

CITY OF DAPHNE
1705 MAIN STREET, DAPHNE, AL
CITY COUNCIL BUSINESS MEETING AGENDA
Monday, July 1, 2024 at 6:00 P.M.

1. **CALL TO ORDER**
2. **ROLL CALL**
INVOCATION
PLEDGE OF ALLEGIANCE
3. **APPROVE MINUTES:** June 17, 2024 regular meeting
4. **REPORTS OF STANDING COMMITTEES**
 - A. **FINANCE COMMITTEE** – Phillips
Review the minutes from the June 17th meeting.
Treasurer’s Report for May 2024: Unrestricted Fund Balance - \$24,901,768;
Total Cash Balance - \$48,082,413
Sales Tax for April 2024: \$2,333,513.48; Lodging Tax for April 2024: \$151,186.91
Debt Summary – May 2024: Warrants - \$31,763,902
Capital Leases: General Fund - \$520,571; Enterprise Fund - \$551,268
 - B. **BUILDINGS & PROPERTY COMMITTEE** – Goodlin
 - C. **PUBLIC SAFETY COMMITTEE** – Hughes
 - D. **CODE ENFORCEMENT/ORDINANCE COMMITTEE** – Scott
 - E. **PUBLIC WORKS COMMITTEE** – Conaway
5. **REPORTS OF SPECIAL BOARDS & COMMISSIONS**
 - A. **BOARD OF ZONING ADJUSTMENTS** – Adrienne Jones
 - B. **DAPHNE PUBLIC SCHOOL COMMISSION** – Conaway
 - C. **DOWNTOWN REDEVELOPMENT AUTHORITY** – Conaway
 - D. **INDUSTRIAL DEVELOPMENT BOARD** – Scott
 - E. **LIBRARY BOARD** – Goodlin
 - F. **PLANNING COMMISSION** – Olen
 - G. **RECREATION BOARD** – Hughes
 - H. **UTILITY BOARD** – Coleman
6. **PUBLIC PARTICIPATION**
7. **MAYOR’S REPORT**
8. **CITY ATTORNEY REPORT**

City Council Agenda – July 1, 2024

9. DEPARTMENT HEAD REPORTS

10. CITY CLERK’S REPORT

11. RESOLUTIONS:

2024 – 36 – Additional Appropriation: Chiller Repairs - \$80,000

2024 - 37 – Acceptance of Roads and Rights-of-Way: Hope Vineyard, Phase 1B

12. 2nd READ ORDINANCES:

2024- 18 – Zoning District Map – Revision to the City of Daphne Land Use and Development Ordinance

13. 1st READ ORDINANCES:

2024 - 21 – Ordinance Amending the City of Daphne’s Garbage Collection Ordinance 2017-59, as Codified in Chapter 12, Article III, Daphne Code of Ordinances, and Repealing and Replacing Ordinance 2020-21, an Ordinance Addressing Solid Waste Enterprise Fund Losses

2024 – 22 – Animal Control Ordinance

2024 – 23 – Ordinance Granting a Non-Exclusive Authorization to Southern Light, LLC for the Purpose of Constructing and Maintaining a Fiber-Optic Transmission Line within the Public Rights-of-Way in the City of Daphne, Alabama for the Provision of Broadband Services

2024 – 24 – Ordinance Granting a Non-Exclusive Authorizing to Uniti Fiber GulfCo, LLC for the Purpose of Constructing and Maintaining a Fiber-Optic Transmission Line within the Public Rights-of-Way in the City of Daphne, Alabama for the Provision of Broadband Services

14. COUNCIL COMMENTS

15. ADJOURN

June 17, 2024
CITY COUNCIL MEETING
REGULAR BUSINESS MEETING
1705 MAIN STREET
DAPHNE, AL
6:00 P.M.

1. **CALL TO ORDER:**

There being a quorum present Council President Steve Olen called the meeting to order at 6:02pm.

2. **ROLL CALL:**

COUNCIL MEMBERS PRESENT: Tommie Conaway, Steve Olen, Ron Scott, Doug Goodlin and Ben Hughes

COUNCIL MEMBERS ABSENT: Joel Coleman and Angie Phillips

Also Present: Chief Gulsby, Police, Patrick Dungan, City Attorney; Mayor LeJeune; Candace Antinarella, City Clerk; Chief Tacon, Fire; Charlie McDavid, Recreation; Adrienne Jones, Planning; Kellie Reid, Finance; Emmie Powell, Library; Ange Baggett, Marketing/Tourism; Vickie Hinman, Human Resources; Ronnie Huskey, Public Works; Kent Ward, Junior Councilmember; and Jessica Linne, Assistant City Clerk.

INVOCATION/PLEDGE OF ALLEGIANCE:

Invocation was given by Pastor Rife Stewart, Destiny Church.

PUBLIC HEARING: Adrienne Jones presented on the official city of Daphne zoning map update.

Public hearing opened at 6:04pm. No one came forward to speak.

Public hearing closed at 6:05pm.

PUBLIC HEARING: Adrienne Jones and Chloe Kelly, 68Ventures presented on the 68V Baldwin Lane Holdings, LLC, Sharon and John Boni, Sharon, Thomas and John Boni, and Sharon Boni, representative of Thelma Boni Estate Pre-Zoning Amendment located Southwest of the intersection of County Road 13 and Milton Jones Road.

Public hearing opened at 6:05pm. No one came forward to speak.

Public hearing closed at 6:07pm.

PUBLIC HEARING: Adrienne Jones presented on the 68Ventures presented on the 68V Baldwin Lane Holdings, LLC, Sharon and John Boni, Sharon, Thomas and John Boni, and Sharon Boni, representative of Thelma Boni Estate Annexation Petition located Southwest of the intersection of County Road 13 and Milton Jones Road.

3. **APPROVAL OF MINUTES:**

The minutes from the June 3, 2024 regular meeting were approved.

4. **REPORT OF STANDING COMMITTEES:**

A. **FINANCE COMMITTEE**

MOTION by Councilwoman Conaway to authorize the Mayor to enter into a new 5 year agreement with Cannon Solutions for Cannon copy machines. No second was needed.
MOTION CARRIED UNANIMOUSLY.

Councilwoman Conaway said the next meeting is July 15th at 4:30pm.

B. **BUILDINGS & PROPERTY COMMITTEE**

Councilman Goodlin said the May 2024 new Construction and Building Reports were in the packet. He said out of those reports were 28 certificates of occupancy, 371 permits issues, 69 new residential home permits and \$205,491.78 collected in fees. He said the next meeting is July 8th at 5:15pm.

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C. PUBLIC SAFETY COMMITTEE

Councilman Hughes said the next meeting is July 8th at 4:30pm.

D. CODE ENFORCEMENT/ORDINANCE COMMITTEE

Councilman Scott said the next meeting is July 1st at 4:30pm.

MOTION by Councilman Scott to approve the Environmental Advisory Committee by-laws. No second was needed. MOTION CARRIED UNANIMOUSLY.

E. PUBLIC WORKS COMMITTEE

Councilwoman Conaway said the next meeting is July 1st at 5:15pm.

5. REPORTS OF SPECIAL BOARDS & COMMISSIONS:

A. Board of Zoning Adjustments

Mrs. Jones said there was no report.

B. Daphne Public School Commission

Councilwoman Conaway said the next meeting is August 26th at 5:30pm.

C. Downtown Redevelopment Authority

Councilwoman Conaway said the next meeting is June 20th at 5:30pm.

D. Industrial Development Board

Councilman Scott said the next meeting is June 18th at 4:30pm.

E. Library Board

Councilman Goodlin said the next meeting is June 20th at the Library at 4:30pm.

F. Planning Commission

Councilman Olen said the next meeting is June 27th at 5:00pm.

G. Recreation Board

Councilman Hughes said the next meeting will be July 10th at 6:00pm.

H. Utility Board

Councilman Olen said the minutes from the April 24th meeting are in the packet and the next meeting is June 26th at 5:00pm.

6. PUBLIC PARTICIPATION:

Public participation opened at 6:12pm.

Billy Mayhand, 1372 Wilson Avenue, commended the Council for their help with the Post Office and said the event with Mayor LeJeune and Sandy Sansing was great.

Public participation closed at 6:13pm.

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7. MAYOR'S REPORT:

Mayor LeJeune said there is a lot of road work going on in the area as well as updates at Lott Park. He gave kudos to the Quilts of Valor event at the Senior Center and invited everyone to enjoy the 4th of July fireworks in a few weeks.

8. CITY ATTORNEY REPORT:

City Attorney asked if the Council would consider going into Executive Session at the end of the meeting to discussing potential litigation.

MOTION by Councilman Goodlin to approve the publication and set a public hearing on August 5, 2024 for the application of George and Melissa Pancner and A. Patterson Ogburn and Kelly Ogburn for the assent and vacation of property located on 2nd Street in Daphne, Alabama. Seconded by Councilwoman Conaway.
MOTION CARRIED UNANIMOUSLY.

9. DEPARTMENT HEAD COMMENTS:

Chief Tacon, Fire, said the department recently purchased some new EMS equipment.

Charlie McDavid, Recreation, said the 5 and 6-year-old Cal Ripken Tournament was recently hosted in Daphne and the 2D World Series is coming up.

Josh Newman, City Engineer, updated the Council on some of the many road closures.

10. CITY CLERK'S REPORT:

City Clerk said the Junior Council interviews have been completed and she is notifying those that have been chosen. She said the next municipal election is August 2025.

11. RESOLUTIONS:

2024 – 30 – Resolution Declaring Certain Personal Property Surplus and Authorizing the Mayor to Dispose – Unclaimed, Forfeited and/or Condemned Items

2024 – 31 - Resolution Declaring Certain Personal Property Surplus and Authorizing the Mayor to Dispose – Conex Metal Container

2024 – 32 – Bid Award: 2024-A-Renovation and Addition for Daphne Justice Center – Persons Services Corporation

2024 – 33 – Appropriation: 2024-A-Renovation and Addition for Daphne Justice Center – \$6,209,389

2024 – 34 – Appropriation: Garbage Carts and Marketing Materials - \$144,029

2024 – 35 – Bid Award: 2024-F-Resurfacing on County Road 13 Phase 2-John G. Walton Construction Company Inc.

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MOTION by Councilman Hughes to waive the reading of Resolution 2024-30. Seconded by Councilman Goodlin.

MOTION CARRIED UNANIMOUSLY.

MOTION by Councilman Hughes to adopt Resolution 2024-30. Seconded by Councilman Goodlin.

MOTION CARRIED UNANIMOUSLY.

MOTION by Councilman Hughes to waive the reading of Resolution 2024-31. Seconded by Councilman Goodlin.

MOTION CARRIED UNANIMOUSLY.

MOTION by Councilman Hughes to adopt Resolution 2024-31. Seconded by Councilman Goodlin.

MOTION CARRIED UNANIMOUSLY.

MOTION by Councilman Scott to waive the reading of Resolution 2024-32, 2024-33, 2024-34 and 2024-35. Seconded by Councilman Goodlin.

MOTION CARRIED UNANIMOUSLY.

MOTION by Councilman Scott to adopt Resolution 2024-32. Seconded by Councilman Goodlin.

MOTION CARRIED UNANIMOUSLY.

MOTION by Councilman Scott to adopt Resolution 2024-33. Seconded by Councilwoman Conaway.

MOTION CARRIED UNANIMOUSLY.

MOTION by Councilman Scott to adopt Resolution 2024-34. Seconded by Councilman Hughes.

MOTION CARRIED UNANIMOUSLY.

MOTION by Councilman Scott to adopt Resolution 2024-35. Seconded by Councilman Goodlin.

MOTION CARRIED UNANIMOUSLY.

12. 2ND READ ORDINANCES:

2024 – 16 – Intergovernmental Agreement – Industrial Development Board Dedication of DISC Right-of-Way Improvements to City, and Acceptance of Same by City

2024 – 17 – Ordinance Repealing and Replacing Ordinance 2005-31 and Setting Forth a Newly Compiled Ordinance Regarding the Abatement of Unsafe Buildings and Structural Nuisances

MOTION by Councilwoman Conaway to waive the reading of Ordinances 2024-16 and 2024-17.

Seconded by Councilman Goodlin.

MOTION CARRIED UNANIMOUSLY.

MOTION by Councilwoman Conaway to adopt Ordinance 2024-16. Seconded by Councilman Hughes.

MOTION CARRIED UNANIMOUSLY.

MOTION by Councilwoman Conaway to adopt Ordinance 2024-17. Seconded by Councilman Hughes.

MOTION CARRIED UNANIMOUSLY.

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13. 1ST READ ORDINANCES:

2024 - 18 – Zoning District Map – Revision to the City of Daphne Land Use and Development Ordinance

2024 – 19 – Ordinance to Pre-Zone Property Located Southwest of the Intersection of County Road 13 and Milton Jones Road – 68V Baldwin Land Holdings, LLC, Sharon and John Boni, Sharon, Thomas and John Boni, and Sharon Boni, representative of Thelma Boni Estate

2024 – 20 – Ordinance to Annex Property Contiguous to the Corporate Limits of the City of Daphne – Property Located Southwest of the Intersection of County Road 13 and Milton Jones Road – 68V Baldwin Land Holdings, LLC, Sharon and John Boni, Sharon, Thomas and John Boni, and Sharon Boni, representative of Thelma Boni Estate

**MOTION by Councilman Scott to suspend the rules in order to consider the adoption of Ordinances 2024-19 and 2024-20. Seconded by Councilman Hughes.
MOTION CARRIED UNANIMOUSLY.**

City Clerk called roll.

Councilwoman Conaway	Aye
Councilman Coleman	Absent
Councilman Goodlin	Aye
Councilman Scott	Aye
Councilman Hughes	Aye
Councilwoman Phillips	Absent
Council President Olen	Aye
MOTION CARRIED UNANIMOUSLY.	

**MOTION by Councilman Scott to waive the reading of Ordinances 2024-19 and 2024-20. Seconded by Councilwoman Conaway.
MOTION CARRIED UNANIMOUSLY.**

**MOTION by Councilman Scott to adopt Ordinance 2024-19. Seconded by Councilwoman Conaway.
MOTION CARRIED UNANIMOUSLY.**

**MOTION by Councilman Scott to adopt Ordinance 2024-20. Seconded by Councilwoman Conaway.
MOTION CARRIED UNANIMOUSLY.**

14. COUNCIL COMMENTS:

Councilman Scott congratulated Junior Councilmember Kent Ward for his acceptance to the University of Florida.

15. EXECUTIVE SESSION:

City Attorney certified that the Council should enter into an Executive Session concerning matters of potential litigation. He said it should take 30-45 minutes and the Council should have no reason to vote.

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MOTION by Councilman Scott to enter into Executive Session. Seconded by Councilman Goodlin.

City Clerk called roll.

Councilwoman Conaway	Aye
Councilman Coleman	Absent
Councilman Goodlin	Aye
Councilman Scott	Aye
Councilman Hughes	Aye
Councilwoman Phillips	Absent
Council President Olen	Aye

MOTION CARRIED UNANIMOUSLY.

16. ADJOURN:

THERE BEING NO FURTHER BUSINESS TO DISCUSS, COUNCIL ADJOURNED INTO EXECUTIVE SESSION AT 6:37PM.

Respectfully submitted by,

Certification of Presiding Officer,

Candace G. Antinarella, MMC, City Clerk

Steve Olen, Council President

CITY OF DAPHNE
FINANCE COMMITTEE MINUTES
JUNE 17, 2024
4:30 P.M.

I. CALL TO ORDER/ROLL CALL

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

Present were:

Councilwoman Mrs. Tommie Conaway
Councilman Mr. Steve Olen
Councilman Mr. Joel Coleman

Councilman Mr. Ron Scott
Councilman Mr. Ben Hughes
Councilman Mr. Doug Goodlin

Also Present: Mayor Robin LeJeune, Finance Director Mrs. Kelli Reid, Accountant III Mrs. Suzâne Henson, Revenue Officer Mrs. Julie Koptis, Senior Human Resources Specialist Ms. Jensen Graddick, City Clerk Mrs. Candace Antinarella, Executive Director of City Development Mr. Troy Strunk, Fire Chief Mrs. LeAnn Tacon, Director of Events and Marketing Mrs. Ange Baggett, Sales & Civic Center Services Coordinator Shannon Brannon, Public Works Director Mr. Ronnie Huskey, Recreation & Parks Director Charlie McDavid, Animal Shelter Manager Ms. Deaon Bryant, and City Attorney Mr. Patrick Dungan.

II. PUBLIC PARTICIPATION

There was no public participation.

III. APPROVE MINUTES FOR THE PREVIOUS MEETING

The previous meeting minutes were approved.

IV. HUMAN RESOURCES BUSINESS

A. Update on Human Resources Department Activity

Ms. Jensen Graddick reviewed the Human Resources Report:

- Posted/Reposted Positions – 11
- Reviewing/Testing/Interviewing/Background check - 13
- Promotion/Internal Transfer - 1
- New Hires – 4

Ms. Graddick reviewed the monthly Safety Committee meeting topics and noted that the June Employee Spotlight is John Williams (Civic Center Manager) and that annual Compliance Training is scheduled for June 1st – June 30th (Workplace Harassment & Substance Abuse Awareness).

V. BUSINESS LICENSE REPORT

A. Report: New Business Licenses – May, 2024

Mrs. Koptis reviewed the following reports and information:

- Code enforcement issued 7 warnings resulting in businesses becoming compliant and \$1,908.75 in revenue.
- New Businesses with a physical location in Daphne - 7
- Simplified Sellers Use Tax collections - \$187,424.95 and YTD collections - \$1,492,168.56
- Total Business Licenses issued were 67 new and 30 renewals for a total of 97 in May 2024

Mr. Scott asked if for the total Brick and Mortar businesses located in Daphne. Mrs. Koptis said she would get that information for the next meeting.

VI. SALES & LODGING TAX REPORT

A. Sales and Use Taxes: April, 2024

Mrs. Henson reviewed the Sales & Use Tax Reports: \$2,333,513.48 was collected for April, 2024 which was up \$75,142.70 from April 2023's collections:

- YTD Variance over Budget - \$1,168,004.98

B. Lodging Tax Collections, April, 2023

Mrs. Henson reviewed the Lodging Tax Collections Report and noted the collections for April, 2024 were \$151,186.91 which is up \$5,514.33 from April 2023's collections.

- YTD Variance over Budget - \$13,035.12

C. Daphne Hotel Quarterly Occupancy Report, January-May, 2024

Mrs. Baggett reviewed the Daphne Hotel Occupancy Report that covers January–May 2024. Mrs. Shannon Brannon gave the presentation on the Alabama Tourism Economic Report. Mrs. Brannon noted that Baldwin County is the most visited county in Alabama and has the highest travel related expenditures from tourism. Mrs. Brannon added that the largest single travel expenditure was made for eating and drinking followed by transportation and lodging. Mrs. Brannon discussed the revenues generated from the City parks ball tournaments as well as from other City events. Discussion continued on how the new amphitheater will bring more events and revenues.

D. Lodging Tax Analysis Report, May, 2024

Mrs. Reid reviewed the Lodging Tax Analysis report:

- Recreation balance for related purchases - \$604,720.20
- Unreserved balance for Bayfront related purchases - \$1,409,803.75
- Reserved balance for Occupancy Fee - \$121,822.00

Mr. Hughes asked if after IDB completed their sale of the land if the City would continue giving them the full 10% allocation. Discussion continued that IDB is working on some additional projects.

VII. FINANCIAL SCHEDULES & REPORTS

A. Financial Reports

1. Treasurer's Report: May, 2024

Mrs. Reid reviewed the Treasurer's Report:

TREASURER'S REPORT As of May 31, 2024					
Account Type/Title	5/31/2024	4/30/2024	Increase (Decrease) from last Month	5/31/2023	Increase (Decrease) from Last Year
GENERAL FUND & ENTERPRISE FUNDS	\$ 14,337,700	\$ 15,098,902	\$ (761,202)	\$ 17,411,395	\$ (3,073,695)
INVESTMENT FUND	10,564,084	10,414,615	149,469	10,337,139	\$ 226,945
Total Unrestricted Cash Balance	24,901,785	25,513,517	(611,732)	27,748,534	(2,846,749)
SPECIAL REVENUE FUNDS					
4 CENT GAS TAX	312,549	307,393	5,155	248,230	64,319
7 CENT GAS TAX	315,711	309,213	6,498	194,997	120,714
10 CENT GAS TAX	300,927	281,781	19,146	235,721	65,206
TREE & FLOWER	10,287	10,287	-	22,660	(12,373)
COVID RELIEF FUND	-	-	-	1,041,500	(1,041,500)
ANIMAL SHELTER FUND	265,586	1,113,839	(848,253)	768,889	(503,303)
MOBILE INFIRMARY BUILDING	82,395	71,201	11,194	66,428	15,967
FEDERAL DRUG FORFEITURES	356,103	356,103	-	198,841	157,262
LOCAL DRUG FORFEITURES	95,435	95,435	-	81,862	13,573
LIBRARY	52,589	61,889	(9,300)	23,600	28,989
COURT TRAINING & EQUIPMENT	42,991	42,511	480	41,575	1,416
COURT/CORRECTION	490,796	500,596	(9,800)	580,494	(89,698)
LODGING TAX	2,217,346	2,211,312	6,034	3,595,378	(1,378,032)
AGENCY FUNDS					
SELF INSURANCE	229,460	237,509	(8,049)	233,907	(4,447)
OPEB TRUST INVESTMENT FUND	1,545,285	1,512,460	32,825	1,195,821	349,464
	6,317,460	7,111,530	(794,070)	8,529,903	(2,212,443)
CAPITAL PROJECT FUNDS					
CAPITAL RESERVE	7,269,066	7,089,558	179,508	5,963,683	1,305,383
2023 CONSTRUCTION FUND	8,831,731	9,227,530	(395,800)	-	8,831,731
	16,100,797	16,317,088	(216,291)	5,963,683	10,137,114
DEBT SERVICE FUNDS					
DEBT SERVICE	762,371	431,231	331,140	345,624	416,747
Total Restricted Cash Balance	23,180,628	23,859,849	(679,221)	14,839,210	8,341,419
Total City Cash Balance	\$ 48,082,413	\$ 49,373,366	\$ (1,290,954)	\$ 42,587,744	\$ 5,494,669
Encumbrance Total as of			5/31/2024	\$ 37,267.48	

The Treasurer's Report as of May, 2024 Total Unrestricted Cash Balance - \$24,901,785 and Total City Cash Balance - \$48,082,413 was presented to be filed for audit.

2. Encumbrance Report

- Encumbrance balance - \$37,267 as of May, 2024.

Mrs. Reid reviewed the Encumbrance Report and noted there were only two items on the report: Bayfront Master Plan and permitting Fees and ADA Transition project.

3. Outstanding Appropriations

Mrs. Reid reviewed the Outstanding Appropriations Report.

4. Financial Overview: Debt Summaries & Monthly Financial Statements

Mrs. Reid reviewed the following Financial Statements:

- **Debt Summary Schedules (General & Enterprise Funds), May, 2024**

- Outstanding Warrant Balance as of May, 2024: \$31,763,902
- Outstanding Capital Lease Balance as of May, 2024:

- General Fund: \$520,571
- Enterprise Fund: \$551,268

- **Overtime Report YTD**

Mrs. Reid noted that the Overtime Report will be included again in the Finance Committee packet. Mrs. Reid noted the Mayor is working with departments to address high overtime amounts.

- **Monthly Financial Statements, April 2024**

- General Fund YTD Budgetary Net Income: \$2,280,879 which is less (\$2,328,089) than the prior YTD net income
- Solid Waste Fund Transfers \$352,325
- Civic Center Fund Transfers \$333,063

5. Summary of Budgetary Amendments

Mrs. Reid reviewed the General Fund budgetary amendments made to the FY2024 Budget.

- Total Appropriations Year to Date – \$6,042,918
- Adjusted Expenses over Revenue – (\$6,040,737)

Mrs. Reid noted two Resolutions have been added for the Impact Fee Study and the Employee Compensation Study.

6. Unfunded Future Projects Expenditure Summary

Mrs. Reid reviewed the Unfunded Future Projects Expenditure Summary.

B. Bills Paid Reports – May, 2024

The Bills Paid Report was previously presented electronically.

VIII. BIDS (Resolution)

A. 2024-F-Resurfacing on CR13 Phase 2

Mrs. Reid noted there was approximately \$400,000 remaining for resurfacing projects and it is on the Council agenda for tonight's meeting. The recommendation is to award the 2023-F-Resurfacing on CR13 Phase 2 bid to John G. Walton Construction Co., Inc. in the amount of \$395,377.77. Discussion continued on the area that will be paved.

MOTION BY Mr. Hughes to recommend to Council to award the 2023-F-Resurfacing on CR13 Phase 2 bid to John G. Walton Construction Co., Inc. in the amount of \$395,377.77 as bid. Seconded by Mr. Goodlin.
MOTION CARRIED UNANIMOUSLY

IX. OTHER APPROPRIATION REQUESTS: (Resolution/Ordinance)

A. Appropriation: Civic Center Chiller Repairs-Additional Appropriation - \$80,000

Mrs. Reid reviewed the chiller repair cost and the need to appropriate \$80,000.

MOTION BY Mr. Goodlin to recommend to Council to adopt a Resolution amending the budget for an additional appropriation of \$80,000 out of the General Fund for the Civic Center chiller repairs. Seconded by Mr. Hughes.
MOTION CARRIED UNANIMOUSLY

B. Appropriation: Garbage Carts and other expenses related to the County Recycling Program - \$144,029

Mrs. Reid discussed Baldwin County Solid Waste Authority will be expanding its curbside recycling program to pick up recycling materials from the citizens of Daphne. Mrs. Reid noted that \$144,029 will need to be appropriated to purchase 2,148 additional green garbage carts as well as marketing materials to notify and educate citizens on the removal of all blue recycling carts from the current City of Daphne Solid Waste Routes. Mrs. Reid noted there should not be any new cans needed for the FY2025 Budget. Mrs. Reid noted this resolution will also be on tonight's Council meeting agenda.

MOTION BY Olen to recommend to Council to adopt a Resolution amending the budget to appropriate \$144,029 out of the General Fund for additional green garbage carts and for marketing materials to notify and educate citizens on the removal of all blue recycling carts from the current City of Daphne Solid Waste Routes. Seconded by Hughes.
MOTION CARRIED UNANIMOUSLY

X. SURPLUS

A. Police: Confiscated & Unclaimed Items

B. Police: Conex Container

Mrs. Reid noted there is a list of confiscated and unclaimed surplus property listed in the resolution attachment and these two resolutions will be on the Council meeting agenda at tonight's meeting. Mrs. Henson noted these items and the conex container need to be moved before Sitework can begin on the Justice Center renovation project.

MOTION BY Mr. Olen to recommend to Council to declare certain property surplus and authorize the Mayor to dispose of the confiscated and unclaimed surplus property as listed in the resolution attachment and the conex container. Seconded by Mr. Scott.
MOTION CARRIED UNANIMOUSLY

XI. NEW BUSINESS

A. Canon Copier Leases

Mrs. Reid reviewed the Canon Copier Lease agreement and noted that a motion is needed to authorize the Mayor to enter into the agreement. Mrs. Reid asked if this motion could be made at the Council meeting following the Finance Committee meeting so the prices quoted would be good. A price increase is going into effect on July 1.

MOTION BY Mr. Scott to recommend to Council to adopt an Resolution authorizing the Mayor to enter into the new copier lease agreement. Seconded by M. Goodlin.
MOTION CARRIED UNANIMOUSLY

B. Animal Control Ordinance

Mr. McDavid introduced Ms. Deaon Bryant the new Animal Shelter Manager. The Mayor noted that this ordinance was one of the last things Mrs. Betsy Schneider worked on before she retired last week. The Mayor noted that Mrs. Schneider worked on the ordinance with Ms. Bryant. Mrs. Reid handed out a marked up copy of the original ordinance showing the changes made. Discussion continued on the changes in the ordinance. The Mayor noted that this ordinance would be on the next Ordinance Committee agenda and that he would like the updated ordinance to be a first read on the Council agenda in July.

XII. OLD BUSINESS

A. Garbage Collection Ordinance Amendment

Mrs. Reid discussed the changes made to the Garbage Collection Ordinance including a \$5/month charge for the first additional cart and an increase on the monthly residential fee to \$19/month and commercial to \$25/month. Discussion continued on the Garbage Collection Ordinance changes.

MOTION BY Mr. Olen to recommend to Council to adopt the amended Garbage Collection Ordinance. Seconded by Mr. Goodlin.
MOTION CARRIED UNANIMOUSLY

XIII. ADJOURN The meeting adjourned at 5:35 p.m.

**CITY OF DAPHNE, ALABAMA
RESOLUTION 2024-36**

ADDITIONAL APPROPRIATION: CIVIC CENTER CHILLER REPAIRS

WHEREAS, Ordinance 2023-35 approved and adopted the Fiscal Year 2024 Budget on September 18, 2023; and

WHEREAS, subsequent to the adoption of the Fiscal Year 2024 budget, the City Council has determined that certain appropriations are required and should be approved and made a part of the Fiscal Year 2024 budget; and

WHEREAS, in Fiscal Year 2023, the chiller at the Civic Center became inoperable, and a temporary chiller was rented until repair parts could be installed and the existing wall around the chiller removed and replaced with a structure providing adequate airflow; and

WHEREAS, a estimate of \$353,250 (Replacement of coils and circuit board - \$150,700; Five month rental of temporary chiller - \$102,500; and removal and replacement of wall - \$100,000) was appropriated in Resolution 2023-48 to complete the project; and

WHEREAS, the replacement parts needed to repair the chiller were delayed causing the temporary rental of the chiller to be extended to over 10 months resulting in the total cost of the project being \$433,250; and

WHEREAS, an additional appropriation in the amount of \$80,000 is needed to fully fund the Civic Center chiller replacement project.

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

1. An appropriation in the amount of **\$80,000** from the **General Fund** is appropriated and made a part of the Fiscal Year 2024 Budget to complete the Civic Center chiller repairs.
2. The Mayor is hereby authorized and directed to do or perform or cause to be done or performed in the name of and behalf of the City such other acts, and to execute, deliver, file and record such other instruments, documents, certificates, notifications and related documents, all as shall be required by law or necessary or desirable to carry out the provisions and purposes of this resolution.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS _____ day of _____, 2024.

Robin LeJeune, Mayor

ATTEST:

Candace G. Antinarella, MMC, City Clerk

**CITY OF DAPHNE
RESOLUTION 2024-37**

Acceptance of Roads and Rights-of-Way: Hope Vineyard, Phase 1B

WHEREAS, the City Council of the City of Daphne, Alabama has received notice that the Daphne Planning Commission has given Final Plat approval to Hope Vineyard, Phase 1B on April 25, 2024, and the City of Daphne hereby recommends acceptance of the roads and rights-of way located in Hope Vineyard, Phase 1B; and

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

WHEREAS, an inspection was made by the Director of Public Works, and said director has recommended acceptance of said streets and associated storm water drainage, to the extent such drainage facilities affect the rights-of-way, of Hope Vineyard, Phase 1B; and

WHEREAS, the developer has provided to the City a two-year maintenance bond in the amount of \$195,874.39 as required and now requests acceptance and dedication of the same for maintenance of said improvements as outlined in Article XVII, entitled the Procedures for Subdivision Review, of the City of Daphne Land Use and Development Ordinance; and

WHEREAS, the developer has caused the plat to be recorded on slide 2128493 of the records in the Baldwin County Judge of Probate Office; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE AS FOLLOWS: that the following rights-of-way within Hope Vineyard, Phase 1B, according to the plat presented by Dewberry Engineers Inc. as recorded in the Office of the Judge of Probate, Baldwin County, Alabama, are hereby accepted by the City of Daphne, Alabama as city streets for maintenance:

a portion of Caymus Drive (1286 linear feet), a 50-ft right of way; a portion of Cakebread Ave (170 linear feet), a 60-ft right of way; and a portion of Lafite Circle (1322 linear feet), a 50-ft right of way.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA ON THIS THE _____ DAY OF _____, 2024.

Robin LeJeune, Mayor

ATTEST:

Candace G. Antinarella, MMC, City Clerk

**COMMUNITY DEVELOPMENT
INTERNAL MEMORANDUM**



DATE: June 14, 2024
TO: Office of the City Clerk
FROM: Adrienne Jones, AICP, Director of Community Development *AJ*
CC: Josh Newman, City Engineer, Ronnie Huskey, Public Works Director, William Eringman,
Deputy Director Public Works, and Natasha Miles, Planner
SUBJECT: Hope Vineyard, Phase 1B, Acceptance of Roads and Rights-of-Ways

LOCATION: East of County Road 13

RECOMMENDATION: At the April 25, 2024 regular meeting of the City of Daphne Planning Commission, eight members were present. The motion carried unanimously for a favorable recommendation for the acceptance of the rights-of-way of Caymus Drive, Cakebread Avenue, and Lafite Circle.

Attached please find the appropriate documentation and action of the Daphne Planning Commission.

Upon receipt of said documentation, please prepare a resolution for placement on the City Council agenda.

Thank you,
ADJ/jv

Attachment(s)

cc: file

1. Correspondence from project engineer requesting acceptance
2. Petition for Acceptance of Rights-of-Way
2. Record plat



Dewberry Engineers Inc.
25353 Friendship Road
Daphne, AL 36526

251.990.9950
251.990.9910 fax
www.dewberry.com

February 28, 2024

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

RE: HOPE VINEYARD PHASE 1B
ENGINEER'S CERTIFICATION

Dear Mrs. Jones:

I, Jason Estes, a professional engineer registered in the State of Alabama, Registration Number 22713, do hereby certify that the streets for HOPE VINEYARD PHASE 1B has been completed in full and to the best of my knowledge and to the best of my belief, conforms to the requirements of the City of Daphne Subdivision regulations and to all other rules, regulations, laws, and ordinances applicable to my design.

Therefore, I hereby request that the City of Daphne accept the roads and drainage for HOPE VINEYARD PHASE 1B subdivision.

If you have any questions or comments, regarding this information please give me a call at 251-990-9950.

Sincerely,
Dewberry Engineers Inc.

A handwritten signature in blue ink, appearing to read "Jason Estes", is written over the company name.

Jason Estes PE
Associate Vice President

JE/db

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

SUBDIVISION NAME: HOPE VINEYARD PHASE 1B

THIS PETITION FOR ACCEPTANCE OF ROADS AND/OR RIGHTS-OF-WAY is made this 25th day of March, 2024 by HOPE VINEYARD PARTNERS, LLC, hereinafter called "the sub-divider," owner of certain property located in the City of Daphne, Alabama known as HOPE VINEYARD PHASE 1B to be recorded in the office of the Judge of Probate of Baldwin County, Alabama; and,

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

WHEREAS, a bond is required by the City as a condition of the acceptance of any new roads or rights-of-way as outlined in Article XVII in an amount equal to twenty percent (20%) of all street and drainage improvements in the subdivision as a warranty for such improvements to last for a period of two (2) years after the date of dedication and upon acceptance by the City Council, the sub-divider has provided a \$ 195,874.39 maintenance bond; and,

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

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

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the sub-divider does hereby dedicate the roads and rights-of-way in said subdivision to the City of Daphne, a municipal corporation, as per the favorable recommendation of the City of Daphne Planning Commission voted upon at its meeting held on April 25, 2024. Said subdivision according the plat recorded in the Judge of Probate, Baldwin County, Alabama and said streets being named as follows:

Name of Right of Way	Length (linear feet) From Plat	Width (feet)
CAYMUS DRIVE	1286	50
CAKEBREAD AVENUE	170	60
LAFITE CIRCLE	1322	50

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

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

IN WITNESS WHEREOF, the sub-divider has caused the execution of this dedication as of the date set forth above.

Respectfully submitted,

HOPE VINEYARD PARTNERS, LLC .

Name of Individual or Corporation (Printed)

By: _____

(Print Legibly and Sign)

MANAGER

Its: _____

(Print Legibly)

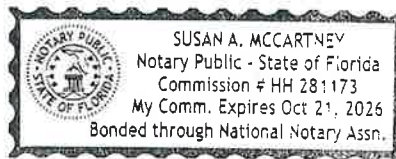
Florida
~~STATE OF ALABAMA~~
~~COUNTY OF BALDWIN~~ Sarasota

I, the undersigned Notary Public in and for said State and County, hereby certify that
MICHAEL P. NEAL whose name as MANAGER of Hope Vineyard Partners an
Alabama corporation or as owner of Hope Vineyard, Phase 1B is signed to the
foregoing instrument, and who is known to me, acknowledged before me on this day that, being
informed of the contents of the instrument, he as such officer or owner and with full authority,
executed the same voluntarily on the day same bears date.

Given under my hand and official seal on this the 21 day of MARCH, 2024.

Susan A. McCartney (NOTARY SEAL)
NOTARY PUBLIC

My commission expires: _____



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

Favorable recommendation on behalf of Daphne Public Works:



City Engineer
City of Daphne

Favorable recommendation on behalf of Daphne Planning Commission:



Andrew Prescott
Planning Commission Chairman
City of Daphne

COMMUNITY DEVELOPMENT



April 26, 2024

Hope Vineyard Partners, LLC
Attn.: Michael Neal
5800 Lakewood Ranch Blvd.
Sarasota, FL 34240

Subject: Hope Vineyard Phase 1B, Final Plat Project Status #SDF24-03
Hope Vineyard Phase 1B, Street Acceptance Project Status #AP24-02

Dear Hope Vineyard Partners, LLC,

On April 25, 2024, the Daphne Planning Commission approved your final plat request for Hope Vineyard Phase 1B.

Additionally, the Planning Commission set forth a favorable recommendation to the City Council to accept the rights-of-ways in Phase 1B. Documentation of this recommendation will be sent to the City Clerk for further processing.

The property is currently zoned R-6(G), Patio/Garden Home. Submit your plat to Community Development for signatures at your convenience.

If you have any questions, feel free to contact me.

Sincerely,

Adrienne D. Jones, AICP
Community Development Director

cc: Justin Estes - Email
Cathy Barnette - Email
File

**CITY OF DAPHNE, ALABAMA
ORDINANCE 2023-18**

**Zoning District Map
Revision to the City of Daphne Land Use and Development Ordinance**

WHEREAS, the Planning Commission of the City of Daphne, Alabama at their regular meeting held on April 25, 2024, favorably recommended to the City Council of the City of Daphne certain amendments to the Daphne Land Use and Development Ordinance / Zoning District Map approved and adopted by Ordinance No. 2011-54, referenced in Appendix H “Exhibit A” thereof, and amended by Ordinance No. 2016-69, Ordinance No. 2017-49, Ordinance No. 2018-02, Ordinance 2018-27, Ordinance 2019-19, Ordinance 2020-12, Ordinance 2020-28, Ordinance 2022-20, Ordinance 2022-51 and Ordinance 2023-44; and

WHEREAS, said amendments are necessary due to various rezoning and annexation requests which have been approved since the adoption of Ordinance No. 2023-44; and

WHEREAS, due notice of said proposed zoning map amendments has been provided to the public as required by law through publication and open display at the City of Daphne Public Library and City Hall; and

WHEREAS, a public hearing regarding the proposed Zoning District Map amendments was held by the City Council on June 15, 2024; and

WHEREAS, the City Council of the City of Daphne after due consideration and upon recommendation of the Planning Commission believe it in the best interest of the health, safety and welfare of the citizens of the City of Daphne to amend said Zoning District Map as recommended; and

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

SECTION I: ZONING DISTRICT MAP

The Zoning District Map referenced hereto as Exhibit “A” shall be the official zoning map of the City of Daphne, Alabama and shall be further designated in Appendix H of the City of Daphne Land Use and Development Ordinance, as set forth in Ordinance No. 2011-54 and its amendments.

SECTION II: REPEALER

Ordinance No. 2011-54, Appendix H “Exhibit A”, Ordinance No. 2016-69, Ordinance No. 2017-49, Ordinance No. 2018-02, Ordinance 2018-27, Ordinance 2019-19, Ordinance 2020-12, Ordinance 2020-28, Ordinance 2022-20, Ordinance 2022-51 and Ordinance 2023-44 are hereby repealed, and any Ordinance(s), parts of Ordinance(s) or Resolution(s) conflicting with the provisions of this Ordinance are hereby repealed insofar as they conflict.

SECTION III: EFFECTIVE DATE

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

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE,
ALABAMA ON THIS ____DAY OF JULY, 2024.**

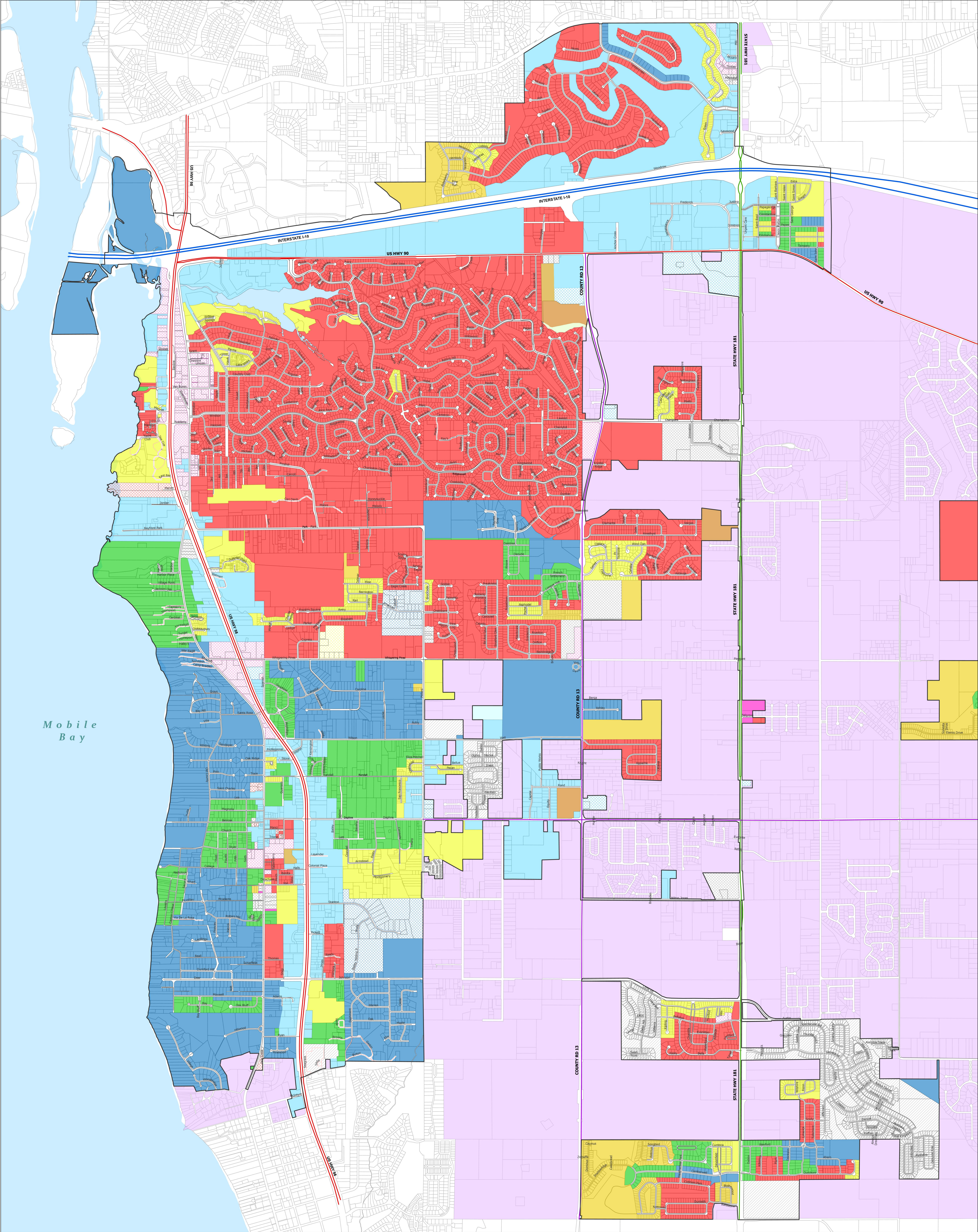
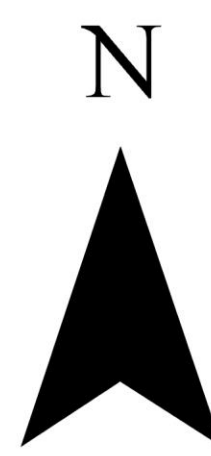
Robin LeJeune, Mayor

ATTEST:

Candace G. Antinarella, MMC, City Clerk

City of Daphne Zoning Map

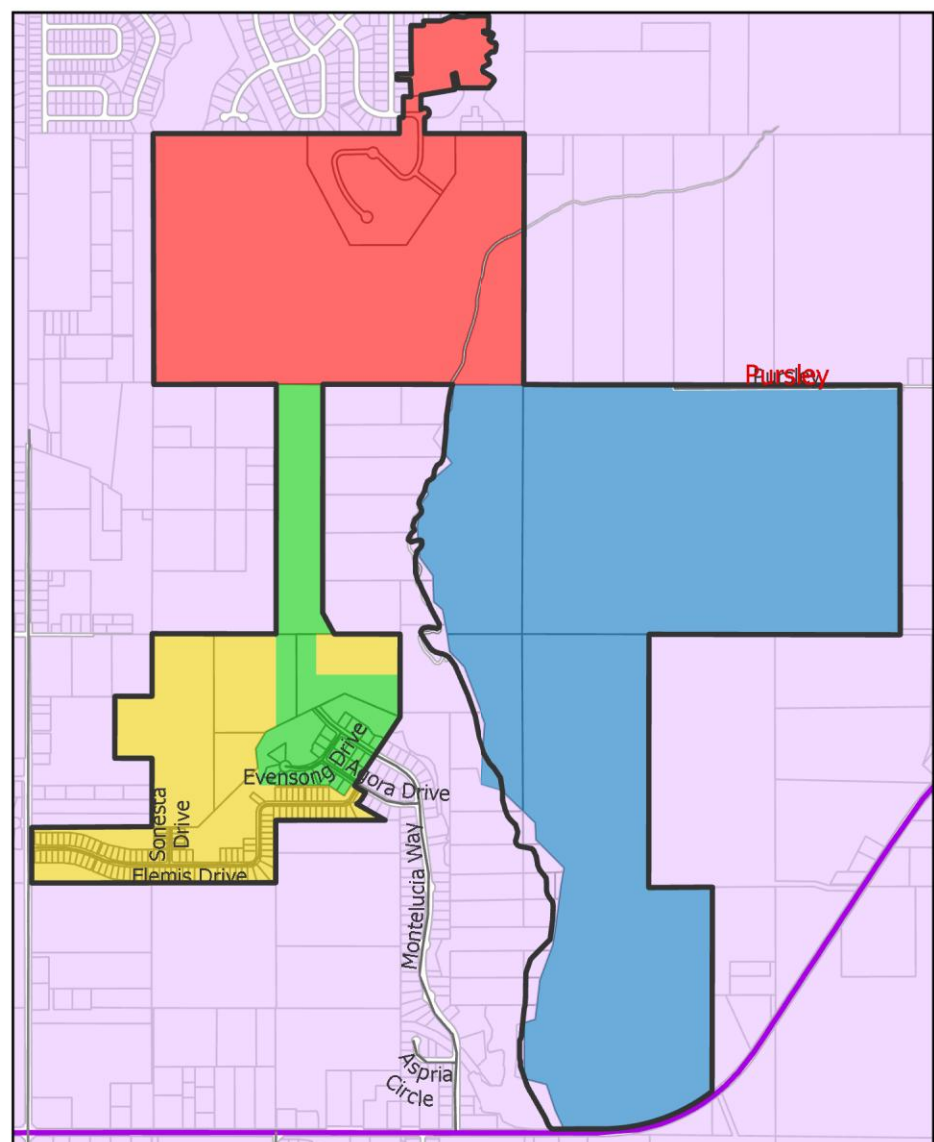
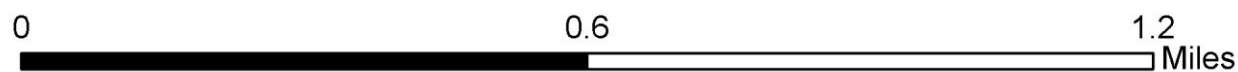
Per Ordinance 2024-XX Adopted by City Council on [REPLACE WITH DATE]



Maps serve a purely illustrative function and do not constitute a legally certified survey.

The information within the datasets disseminated by the City of Daphne is sourced from a diverse range of both public and private origins, which are generally considered to be reliable. However, the City of Daphne does not provide guarantees as to the accuracy, comprehensiveness, or completeness of this information. The City of Daphne disclaims all express or implied warranties concerning the accuracy, comprehensiveness, currency, reliability, or appropriateness of the information or data originating from the City Geographic Information System.

Furthermore, the City of Daphne, its representatives, agents, or employees assume no liability associated with the utilization of this data and accept no responsibility for its maintenance in any manner or form. For any inquiries related to zoning or any dataset, please direct your queries to the City of Daphne, Community Development Department at 251-620-1000.



- ET JURISDICTION
Zoning as of 04/30/2024
- B-1 Local Business
 - B-1(A) Limited Local Business District
 - B-2 General Business
 - B-2(B) General Business Alternate
 - B-3 Professional Business
 - C-1 Commercial/Residential
 - GC Golf Course
 - H-1 Mixed Use
 - PUD Planned Unit Development
 - R-1 Low Density Single Family Residential
 - R-2 Medium Density Single Family Residential
 - R-3 High Density Single Family Residential
 - R-4 High Density Single Family Residential
 - R-5 Medium Density Residential
 - R-6 Duplex - Two Family
 - R-6(C) Garden or Patio Home
 - R-7(A) Apartment
 - R-7(B) Mid-Rise Condominium
 - R-7(C) Townhouse
 - Park
 - Water Bodies

**CITY OF DAPHNE, ALABAMA
ORDINANCE 2024-21**

**AN ORDINANCE AMENDING THE CITY OF DAPHNE’S GARBAGE COLLECTION
ORDINANCE NO. 2017-59, AS CODIFIED IN CHAPTER 12, ARTICLE III, DAPHNE
CODE OF ORDINANCES, AND REPEALING AND REPLACING ORDINANCE NO.
2020-21, AN ORDINANCE ADDRESSING SOLID WASTE ENTERPRISE FUND
LOSSES**

WHEREAS, Ordinance 2017-59 established regulations governing the collection of garbage in the City of Daphne (the “City”); and

WHEREAS, Ordinance 2020-21 was adopted to provide for certain measures to be taken by the City to modify the City’s recycling program and provide for certain increases to fees charge for collection and disposal of garbage in the City; and

WHEREAS, certain of the fee increases established in Ordinance 2020-21 have not gone into effect because they were tied to the City’s re-commencement of normal recycling pickup, which has not occurred; and

WHEREAS, since the adoption of Ordinance 2020-21, plans for recycling services have been adjusted to account for the Baldwin County Solid Waste Authority expanding its curbside recycling program to include the City of Daphne; and

WHEREAS, the Solid Waste Enterprise Fund continues to experience significant losses on a year-to year basis, requiring annual subsidies from the City’s General Fund; and

WHEREAS, the fees charged by the City for the collection of garbage have not been revised in approximately seven (7) years; and

WHEREAS, the City desires for the Solid Waste Enterprise Fund to operate at no greater than a 10% subsidy on an annualized basis.

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

**SECTION 1. AMENDMENT TO ORDINANCE 2017-59, SECTION IV
(CHAPTER 12, ARTICLE III, DIVISION 1, SEC. 12-34) –
PREPARATION AND RECEPTACLE REQUIREMENTS**

Section IV of Ordinance 2017-59, as codified at Section 12-34 of Division 1, Article III, Chapter 12 of the Daphne Code of Ordinances, is hereby amended by adding a new subsection (d) immediately following subsection (c) as follows:

(d) Fees for Additional Receptacles.

(1) Replacement Receptacle. Every person or persons occupying either a residential unit or a commercial establishment that requests a new garbage receptacle to

replace a lost or damaged receptacle shall be subject to a one-time fee of seventy dollars (\$70.00) for each replacement receptacle.

- (2) Additional Receptacle. Every person or persons occupying a residential unit that requests an additional garbage receptacle for use in addition to one or more existing receptacles shall be subject to a fee of five dollars (\$5.00) per month for the first additional receptacle. Any additional receptacles beyond two shall be subject to a fee of nineteen dollars (\$19.00) per month per receptacle.

**SECTION 2. AMENDMENT TO ORDINANCE 2017-59, SECTION VI
(CHAPTER 12, ARTICLE III, DIVISION 1, SEC. 12-36) – FEES
FOR COLLECTION AND DISPOSAL**

Section VI of Ordinance 2017-59, as codified at Section 12-36 of Division 1, Article III, Chapter 12 of the Daphne Code of Ordinances, is hereby repealed and replaced in its entirety with the following:

FEES FOR COLLECTION AND DISPOSAL

- (a) Residential Units. Every person or persons occupying a residential unit which generates garbage within the City Limits of the City of Daphne, Alabama, shall be subject to a fee of nineteen dollars (\$19.00) per month per residential unit, which may only be adjusted by a subsequent ordinance amending this article. Said fee shall include service for garbage collection and disposal. Notwithstanding any automatic rate increase implemented pursuant to Section 3 of this Ordinance, such fees for the collection and disposal of garbage shall be subject to change from time to time as deemed necessary by the City Council in order to cover an 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.
- (b) Commercial Establishments. Every person or persons occupying a commercial establishment which generates garbage within the City Limits of the City of Daphne, Alabama, shall be subject to a fee of twenty-five dollars (\$25.00) per month, per garbage receptacle, which may only be adjusted by a subsequent ordinance amending this article. Said fee shall include service for garbage collection and disposal. Notwithstanding any automatic rate increase implemented pursuant to Section 3 of this Ordinance, such fees for the collection and disposal of garbage shall be subject to change from time to time as deemed necessary by the City Council in order to cover an 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 3. SOLID WASTE ENTERPRISE FUND; AUTOMATIC RATE
INCREASE**

There is hereby established a defined annual subsidy in the amount of ten percent (10%) of Solid Waste Fund charges for services revenue from the General Fund to the Solid Waste Enterprise Fund to allow the City to continue providing affordable service and excellent value to its citizens. In the event that the annual transfer subsidy exceeds fifteen percent (15%) of Solid Waste Fund charges for service revenue as reported by the annual audit, the monthly rates for all

Solid Waste services shall automatically increase by one dollar (\$1.00) per month per residential unit and per garbage receptacle for commercial establishments. Any such automatic rate increase must be publicly advertised at least thirty (30) days before the effective date of the change, which shall be on or about the first day of April following the completion of the City's annual audit. No such rate increase shall go into effect prior to April 1, 2027.

SECTION 4. REPEAL OF ORDINANCE 2020-21

Ordinance 2020-21 is hereby repealed in its entirety.

SECTION 5. 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 portions hereof.

SECTION 6. SURVIVAL AND REPEALER

All other provisions of Ordinance 2017-59 not amended or repealed by this Ordinance remain in full effect. All other City Ordinances or parts thereof in conflict with the provisions of this Ordinance, in so far as they conflict, are hereby repealed to the extent of such conflict.

SECTION 7. EFFECTIVE DATE

This Ordinance shall be effective as of October 1, 2024, upon its due adoption by the City Council and publication as required by law, including the public advertisement requirement set forth herein.

ADOPTED AND APPROVED on this _____ day of _____, 2024.

Robin LeJeune, Mayor

ATTEST:

Candace G. Antinarella, MMC, City Clerk

**CITY OF DAPHNE, ALABAMA
ORDINANCE 2024-22**

ANIMAL CONTROL ORDINANCE

**AN ORDINANCE REPEALING AND REPLACING ORDINANCES 2013-57 AND 2018-05
AND SETTING FORTH A NEWLY COMPILED ANIMAL CONTROL ORDINANCE**

WHEREAS the City Council of the City of Daphne has determined that consolidating the existing animal control ordinances which are currently in effect is necessary to effectuate and implement more efficient means of animal control within the City of Daphne; and

WHEREAS the City Council of the City of Daphne has determined that this ordinance consolidating all existing animal control ordinances is in the interest of the public health, safety, and welfare of the citizens of the City of Daphne.

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

SECTION I. OFFICE OF ANIMAL CONTROL OFFICER

A. There is hereby recognized within the City of Daphne (the “City”), the established position of Animal Control Officer. The Animal Control Officer shall be under the supervision, direction, and control of the City of Daphne Animal Shelter. All enforcement officers assigned to the City of Daphne Animal Shelter shall hereafter be known as Animal Control Officers.

B. It shall be unlawful for any person to knowingly or willingly oppose or resist any Animal Control Officer in executing or attempting to execute any lawful process or in the discharge of any regular duty, or in any way to interfere with, hinder or prevent any such officer from discharging their duty.

SECTION II. DEFINITIONS

For the purpose of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section unless taken specific exception to elsewhere in this chapter.

Animal. The term shall mean any nonhuman, animate being which is endowed with the power of voluntary motion to include, but not limited to: Mammals (i.e. dogs, cats, horses, hogs, cows, sheep, goats, rabbits, etc.); reptiles; birds; salamanders; toads; frogs; sharks; snakes; rays; bony fishes; and amphibians.

Animal Control Officers. All enforcement officers assigned to the City of Daphne Animal Shelter.

Animal Shelter Policy. Document itemizing the fees and fines associated with the Animal Shelter. Content to be updated as required with Mayoral approval.

Animal Shelter Manager. The individual employed by the City of Daphne as the Manager of the City of Daphne Animal Shelter, or his or her designee.

At large. Any animal which is off the property of its owner or person in charge and not carried by said person, kept in an effective closure or under control or restraint by such person by means of a leash in such a way as to prevent its free movement, and so as to prevent said animal from freely charging or attacking persons or animals.

Bitten. Seized with teeth or jaws such that the skin of the person or thing seized has been nipped or gripped or has been wounded or pierced and there has been probable contact of saliva with the break or abrasion of the skin.

Caged. Confinement in a container, which may include a vehicle but not its trunk, in such a way that the free movement of such animal is restrained and so as to prevent the animal caged from biting or attacking a person or animal.

Cat. All members of the domestic feline family.

City of Daphne Animal Shelter. The location designated or used as such by the city for the housing, care and rehoming of stray animals pursuant to the authority of this chapter.

Corral. Any uncovered, enclosed parcel of land where large animals are kept.

Crowing hen. A hen that crows like a rooster.

Dog. All members of the domestic canine family.

Dog run (tethered). Means any enclosure or structure of any kind whatsoever, designed or used for the harboring or containment of a tethered dog.

Domesticated animal. Shall mean, but is not limited to rabbits, squirrels, raccoons, pot-bellied pigs, or any other animal used as a pet.

Domestic poultry. A common gallinaceous farm bird (*gallus domesticus*) raised for its edible eggs.

Fowl. Chicken, turkey, ducks, geese, guineas or other domestic fowl.

Hen. Female domestic poultry.

Henhouse. An enclosed structure designed for the purpose of keeping and securing hens.

Livestock. Horses, mules, donkeys, oxen, sheep, goats, cows, buffaloes and swine, or any one of them.

Owner. Any person, firm, corporation, organization, or department having a right of property in the animal, or who keeps or harbors the animal, or who has it in his care, or acts as its custodian, or who permits the animal to remain on or about any premises occupied by him or her.

Person in charge. Any person who feeds a dog or cat not owned by him or her or who otherwise cares for the animal. This definition shall not include individuals who perform humane acts for the health and safety of an animal on a one (1) time or temporary basis.

Rooster. Male domestic poultry.

Run. A fenced enclosure that is connected to and/or surrounding a henhouse for the purpose of allowing hens to leave the coop while remaining in an enclosed environment.

Vicious and dangerous animal.

(1) Any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury to, or otherwise threaten the safety of human beings.

(2) Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

The terms “potentially dangerous” and “vicious” shall not apply to dogs used by law enforcement officials for legitimate law enforcement purposes, nor dogs used as certified guide dogs for the blind, hearing dogs for the deaf nor aid dogs for the handicapped nor shall it apply to licensed kennels, humane society shelters, animal control facilities, or veterinarians.

SECTION III. LIVESTOCK AND FOWL

(a) General provisions.

(1) *General prohibition.* It shall be unlawful for any person to keep any livestock or fowl, except for hens as defined in Section II of this Ordinance, within the city limits of the city.

(2) *Exceptions.* Subsection (a)(1) shall not apply to those whose property is annexed in the future should those property owners maintain livestock or fowl upon the property prior to annexation. Following any such annexation, it shall be unlawful to replace any livestock or fowl that is sold, traded, given away, lost, deceased, or otherwise disposed of. All livestock or fowl located upon any real property within the city at the time of such annexation shall be removed therefrom upon the sell, lease, rent, conveyance, or gift of said real property or upon the death of the owner of said livestock or fowl.

(3) *Condition of premises.* If the premises, exempted from subsection (a)(1) as described in subsection (a)(2), where livestock or fowl are kept shall not be free from unsanitary droppings, refuse and odors, or shall be in such condition as to breed flies, the animal control officer shall notify the owner or person-in-charge of the animals or fowl to remove such matter or cure such condition within a reasonable time to be fixed by the animal control officer and, if such objectionable conditions are not cured within such time as is specified, the animal control officer shall issue a citation to the owner or person-in-charge.

(b) *Livestock or fowl at large.* It shall be unlawful for any owner or person-in-charge to knowingly, voluntarily, or willfully permit any livestock or fowl to be at large within the city.

(c) Horse stable permit.

(1) Any person, firm or corporation desiring to open, operate or be in charge of a horse stable within the city must obtain a yearly permit therefor. The application for permit shall be maintained by the Animal Control Officer and will indicate the number and type of horses, the name, address and phone number of the owner or person in charge of each and the veterinarian contact number. The cost to obtain a permit and yearly fees are listed in the Animal Shelter Policy.

(2) A consent petition must be signed by all neighbors within five hundred (500) feet of the exterior parameter of the real property line where the stable is located. The petition and

application will then be forwarded to the Planning Commission along with plans reflecting, at a minimum, the boundaries of the proposed pasture area and the proposed stable area with square footage per animal indicated thereon.

The Planning Commission will then make a recommendation to the City Council. If approved and the stable becomes operational, animal control officers will conduct an inspection of the facility to determine whether the condition of the premises is in compliance with subsection (a)(3) above. A stable exists where two (2) or more horses are kept.

(3) This section does not apply to newly annexed properties where stables existed and were operated immediately prior to annexation.

SECTION IV. RESERVED

SECTION V. DOG OR DOMESTICATED ANIMAL AT LARGE

- (a) *General prohibition.* No owner or person in charge of a dog or domesticated animal shall permit the dog or domesticated animal to be at large at any time within the city.
- (b) *Owner liability.* If the owner of any dog or domesticated animal carelessly manages said dog or domesticated animal or permits said animal to be at large, and another person, without fault, suffers damage thereby, such owner shall be liable for damages.

SECTION VI. SEIZURE OF DOGS OR DOMESTICATED ANIMALS AT LARGE

- (a) *Police officer's duty to notify animal control officer of dogs at large; procedure for seizure of dogs at large.* It shall be the duty of every police officer in the City, upon discovering a dog or domesticated animal at large within the City, to promptly notify the Animal Control Officer. It shall be the duty of the Animal Control Officer when so notified, or whenever the Animal Control Officer observes any dog or domesticated animal at large, to immediately seize the dog or domesticated animal and confine the animal to the City of Daphne Animal Shelter and if said dog is licensed by the City, to make a reasonable effort to notify the owner. Any dog or domesticated animal found unlawfully to be at large within the City is hereby declared a nuisance and shall be seized and confined by the Animal Control Officer, and cared for in a humane manner for a period of not less than seven (7) days.
- (b) *Return of dogs or domesticated animals to owner permitted.* In addition to, or in lieu of, confining a dog or domesticated animal found unlawfully at large when the owner or person-in-charge of said dog or domesticated animal is known to the Animal Control Officer, the Animal Control Officer may return the dog or domesticated animal to the owner or person in charge and issue a citation for violation of this Ordinance.
- (c) *Notice to owner of confinement of dogs or domesticated animals.* Immediately upon confinement of a dog or domesticated animal, the Animal Control Officer shall make reasonable effort to ascertain the identity of and notify the owner or person-in-charge of such dog or domesticated animal of their confinement and of the conditions under which they may regain possession of such animal.

SECTION VII NOISY ANIMALS

- (a) *Residential neighborhood prohibition against keeping of noisy animals.* It shall be unlawful and a nuisance for any person to keep on a residential lot or premises any animal

or group of animals known to said person to habitually, continuously or intermittently to make or emit sounds or noises of such volume and nature as unreasonably to interfere with or disturb the peace, quiet, comfort and repose of persons of ordinary sensibilities within the neighborhood in the reasonable use and enjoyment of adjacent property.

(b) *Other areas prohibition against keeping of noisy animals.* It shall be unlawful and a nuisance for any person to keep, on any tract, lot or premises within the city, any animal or group of animals under such circumstances that the sounds or noises emitted by said animals are of such volume and nature as unreasonably to interfere with or disturb the peace, quiet, comfort and repose of persons of ordinary sensibilities in the reasonable use and enjoyment of any adjacent property used for residential purposes.

(c) *Abatement of noise; enforcement.*

(1) Any owner or person-in-charge violating this section shall be guilty of maintaining a nuisance. However, no prosecution shall be commenced and no arrest made pursuant to this section, except upon affidavit made before, and warrant issued by, a magistrate.

(2) Any police officer or animal control officer may take steps immediately to cure the situation to cause the noise to be abated, either through issuance of a citation, or impounding the animal if the owner, agent or person-in-charge cannot be found at the time of the disturbance.

SECTION VIII RIGHT OF ENTRY; AUTHORITY TO USE FIREARM

(a) *Right of entry.* The Animal Control Officer shall have the right and it shall be the Officer's duty to enter upon any property, except a private dwelling house, for the purpose of (i) inspecting any living condition for an animal for which there is a reasonable suspicion to believe that there exists thereupon a violation of this Ordinance or (ii) capturing any dog or domesticated animal at-large in compliance with the provisions of this Ordinance.

(b) *Authority to use firearm.* Any Animal Control Officer may be authorized by the Chief of Police to carry a firearm for the purpose of assisting in impounding any dog or domesticated animal and shall have the authority to shoot and kill such dog or domesticated animal if, in attempting to capture the same or in otherwise keeping the same, it shall become an immediate hazard to the safety of the person or to the safety of persons or animals in the immediate vicinity.

SECTION IX PROCEDURE FOR REDEMPTION

The owner of any impounded dog, cat, or domesticated animal may, within seven (7) days after the dog, cat, or domesticated animal is impounded, redeem the dog or cat or domesticated animal by paying to the City an appropriate fee as listed in the Animal Shelter Policy.

SECTION X DISPOSITION OF UNREDEEMED DOGS, CATS, OR DOMESTICATED ANIMALS

(a) *Adoption.*

(1) In the event any impounded dog, cat or domesticated animal is not redeemed within seven (7) days, or if after seven (7) days from the time notice has been given to the owner of a dog, cat, or domesticated animal which has been picked up, the Animal Control Officer will turn the dog, cat, or domesticated animal over to the Daphne Animal Shelter for health assessment and potential adoption.

- (2) Any person who adopts a sexually mature dog or cat, at least 180 days in age, is required by state law to have the animal properly sterilized. Therefore, for all animals adopted through the Daphne Animal Shelter, appropriate fees will be collected by the Daphne Animal Shelter prior to the adoption of any dog or cat to ensure the animal is sterilized. A voucher may be issued to provide sterilization if prior sterilization is not feasible. Adoption fees will be reviewed periodically and updated as necessary in the Animal Shelter Policy.
- (b) *Humane disposition of injured or diseased animals* Injured or diseased animals may, at the discretion of the Animal Shelter Manager, be euthanized prior to the seven (7) days to humanely alleviate suffering by the animal. Any confined dog, cat, or domesticated animal that is injured or diseased, shall, as an act of mercy, be humanely destroyed immediately after inspection by a veterinarian, or by the Animal Control Officer if it is determined that such destruction is necessary to prevent unnecessary suffering, to prevent the spread of disease, or because the animal is incurable.
- (c) *Disposition of aggressive dogs.* Aggressive dogs that in the discretion of the Animal Control Officer are determined to be unsafe for adoption may be euthanized.
- (d) *Manner of disposal.* The Animal Control Officer, when required to dispose of dogs, cats, or domesticated animals, shall do so by such process as is recognized by veterinary science as being a humane manner in which to destroy dogs, cats and domesticated animals.
- (e) *Disposal of non-domesticated animals.* Non-domesticated animals may be destroyed by the Animal Control Officer or by their direction, for public safety to prevent the spread of disease and acts of mercy. Such authority shall come from the Animal Shelter Manager for animal control personnel to carry out the provisions of this order.

SECTION XI RABIES VACCINATION

- (a) *Rabies vaccination required.* It shall be unlawful for any owner or person in charge of any premises where a dog or cat is kept to keep any dog or cat more than three (3) months of age, thereon, which has not been vaccinated against rabies within the preceding twelve (12) months.
- (b) *Vaccination Period.* The vaccination of any dog or cat against rabies shall be valid for a period of one (1) year.
- (c) *Penalty.* Any owner or person in charge in violation of this Section shall be subject to a penalty not to exceed an amount equal to twice the State approved charge for inoculation, to be imposed by the Animal Control Officer or his authorized representative, in addition to the fee prescribed for the inoculation.
- (d) *Licensed veterinarian.* In order to be sufficient under this Ordinance, the vaccination of any dog or cat shall be accomplished by a licensed veterinarian.
- (e) *Tag attachment mandatory.* The serially numbered rabies tag issued at the time of inoculation shall at all times be attached to a collar or harness worn by the dog or cat for which the tag is issued. It shall be unlawful for any owner or person in charge of any dog or cat not to keep attached to said dog or cat the tag evidencing the anti-rabies vaccine or inoculation as provided in this Ordinance. However, said tag need not be attached during supervised obedience training classes or animal shows.

(f) *Animal bite.*

- (1) Whenever the Daphne Police Department or an Animal Control Officer receives information that any person has been bitten by an animal required to be inoculated against rabies, the animal will be placed in quarantine with a duly licensed veterinarian for observation of rabies for two hundred forty (240) consecutive hours. The owner or person-in-charge shall be responsible for ensuring the quarantine is carried out immediately and at the owner or person-in-charge's expense. A police report will be completed documenting the incident and confirmation of quarantine. It shall be unlawful for any person having knowledge that any person has been bitten by any such animal to refuse to notify promptly the Daphne Police Department or an Animal Control Officer.
- (2) It shall be unlawful for an owner or person-in-charge to refuse or fail to quarantine an animal.
- (3) Where biting occurs by a stray animal, the Animal Control Officer may humanely destroy the animal immediately after the bite and submit the Animal's head to the state health laboratory for rabies examination.
- (4) K-9 animals used by law enforcement shall be exempted from the quarantine period where such bite occurs in the line of duty and evidence of proper vaccination against rabies, but shall be examined at the end of ten (10) days by a duly licensed veterinarian.

(g) *Animals suspected of having rabies declared nuisances.* Any animal suspected of infection with rabies is hereby declared to be a public nuisance and a danger to the health and safety of the community. The Animal Control Officer may take up and confine any such animal, and the disposition of such animal shall be determined by the Animal Shelter Manager.

SECTION XII RESERVED

SECTION XIII CONFINEMENT OF DOGS OR CATS IN HEAT

Every female dog or cat in heat shall be kept confined by the owner or person-in-charge. At any time a female dog or cat in heat is found to be causing a disturbance of any dog or cat on adjoining premises, it shall be the duty of the owner or person-in-charge of said dog or cat to immediately confine said dog or cat in a manner so as to avoid such disturbance.

SECTION XIV DUTY TO RESTRAIN; CONDITION OF PREMISES

- (a) *Dogs and domesticated animals.* It shall be the duty of every owner or person in charge of any dog or domesticated animal (excluding cats) to keep said animal under effective restraint, while the same is within the limits of the City, whether or not said dog or domesticated animal (excluding cats) is upon or away from his or her premises. It shall be unlawful for the owner or person in charge of any dog or domesticated animal (excluding cats) to fail to keep said animal under effective restraint. Proof that a dog or domesticated animal (excluding cats) was not properly restrained, whether on or off the premises of the owner or person in charge, shall be prima facie evidence of a violation. Negligent failure to provide or maintain effective restraint shall not be a defense; however, competent evidence that said failure was occasioned by an unforeseeable and independent act of a third person shall shift the burden on the City to prove otherwise.
- (b) *Confinement of stray dogs or domesticated animals.* Any person in the City finding any dog or domesticated animal running at large about his premises or residence, or the

residence of which he is in charge, may request to have such animal confined by the Animal Control Officer as an at-large animal or stray.

(c) *Defecation on another's property.* It shall be the duty of the owner or person-in-charge to remove and dispose of any feces deposited by said animal upon the grounds of any public park or public place, upon any residential lot of another occupied for human habitation, or upon any right-of-way adjacent thereto.

(d) *Condition of premises.*

(1) The premises where any dog, cat or domesticated animal is kept shall be free from unsanitary droppings, refuse and odors, or in a condition to breed flies or infestation of fleas. Unsanitary or inhumane living conditions for these animals will not be allowed. The Animal Control Officer shall notify the owner or person-in-charge of the premises to remove such matter or cure such condition within a reasonable time, to be fixed by the Animal Control Officer. If such condition is not remedied within the time so fixed, the Animal Control Officer shall issue a citation to the owner or person-in-charge. Animals found in cruel, abusive, or neglectful situations may be promptly impounded if the life or health of the animal is at risk. If no contact is immediately made with the owner, then a written notice shall be left indicating the location of the animal and the reason for impoundment.

(2) An owner or person-in-charge of any dog, cat or domesticated animal shall provide adequate shelter from the elements if the animal is kept outside. Adequate food and water shall be made available to the animal. Dogs shall not be kept or maintained on a chain or tether in the City. Dog runs may be utilized for a limited period of time (maximum 2 hours) under owner supervision. Any dog confined with a fenced in yard must have adequate space for exercise based on the dimensions of at least 150 square feet per dog. Such enclosure shall be constructed of chain link or wooden fencing or a similar type material with all four sides enclosed. The enclosure shall be of sufficient height to prevent the animal from escaping from such enclosure and shall meet the requirements of the Alabama Animal Rights Protection Act, Section 13A-11-24(1), as it may be amended from time to time. At no point in time may an animal be tied or leased to an inanimate object, i.e., tree, post, etc.

As an alternative, the owner may use underground invisible fencing to meet the requirements of this section in lieu of a chain link or wooden fence. The invisible fencing must be able to properly and humanely restrain the dog on the property. A dog at large is prima facie evidence that the invisible fence did not properly restrain the animal. During power outages, etc., the owner must take other proper measures such as bringing the animal inside to prevent the animal from being at large during power outages.

(3) No dog, cat, or domesticated animal shall be placed, confined or allowed to be placed or confined in a motor vehicle under such conditions or for such a period of time as to endanger the health or welfare of the animal because of temperature, lack of food or water, or such other conditions as may reasonably be expected to cause suffering, disability or death.

SECTION XV

RESERVED

SECTION XVI

HUMANE TRAPS

- (a) The Animal Control officer is hereby authorized, in order to apprehend animals in violation of this Ordinance which are otherwise difficult to apprehend, to use traps designed to humanely capture said animals by placing the same upon any public property of the City, upon the right of way of any public street or highway or upon the private property of any person granting permission therefor.
- (b) It shall be the duty of the Animal Control Officer to check such traps daily and remove captured animals therefrom to the City of Daphne Animal Shelter where they shall be disposed or treated as otherwise provided herein.
- (c) It shall be unlawful for any person to molest or tamper with any such trap, or to remove any animal captured in any such trap or to interfere with the Animal Control Officer in setting or servicing any such trap.

SECTION XVII

CRUELTY TO ANIMALS

- (a) Any person who commits any of the acts enumerated hereafter shall be guilty of a misdemeanor:
 - (1) any person who overrides, over-drives, overloads, drives when overloaded, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates, or cruelly kills or causes or procures to be overridden, over-driven, overloaded, driven when overloaded, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated, abandoned or cruelly killed; or
 - (2) any person having the charge or custody of such animal, either as owner or otherwise, inflicts unnecessary cruelty upon same, or fails to provide the same with proper food, drink or protection from the weather, or cruelly drives or allows to be ridden or over-driven when unfit for labor; or
 - (3) any person who, having the charge or custody of any animal known to him to require medical treatment or care in order to prevent unjustifiable physical pain, suffering or death, who having such knowledge fails to provide proper treatment and care, or in the alternative to cause said animal to be humanely disposed of; or
 - (4) any person who unlawfully or maliciously kills, disables, disfigures, or injures any animal, without good cause.

SECTION XVIII

RESERVED

SECTION XIX

CITATIONS AND FINES

- (a) *Citations.* When any animal is found by the Animal Control Officer to be in violation of any provision of this Ordinance, and the person or persons responsible become known to the Animal Control Officer, a citation may issue to the owner or person in charge for said violation directing the person to appear in Municipal Court at a time and date stated therein to answer to charges of violations of this Ordinance, which said charges shall be stated in said citation. It shall be unlawful and a misdemeanor for any person to fail to appear in City Court at the time and place stated in a citation issued by the Animal Control Officer.
- (b) *Fines.* The schedule of fines is hereby established by the City and specified in the schedule of fines set forth in the Animal Shelter Policy, as the same may be updated from time to time. In addition to the fines so established, the Defendant shall pay, in addition to such fine amount, any court costs which are in effect at the time of such violation occurs. If the

Defendant elects to plead guilty before a magistrate to a violation of any of the municipal offenses contained herein for which there is a fine set forth in the Animal Shelter Policy, the fine plus applicable court cost shall apply. In lieu of appearing before a magistrate, the Defendant may sign a guilty plea and waiver of trial provision on the municipal offense citation, and deliver the amount of the fine plus applicable court costs to the Clerk of the Municipal Court or mail such amount to the Clerk of the Municipal Court for the City of Daphne at 1502 Highway 98, Daphne, Alabama 36526.

SECTION XX DISPOSITION OF FEES

All monies collected, as provided for in this Ordinance, shall be turned over and delivered forthwith to the City Treasurer and all revenues generated through enforcement of any section of this Ordinance shall be appropriated by the City for use in supporting, maintaining and providing for the ongoing expense of operating the City of Daphne Animal Shelter and expenses and costs incurred in the enforcement of this Ordinance.

SECTION XXI RESERVED

SECTION XXII RESERVED

SECTION XXIII DANGEROUS ANIMALS

The City of Daphne Animal Shelter shall adhere to the guidelines set forth in Alabama Code Section 3-6A-1, *et seq.*, otherwise known as “Emily’s Law,” as it exists and may be amended from time to time. For fees and fines related to the ownership of a dangerous animal, please refer to the Animal Shelter Policy.

SECTION XXIV RESERVED

SECTION XXV KEEPING OF HENS

- (a) *Purpose.* The purpose of this section is to provide standards for the keeping of hens in single-family residential zones and limited institutional settings in the City of Daphne. It is intended to enable residents to keep a limited number of hens for non-commercial purposes, while establishing standards to limit the adverse impacts on neighboring properties, and ensuring the health and sanitation of the domestic poultry and related structures. It is also intended to enable educators to keep a limited number of hens on the premises of an institution of education for educational purposes.
- (b) *General requirements.* Domestic poultry may be kept in single-family residential zones and single family residential PUD (planned unit development) districts in accordance with the following regulations:
 - (1) It shall be unlawful for any resident to keep roosters, crowing hens, peafowl, or waterfowl within the city limits of the city.
 - (2) Hens may be kept on all parcels in single-family residential zones having a minimum lot area of five thousand (5,000) square feet.
 - (3) For parcels with a lot area of between five thousand (5,000) square feet and seven thousand seven hundred ninety-nine (7,799) square feet, residents may keep up to two (2) hens.
 - (4) For parcels with a lot area of between seven thousand eight hundred (7,800) square feet and three (3) acres, residents may keep up to four (4) hens.

- (5) For parcels with a lot area in excess of three (3) acres, residents may keep up to eight (8) hens.
- (6) Residents shall not be eligible to keep hens on parcels in single-family residential zones that contain more than two (2) residential dwelling units or a non-conforming multifamily structure.
- (7) Hens shall be kept for personal use only. The selling of eggs or fertilizer or the breeding of hens is prohibited.
- (8) All hens shall be kept in a henhouse or run. Henhouses and runs shall be fenced and maintained in accordance with the design standards set forth in subsection (c) of this section. Hens may be allowed to roam freely in enclosed rear yards during daylight hours only.
- (9) It shall be unlawful for any domestic poultry to be at large within city limits.
- (10) It shall be unlawful for the owner, keeper, or custodian of any domestic poultry to allow the animal(s) to be a nuisance to any neighbor(s), including but not limited to noxious odors from the animals or related structure, associated rodent or pest infestation, particulate matter runoff, and noise of a loud and persistent and habitual nature. An officer of the City of Daphne Animal Control Service, City of Daphne Code Enforcement, City of Daphne Police Department, or the Baldwin County Health Department shall determine whether or not a nuisance exists.
- (11) The slaughtering of hens in residential zones is prohibited.
- (12) The provisions of this section shall not be interpreted to supersede any covenant or deed restriction prohibiting the keeping of domestic poultry on a particular parcel that is subject to such covenant or deed restriction.
- (13) Up to eight (8) hens may be kept on the premises of any public or private school for educational purposes, subject to the requirements of this section.

(c) *Requirements for henhouses and runs.*

- (1) *Location.*
 - a. The henhouse and run shall not be visible from any public right-of-way. On double frontage lots or corner lots, henhouses and runs shall not be allowed within thirty (30) feet of any public right-of-way.
 - b. The henhouse and run shall be a minimum of ten (10) feet from any property line.
 - c. The henhouse and run shall be a minimum of twenty-five (25) feet from the residence.
 - d. For purposes of this section, an officer of the City of Daphne Code Enforcement shall determine whether or not a setback violation exists, and shall not be required to prove such a violation by a land survey. Any resident charged with a right-of-way setback violation under this section shall be entitled to rebut the officer's determination with a land survey or other suitable evidence.
- (2) *Design requirements.*
 - a. The henhouse shall be enclosed on all sides and have a roof and access door that are able to be shut and secured. The henhouse shall be ventilated and impermeable to rodents, wild birds, and predators including raccoons, skunks,

dogs, and cats. Any openings on the henhouse or the entire henhouse shall be elevated at least eighteen (18) inches above ground. Except for access doors, all other openings shall be sealed with rodent and predator-proof wire mesh with openings of one-quarter (¼) inch or smaller.

- b. The henhouse shall be free-standing and accessible on all sides for cleaning and maintenance.
- c. The run shall be fully enclosed, including a roof, by a secured fence at all times. The fence must be at least (5) feet in height and no more than (6) feet in height. The fence shall be made of one-quarter (¼) inch metal mesh hardware cloth and buried. Chicken wire shall not be permitted.
- d. The total area of the henhouse and run shall be at least of six (6) square feet per hen and the total area of the henhouse shall be at least of two (2) square feet per hen. The total area of the run shall not exceed eighty (80) square feet and the total area of the henhouse shall not exceed thirty-six (36) square feet.
- e. Materials used for henhouses and runs shall be suitable for use in single-family residential zones. Prefabricated henhouses are allowed, provided they meet the specification for excluding rodents.
- f. The henhouse shall not exceed eight (8) feet in height at its tallest point.

(3) *Sanitation requirements.*

- a. All henhouses and runs shall be kept and maintained in a clean and sanitary condition. All droppings shall be cleaned out at least once every week. Chicken pens shall be thoroughly cleaned with a standard disinfectant at least three (3) times yearly, once in each of the months of March, July and October. At all times, all hens shall have access to feed and clean liquid water.

SECTION XXVI SEVERABILITY

The provisions of this Ordinance are severable. If any provision, section, paragraph, sentence, or part thereof shall be held to be unconstitutional or invalid, such decision shall not affect or impair the remainder of this 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 XXVII REPEALER

This Ordinance expressly repeals and replaces Ordinance 2013-57 and Ordinance 2018-05. All other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION XXVIII EFFECTIVE DATE

This Ordinance shall become effective immediately and be in full force after final passage and publication as required by law.

**ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE,
ALABAMA ON THE ____ DAY OF _____, 2024.**

Robin LeJeune, Mayor

ATTEST:

Candace G. Antinarella, MMC, City Clerk

**CITY OF DAPHNE, ALABAMA
ORDINANCE 2024-23**

**AN ORDINANCE GRANTING A NON-EXCLUSIVE AUTHORIZATION TO
SOUTHERN LIGHT, LLC FOR THE PURPOSE OF CONSTRUCTING AND
MAINTAINING A FIBER-OPTIC TRANSMISSION LINE WITHIN THE PUBLIC
RIGHTS-OF-WAY IN THE CITY OF DAPHNE, ALABAMA FOR THE PROVISION OF
BROADBAND SERVICES**

WHEREAS, Southern Light, LLC (hereinafter referred to as the “the Company”) desires to maintain and construct a fiber-optic transmission line within public rights-of-way located in the City of Daphne, Alabama (“City”); and

WHEREAS, the Company has requested the right to maintain and construct a fiber-optic transmission line within the corporate limits of the City for the provision of Broadband Services; and

WHEREAS, the City Council wishes to accommodate the Company’s request and grant authorization to allow Company to maintain fiber-optic transmission lines in accordance with the terms and conditions contained herein.

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

The City Council of the City of Daphne does hereby grant to Company a non-exclusive right to construct and maintain a fiber-optic transmission line in the City in and along certain rights-of-way outlined in Exhibit A below, subject to the terms and conditions set forth in the following agreement:

AGREEMENT

This Agreement is entered into on this the _____, 2024, by and between the City of Daphne, Alabama (hereinafter referred to as the “City”), and Southern Light, LLC, (hereinafter referred to as the “the Company”).

W I T N E S S E T H :

The City and the Company do hereby mutually covenant and agree as follows:

SECTION 1. Defined Terms. For purposes of this Agreement, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

1.1 “Broadband Services” means wide bandwidth data transmission with an ability to simultaneously transport multiple signals and traffic types and specifically a wired connection with a minimum download speed of 100 megabits per second (“Mbps”) and a minimum upload speed of 20 Mbps.

1.2 “City” means the City of Daphne, Alabama.

1.3 “Code” means the City of Daphne, Alabama Municipal Code of Ordinances, as may from time to time be amended.

1.4 “Company” is Southern Light, LLC, or its successors in interest, in accordance with the provisions of this Ordinance.

1.5 “Governing Body” or “City Council” means the City Council of the City of Daphne, Alabama.

1.6 “Gross Revenues” means all local revenue, in whatever form and from all sources, determined in accordance with generally accepted accounting principles that are received by Company from customers to the Company’s Broadband Services within the City, without deduction for operating expenses, accruals, or any other expenditure. Notwithstanding the foregoing, Gross Revenue shall not include any taxes on services furnished by Company imposed by any municipality, state, or other governmental unit and collected by Company for such governmental unit.

1.7 “Person” means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.

1.8 “Rights-of-way” means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, public ways, or other public rights of way, including public utility easements, dedicated utility strips or rights of way dedicated for compatible uses held by the City or location within the City which shall entitle the City and the Company to use the same for the purpose of installing, operating, repairing and maintaining the System.

1.9 “System” shall mean a system of pipes, transmission lines, meters, equipment and all other facilities associated with the operation of a fiber-optic transmission line by the Company in accordance with the terms and conditions contained in this Agreement.

1.10 “Use Fee” means the fee paid by the Company to the City for locating, maintaining and operating facilities in the Rights-of-way.

SECTION 2. Grant of Authority. The City hereby grants to the Company the non-exclusive and limited authority to construct, install and maintain and operate a fiber-optic transmission line in and along the Rights-of-way in the City (hereinafter referred to as the “System”). The Company shall obtain the appropriate construction permits as required by City Ordinances before constructing, expanding or extending the System within the City pursuant to this Agreement.

2.1 Micro-Trenching: Subject to the review of the City, the Company has informed the City that it will utilize a technique known as “Micro-Trenching” to install Fiber along certain paths throughout the City. The Company will be required to apply for construction permits to conduct

its micro-trenching and the City will review the Company's use of micro-trenching. The City agrees that it will not unreasonably deny applications by the Company to conduct micro-trenching where reasonable to avoid construction or make-ready delays.

2.2 Prior to the commencement or continuation of any construction or operation in the City, the Company shall be duly authorized to do business in Alabama and shall have received any necessary certificate of public convenience and necessity or other required authorization from the Federal Communications Commission or other authorized regulatory body, and all requisite State and City licensing for the work to be performed. Evidence that such authority has been acquired or that it is not required shall be filed with the City upon request of the City.

2.3 All work in the Right-of-way shall be in accordance with the Code and all applicable state and federal standards, local codes and ordinances, and will be done under the regulatory oversight of the City. The Company shall apply for and obtain all required permits from City as specified in the Code before Company shall undertake any construction in the Right-of-way. All new construction will, unless specifically authorized by the City, be placed underground if the City deems necessary for the public convenience and safety and generally to control and regulate the use of the streets as required by Section 11-43-62 of the Alabama Code, as it exists on the date of this Agreement and as it may be amended from time to time. The placement of above ground pedestals, meter bases and related equipment shall be permitted only as specifically set forth in approved permits and only at the direction of the City with respect to the acceptable location for such facilities.

SECTION 3. Compensation.

3.1 As consideration for the use of the City's Rights-of-ways as set forth in this Agreement, the Company shall pay the City an annual Use Fee in an amount equal to the greater of (i) five percent (5%) of its Gross Revenues collected by the Company during each calendar year of operation under this agreement, or (ii) \$7,000. The Company will pay the Use Fee collected from its Customers quarterly during each calendar year, within forty-five (45) days of the close of each quarter. Each Use Fee payment shall be accompanied by a certified report from a representative of the Company, which shows the basis for the computation of all monthly service charges revenue from providing local Broadband Services to Persons located within the City limits during the period for which such payment is made. In the event that the Use Fee payment is not actually received by the City on or before the applicable due date set forth in this section or is underpaid the Company shall pay in addition to the payment, or sum due, interest from the due date at the state legal interest rate of 6% annually (Alabama Code § 8-8-1). If the Company's quarterly Use Fee payments total less than \$7,000 for a calendar year, the Company will pay the difference between the amount of Use Fee payments made in such calendar year and the \$7,000 minimum amount within forty-five (45) days following the end of such calendar year.

3.2 All Use Fee amounts paid shall be subject to audit and recomputation by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the City should conduct a review of Company's books and records and such review indicates a fee underpayment of five percent (5%) or more during the entire period reviewed, the Company shall assume all reasonable documented costs of such audit, and pay same upon demand by the City. All documents pertaining to financial matters, which may be the subject of an audit by the City, shall be retained by the Company for a minimum period of three (3) years.

SECTION 4. Duration and Term. The agreement granted hereunder shall be for an initial term of ten (10) years (the “Initial Term”) commencing on the effective date of this Ordinance and Agreement, unless otherwise lawfully renewed, revoked or terminated as herein provided. Upon the expiration of the Initial Term, the Company or the City shall have the option to renew this Agreement by giving written notice, sixty (60) days before the expiration of the Initial Term, to the other party of that party’s intent to renew this Agreement. Any renewal of this Agreement shall be on terms and for a duration mutually agreed to by the City and the Company.

SECTION 5. Grant of Non-Exclusive Authority. The right to use and occupy the Rights-of-way for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant the use of said Rights-of-way to any person at any time and for any lawful purpose. This Agreement shall not be construed to create any rights beyond the terms, conditions and periods set forth in this Agreement, except as provided herein. The City does not warrant any of the rights granted by this Agreement.

SECTION 6. Reservation of Regulatory and Police Powers. The City, by the granting and approving of this Agreement, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now, or which may be hereafter, vested in the City under the Constitution and the statutes of the State of Alabama to regulate the use of its Rights-of-way by the Company or any person or to charge reasonable compensation for such use, and the Company, by its acceptance of this Agreement, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. The Company acknowledges that its rights are subject to the regulatory and police powers of the City to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such powers.

Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City’s police powers shall be resolved in favor of the latter to the extent that such exercise does not materially erode the essential rights of the company.

SECTION 7. Standards of Service.

7.1 Conditions of Street Occupancy. All portions of the System and all associated equipment installed or erected by the Company pursuant to this Agreement shall be located so as to cause minimum interference with the proper use of the Rights-of-way and with the rights and reasonable convenience of property owners who own property that adjoins any of such Rights-of-way. Company shall present to the City Right-of-Way Official, or to such other individual as directed by the Mayor, plats of all installations to be installed or constructed listing anticipated types of equipment and facilities, properly identifying and describing them by appropriate symbols and marks, and including annotations of all public ways, streets and roads where the work is anticipated. Maps shall be presented in a scale that allows proper review and interpretation and will be filed no less than thirty (30) working days before any installation of said cable or equipment or facilities, and the City shall provide a response no less than 14 days before the work is scheduled. Company shall obtain formal approval prior to the commencement of construction. Should the City require any plan additions or modifications prior to issuing formal approval, the City will promptly notify the Company thereof. The Company shall provide the City Right-of-Way Official

as-built drawings in digital formats that are reasonably acceptable to the Parties within six (6) months of the completion of the construction.

7.2 Restoration of Rights-of-way. If during the course of the Company's construction, operation or maintenance of the System there occurs a disturbance of any Rights-of-way by the Company, it shall, at its expense, replace and restore such Rights-of-way to a condition comparable to the condition of the Rights-of-way existing immediately prior to such disturbance to the satisfaction of the City. The Company shall re-sod disturbed grassed areas and replace all excavated areas, structures, and landscaping to original or better condition in order to minimize the disruption of public property. The work to be done under this Agreement, and the restoration of Rights-of-way as required herein, must be completed within the dates specified in any permits authorizing the work. The Company shall perform the work according to the standards and with the materials specified or approved by the City, or in the case of state or federal highways within the City in accordance with the applicable Department of Transportation standards.

7.3 Relocation at Request of the City. Upon its receipt of reasonable notice, not to be less than forty-five (45) days, except where emergency conditions require shorter notice, the Company shall, at its own expense, protect, support, temporarily disconnect, relocate in the Rights-of-way, or remove from the Rights-of-way, any property of the Company when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, electrical or telecommunications lines, when such installation or construction is being done directly by or for the City. Should the Company refuse or fail to remove its equipment or property as provided for herein within forty-five (45) days after written notification, the City shall have the right to do such work or cause it to be done, and the reasonable cost thereof shall be chargeable to the Company.

7.4 Trimming of Trees and Shrubbery. The Company shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Company to the satisfaction of the City.

7.5 Safety and Permit Requirements. Construction, installation, repair and maintenance of the System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial compliance with applicable federal, state, and local laws, rules and regulations, including all permit requirements and ordinances adopted by the City which are now in effect or are hereafter adopted. The System or parts thereof shall not unreasonably endanger or interfere with the safety of persons or property in the area.

7.6 Minimum Standards. All of the construction by the Company shall conform, at a minimum, to the minimum standards of the Company. In the event there is a conflict between the standards adopted by the Company and any applicable federal, state or local standards, including ordinances adopted by the City, the stricter standard shall apply.

7.7 Obstructions of Rights-of-Way.

A. Except in the case of an emergency, or with the approval of the City Public Works Department and with the consent of the Daphne Police Department, which consent shall not be unreasonably withheld, no Rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.

B. The Company shall not so obstruct the Rights-of-way as to interfere with the natural, free and clear passage of water through the gutters, drains, ditches or other waterways. The Company shall clear the streets of any drill mud, debris and other obstructions that accumulate as a result of the Company's construction activities, and will not permit its activities to create a hazard to any persons or property. In the event that any such drill mud, debris or other obstruction caused by the Company's activities encroaches upon the street, the Company shall take immediate corrective action to remove the same.

7.8 Safety Requirements.

A. The Company shall at all times employ the highest degree of care as is commensurate with the practical operation of its business and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

B. The Company shall install and maintain the System in accordance with the requirements of all applicable regulations of the City, which may be amended from time to time, and in such manner that its operations will not interfere with any installations of the City or of a public utility serving the City. The Company shall meet all City and State requirements for traffic control and notify the City at least twenty-four (24) hours prior to the commencement of work, except in cases of emergency. The Company shall, on the request of any Person holding a permit to move a building temporarily raise or lower its wires to facilitate the moving of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given at least ten (10) business days' advance notice to arrange such temporary wire alterations.

C. All construction, installation, maintenance, and operation of the System or of any facilities employed in connection therewith shall be in compliance with the applicable provisions of the National Electrical Safety Code as prepared by the National Bureau of Standards, the National Electrical Code of the National Council of Fire Underwriters, any standards issued by the FCC or other federal or state regulatory agencies in relation thereto, duly adopted local construction standards, and local zoning regulations. The Company shall comply with ordinances, rules, and regulations established by the City pursuant to the lawful exercise of its police powers and generally applicable to all users of the Rights-of-way.

D. The Company shall maintain a force of employees at all times sufficient to provide safe, adequate and prompt service for the System.

7.9 Least Disruptive Technology. The Company is encouraged to perform construction and maintenance of the System in a manner resulting in the least amount of damage and disruption to the rights-of-way. The Company will be required to use trenchless technology which includes directional drilling or directional boring for any portion of construction or maintenance projects which lie beneath the paved or improved portion of any roadway to which this Agreement applies, unless otherwise approved by the City Council. The City Right-of-Way Official may require trenchless technology in other locations, where circumstances prevent or make open-cut methods impractical. The Company may use either the open-cut method or trenchless technology for construction outside the paved or improved portion of any roadway to which this Agreement applies. The Company shall use directional boring in all areas where no conduit exists, unless otherwise required or approved by the City. The Company shall meet all City and State requirements for traffic control and notify the City at least twenty-four (24) hours prior to the commencement of work, except in cases of emergency.

SECTION 8. Enforcement and Termination of Agreement.

8.1 Notice of Violation. In the event the Company has not complied with the terms of this Agreement, the City shall notify the Company in writing of the nature of the alleged noncompliance.

8.2 Right to Cure or Respond. The Company shall have thirty (30) days from receipt of the notice described in Section 8.1: (a) to respond to the City by contesting the assertion of noncompliance, (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot, for reasons beyond the control of the Company, be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

8.3 Public Hearing. In the event the Company fails to respond to the notice described in Section 8.1 or contests the assertion of noncompliance pursuant to the procedures set forth in Section 8.2, or in the event the alleged default is not remedied within thirty (30) days or by the date projected pursuant to 8.2(c) above, the City shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the City Council which is scheduled at a time not less than fourteen (14) business days therefrom. The City shall notify the Company in writing of the time and place of such meeting and provide the Company with an opportunity to be heard.

8.4 Enforcement. In the event the City, after such meeting, determines that the Company is in default of any provision of this Agreement, the City may pursue any or all of the following remedies:

- A. Seek specific performance of any provision which reasonably lends itself to such a remedy;
- B. Make a claim against any surety or performance bond which may be required to be posted;
- C. Restrain by injunction the default or reasonably anticipated default by the Company of any provision of this Agreement;

D. Seek any other available remedy permitted by law or in equity;

E. In the case of a material default of this Agreement, declare the Agreement to be revoked in accordance with the following:

(1) The City shall give written notice to the Company of its intent to revoke the Agreement on the basis of noncompliance by the Company. The notice shall set forth the exact nature of the noncompliance. The Company shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from the Company, it may then seek termination of this Agreement at a public meeting. The City shall cause to be served upon the Company, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to seek such termination.

(2) At the designated meeting, the City shall give the Company an opportunity to state its position on the matter, after which it shall determine whether or not this Agreement shall be terminated. The Company may appeal such determination to an appropriate state or federal court or agency which shall have the power to review the decision of the City and to modify or reverse such decision as justice may require. Such appeal must be taken within thirty (30) days of the issuance of the determination by the City.

(3) The City may, in its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under this Agreement in lieu of revocation of the Agreement.

8.5 Impossibility of Performance. The Company shall not be held in default or noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control.

SECTION 9. Default.

9.1 Each of the following shall constitute a material default by the Company:

A. Failure to make any payments to the City required to be made as set forth in this Agreement;

B. Failure to maintain a liability insurance policy that is not cured within thirty (30) days following written notice to the Company;

C. Failure to provide or furnish any information required under this Agreement to the City that is not cured within thirty (30) days following written notice to the Company;

D. Any breach or violation of any ordinance, rule or regulation or any applicable safety or construction requirements or regulations that present a threat to health or safety that has not been cured within thirty (30) days written notice;

E. The occurrence of any event relating to the financial status of the Company which may reasonably lead to the foreclosure or other judicial sale of all or any material part of the System or the assets of the Company;

F. The condemnation by a public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the facilities; or

G. If (a) the Company shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the System; (b) a writ of attachment, execution, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (c) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or for any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceeding; or (d) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company.

SECTION 10. Work in Rights-of-Way. Prior to any excavation within the Rights-of-way, the Company shall obtain a permit from the City pursuant to this Agreement, and the work shall be performed in accordance with all applicable ordinances and codes and any subsequent ordinances or regulations that may be adopted by the City. Repair and replacement of the Rights-of-ways due to the Company's installation, removal, relocation, maintenance and repair of its System or facilities shall be accomplished to the satisfaction of the City. Within 45 days after the City approves this Agreement and prior to the commencement of any work under this Agreement, the Company shall deliver to City a performance bond in the amount of \$50,000, payable to City to ensure the appropriate and timely performance of the Company to meet the Company's obligations under this Agreement. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Alabama, and reasonably satisfactory to City Attorney in form and substance. The Company shall be required to replenish any such bond within 30 days after the City draws down upon it.

SECTION 11. Insurance. The Company shall maintain in full force and effect, at its own cost and expense, a comprehensive general liability insurance policy in the amount of \$5,000,000.00 per occurrence and \$10,000,000.00 general aggregate limit for bodily injury and property damage, satisfactory to the City. The City shall be named as an additional insured on the comprehensive general liability insurance policy, and the Company shall provide the City with a certificate of insurance designating the City as an additional insured on each policy and extension or renewal thereof. An endorsement shall be included with the policy that states that the policy shall not be cancelled without giving thirty (30) days' written notice of such cancellation to the City. In addition, the Company shall obtain worker's compensation coverage as required by the laws of the State of Alabama. The City shall be provided with a certificate or certificates of such

coverage. In addition, the Company shall secure any and all other insurance as the Company, in its sole discretion, deems appropriate. Nothing in this paragraph is intended to be a waiver of the City's immunity under State-agent immunity or any other immunity afforded municipalities under Alabama or Federal law.

SECTION 12. Indemnity and Hold Harmless. The Company agrees to indemnify, defend, and hold harmless the City, its elected officers, employees, agents, and representatives, against all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by the City or for which the City may be liable, which arise from the negligence or willful misconduct, of the Company, its employees, agents, or subcontractors arising out of the construction, operation, maintenance, upgrade, repair or removal of the Company's property or equipment except for those claims, costs, losses, expenses, demands, actions, or causes of action which arise solely from the negligence, willful misconduct, or other fault of the City. The City does not and shall not waive any rights against the Company which it may have by reason of this indemnification, or because of the acceptance by, or the Company's deposit with the City of any of the insurance policies described in this Agreement. The indemnification by the Company shall apply to all damages, penalties and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

SECTION 13. Disclaimer of Warranties. The City makes no representation or warranty regarding its rights to authorize the installation or operation of the System on any particular Right-of-way, and the burden and responsibility for making such determination in advance of the installation shall be upon the Company. This Agreement shall not be construed to deprive the City of any rights or privileges which it now has, or may hereafter have, to regulate the use and control of its streets.

SECTION 14. Warranties and Representations. The Company hereby agrees, represents and warrants that it is legally authorized to enter into this Agreement in accordance with all applicable laws, rules and regulations. Furthermore, the Company further agrees, represents and warrants that this Agreement is legal, valid and binding, and that it is required to obtain authorization and consent from the City prior to the construction, installation, operation or maintenance of the System.

SECTION 15. Other Obligations. Obtaining this Agreement does not relieve the Company of its duty to obtain all other necessary permits, licenses, authority and the payment of fees required by any other City, county, state or federal rules, laws or regulations, and the Company is responsible for all work done in the Rights-of-way pursuant to this Agreement, regardless of who performs the work, but in no event will Company be required to pay twice for the same rights.

SECTION 16. Payment of Costs. The Company shall be responsible for all costs associated with the installation, repair and maintenance of the System and all associated equipment including, but not limited to (1) the costs to repair the Rights-of-way due to the installation, repair and maintenance of the System, and (2) the costs incurred in removing or relocating any portion of the System or facilities constructed when required by the City and not by a third party.

SECTION 17. Priority of Use. This Agreement does not establish any priority for the use of the Rights-of-way by the Company or any present or future agreements or permit

holders. In the event of any dispute as to the priority of use of the Rights-of-way, the first priority shall be to the public generally, the second priority to the City, the third priority to the State of Alabama and its political subdivisions in the performance of their various functions, and thereafter, as between other agreement and permit holders, as determined by the City in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of Alabama.

SECTION 18. Notice. Every notice or response required by this Agreement to be served upon the City or the Company shall be in writing and shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid as follows:

The notices or responses to the City shall be addressed as follows:

City of Daphne, Alabama
Post Office Box 400
Daphne, Alabama 36526

With a copy to: Adams and Reese LLP
 Attn: A. Patrick Dungan
 11 N Water St, Ste 23200
 Mobile, AL 36602

The notices or responses to the Company shall be addressed as follows:

Southern Light, LLC
ATTN: Kelly A. McGriff, Esq.
Vice President and Deputy General Counsel
Uniti Group Inc.
107 St. Francis Street, Suite 1800
Mobile, Alabama 36602

The City and the Company may designate such other address or addresses from time to time by giving written notice to the other party as set forth in this section.

SECTION 19. Application. The terms and conditions contained in this Agreement shall apply to all areas within the corporate limits of the City and those areas annexed by the City after the passage and approval of this Ordinance and Agreement.

SECTION 20. Acceptance. The Company's acceptance of this Agreement shall be in writing in a form approved by the City attorney and shall be accompanied by delivery of all insurance certificates, applications, and performance of other requirements relating to commencement of construction as set forth in this Agreement.

SECTION 21. Assignment. The Company's interest in this Agreement shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City Council, which shall not be

unreasonably withheld. The City reserves the right to be reimbursed by the Company for costs incurred by it in reviewing the request for transfer of ownership.

SECTION 22. Miscellaneous. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise. The captions used in connection with the sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement, or be used in interpreting the meanings and provisions of this Agreement.

SECTION 23. Rules of Construction. The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

SECTION 24. Governing Law. This Agreement shall be deemed to have been made in the State of Alabama and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder.

SECTION 25. Severability. If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

SECTION 26. Repealer. Any Ordinance heretofore adopted by the City Council of the City of Daphne, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

SECTION 27. Publication, Effective Date and Acceptance. This Ordinance shall be published in accordance with Applicable Laws. This Ordinance shall become effective only upon receipt of a written unconditional acceptance by the Company of the terms and conditions contained herein within thirty (30) days of the passage of this Ordinance.

With its acceptance, Company shall also deliver a certified or cashier's check, approved by the City, in the amount of Five Thousand Dollars (\$5,000.00) made payable to the City of Daphne, Alabama, as an acceptance fee and insurance certificates as required herein, that have not previously been delivered. The acceptance fee shall be deposited in an account of the City, and shall serve to recover expenses incurred by the City in the granting of this Ordinance. Said expenses shall include attorney's fees and consulting expenses incurred by the City.

[Signature Page to Follow]

ADOPTED AND APPROVED this _____ day of _____, 2024.

CITY OF DAPHNE, ALABAMA

BY: _____
Robin LeJeune, Mayor

ATTEST:

Candace G. Antinarella, MMC, City Clerk

APPROVED AND ACCEPTED:

SOUTHERN LIGHT, LLC

Name Printed _____

Title Printed: _____

Date: _____

**CITY OF DAPHNE, ALABAMA
ORDINANCE 2024-24**

**AN ORDINANCE GRANTING A NON-EXCLUSIVE AUTHORIZATION TO UNITI
FIBER GULFCO, LLC FOR THE PURPOSE OF CONSTRUCTING AND
MAINTAINING A FIBER-OPTIC TRANSMISSION LINE WITHIN THE PUBLIC
RIGHTS-OF-WAY IN THE CITY OF DAPHNE, ALABAMA FOR THE PROVISION OF
BROADBAND SERVICES**

WHEREAS, Uniti Fiber GulfCo, LLC (hereinafter referred to as the “the Company”) desires to maintain and construct a fiber-optic transmission line within public rights-of-way located in the City of Daphne, Alabama (“City”); and

WHEREAS, the Company has requested the right to maintain and construct a fiber-optic transmission line within the corporate limits of the City for the provision of Broadband Services; and

WHEREAS, the City Council wishes to accommodate the Company’s request and grant authorization to allow Company to maintain fiber-optic transmission lines in accordance with the terms and conditions contained herein.

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

The City Council of the City of Daphne does hereby grant to Company a non-exclusive right to construct and maintain a fiber-optic transmission line in the City in and along certain rights-of-way outlined in Exhibit A below, subject to the terms and conditions set forth in the following agreement:

AGREEMENT

This Agreement is entered into on this the _____, 2024, by and between the City of Daphne, Alabama (hereinafter referred to as the “City”), and Uniti Fiber GulfCo, LLC, (hereinafter referred to as the “the Company”).

W I T N E S S E T H :

The City and the Company do hereby mutually covenant and agree as follows:

SECTION 1. Defined Terms. For purposes of this Agreement, the following terms, words and phrases shall have the meanings set forth below. When not inconsistent with the context, words used in the singular number shall include the plural number, and words in the plural number shall include the singular.

1.1 “Broadband Services” means wide bandwidth data transmission with an ability to simultaneously transport multiple signals and traffic types and specifically a wired connection with a minimum download speed of 100 megabits per second (“Mbps”) and a minimum upload speed of 20 Mbps.

1.2 “City” means the City of Daphne, Alabama.

1.3 “Code” means the City of Daphne, Alabama Municipal Code of Ordinances, as may from time to time be amended.

1.4 “Company” is Uniti Fiber GulfCo, LLC, or its successors in interest, in accordance with the provisions of this Ordinance.

1.5 “Governing Body” or “City Council” means the City Council of the City of Daphne, Alabama.

1.6 “Gross Revenues” means all local revenue, in whatever form and from all sources, determined in accordance with generally accepted accounting principles that are received by Company from customers to the Company’s Broadband Services within the City, without deduction for operating expenses, accruals, or any other expenditure. Notwithstanding the foregoing, Gross Revenue shall not include any taxes on services furnished by Company imposed by any municipality, state, or other governmental unit and collected by Company for such governmental unit.

1.7 “Person” means any natural or corporate person, business association or other business entity including, but not limited to, a partnership, sole proprietorship, political subdivision, public or private agency of any kind, utility, successor or assign of any of the foregoing, or any other legal entity.

1.8 “Rights-of-way” means the surface and space above and below any public street, boulevard, road, highway, freeway, lane, alley, sidewalk, parkway, driveway, public ways, or other public rights of way, including public utility easements, dedicated utility strips or rights of way dedicated for compatible uses held by the City or location within the City which shall entitle the City and the Company to use the same for the purpose of installing, operating, repairing and maintaining the System.

1.9 “System” shall mean a system of pipes, transmission lines, meters, equipment and all other facilities associated with the operation of a fiber-optic transmission line by the Company in accordance with the terms and conditions contained in this Agreement.

1.10 “Use Fee” means the fee paid by the Company to the City for locating, maintaining and operating facilities in the Rights-of-way.

SECTION 2. Grant of Authority. The City hereby grants to the Company the non-exclusive and limited authority to construct, install and maintain and operate a fiber-optic transmission line in and along the Rights-of-way in the City (hereinafter referred to as the “System”). The Company shall obtain the appropriate construction permits as required by City Ordinances before constructing, expanding or extending the System within the City pursuant to this Agreement.

2.1 Micro-Trenching: Subject to the review of the City, the Company has informed the City that it will utilize a technique known as “Micro-Trenching” to install Fiber along certain paths throughout the City. The Company will be required to apply for construction permits to conduct

its micro-trenching and the City will review the Company's use of micro-trenching. The City agrees that it will not unreasonably deny applications by the Company to conduct micro-trenching where reasonable to avoid construction or make-ready delays.

2.2 Prior to the commencement or continuation of any construction or operation in the City, the Company shall be duly authorized to do business in Alabama and shall have received any necessary certificate of public convenience and necessity or other required authorization from the Federal Communications Commission or other authorized regulatory body, and all requisite State and City licensing for the work to be performed. Evidence that such authority has been acquired or that it is not required shall be filed with the City upon request of the City.

2.3 All work in the Right-of-way shall be in accordance with the Code and all applicable state and federal standards, local codes and ordinances, and will be done under the regulatory oversight of the City. The Company shall apply for and obtain all required permits from City as specified in the Code before Company shall undertake any construction in the Right-of-way. All new construction will, unless specifically authorized by the City, be placed underground if the City deems necessary for the public convenience and safety and generally to control and regulate the use of the streets as required by Section 11-43-62 of the Alabama Code, as it exists on the date of this Agreement and as it may be amended from time to time. The placement of above ground pedestals, meter bases and related equipment shall be permitted only as specifically set forth in approved permits and only at the direction of the City with respect to the acceptable location for such facilities.

SECTION 3. Compensation.

3.1 As consideration for the use of the City's Rights-of-ways as set forth in this Agreement, the Company shall pay the City an annual Use Fee in an amount equal to the greater of (i) five percent (5%) of its Gross Revenues collected by the Company during each calendar year of operation under this agreement, or (ii) \$7,000. The Company will pay the Use Fee collected from its Customers quarterly during each calendar year, within forty-five (45) days of the close of each quarter. Each Use Fee payment shall be accompanied by a certified report from a representative of the Company, which shows the basis for the computation of all monthly service charges revenue from providing local Broadband Services to Persons located within the City limits during the period for which such payment is made. In the event that the Use Fee payment is not actually received by the City on or before the applicable due date set forth in this section or is underpaid the Company shall pay in addition to the payment, or sum due, interest from the due date at the state legal interest rate of 6% annually (Alabama Code § 8-8-1). If the Company's quarterly Use Fee payments total less than \$7,000 for a calendar year, the Company will pay the difference between the amount of Use Fee payments made in such calendar year and the \$7,000 minimum amount within forty-five (45) days following the end of such calendar year.

3.2 All Use Fee amounts paid shall be subject to audit and recomputation by the City and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the City should conduct a review of Company's books and records and such review indicates a fee underpayment of five percent (5%) or more during the entire period reviewed, the Company shall assume all reasonable documented costs of such audit, and pay same upon demand by the City. All documents pertaining to financial matters, which may be the subject of an audit by the City, shall be retained by the Company for a minimum period of three (3) years.

SECTION 4. Duration and Term. The agreement granted hereunder shall be for an initial term of ten (10) years (the “Initial Term”) commencing on the effective date of this Ordinance and Agreement, unless otherwise lawfully renewed, revoked or terminated as herein provided. Upon the expiration of the Initial Term, the Company or the City shall have the option to renew this Agreement by giving written notice, sixty (60) days before the expiration of the Initial Term, to the other party of that party’s intent to renew this Agreement. Any renewal of this Agreement shall be on terms and for a duration mutually agreed to by the City and the Company.

SECTION 5. Grant of Non-Exclusive Authority. The right to use and occupy the Rights-of-way for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant the use of said Rights-of-way to any person at any time and for any lawful purpose. This Agreement shall not be construed to create any rights beyond the terms, conditions and periods set forth in this Agreement, except as provided herein. The City does not warrant any of the rights granted by this Agreement.

SECTION 6. Reservation of Regulatory and Police Powers. The City, by the granting and approving of this Agreement, does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights now, or which may be hereafter, vested in the City under the Constitution and the statutes of the State of Alabama to regulate the use of its Rights-of-way by the Company or any person or to charge reasonable compensation for such use, and the Company, by its acceptance of this Agreement, agrees that all lawful powers and rights, regulatory power, police power or otherwise, that may be from time to time vested in or reserved to the City, shall be in full force and effect and subject to the exercise thereof by the City at any time. The Company acknowledges that its rights are subject to the regulatory and police powers of the City to adopt and enforce ordinances necessary for the safety and welfare of the public and agrees to comply with all applicable laws and ordinances enacted by the City pursuant to such powers.

Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City’s police powers shall be resolved in favor of the latter to the extent that such exercise does not materially erode the essential rights of the company.

SECTION 7. Standards of Service.

7.1 Conditions of Street Occupancy. All portions of the System and all associated equipment installed or erected by the Company pursuant to this Agreement shall be located so as to cause minimum interference with the proper use of the Rights-of-way and with the rights and reasonable convenience of property owners who own property that adjoins any of such Rights-of-way. Company shall present to the City Right-of-Way Official, or to such other individual as directed by the Mayor, plats of all installations to be installed or constructed listing anticipated types of equipment and facilities, properly identifying and describing them by appropriate symbols and marks, and including annotations of all public ways, streets and roads where the work is anticipated. Maps shall be presented in a scale that allows proper review and interpretation and will be filed no less than thirty (30) working days before any installation of said cable or equipment or facilities, and the City shall provide a response no less than 14 days before the work is scheduled. Company shall obtain formal approval prior to the commencement of construction. Should the City require any plan additions or modifications prior to issuing formal approval, the City will promptly notify the Company thereof. The Company shall provide the City Right-of-Way Official

as-built drawings in digital formats that are reasonably acceptable to the Parties within six (6) months of the completion of the construction.

7.2 Restoration of Rights-of-way. If during the course of the Company's construction, operation or maintenance of the System there occurs a disturbance of any Rights-of-way by the Company, it shall, at its expense, replace and restore such Rights-of-way to a condition comparable to the condition of the Rights-of-way existing immediately prior to such disturbance to the satisfaction of the City. The Company shall re-sod disturbed grassed areas and replace all excavated areas, structures, and landscaping to original or better condition in order to minimize the disruption of public property. The work to be done under this Agreement, and the restoration of Rights-of-way as required herein, must be completed within the dates specified in any permits authorizing the work. The Company shall perform the work according to the standards and with the materials specified or approved by the City, or in the case of state or federal highways within the City in accordance with the applicable Department of Transportation standards.

7.3 Relocation at Request of the City. Upon its receipt of reasonable notice, not to be less than forty-five (45) days, except where emergency conditions require shorter notice, the Company shall, at its own expense, protect, support, temporarily disconnect, relocate in the Rights-of-way, or remove from the Rights-of-way, any property of the Company when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, electrical or telecommunications lines, when such installation or construction is being done directly by or for the City. Should the Company refuse or fail to remove its equipment or property as provided for herein within forty-five (45) days after written notification, the City shall have the right to do such work or cause it to be done, and the reasonable cost thereof shall be chargeable to the Company.

7.4 Trimming of Trees and Shrubbery. The Company shall reasonably compensate the City for any damages, in such amounts as determined by the City, caused by trimming, cutting or removing trees or shrubbery, or shall, at its own expense, replace all trees or shrubs damaged as a result of any construction, installation, repair or maintenance of the System undertaken by the Company to the satisfaction of the City.

7.5 Safety and Permit Requirements. Construction, installation, repair and maintenance of the System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial compliance with applicable federal, state, and local laws, rules and regulations, including all permit requirements and ordinances adopted by the City which are now in effect or are hereafter adopted. The System or parts thereof shall not unreasonably endanger or interfere with the safety of persons or property in the area.

7.6 Minimum Standards. All of the construction by the Company shall conform, at a minimum, to the minimum standards of the Company. In the event there is a conflict between the standards adopted by the Company and any applicable federal, state or local standards, including ordinances adopted by the City, the stricter standard shall apply.

7.7 Obstructions of Rights-of-Way.

A. Except in the case of an emergency, or with the approval of the City Public Works Department and with the consent of the Daphne Police Department, which consent shall not be unreasonably withheld, no Rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.

B. The Company shall not so obstruct the Rights-of-way as to interfere with the natural, free and clear passage of water through the gutters, drains, ditches or other waterways. The Company shall clear the streets of any drill mud, debris and other obstructions that accumulate as a result of the Company's construction activities, and will not permit its activities to create a hazard to any persons or property. In the event that any such drill mud, debris or other obstruction caused by the Company's activities encroaches upon the street, the Company shall take immediate corrective action to remove the same.

7.8 Safety Requirements.

A. The Company shall at all times employ the highest degree of care as is commensurate with the practical operation of its business and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

B. The Company shall install and maintain the System in accordance with the requirements of all applicable regulations of the City, which may be amended from time to time, and in such manner that its operations will not interfere with any installations of the City or of a public utility serving the City. The Company shall meet all City and State requirements for traffic control and notify the City at least twenty-four (24) hours prior to the commencement of work, except in cases of emergency. The Company shall, on the request of any Person holding a permit to move a building temporarily raise or lower its wires to facilitate the moving of such buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given at least ten (10) business days' advance notice to arrange such temporary wire alterations.

C. All construction, installation, maintenance, and operation of the System or of any facilities employed in connection therewith shall be in compliance with the applicable provisions of the National Electrical Safety Code as prepared by the National Bureau of Standards, the National Electrical Code of the National Council of Fire Underwriters, any standards issued by the FCC or other federal or state regulatory agencies in relation thereto, duly adopted local construction standards, and local zoning regulations. The Company shall comply with ordinances, rules, and regulations established by the City pursuant to the lawful exercise of its police powers and generally applicable to all users of the Rights-of-way.

D. The Company shall maintain a force of employees at all times sufficient to provide safe, adequate and prompt service for the System.

7.9 Least Disruptive Technology. The Company is encouraged to perform construction and maintenance of the System in a manner resulting in the least amount of damage and disruption to the rights-of-way. The Company will be required to use trenchless technology which includes directional drilling or directional boring for any portion of construction or maintenance projects which lie beneath the paved or improved portion of any roadway to which this Agreement applies, unless otherwise approved by the City Council. The City Right-of-Way Official may require trenchless technology in other locations, where circumstances prevent or make open-cut methods impractical. The Company may use either the open-cut method or trenchless technology for construction outside the paved or improved portion of any roadway to which this Agreement applies. The Company shall use directional boring in all areas where no conduit exists, unless otherwise required or approved by the City. The Company shall meet all City and State requirements for traffic control and notify the City at least twenty-four (24) hours prior to the commencement of work, except in cases of emergency.

SECTION 8. Enforcement and Termination of Agreement.

8.1 Notice of Violation. In the event the Company has not complied with the terms of this Agreement, the City shall notify the Company in writing of the nature of the alleged noncompliance.

8.2 Right to Cure or Respond. The Company shall have thirty (30) days from receipt of the notice described in Section 8.1: (a) to respond to the City by contesting the assertion of noncompliance, (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot, for reasons beyond the control of the Company, be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

8.3 Public Hearing. In the event the Company fails to respond to the notice described in Section 8.1 or contests the assertion of noncompliance pursuant to the procedures set forth in Section 8.2, or in the event the alleged default is not remedied within thirty (30) days or by the date projected pursuant to 8.2(c) above, the City shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the City Council which is scheduled at a time not less than fourteen (14) business days therefrom. The City shall notify the Company in writing of the time and place of such meeting and provide the Company with an opportunity to be heard.

8.4 Enforcement. In the event the City, after such meeting, determines that the Company is in default of any provision of this Agreement, the City may pursue any or all of the following remedies:

- A. Seek specific performance of any provision which reasonably lends itself to such a remedy;
- B. Make a claim against any surety or performance bond which may be required to be posted;
- C. Restrain by injunction the default or reasonably anticipated default by the Company of any provision of this Agreement;

D. Seek any other available remedy permitted by law or in equity;

E. In the case of a material default of this Agreement, declare the Agreement to be revoked in accordance with the following:

(1) The City shall give written notice to the Company of its intent to revoke the Agreement on the basis of noncompliance by the Company. The notice shall set forth the exact nature of the noncompliance. The Company shall have thirty (30) days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from the Company, it may then seek termination of this Agreement at a public meeting. The City shall cause to be served upon the Company, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to seek such termination.

(2) At the designated meeting, the City shall give the Company an opportunity to state its position on the matter, after which it shall determine whether or not this Agreement shall be terminated. The Company may appeal such determination to an appropriate state or federal court or agency which shall have the power to review the decision of the City and to modify or reverse such decision as justice may require. Such appeal must be taken within thirty (30) days of the issuance of the determination by the City.

(3) The City may, in its sole discretion, take any lawful action which it deems appropriate to enforce the City's rights under this Agreement in lieu of revocation of the Agreement.

8.5 Impossibility of Performance. The Company shall not be held in default or noncompliance with the provisions of this Agreement, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control.

SECTION 9. Default.

9.1 Each of the following shall constitute a material default by the Company:

A. Failure to make any payments to the City required to be made as set forth in this Agreement;

B. Failure to maintain a liability insurance policy that is not cured within thirty (30) days following written notice to the Company;

C. Failure to provide or furnish any information required under this Agreement to the City that is not cured within thirty (30) days following written notice to the Company;

D. Any breach or violation of any ordinance, rule or regulation or any applicable safety or construction requirements or regulations that present a threat to health or safety that has not been cured within thirty (30) days written notice;

E. The occurrence of any event relating to the financial status of the Company which may reasonably lead to the foreclosure or other judicial sale of all or any material part of the System or the assets of the Company;

F. The condemnation by a public authority, other than the City, or sale or dedication under threat or in lieu of condemnation, of all or substantially all of the facilities; or

G. If (a) the Company shall make an assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets, including all or any part of the System; (b) a writ of attachment, execution, levy, possession or any similar process shall be issued by any tribunal against all or any material part of the Company's property or assets; (c) any creditor of the Company petitions or applies to any tribunal for the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official for the Company or for any material parts of the property or assets of the Company under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceeding; or (d) any final order, judgment or decree is entered in any proceedings against the Company decreeing the voluntary or involuntary dissolution of the Company.

SECTION 10. Work in Rights-of-Way. Prior to any excavation within the Rights-of-way, the Company shall obtain a permit from the City pursuant to this Agreement, and the work shall be performed in accordance with all applicable ordinances and codes and any subsequent ordinances or regulations that may be adopted by the City. Repair and replacement of the Rights-of-ways due to the Company's installation, removal, relocation, maintenance and repair of its System or facilities shall be accomplished to the satisfaction of the City. Within 45 days after the City approves this Agreement and prior to the commencement of any work under this Agreement, the Company shall deliver to City a performance bond in the amount of \$50,000, payable to City to ensure the appropriate and timely performance of the Company to meet the Company's obligations under this Agreement. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Alabama, and reasonably satisfactory to City Attorney in form and substance. The Company shall be required to replenish any such bond within 30 days after the City draws down upon it.

SECTION 11. Insurance. The Company shall maintain in full force and effect, at its own cost and expense, a comprehensive general liability insurance policy in the amount of \$5,000,000.00 per occurrence and \$10,000,000.00 general aggregate limit for bodily injury and property damage, satisfactory to the City. The City shall be named as an additional insured on the comprehensive general liability insurance policy, and the Company shall provide the City with a certificate of insurance designating the City as an additional insured on each policy and extension or renewal thereof. An endorsement shall be included with the policy that states that the policy shall not be cancelled without giving thirty (30) days' written notice of such cancellation to the City. In addition, the Company shall obtain worker's compensation coverage as required by the laws of the State of Alabama. The City shall be provided with a certificate or certificates of such

coverage. In addition, the Company shall secure any and all other insurance as the Company, in its sole discretion, deems appropriate. Nothing in this paragraph is intended to be a waiver of the City's immunity under State-agent immunity or any other immunity afforded municipalities under Alabama or Federal law.

SECTION 12. Indemnity and Hold Harmless. The Company agrees to indemnify, defend, and hold harmless the City, its elected officers, employees, agents, and representatives, against all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, which may be asserted against or incurred by the City or for which the City may be liable, which arise from the negligence or willful misconduct, of the Company, its employees, agents, or subcontractors arising out of the construction, operation, maintenance, upgrade, repair or removal of the Company's property or equipment except for those claims, costs, losses, expenses, demands, actions, or causes of action which arise solely from the negligence, willful misconduct, or other fault of the City. The City does not and shall not waive any rights against the Company which it may have by reason of this indemnification, or because of the acceptance by, or the Company's deposit with the City of any of the insurance policies described in this Agreement. The indemnification by the Company shall apply to all damages, penalties and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

SECTION 13. Disclaimer of Warranties. The City makes no representation or warranty regarding its rights to authorize the installation or operation of the System on any particular Right-of-way, and the burden and responsibility for making such determination in advance of the installation shall be upon the Company. This Agreement shall not be construed to deprive the City of any rights or privileges which it now has, or may hereafter have, to regulate the use and control of its streets.

SECTION 14. Warranties and Representations. The Company hereby agrees, represents and warrants that it is legally authorized to enter into this Agreement in accordance with all applicable laws, rules and regulations. Furthermore, the Company further agrees, represents and warrants that this Agreement is legal, valid and binding, and that it is required to obtain authorization and consent from the City prior to the construction, installation, operation or maintenance of the System.

SECTION 15. Other Obligations. Obtaining this Agreement does not relieve the Company of its duty to obtain all other necessary permits, licenses, authority and the payment of fees required by any other City, county, state or federal rules, laws or regulations, and the Company is responsible for all work done in the Rights-of-way pursuant to this Agreement, regardless of who performs the work, but in no event will Company be required to pay twice for the same rights.

SECTION 16. Payment of Costs. The Company shall be responsible for all costs associated with the installation, repair and maintenance of the System and all associated equipment including, but not limited to (1) the costs to repair the Rights-of-way due to the installation, repair and maintenance of the System, and (2) the costs incurred in removing or relocating any portion of the System or facilities constructed when required by the City and not by a third party.

SECTION 17. Priority of Use. This Agreement does not establish any priority for the use of the Rights-of-way by the Company or any present or future agreements or permit

holders. In the event of any dispute as to the priority of use of the Rights-of-way, the first priority shall be to the public generally, the second priority to the City, the third priority to the State of Alabama and its political subdivisions in the performance of their various functions, and thereafter, as between other agreement and permit holders, as determined by the City in the exercise of its powers, including the police powers and other powers reserved to and conferred on it by the State of Alabama.

SECTION 18. Notice. Every notice or response required by this Agreement to be served upon the City or the Company shall be in writing and shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid as follows:

The notices or responses to the City shall be addressed as follows:

City of Daphne, Alabama
Post Office Box 400
Daphne, Alabama 36526

With a copy to: Adams and Reese LLP
 Attn: A. Patrick Dungan
 11 N Water St, Ste 23200
 Mobile, AL 36602

The notices or responses to the Company shall be addressed as follows:

Uniti Fiber GulfCo, LLC
ATTN: Kelly A. McGriff, Esq.
Vice President and Deputy General Counsel
Uniti Group Inc.
107 St. Francis Street, Suite 1800
Mobile, Alabama 36602

The City and the Company may designate such other address or addresses from time to time by giving written notice to the other party as set forth in this section.

SECTION 19. Application. The terms and conditions contained in this Agreement shall apply to all areas within the corporate limits of the City and those areas annexed by the City after the passage and approval of this Ordinance and Agreement.

SECTION 20. Acceptance. The Company's acceptance of this Agreement shall be in writing in a form approved by the City attorney and shall be accompanied by delivery of all insurance certificates, applications, and performance of other requirements relating to commencement of construction as set forth in this Agreement.

SECTION 21. Assignment. The Company's interest in this Agreement shall not be sold, transferred, assigned or otherwise encumbered or disposed of, either by forced or voluntary sale or otherwise, without the prior written consent of the City Council, which shall not be

unreasonably withheld. The City reserves the right to be reimbursed by the Company for costs incurred by it in reviewing the request for transfer of ownership.

SECTION 22. Miscellaneous. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise. The captions used in connection with the sections of this Agreement are for convenience only and shall not be deemed to construe or limit the meaning of the language contained in this Agreement, or be used in interpreting the meanings and provisions of this Agreement.

SECTION 23. Rules of Construction. The parties hereto acknowledge that each party and its counsel have had the opportunity to review and revise this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits thereto.

SECTION 24. Governing Law. This Agreement shall be deemed to have been made in the State of Alabama and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder.

SECTION 25. Severability. If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

SECTION 26. Repealer. Any Ordinance heretofore adopted by the City Council of the City of Daphne, Alabama, which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

SECTION 27. Publication, Effective Date and Acceptance. This Ordinance shall be published in accordance with Applicable Laws. This Ordinance shall become effective only upon receipt of a written unconditional acceptance by the Company of the terms and conditions contained herein within thirty (30) days of the passage of this Ordinance.

With its acceptance, Company shall also deliver a certified or cashier's check, approved by the City, in the amount of Five Thousand Dollars (\$5,000.00) made payable to the City of Daphne, Alabama, as an acceptance fee and insurance certificates as required herein, that have not previously been delivered. The acceptance fee shall be deposited in an account of the City, and shall serve to recover expenses incurred by the City in the granting of this Ordinance. Said expenses shall include attorney's fees and consulting expenses incurred by the City.

[Signature Page to Follow]

ADOPTED AND APPROVED this _____ day of _____, 2024.

CITY OF DAPHNE, ALABAMA

BY: _____
Robin LeJeune, Mayor

ATTEST:

Candace G. Antinarella, MMC, City Clerk

APPROVED AND ACCEPTED:

UNITI FIBER GULFCO, LLC

Name Printed _____

Title Printed: _____

Date: _____