ron Scott	_____	Mayor
Rebecca Hayes	_____	City Clerk

3. The Lease Purchase Agreement, in accordance with the applicable law, has been financed by Hancock Bank, Gulfport, Mississippi,(the "LESSOR"), in the amount of \$442,910, and in accordance with the terms of the Lease Purchase Authorizing Resolution adopted by the Governing Body on _____, 2013.

4. The Resolution identified above in Paragraph 3 was duly adopted at public meetings of the Governing Body pursuant to notice duly given, by the majority vote of the full membership of the

Governing Body, and said Resolution has not since been modified, amended or repealed and is in full force and effect on the date hereof.

5. To the best of our knowledge and belief, there has been no protest, challenge or claim filed concerning the issuance of the Lease Purchase Agreement and there is currently no litigation currently pending or threatened against the Issuer which could reasonably be expected to adversely affect the Issuer's ability to pay the Lease Purchase Agreement when due.

IN WITNESS WHEREOF, we have hereunto affixed our signatures as of the _____ day of _____, 2013

CITY OF DAPHNE, ALABAMA

By: _____
Title: Mayor

By: _____
Title: City Clerk

HANCOCK BANK

Lease Purchase Closing Memorandum

Transaction Profile

Date of Funding:	<u>TBD</u> , 2013
Government Name:	City of Daphne, Alabama
Type of Governing Body:	Mayor and City Council
Amount, Rate & Term of Lease:	\$442,910.00 / 1.80% / 3 Years (in advance)
Annual Payment Amount:	\$150,278.19
Equipment Description:	Mowers and Garbage Trucks

Schedule & Description of Closing Documents

Step # and Document Description:

1. **Authorizing Resolution** – *This document authorizes the lease purchase financing by the governing body and gives the appropriate officials the authority to enter into such contract.* The Resolution must be passed by the City Council and executed (signed) by the Mayor and City Clerk before any other document is executed. The original, signed copy needs to be sent back to Hancock Bank.
2. **Governmental Lease Purchase Agreement** – *This document is the contract between the lessor and the lessee (City of Daphne) which is the basis of the transaction.* This Agreement must be signed and dated on or after the Resolution is passed and before or at the funding of the lease (not after!). The original, signed copy needs to be sent back to Hancock Bank.
3. **Attachments to the Lease Agreement** – *These various documents support and perfect the Lease Agreement as well as the interests of the parties to the transaction.* These documents should be signed and executed by the appropriate officials and dated with the same date as that of the Lease Agreement. The original, signed copies need to be sent back to Hancock Bank.

Important Notes Regarding Attachments:

- IRS Form 8038G – Hancock Bank will file this form with the Internal Revenue Service, as required by law, on behalf of the City . Please have it signed by the appropriate official and return it to Hancock Bank along with the rest of the documents.
 - Purchase Orders and Invoices – Hancock Bank must have all Purchase Orders and Invoices (copies are sufficient) issued to or received from the equipment vendor.
 - Evidence of Insurance – Hancock Bank must be shown as additional insured and loss payee on the equipment’s insurance policy. Please provide an insurance certificate or some other form of evidence of insurance.
4. **Legal Opinion of Lessee’s Counsel** – This opinion must be printed on the Board Attorney’s letterhead and dated on or after the date of the Lease Agreement (not before!). The original, signed copy needs to be sent back to Hancock Bank.

*****Please Note: There is no need to make copies of the documents. Hancock Bank will provide a package containing copies of all transaction documents soon after closing.**

AUTHORIZING RESOLUTION

COUNCIL MEMBER _____ moved the adoption of the following Resolution and Order:

A RESOLUTION OF THE CITY COUNCIL, THE GOVERNING BODY (“THE COUNCIL”) OF CITY OF DAPHNE , ALABAMA (THE “LESSEE”), FINDING IT NECESSARY TO ACQUIRE EQUIPMENT FOR GOVERNMENTAL OR PROPRIETARY PURPOSES AUTHORIZED BY LAW: FINDING THAT IT WOULD BE IN THE PUBLIC INTEREST TO ACQUIRE SUCH EQUIPMENT UNDER THE TERMS OF A LEASE PURCHASE AGREEMENT: FINDING THAT HANCOCK BANK (THE “LESSOR”) HAS OFFERED TO ACQUIRE SUCH EQUIPMENT, OR TO ACQUIRE FROM AND REIMBURSE THE LESSEE FOR THE COST OF SUCH EQUIPMENT IN THE EVENT THE EQUIPMENT HAS ALREADY BEEN PURCHASED BY THE LESSEE, AND TO LEASE SUCH EQUIPMENT TO LESSEE: FINDING THAT SUCH PROPOSAL IS IN THE INTEREST OF THE LESSEE AND AUTHORIZING AND DIRECTING THE AUTHORIZED OFFICERS (AS HEREINAFTER DEFINED) TO EXECUTE A LEASE PURCHASE AGREEMENT AND SUPPORTING SCHEDULES AND ATTACHMENTS INCLUDING, BUT NOT LIMITED TO, ASSIGNMENTS OF TITLE TO THE EQUIPMENT TO HANCOCK BANK TO THE END THAT THE EQUIPMENT SHALL BE ACQUIRED BY SUCH BANK AND LEASED TO THE LESSEE ON THE TERMS AND CONDITIONS EXPRESSED IN SUCH LEASE.

WHEREAS, the Council has determined that it is necessary to acquire certain items of Equipment (the “Equipment”) for use by the Lessee for purposes authorized by law and

WHEREAS, the Council has by these presents determined that it would be in the public interest to acquire such Equipment through a Lease Purchase Agreement as provided under Section 41-16A-1 *et seq.* of the Code of Alabama, 1975, and

WHEREAS, to the best knowledge and belief of the Board, this lease qualifies as a qualified project bond within the meaning of the Tax Reform Act of 1986; and

WHEREAS, Hancock Bank has proposed to acquire the Equipment at the offered price and to lease the Equipment to the Lessee at a rate of 1.80% per annum.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD AS FOLLOWS:

SECTION 1: The Mayor and City Clerk (hereinafter the “Authorized Officers”) are hereby authorized and directed to execute a Lease Purchase Agreement (also referred to as a “Governmental Lease Purchase Agreement”), either reference being the “Agreement”, and all attachments thereto. Such Agreement shall be in substantially the form attached hereto with such appropriate variations, omissions and insertions as are permitted or required by this Resolution and as are consented to by the Lessee’s representatives (the “Authorized Officers”) executing the Agreement, such consent being evidenced by their signatures.

SECTION 2: The Equipment to be leased pursuant to the Agreement shall be more fully described in a schedule to the Agreement titled “Exhibit D – Description of the Equipment”. Upon delivery and acceptance by the Lessee of the Equipment, the Authorized Officers are authorized and directed to execute a Certificate of Acceptance of such Equipment and, as provided in Section 4.01 of such Lease, the lease term shall commence on the date of acceptance.

SECTION 3: The Authorized Officers are further authorized and directed to execute on behalf of the Lessee a Financing Statement and all other documents as provided for under Section 7.02 of such Lease to establish and maintain the security interest of Hancock Bank in such Equipment.

SECTION 4: The Lessee and the Council understand Section 8.03 of the Agreement (“Provisions Regarding Insurance”) and agree to provide property damage and liability insurance in accordance with the terms of the Agreement.

COUNCIL MEMBER _____ seconded the motion and after a full discussion, the same was put to vote with the following results:

Randy Fry	Voted: _____
Tommie Conway	Voted: _____
John L. Lake	Voted: _____
Pat Rudicell	Voted: _____
Ron Scott	Voted: _____
Robin LeJeune	Voted: _____
Dane Haygood	Voted: _____

The motion, having received an affirmative vote, was carried and the resolution adopted this the _____ day of _____, 2013.

By: _____

Ron Scott

Mayor

{Seal}

Attest: _____

Rebecca Hayes

City Clerk

CERTIFICATE OF RECORDING OFFICER

1. I am the duly appointed, qualified and acting City Clerk of City of Daphne, Alabama and keeper of the records thereof, including the minutes of its proceedings;

2. A meeting was duly convened on _____, 2013 in conformity with all applicable requirements; a proper quorum was present throughout said meeting and the instrument hereinafter mentioned was duly proposed, considered and adopted in conformity with applicable requirements; and all other requirements and proceedings incident to the proper adoption of said instrument have been duly fulfilled, carried out and otherwise observed

3. I am duly authorized to execute this Certificate; and

4. The copy of the instrument annexed hereto, entitled:

A RESOLUTION OF THE CITY COUNCIL, THE GOVERNING BODY (“THE COUNCIL”) OF CITY OF DAPHNE, ALABAMA (THE “LESSEE”), FINDING IT NECESSARY TO ACQUIRE EQUIPMENT FOR GOVERNMENTAL OR PROPRIETARY PURPOSES AUTHORIZED BY LAW: FINDING THAT IT WOULD BE IN THE PUBLIC INTEREST TO ACQUIRE SUCH EQUIPMENT UNDER THE TERMS OF A LEASE PURCHASE AGREEMENT: FINDING THAT HANCOCK BANK (THE “LESSOR”) HAS OFFERED TO ACQUIRE SUCH EQUIPMENT, OR TO ACQUIRE FROM AND REIMBURSE THE LESSEE FOR THE COST OF SUCH EQUIPMENT IN THE EVENT THE EQUIPMENT HAS ALREADY BEEN PURCHASED BY THE LESSEE, AND TO LEASE SUCH EQUIPMENT TO LESSEE: FINDING THAT SUCH PROPOSAL IS IN THE INTEREST OF LESSEE.....(continued)....

Is a true, correct and compared copy of the original instrument referred to in said minutes and as finally enacted at said meeting, is in full force and effect and, to the extent required by law, has been duly signed or approved by the proper officer or officers and is on file and of record.

DATED as of this the _____ day of _____, 2013.

CITY OF DAPHNE, ALABAMA

(SEAL)

Rebecca Hayes
City Clerk of City of Daphne

Governmental Lease Purchase Agreement

**Lessor: Hancock Bank
P.O. Box 4019
Gulfport, MS 39502**

**Lessee: City of Daphne , Alabama
1705 Main St.
Daphne, Alabama 36526**

This GOVERNMENTAL LEASE PURCHASE AGREEMENT (the "Agreement") entered into between **HANCOCK BANK** (the "Lessor"), and City of Daphne , Alabama (Lessee), a body, corporate and politic, duly organized and existing under the laws of the State of Alabama (the "State") and a governmental entity as defined in Section 41-16A-3(b) of the Code of Alabama, 1975.

WITNESSETH

WHEREAS, Lessor desires to lease the Equipment, as hereinafter defined, to Lessee, and Lessee desires to lease the Equipment from Lessor, subject to the terms and conditions of, and for the purposes set forth in, this Agreement; and

WHEREAS, Lessee is authorized under the Constitution and laws of the State to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I

Covenants of Lessee. Lessee represents, covenants and warrants, for the benefit of Lessor and its assignees, as follows:(a) Lessee is a public body, corporate and politic, duly organized and existing under the Constitution and laws of the State and a governmental entity as defined in Section 41-16A-3(b) of the Code of Alabama, 1975. (b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic and governmental entity. (c) Lessee is authorized under the Constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby, and to perform all of its obligations hereunder. (d) Lessee has been duly authorized to execute and deliver this Agreement under the terms and provisions of the resolution of its governing body, attached hereto as Exhibit "A", or by other appropriate official approval, and further represents, covenants and warrants that all requirements have been met, and procedures have occurred in order to ensure the enforceability of this Agreement, and Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment hereunder. Lessee shall cause to be executed an opinion of its counsel substantially in the form attached hereto as Exhibit "B". (e) During the term of this Agreement, the Equipment will be used by Lessee only for the purpose of performing one or more governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than the Lessee. (f) During the period this Agreement is in force, Lessee will provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may be reasonably requested by Lessor or its assignee. (g) The Equipment will have a useful life in the hands of the Lessee that is substantially in excess of the Original Term and all Renewal Terms. (h) The Equipment is, and shall remain during the period this Agreement is

in force, personal property and when subject to use by Lessee under this Agreement, will not be or become fixtures.

ARTICLE II

Definitions: The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" - means this Governmental Lease Purchase Agreement, including the Exhibits attached hereto, as the same may be supplemented or amended from time to time in accordance with the terms hereof.

"Commencement Date" - is the date when the term of this Agreement begins and Lessee's obligation to pay rent accrues, which date shall be the date on which the Equipment is accepted by Lessee as indicated on the Certificate of Acceptance attached hereto as Exhibit "F".

"Equipment" - means the property described in Exhibit "D" and which is the subject of this Agreement.

"Lease Term" - means the Original Term and all Renewal Terms provided for in this Agreement under Section 4.01, but in no event longer than the number of months set forth in Exhibit "E" of the Agreement.

"Lessee" - means the entity which is described in the first paragraph of this Agreement and which is leasing the Equipment from Lessor under the provisions of this Agreement.

"Lessor" - means (i) Hancock Bank, a corporation, acting as Lessor hereunder; (ii) Any surviving, resulting or transferee corporation; and (iii) Except where the context requires otherwise, any assignee(s) of Lessor.

"Original Term" - means that period from the Commencement Date until the end of the fiscal year of Lessee in effect at the Commencement Date.

"Purchase Price" - means the amount which Lessee may, in its discretion, pay to Lessor in order to purchase the Equipment, as set forth in Exhibit "E" hereto.

"Renewal Term(s)" - means the automatic renewal terms of this Agreement as provided for in Article IV of this Agreement, each having a duration of one (1) year and a term co-extensive with the Lessee's fiscal year except the last of such automatic renewal terms which shall end on the anniversary of the Commencement Date therein.

"Rental Payments" - means the basic rental payments payable by Lessee pursuant to the provisions of this Agreement during the Lease Term, payable in consideration of the right of Lessee to use the Equipment during the then current portion of the Lease Term. Rental Payments shall be payable by Lessee to the Lessor or its assignee in the amounts and at the times during the Lease Term as set forth in Exhibit "E" of this Agreement.

"Vendor" - means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer from whom Lessor purchased or is purchasing the Equipment.

ARTICLE III

Lease of Equipment. Lessor hereby demises, leases and lets to Lessee, the Lessee rents, leases and hires from Lessor, the Equipment, in accordance with the provisions of this Agreement, to have and to hold for the Lease Term.

ARTICLE IV

LEASE TERM

Section 4.01 Commencement of Lease Term

The original Term of this Agreement shall commence on the Commencement Date as indicated in Exhibit "F" and shall terminate the last day of Lessee's current fiscal year.

The Lease Term will be automatically renewed at the end of the Original Term or any Renewal Term for an additional one (1) year, unless the Lessee gives written notice to Lessor not less than sixty (60) days prior to the end of the Original Term or Renewal Term then in effect, or such greater notice as may be provided in Article VI, of Lessee's intention to terminate this Agreement at the end of the Original Term or the then current Renewal Term pursuant to Article XI or Article VI, as the case may be.

Section 4.02 Termination of Lease Term.

The Lease Term will terminate upon the earliest of any of the following events: (a) The expiration of the Original Term or any Renewal Term of this Agreement and the non-renewal of this Agreement in the event of non appropriation of funds pursuant to Section 6.06; (b) The exercise by Lessee of the option to purchase the Equipment granted under the provisions of Articles IX or XI of this Agreement; (c) A default by Lessee and Lessor's election to terminate this Agreement under Article XIII; or (d) The payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder.

ARTICLE V

Enjoyment of Equipment. Lessor hereby covenants to provide Lessee during the Lease Term with quiet use and enjoyment of the Equipment, and Lessee shall during the Lease Term peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement.

Lessor shall have the right at all reasonable times during business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

ARTICLE VI

RENTAL PAYMENTS

Section 6.01 Rental Payments to Constitute a Current Expenses of Lessee.

Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee.

Section 6.02 Payment of Rental Payments.

Lessee shall pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor, or in the event of assignment by Lessor, to its assignee, in the amounts and on the dates set forth in Exhibit "E" hereto. Rental Payments shall be in consideration for Lessee's use of the Equipment during the applicable year in which such payments are due.

Section 6.03 Interest and Principal Component.

A portion of each Lease Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal. Exhibit "E" hereto sets forth the interest component and the principal component of each Rental Payment during the Lease Term.

Section 6.04 Rental Payments to be Unconditional.

The obligations of Lessee to make payment of the Rental Payments required under this Article VI and other sections hereof, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, except as expressly provided under this Agreement. Notwithstanding any dispute between Lessee and Lessor, and Vendor or any other person, Lessee shall make all payments of Rental Payments when due and shall not withhold any Rental Payments pending final resolution of such dispute, nor shall Lessee assert any right of setoff or counterclaim against its obligation to make such payments required under this Agreement. Lessee's obligation to make Rental Payments during the Original Term or the then current Renewal Term shall not be abated through accident or unforeseen circumstances.

Section 6.05 Continuation of Lease Term by Lessee.

Lessee intends, subject to the provisions of Section 6.06, to continue the Lease Term through the Original Term and all of the Renewal Terms and to pay the Rental Payments hereunder. Lessee reasonably believes that legally available funds of an amount sufficient to make all Rental Payments during the Original Term and each of the Renewal Terms can be obtained. Lessee further intends to do all things lawfully within its power to obtain and maintain funds from which the Rental Payments may be made, including making provision for such payments to the extent necessary in each bi-annual or annual budget submitted and adopted in accordance with applicable provisions of state law, to have such portion of the budget approved.

Section 6.06 Non-appropriation.

In the event sufficient funds shall not be appropriated for the payment of the Rental Payments required to be paid in the next occurring Renewal Term, and if Lessee has no funds legally available for Rental Payments from other sources, then Lessee may terminate this Agreement at the end of the then current Original Term or Renewal Term, and Lessee shall not be obligated to make payment of the Rental Payments provided for in this Agreement beyond the then current original or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at Least sixty (60) days prior to the end of the then current Original or Renewal Term. If this Agreement is terminated under this Section 6.06, Lessee agrees, at Lessee's cost and expense, peaceably to deliver the Equipment to Lessor at the location specified by Lessor. To the extent lawful, Lessee shall not, until the date on which the next occurring Renewal Term would have ended, expend any funds for the purchase or use of Equipment similar in function to the Equipment subject to this Agreement for a period of time equal to the less of (i) five (5) years or (ii) the time elapsing between the date this Agreement terminates as aforesaid and the date indicated in the amortization schedule attached to Exhibit "E" to this Agreement as the first date on which the "balance" or "outstanding balance" is zero. Notwithstanding anything to the contrary contained herein, the provisions of this section shall survive the termination of this Agreement for a period of not less than five (5) years.

ARTICLE VII

TITLE TO EQUIPMENT; SECURITY INTEREST

Section 7.01 Title To The Equipment

During the Term of this Agreement, title to the Equipment any and all additions, repairs, replacements or modifications shall vest in Lessee, subject to the rights of Lessor under this Agreement. In the event of default as set forth in

Section 13.02 or nonappropriation as set forth in Section 6.06, Title to the Equipment shall immediately vest in Lessor, and Lessee will reasonably surrender possession of the Equipment to Lessor. Lessee, irrevocably, hereby designates, makes, constitutes and appoints Lessor (and all persons designated by Lessor) as Lessee's true and lawful attorney (and agent-in-fact) with power, at such time of default or nonappropriation or times thereafter as Lessor in its sole and absolute discretion may determine, in Lessee's or Lessor's name, to endorse the name of Lessee upon any Bill of Sale, document, instrument, invoice, freight bill, bill of lading or similar document relating to the Equipment in order to vest title in Lessor and transfer possession to Lessor.

Section 7.02 Security Interest.

To secure the payment of all Lessee's obligations under this Agreement, Lessee grants to Lessor a security interest constituting a first lien on the Equipment and on all additions, attachments, accessions and substitutions thereto, and on any proceeds therefrom. Lessee agrees to execute such additional documents, including financing statements, certificates of title, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest, and upon assignment, the security of any assignee of Lessor, in the Equipment.

Section 7.03 No Replacement of Equipment under Certain Circumstances.

If the Lessee shall fail to renew the term of this Lease for another Renewal Term at the end of the Original Term or any Renewal Term and shall also fail to exercise its right to purchase the Equipment granted to it by Article XI of the Agreement, then the Lessee represents, covenants and warrants that it will not replace the Equipment with other equipment having a similar function for a period of time equal to the less of (i) five (5) years or (ii) the time elapsing between the date this Agreement terminates as aforesaid and the date indicated in the amortization schedule attached to Exhibit "E" to this Agreement as the first date on which the "balance" or "outstanding balance" is zero. Notwithstanding anything to the contrary contained herein, the provisions of this section shall survive the termination of this Agreement for a period of not less than five (5) years.

ARTICLE VIII MAINTENANCE; MODIFICATION TAXES, EXEMPTION FROM FEDERAL TAXATION, INSURANCE AND OTHER CHARGES.

Section 8.01 Maintenance of Equipment by Lessee.

Lessee agrees that at all times during the Lease Term, Lessee will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and that Lessee will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals. Lessor shall have no responsibility in any of these matters or for the making of improvements or additions to the Equipment. The Lessee may from time to time add further parts or accessories to any item of leased Equipment, provided such addition does not affect or impair the value or utility of such item of Equipment. Any part or accessory so added, if not required as a replacement hereunder, shall remain the property of the Lessee and may be removed at any time prior to the expiration of the lease term of such item, provided such removal does not affect or impair the value or utility of such item of Equipment. Any parts or accessories not so removed shall become the property of the Lessor.

Section 8.02 Taxes, Other Governmental Charges and Utility Charges.

The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes of Lessor), Lessee will pay during the Lease Term, as the same respectively come due, all taxes

and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment and any Equipment or other property acquired by Lessee in substitution for, as a renewal or replacement of, or modification, improvement or addition to the Equipment, as well as all gas, water, steam, electricity, heat, power, telephone, utility and all other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment; provided that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as have accrued during the time this Agreement is in effect.

The Lessor has entered into this Agreement contemplating that the interest portion of rental payments will be exempt from federal income taxation. In the event any governmental taxing authority successfully imposes tax treatment, under this Agreement or any other lease of the Lessor which in the opinion of Lessor's counsel will be determinative of the tax treatment under this Agreement, which differs from the tax treatment contemplated to be taken by the Lessor hereto at the inception of this Agreement or which effectively denies to the Lessor the use or benefit of such tax treatment as contemplated, then Lessee agrees to pay rents with an interest factor equal to the maximum rate of interest which, under applicable law, Lessor is permitted to charge, retroactively from the date of imposition of the change of tax treatment through the term of each Equipment Lease Schedule under this Agreement during which the change of tax theory is imposed, and subsequently thereto, as rental payments would otherwise become due, until the end of the lease term. Any retroactive payments of rent under this paragraph shall be due and payable at the date that Lessor gives notice to Lessee of imposition of the change of tax-treatment.

Lessee agrees to pay its pro-rata share of attorney's fees that may reasonably be incurred by Lessor in the event legal action or administrative action is taken by the Lessor to secure the tax treatment intended to be taken by Lessor under this Agreement or any other lease which in the opinion of Lessor's counsel will be determinative of the tax treatment under this Agreement whether such action is successful or not. Lessee's pro-rata share shall be determined by the percentage that the Lessor's original cost of leased equipment for all other similar leases of the Lessor involving similar issues of fact or law. In the event the Lessor is successful in securing the tax treatment intended to be taken by Lessor, Lessor shall refund to Lessee the total amount of increased interest (as hereinabove provided) which has been paid by Lessee and rental payments for the remainder of the lease term shall be the original rentals specified in the Equipment Lease Schedules.

Section 8.03 Provisions Regarding Insurance.

At its own expense, Lessee shall cause casualty, public liability and property damage insurance to be carried and maintained sufficient to protect the Full Insurable Value (as that term is hereinafter defined) of the Equipment, and to protect Lessor from liability in all events. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. Lessee shall furnish to Lessor Certificates evidencing such coverage throughout the Lease Term. Such Certificates shall name the Lessor as an additional insured or loss payee, as Lessor's interests may appear.

Alternatively, Lessee may insure the Equipment under a blanket insurance policy or policies which cover not only the Equipment, but other properties.

The term "Full Insurable Value" as used herein shall mean the full replacement value of the Equipment or the then applicable Purchase Price, whichever is greater.

Any insurance policy pursuant to this Section 8.03 shall be written with Hancock Bank as an additional insured or loss payee, as its interests may appear. The Net Proceeds (as defined in Section 9.01) of the insurance required in this Section 8.03 shall be applied as provided in Article IX hereof. Each insurance policy provided for in this Section 8.03 shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of Lessor without first giving written notice thereof to Lessor at least ten (10) days in advance of such cancellation.

The Lessee will at all times carry liability insurance from a third party insurer, such coverage being for the joint benefit of the Lessee and Lessor and with the Lessor named as an additional insured.

Under this Agreement, the Lessee is required to maintain property damage insurance from a third party insurer, against loss, theft, damage or destruction from every cause whatsoever for not less than the Full Insurable Value of the Equipment. Alternately, with regard to property damage insurance, and subject to the terms of this Agreement, including the preceding paragraphs of this Section 8.03, the Lessee may optionally elect to self insure through a self insurance program ("Self-Insurance"), against loss, theft, damage or destruction from every cause whatsoever for not less than the Full Insurable Value of the Equipment. Such Self-Insurance shall be in the joint names of the Lessor and Lessee, with the Lessor and Lessee named as loss payees. With regard to any Self-Insurance, which is alternatively elected, chosen, initiated and maintained by the Lessee, in order to meet the requirements of this Agreement, the Lessee does hereby declare and name the Lessor as a joint and additional insured and loss payee with regard to Self-Insurance which, Lessee alternately chooses to implement and maintain in order to meet its responsibilities under this Agreement. With regard to any Self-Insurance elected, in substitution for third party insurance as required by the Agreement, the Lessee agrees that it will at all times maintain sufficient monetary and other necessary resources, under its Self-Insurance election, to enable the Lessee to meet all of its obligations under this Agreement. The Lessee, and the Lessee's Governing Body, agree and declare that they individually and collectively have the necessary experience and sophistication in matters pertaining to any and all risks and responsibilities taken and assumed with the alternative election and choice of Self-Insurance. The Lessee, and the Lessee's Governing Body, individually and collectively understands, that there will be no abatement or reduction of responsibilities under this Agreement (including making rental payments) by Lessee for any reason, including but not limited to, the election of Self-Insurance, loss, theft, damage or destruction from any cause whatsoever.

Section 8.04 Advances.

In the event Lessee shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Equipment in good repair and operating condition, Lessor may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements which are necessary and provide for payment thereof; and all amounts so advance therefore by Lessor shall become additional rent for the then current Original Term or Renewal Term which amounts Lessee agrees to pay, together with interest thereon at the rate of twelve (12%) per cent per annum or the highest rate permitted by applicable law, whichever is less.

ARTICLE IX DAMAGES, DESTRUCTION AND CONDEMNATION: USE OF NET PROCEEDS

Section 9.01 Damages, Destruction and Condemnation.

Unless Lessee shall have exercised its option to purchase the Equipment by making payment of the Purchase Price as provided herein, if prior to the termination of the Lease Term; (A) the Equipment or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty; or
(B) title to, or the temporary use of, the Equipment of any part thereof or the estate of Lessee or Lessor in the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to Lessee's obligations pursuant to Section 9.02 hereof.

For purposes of Section 8.03 and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award deducting all expenses (including attorney's fees) incurred in the collection of such claim or award.

Section 9.02 Insufficiency of Net Proceeds.

Provided, the Equipment is not deemed to be a total loss, Lessee shall if Lessee is not in default hereunder, cause the repair, replacement or restoration of the Property and pay the cost thereof.

In the event of total destruction or damage to the Equipment, whether or not Lessee is in default, at Lessor's option, Lessee shall pay to Lessor on the rent payment due date next succeeding the date of such loss ("Rent Payment Due Date") the amount of the Purchase Price applicable to such Rent Payment Due Date, plus the Rental Payment due on such date, plus any other amounts payable by Lessee hereunder, and, upon such payment, the Lease Term shall terminate and Lessor's security interest in the Equipment shall terminate as provided in Article XI of this Agreement. The amount of the Net Proceeds in excess of the then applicable Purchase Price, if any, may be retained by Lessee. Lessee agrees that if the Net proceeds are insufficient to pay in full Lessee's obligations hereunder, Lessee shall make such payments to the extent of any such deficiency. Lessee shall not be entitled to any reimbursement therefore from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article VI hereof.

ARTICLE X DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES; USE OF THE EQUIPMENT

Section 10.01 Disclaimer of Warranties.

Lessor makes no warranty or representation, either express or implied, as to the value, design, condition, mechanism or fitness for particular purposes or fitness for use of the Equipment, or warranty with respect thereto. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or Lessee's use of any item or products or services provided for in this Agreement.

Section 10.02 Vendor's Warranties.

Lessor hereby agrees to assign to Lessee solely for the purpose of making and prosecuting any such claim against Vendor, all of the rights which Lessor has against Vendor for breach of warranty or other representation respecting the Equipment. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against the Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive fully and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made no representation or warranties whatsoever as to the existence or availability of such warranties of the Vendor of the Equipment.

Section 10.03 Use of the Equipment.

Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all laws of the jurisdiction in which its operations involving any item of Equipment may extend and any legislative, administrative or judicial body exercising any power or jurisdiction over the items of the Equipment; provided, however, that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the estate of Lessor in and to any of the items of the Equipment or its interest or rights under this Agreement.

ARTICLE XI
Option to Purchase. At the request of Lessee, Lessor's security interest in the Equipment will be terminated and this Agreement shall terminate: (a) At the end of the Lease Term (including Renewal Terms), upon payment in full of the Rental Payments and other amounts payable by Lessee hereunder; or (b) At the end of the Original Term or any Renewal Term upon payment by Lessee of the then applicable Purchase Price; or (c) If the Lease Term is terminated pursuant to Article IX of this Agreement.

ARTICLE XII

**ASSIGNMENT: SUBLEASING: INDEMNIFICATION:
MORTGAGING AND SELLING**

Section 12.01 Assignment by Lessor.

This Agreement, and the obligations of Lessee to make payments hereunder, may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time subsequent to its execution, without the necessity of obtaining the consent of Lessee. Lessor agrees to give notice of assignment to Lessee and upon receipt of such notice Lessee agrees to make all payments to the assignee designated in the assignment, notwithstanding any claim, defense, set off or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Lessee may from time to time have against Lessor, or the assignee. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements which may be reasonably requested by Lessor or its assignee to protect their interests in the Equipment and in this Agreement.

Section 12.02 No Sale, Assignment or Subleasing by Lessee.

This Agreement and the interest of Lessee in the Equipment may not be sold, assigned or encumbered by Lessee without the prior written consent of Lessor.

Section 12.03 Release and Indemnification Covenants.

To the extent permitted by the laws and Constitution of the State, Lessee shall protect, hold harmless and indemnify Lessor from and against any and all liability obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into of this Agreement, the ownership of any item of the Equipment, the ordering acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death of any person. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason. Lessee agrees not to withhold or abate any portion of the payments required pursuant to this Agreement by reason of any defects, malfunctions, breakdowns, or infirmities of the Equipment.

**ARTICLE XIII
EVENTS OF DEFAULT BY LESSEE AND REMEDIES
THEREUPON**

Section 13.01 Events of Default by Lessee Defined.

With respect to Lessee, the following shall be "Events of Default" under this Agreement and the terms "Event of Default" and "Default" shall mean, whenever they are used in this Agreement, any one or more of the following events: (a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein; or (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 13.01(a), for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied as given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected; or (c) Breach of any material representation or warranty by Lessee under this Agreement; or (d) Commencement by Lessee of a case or proceeding under the Federal bankruptcy laws or filing by Lessee of any petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any existing or future bankruptcy, insolvency or other similar law or any answer admitting or not contesting the material allegations of a petition filed against Lessee in any such proceeding; or (e) A Petition against Lessee in a proceeding

under any existing or future bankruptcy, insolvency or other similar law shall be filed and not withdrawn or dismissed within thirty (30) days thereafter.

The foregoing provisions of this Section 13.01 are subject to (i) the provisions of Section 6.06 hereof with respect to nonappropriation; and (ii) if by reason of force majeure Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of the Lessee contained in Article VI hereof, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: Acts of God, strikes, lockouts or other industrial disturbances; acts of public enemies, order or restraints of any kind of the government of the United States of America or of the State wherein Lessee is located or any of their department, agencies or officials, or any civil or military authority; insurrections; riot, landslides; earthquakes; fire, storms; droughts; floods; or explosions.

Section 13.02 Remedies on Default.

Whenever any event of default referred to in section 13.01 hereof shall have happened and be continuing, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps: (a) with or without terminating this Agreement, retake possession of the Equipment and sell, lease or sublease the Equipment for the account of Lessee, to be applied to Lessee's obligations hereunder, holding Lessee liable for the Purchase Price applicable on the rent payment due date immediately preceding the date of default, plus the Rental payments due on such date, plus any other amounts payable by Lessee hereunder, including, but not limited to, attorney's fees expenses and costs of repossession; (b) Require Lessee at Lessee's risk and expense to promptly return the Equipment in the manner and in the condition set forth in Section 6.06 and 8.01 hereof;

(c) If the Lessor is unable to repossess the Equipment for any reason, the Equipment shall be deemed a total loss and Lessee shall pay to Lessor the amount due pursuant to Article IX hereof; and (d) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights as the owner of the Equipment.

Section 13.03 No Remedy Exclusive.

No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power and may be exercised from time to time and as often as may be deemed expedient.

ARTICLE XIV

LESSOR'S WARRANTIES

Section 14.01 Lessor's Warranties.

As to each item of leased Equipment to be leased hereunder, the Lessor warrants that: (a) It has the right to lease the same to Lessee. (b) It will keep each item of leased Equipment free of security interests except for the security interest provided for in Section 7.02 of this Agreement. (c) It will do nothing to disturb Lessee's full right of possession and enjoyment thereof and the exercise of Lessee's rights with respect to the Equipment leased hereunder subject to compliance by Lessee of the terms of this Agreement.

ARTICLE XV

MISCELLANEOUS

Section 15.01 Notices.

All notices, certificates of other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, to the parties at their respective places of business.

Section 15.02 Binding Effect.

This Agreement shall insure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 15.03 Severability.

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 15.04 Amendments.

The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the Lessor and the Lessee; nor shall any such amendment that affects the rights of Lessor's assignee be effective without such assignee's consent.

Section 15.05 Execution in Counterparts.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 15.06 Applicable Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

Section 15.07 Captions.

The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of sections of the Agreement.

Section 15.08 Entire Agreement.

This Agreement constitutes the entire Agreement between Lessor and Lessee. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, not specified herein regarding this Agreement or the Equipment lease hereunder. Any terms and conditions of any purchase order or other document (with the exception of Supplements) submitted by Lessee in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on Lessor and will not apply to this Agreement. Lessor and Lessee by their signatures acknowledge that each has read this Agreement, understands it, and agrees to be bound by its terms and conditions, and certifies that each signature is duly authorized and the signers are empowered to execute this Agreement on behalf of their respective principals.

IN WITNESS WHEREOF, Lessor has executed this Agreement in its corporate name by its duly authorized officer, and Lessee has caused this Agreement to be executed in its corporate name with its corporate seal hereunto affixed and attested by its duly authorized officers. All of the above occurred as of the date first written below.

LESSOR: HANCOCK BANK

LESSEE: City of Daphne , Alabama

By: _____

Jonathan King

Assistant Vice President

As of _____, 2013.

By: _____

Ron Scott

Mayor

As of _____, 2013

ATTEST:

By: _____

Rebecca Hayes

City Clerk

As of _____, 2013

{CITY SEAL}

EXHIBIT "A"
RESOLUTION OF LESSEE

**Attached is an Authorizing Resolution of the City Council adopted at a Council Meeting on
, 2013.**

EXHIBIT “B”

{ATTACH LEGAL OPINION FROM LESSEE’S COUNSEL}

EXHIBIT "C"
CERTIFICATE AS TO ARBITRAGE

We, the undersigned officers of City of Daphne, Alabama ("Lessee"), being the persons duly charged, with others, with responsibility for issuing the Lessee's obligation in the form of that certain agreement entitled "Governmental Lease Purchase Agreement" (the "Agreement") dated as of _____, 2013 hereby certify that:

1. The Agreement was issued by the Lessee under and pursuant to Section 41-16A-1 *et seq.* of the Code of Alabama, 1975 to finance the acquisition of certain equipment described therein.
2. Pursuant to the Agreement, the Lessee is entitled to receive said equipment in consideration for the obligation of the Lessee under the Agreement. Said equipment will be used in furtherance of the public purposes of the Lessee. The Lessee does not intend to sell equipment or said Agreement or to otherwise dispose of said equipment during the term of the Agreement. The Lessee will not receive any monies, funds, or other "proceeds" as a result of the Agreement.
3. The Lessee expects to make payments under the Agreement from its general funds and proprietary funds (as necessary) (the "Funds") on the basis of annual appropriations in amount equal to the required payments under the Agreement. The remaining Funds of the Lessee are not reasonably expected to be used to make such payments and no other monies are pledged to the Agreement or reasonably expected to be used to pay principal and interest on the Agreement.
4. The Lessee has not received notice that its Certificate may not be relied upon with respect to its own issues nor has it been advised than any adverse action by the Counciler of Internal Revenue is contemplated.

To the best of our knowledge, information and belief the expectations herein expressed are reasonable and there are no facts, estimates or circumstances other than those expressed herein that would materially affect the expectations herein expressed.

IN WITNESS WHEREOF, we have hereunto set our hands as of _____, 2013.

By: _____
Ron Scott
Mayor

By: _____
Rebecca Hayes
City Clerk

EXHIBIT "D"
DESCRIPTION OF EQUIPMENT

The Equipment that is listed on the invoices attached to this Exhibit D is the subject of the Governmental Lease Purchase Agreement dated as of _____, 2013 entered into between Hancock Bank (Lessor) and City of Daphne , Alabama (Lessee) and Lessee hereby certifies that the description of the personal property set forth in the attached invoices constitutes an accurate description of the "Equipment", as defined in the above referenced Governmental Lease Purchase Agreement.

By: _____
Ron Scott
Mayor

By: _____
Rebecca Hayes
City Clerk

EXHIBIT "E"
RENTAL PAYMENTS

Annual rentals (in advance) on this agreement are **\$150,278.19**. The first rental due on this agreement will be due on the **TBD** day of **TBD Month 2013** and subsequent annual rentals will be due on the TBD day of each **year** thereafter. The lease term of this agreement is **three (3) years, with 3 annual payments in advance** with a \$1.00 Purchase Option available to the Lessee at contract end. The purchase price during the original or any renewal term shall be the amount set forth as the "balance" or "outstanding balance" on the attached amortization schedule plus \$1.00 plus accrued but unpaid interest amounts as set forth on the attached schedule plus other amounts payable by lessee under the terms of the lease.

EXHIBIT "F"
ACCEPTANCE CERTIFICATE

The undersigned officers of City of Daphne , Alabama as Lessee, under the Governmental Lease Purchase Agreement (the "Agreement") dated as of _____, 2013 with HANCOCK BANK ("Lessor"), acknowledges receipt in good condition of all of the Equipment described in the Agreement and Exhibit "D" thereto this _____ day of _____, 2013 and certifies that Lessee has fully and satisfactorily performed all of its covenants and obligations required under the Agreement to date.

The undersigned officers of the Lessee hereby direct the Lessor to fund this portion of the Agreement by advancing funds for the purchase price of the Equipment hereby accepted as follows:

CHECK EITHER A OR B BELOW:

- A) Lessor should pay Vendor directly _____
- B) Reimburse Lessee for purchase price already paid by Lessee to Vendor _____

By: _____
Ron Scott
Mayor

By: _____
Rebecca Hayes
City Clerk

EXHIBIT G
ESSENTIAL USE/SOURCE OF FUNDS LETTER

TO: HANCOCK BANK

RE: Governmental Lease Purchase Agreement

Gentlemen:

Reference is made to that certain Governmental Lease Purchase Agreement, dated as of January _____, 2013 ("Lease"), between Lessor and us, City of Daphne , Alabama as Lessee, leasing the personal property ("Property") described in Exhibit "D" to such Lease. This confirms and affirms that the Property is essential to the functions of the undersigned as or to the service we provided to our citizens.

Further, we have an immediate need for, and expect to make immediate use of, substantially all the Property, which need is not temporarily or expected to diminish in the foreseeable future. The Property will be used by us only for the purpose of performing one or more of the governmental or proprietary functions consistent with the permissible scope of our authority.

We expect and anticipate adequate funds to be available for all future payments of rent due after the current fiscal year in as much as there will be a continued need for such property.

Very truly yours,

By: _____
Ron Scott
Mayor

By: _____
Rebecca Hayes
City Clerk

Exhibit H
BILL OF SALE

For and in consideration of the purchase price of **\$442,910.00** paid by Hancock Bank, Gulfport, Mississippi (“Lessor”), to City of Daphne, Alabama (“Lessee”), or alternately paid to Vendor under our direction, receipt of which is hereby acknowledged, the Lessee hereby sells, assigns, and transfers to Lessor, the equipment (the “Equipment”) now in the possession of Lessee as described on Exhibit D and the attachments thereto.

It is agreed that the Equipment is to remain in the possession of Lessee but that the possession thereof by Lessee shall, from and after the date hereof, be subject to the Governmental Lease Purchase Agreement dated as of _____ 2013 between Lessor and Lessee (the “Agreement”), with the same effect as though the Equipment had been acquired by Lessor and delivered to Lessee as of the date hereof. The rental applicable to the Equipment shall be determined in accordance with the terms of the Agreement.

Lessee hereby represents and warrants that the Equipment is now in the possession of the Lessee and hereby transfers to Lessor the Equipment free and clear of any and all liens and encumbrances, subject to re-conveyance and retention of title to Lessee as provided in the Agreement.

Lessee hereby agrees, upon request of Lessor, to execute and deliver any other instruments, papers, or documents which may be required, or desirable, in the opinion of Lessor in order to give effect to this Bill of Sale.

IN WITNESS WHEREOF Lessee has duly executed this Bill of Sale as of the _____ of _____ 2013.

BY: _____
Ron Scott
Mayor

BY: _____
Rebecca Hayes
City Clerk

Exhibit I

IRS FORM 8038 (attached to this exhibit)

**TO BE FILED WITH THE IRS FOR THE PURPOSES OF OBTAINING TAX
EXEMPTION ON THE LEASE**

Exhibit J
ASSIGNMENT OF PURCHASE ORDERS

For value received, City of Daphne , Alabama (“Assignor”) does hereby, sell, assign and transfer to Hancock Bank, Gulfport, Mississippi (“Assignee”) all its right, title and interest in and to and delegates all its duties under the purchase orders attached hereto and made a part hereof (the “Purchase Orders”), including without limitation the right to take title to the equipment (the “Equipment”) described in the Purchase Orders and to be named as purchaser in any bills of sale and/or invoices to be delivered in connection therewith, subject to the provisions of the Agreement with respect to the transfer of title to Lessee.

The Assignor represents that the Purchase Orders are in full force and effect and enforceable in accordance with the terms thereof, and are assignable and the duties thereunder delegable and that this Assignment is a valid exercise of the rights of the Assignor.

This Assignment is executed for the purpose of enabling Assignee to purchase the Equipment specified on the Purchase Orders which Assignee will lease to Assignor pursuant to a certain Governmental Lease Purchase Agreement dated as of _____, 2013 and of which this Assignment constitutes an integral part, and is subject to the provisions of the Agreement with respect to the transfer of title to Lessee.

Assignor has caused or will cause all actions to be taken as provided in the Purchase Orders assigned hereby including those pertaining to the delivery, installation, quality and quantities of Equipment.

EXECUTED as of the _____ day of _____ 2013.

BY: _____
Ron Scott
Mayor

BY: _____
Rebecca Hayes
City Clerk

Exhibit K
ASSIGNMENT OF INVOICES

For value received, City of Daphne, Alabama (“Assignor”) does hereby sell, assign and transfer to Hancock Bank, Gulfport, Mississippi (“Assignee”) all its right, title and interest in and to and delegates its duties under the invoices attached hereto and made a part hereof (the “Invoices”).

The Assignor represents that the Invoices are in full force and effect and are assignable and that this Assignment is a valid exercise of the rights of the Assignor.

This Assignment is executed for the purpose of establishing in Assignee clear title to the equipment specified on the Invoices which equipment is subject to that certain Governmental Lease Purchase Agreement dated as of _____, 2013 by the Assignor and Assignee, of which this Assignment constitutes an integral part, including those provisions for the transfer and retention of title to Lessee as provided in the Agreement.

This Assignment of Invoices is executed as of the _____ day of _____ 2013.

BY: _____

Ron Scott
Mayor

BY: _____

Rebecca Hayes
City Clerk

EXHIBIT L

INSURANCE CERTIFICATES (SEE ATTACHED)
(Hancock should be shown as loss payee and additional insured)

EXHIBIT M
AGREEMENT TO TENDER VEHICLE TITLE TO LESSOR

We, the undersigned officers of City of Daphne, Alabama (“Lessee”), being the persons duly charged, with others, with responsibility for issuing the Lessee’s obligation in the form of that certain agreement entitled “Governmental Lease Purchase Agreement (the “Agreement”) dated as of _____, 2013 hereby agree to give to Hancock Bank (“Lessor”) the title to the vehicle being financed through the above referenced Agreement within ten days of receipt of the title from the State of Alabama.

Upon receipt of the vehicle title from the Lessee, Hancock Bank will file a title application with the State of Alabama in order that Hancock Bank may be shown as lien holder on the vehicle.

IN WITNESS WHEREOF, we have hereunto set our hands as of this the _____ day
of _____, 2013.

Ron Scott
Mayor

Rebecca Hayes
City Clerk

(To Be Printed on Attorney Letterhead)

(To Be Dated On or After Date of Agreement)

Hancock Bank
Public Finance Department
P.O. Box 4019
Gulfport, MS 39502

RE: Lease-Purchase of Equipment by City of Daphne, Alabama

Gentlemen:

Pursuant to your request, we hereby render the following opinion regarding the Governmental Lease Purchase Agreement (the "Agreement"), dated as of May _____, 2013 between City of Daphne, Alabama ("Lessee") and Hancock Bank (the "Lessor").

We have acted as counsel to the Lessee with respect to certain legal matters pertaining to the Agreement, and to the transactions contemplated thereby. We are familiar with the Agreement and we have examined such agreements, schedules, statements, certificates, records, including minutes of the governing body of the Lessee and any other governing authority, and other instruments of public officials, Lessee, and other persons, as we have considered necessary or proper as a basis for the opinions hereinafter stated.

Based on such examination, we are of the opinion that:

1. Lessee has full power, authority and legal right to purchase equipment, as defined in the Agreement, and to execute, deliver and perform the terms of the Agreement. The purchase of the equipment and the execution, delivery and performance of the Agreement has been duly authorized by all necessary action on the part of Lessee and any other governing authority and does not require the approval of, or giving of notice to, any other federal, state, local, or foreign governmental authority and does not contravene any law binding on Lessee or contravene any indenture, credit agreement or other agreement to which Lessee is a party or by which it is bound. The Agreement grants the Lessor a valid, first priority security interest in the Equipment.
2. The agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms.

3. All required procedures and laws for the purchase of the equipment and the execution, delivery and performance of the Agreement, including competitive bidding, if applicable, have been complied with, and all will be paid out of funds which are legally available for such purposes.
4. With respect to the tax-exempt status of the portion of rental payments under the Agreement, under present law:
 - (a) The Lessee is a body corporate and politic, duly organized and existing under the laws of the State of Alabama.
5. There are no pending or threatened actions or proceedings before any court, administrative agency or other tribunal or body against Lessee which may materially affect Lessee's financial condition or operations; or which could have any effect whatsoever upon the validity, performance or enforceability of the terms of the Agreement.

This opinion is being furnished to you in connection with the above-referenced transaction. The opinions expressed herein are for the sole benefit of and may be relied upon by the Lessor and its assigns and are not to be delivered to or relied upon by any other party without prior written consent.

Sincerely,

RESOLUTION 2013-07

ENGINEERING ANALYSIS FOR CITY'S COMMUNICATION TOWER

WHEREAS, specialized engineering services are required to advise on changes in code requirements for communication towers and the structural integrity of the City's tower; and

WHEREAS, the City Attorney and IT Consultant will evaluate engineering companies who provide these specialized services; and

WHEREAS, the City Attorney has reviewed the proposed agreement; and

WHEREAS, the report from the engineering company will be submitted to Council for their review ; and

WHEREAS, monies for tower maintenance/analysis are available from revenues received from tower lease contracts.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA that the cost for the tower engineering/analysis services will not exceed the rate of \$200/hour or a total cost of \$25,000 and that the Mayor is hereby authorized to execute the engineering agreement on behalf of the City of Daphne.

APPROVED AND ADOPTED by the Mayor and City Council of the City of Daphne, Alabama, this _____ day of _____, 2013.

Ron Scott, Council President

ATTEST:

Rebecca Hayes, Interim City Clerk

**CITY OF DAPHNE
ORDINANCE NO. 2013-04**

=====

TRASH ORDINANCE

=====

WHEREAS, the City Council of the City of Daphne, Alabama desires to promote the health, welfare and safety of the residents of the City of Daphne, Alabama by providing for the orderly, effective and systematic collection of trash and rubbish: and

WHEREAS, the City Council of the City of Daphne desires to establish, maintain and operate a service for the orderly, effective and systematic collection of trash and rubbish in the City of Daphne, Alabama; to establish the rules, regulations and conditions which shall regulate the accumulation, removal and disposal of trash, rubbish, junk and other wastes; to provide definitions, receptacle requirements and prohibited acts; and to provide penalties for the violation thereof within the City of Daphne, Alabama.

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

SECTION I. DEFINITIONS

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directive.

A. Trash. The term "trash" shall mean rubbish, shrubbery, trimmings, sidewalk sweepings, leaves, pine straw, grass, weeds, hedge trimmings, small tree trimmings (limbs less than five (5) feet in length and eight (8) inches in diameter), firewood or other refuse originating in yards, on sidewalks, or neutral grounds adjacent to the home or business of the person receiving trash service, excluding the following: junk as herein defined, recyclable materials, trees that have been cut down by contractors or by individuals who have been paid to remove or cut trees.

B. Rubbish. The term “rubbish” shall mean clothing, appliances, furniture, bicycles, lawn mowers, barbecue grills and similar discarded personal and household items, excluding junk as herein defined and excluding recyclable materials.

C. Junk. The term “junk” shall mean any vehicle or vehicle parts, rubber tires, automotive batteries, paint or paint containers, oil, gasoline, items containing hazardous or flammable material, chemicals, asphalt, cement or concrete, machinery, equipment, building or construction material, or other items which are either in a wholly or partially rusted, wrecked, junked, dismantled or inoperative condition.

D. Commercial Establishment. The term “commercial establishment” shall mean an establishment organized primarily for purpose of conducting commercial activity including, but is not limited to, the following: apartments, motels, and hotels maintaining centralized locations for trash containers, stores, office buildings, restaurants, service stations and garages, laundries and cleaning establishments, industrial establishments, retail establishments and all other places not classed as residential which produce or accumulate trash.

E. Trash Receptacle. The term “trash receptacle” shall mean a paper or plastic trash bag that shall be closed and sealed to protect the contents from flies, insects, rats and other animals and which shall be free from jagged and for sharp edges. **Red colored bags**, garbage containers, cans or boxes are not acceptable trash receptacles. (Red is the universal color for medical waste.)

F. Person. The term “person” shall mean any person or persons, firm, corporation, or association of any type.

G. Contractor. The term “Contractor” shall mean the City of Daphne Solid Waste Department or any person, firm or corporation to whom the City of Daphne has granted a franchise for the right to collect trash within the City of Daphne, Alabama. The term “Contractor” shall also mean a duly licensed person, or business, who accepts either cash payment for services rendered or swaps for services provided by another professional or provider.

H. Owner. The term “Owner” shall mean any person, firm, corporation or association who accumulates trash, causes trash to be accumulated or causes trash to be placed for pickup and disposal by the Contractor.

I. Code Enforcement Officer. The term “code enforcement officer” shall mean the Code Enforcement Officer of the City of Daphne or a duly authorized representative of the City appointed by the Mayor to oversee enforcement of the terms of this Ordinance.

J. Trash Disposal Site. The term “trash disposal site” shall mean any areas or facilities established for the disposal of trash as designated by the Code Enforcement Officer.

K. Contract. The term “contract” shall describe the agreement between either the City of Daphne Solid Waste Department or any other person, firm or corporation with whom the City of Daphne has contracted and a private property owner and a private contractor. The term “Contract” shall apply to either a written or implied agreement for services between the respective parties.

SECTION II. TERRITORIAL APPLICATION

The provisions of this Ordinance shall apply to all territory which presently lies within the city limits or which may be hereinafter annexed to the City of Daphne.

SECTION III. REQUIREMENTS FOR TRASH REMOVAL

A. Residential. All residents and occupants of residential units in Daphne, Alabama, shall be required to have accumulations of trash removed and disposed of by (1) the City of Daphne Solid Waste Department or a contractor with whom the City of Daphne has granted a franchise, (2) transporting to approved bulk containers or approved disposal sites, or (3) obtaining a permit from the Health Department to transport to a landfill. The City of Daphne Solid Waste Department shall not collect junk. The actual producers or owners of junk or the owners of the premises upon which junk is accumulated must dispose of said materials not included in the definition of trash in a manner that is consistent with the laws of the City, County and State.

B. Commercial. The actual producers or owners of commercial trash or the owners of premises upon which trash is accumulated may collect and dispose of such trash, but shall use a vehicle and disposal site as approved by the Code Enforcement Officer. Contractors shall be responsible for the removal of trash from the premises of the property owner who contracted said services. If a contractor fails to remove trash within seven (7) days of leaving a contracted site, then the City of Daphne Solid Waste Department may remove and dispose of said trash and assess the responsible property owner a bill in the amount governed by this ordinance.

C. Evidence of Accumulation. The fact that any residence, commercial establishment or any place of business is occupied shall be prima facie evidence that trash is being produced and accumulated upon such premises. Said trash shall be stored, transported and disposed of in a manner approved by the Code Enforcement Officer and in compliance with the requirements of this Ordinance and any amendments thereto.

D. Placement. All trash, as defined by this ordinance, must be placed at the curbside, within six (6) feet of the street before 7:00 a.m. on the day scheduled for pick up. No trash shall be placed at the curbside more than twenty-four (24) hours before the scheduled day of service for pickup. The placement of trash at the curbside in excess of twenty-four hours before the scheduled day of service for pickup shall constitute a violation of the provisions of this ordinance. Any hazardous or other material not constituting trash in accordance with the provisions of this ordinance not collected by the City of Daphne Solid Waste Department shall be removed from the curbside within twenty-four (24) hours of service. Any hazardous or other material not constituting trash in accordance with the provisions of this ordinance not collected by the City of Daphne Solid Waste Department not removed within twenty-four (24) hours of service shall constitute a violation of the provisions of this ordinance. If trash and garbage are scheduled for collection on the same day, materials, including limbs and rubbish, should be neatly placed in separate areas of the curbside.

E. Sanitary Nuisance. Accumulation of trash or junk at any residential unit or any commercial unit for more than two (2) days shall be prima facie evidence of a sanitary nuisance. The Code Enforcement Officer may, upon finding a nuisance as described herein, issue a municipal offense ticket pursuant to the Municipal Offense Ordinance of the City of Daphne, and may pursue all legal remedies available to the City under the law, including but not limited to, taking any action necessary to abate the nuisance.

SECTION IV. PREPARATION AND RECEPTACLE REQUIREMENTS

A. Preparation Requirements.

All trash placed for collection shall be in paper or plastic bags of any color **except red**, closed and sealed so as to protect the contents from flies, insects, rats, and other animals, free from jagged and sharp edges and shall be placed behind the front curb line within six (6) feet of the roadway. Non-garbage material or improperly placed trash will not be collected. Trash receptacles should not contain materials other than trash or rubbish. If non-trash materials are observed, the City of Daphne Solid Waste Department will not be responsible for collection of any of the material or trash in the receptacle. Tree-limbs and stumps need not be containerized. All tree limbs shall not be longer than five (5) feet in length. The maximum trash quantity allowed is fifteen (15) cubic feet per residence per week. Any trash pile exceeding this stated maximum will be collected and the property owner (or resident) assessed the appropriate expense as stated in Section VI of this ordinance.

B. Location Of Receptacles.

(1) Residential. Trash containers shall be placed at ground level within six (6) feet of the roadway, on the property of the residential unit or commercial establishment which has accumulated said trash, and shall not be kept upon any city, county or public property or neighboring property not in the ownership or tenancy of the person by whom the trash is accumulated, regardless of whether said neighboring property is vacant or improved except that it may be kept on the City right-of-way.

The placement of receptacles shall be easily accessible to the Code Enforcement Officer for inspection and to employees of the contractor for collection.

(a) Trash shall be neatly placed to allow convenient passage of persons and vehicles on the roadway. At no time shall any receptacle or trash be placed in any street, drainage ditch, storm drain, gutter or median. Trash shall also not be placed near trees, power lines, street signs or utility, cable or telephone equipment. If trash is placed near service equipment and damage occurs to said equipment due to collection efforts, the property owner shall be responsible for all necessary repairs or replacements.

(b) Ownership of and responsibility for trash material shall remain with the producer until collected.

(2) Commercial. All commercial trash containers and/or bulk containers shall be kept in a place easily accessible to the contractor and in such location so to prevent obnoxious and nuisance conditions to inhabitants and the general public. Adequate screening shall be provided either by location as close to the building or buildings as possible or by providing other concealment to be least noticeable from a public thoroughfare and so placed not to interfere with the movement of pedestrian or vehicular traffic.

C. Minimum Receptacle Specifications.

(1) Receptacles Required. All trash shall be in receptacles as herein defined, except limbs and stumps which need not be containerized. This includes leaves, pine straw, grass clippings and pine cones. Such receptacles shall be in sufficient number to hold all trash produced between regular collections.

(2) Commercial Receptacle Exceptions. Trash from commercial establishments may be stored or collected in a container designed for mechanical pickup provided that such container and the location of such container have been approved by the Code Enforcement Officer.

(3) Improper Receptacles. Any container used for the collection or storage of trash failing to meet the requirements of this section shall be clearly marked or identified by an agent of the Contractor or the Code Enforcement Officer, which marking or identification shall legibly specify in what manner the container fails to meet the requirements of trash receptacles. Any container so tagged must be replaced with an acceptable container within five (5) days after notification by the Code Enforcement Officer. The contractor will not be responsible for removing trash that is not properly prepared and placed in approved receptacles.

SECTION V FREQUENCY OF COLLECTIONS

Trash shall be picked up by the Contractor from each location once per week. All collection schedules are subject to change due to legal holidays and/or weather conditions. Persons desirous of trash pickup shall call the Public Works Department of the City of Daphne to obtain a trash collection schedule.

SECTION VI FEES FOR COLLECTION AND DISPOSAL

Every person or persons occupying a building or dwelling unit which generates trash within the City Limits of the City of Daphne, Alabama, shall be subject to a fee of (A) Residential Over 15 Cubic Feet \$100.00 full load and \$60.00 half load or (B) Commercial \$200.00 full load and \$120.00 half load. Such fees for the collection and disposal of trash shall be subject to change from time to time as deemed necessary in order to cover the increased cost of collection and disposal services. Any change in the fee for such services must be publicly advertised at least thirty (30) days before the effective date of the change.

SECTION VII. PROHIBITED ACTS

A. Accumulation Of Trash, Rubbish and/or Junk. It shall be unlawful for any person to accumulate or to cause, permit or allow to be accumulated any trash, rubbish or junk upon his property or premises except during regular intervals between collections by the Contractor.

B. Unlawful Disposal. It shall be unlawful for any person to dump or bury any trash, rubbish or junk on public or private property not owned by him unless permission has been obtained from the respective property owner or owners and such disposal has been authorized by the Code Enforcement Officer. If any trash, rubbish or junk is found on any public or private property or roadway and its origin is traced to a commercial establishment or residential unit by investigation or identification such as mail, statements, checks, etc., and such person or owners are not receiving disposal service by the Contractor, such information presented in a statement signed by the Code Enforcement Officer shall be prima facie evidence that such trash, rubbish or junk came from that commercial establishment or residential unit and such person or owner shall be in violation of this Ordinance. The provisions of this section do not apply to dumping on private property, with owner's permission, of sand, dirt, broken brick, blocks, broken pavement or other material suitable for use as fill material to raise the elevation of land.

C. Contagious Disease Refuse. Refuse consisting of clothing, bedding or other waste from homes or other places where highly infectious or contagious diseases have prevailed shall not be placed in containers for regular collection. Removal of such materials shall be performed under the supervision and direction of the Code Enforcement Officer.

D. Flammable Or Explosive Refuse. Highly flammable or explosive materials shall not be placed in containers for regular collection but shall be disposed of as directed by the Code Enforcement Officer at the expense of the owner or possessor thereof.

E. Other Hazardous Materials. No person shall place or cause to be placed in such receptacles such materials as unwrapped razor blades, glass, acid or other like materials which may cause personal injury to employees of the Collection Personnel. Such material shall not be collected unless wrapped, rendered harmless or identified as injurious materials. Further, the City of Daphne Solid Waste Department shall not collect automobile batteries, paint, paint thinners, concrete or cement.

F. Dead Animals. The disposal of all dead animals on private property shall be the responsibility of the respective property owner. Disposal shall be as required by the Code Enforcement Officer.

G. Scattering Trash, Rubbish or Junk. It shall be unlawful to molest, disturb, scatter or spread about or cause to be molested, disturbed, scattered or spread about the contents of any container or trash set out or intended to be collected and removed.

H. Medical Waste. The City of Daphne Solid Waste Department shall not collect any medical waste. The disposal of medical waste shall be the responsibility of the property owner, and shall be collected by a licensed contractor in accordance with all federal, state and local laws.

SECTION VIII. PENALTIES

Any person found to be in violation of any provision of this Ordinance shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than \$50.00 nor more than \$500.00 or by a period of incarceration not exceeding six (6) months or both in the discretion of the Municipal Judge.

SECTION IX. SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion hereof.

SECTION X. REPEALER

Ordinances Nos. 2004-05 AND 2004-36, and all other Ordinances or parts thereof conflicting with the provisions of this Ordinance are hereby repealed insofar as they conflict.

SECTION XI. EFFECTIVE DATE

This Ordinance shall become effective and shall be in full force from and after the date of its adoption and approval by the City Council of the City of Daphne and publication as required by law.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF DAPHNE,
ALABAMA, ON THE _____ DAY OF _____, 2013.

CITY OF DAPHNE

RON SCOTT, COUNCIL PRESIDENT

ATTEST:

REBECCA A. HAYES, INTERIM CITY CLERK

**CITY OF DAPHNE, ALABAMA
ORDINANCE NO. 2013-05**

**Ordinance to Rezone Property Located
Southwest of the intersection of Tiawasee Boulevard and County Road 13
Also Known as GCOF Retreat at Tiawasee, LLC**

WHEREAS, GCOF Retreat at Tiawasee, LLC, as the owner of certain real property located within the unincorporated area of Baldwin County, Alabama, has requested that said property be pre-zoned from RSF-2, Single Family District, Baldwin County District 15 to R-2, Medium Density Single Family Residential, City of Daphne; and,

WHEREAS, said real property is Southwest of the intersection of Tiawasee Boulevard and County Road 13, and more particularly described as follows:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 9, TOWNSHIP 5 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA, REAL PROPERTY BOOK 256, PAGE 274; THENCE RUN SOUTH 00°00'19" EAST, 840.93 FEET TO THE NORTH RIGHT OF WAY OF PARKER ROAD (80' ROW); THENCE RUN ALONG THE SAID NORTH RIGHT OF WAY NORTH 89°32'20" EAST, 42.92 FEET TO THE EAST RIGHT OF WAY OF POLLARD ROAD; THENCE RUN ALONG THE EAST RIGHT OF WAY SOUTH 00°00'19" EAST, 403.14 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH 89°50'14" EAST, 3490.21 FEET; THENCE RUN SOUTH 89°48'53" EAST, 786.31 FEET; THENCE RUN SOUTH 89°19'19" EAST, 51.02 FEET; THENCE RUN NORTH 89°49'05" WEST, 796.66 FEET; THENCE RUN SOUTH 00°05'47" EAST, 1327.82 FEET; THENCE RUN NORTH 89°48'41" WEST, 878.46 FEET; THENCE RUN NORTH 00°10'07" EAST, 1328.02 FEET; THENCE RUN NORTH 89°49'02" WEST, 2617.56 FEET TO THE EAST RIGHT OF WAY OF POLLARD ROAD (80' ROW); THENCE RUN ALONG SAID EAST RIGHT OF WAY NORTH 00°00'19" WEST, 48.51 FEET TO THE POINT OF BEGINNING. PARCEL CONTAINING 31.53 ACRES, MORE OR LESS, LYING IN SECTION 9, TOWNSHIP 5 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA.

WHEREAS, at the City of Daphne Planning Commission meeting on October 25, 2012, the Commission considered said request and set forth no recommendation to the City Council of the City of Daphne regarding said property rezoning request with the motion to set forth an unfavorable recommendation failing to pass; and,

WHEREAS, due notice of said proposed pre-zoning 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 January 21, 2013; and,

WHEREAS, the City Council of the City of Daphne after due consideration and upon consideration of the notes of the Planning Commission, deemed that said application for pre-zoning 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 Baldwin County District 15 RSF-2, Single Family District to City of Daphne Zone R-2, Medium Density Single 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 upon the date of annexation of the above described property into the Corporate Limits of the City of Daphne, Alabama and after the date of its approval by the City Council of the City of Daphne and publication as required by law.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS ____ day of _____, 2013.

Ron Scott,
Council President

ATTEST:

Rebecca A. Hayes,
Interim City Clerk

January 30, 2013

Ms. Rebecca Hayes
City Clerk, City of Daphne
P.O. Box 400
Daphne, Alabama 36526

RE: Annexation and Zoning Request

Dear Ms. Hayes:

Preble-Rish LLC is the authorized agent for the property owner, GCOF Retreat at Tiawasee LLC. At the request of the property we are requesting that the annexation and zoning request presently being considered by the City Council be withdrawn from further consideration.

Sincerely,


Steven Pumphrey
Senior Planner

Cc: GCOF Retreat at Tiawasee, LLC
file

ORDINANCE 2013-06

FOR THE ANNEXATION OF CERTAIN PROPERTY INTO THE CORPORATE LIMITS OF THE MUNICIPALITY OF THE CITY OF DAPHNE, ALABAMA

**GCOF Retreat at Tiawasee, LLC
(Property located Southwest of the intersection of Tiawasee Boulevard and County Road 13)**

WHEREAS, on the 24th day of September, 2012, GCOF Retreat at Tiawasee, LLC, being the owner of all real property hereinafter described, did file with the City Clerk a petition asking that the said tracts or parcels of land be annexed into and become part of the City of Daphne, Alabama; and

WHEREAS, said petition did contain the signatures of all owners of the described territory and a map of said property showing its relationship to the corporate limits of the City of Daphne, Alabama; and

WHEREAS, said petition has been presented to the Planning Commission of the City of Daphne on October 25, 2012, the Commission considered said request and set forth no recommendation to the City Council of the City of Daphne regarding said property annexation request with the motion to set forth an unfavorable recommendation failing to pass;

WHEREAS, after proper publication, a public hearing was held by the City Council on January 21, 2013 concerning the petition for annexation; and

WHEREAS, the City Council of the City of Daphne, Alabama did determine that it is in the public interest that said property be annexed into the City of Daphne, Alabama and it did further determine that all legal requirements for annexing said real property have been met pursuant to Sections 11-42-20, et seq., Code of Alabama, 1975;

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

SECTION I: ANNEXATION

The City Council of the City of Daphne, Alabama finds that and declares as the legislative body of the City of Daphne, Alabama that it is in the best interest of the citizens of the City of Daphne, Alabama and the citizens of the affected area, to bring the territory described in Section 2 of this Ordinance into the City of Daphne, Alabama effective from and after the date of its approval by the City Council of the City of Daphne and after publication as required by law.

SECTION II: DESCRIPTION OF TERRITORY

The boundary lines of the City of Daphne, Alabama, be, and the same are hereby altered or rearranged so as to include all the territory hereto before encompassed by the corporate limits of the City of Daphne, Alabama and in addition thereto the following described property, to-wit:

Owner: GCOF Retreat at Tiawasee, LLC

COMMENCING AT THE NORTHWEST CORNER OF SECTION 9, TOWNSHIP 5 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE, BALDWIN COUNTY, ALABAMA, REAL PROPERTY BOOK 256, PAGE 274; THENCE RUN SOUTH 00°00'19" EAST, 840.93 FEET TO THE NORTH RIGHT OF WAY OF PARKER ROAD (80' ROW); THENCE RUN ALONG THE SAID NORTH RIGHT OF WAY NORTH 89°32'20" EAST, 42.92 FEET TO THE EAST RIGHT OF WAY OF POLLARD ROAD; THENCE RUN ALONG THE EAST RIGHT OF WAY SOUTH 00°00'19" EAST, 403.14 FEET TO THE POINT OF BEGINNING; THENCE RUN SOUTH 89°50'14" EAST, 3490.21 FEET; THENCE RUN SOUTH 89°48'53" EAST, 786.31 FEET; THENCE RUN SOUTH 8°19'19" EAST, 51.02 FEET; THENCE RUN NORTH 89°49'05" WEST, 796.66 FEET; THENCE RUN SOUTH 00°05'47" EAST, 1327.82 FEET; THENCE RUN NORTH 89°48'41" WEST, 878.46 FEET; THENCE RUN NORTH 00°10'07" EAST, 1328.02 FEET; THENCE RUN NORTH 89°49'02" WEST, 2617.56 FEET TO THE EAST RIGHT OF WAY OF POLLARD ROAD (80' ROW); THENCE RUN ALONG SAID EAST RIGHT OF WAY NORTH 00°00'19" WEST, 48.51 FEET TO THE POINT OF BEGINNING. PARCEL CONTAINING 31.53 ACRES, MORE OR LESS, LYING IN SECTION 9, TOWNSHIP 5 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA.

SECTION III: THE PROPERTY

That property requested to be annexed into the City of Daphne is described in Exhibit "A", attached hereto and made a part of this Ordinance as if fully set out herein.

SECTION IV: MAP OF PROPERTY.

The property hereby annexed to the City of Daphne, Alabama, is set forth and described in Exhibit "B" and attached hereto a map of the property showing its relationship to the corporate limits of the municipality of the City of Daphne and made a part of this Ordinance.

SECTION V: PUBLICATION

This Ordinance shall be published as provided by law and a certified copy of the same shall be filed with the Office of the Judge of Probate of Baldwin County, Alabama.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS THE _____ DAY OF _____, 2013.

Ron Scott, Council President

ATTEST:

Rebecca A. Hayes, Interim City Clerk

January 30, 2013

Ms. Rebecca Hayes
City Clerk, City of Daphne
P.O. Box 400
Daphne, Alabama 36526

RE: Annexation and Zoning Request

Dear Ms. Hayes:

Preble-Rish LLC is the authorized agent for the property owner, GCOF Retreat at Tiawasee LLC. At the request of the property we are requesting that the annexation and zoning request presently being considered by the City Council be withdrawn from further consideration.

Sincerely,



Steven Pumphrey
Senior Planner

Cc: GCOF Retreat at Tiawasee, LLC
file

ORDINANCE 2013-07

Appropriation: Bullet Proof Vests Replacement

WHEREAS, Ordinance 2012-58 approved and adopted the Fiscal Year 2013 Budget on October 1, 2012; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2013 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2013 budget; and

WHEREAS, the police department needs to replace Bullet Proof Vests prior to the expiration of the warranties in order to provide additional protection to police personnel; and

WHEREAS, the police department has twenty officers who have bullet proof vests that will expire soon and need to be replaced; and

WHEREAS, the City is eligible of funding in the amount of 50% of the cost of the bullet proof vests through participation in the OJP (Office of Justice Programs).

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that the Fiscal Year 2013 Budget is hereby amended to include a net General Fund appropriation in the amount of \$6,950 (*50% of total cost \$13,900*) for the replacement of twenty police department bullet proof vests.

APPROVED AND ADOPTED by the Mayor and City Council of the City of Daphne, Alabama, this _____ day of _____, 2013.

Ron Scott, Council President

ATTEST:

Rebecca A. Hayes, Interim City Clerk

ORDINANCE 2013-08

JOB RECLASSIFICATION: MAYOR'S ASSISTANT

**An Ordinance Approving the Job Reclassification of
the Mayor's Administrative Assistant to Executive Assistant**

WHEREAS, the annual budget as adopted by the City Council authorized and funded the position of the Administrative Assistant to the Mayor; and

WHEREAS, such position has been reviewed by the Archer Company with the determination that such position would more accurately be classified as an Executive Assistant to the Mayor and placed within the existing Job Classification Schedule.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that:

- 1) The authorized position of the Mayor's Administrative Assistant (Grade 13) be removed and unfunded and that the job be re-instated, reclassified and funded as Executive Assistant to the Mayor (Grade 14) and the existing Job Classification Schedule shall be amended to include such revision; and
- 2) The total annual increase of such reclassification is \$ 4,880 (FY13 increase of \$ 3,255); and
- 3) The FY 13 Budget includes an allocation for Position Upgrades and \$ 3,255 of such allocation is hereby released and transferred to the Grade 14 Executive Assistant to the Mayor position.
- 4) Such reclassification shall be effective beginning with the second pay period of February 2013.

APPROVED AND ADOPTED by the City Council of the City of Daphne, Alabama, this _____ day of _____, 2013.

Ron Scott, Council President

ATTEST:

Rebecca A. Hayes, Interim City Clerk

ORDINANCE 2013-09

Fiscal 2013 Blueprint for a Better Tomorrow

WHEREAS, Ordinance 2012-58 approved and adopted the Fiscal Year 2013 Budget on October 1, 2012; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2013 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2013 budget; and

WHEREAS, the City Council of the City of Daphne recognizes the health, safety, and welfare benefits derived by the citizens of Daphne through the services performed by community agencies and the promotion of the City of Daphne fostered by community events, and strategic plans; and

WHEREAS, the Blueprint for Tomorrow, an initiative of the Eastern Shore Chamber of Commerce, is one such agency; and

WHEREAS, the City Council has determined it to be in the best interest of the City to make a \$35,000 contribution to the Eastern Shore Chamber of Commerce for the Blueprint for a Better Tomorrow initiative.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daphne, Alabama, that:

1. Funds in the amount of \$35,000 from the General Fund are hereby appropriated as Community Contributions in the FY2013 Budget for a contribution to the Eastern Shore Chamber of Commerce for the Blueprint for a Better Tomorrow initiative.
2. 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 _____, 2013.

Ron Scott, Council President

ATTEST:

Rebecca A. Hayes, Interim City Clerk

CITY OF DAPHNE

ORDINANCE 2013-10

**AN ORDINANCE CONSENTING TO THE VACATION AND CONVEYANCE
OF CERTAIN EASEMENTS BY THE UTILITIES BOARD OF THE CITY OF
DAPHNE, ALABAMA**

WHEREAS, the Utilities Board of the City of Daphne ("Daphne Utilities") is required to receive the consent of the City Council of the City of Daphne pursuant to the provisions of Alabama Code § 11-50-314(a)(10) before it conveys real property; and

WHEREAS, the management of the Utilities Board of the City of Daphne has determined that it is in the best interest of the Utilities Board of the City of Daphne to vacate and/or convey certain easements to the current or future owners of the real property commonly known as Jubilee Square Mall, as described in detail on Exhibit "A" attached hereto; and

WHEREAS, the Utilities Board of the City of Daphne has approved the vacation and conveyance of the referenced easements to be conveyed to the current or future owners of the real property known as Jubilee Square Mall, as described in Exhibit "A";

NOW, THEREFORE, BE IT ORDAINED that the City Council of the City of Daphne does hereby consent to the vacation and conveyance of certain easements to the current or future owners of Jubilee Square Mall, as referenced on Exhibit "A".

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY
OF DAPHNE, ALABAMA** on this the ____ day of February, 2013.

RON SCOTT
Council President, signing on behalf of
authority of Mayor by resolution of the
Daphne City Council of January 22, 2013

ATTEST:

REBECCA A. HAYES
Interim City Clerk

EXHIBIT "A"

**EASEMENTS WHICH ARE TO BE VACATED AND CONVEYED TO THE
CURRENT OR FUTURE OWNERS OF THE REAL PROPERTY KNOWN AS
JUBILEE SQUARE MALL**

- 1. Easement dated March 25, 1981 and recorded in Real Property Book 88, Page 1386 and as shown on the Jubilee Square Subdivision Plat as recorded on Instrument No. 2023A;**
- 2. Five foot (5') gas line easement as shown on the Jubilee Square Subdivision Plat as recorded on Instrument No. 2023A;**
- 3. Fifty foot (50') water easement dated November 7, 1980 and recorded in Real Property Book 80, Page 704, as corrected in Real Property Book 85, Page 662 and as shown on the Jubilee Square Subdivision Plat as recorded on Instrument No. 2023A; and**
- 4. Easement dated May 8, 1996 and recorded in Real Property Book 685, Page 1354 and as shown on the Jubilee Square Subdivision Plat as recorded on Instrument No. 2023A.**