**RECESSED REGULAR MEETING OF THE CITY COUNCIL**
**TUESDAY, SEPTEMBER 18, 2012, AT 6:00 P. M.**
**CITY HALL, PASCAGOULA, MISSISSIPPI**

The City Council of the City of Pascagoula, Mississippi, met at City Hall in a recessed regular meeting on Tuesday, September 18, 2012, at 6:00 p.m. Mayor Maxwell called the meeting to order with the following officials present:

Mayor Robert H. Maxwell
Councilman Joe Abston
Councilman Frank Corder
Councilman Jim Milstead
Councilman Robert Stallworth, Sr.
Councilman Harold Tillman, Jr.
Councilman George L. Wolverton, Sr.

City Manager Joe Huffman
City Attorney Eddie Williams
Asst. City Clerk Brenda Reed
City Clerk/Comptroller Robert J. Parker

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Mayor Maxwell welcomed everyone to the meeting. Councilman Corder then gave the invocation and the pledge of allegiance was recited before the commencing of business.

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Roosevelt Crockett, 1102 Skip Avenue, addressed the Council regarding street repairs and tall grass in his neighborhood. The City Manager will check his concerns.

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Tim Ritter, USN SUPSHIP, addressed the Council and advised that the Mobile Patriots Wheelchair Basketball Team is working on a fundraiser at the Pascagoula Parks & Recreation Building on October 10th or 11th, 2012. Mr. Ritter advised they have a limited budget and requested that the fees for use of the building for this fundraiser program be waived if possible. The group is a 501 (c) 3 organization under the Gulf Health-Infirmary Health System – Infirmary Foundation. Money from fundraisers are used to pay for equipment (playing chairs, basketballs, wheels, uniforms), referees for games, and travel for competition in tournaments. The City Attorney advised he would need to review the request further.

After discussion, Councilman Tillman made a motion to approve the request to waive the $500.00 building deposit pending a review by the City Attorney on this matter. The motion was seconded by Councilman Wolverton and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

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Rebecca Davis, Main Street Director, addressed the Council regarding advertising the resources of the City of Pascagoula for the purchase of awards for the Main Street Gala which will be held on September 27, 2012. The cost of the awards will be $280.00.

Councilman Corder made a motion to advertise the resources of the City of Pascagoula and approve $280.00 to cover the cost of awards needed for the Main Street Gala as recommended. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

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Jeff Story addressed the Council regarding a proposal for a community garden in Pascagoula. He felt this would be a great idea and a good way to get the community involved, including children. Mr. Story stated that he is willing to help and would appreciate some type of funding to start the program. He has met with Jen Dearman, Community and Economic Development Director, about this project and they have identified several parcels for possible use. The Council thanked Mr. Story for his interest in this matter and recommended that he meet with the City Manager to discuss it further.

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Kellie Lamb, with the Mississippi Tobacco Free Coalition of Jackson County, addressed the Council regarding grant funding to work on the adoption of a comprehensive smoke-free ordinance in Pascagoula. Ms. Lamb briefed the Council on this proposal and discussed the positive health effects it would have on the public. She urged the Council to consider the adoption of a smoke-free ordinance and offered to meet with others to discuss it further. A question and answer session followed. The Council thanked Ms. Lamb for attending the meeting tonight and sharing this information.

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**<u>The consent agenda was considered at this time:</u>**

The first items for consideration were minutes of the regular Council meeting of September 4, 2012, and the recessed regular Council meeting of September 13, 2012, as recommended by Brenda Reed, Asst. City Clerk.

Councilman Corder made a motion to adopt and approve minutes of the regular Council meeting of September 4, 2012, and the recessed regular Council meeting of September 13, 2012, as recommended. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

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Minutes of the Recreation Commission meeting of September 5, 2012, were acknowledged by the Council.

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Minutes of the Pascagoula Redevelopment Authority meeting of August 9, 2012, were acknowledged by the Council. It was noted that the time should be 10:00 a.m. on the minutes.

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The next item for consideration was Budget Amendment No. 12.50 in the General Fund and the Utility Fund to reallocate budget provisions as necessary as recommended by Bobby Parker, City Clerk/Comptroller. The budget amendment is spread on the minutes as follows:

**City of Pascagoula**
**Budget Amendment # 12.50**
**September 18, 2012**

| | Current Budget | Budget Amendment | Amended Budget |
|---|---|---|---|
| **General Fund** | | | |
| **Expenditures:** | | | |
| **Grants Administration:** | | | |
| **Personal Services:** | | | |
| **Salaries and Wages** | 130,547 | 53,314 | 183,861 |
| **Merit** | 3,598 | 1,466 | 5,064 |
| **Education Pay** | 2,400 | 600 | 3,000 |
| **Health Insurance** | 32,100 | 10,700 | 42,800 |
| **Retirement** | 21,112 | 7,205 | 28,317 |
| **Social Security** | 9,976 | 3,434 | 13,410 |
| **Medicare** | 2,333 | 803 | 3,136 |
| **Total Expenditures-General Fund** | 202,066 | 77,522 | 279,588 |
| **Utility Fund** | | | |
| **Expenditures:** | | | |
| **Utility Administration:** | | | |
| **Personal Services:** | | | |
| **Salaries and Wages** | 155,450 | (53,314) | 102,136 |
| **Merit** | 4,275 | (1,466) | 2,809 |
| **Education Pay** | 3,000 | (600) | 2,400 |

| | | | |
|---|---|---|---|
| - Health Insurance | 21,400 | (10,700) | 10,700 |
| - Retirement | 21,171 | (7,205) | 13,966 |
| - Social Security | 10,089 | (3,434) | 6,655 |
| - Medicare | 2,360 | (803) | 1,557 |
| - | | | |
| **Total Expenditures-Utility Fund** | **217,745** | **(77,522)** | **140,223** |
| **Net Change in Fund Balance -** | | | |
| **General Fund** | | **(77,522)** | |
| **Net Change in Fund Balance -** | | | |
| **Utility Fund** | | **77,522** | |
| **To amend budget to provide expenditure authority under the Grant Administration Department for an employee transferred there from the Utility Administration Department.** | | | |

Councilman Corder made a motion to approve the budget amendment as presented and recommended. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

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The next item for consideration was Budget Amendment No. 12.51 in the Community Development Fund for the CIAP project for the Magnolia St. Birding Pier as recommended by Bobby Parker, City Clerk/Comptroller. The budget amendment is spread on the minutes as follows:

**City of Pascagoula**
**Budget Amendment # 12.51**
**September 18, 2012**

| | Current Budget | Budget Amendment | Amended Budget |
|---|---|---|---|

| | | | |
|---|---|---|---|
| **Community Development Fund** | - | | - |
| | - | | - |
| **Expenditures:** | | | |
| **Community Development:** | | | |
| **Other Services & Charges:** | | | |
| **Program Outlay & Expense** | - | 6,510 | 6,510 |
| **Total Expenditures** | - | 6,510 | 6,510 |
| **Net Change in Fund Balance -** | | | |
| **Community Development Fund** | | (6,510) | |
| **To amend budget to provide expenditure authority for the CIAP project for the Magnolia St. Birding Pier through project completion.** | | | |

Councilman Corder made a motion to approve the budget amendment as presented and recommended. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

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The next item for consideration was Budget Amendment No. 12.52 in the Community Development Fund for the amendment to the DWFP Environmental Trail grant revenue and related expenses as recommended by Bobby Parker, City Clerk/Comptroller. This amendment has no effect on the Community Development Fund's fund balance. The budget amendment is spread on the minutes as follows:

**City of Pascagoula**
**Budget Amendment # 12.52**
**September 18, 2012**

| | Current Budget | Budget Amendment | Amended Budget |
|---|---|---|---|

| | | | |
|---|---|---|---|
| | - | - | - |
| **Community Development Fund** | - | | - |
| - | - | | - |
| **Revenues:** | | | |
| - **Grants:** | | | |
| **DWFP Environmental Trail Grant** | **90,000** | **10,000** | **100,000** |
| **Transfers:** | | | |
| **Transfer From General Fund** | **20,000** | **5,000** | **25,000** |
| **Total Revenues** | | **15,000** | **125,000** |
| **Expenditures:** | | | |
| **Community Development:** | | | |
| - **Other Services & Charges:** | | | |
| - **Program Outlay & Expense** | **110,000** | **15,000** | **125,000** |
| - | | | |
| **Total Expenditures** | **110,000** | **15,000** | **125,000** |
| **Net Change in Fund Balance** | | **-** | |
| **To amend budget to provide expenditure authority of the amended DWFP Environmental Trail Grant & match for the River Bridge Pathway as approved by Council on April 17, 2012.** | | | |

Councilman Corder made a motion to approve the budget amendment as presented and recommended. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

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The next item for consideration was Budget Amendment No. 12.53 in the General Fund for the amended match on the DWFP Environmental Trail Grant as recommended by Bobby Parker, City Clerk/Comptroller. This amendment has no effect on the General Fund's fund balance. The budget amendment is spread on the minutes as follows:

**City of Pascagoula**
**Budget Amendment # 12.53**
**September 18, 2012**

| | Current Budget | Budget Amendment | Amended Budget |
|---|---|---|---|
| **General Fund** | - | | - |
| - | - | | - |
| **Expenditures:** | | | |
| - | | | |
| **General Administration:** | | | |
| **Transfers:** | | | |
| **Transfer to Comm. Dev. Fund** | **20,000** | **5,000** | **25,000** |
| **Parks & Recreation:** | | | |
| **Other Services & Charges:** | | | |
| **Professional Serv. - Other** | **13,033** | **-5,000** | **8,033** |
| - | | | |
| **Total Expenditures** | **33,033** | **-** | **33,033** |
| **Net Change in Fund Balance -** | | | |
| **General Fund** | | **-** | |
| **To amend budget to provide expenditure authority of the amended DWFP Environmental Trail Grant match for the River Bridge Pathway as approved by Council on April 17, 2012.** | | | |

Councilman Corder made a motion to approve the budget amendment as presented and recommended. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

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The next item for consideration was a consultant selection for professional services for the Hospital Road Widening Project as recommended by Jaci Turner, Program Manager, and the Selection Committee. They recommended Brown, Mitchell & Alexander, Inc., Gulfport, MS, based on the review of proposals received. Ms. Turner advised that MDOT has reviewed the selection process and concurred with this recommendation.

Councilman Corder made a motion to approve the selection of Brown, Mitchell & Alexander, Inc. for professional services on the Hospital Road Widening Project as recommended and authorize the City Manager to execute the related documents. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

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The next item for consideration was the renewal of flood insurance for two City locations with Hartford Insurance through Lemon Mohler Insurance Agency as recommended by Jeane Bull, Assistant Comptroller. The renewal cost is $9,804.00 at current values of insurance. This is a zero increase from last year. The staff recommends Option 2, which gives the City an additional $12,300.00 in coverage for an increase in premium of $964.00. Ms. Bull also requested approval of a manual check for timely payment.

Councilman Corder made a motion to approve Option 2 for the renewal of flood insurance for two City locations with Hartford Insurance through Lemon Mohler Insurance Agency as recommended and authorize a manual check for $964.00. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

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The next item for consideration was the final plat for the Live Oak Subdivision Addition Project and authorization for signatures as appropriate to allow the plat to be recorded as recommended by Jaci Turner, Program Manager, and Compton Engineering, Inc. There is no cost associated with this action.

Councilman Corder made a motion to approve the final plat for the Live Oak Subdivision Addition Project as recommended and authorize signatures as appropriate to allow the plat to be recorded. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

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The next item for consideration was the final plat for the Riverfront Addition Project and authorization for signatures as appropriate to allow the plat to be recorded as recommended by Jaci Turner, Program Manager, and Compton Engineering, Inc. There is no cost associated with this action.

Councilman Corder made a motion to approve the final plat for the Riverfront Addition Project as recommended and authorize signatures as appropriate to allow the plat to be recorded. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

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The next item for consideration was a payment of $287,164.43 to D&D Construction Company, Inc., Lucedale, MS, for the Pascagoula Historic Pathway and Boat Launch Project, subject to submittal of the MDOT Site Manager documents to support payment, as recommended by Jaci Turner, Program Manager, and Neel Schaffer, Inc. This is Project No. STP-0370-00(018)LPA/105401-701000.

Councilman Corder made a motion to approve a payment of $287,164.43 to D&D Construction Company, Inc. for the Pascagoula Historic Pathway and Boat Launch Project, subject to submittal of the MDOT Site Manager documents to support payment as recommended, and authorize a manual check upon receipt of those documents. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

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Next for consideration was the annual renewal of the Employee Crime Policy (#CCP0023970-16) with Fidelity and Deposit Company of Maryland through Stewart-Sneed-Hewes Insurance, for the period October 22, 2012, through October 22, 2013, as recommended by Jeane Bull, Assistant Comptroller. The renewal rate is $1,636.00 and reflects no increase from last year.

Councilman Corder made a motion to approve the annual renewal of the Employee Crime Policy with Fidelity and Deposit Company of Maryland through Stewart-Sneed-Hewes Insurance for the period October 12, 2012, through October 22, 2013, as recommended. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE".

Councilmen Abston “AYE”, Corder “AYE”, Milstead “AYE”, Stallworth “AYE”, Tillman “AYE”, and Wolverton “AYE”. (Approved 9-18-12)

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

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Next for consideration was the renewal of a contract with the Boys and Girls Club of Jackson County, Inc. for the use and operation of the Andrew Johnson Recreation Center for $30,000.00 as recommended by Darcie Crew, Parks & Recreation Director. The contract period is from October 1, 2012, through September 30, 2013. This is the same amount as last year.

The contract is spread on the minutes as follows:

**CONTRACT BETWEEN THE BOYS AND GIRLS CLUBS OF JACKSON COUNTY, INC., AND THE CITY OF PASCAGOULA, PERTAINING TO THE USE AND OPERATION OF THE ANDREW JOHNSON RECREATION CENTER**

On the 1st day of October, 2012, the City of Pascagoula, Mississippi, a municipal corporation, (“City”) and the Boys and Girls Clubs of Jackson County, Inc., a non-profit corporation (“Contractor”) have entered into this contract, subject to the terms and conditions appearing hereinafter.

**WHEREAS**, the Contractor has developed and successfully demonstrated the capacity to operate neighborhood-based recreational and educational programs which serve to improve quality of life, reduce the propensity toward juvenile crime, and provide educational enrichment for its clients; and

**WHEREAS**, the Contractor will employ some of its own assets and resources in the operation of the Andrew Johnson Recreational Center (“Center”) and thereby increase the value of the services provided to the City; and

**WHEREAS**, the Contractor’s program is a community service which has been offered to the City on a continuing basis; and

**WHEREAS**, the City desires to engage the Contractor to provide these services;

**NOW, THEREFORE, THE CITY FOR AND IN CONSIDERATION** of the covenants and agreements hereinafter enumerated to be kept and performed by the Contractor, the City hereby agrees to pay the Contractor the sum of $30,000.00 payable for a period of one year from October 1, 2012, through September 30, 2013, which shall be the term of the contract. These funds will be paid in quarterly payments of $7,500.00, which shall be paid on written requests therefor delivered to the City Manager. In consideration of the covenants and agreements made by the City, the Contractor agrees that it shall be responsible for and shall have exclusive control over the management and disbursement of such funds paid to it by the City and that the funds received under this contract shall be used only for the purpose of operating the Center and grounds, including playground and parking lot.

In order to carry out the intent and purposes of this contract the Contractor agrees to do the following:

1. Provide proper supervision of the Center and grounds during its use by the Contractor.
2. Provide its own cleaning supplies and to provide proper care and cleaning of the Center.
3. Provide productive programs during the Contractor's hours of operation for youths 5-18 years of age who are residents of Pascagoula.
4. Provide a minimum of a six (6) week summer camp program for youths 5-18 years of age during the weeks that school is not in session.
5. Provide holiday day camps for its members during some holiday breaks.
6. To provide that the hours of operation of the Center for the Contractor's programs will be approximately 10:00 a.m. to 2:00 p.m. for administrative duties, 2:00 p.m. to 6:00 p.m. for after school programming, Monday through Friday while schools are in session and 8:00 a.m. to 5:30 p.m. Monday through Friday when schools are not in session.

7. Be responsible for any damage done to the Center and grounds during its hours of operation.
8. Notify the Parks and Recreation Department of any changes in the schedule of activities. Changes in any schedule must be approved by the Director of the Parks and Recreation Department. Changes must be made at least thirty days in advance.
9. To exercise reasonable care in securing the Center against theft and vandalism and to maintain the Center and grounds in good order.
10. To not alter, renovate, enlarge or remodel the Center or grounds without written approval from the City.
11. To provide worker's compensation insurance as required by law for the term of this contract.
12. Upon request, to provide the City with an account of all sums received and disbursed pursuant to this contract.
13. Not to allow any other organization to use any part of the Center or grounds without permission from the City.
14. To charge patrons a fee for use of the Center for special events ONLY, such as tournaments, dances, and charitable fund raising activities. This does not affect the right of the Contractor to charge regular membership dues to its members. Charges for use of the Center shall be within the discretion of the Contractor, which shall not be unreasonable and the revenue therefrom shall be used for the sole purpose of defraying expenses of maintenance of equipment, to purchase equipment, and to expand programs at the Center.
15. To purchase or accept donations of additional equipment for use at the Center, e.g., pool tables, weight room apparatus, and the like.

The City agrees to do the following:

1. Pay all utility bills for the Center.
2. Provide proper supervision of the Center and grounds for general public use at the City's discretion.
3. Provide routine maintenance, including grass cutting and other grounds work, repair walls, doors, restrooms, and floors.
4. Permit the use of the Center by private groups during the hours that the Contractor is not operating the Center.
5. Manage all facets of swimming pool operations, including staffing and proper water treatment levels.
6. Make any alteration to the Center and grounds as the City deems to be necessary.
7. Maintain adequate fire and extended coverage insurance on the Center.
8. To permit the Contractor in carrying out its programs to use the City-owned equipment at the Center, including but not limited to mats, foosball and table tennis tables, basketball goals, televisions, and television room.

The Contractor agrees to comply with the laws of the City, the State of Mississippi, and the United States in the performance of its obligations under this contract.

The Contractor understands that upon violation of any material term or condition of this contract the City may terminate it.

The Contractor agrees to comply with the terms of the Civil Rights Act of 1964 assuring that no person will be excluded from participation in or be denied benefits of referral services under the terms of this contract or otherwise be subjected to discrimination based on grounds of race, sex, color, national origin, or handicap.

The Contractor understands that if during the City's fiscal year actual revenues of the City decrease below the amount which has been projected by the City to sustain the operating budget of the City, the City may declare this contract null and void and no liability shall accrue to either party as a result thereof.

Notwithstanding any other provision of this contract, the City retains the right to terminate this contract upon thirty days written notice provided to the Contractor.

During the term of this contract the Contractor shall maintain in effect liability and comprehensive insurance which shall name the City as an additional insured. The limits of the policy shall be approved by the Director of the Parks and Recreation Department.

This contract shall replace and supercede any prior contract between the City and Contractor pertaining to the Center.

Signed by the undersigned duly authorized officers of the City and Contractor on the date appearing above.

City of Pascagoula

By:_____
Robert Maxwell
Mayor

Attest:

_____
Brenda J. Reed
Asst. City Clerk

Boys and Girls Clubs of
Jackson County, Inc.

By:_____
President

Attest:

_____
Executive Director

Councilman Corder made a motion to approve the contract for services at the Andrew Johnson Recreation Center by the Boys and Girls Clubs of Jackson County Inc., in the amount of $30,000.00 for the period from October 1, 2012, through September 30, 2013, as recommended and authorize the Mayor to execute the related documents. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

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The next item for consideration was a Mississippi eChildcare (ECC) Provider Agreement with Xerox as recommended by Darcie Crew, Parks & Recreation Director. This will provide fingerprint scanners for a licensed childcare facility to provide timekeeping and attendance records as well as provide the State's payment for the subsidized attendees to the City effective September 19, 2012. There is no charge to participate in the program.

Councilman Corder made a motion to authorize the City Manager to execute a Mississippi eChildcare (ECC) Provider Agreement with Xerox to provide fingerprint scanners for licensed child care facility to provide timekeeping and attendance records as well as provide the State's payment for the subsidized attendees to the City effective September 19, 2012, as recommended. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

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The next item for consideration was the annual renewal of a contract with Southern Financial Systems, Hattiesburg, MS, for collection of delinquent utilities accounts due the City of Pascagoula as recommended by Jerri Rainey, Utilities Business Manager.

The contract is spread on the minutes as follows:

**CONTRACT BETWEEN THE CITY OF PASCAGOULA, MISSISSIPPI**
**AND**
**SOUTHERN FINANCIAL SYSTEMS, INC.,**
**FOR COLLECTION OF DELINQUENT UTILITIES ACCOUNTS**
**DUE TO THE CITY OF PASCAGOULA, MISSISSIPPI**

This contract is entered into as of the _____ day of _____, 2012, between the City of Pascagoula, Mississippi, ("City"), and Southern Financial Systems, Inc., ("Collector"). As used

herein, the phrase, “delinquent utility accounts” shall include all past due amounts owed to the City of Pascagoula for the provision of gas, water, and sewer services to residential, commercial, industrial, institutional and governmental clients to whom utility services are/or have been provided by the City.

RECITALS

WHERAS, a considerable backlog of unpaid utility accounts have accrued in the city Utility Department and which are in need of collection; and

WHEREAS, the City does not have sufficient personnel to devote to the collection of these accounts and wishes to contract with Collector for collection of these delinquent accounts on a contingency basis; and

WHEREAS, Section 21-17-1, Mississippi Code of 1972, authorizes a municipality to employ an attorney or private collections agency to collect delinquent utility accounts; and

WHEREAS, Section 21-17-1, Mississippi Code of 1972, as amendment effective July 2001, there shall be due the City from any person whose delinquent payment is collected, a surcharge, in addition to the delinquent payment of not to exceed twenty-five percent (25%) of the delinquent payment for collections made within this state and not to exceed fifty percent (50%) of the delinquent payment for collection made outside of this state; and

WHEREAS, the Collector has offered to collect unpaid and delinquent utility accounts as defined hereinabove for and on behalf of the City;

NOW, THEREFORE, THE CITY AND THE COLLECTOR CONTRACT AND AGREE AS FOLLOWS:

1. The term of this contract shall be for the period beginning October 1, 2012, and ending September 30, 2013. It is in effect for one year from its effective date. The City of Pascagoula shall have the option to renew it on successive one (1) year terms.

With or without cause, either party hereto may terminate this contract upon sixty days (60) written notice. If the contract is so terminated, the Collector shall be paid its fees for any money collected to the date of termination.

2. The Collector agrees to collect such delinquent utility accounts as may be assigned by the City.
3. Payment for delinquent utility accounts on accounts assigned to the Collector may be received by the City at the Utility Department, or at the office of the Collector. The Collector shall be entitled to the collection fee prescribed, herein, regardless of where payment of the past due utility account is made.
4. The Collector shall be paid a fee of twenty-five percent (25%) of all monies collected on accounts assigned to the Collector.
5. Each month the Collector shall remit to the City all monies collected by the Collector during the month by the 10th of the following month. Thereafter on a monthly basis the City shall pay to the Collector the contingency fee of all monies collected on accounts assigned to the Collector whether payment was received by the Collector or was received by the City at the Utility Department.
6. When a delinquent account is collected either by the Collector, or the City a receipt shall be issued to the person or party paying the account, showing the name of the responsible party, the account number for which payment is made, the date and the amount paid as well as the name of the person making the payment.
7. The City agrees to provide notice to any person or party having a delinquent utility account that, once the same is referred to the Collector for collection, an additional fee of twenty-five percent (25%) of the amount due on the account shall automatically be added. The entire amount of all delinquent utility accounts collected by the Collector

shall be remitted to the City and shall not be reduced by the amount of the collection fees.

8. The Collector, on a monthly basis, shall submit to the City an itemized claim for its fees for consideration of payment by the City Council. The City agrees to remit commissions owed to the Collector within five (5) days of the City Council meeting approving the disbursement of funds.
9. Neither the City, nor any officer of any employee thereof shall be liable, civilly or criminally, for any wrongful act or unlawful act or omission of the Collector.
10. The parties agree that they shall abide by the terms of Section21-17-1, Mississippi Code of 1972; Circular No. 12 promulgated by the State Auditor's Office and any amendments thereto; the Federal Fair Debt Collection Practices Act (if applicable); and any state law dealing with the collection of debts.
11. The Collector may only file civil actions to collect delinquent accounts if authorized by the City, acting through proper authority, under such conditions the City may require. The Collector is authorized, however, to use the garnishment process for the collection of delinquent utility accounts, with the understanding that Collector shall pay all costs thereof, which costs shall be reimburse to Collector as soon as the same can be recovered by the City on the delinquent account or accounts in question.
12. The Collector shall give a surety bond issued by a company qualified to issue such bonds in Mississippi, in the amount of at least $20,000.00, a copy of which shall be filed with the City. The City shall have the right to examine the Collector's records pertaining to the accounts assigned to it by the City during regular business hours on at least 24 hours advance notice. The City shall make the best efforts to assure that all delinquent utility accounts forwarded to the Collector are valid and legally

enforceable debtors and the city agrees to provide, wherever requested to do so by Collector, a written verification of the account or certified copy of judgments, if any, upon which the claim is based by the City.

13. The Collector agrees to furnish to the appropriate City personnel, access to its computer system so that City personnel may verify payments on accounts that are received by Collector and verify any balances that might be due for collection by the city when payment is tendered to the City at its Utility Office. The City agrees that all such access codes as provided by the collector for these purposes shall remain confidential and shall not be, under any circumstances, made available to any member of the public, or any city employees not directly involved in the collection of utility accounts.

14. Collector agrees that it will indemnify and hold the city harmless from any claims, causes of action, assessments, attorney fees, expenses of litigation, or any costs associated with any claim brought against the City and arising out of any negligence on the part of the Collector in the performance of the terms of this contract. No modifications of this contract shall be allowed except as may be agreed upon by the parties in writing and subject to the approval of the appropriate officers of Collector and the City Council of the City of Pascagoula. The parties agree that this writing constitutes their entire agreement and that the same shall be enforceable pursuant to the laws of the State of Mississippi and further agree that the venue for any legal action taken by either party for the enforcement of any term or provision of this contract shall be in Jackson County, Mississippi. The parties further agree that, should any portion of this contract be deemed by a Court of competent jurisdiction to be invalid or unenforceable, that the invalidity or unenforceability of such portion of

this contract shall not operate to invalidate the remaining terms and conditions set forth herein and, as to those terms and conditions, the same shall remain fully enforceable and in effect as between the parties.

Witness the signatures of the parties to this agreement by the through their authorized representatives on the dates hereinafter set forth.

CITY OF PASCAGOULA, MISSISSIPPI

By: _____
CITY MANAGER

SOUTHERN FINANCIAL SYSTEMS, INC.

By: _____

Title: _____

Councilman Corder made a motion to approve the annual renewal of the contract with Southern Financial Systems, Inc. for the collection of delinquent utilities accounts as recommended and authorize the City Manager to execute the related documents. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

*****

Next for consideration was the annual renewal of the Employee Assistance Program (EAP) Contract with Singing River Services, Gautier, MS, as recommended by Brenda Germany, Human Resources Generalist.

The contract is spread on the minutes as follows:

**PROPOSAL**
**FOR**
**LIFE CARE PLUS SERVICES**

**THIS AGREEMENT**, made the ___ day of _____ between Singing River Mental Health/Mental Retardation services, Region XIV, A.K.A. Singing River Services (the provider), and the CITY OF PASCAGOULA, (the Subscriber).

RECITALS

**WHEREAS**, SINGING RIVER SERVICES is a provider of mental health services for Region XIV whose general objective is to identify, assess, and treat mental health problems.

**WHEREAS**, the Provider has main facilities at 3407 Shamrock Court, Gautier, Mississippi 39553, as well as branch offices covering Jackson and George Counties.

**WHEREAS**, for the convenience and appearance of improved confidentiality for beneficiaries, the Provider will contract Assessment and Counseling Services during evening hours by appointment.

**WHEREAS**, the Provider recognizes the need to assist employers such as "the Subscriber" in managing and resolving employee problems such as poor job performance, absenteeism, employee/employer relations, health insurance abuse, and on-the-job accidents.

**WHEREAS**, the Provider has developed an employer/employee benefit program (the "Life Care Plus Program" or "EAP") designed to identify and provide counseling for employees and dependents who have personal problems that may contribute to unacceptable job performance.

**WHEREAS**, the Subscriber employs approximately 267 employees as of the date of this agreement and the Subscriber wants to utilize the Life Care Plus Program.

**WHEREAS**, the Subscriber's intention is to make available to its employees, their dependents and/or family members (collectively "Beneficiaries") who are participating in, or, who are eligible to participate in the Subscriber's self-funded Life Care Plus Program, a range of substance abuse/chemical dependency and mental health treatment services.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. PROVIDER'S OBLIGATION:

The PROVIDER will use its best efforts to provide the following services ("EAP Services") from October 1, 2012 to September 30, 2013 (the "Contract Period") for beneficiaries.

A. General Program Development Services:

1. Emergency Crisis Services: The Provider agrees to provide an "emergency help line" telephone consultation service operated twenty-four (24) hours per day and seven (7) days per week. Normal EAP counseling hours are 8:00 a.m. – 5:00 p.m., Monday through Friday.

2. Arranging for Services: The Provider agrees to provide EAP counselor for face-to-face confidential emergency consultation with the Beneficiary within twenty-four (24) hours over the weekdays or forty-eight (48) hours over the weekend, if requested by the Beneficiary; the Provider agrees that Beneficiaries can reach an EAP counselor by making a phone call to Singing River Services from 8:00 a.m. to 5:00 p.m. Monday through Friday for an appointment. Telephone referrals will be made in severe crisis to the emergency room and support groups, etc., so that the recovery process can commence.

3. Extent of Services and Exclusions: Each beneficiary may have access to all mental health services available through the contractor at no out-of-pocket expense and at no charge to the Subscriber's insurance program subject to the following limitations:

   a. Services normally provided by the Provider are covered. Service needs that are not normally provided at any of the Singing River Services facilities are not covered (i.e., hospitalization).

   b. A legal DUI assessment fee of $100.00 will be charged to the Beneficiary arrested for DUI offense and who seeks counseling by referral to Singing River Services.

   c. Receipt of funds pursuant to this agreement does not preclude the provider from charging other third parties covering beneficiaries for services. This includes Medicaid and insurance covering primarily other family members and special grant funds. In such event, funds received pursuant to this agreement will be used to pay co-payments, if any.

   d. Room and board will be provided at The Stevens Center only. A Deductible of $250.00 will be charged to the beneficiary participating in the Stevens Center Residential treatment. The balance is covered by this contract.

e. A deductible of $100.00 will be charged to the beneficiary participating in the Phoenix Intensive Outpatient Alcohol and Drug Program. The balance will be covered by the contract.

f. Clinical visits are not to exceed six (6) visits per client.

4. Liaison Services: Provider agrees to provide an EAP coordinator to serve as a Liaison between the Subscriber and the Provider, to plan and help implement wellness and prevention programming, to encourage employee participation in the EAP, and to gain the recognition of problems which may later impede their work performance.

B. Problem Assessment, Case Management, and Referral Services:

1. The EAP coordinator (or a member of Provider's Staff) agrees to refer Subscriber's employees and/or their dependents to an appropriate competent professional treatment program with Singing River Services at no cost or, if necessary, to an outside resource at the expense of the beneficiary for services not covered by this agreement. Such referrals and general assessments shall include the beneficiary's problem list, social summary, assessment of mental status, tentative diagnosis, and recommended treatment.

2. The Provider agrees to supply the Subscriber's supervisors with a supervisory guide for making referrals to the EAP. The EAP counselor will assist the employee in formulating an assistance plan, will identify appropriate therapeutic resources, and will document employee progress therein.

3. The Provider agrees to arrange, as appropriate and as needed, ongoing consultation with Subscriber regarding special handling or re-integration of employees after treatment.

4. The Provider will suggest that any employee seeking counseling regarding job or employer dissatisfaction to contact the Subscriber personnel manager or designee. However, the EAP counselor will counsel with any employee regarding the employee's attitudes or feelings as relates to job satisfaction.

5. The Provider, at its discretion, may discontinue treatment services for beneficiaries who seek such referrals on a continuous basis for the same problems without utilizing recommended solutions or who violate program rules.

C. Reporting Services:

1. The Provider agrees to furnish to any Subscriber's supervisor, who so requests, a periodic participation report for beneficiaries who have sought EAP counseling or treatment upon referral from said supervisor; said beneficiary must give written consent for such reporting to be shared with supervisor.

2. Quarterly reports regarding employee usage will be submitted to the Human Resources Director.

II. SUBSCRIBER'S OBLIGATIONS:

The Subscriber will cooperate fully with the Provider so as to allow the Provider to Discharge its obligations and provide the services described herein. Additionally, the Subscriber agrees:

A. Commitments:

1. To issue a policy directive announcing the availability of EAP services to its employees and shall allow on-the-job time for training sessions for supervisors as well as orientation programs for non-supervisory employees which sessions will be made available by the Provider. The Subscriber will assist in disseminating promotional and educational materials designed to encourage utilization.

2. To pay the Provider $3,500.00 per year, in consideration of the Life Care Plus services performed by the Provider for the duration of the contract period. The agreement shall be extended automatically under the same terms unless either party shall notify the other party in writing at least thirty (30) days prior to the end of the initial term or any renewal terms that alterations or termination is desired. Fee rates remain the same until the anniversary date and may be renegotiated before continuance of EAP and counseling services and initiation of a new contract.

3. To submit to the Provider on fifth (5th) day of the first month an initial list of employees qualifying for EAP services and updating said list monthly.

B. Miscellaneous:

1. Licensure: The Provider represents and warrants that it is duly licensed and certified to provide covered services in Mississippi, where covered services to beneficiaries are rendered and shall maintain such standing while an agreement is in effect.

2. Professional Liability Insurance Coverage: The Provider, at its sole cost and expense, shall provide and maintain such policies of general liability

and professional liability insurance, other insurance as shall be necessary to insure the Provider and its personnel and agents against any claims for damages arising by reason of personal injuries or death, directly or indirectly in connection with the performance of any service provided hereunder.

3. Confidentiality of Records: Both the Subscriber and Provider agree that mental health and substance abuse records of beneficiaries shall be treated as confidential so as to comply with all federal and state laws and regulations regarding the confidentiality of patient records. Provider reserves the right to use the information without disclosing the identity of the beneficiaries for reporting purposes.

4. Termination for Cause: The Agreement may be terminated for cause under the following conditions:

   a. Upon default by the Subscriber in payment of compensation in accordance with the Agreement, the Provider may terminate the Agreement thirty (30) days after the Provider has given written notice to the Subscriber of such default.

   b. Upon material breach of the Agreement by either party, the non-breaching party may terminate the Agreement after thirty (30) days written notice to the breaching party, specifying the facts and circumstances of the breach.

5. Condition Precedent to Lawsuit: The thirty (30) day notice of breach as set forth in paragraph 4.b hereinabove is a condition precedent to the filing of an action in a court of law or equity.

6. Mississippi Law Controls: The laws of the State of Mississippi shall apply to all issues pertaining to this Agreement.

7. Costs of Litigation: The losing party in any litigation shall be responsible for all reasonable costs, including attorneys fees and expenses incurred in conjunction with the resolution of such controversy or claim, but only to the extent allowed by law.

8. Hold Harmless:

   a. The Provider shall hold harmless and indemnify the Subscriber from any claims, losses, damages, judgments, liabilities, costs, expenses or obligations, including but not limited to attorney fees and expenses arising out of or resulting from the Provider's gross negligence or willful misconduct in its provisions of mental health and substance abuse services to beneficiaries.

b. To the extent allowed by law, the Subscriber shall hold harmless and indemnify the Provider from any claims, losses, damages, judgments, liabilities, costs, expenses or obligations, including but not limited to attorney fees and expenses arising out of or resulting from the Subscriber's gross negligence or willful misconduct in its interaction with the Provider.

IN WITNESS WHEREOF, the parties have entered in to this agreement on the_____

day of _____, 2012.

SINGING RIVER SERVICES BY: _____
TAX ID NO. 640 650 708 Sherman F. Blackwell, II,
Executive Director

CITY OF PASCAGOULA: BY: _____
City Manager's Signature

Councilman Corder made a motion to approve the annual renewal of the Employee Assistance Program (EAP) contract with Singing River Services at the rate of $3,500.00 for the contract period of October 1, 2012, through September 30, 2013, and authorize the City Manager to execute the related documents. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

*****

The next item for consideration was a request to adopt a Facility Use Agreement for Resurrection Catholic School as a Parks & Recreation Department policy as recommended by Darcie Crew, Parks & Recreation Director.

The agreement is spread on the minutes as follows:

## Parks and Recreation
## Facility Use Agreement with Resurrection Catholic School (RCS)

This agreement sets forth the terms and limits associated with the use of the City of Pascagoula Parks and Recreation Department (PPRD) athletic facilities. The terms of this agreement are not subject to alteration and must be signed annually by both School Athletic Director and the Recreation Athletic Director before any use will be assigned.

Facility Requested: _____
Date(s) Requested: _____

## School Responsibilities/Guidelines

1. RCS will furnish the Parks and Recreation Department with a copy of all rosters (to include name, address and phone number) for all participants prior to the start of the season.
2. RCS will be responsible for any damages while using facility.
3. RCS will furnish the PPRD with a copy of a contact list of Head Coach and assistant coaches.
4. RCS shall furnish the PPRD with a copy of the schedule at least two weeks prior to first game. All changes must be submitted in writing to the PPRD.
5. RCS will be responsible for all daily cleaning of concession areas.
6. RCS shall report any maintenance problems to the PPRD to be corrected as soon as possible.
7. RCS shall notify the PPRD of any accidents or altercations that happen within 48 hours of the incident.
8. RCS must provide the PPRD with a copy of liability insurance.
9. RCS is responsible to pick up all litter created by concessions and spectators.
10. RCS will pay the City for all field lining at $50 per game.

The Parks and Recreation Department will be responsible for the following:

1. PPRD will provide safe playing fields and facilities.
2. PPRD will ensure that grass is cut on a planned rotation, lay-out and line fields for scheduled games.
3. PPRD will repair all maintenance issues in a timely manner.
4. PPRD will empty all trash barrels at facilities on a semi-weekly basis.
5. PPRD will ensure restrooms are clean Monday, Tuesday, Thursday and Friday.

Non-sanctioned activities shall follow the City of Pascagoula Athletic Facility Rental Agreement policy.

I agree to all the terms and conditions set forth in the above agreement. I understand that if the school administration/head coach does not abide by the agreement then use may be terminated with a seven day notice from the PPRD.

RCS Athletic Director: _____ Date: _____
Mailing Address: _____ Phone:_____
PPRD Athletic Director: _____ Date:_____

Bo Cole
Athletic Director
Phone: 228-938-2356
Fax: 228-938-2355

Councilman Corder made a motion to adopt the Facility Use Agreement with Resurrection Catholic School as a Parks and Recreation Department policy as recommended and authorize the Parks and Recreation Director (or designee) to execute the agreement annually beginning in September 2012. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

*****

The next item for consideration was Change Order #2 to the contract with Kappa Development and General Contracting, Inc., Gulfport, MS, for the Citywide Sewer Evaluation and Rehabilitation Project as recommended by Jaci Turner, Program Manager, and Compton Engineering, Inc.

Councilman Corder made a motion to approve Change Order #2 to the contract with Kappa Development and General Contracting, Inc., for the Citywide Sewer Rehabilitation Project as recommended and authorize the City Manager to execute the related documents. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

*****

The next item for consideration was a bid award for Annual Bid #323 – Portable Restrooms to United Site Service, Gulfport, MS, as recommended by Darcie Crew, Parks & Recreation Director. The contract dates are September 19, 2012, through September 18, 2013, with a one-year renewal option. The prices are as follows:

| **BIDDERS:** | 1-7 Units 1x week | 1-7 units 2x week | 2-10 units per day | 2-10 unit per 2 days | 2-10 units per 3 days | 2-10 units per 4 days |
|---|---|---|---|---|---|---|
| | $50.00 | $85.00 | $47.00 | $69.00 | $91.00 | $113.00 |

Councilman Corder made a motion to approve a bid award for Annual Bid #323 – Portable Restrooms to United Site Service as recommended above. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen

Abston “AYE”, Corder “AYE”, Milstead “AYE”, Stallworth “AYE”, Tillman “AYE”, and Wolverton “AYE”. (Approved 9-18-12)

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

*****

The financial reports for August 2012 were filed by the City Clerk and acknowledged by the City Council.

*****

The next item for consideration was an Order for the Petty Cash Fund for FY2013 as follows:

**ORDER**

**WHEREAS**, a need exists to establish a Petty Cash Fund for Fiscal Year 2013;

**NOW, THEREFORE IT IS ORDERED**, that a Petty Cash Fund is hereby established with the following amounts allocated as shown under the care and custody of those persons listed:

| | | |
|---|---|---|
| City Hall (Accounting) | $500.00 | Cathy Turner |
| Police Department | $200.00 | Kenny Johnson |
| Recreation Department | $100.00 | Karen Strickland |

The above Order was introduced by Councilman Corder, seconded for adoption by Councilman Stallworth, and received the following vote: Mayor Maxwell “AYE”. Councilmen Abston “AYE”, Corder “AYE”, Milstead “AYE”, Stallworth “AYE”, Tillman “AYE”, and Wolverton “AYE”. The Mayor then declared the Order adopted on the 18th day of September, 2012.

*****

The next item for consideration was a request to advertise the resources of the City of Pascagoula for Advocates for Freedom regarding the anti-human trafficking effort as presented by Joe Huffman, City Manager. Mr. Huffman and Police Chief Kenny Johnson made comments and advised they support this program. Mr. Huffman recommended supporting the program with $1,000.00. Councilman Tillman stated this problem is larger than he was aware. Councilman Milstead advised that he supports the efforts and also recommended that the Council carefully review future funding amounts for all programs. Bobby Parker, City Clerk/Comptroller, advised the money could be taken from the current fiscal year’s budget.

Councilman Stallworth made a motion to approve $1,000.00 to advertise the resources of the City of Pascagoula for Advocates for Freedom regarding the anti-human trafficking efforts. The motion was seconded by Councilman Tillman and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

*****

The next item for consideration as an appointment to the Municipal Election Commission to fill the unexpired term of Donna (Chris) Lee who recently resigned. This term will expire in July, 2013. Councilman Corder recommended posting this information on the City's website and request that resumes be submitted from anyone interested in the appointment.

Councilman Corder made a motion to "TABLE" the appointment at this time. The motion was seconded by Councilman Milstead and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Tabled 9-18-12)

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The next item for consideration was a Resolution authorizing and directing preparations for the issuance of re-funding bonds as recommended by Bobby Parker, City Clerk/Comptroller. Eddie Williams, City Attorney, briefed the Council on this item.

The Council then considered the following Resolution:

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASCAGOULA, MISSISSIPPI, AUTHORIZING AND DIRECTING PREPARATIONS FOR THE ISSUANCE OF REFUNDING BONDS OF THE CITY FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING DEBT OF THE CITY; AUTHORIZING THE NEGOTIATED SALE OF SUCH REFUNDING BONDS; DIRECTING THE PREPARATION AND DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT IN CONNECTION WITH THE REFUNDING BONDS; AND FOR RELATED PURPOSES.**

**WHEREAS**, the City Council of the City of Pascagoula, Mississippi (the "Governing Body"), acting for and on behalf of the City of Pascagoula, Mississippi (the "City"), is authorized by Sections 31-27-1 *et seq.*, Mississippi Code of 1972, as amended (the "Act"), to issue refunding bonds of the City for the purpose of refinancing outstanding obligations of the City; and

**WHEREAS**, the Act authorizes the Governing Body, among other things, to provide for the terms and details of such refunding bonds, to sell such refunding bonds at public or private sale (which sale shall be on such terms and in such manner as the Governing Body shall determine to be in the City's best interest), to make arrangements for the retirement of certain outstanding obligations of the City which are to be refinanced with the proceeds of such refunding bonds and to make other arrangements relating to such refunding bonds; and

**WHEREAS**, the Governing Body desires to refund in accordance with the Act all or a portion of the outstanding principal amount of the following loans:

1. $1,504,518 (original principal amount) City of Pascagoula, Mississippi, State Revolving Fund Loan, DWI-H280044-01-2, dated September, 2000, currently outstanding in the principal amount of $851,816;

2. $1,504,518 (original principal amount) City of Pascagoula, Mississippi, State Revolving Fund Loan, DWI-H280044-02-2, dated September, 2000, currently outstanding in the principal amount of $851,816;

3. $383,984 (original principal amount) City of Pascagoula, Mississippi, State Revolving Fund Loan, DWI-H280044-03-3, dated September, 2000, currently outstanding in the principal amount of $271,398;

4. $1,141,222 (original principal amount) City of Pascagoula, Mississippi, State Revolving Fund Loan, DWI-H280044-04-3, dated November, 2002, currently outstanding in the principal amount of $762,498;

5. $727,316 (original principal amount) City of Pascagoula, Mississippi, State Revolving Fund Loan, DWI-H280044-05-3, dated November, 2002, currently outstanding in the principal amount of $485,947; and

6. $1,524,037 (original principal amount) City of Pascagoula, Mississippi, State Revolving Fund Loan, DWI-H280044-06-3, dated December, 2002, currently outstanding in the principal amount of $1,021,459

(together, the "Prior Loans"). The proceeds of the Prior Loans were used to make certain capital improvements to the City's combined water and sewer system (the "System"); and

**WHEREAS**, the refunding of the Prior Loans must result in an overall net present value savings to maturity of not less than two percent (2%) of the Prior Loans being refunded as required by Section 31-27-13 of the Act, resulting in the enhancement of the City's annual cash flow; and

**WHEREAS**, the sale of such refunding bonds through private sale will provide the Governing Body with the greatest degree of flexibility in the marketing of such refunding bonds and will ensure the most favorable long term interest rates and will thereby maximize the interest savings for the City; and

**WHEREAS**, it is necessary for the health and financial well-being of the citizens of the City for the Governing Body to issue refunding bonds of the City for the purpose of providing for the refunding of all or a portion of the Prior Loans.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, ACTING FOR AND ON BEHALF OF THE CITY, AS FOLLOWS:**

**SECTION 1.** This resolution is adopted pursuant to the Act and other applicable laws of the State of Mississippi.

**SECTION 2.** The Mayor of the City is hereby appointed as representative (the "Representative") for the purpose of preparing, on behalf of the Governing Body, for the sale and issuance of refunding bonds of the City (the "Refunding Bonds") to provide for the refunding of all or a portion of the Prior Loans in accordance with the terms and provisions of this resolution and the Act.

**SECTION 3.** Phelps Dunbar LLP, Jackson, Mississippi, is hereby selected to serve as bond counsel ("Bond Counsel") to the City in connection with the sale and issuance of the Refunding Bonds.

**SECTION 4.** Governmental Consultants, Inc., Jackson, Mississippi, is hereby selected to serve as financial advisor (the "Financial Advisor") to the City in connection with the sale and issuance of the Refunding Bonds.

**SECTION 5.** Eddie C. Williams, *Esq*., Pascagoula, Mississippi, is hereby directed to serve as counsel to the City ("City Counsel") in connection with the sale and issuance of the Refunding Bonds.

**SECTION 6.** The Representative, Bond Counsel, the Financial Advisor and City Counsel are each hereby authorized and directed to carry out their respective responsibilities as set forth in this resolution; provided that the Refunding Bonds shall not be issued unless all of the requirements of the Act are met, including the net present value savings requirement of Section 31-27-13 of the Act.

**SECTION 7.** The Refunding Bonds will be limited obligations of the City secured solely by the gross revenues derived from the operation of the System, subject to the prior payment of the reasonable and necessary expenses of operating and maintaining the System (the "Net Revenues"). The Refunding Bonds will be secured by a lien on Net Revenues of the System. The Refunding Bonds will not constitute an indebtedness of the City within the meaning of any constitutional or statutory restriction, limitation or provision, and the full faith, credit and taxing power of the City will not pledged to the payment of the Refunding Bonds, either as to principal or interest.

**SECTION 8.** The Governing Body hereby finds and determines that it is in the best interest of the City to sell the Refunding Bonds at a private negotiated sale rather than a public sale and hereby selects Duncan-Williams, Inc., Memphis, Tennessee, to serve as underwriter or placement agent as the case may be (the "Underwriter") in connection with the sale and issuance of the Refunding Bonds.

**SECTION 9.** Bond Counsel and City Counsel are hereby authorized and directed to prepare the form of all legal documents necessary or appropriate for the sale and issuance of the Refunding Bonds, to provide for the disposition of the proceeds thereof and to effect the retirement of the Prior Loans.

**SECTION 10.** The Representative, the Financial Advisor and Bond Counsel are hereby authorized and directed to prepare a preliminary official statement or private placement memorandum as the case may be (the "Preliminary Official Statement") relating to the Refunding Bonds, including information related to the City and such other materials and information required for the sale of the Refunding Bonds and, subject to ratification by the Governing Body, the Representative are hereby authorized to distribute the Preliminary Official Statement to the Underwriter for use in connection with the marketing of the Refunding Bonds.

**SECTION 11.** Bond Counsel, the Financial Advisor and City Counsel are hereby further authorized and directed to provide such advice and assistance as shall be requested by the Representative in connection with the Representative fulfilling their duties under this resolution.

**SECTION 12.** All orders, resolutions or proceedings of the Governing Body in conflict with the provisions of this resolution shall be and are hereby repealed, rescinded and set aside, but only to the extent of such conflict.

The above Resolution was introduced by Councilman Stallworth, seconded for adoption by Councilman Corder, and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". The Mayor then declared the Resolution adopted on the 18th day of September, 2012.

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The next item for consideration was a Resolution authorizing and directing issuance of water and sewer system revenue re-funding bonds as recommended by Bobby Parker, City Clerk/Comptroller. Eddie Williams, City Attorney, briefed the Council on this item.

The Council then considered the following Resolution:

**RESOLUTION AUTHORIZING AND DIRECTING THE ISSUANCE OF COMBINED WATER AND SEWER SYSTEM REVENUE REFUNDING BONDS, SERIES 2012 OF THE CITY OF PASCAGOULA, MISSISSIPPI IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED FOUR MILLION FOUR HUNDRED THOUSAND DOLLARS ($4,400,000) TO RAISE MONEY FOR THE PURPOSE OF REFUNDING A PORTION OF THE CITY'S $1,504,518 (ORIGINAL PRINCIPAL AMOUNT) STATE REVOLVING FUND LOAN, DWI-H280044-01-2, DATED SEPTEMBER, 2000, CURRENTLY OUTSTANDING IN THE PRINCIPAL AMOUNT OF $851,816; $1,504,518 (ORIGINAL PRINCIPAL AMOUNT) STATE REVOLVING FUND LOAN, DWI-H280044-02-2, DATED SEPTEMBER, 2000, CURRENTLY OUTSTANDING IN THE PRINCIPAL AMOUNT OF $851,816; $383,984 (ORIGINAL PRINCIPAL AMOUNT)**

**STATE REVOLVING FUND LOAN, DWI-H280044-03-3, DATED SEPTEMBER, 2000, CURRENTLY OUTSTANDING IN THE PRINCIPAL AMOUNT OF $271,398; $1,141,222 (ORIGINAL PRINCIPAL AMOUNT) STATE REVOLVING FUND LOAN, DWI-H280044-04-3, DATED NOVEMBER, 2002, CURRENTLY OUTSTANDING IN THE PRINCIPAL AMOUNT OF $762,498; $727,316 (ORIGINAL PRINCIPAL AMOUNT) STATE REVOLVING FUND LOAN, DWI-H280044-05-3, DATED NOVEMBER, 2002, CURRENTLY OUTSTANDING IN THE PRINCIPAL AMOUNT OF $485,947; AND $1,524,037 (ORIGINAL PRINCIPAL AMOUNT) STATE REVOLVING FUND LOAN, DWI-H280044-06-3, DATED DECEMBER, 2002, CURRENTLY OUTSTANDING IN THE PRINCIPAL AMOUNT OF $1,021,459; AND FOR RELATED PURPOSES.**

**WHEREAS**, the City Council of the City acting for and on behalf of the City, hereby finds, determines, adjudicates and declares as follows:

1. In addition to any words and terms elsewhere defined herein, the following words and terms shall have the following meanings, unless some other meaning is plainly intended:

"Act" shall mean Sections 31-27-1 *et seq.*, Mississippi Code of 1972, as amended.

"Act of Bankruptcy" shall mean filing of a petition in bankruptcy by or against the City under any applicable bankruptcy, insolvency, reorganization or similar law, now or hereafter in effect.

"Additional Bonds" shall mean additional bonds issued hereafter on parity with the Series 2012 Bonds and secured by Net Revenues pursuant to this Bond Resolution.

"Agent" shall mean any Paying Agent or Transfer Agent, whether serving in either or both capacities, and designated by the Governing Body unless otherwise provided herein.

"Arbitrage Rebate Agreement" shall mean the Arbitrage Rebate Agreement, dated as of the date of delivery of the Series 2012 Bonds, by and between the City and the Paying Agent.

"Authorized Officer" shall mean the Mayor, the Clerk, and any other officer designated from time to time as an Authorized Officer by resolution of the Governing Body, and when used with reference to any act or document also means any other Person authorized by resolution of the Governing Body to perform such act or sign such document.

"Beneficial Owner" shall mean, whenever used with respect to a Series 2012 Bond, the person in whose name such Series 2012 Bond is recorded as the Beneficial Owner of such Series 2012 Bond by a DTC Participant on the records of such DTC participant, or such person's subrogee.

"Bond" or "Bonds" shall mean the Series 2012 Bonds and any Additional Bonds.

"Bond Counsel" shall mean Phelps Dunbar LLP, Jackson, Mississippi.

"Bond Resolution" shall mean this resolution.

"Book-Entry System" shall mean a book-entry system established and operated for the recordation of Beneficial Owners of the Series 2012 Bonds as described in Section 2.

"Clerk" shall mean the Clerk of the City.

"Closing" shall mean the date of the delivery of the Series 2012 Bonds.

"Code" shall mean the Internal Revenue Code of 1986, as amended, supplemented or superseded and the Regulations promulgated thereunder.

"Consulting Engineers" shall mean any engineer or engineering firm subsequently employed in connection with the System or for the purposes set out in this Bond Resolution.

"Current Expenses" shall mean the reasonable and necessary current expenses of maintenance, repair and operation of the System and shall include, without limiting the generality of the foregoing, expenses not annually recurring, premiums for insurance, administrative and engineering expenses relating to maintenance, repair and operation, fees and expenses of the Paying Agent, legal expenses, taxes lawfully imposed on the System, reasonable payments to pension or retirement funds for employees of the System, General Fund Administration Charges and any other expense of the System required or permitted to be paid by the City under the provisions of this Bond Resolution or by law, but shall not include any allowance for depreciation or deposits or transfers to the credit of the 2012 Bond Fund, the 2012 Depreciation Fund or the 2012 Contingent Fund.

"Direct Participants" shall mean any broker-dealer, bank or other financial institution for which the Security Depository holds Series 2012 Bonds as a securities depository.

"DTC" means The Depository Trust Company, New York, New York.

"DTC Participants" shall mean any participant for whom DTC is a Security Depository.

"Financial Advisor" shall mean Government Consultants, Inc., Jackson, Mississippi.

"Fiscal Year" shall mean the period commencing on the first day of October of any year and ending on the last day of September of the following year.

"General Fund Administration Charges" shall mean charges to the System for its pro rata share of general City support services, including but not limited to, personnel, data processing, finance, accounting and other generally applicable services.

"Governing Body" shall mean the City Council of the City.

"Indirect Participant" shall mean a broker-dealer, bank or other financial institution for which the Securities Depository holds Series 2012 Bonds as a securities depository through a Direct Participant.

"Letter of Representations" shall mean the letter of representations for the City and/or Paying Agent to DTC under the Book-Entry System.

"Mayor" shall mean the Mayor of the City.

"Net Revenues" shall mean all Revenues remaining after payment of Current Expenses.

"Operation and Maintenance Fund" shall mean the fund by that name provided for in Section 12(a) hereof.

"Paying Agent" shall mean any bank, trust company or other institution hereafter designated by the Governing Body for the payment of the principal of and interest on the Series 2012 Bonds, to initially be selected by the Placement Agent subject to the approval of the Mayor.

"Person" shall mean an individual, partnership, corporation, limited liability company, trust or unincorporated organization and a government or agency or political subdivision thereof.

"Placement Agent" shall mean Duncan-Williams, Inc., Memphis, Tennessee.

"Prior Loan Resolution" shall mean the resolutions of the Governing Body adopted in connection with the Prior Loans.

"Prior Loans" shall mean the City's $1,504,518 (original principal amount) State Refunding Loan, DWI-H280044-01-02, dated September 2000, currently outstanding in the principal amount of $851,816; the $1,504,518 (original principal amount) State Revolving Fund Loan, DWI-H280044-02-2, dated September 2000, currently outstanding in the principal amount of $851,816; the $383,984 (original principal amount) State Revolving Fund Loan, DWI-H280044-03-3, dated September 2000, currently outstanding in the principal amount of $271,398; the $1,141,222 (original principal amount) State Revolving Fund Loan, DWI-H280044-04-3, dated November 2002, currently outstanding in the principal amount of $762,498; the $727,316 (original principal amount) State Revolving Fund Loan, DWI-H280044-05-3, dated November 2002, currently outstanding in the principal amount of $485,947; and the $1,524,037 (original principal amount) State Revolving Fund Loan, DWI-H280044-06-3, dated December 2002, currently outstanding in the principal amount of $1,021,459.

"Private Placement Agreement" shall mean the Private Placement Agreement by and between the Placement Agent and the City in connection with the Series 2012 Bonds, a copy of which is attached hereto as Exhibit A.

"Purchaser" shall mean the purchaser or purchasers of the Series 2012 Bonds in accordance with the terms and provisions of the Private Placement Agreement. The total of Purchasers shall not exceed thirty-five (35).

"Record Date" shall mean, as to interest payments, the 15th day of the month preceding the dates set for payment of interest on the Series 2012 Bonds and, as to payments of principal, the 15th day of the month preceding the maturity date or the date set for redemption of the Series 2012 Bonds.

"Record Date Registered Owner" shall mean the Registered Owner as of the Record Date.

“Refunding Fund” shall mean the fund created in Section 33 hereof.

"Refunding Project" shall mean using a portion of the proceeds of the Series 2012 Bonds to provide funds for the refunding of the Prior Loans.

"Registered Owner" shall mean the Person whose name shall appear in the Registration Records.

"Registration Records" shall mean the records maintained by the Transfer Agent on behalf of the City for the registration and transfer of the Series 2012 Bonds.

"Revenue Fund" shall mean the fund by that name provided for in Section 12 hereof.

"Revenues" shall mean all payments, proceeds, fees, charges, rents and all other income derived by or for the account of the City from its ownership and operation of the System, excluding all acreage, front-footage, assessment and similar fees and charges derived by the City in connection with the provision of or payment for capital improvements constituting a part of the System.

"Securities Depository" means DTC and any substitute for or successor to such securities depository that shall maintain a Book-Entry System with respect to the Series 2012 Bonds.

"Securities Depository Nominee" means the Securities Depository or the nominee of such Securities Depository in whose name there shall be registered on the registration records the Series 2012 Bonds to be delivered to such Securities Depository during the continuation with such Securities Depository of participation in its Book-Entry System.

"Series 2012 Bonds" shall mean the not to exceed $4,400,000 Combined Water and Sewer System Revenue Refunding Bonds, Series 2012, of the City authorized and directed to be issued by this Bond Resolution.

"State" shall mean the State of Mississippi.

"System" shall mean the combined waterworks and sewage system of the City, including any enlargement and extension thereof.

"City" shall mean the City of Pascagoula, Mississippi.

"Transfer Agent" shall mean any bank, trust company or other institution hereafter designated by the Governing Body for the registration of owners of the Series 2012 Bonds and for the performance of such other duties as may be herein or hereafter specified by the Governing Body, to initially be selected by the Placement Agent subject to the approval of the Mayor.

"2012 Bond Fund" shall mean the fund by that name established pursuant to Section 12(b) hereof.

"2012 Contingent Fund" shall mean the fund by that name established pursuant to Section 12(d) hereof.

"2012 Current Debt Service Account" shall mean the subaccount by that name established in the 2012 Bond Fund pursuant to Section 12(b)(i) hereof.

"2012 Depreciation Fund" shall mean the fund by that name established pursuant to Section 12(c) hereof.

"Utilities Act" shall mean Sections 21-27-11 *et seq.*, Mississippi Code of 1972, as amended.

2. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words and terms herein defined shall be equally applicable to the plural as well as the singular form of any of such words and terms.

3. The City is authorized under the provisions of the Act to issue its Combined Water and Sewer System Refunding Bonds, Series 2012 to provide funds for the refunding of the Prior Loans pursuant to the Prior Loan Agreements, and it is advisable and in the public interest to issue the Series 2012 Bonds for the purpose stated herein.

4. The estimated cost of the Refunding Project and paying the costs of issuance of the Series 2012 Bonds shall not exceed Four Million Four Hundred Thousand Dollars ($4,400,000).

5. It has now become necessary to make provision for the preparation, execution and issuance of the Series 2012 Bonds.

6. It has now become necessary to make arrangements for the approval, execution and delivery of the Private Placement Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY, ACTING FOR AND ON BEHALF OF THE CITY, AS FOLLOWS:**

**SECTION 1.** In consideration of the purchase and acceptance of any and all of the Series 2012 Bonds by those who shall hold the same from time to time, this Bond Resolution shall constitute a contract between the City and the Registered Owner from time to time of the Series 2012 Bonds. The pledge made herein and the covenants and agreements herein set forth to be performed on behalf of the City for the benefit of the Registered Owner shall be for the equal benefit, protection and security of the Registered Owner of any and all of the Series 2012 Bonds, all of which, regardless of the time or times of their authentication and delivery or maturity, shall be of equal rank without preference, priority or distinction.

**SECTION 2.** (a) Upon initial issuance of the Series 2012 Bonds, the Issuer shall authenticate and deliver the Series 2012 Bonds to the Purchasers, unless otherwise directed thereby. The Series 2012 Bonds may thereafter be issued pursuant to a Book-Entry System administered by the Securities Depository with no physical distribution of Series 2012 Bond

certificates to be made except as provided in this Section 2. Any provision of this Bond Resolution or the Series 2012 Bonds requiring physical delivery of the Series 2012 Bonds shall, with respect to any Series 2012 Bonds held under the Book-Entry System, be deemed to be satisfied by a notation on the Registration Records maintained by the Transfer Agent that such Series 2012 Bonds are subject to the Book-Entry System.

(b) So long as a Book-Entry System is being used, one Series 2012 Bond for each maturity of the Series 2012 Bonds shall be issued and registered in the name of the Securities Depository. The Securities Depository, the Securities Depository Nominee and the Direct Participants and Indirect Participants will evidence beneficial ownership of the Series 2012 Bonds in authorized denominations, with transfers of ownership effected on the records of the Securities Depository, the Direct Participants and the Indirect Participants pursuant to rules and procedures established by the Securities Depository, the Direct Participants and the Indirect Participants. The principal of and any premium on each Series 2012 Bond shall be payable to the Securities Depository Nominee or any other person appearing on the Registration Records as the Registered Holder of such Series 2012 Bond or its registered assigns or legal representative at the principal office of the Paying Agent. So long as the Book-Entry System is in effect, the Securities Depository will be recognized as the registered owner of the Series 2012 Bonds for all purposes. Transfer of principal, interest and any premium payments or notices to Direct Participants and Indirect Participants will be the responsibility of the Securities Depository and the transfer of principal, interest and any premium payments or notices to Beneficial Owners will be the responsibility of the Direct Participants and the Indirect Participants. No other party will be responsible or liable for such transfers of payments or notices or for maintaining, supervising or reviewing such records maintained by the Securities Depository, the Direct Participants or the Indirect Participants. While the Securities Depository Nominee or the Securities Depository, as the case may be, is the registered owner of the Series 2012 Bonds, notwithstanding any other provisions set forth herein, payments of principal of, redemption premium, if any, and interest on the Series 2012 Bonds shall be made to the Securities Depository Nominee or the Securities Depository, as the case may be, by wire transfer in immediately available funds to the account of such holder, without notice to or the consent of the Beneficial Owners. The Paying Agent, with the consent of the City and the Securities Depository, may agree in writing to make payments of principal and interest in a manner different from that set out herein. In such event, the Paying Agent shall make payments with respect to the Series 2012 Bonds in such manner as if set forth herein.

(c) The Securities Depository may discontinue providing its services as securities depository with respect to the Series 2012 Bonds at any time by giving reasonable notice to City and the Agent. Under such circumstances, in the event that a successor securities depository is not obtained, Series 2012 Bond certificates are required to be printed and delivered.

(d) The City may decide to discontinue use of the system of book-entry-only transfers through the Securities Depository (or a successor securities depository). In that event, Series 2012 Bond certificates will be printed and delivered to the Securities Depository for delivery to the Beneficial Owners.

(e) The Securities Depository, the Direct Participants, the Indirect Participants and the Beneficial Owners of the Series 2012 Bonds, by their acceptance of the Series 2012 Bonds, agree

that the City and the Paying Agent shall have no liability for the failure of the Securities Depository to perform its obligation to any Direct Participant, Indirect Participant or other nominee of any Beneficial Owner of any Series 2012 Bonds to perform any obligation that such Direct Participant, Indirect Participant or other nominee may incur to any Beneficial Owner of the Series 2012 Bonds.

(f) Notwithstanding any other provision of this Bond Resolution, on or prior to the date of issuance of the Series 2012 Bonds, the Paying Agent or the City shall have executed and delivered to the initial Securities Depository a Letter of Representations governing various matters relating to the Securities Depository and its activities pertaining to the Series 2012 Bonds. The terms and provisions of such Letter of Representations are incorporated herein by reference and in the event there shall exist any inconsistency between the substantive provisions of the said Letter of Representations and any provisions of this Bond Resolution, then, for as long as the initial Securities Depository shall serve with respect to the Series 2012 Bonds, the terms of the Letter of Representations shall govern.

(g) Notwithstanding any provision in this Bond Resolution to the contrary, at all times in which the Book-Entry System is in effect, any references to physical delivery of a Series 2012 Bond shall not be required.

**SECTION 3.** (a) The Series 2012 Bonds are hereby authorized and ordered to be prepared and issued in the principal amount of not to exceed Four Million Four Hundred Thousand Dollars ($4,400,000) to raise money for the Refunding Project and providing for the costs of issuance of the Series 2012 Bonds, all as authorized by the Act.

(b) The Series 2012 Bonds shall be secured by a lien on the Net Revenues of the System and are payable from Net Revenues and any other security pledged for the Series 2012 Bonds. The principal of and interest on the Series 2012 Bonds shall be payable solely from Revenues, and shall be subject to the prior payment of Current Expenses. The Series 2012 Bonds shall not constitute a general obligation indebtedness of the City within the meaning of any constitutional or statutory restriction, limitation or provision, and the full faith, credit and taxing power of the City will not be pledged to the payment of the Series 2012 Bonds, either as to principal or interest. The Series 2012 Bonds are issued on parity with any Additional Bonds.

**SECTION 4.** (a) Payments of interest and principal on the Series 2012 Bonds shall be made in accordance with Section 12(b)(i). Interest on the Series 2012 Bonds will be computed on the basis of a 360-day year consisting of twelve (12) thirty (30) day months.

(b) The Series 2012 Bonds shall be registered as to both principal and interest; shall be dated the date of delivery thereof; shall be issued in the principal denomination of $100,000 each (and $5,000 thereafter), or integral multiples thereof up to the amount of a single maturity; shall be numbered from one upward in the order of issuance; shall bear interest from the date thereof at the rate or rates as set forth in the Private Placement Agreement, payable on October 1 and April 1 of each year (each an "Interest Payment Date"), commencing October 1, 2013 and shall mature and become due and payable on October 1 in the years and in the principal amounts as set forth in the Private Placement Agreement, with the final maturity occurring not later than October 1, 2024.

(c) The Series 2012 Bonds shall not be subject to redemption prior to their stated dates of maturity.

(d) The Series 2012 Bonds, for which the payment of sufficient moneys or, to the extent permitted by the laws of the State, (i) direct obligations of, or obligations for the payment of the principal of and interest on which are unconditionally guaranteed by, the United States of America ("Government Obligations"), (ii) certificates of deposit or municipal obligations fully secured by Government Obligations or (iii) evidences of ownership of proportionate interests in future interest or principal payments on Government Obligations held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor on the Government Obligations and which Government Obligations are not available to satisfy any claim of the custodian or any person claiming through the custodian or to whom the custodian may be obligated, (iv) State and Local Government Series ("SLGS") Securities, and (v) municipal obligations, the payment of the principal of, interest and redemption premium, if any, on which are irrevocably secured by Government Obligations and which Government Obligations are not subject to redemption prior to the date on which the proceeds attributable to the principal of such obligations are to be used and have been deposited in an escrow account which is irrevocably pledged to the payment of the principal of and interest and redemption premium, if any, on such municipal obligations (all of which collectively, with Government Obligations, "Defeasance Securities"), shall have been deposited with an escrow agent appointed for such purpose by the Governing Body, which may be the Agent, shall be deemed to have been paid, shall cease to be entitled to any lien, benefit or security under this Bond Resolution and shall no longer be deemed to be outstanding hereunder, and the Registered Owner shall have no rights in respect thereof except to receive payment of the principal of and interest on such Series 2012 Bonds from the funds held for that purpose. Defeasance Securities shall be considered sufficient under this Bond Resolution if said investments, with interest, mature and bear interest in such amounts and at such times as will assure sufficient cash to pay currently maturing interest and to pay principal when due on such Series 2012 Bonds.

(e) The Governing Body hereby authorizes the Mayor and the Clerk, Bond Counsel and the Financial Advisor, to negotiate the terms for the sale of the Series 2012 Bonds through the Placement Agent to the Purchaser and approve the form of the Private Placement Agreement and authorizes the execution by the Mayor and the Clerk of the Private Placement Agreement in substantially the same form, for and on behalf of the City, with such completions, changes, insertions and modifications as shall be approved by the officers executing and delivering the same (the execution thereof shall constitute conclusive evidence of approval of any such completions, changes, insertions and modifications) under the following conditions: (1) the par amount of the Series 2012 Bonds will not exceed $4,400,000; (2) the savings to the City must be at least $137,000.00; (3) the net interest cost of the Series 2012 Bonds will not exceed 5% per annum; (4) the Series 2012 Bonds will mature not later than October 1, 2024; and (5) terms and provisions of the Series 2012 Bonds are in compliance with the Act.

**SECTION 5.** (a) When the Series 2012 Bonds shall have been validated and executed as herein provided, they shall be registered as an obligation of the City in the office of the Clerk in a record maintained for that purpose, and the Clerk shall cause to be imprinted upon the

reverse side of each of the Series 2012 Bonds, over his facsimile signature and facsimile seal, his certificate in substantially the form set out in Section 7 hereof.

(b) The Series 2012 Bonds shall be executed by the manual or facsimile signature of the Mayor and countersigned by the manual or facsimile signature of the Clerk, with the seal of the City imprinted or affixed thereto; provided, however, all signatures and seals appearing on the Series 2012 Bonds, other than the signature of an authorized officer of the Transfer Agent hereafter provided for, may be facsimile and shall have the same force and effect as if manually signed or impressed. In case any official of the City whose signature or a facsimile of whose signature shall appear on the Series 2012 Bonds shall cease to be such official before the delivery or reissuance thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such official had remained in office until delivery or reissuance.

(c) Prior to or simultaneously with the delivery by the Transfer Agent of any of the Series 2012 Bonds, the City shall file with the Transfer Agent:

(i) a copy, certified by the Clerk, of the transcript of proceedings of the Governing Body in connection with the authorization, issuance, sale and validation of the Series 2012 Bonds; and

(ii) an authorization to the Transfer Agent, signed by the Mayor or Clerk, to authenticate and deliver the Series 2012 Bonds to the Purchaser.

(d) At delivery, the Transfer Agent shall authenticate the Series 2012 Bonds and deliver them to or as directed by the Purchaser thereof upon payment of the purchase price of the Series 2012 Bonds to the City in accordance with the terms and conditions of the Private Placement Agreement. The Purchaser shall also receive a complete certified transcript of the proceedings had and done in the matter of the authorization, issuance, sale and validation of the Series 2012 Bonds, and the final, unqualified approving opinion of Bond Counsel.

(e) If determined by the Transfer Agent to be necessary, Series 2012 Bonds, blank as to denomination, rate of interest, date of maturity and CUSIP number and sufficient in quantity in the judgment of the Transfer Agent to meet the reasonable transfer and reissuance needs of the Series 2012 Bonds, shall be printed and delivered to the Transfer Agent in generally-accepted format, and held by the Transfer Agent until needed for transfer or reissuance, whereupon the Transfer Agent shall imprint the appropriate information as to denomination, rate of interest, date of maturity and CUSIP number prior to the registration, authentication and delivery thereof to the transferee holder. The Transfer Agent is hereby authorized upon the approval of the Governing Body to have printed from time to time as necessary additional Series 2012 Bonds bearing the facsimile seal of the City and facsimile signatures of the persons who were the officials of the Governing Body as of the date of original issue of the Series 2012 Bonds.

**SECTION 6.** (a) The initial Paying Agent and Transfer Agent will be selected by the Placement Agent subject to the approval of the Mayor. The City specifically reserves the right to hereafter designate a substitute and/or separate Transfer Agent and/or Paying Agent in its discretion in the manner hereinafter provided.

(b) So long as any of the Series 2012 Bonds shall remain outstanding, the City shall maintain with the Transfer Agent the Registration Records. The Transfer Agent is hereby

appointed registrar for the Series 2012 Bonds, in which capacity the Transfer Agent shall register in the Registration Records and permit to be transferred thereon, under such reasonable regulations as may be prescribed, any Series 2012 Bond entitled to registration or transfer.

(c) The City shall pay or reimburse the Agent for reasonable fees for the performance of the services normally rendered and the incurring of normal expenses reasonably and necessarily paid as are customarily paid to paying agents, transfer agents and bond registrars, subject to agreement between the City and the Agent. Fees and reimbursements for extraordinary services and expenses, so long as not occasioned by the negligence, misconduct or willful default of the Agent, shall be made by the City on a case-by-case basis, subject, where not prevented by emergency or other exigent circumstances, to the prior written approval of the Governing Body.

(d) (i) An Agent may at any time resign and be discharged of the duties and obligations of either the function of the Paying Agent or Transfer Agent, or both, by giving at least sixty (60) days' written notice to the City, and may be removed from either or both of said functions at any time by resolution of the Governing Body delivered to the Agent. The resolution shall specify the date on which such removal shall take effect and the name and address of the successor Agent, and shall be transmitted to the Agent being removed within a reasonable time prior to the effective date thereof. Provided, however, that no resignation or removal of an Agent shall become effective until a successor Agent has been appointed pursuant to this Bond Resolution.

(ii) Upon receiving notice of the resignation of an Agent, the City shall promptly appoint a successor Agent by resolution of the Governing Body. Any appointment of a successor Agent shall become effective upon acceptance of appointment by the successor Agent. If no successor Agent shall have been so appointed and have accepted appointment within thirty (30) days after the notice of resignation, the resigning Agent may petition any court of competent jurisdiction for the appointment of a successor Agent, which court may thereupon, after such notice as it may deem appropriate, appoint a successor Agent.

(iii) In the event of a change of Agents, the predecessor Agent shall cease to be custodian of any funds held pursuant to this Bond Resolution in connection with its role as such Agent, and the successor Agent shall become such custodian; provided, however, that before any such delivery is required to be made, all fees, advances and expenses of the retiring or removed Agent shall be fully paid. Every predecessor Agent shall deliver to its successor Agent all records of account, registration records, lists of Registered Owner and all other records, documents and instruments relating to its duties as such Agent.

(iv) Any successor Agent appointed under the provisions hereof shall be a bank, trust company or national banking association, duly authorized to exercise corporate trust powers and subject to examination by and in good standing with the federal and/or state regulatory authorities under the jurisdiction of which it falls.

(v) Every successor Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor Agent and to the City an instrument in writing accepting such appointment hereunder, and thereupon such successor Agent, without any further act, shall become fully vested with all the rights, immunities and powers, and subject to all the duties and obligations, of its predecessor.

(vi) Should any transfer, assignment or instrument in writing be required by any successor Agent from the City to more fully and certainly vest in such successor Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Agent, any such transfer, assignment and written instruments shall, on request, be executed, acknowledged and delivered by the City.

(vii) The City will provide any successor Agent with certified copies of all resolutions, orders and other proceedings adopted by the Governing Body relating to the Series 2012 Bonds.

(viii) All duties and obligations imposed hereby on an Agent or successor Agent shall terminate upon the accomplishment of all duties, obligations and responsibilities imposed by law or required to be performed by this Bond Resolution.

(e) Any corporation or association into which an Agent may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become successor Agent hereunder and vested with all the powers, discretion, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of either the City or the successor Agent, anything herein to the contrary notwithstanding, provided only that such successor Agent shall be satisfactory to the City and eligible under the provisions of Section 6(d)(iv).

**SECTION 7.** The Series 2012 Bonds shall be in substantially the following form, with such appropriate variations, omissions and insertions as are permitted or required by this Bond Resolution:

**[BOND FORM]**

**UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE TRANSFER AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY BOND IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.**

**UNITED STATES OF AMERICA**
**STATE OF MISSISSIPPI**
**CITY OF PASCAGOULA**
**COMBINED WATER AND SEWER SYSTEM**
**REVENUE REFUNDING BOND,**
**SERIES 2012**

**No. _____** **$_____**

| Interest Rate | Maturity Date | Date of Original Issue | CUSIP |
|---|---|---|---|
| | | _____, 2012 | |

**Registered Owner:**

**Principal Amount:**

City of Pascagoula, Mississippi (the "City"), a body politic existing under the Constitution and laws of the State of Mississippi, acknowledges itself to owe and for value received, promises to pay in lawful money of the United States of America to the Registered Owner identified above, upon the presentation and surrender of this bond, at the principal office of _____, _____, Mississippi, or its successor, as paying agent (the "Paying Agent") for the Combined Water and Sewer System Revenue Refunding Bonds, Series 2012, of the City (the "Bonds"), on the maturity date identified above, the principal amount identified above. Payment of the principal amount of this bond shall be made to the Registered Owner hereof who shall appear on the registration records of the City maintained by _____, _____, _____ or its successor, as transfer agent for the Bonds (the "Transfer Agent"), as of the 15th day of the calendar month preceding the maturity date hereof.

The City further promises to pay interest on such principal amount from the date of this bond or from the most recent interest payment date to which interest has been paid at the rate of interest per annum set forth above, on October 1 and April 1 of each year (each an "Interest Payment Date"), commencing October 1, 2013, until said principal sum is paid, to the Registered Owner hereof who shall appear on the registration records of the City maintained by the Transfer Agent as of the 15th day of the calendar month preceding the applicable Interest Payment Date. Interest on this bond will be computed on the basis of a 360-day year consisting of twelve (12) thirty (30) day months.

Payments of principal of and interest on this bond shall be made by check or draft mailed on the Interest Payment Date to such Registered Owner at his address as it appears on such registration records. The Registered Owner hereof may change such address by written notice to the Transfer Agent by certified mail, return receipt requested, or such other method as may be subsequently prescribed by the Transfer Agent, such notice to be received by the Transfer Agent not later than the 15th day of the calendar month preceding the applicable principal or Interest Payment Date.

This bond is one of a series of Bonds of like date of original issue, tenor and effect, except as to denomination, number, rate of interest and date of maturity, issued in the aggregate authorized principal amount of Four Million Four Hundred Thousand Dollars ($4,400,000) to raise money for the purpose of providing funds for the refunding of certain portions of the City's $1,504,518 (original principal amount) State Refunding Loan, DWI-H280044-01-02, dated September 2000, currently outstanding in the principal amount of $851,816; the $1,504,518 (original principal amount) State Revolving Fund Loan, DWI-H280044-02-2, dated September 2000, currently outstanding in the principal amount of $851,816; the $383,984 (original principal amount) State Revolving Fund Loan, DWI-H280044-03-3, dated September 2000, currently

outstanding in the principal amount of $271,398; the $1,141,222 (original principal amount) State Revolving Fund Loan, DWI-H280044-04-3, dated November 2002, currently outstanding in the principal amount of $762,498; the $727,316 (original principal amount) State Revolving Fund Loan, DWI-H280044-05-3, dated November 2002, currently outstanding in the principal amount of $485,947; and the $1,524,037 (original principal amount) State Revolving Fund Loan, DWI-H280044-06-3, dated December 2002, currently outstanding in the principal amount of $1,021,459; which were used to fund certain capital improvements to the City's combined water and sewer system (the "System").

This bond is issued under the authority of the Constitution and statutes of the State of Mississippi, including Sections 31-27-1 *et seq.*, Mississippi Code of 1972, as amended, and by the further authority of proceedings duly had by the City Council of the City, including a resolution adopted on _____, 2012 (the "Bond Resolution").

This bond shall not be subject to redemption prior to its stated date of maturity.

The Bonds are registered as to both principal and interest. The Bonds are to be issued or reissued in the denomination of $100,000 each (and $5,000 thereafter), or integral multiples thereof up to the amount of a single maturity.

This bond may be transferred or exchanged by the Registered Owner hereof in person or by his attorney duly authorized in writing at the principal office of the Transfer Agent, but only in the manner, subject to the limitations in the Bond Resolution, and upon surrender and cancellation of this bond. Upon such transfer or exchange, a new bond or bonds of like aggregate principal amount in authorized denominations of the same maturity will be issued.

The City and the Paying Agent may deem and treat the Registered Owner hereof as the absolute owner for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the City nor the Paying Agent shall be affected by any notice to the contrary.

The Bonds will be limited obligations of the City secured solely by the gross revenues derived from the operation of the System, subject to the prior payment of the reasonable and necessary expenses of operating and maintaining the System (the "Net Revenues"). The Bonds will be secured by a lien on Net Revenues of the System. The Bonds will not constitute a general obligation indebtedness of the City within the meaning of any constitutional or statutory restriction, limitation or provision, and the full faith, credit and taxing power of the City will not be pledged to the payment of the Bonds, either as to principal or interest. The Bonds are being issued on parity with any Additional Bonds (as hereinafter defined).

**THE BOND RESOLUTION PROVIDES THAT UNDER CERTAIN CIRCUMSTANCES, ADDITIONAL BONDS ("ADDITIONAL BONDS") MAY BE ISSUED BY THE CITY ON PARITY WITH THE BONDS AND SECURED BY A PARITY LIEN ON NET REVENUES OF THE SYSTEM AND PAYABLE RATABLY FROM SUCH NET REVENUES ALONG WITH THE BONDS.**

The City covenants and agrees that it will perform all duties required by law and by the Bond Resolution; that it will apply the proceeds of this bond to the purposes above set forth; that,

as long as this bond is outstanding, it will operate and maintain the System; that it will fix and maintain rates and make and collect charges for the services of the System, without regard to the user thereof, sufficient to provide for the operation and maintenance of the System in good repair and working order, to provide for the payment of the principal of and interest on this bond and any Additional Bonds as same shall mature and accrue, and to provide for a 2012 Depreciation Fund and a 2012 Contingent Fund, all as set forth in the Bond Resolution; and that such an amount of the gross Revenues of the System remaining after paying the expenses of operating and maintaining the System as will maintain the payment of the principal and interest on this bond, as the same shall mature and accrue, is hereby irrevocably pledged to said purpose.

This bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Bond Resolution until the certificate of registration and authentication hereon shall have been signed by the Transfer Agent.

Terms capitalized herein shall have the same meaning as in the Bond Resolution, unless otherwise expressly provided herein.

**IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED** that all conditions, acts and things required by law to exist, to have happened and to have been performed precedent to and in the issuance of the Bonds, in order to make the same legal and binding limited obligations of the City, according to the terms thereof, do exist, have happened and have been performed in regular and due time, form and manner as required by law.

**IN WITNESS WHEREOF**, the City has caused this bond to be executed in its name by the manual or facsimile signature of the Mayor of the City, countersigned by the manual or facsimile signature of the Clerk of the City, under the manual or facsimile seal of the City, which said manual or facsimile signatures and seal said officials adopt as and for their own proper signatures and seal, as of the ____ day of _____, 2012.

**CITY OF PASCAGOULA, MISSISSIPPI**

BY: _____
Mayor

**COUNTERSIGNED:**

_____
City Clerk

(SEAL)

## CERTIFICATE OF REGISTRATION AND AUTHENTICATION

This bond is one of the Bonds described in the within mentioned Bond Resolution and is one of the Combined Water and Sewer System Revenue Refunding Bonds, Series 2012, of the City of Pascagoula, Mississippi.

_____, as Transfer Agent
BY:_____
Authorized Officer

Date of Registration and Authentication: _____

## REGISTRATION AND VALIDATION CERTIFICATE

**STATE OF MISSISSIPPI**

**COUNTY OF JACKSON**

I, the undersigned Clerk of the City of Pascagoula, Mississippi, do hereby certify that the within bond has been duly registered by me as an obligation of said City pursuant to law in a record kept in my office for that purpose, and has been validated and confirmed by Decree of the Chancery Court of Jackson County, Mississippi, rendered on the _____ day of _____, 2012.

_____
City Clerk

(SEAL)

## ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto _____
_____
(Name and Address of Assignee)
_____

the within bond and does hereby irrevocably constitute and appoint _____
_____as registrar and transfer agent to transfer the said bond on the records kept for registration thereof with full power of substitution in the premises.

Signature guaranteed:

_____
(Bank, Trust Company or Paying Agent)

_____
(Authorized Officer)

Date of Assignment: _____

Insert Social Security Number or other Tax Identification Number of Assignee

_____

NOTICE: The signature to this Assignment must correspond with the name of the registered owner as it appears upon the face of the within bond in every particular, without any alteration whatever, and must be guaranteed by a commercial bank or trust company or a member of a national securities exchange who is a member of a Medallion Signature Guarantee Program.

**[END OF BOND FORM]**

**SECTION 8.** In case any Series 2012 Bond shall become mutilated or be stolen, destroyed or lost, the City shall, if not then prohibited by law, cause to be authenticated and delivered a new Series 2012 Bond of like date, number, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated Series 2012 Bond, or in lieu of and in substitution for such Series 2012 Bond stolen, destroyed or lost, upon the Registered Owner's paying the reasonable expenses and charges of the City in connection therewith, and in case of a Series 2012 Bond stolen, destroyed or lost, his filing with the City or the Transfer Agent evidence satisfactory to them that such Series 2012 Bond was stolen, destroyed or lost, and of his ownership thereof, and furnishing the City or Transfer Agent with such security and/or indemnity as may be required by law or by them to save each of them harmless from all risks, however remote.

**SECTION 9.** Only such of the Series 2012 Bonds as shall have endorsed thereon a certificate of registration and authentication in substantially the form set forth in Section 7, duly executed by the Transfer Agent, shall be entitled to the rights, benefits and security of this Bond Resolution. No Series 2012 Bond shall be valid or obligatory for any purpose unless and until such certificate of registration and authentication shall have been duly executed by the Transfer Agent, which executed certificate shall be conclusive evidence of registration, authentication and delivery under this Bond Resolution. The Transfer Agent's certificate of registration and authentication on any Series 2012 Bond shall be deemed to have been duly executed if signed by an authorized officer of the Transfer Agent, but it shall not be necessary that the same officer sign said certificate on all of the Series 2012 Bonds that may be issued hereunder at any one time.

**SECTION 10.** (a) Each Series 2012 Bond shall be transferable only on the Registration Records, upon surrender thereof at the office of the Transfer Agent, together with a written instrument of transfer satisfactory to the Transfer Agent duly executed by the Registered Owner or his attorney duly authorized in writing. Upon the transfer of any Series 2012 Bond, the City, acting through its Transfer Agent, shall issue in the name of the transferee a new Series 2012 Bond or Series 2012 Bonds of the same aggregate principal amount and maturity and rate of interest as the surrendered Series 2012 Bond or Series 2012 Bonds.

(b) In all cases in which the privilege of transferring Series 2012 Bonds is exercised, the Transfer Agent shall authenticate and deliver Series 2012 Bonds in accordance with the provisions of this Bond Resolution.

**SECTION 11.** From and after the issuance and delivery of the Series 2012 Bonds, the System shall be operated on a Fiscal Year basis, commencing on the first day of October, and ending on the last day of September in the following year; provided, however, that the Fiscal Year may be changed upon written notice to the Registered Owner.

**SECTION 12.** The City hereby establishes the Revenue Fund. All Revenues shall be set aside as collected and shall be deposited into the Revenue Fund. Moneys in said fund shall not be subject to lien or attachment by any creditor of the City and shall be set aside for, allocated to and deposited by the Clerk to the extent available in the following order of preference in the following separate and special funds, hereby created, without further direction of or action by the Governing Body or other authority of the City:

(a) The City hereby establishes the Operation and Maintenance Fund. On the first business day of each month, commencing in the first month after delivery of the Series 2012 Bonds, there shall be deposited into the Operation and Maintenance Fund, an amount which will provide for the payment of the Current Expenses to be paid during such calendar month, and, in the event that the aggregate amounts deposited into such fund pursuant to this Bond Resolution during the preceding months shall have been insufficient to pay all such expenses, an amount sufficient to repay such deficiencies.

(b) The City hereby establishes the 2012 Bond Fund which shall be maintained with a qualified depository in its name for the payment of the principal of and interest on the Series 2012 Bonds and the payment of the Agents' fees in connection therewith. There is hereby created within the 2012 Bond Fund two (2) separate subaccounts as follows:

(i) On the first business day of each month, commencing in the first month after the delivery of the Series 2012 Bonds, there shall be deposited into a subaccount in the 2012 Bond Fund designated as the 2012 Current Debt Service Account, which account is hereby created, an amount which, together with equal subsequent monthly deposits on the first business day of each successive month, will provide a sum equal to the amount necessary to pay interest and principal due and payable through the date on which the next installment of principal on the Series 2012 Bonds is due. Accrued interest, if any, on the Series 2012 Bonds received from the Purchaser shall be deposited into the 2012 Current Debt Service Account of the 2012 Bond Fund at Closing;

(c) In order to fully fund the 2012 Depreciation Fund which is hereby created, the Clerk shall, as available, fund the 2012 Depreciation Fund with excess Revenues. The amount on deposit in the 2012 Depreciation Fund shall not exceed Five Thousand Dollars ($5,000), which sum shall thereafter be maintained in such fund by such future payments as may be necessary for that purpose. Notwithstanding any other provision contained herein, upon the determination of any deficiency in the total amount on deposit in the 2012 Depreciation Fund the full amount of such deficiency shall be fully funded within one (1) year of such determination. The 2012 Depreciation Fund shall be used for the purpose of paying the cost of replacing such parts of the System as may need replacement in order to keep the System operating in an

economical and efficient manner upon written certification by the Consulting Engineers to the Governing Body certifying the necessity for such expenditure and concurring in the necessity for such expenditure from the 2012 Depreciation Fund; provided, however, that in the event the funds otherwise established for the payment of the principal of and interest on the Series 2012 Bonds should be insufficient for said purpose, then and in that event, to the extent of any such insufficiency, the amount necessary to pay accruing interest and to provide for the payment of the principal as set forth in subparagraph (b)(i) of this section shall be drawn from the 2012 Depreciation Fund and shall be used, together with funds otherwise available, to pay such accruing interest and to provide for the payment of principal as set forth in subparagraph (b)(i) of this section.

(d) In order to fully fund the 2012 Contingent Fund, which is hereby created, the Clerk shall, as available, fund the 2012 Contingent Fund with excess Revenues. The amount on deposit in the 2012 Contingent Fund shall not exceed Five Thousand Dollars ($5,000), which sum shall thereafter be maintained in such fund by such future payments as may be necessary for that purpose. Notwithstanding any other provision contained herein, upon the determination of any deficiency in the total amount on deposit in the 2012 Contingent Fund the full amount of such deficiency shall be fully funded within one (1) year of such determination. The 2012 Contingent Fund shall be used for the purpose of paying the cost of unforeseen contingencies arising in the operation and maintenance of the System, including the construction of reasonable and proper improvements, betterments, and extensions thereto upon written certification by the Consulting Engineers to the Governing Body certifying the necessity for such expenditure and concurring in the necessity for such expenditure from the 2012 Contingent Fund; provided, however, that in the event the funds otherwise established by the Resolution for the payment of the principal of and interest on the Series 2012 Bonds should be insufficient for said purpose, then and in that event, to the extent of any such insufficiency, the amount necessary to pay accruing interest and to provide for the payment of the principal as set forth in subparagraph (b)(i) of this section shall be drawn from the 2012 Contingent Fund and shall be used, together with funds otherwise available, to pay such accruing interest and to provide for the payment of principal as set forth in subparagraph (b)(i) of this section.

The moneys in the foregoing funds shall be held separate and apart from all other funds of the City and shall be applied in the manner provided, and, except for moneys in the Operation and Maintenance Fund, pending such application, shall be subject to a lien and charge in favor and for the security of Registered Owner of the Series 2012 Bonds, and any Additional Bonds until paid out or transferred as herein provided. Any surplus Revenues remaining after all deposits and transfers required or allowed by this Bond Resolution shall be used solely for purposes pertaining to the System or as otherwise allowed by the Utilities Act.

Any Revenues of the System collected prior to the Closing by the City may be used by the City to fund all or a portion of the foregoing funds and accounts.

**SECTION 13.** If Revenues shall be insufficient at any time to make the payments or deposits required by Section 12 hereof, the deficiency shall be made good by additional payments to be made out of the first available Revenues received during any succeeding month or months. Whenever and as long as sums actually on deposit in the 2012 Bond Fund, including the 2012 Debt Service Reserve Account therein, shall equal the outstanding principal amount of

the Series 2012 Bonds, plus the amount of all interest due thereon until the respective maturity dates of the Series 2012 Bonds, no further deposits need be made into said funds.

**SECTION 14.** All sums in the funds referred to in Section 12 hereof shall be kept on deposit in bank accounts separate from all other bank accounts of the City in a bank or banks having Federal Deposit Insurance Corporation insurance of its accounts and at all times shall be continuously secured as provided by the laws of the State for other funds of the City, or, in the discretion of the Governing Body, may be invested as directed in this resolution in investments authorized under the laws of the State as may now be or hereafter become applicable. Such investments shall mature or be redeemable prior to the time the funds so invested will be needed for expenditure. Any interest or other income received from investments shall accrue to and be deposited in the fund which generated such income or to which such income is attributable. Provided, however, that the Governing Body shall transfer to the 2012 Current Debt Service Account in the 2012 Bond Fund any such income in excess of the aggregate amount required by this resolution to be maintained in any other fund or account.

**SECTION 15.** The City covenants and agrees with the Registered Owner that it will perform, or cause to be performed, all duties with respect to the operation and maintenance of the System and with respect to the fixing, maintaining and collecting of the rates, fees and charges for the services thereof, the establishing of the funds herein referred to, and all other matters and things required by law and by this resolution, and that it will do or cause to be done, in apt time and season, each and every official act necessary for the payment of the principal of and the interest on the Series 2012 Bonds as the same shall mature and accrue.

**SECTION 16.** The City further covenants with the Registered Owner as follows:

(a) As long as any of the Series 2012 Bonds are outstanding and unpaid, it will operate and maintain the System, or cause the System to be operated and maintained.

(b) As long as any of the Series 2012 Bonds are outstanding and unpaid, it will fix and maintain rates and make and collect charges for the use and service of the System which will at all times be sufficient: (i) to pay the Current Expenses of the System, (ii) to provide one hundred ten per centum (110%) of the amount of the maximum Principal and Interest Requirements for the current Fiscal Year on account of the Bonds then outstanding, and (iii) to fund the 2012 Depreciation Fund and the 2012 Contingent Fund as provided in Section 12 hereof.

(c) The rates, fees and charges for the use and service of the System at the Closing will be sufficient to satisfy the requirements of the preceding paragraph.

(d) If the Revenues in any Fiscal Year as shown by the City's audit are less than the total amount set forth in subsection (b) of this Section, then it shall, as promptly as possible, request the Consulting Engineers to make recommendations as to a revision of such rates, fees and charges or methods of operating the System which will result in producing the required amount in the following Fiscal Year. Upon receipt of such recommendations the City shall, subject to applicable requirements imposed by law, immediately revise such rates, fees and

charges and take such other actions respecting the methods of operation of the System as shall in its discretion be deemed necessary.

(e) As long as any of the Series 2012 Bonds shall remain outstanding and unpaid, the City shall carry and maintain all risk insurance upon all the properties forming a part of the System which may be of an insurable nature, such insurance to be of the type and kind and for such amount or amounts as carried and maintained by other municipalities rendering services of a similar character in similar communities. The proceeds of all such insurance shall be used only for the maintenance and restoration of the System, or for the payment of the principal of and the interest on the Series 2012 Bonds.

(f) The City shall set up and maintain a proper system of accounts showing the amount of Revenues received from the System and the application thereof. Such accounts shall be separate and distinct from the other accounts of the City, and at least once a year shall be properly audited by independent auditors who shall be certified public accountants. The report of such audit shall be open to the public and to the Registered Owner upon reasonable request.

(g) The Registered Owner of any of the Series 2012 Bonds shall be permitted, at all reasonable times, to inspect the System and all records, accounts and data relating thereto, and shall be furnished all data and information relating to the System which may be reasonably requested.

(h) Except as provided for in Section 19(b) of this resolution, the City will not create or permit to be created any charge or lien on Revenues ranking equal or prior to the charge or lien of the Series 2012 Bonds.

**SECTION 17.** Prior to the commencement of each Fiscal Year, the Governing Body shall cause to be prepared a budget setting out the estimated receipts and expenditures of the System for the then ensuing Fiscal Year. This budget shall contain:

(a) An estimate of the receipts expected to be derived from the operation of the System;

(b) A statement of the estimated cost of operating the System during the next ensuing Fiscal Year;

(c) A statement of the amount of principal and interest due during the ensuing Fiscal Year;

(d) A statement of what replacements to the System may be anticipated and the estimated cost thereof;

(e) A statement of the total amount anticipated to be payable from Revenues during the next ensuing Fiscal Year; and

(f) A statement of the amount on deposit in each of the funds referred to in Section 12 of this resolution.

**SECTION 18.** (a) In order to insure the efficient and economical operation of the System and to insure the proper maintenance thereof in an efficient working order, the City covenants, as a part of the contract to be evidenced by the Series 2012 Bonds, that it will employ, while any of the Series 2012 Bonds are outstanding, independent engineers or engineering firms having a favorable reputation for skill and experience in such work, such engineer or engineering firm to act as Consulting Engineers for the operation and maintenance of the System. The current Consulting Engineers shall continue to be employed under this Section 18 until further action by the Governing Body. The compensation of the Consulting Engineers shall be deemed to be an expense of operating the System and shall be payable from Revenues.

(b) It shall be the duty of the City with advice from the Consulting Engineers annually to inspect the System prior to the commencement of each Fiscal Year and to file a report with the Clerk prior to the commencement of each Fiscal Year, setting out the condition of the physical plant of the System and any recommendations which the Consulting Engineers shall deem to be advisable. Such report shall include the following:

(i) Advice and recommendations concerning the maintenance, repair and operation of the System.

(ii) Advice and recommendations as to renewals or replacements of any part of the System.

(iii) Advice and recommendations as to extensions of the System.

(iv) The estimated cost of any recommended renewals, replacements or extensions to the System.

(v) Advice and recommendations concerning the amount and character of insurance that should be carried on the System.

(vi) Advice and recommendations concerning any revision of the rates to be charged for the services of the System.

(vii) A statement of the judgment of the City with advice from such Consulting Engineers concerning whether the System had been maintained in good repair and operating order, with such suggestions as such Consulting Engineers may deem advisable concerning changes in the methods of operating the System.

(c) The City covenants with the Registered Owner that if the report of the Consulting Engineers shall show that the System has not been maintained in good repair and operating condition, it will, from available Revenues and from the 2012 Depreciation Fund and, to the extent applicable, the 2012 Contingent Fund, promptly restore the System to good repair and operating condition; that all recommendations of said report shall receive impartial consideration by the Governing Body; and that the City and the Governing Body shall endeavor in good faith to carry out the recommendations that may be made by the City with advice from the Consulting Engineers.

**SECTION 19.** (a) Except as hereafter set forth in subparagraph (b) below, from and after the issuance of the Series 2012 Bonds, no Additional Bonds shall be issued or obligations incurred by the City which are payable in whole or in part from or chargeable to Revenues (except obligations incurred in the operation and maintenance of the System), unless such Additional Bonds or obligations are in all respects junior and subordinate to the Bonds.

(b) The City shall have the right to issue one or more series of Additional Bonds to be secured by a parity lien on and ratably payable from Net Revenues and any other security pledged to the Bonds, provided in each instance that:

(i) the Net Revenues available for payments of principal and interest on the Bonds for a period of 12 consecutive months during the 18 months preceding the month in which such Additional Bonds are issued must be certified by an accountant to have been at least equal to 110% of the highest annual debt service payments in any succeeding Bond Year with respect to the Bonds and the Additional Bonds proposed to be issued; or in lieu of the foregoing formula, if a new schedule of rates, fees and charges for the services, facilities and commodities of the System shall have been adopted, then the Revenues available for debt service payments (taking into account such new rates) must be certified by an accountant to have been at least equal to 120% of the highest annual debt service payments in any succeeding Bond Year with respect to the Bonds and the Additional Bonds proposed to be issued during the period set forth above;

(ii) the pledge of and lien on the Net Revenues and amounts on deposit from time to time in the 2012 Bond Fund shall be extended for the benefit of the Registered Owner of the Additional Bonds; and

(iii) the resolution under which the proposed bonds are being issued shall provide for the funding of a debt service reserve fund or account for such Additional Bonds resulting from the issuance of such Additional Bonds from the proceeds of such Additional Bonds.

(c) The City hereby covenants and agrees that in the event Additional Bonds in one or more series are issued on parity with the Bonds, it shall:

(i) Adjust the deposits into the 2012 Bond Fund in the following manner: On the first business day of each month, commencing in the first month after the delivery of the Additional Bonds, there shall be deposited into a subaccount in the 2012 Bond Fund designated 2012 Current Debt Service Account an amount which, after taking into account any amounts already on deposit and equal subsequent monthly deposits on the first business day of each successive month, will provide a sum equal to the amount necessary to pay interest and principal due and payable through the date on which the next installment of principal on the Bonds and the Additional Bonds is due.

(ii) Adjust the maximum amounts to be deposited annually into the 2012 Depreciation Fund and the 2012 Contingent Fund, taking into account the future replacement cost of the facilities and equipment to be constructed or acquired with the proceeds of such Additional Bonds, by depositing into said funds on the first business day

of each month, commencing in the first month after the delivery of such Additional Bonds, such amount, if any, of the balance remaining after making the deposits under clause (i) above (or the entire balance if less than the required amount) as is required by the resolution under which such Additional Bonds are issued.

(d) The City shall have the right to call, subject to the call provisions of the respective Bond series, any or all outstanding Bonds which may be called at par prior to calling any Bonds that are callable at a premium. If it is provided in any subsequently issued series of Additional Bonds secured by a parity lien on Net Revenues that excess moneys in the 2012 Bond Fund shall be used to redeem bonds in advance of scheduled maturity or if the City, at its option, undertakes to redeem outstanding Bonds in advance of scheduled maturity, it is agreed and understood that:

(i) calls of or prepayment on Bonds will apply to each series of Bonds on an equal pro rata basis (reflecting the proportion of the original amount of each series of Bonds outstanding at the time of such call); and

(ii) calls of Bonds for each Bond series will be in accordance with the call provisions of the respective Bond series.

(e) The City may issue bonds junior and subordinate to the Bonds and any Additional Bonds at any time, provided that the issuance of such bonds does not violate any covenant of the City concerning any of its then outstanding Bonds.

**SECTION 20.** The City covenants that it will not provide free service to any user of the System unless permitted by State statute.

**SECTION 21.** The City hereby covenants that it will not make any use of the proceeds of the Series 2012 Bonds or do or suffer any other action that would cause: (a) the Series 2012 Bonds to be "arbitrage bonds" as such term is defined in Section 148(a) of the Code; (b) the interest on the Series 2012 Bonds to be included in the gross income of the Registered Owner thereof for federal income taxation purposes; or (c) the interest on the Series 2012 Bonds to be treated as an item of tax preference under Section 57(a)(5) of the Code.

**SECTION 22.** The Governing Body hereby designates the Series 2012 Bonds as "qualified tax exempt obligations" for purposes of Section 265(b)(3) of the Code. The City (including any subordinate entity or entities issuing tax exempt obligations on behalf of the City within the meaning of Section 265(b)(3) of the Code) has not issued, and does not reasonably expect to issue, tax exempt obligations within calendar year 2012 which, together with the Series 2012 Bonds, will exceed $10,000,000.

**SECTION 23.** The City represents as follows:

(a) The City shall timely file with the Internal Revenue Service, such information report or reports as may be required by Section 148(f) and 149(e) of the Code;

(b) The City shall take no action that would cause the Series 2012 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code;

(c) The City shall take all necessary action to have the Series 2012 Bonds registered within the meaning of Section 149(a) of the Code; and

(d) The City will not employ any device or abusive transaction with respect to the investment of the proceeds of the Series 2012 Bonds.

**SECTION 24.** The City reasonably expects that it will not issue bonds in an amount that exceeds $5,000,000 for calendar year 2012 and therefore will not be subject to the rebate required by Section 148(f) of the Code. However, if the Series 2012 Bonds become subject to the rebate required by Section 148(f) of the Code, the City hereby covenants that it shall make, or cause to be made, the rebate required by Section 148(f) of the Code by fully complying with the terms and provisions of the Arbitrage Rebate Agreement.

**SECTION 25.** The City shall not hereafter construct, acquire or operate, or permit, or, to the extent permitted by law, consent to the construction, acquisition or operation of, any plants, structures, facilities or properties which may compete or tend to compete with the System; except that nothing in this resolution contained shall prevent the City from giving its permission or consent to the construction, acquisition or preparation in the area serviced by the System by a Person or facilities for the provision of water and sewer services which the City shall determine are not economically feasible for it to construct or acquire at such time, but which, if constructed or acquired by the City, would carry out the purposes of the City and its System under the Utilities Act and such facilities pursuant to the terms of such permission or consent will become a part of the System upon notice to such person by the City, either (a) without any cost to or payment by the City, or (b) upon payment of such amount or cost as the City shall determine to be proper in the circumstances.

**SECTION 26.** The City covenants that it will (a) diligently enforce and collect all fees, rental or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the laws of the State, and (b) to the full extent permitted by law, under reasonable rules and regulations, shut off and discontinue the supplying of the services and facilities of the System for the non-payment of fees, rentals or other charges for said water services, and will not restore said water services until all delinquent charges, together with interest and reasonable penalties, have been paid in full.

**SECTION 27.** (a) The provisions of this resolution shall constitute a contract between the City and the Registered Owner from time to time of the Series 2012 Bonds, and after the issuance of the Series 2012 Bonds no changes, additions or alterations of any kind shall be made hereto in any manner except upon consent of the Registered Owner of at least sixty five percent (65%) in principal amount of the Series 2012 Bonds then outstanding, such consent to be evidenced by an instrument or instruments signed by such Registered Owner and duly acknowledged in the manner of a deed for the conveyance of real estate in the State. Such instruments shall contain or be accompanied by proofs of ownership of specified numbers and principal amounts of the Series 2012 Bonds, shall be filed in the office of the Clerk and shall be a public record.

(b) Any and all modification or alterations made in the manner hereinabove provided shall not become effective until the required consents shall have been filed with the Clerk.

(c) No modifications or alterations to this resolution shall extend the maturity of or reduce the interest rate on or otherwise alter or impair the obligation to pay the principal of or the interest on any of the Series 2012 Bonds at the time and place and at the rate and in the currency as provided herein, without the express consent of the Registered Owner of any of such Series 2012 Bonds, nor reduce the percentage of the Series 2012 Bonds required for the affirmative vote or written consent to a modification or alteration, nor alter or impair the covenants set forth in Sections 15, 16 and 18 hereof.

**SECTION 28.** The Series 2012 Bonds shall be payable equally and ratably, without regard to the date when the Series 2012 Bonds actually shall be delivered and shall enjoy parity of lien, one with the other, upon Net Revenues and any Additional Bonds.

**SECTION 29.** Due to the character of the Series 2012 Bonds, the complexity of structuring bonds and prevailing market conditions, the Series 2012 Bonds will be sold by negotiation rather than a public sale by competitive bid to the Purchaser pursuant to the Private Placement Agreement. Notwithstanding any other provision of this Bond Resolution, the Mayor, acting for and on behalf of the City and with the assistance of the Financial Advisor is hereby authorized and directed to negotiate with the Placement Agent and the Purchaser for the sale of the Series 2012 Bonds and to make the final decisions regarding (a) the terms and provisions of the Private Placement Agreement, (b) the aggregate principal amount of the Series 2012 Bonds, (c) the selection of the initial Paying Agent and Transfer Agent, (d) the maturity and payment dates of the Series 2012 Bonds; and (e) the interest rates to be borne by the Series 2012 Bonds, and to make all final determinations necessary to structure the Series 2012 Bonds.

**SECTION 30.** The Private Placement Agreement, in the form attached hereto as Exhibit A, shall be, and hereby is, approved in substantially said form and the Mayor is hereby authorized and directed to execute and deliver, for and on behalf of and in the name of the City, the Private Placement Agreement, with such changes, omissions, insertions and revisions as the Mayor shall approve, said execution to constitute conclusive evidence of such approval; provided, however, that the Mayor shall not execute and deliver the Private Placement Agreement until such time as the net present value savings to maturity of the Prior Loans is in an amount satisfactory to the Mayor and in compliance with the Act and this Bond Resolution.

**SECTION 31.** The Mayor and the Clerk, acting for and on behalf of the City, are hereby authorized to prepare and distribute an Offering Memorandum in connection with the Series 2012 Bonds in order to add in the sale of the Series 2012 Bonds.

**SECTION 32.** The Series 2012 Bonds are being sold to the Purchaser without a view for re-selling the Series 2012 Bonds. The Purchaser shall be required to execute a certification satisfactory to the City upon delivery of the Series 2012 Bonds to the effect that the Series 2012 Bonds are being purchased for the account of the Purchaser without the intent to re-sell.

**SECTION 33.** (a) The City hereby establishes the Refunding Fund which shall be maintained with a qualified depository in its name. The principal proceeds received upon the

sale of the Series 2012 Bonds shall be deposited in the Refunding Fund from which there shall be paid all legal fees and expenses including those of Bond Counsel, Financial Advisor fees and expenses, Placement Agent fees, paying and transfer agent fees and expenses, premiums, commissions and all other fees and expenses incurred by the City in connection with the authorization, issuance, sale, validation and delivery of the Series 2012 Bonds. The Mayor is authorized to pay all such legal fees and expenses related to the issuance of the Series 2012 Bonds out of the Refunding Fund, provided, however, the total costs of issuance of the Series 2012 Bonds shall not exceed $40,000.

(b) The balance of the proceeds in the Refunding Fund shall be used by the City to refund the Prior Loans on a date in compliance with the Prior Loan Resolution and Section 34.

**SECTION 34.** The Governing Body, acting for and on behalf of the City, hereby irrevocably elects and directs that the Prior Loans shall be redeemed on such date as may be determined by the Financial Advisor to be in the best interest of the City and that is in compliance with the terms and provisions of the Prior Loan Resolution. The Clerk is hereby authorized and directed to give all notices required for the refunding of the Prior Loans, including giving notice of prepayment of the Prior Loans to the extent necessary.

**SECTION 35.** The Mayor, acting for and on behalf of the City, is hereby authorized, if deemed necessary, to employ a verification agent in connection with the Series 2012 Bonds and the Prior Loans to verify the arithmetical accuracy of certain computations prepared by the Placement Agent.

**SECTION 36.** The Governing Body, acting for and on behalf of the City, hereby irrevocably elects and directs that the Prior Loans shall be redeemed on the first call date in compliance with the terms and provisions of the Prior Loan Resolution. The Clerk is hereby authorized and directed to give all notices required for the refunding of the Prior Loan.

**SECTION 37.** (a) Payment of principal on the Series 2012 Bonds shall be made, upon presentation and surrender of the Series 2012 Bonds at the principal office of the Paying Agent, to the Record Date Registered Owner thereof who shall appear in the Registration Records as of the Record Date.

(b) Payment of each installment of interest on the Series 2012 Bonds shall be made to the Record Date Registered Owner thereof whose name shall appear in the Registration Records. Interest shall be payable in the aforesaid manner irrespective of any transfer or exchange of such Series 2012 Bond subsequent to the Record Date and prior to the due date of the interest.

(c) Principal of and interest on the Series 2012 Bonds shall be paid by check or draft mailed on the Interest Payment Date to the Registered Owner at the addresses appearing in the Registration Records. Any such address may be changed by written notice from the Registered Owner to the Transfer Agent by certified mail, return receipt requested, or such other method as may be subsequently prescribed by the Transfer Agent, such notice to be received by the Transfer Agent not later than the 15th day of the calendar month preceding the applicable principal or Interest Payment Date to be effective as of such date.

**SECTION 38.** The Series 2012 Bonds shall be submitted to validation as provided by Section 31-13-1 *et seq*., Mississippi Code of 1972, and to that end the Clerk is hereby directed to prepare a transcript of all legal papers and proceedings relating to the Series 2012 Bonds and to certify and forward the same to the State's Bond Attorney for the institution of validation proceedings.

**SECTION 39.** Each of the following constitutes an event of default under this Bond Resolution:

(a) failure by the City to pay any installment of principal of or interest on any Series 2012 Bond at the time required;

(b) failure by the City to perform or observe any other covenant, agreement or condition on its part contained in this Bond Resolution or in the Series 2012 Bonds, and the continuance thereof for a period of thirty (30) days after written notice thereof to the City by the Registered Owner of not less than ten percent (10%) in principal amount of the then outstanding Series 2012 Bonds; or

(c) an Act of Bankruptcy occurs.

**SECTION 40.** The Series 2012 Bonds shall be prepared and executed as soon as may be practicable after the adoption of this Bond Resolution and shall thereafter be delivered to or as directed by the Purchaser.

**SECTION 41.** Except as otherwise expressly provided herein, nothing in this Bond Resolution, express or implied, is intended or shall be construed to confer upon any person or firm or corporation other than the City, the holders of the Series 2012 Bonds issued under the provisions of this Bond Resolution, the Governing Body and the Agent, any right, remedy, or claim, legal or equitable, under and by reason of this Bond Resolution or any of the provisions hereof. This Bond Resolution, and all of its provisions are intended to be and shall be for the sole and exclusive benefit of the City, the Governing Body and the holders from time to time of the Series 2012 Bonds issued under the provisions of this resolution.

**SECTION 42.** All covenants, stipulations, obligations and agreements of the City contained in this Bond Resolution, shall be binding upon the City, and, except as otherwise provided in this Bond Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the City by the provisions of this Bond Resolution, shall be exercised or performed by the City. No stipulation, obligation or agreement herein contained or any other document necessary to conclude the issuance and sale of the Series 2012 Bonds shall be deemed to be a stipulation, obligation or agreement of any officer, agent or employee of the City, including the Governing Body, in his or her individual capacity, and no such officer, agent or employee shall be personally liable on the Series 2012 Bonds or be subject to personal liability or accountability by reason of the issuance and sale thereof.

**SECTION 43.** If any one or more of the provisions of this resolution shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any of the other provisions of this Bond Resolution, but this Bond Resolution shall be construed and enforced as if such illegal or invalid provision or provisions had not been contained herein.

**SECTION 44.** The Mayor, the Clerk and the other Authorized Officers of the City are, and each of them acting alone is, hereby authorized and directed to take such actions and to execute such documents as may be necessary to effectuate the purposes of this Bond Resolution.

> The above Resolution was introduced by Councilman Wolverton, seconded for adoption by Councilman Abston, and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". The Mayor then declared the Resolution adopted on the 18th day of September, 2012.

The exhibits are spread on the minutes as follows:

**Exhibit A**

**PRIVATE PLACEMENT AGREEMENT**

This **PRIVATE PLACEMENT AGREEMENT**, dated _____, 2012 (this "Placement Agreement"), is by and between the **CITY OF PASCAGOULA, MISSISSIPPI** (the "City"), a body politic existing under the Constitution and laws of the State of Mississippi and, Duncan-Williams, Inc., Memphis, Tennessee (the "Placement Agent").

**WITNESSETH:**

**WHEREAS**, the City Council of the City, acting for and on behalf of the City, has authorized the issuance of the City's Combined Water and Sewer System Revenue Refunding Bonds, Series 2012, in the aggregate principal amount of $_____ (the "Bonds"), pursuant to the provisions of a Bond Resolution, adopted on September 18, 2012 (the "Bond Resolution"); and

**WHEREAS**, the proceeds of the Bonds will be used to provide funds for the refunding of all of the City's outstanding $1,504,518 (original principal amount) State Revolving Fund Loan, DWI-H280044-01-2, dated September, 2000, currently outstanding in the principal amount of $851,816; $1,504,518 (original principal amount) State Revolving Fund Loan, DWI-H280044-02-2, dated September, 2000, currently outstanding in the principal amount of $851,816; $383,984 (original principal amount) State Revolving Fund Loan, DWI-H280044-03-3, dated September, 2000, currently outstanding in the principal amount of $271,398; $1,141,222 (original principal amount) State Revolving Fund Loan, DWI-H280044-04-3, dated November, 2002, currently outstanding in the principal amount of $762,498; $727,316 (original principal amount) State Revolving Fund Loan, DWI-H280044-05-3, dated November, 2002, currently outstanding in the principal amount of $485,947; and $1,524,037 (original principal amount) State Revolving Fund Loan, DWI-H280044-06-3, dated December, 2002, currently outstanding

in the principal amount of $1,021,459, as more particularly described in Schedule I hereto (the "Prior Loans"); and

**WHEREAS**, the Bonds are more fully described in the Bond Resolution and in Schedule II attached hereto; and

**WHEREAS**, the City has employed the Placement Agent to act as its agent in connection with the private placement of the Bonds.

**NOW, THEREFORE**, for and in consideration of the covenants herein made, and upon the terms and subject to the conditions herein set forth, the parties hereto agree as follows:

1. **Definitions.** All capitalized terms used herein and not otherwise herein defined shall have the meanings ascribed to them in the Bond Resolution.

2. **Appointment of Placement Agent**. Pursuant to the Bond Resolution and this Placement Agreement, the City hereby appoints the Placement Agent as exclusive placement agent with respect to the Bonds, and the Placement Agent and the Purchaser hereby accept such appointment, with such duties as described herein and in the Bond Resolution.

3. **Placement of the Bonds**. The Placement Agent hereby agrees, as the agent of the City, to place the Bonds with _____, _____, _____, (the "Purchaser"). The Purchaser is to purchase the Bonds at a price as set forth in Schedule III (the "Purchase Price"). It is understood that the purchase of the Bonds by the Purchaser is subject to (a) receipt by the Placement Agent of an opinion of Phelps Dunbar LLP, Jackson, Mississippi ("Bond Counsel") to the effect that the Bonds constitute valid and legally binding obligations of the City payable from and secured by the Net Revenues of the System (as such terms are defined in the Bond Resolution) on parity with any Additional Bonds (as defined in the Bond Resolution), as set forth in the Bond Resolution, and to the effect that the interest on the Bonds is exempt from federal and state income taxes under existing laws, regulations, rulings and judicial decisions; (b) the delivery of certificates in form and tenor satisfactory to the Placement Agent and the Purchaser evidencing the proper execution and delivery of the Bonds and receipt of payment therefor, including a statement of the City, dated as of the date of such delivery, to the effect that there is no litigation pending or, to the knowledge of the signer or signers thereof, threatened relating to the issuance, sale and delivery of the Bonds; and (c) satisfaction of other conditions specified in the Bond Resolution. The Purchaser shall be required to deposit the Purchase Price with the City on or before _____, 2012 (the "Closing Date"), as set forth in Schedule III attached hereto. Subject to the purchase of the Bonds by the Purchaser, the City will pay $_____ from the proceeds of the Bonds or from other funds of the City to the Placement Agent for its Placement Agent Fee (the "Placement Agent Fee") on or after the Closing Date.

4. **Interest on the Bonds**. The parties acknowledge that interest on the Bonds should be treated as excludable from the gross income of the holders of the Bonds for federal income tax purposes and that the Bonds have been designated as "qualified tax exempt obligations" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

5. **Payment to the City**. The Placement Agent agrees that it will, on the Closing Date, cause the Purchaser to transfer to the City, the Purchase Price in immediately available funds. If the Purchaser does not transfer to the City the Purchase Price of the Bonds to be purchased by it or otherwise refuses to purchase the Bonds, the Placement Agent will use its reasonable best efforts to arrange for a substitute Purchaser for the Bonds on the terms set forth in Section 3.

6. **Limitation**. Nothing contained in this Placement Agreement shall obligate the Placement Agent to purchase the Bonds in the event the Purchaser fails to pay the Purchase Price of the Bonds or in the event the Placement Agent is unable to arrange for the purchase of the Bonds.

7. **Fees and Expenses**. The Placement Agent Fee set forth herein represents the total compensation due to the Placement Agent for its services under this Placement Agreement.

The City is responsible for all other expenses and fees due in connection with the sale, delivery and issuance of the Bonds which are to be paid from the balance of the proceeds of the Bonds not utilized for the refunding of the Prior Loans or from other funds of the City.

8. **Governing Law**. This Placement Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi.

9. **Counterparts**. This Placement Agreement may be executed in one or more counterparts, each of which shall be an original and all of which, when taken together, shall constitute but one and the same instrument.

10. **Binding Effect**. This Placement Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns, except that no party hereto may assign any of its rights or obligations hereunder without the consent of the other party.

11. **Investor Letter**. The Purchaser shall execute an Investment Letter in the form attached hereto as Exhibit A.

**IN WITNESS WHEREOF**, the parties hereto have caused this Placement Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

**DUNCAN-WILLIAMS, INC., AS PLACEMENT AGENT**

By:_____

Title:_____

**CITY OF PASCAGOULA, MISSISSIPPI**

By:_____
Robert H. Maxwell, Mayor

**ATTEST:**

**By:_____**
Robert J. Parker, City Clerk

**(SEAL)**

# SCHEDULE I

## PRIOR LOANS

All of the outstanding principal amount of the $1,504,518 (original principal amount) State Revolving Fund Loan, DWI-H280044-01-2, dated September, 2000, currently outstanding in the principal amount of $851,816; $1,504,518 (original principal amount) State Revolving Fund Loan, DWI-H280044-02-2, dated September, 2000, currently outstanding in the principal amount of $851,816; $383,984 (original principal amount) State Revolving Fund Loan, DWI-H280044-03-3, dated September, 2000, currently outstanding in the principal amount of $271,398; $1,141,222 (original principal amount) State Revolving Fund Loan, DWI-H280044-04-3, dated November, 2002, currently outstanding in the principal amount of $762,498; $727,316 (original principal amount) State Revolving Fund Loan, DWI-H280044-05-3, dated November, 2002, currently outstanding in the principal amount of $485,947; and $1,524,037 (original principal amount) State Revolving Fund Loan, DWI-H280044-06-3, dated December, 2002, currently outstanding in the principal amount of $1,021,459.

# SCHEDULE II

| Year of Maturity | Principal Amount | Interest Rate | Yield | CUSIP |
|---|---|---|---|---|
| 2013 | | | | |
| 2014 | | | | |
| 2015 | | | | |
| 2016 | | | | |
| 2017 | | | | |
| 2018 | | | | |
| 2019 | | | | |
| 2020 | | | | |
| 2021 | | | | |
| 2022 | | | | |
| 2023 | | | | |
| 2024 | | | | |

# SCHEDULE III

## PURCHASE PRICE

| | |
|---|---|
| Par Amount of Bonds | $ |
| Plus Net Original Issue Premium | |
| Less: Placement Agent Fee | |

**PURCHASE PRICE DUE TO CITY:**

**EXHIBIT A**

**INVESTMENT LETTER**

_____, 2012

City Council
City of Pascagoula, Mississippi

RE: $_____ City of Pascagoula, Mississippi Combined Water and Sewer System Revenue Refunding Bonds, Series 2012

Ladies and Gentlemen:

The undersigned, _____ (the "Purchaser"), hereby offers to purchase on behalf of its own account at a price of $_____ (representing the par amount of the Bonds of $_____ plus original issue premium of $_____), all of the aggregate principal amount of the bonds captioned above (the "Bonds"), in the principal amount of $_____ maturing on the dates and bearing interest at the stated rates set forth in **EXHIBIT A** attached hereto.

The Purchaser understands that the Bonds will be registered as to both principal and interest, dated the date of delivery, issued in authorized denominations of $100,000 each (and $5,000 thereafter) or integral multiples thereof up to the amount of a single maturity and secured by an irrevocable pledge of and shall be payable from the revenues derived from the operation of the combined waterworks and sewage system, including any enlargement and extension thereof (the "System"), of the City of Pascagoula, Mississippi (the "City"), subject to the prior payment of the reasonable and necessary expenses of operating and maintaining the System (the "Net Revenues"), all in accordance with the provisions of the Parameter Resolution adopted by the City Council of the City (the "Governing Body") on September 18, 2012 (the "Parameter Resolution"), and the Bond Resolution adopted by the Governing Body of the City on September 18, 2012 (together with the Parameter Resolution, the "Bond Resolution"). The Purchaser understands that the Bonds will be available for delivery on or about _____, 2012.

12. *Representations and Warranties*. The Purchaser acknowledges, represents, warrants and agrees as follows:

That it is a "Qualified Institutional Buyer" as defined in Rule 144A of the Securities Act of 1933, as amended, or an "Accredited Investor" within the meaning of Regulation D promulgated under Section 4(2) of the Securities Act of 1933, as amended.

That it has been advised that the Bonds will be exempt from the United States Securities and Exchange Commission Rule 15c2-12, as amended. The Purchaser realizes that, if and when the Purchaser wishes to resell part of all of the Bonds, there may not be available current financial information about the City. Further, no trading market currently exists for the Bonds. Accordingly, the Purchaser understands that it may need to bear the risks of this investment for

an indefinite time, since any sale prior to the maturity of the Bonds may not be possible or may be at a price below that which the Purchaser is paying for the Bonds.

That no official statement, prospectus, offering circular or other disclosure document containing information with respect to the City or the Bonds other than a Private Placement Memorandum dated _____, 2012, has been or will be prepared, and it has not requested such a document; that it has made its own inquiry and analysis with respect to the City, the Bonds and the security therefor, and other material factors affecting the security and payment of the Bonds; and that it has in no way relied upon the City or Phelps Dunbar LLP ("Bond Counsel") in connection with such inquiry or analysis.

That it has either been supplied with or has had access to all information, including financial statements and other information of the City to which a reasonable investor would attach significance in making investment decisions, and it has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the City, the Bonds and the security therefor, so that as a reasonable investor, it has been able to evaluate the merits and risks of an investment in the Bonds.

That it is purchasing the Bonds for its own account with its own unencumbered funds. That it has experience and knowledge in purchasing unrated municipal bonds similar to the Bonds and is authorized and otherwise duly qualified to purchase and hold the Bonds. That it has not been formed for the specific purpose of acquiring the Bonds.

Neither the City, counsel to the City, Bond Counsel, the Governing Body, their members nor any of their officers, employees or agents will have any responsibility to the Purchaser for the accuracy or completeness of information obtained by the Purchaser from any source regarding the Bonds or the City, or its assets, businesses, circumstances, financial condition and properties, or regarding the Bonds, the provisions for payment thereof, or the sufficiency of any security therefor.

That no credit rating has been, or will be, obtained with respect to the Bonds; that the Bonds are a speculative investment and that there may be a high degree of risk in such investment.

That it has been advised that the Bonds will not be registered under the Securities Act of 1933, as amended, or any state securities laws and have not been approved by any federal or state securities agency or commission, and that the City is not presently required to register under Section 12 of the Securities Exchange Act of 1934, as amended. The Purchaser agrees that the transfer or assignment of the Bonds acquired pursuant hereto shall be made only in accordance with the Bond Resolution and all applicable laws.

13. *Miscellaneous*.

The Purchaser agrees that it may not cancel, terminate or revoke this Investment Letter or any agreement by it made hereunder (except as otherwise specifically provided herein); that all of the representations and warranties contained herein with respect to the Purchaser will be true on the date of delivery of the Bonds unless prior to the date of delivery of the Bonds the

Purchaser notifies the City otherwise; and that this Investment Letter shall be binding upon the Purchaser's successors and assigns.

This Investment Letter constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and may be amended only by a writing executed by the City.

This Investment Letter shall be enforced, governed and construed in all respects in accordance with the laws of the State of Mississippi.

The representations and warranties of the Purchaser set forth herein shall survive the sale of the Bonds pursuant to this Investment Letter.

**_____, as Purchaser**

**By: _____**
**Name: _____**
**Title: _____**

**EXHIBIT A**

**$_____**
**COMBINED WATER AND SEWER SYSTEM REVENUE REFUNDING BONDS**
**SERIES 2012**
**OF**
**THE CITY OF PASCAGOULA, MISSISSIPPI**
**DATED: Date of Delivery**

| MATURITY (_____ 1) | PRINCIPAL AMOUNT DUE($) | INTEREST RATE(%) | YIELD(%) | REOFFERING PRICE(%) |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

The Bonds are not subject to optional redemption prior to their stated dates of maturity.

*****

The next item for consideration was the renewal of the City's Group Health Insurance Third Party Administrator (TPA) Contract with Lockard & Williams Insurance Services, Pascagoula, MS, as recommended by Brenda Germany, Human Resources Generalist. The current contract will expire September 30, 2012. John Lockard briefed the Council on this item and discussion followed.

The contract is spread on the minutes as follows:

**CLAIMS ADMINISTRATIVE AGREEMENT**

THIS CLAIMS ADMINISTRATIVE AGREEMENT AND ADDENDUM THERETO is made by and between **Lockard & Williams Insurance Services, P.A.** (hereinafter called "L&W"); and **City of Pascagoula** (hereinafter called "Employer").

**WITNESSETH:**

WHEREAS, under various Welfare Benefit Plans designated in Section 1.02 hereof, the Employer has designated itself to serve as "Administrator", as that term is defined in Section 3(16)(A) of the Employee Retirement Security Act; and,

WHEREAS, under such Plans, the Employer is specifically authorized to delegate any or all of its administrative duties to one or more persons, firms or corporations and to compensate such delegates for their services; and,

WHEREAS, L&W is engaged in the business of determining and administering the payment of health care and other welfare benefits on behalf of those Plans as may be agreed upon by it and the Employer from time to time; and,

WHEREAS, it is the purpose of this Agreement to establish a contractual relationship between the Parties whereby L&W will undertake to arrange to receive and process claims and to disburse checks for claims payable under such Plans and to perform such additional administrative services as set forth and delegated to it herein;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and the monetary consideration herein recited, it is mutually agreed as follows:

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## ARTICLE I

## ELECTIONS

**Section 1.01 Effective Date.** The terms and conditions of this Agreement as herein set forth shall be effective on October 1, 2012 through September 30, 2015.

**Section 1.02 Associated Plans.** The Employer hereby designates the following plans of the Employer as "Plans" under Section 2.03 of the Agreement:

/ XX / Cafeteria Plan

/ XX / Employee Health Care Plan

/ XX / Medical Reimbursement Plan

/ XX / Dental Plan

/ XX / Prescription Drug Card

/ / Long Term Disability Benefits Plan

/ XX / Life Insurance Plan

/ XX / Dependent Life

**IN WITNESS WHEREOF,** the Parties have hereunto set their hands and seals, this _____ day of _____, 2012.

**CITY OF PASCAGOULA**

By: _____ **ATTEST** _____

Its: _____ _____

**LOCKARD & WILLIAMS INSURANCE SERVICES, P.A.** **ATTEST**

By: _____ _____

Its: _____ _____

## ARTICLE II

## DEFINITIONS

**Section 2.01 Agreement.** The term "agreement" shall mean this Claims Administrative Agreement between the Employer and L&W.

**Section 2.02 ERISA.** The term "ERISA" shall mean Employee Retirement Income Security Act of 1974, as the same may be from time to time amended.

**Section 2.03 Plans.** The term "plans" shall mean those Employees' Welfare Benefit Plans designated under Section 1.02 of Article I of this Agreement. Copies of such Plans, as amended, shall be maintained by both the Employer and L&W.

## ARTICLE III

## ENGAGEMENT OF L&W

**Section 3.01 Engagement as Independent Contractor.** The Employer hereby engages L&W as an independent contractor and L&W hereby accepts the engagement as an independent contractor to arrange to perform for the Employer certain administrative services, as specified and delegated herein, in conjunction with the operation of the Plans identified in Section 1.02. L&W is, and shall remain, an independent contractor with respect to the services being performed hereunder and shall not for any purpose be deemed an employee or agent of the Employer; nor shall L&W and the Employer be deemed partners, joint venturers, or the like.

## ARTICLE IV

## SERVICES AND DUTIES DELEGATED TO L&W

**Section 4.01 Services and Duties in General.** The services and duties delegated herein by the Employer to L&W are to be performed within the framework of policies, interpretations, rules, practices, and procedures made and established by the Employer. Within the framework of this Agreement, L&W is to provide assistance to the Employer in administering the Plans in accordance with their terms, and is to provide only such services and duties as set forth on Exhibit "A", attached hereto and made a part hereof.

**Section 4.02 Payment of Claims and Benefits.** The Employer shall establish an account, trust, or other funding mechanism to receive deposits of funds to cover expenses of each Plan. As scheduled check cycles are performed, L&W will notify Employer of the amount of funds necessary to pay claims and benefits. Employer will wire transfer the necessary amounts from its account to a check clearing account or premium account established and maintained by L&W expressly for the purpose of issuing checks and benefit payments.

**Section 4.03 Processing Claims and Benefits.** L&W shall process and pay claims and benefits in accordance with the Plans maintained by the Employer. L&W shall incorporate sound business practices and be responsible for reasonable internal audits. Where an error exists, L&W shall use reasonable efforts for recovery of any loss resulting from therefrom, but shall not be required to initiate court proceedings for any such recovery. In the event L&W pays any claimant less than the amount of entitlement under the Plan's documents, it shall promptly adjust the underpayment.

**Section 4.04 Handling Large Claim.** Any claim or benefit in excess of $ 25,000 submitted for payment shall be validated for payment by the Employer prior to the actual payment thereof.

**Section 4.05 Management Reports.** L&W shall provide the Employer with those standard management reports set forth in Exhibit "B", which is attached hereto, with respect to each health care plan. The reports shall be provided to the Employer on a monthly basis, unless it directs L&W to furnish such reports less frequently. Additional and/or custom reports will be provided to Employer by L&W at additional cost.

**Section 4.06 Changes to Plans and Benefits.** The Employer agrees that it shall not make changes in benefits until the changes proposed are communicated to L&W in writing and its written consent given.

**Section 4.07 No Responsibility for the Following Expenses.** L&W shall not provide nor be responsible for the expense and cost of legal counsel, actuaries, consulting physicians or dentists, certified public accountants, investment counselors, investment analysts, or similar type service performed for the Employer. Additionally, expenses related to the acquisition of medical documentation will be the responsibility of the Employer. L&W shall not be authorized to incur any expense or cost for such services on behalf of the Employer without written consent of the Employer, with the exception of the expenses related to the acquisition of additional medical documentation. In the event that such services are engaged by L&W with the consent of the Employer, the Employer shall be responsible for such services and the cost and expense thereof.

**Section 4.08 No Responsibility for Provider's Services.** No employee or dependent covered by the Plan shall have any claims, right, or cause of action against L&W or the Employer, or their directors, officers, agents, or employees on account of any act or commission or omission, whether negligent, willful, or otherwise, on the part of any institution or person rendering services or furnishing materials to any covered employee or dependent, or on account of any failure to obtain from any physician or other provider of any other services, care, treatment, or supplies for which benefits are payable pursuant to the Plans.

**Section 4.09 No Responsibility for Acts of Other Fiduciaries.** L&W does not assume any responsibility for any act or omission or breach of duty by any plan fiduciary or party in interest other than itself, and it is not to be deemed an insurer, underwriter, or guarantor with respect to any benefits payable by the Employer of the Plans.

**Section 4.10 No Responsibility for Funding of Plans.** L&W shall have no responsibility, risk, liability, or obligation for funding the Plans. The responsibility and obligation for funding the Plans are the entities so provided in the Plans. It is further understood and agreed that L&W shall have no responsibility or obligation to take action against the Employer, any employee, or other person to enforce provisions of the Plans. In the event that the Employer desires to engage the services of L&W for such purposes, such services shall be engaged and rendered only pursuant to a separate written agreement between the parties. It is further understood and agreed that L&W shall not be responsible or obligated for the investment of any assets or funds of the Plans.

## ARTICLE V

## SERVICE FEES OF L&W AND INSURANCE PREMIUMS

**Section 5.01 Administrative Fee and Insurance Premiums.** For the claims and administrative services to be provided by L&W under the terms of this Agreement, the Employer agrees to pay L&W monthly administrative fees with respect to the various Plans as agreed upon from time to time. The Employer will also submit to L&W any insurance premiums and other fees required to keep these plans in force. The current fee and premium schedule in effect shall be attached hereto as Exhibit "C". Each month L&W shall submit to the Employer a statement showing the fees and insurance premiums applicable to each Plan for the following month. **The monthly fees and insurance premiums shall be paid to L&W within ten (21) days after receipt of such statement.**

## ARTICLE VI

## AMENDMENT AND TERMINATION

**Section 6.01 Amendment of Agreement.** This Agreement contains the entire agreement between the parties relating to the subject matter thereof, and may be amended only by a writing signed by them.

**Section 6.02 Termination or Amendment.** The initial term of this Agreement shall begin on the effective date and end on the following September 30, and shall renew automatically from year to year thereafter, unless sooner terminated as provided below.

(a) At the end of any month pursuant to written notice given by any party to the other parties not less than 60 days in advance of an intent to terminate; or,

(b) The Employer's failure to pay the monthly fees to L&W provided for in Section 5.01 of the Agreement. If L&W fails to receive said payments from the Employer when they have become due and payable, it shall notify the Employer of such failure to receive payment. Thereupon, the Employer shall have ten (10) days from the day of receipt of notice to cause payment to be made of such fees to L&W. If L&W thereafter fails to receive the payment of such charge within the ten (10) day period after notice as provided herein, then L&W, at their option, may immediately terminate this Agreement.

**Section 6.03 Final Determination Report.** Upon termination of this Agreement by either party, L&W, within 30 days after the effective date of termination and after receipt of payment of all fees and expenses of L&W, shall prepare and deliver a final report as of the date of termination of the financial status and transactions of the Plans To the Employer.

Upon termination and receipt of all fees and expenses, L&W shall cooperate fully with the successor in transferring files, records, reports, and the like.

## ARTICLE VII

## MISCELLANEOUS

**Section 7.01 Records and Files.** L&W shall maintain all books, financial records, claims files, medical records, and reports in conjunction with the administrative services to be performed hereunder. The confidentiality of such records shall be maintained by L&W and the information therein shall not be divulged or disclosed or made available to persons other than the Employer or the Administrator or the affected person without the prior written approval of the Employer or Administrator, or affected person, or a court of competent jurisdiction, except that in administration of the coordination of benefits, L&W may furnish such information from such records and files as may be allowed in the Plan documents.

In the event of the termination of this Agreement, L&W shall deliver to the Employer, upon written request, the information on all claims histories for the past two (2) years. All information produced as a part of the reports listed in Exhibit B will be furnished at no charge to the Employer. If the detailed claims histories are requested, in addition to those in Exhibit B, the Employer shall pay all reasonable costs incurred by L&W in providing the histories including the costs of programming, computer charges, mailing costs, etc. If additional information is requested by the Employer subsequent to the termination of this Agreement, the Employer shall pay all reasonable costs incurred by L&W in providing such information, including the costs of programming, computer charges, mailing costs, etc. L&W shall be entitled to retain copies of any such records at its own expense.

All original claim documents are the property of the Employer and no other provision of this Agreement shall be construed or interpreted otherwise. The delivery of these documents to the Employer shall be in accordance with the time frame set forth in the previous paragraph.

**Section 7.02 Examination of Records.** The Employer or its authorized representative shall have the right at any time during normal business hours to examine the records of L&W with respect to its administration of claims under this Agreement and to assure that its performance complies with the Agreement and the provisions of the Plans.

**Section 7.03 Adjustments.** The monthly administrative fee is a "base rate". If a state or any other taxing authority imposes upon L&W a tax or fee which is levied or measured by such base rate, by L&W's gross receipts, or by L&W's number of covered persons, then L&W may adjust this Agreement to increase the base rate by an amount sufficient to cover all such taxes and/or fees rounded to the nearest cent effective as of the date of imposition of such tax or fee. L&W shall mail a postage paid notice of such an adjustment to the subscribing group at least thirty-one (31) days prior to its effective date.

**Section 7.04 Mailing of Notices.** Any notice required to be given pursuant to the terms of this Agreement shall be in writing and may be given either personally or by first class mail, postage prepaid, to the principal business address of the Party to whom notice is being given.

**Section 7.05 Non Assignment.** This Agreement may not be assigned without the written consent of the other Parties, except as otherwise provided herein.

**Section 7.06 Applicable Law.** This Agreement shall be construed under the laws of the state in which the Employer maintains its principal place of business, except as otherwise provided by ERISA.

**Section 7.07 Medicare Access Clause.** Until the expiration of four (4) years after the furnishing of the services provided under this contract, L&W will make available to the Secretary, U.S. Department of Health and Human Services, and the U.S. Comptroller General, and their representatives, this contract and all books, documents, and records necessary to certify the nature and extent of the costs of those services. If L&W carries out the duties of this contract through a subcontract worth ten thousand dollars or more over a twelve (12) month period with a related organization, the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General, and their representative to the related organization's books and records.

## EXHIBIT "A"

### (Services and Duties of L&W)

Pursuant to Section 4.01 of this Agreement, the following services shall be performed by L&W with respect to each of the Plans designated in Section 1.02 of Article I:

(1) maintain and operate at L&W's expense an office for the provision of services hereunder;

(2) employ a sufficient staff of employees to provide the administrative services to be performed by it hereunder;

(3) provide standard administrative forms and supplies necessary with respect to the administration of the Plans, and coordinate with Employer the design and printing of such forms, including enrollment materials, identification cards, claims forms, questionnaires and other related documents;

(4) answer all telephone, mail and other inquiries received from all participants relating to claims under the Plans;

(5) receive claims and claim documents from the Employer or from participants under the Plans and verify the eligibility of the claimants for benefits based on eligibility information provided by the Employer;

(6) review all claims thoroughly and coordinate them with physicians, hospitals, and other providers of services, to determine that the charges made are necessary, reasonable and customary, and to determine the amount, if any, which is due and payable with respect thereto;

(7) correspond with participants if additional information is needed for payment of their claims;

(8) coordinate benefits with other benefit plans, insurance plans and health maintenance organization;

(9) take reasonable steps to process claims accurately and handle all claims and the payment thereof expeditiously;

(10) process, issue, and distribute the claims checks or drafts to hospitals, doctors, or the Employer for the benefit of participants, or others as applicable and provide documents to support these disbursements;

(11) provide appropriate data to the Plan Administrator for preparation of ERISA reports and filings;

(12) attend meetings with the Employer and Administrator to assure proper administration of the Plans;

(13) provide the Employer instructions for reporting its employees' eligibility to L&W;

(14) assist the Administrator in the purchasing of excess risk insurance or other insurance;

(15) prepare summary plan description material for issuance to eligible employees under the Plans;

(16) prepare and file information reports in connection with claim payments to providers of health services as required by the tax laws;

(17) fulfill the requirements of any excess risk insurance policy issued in connection with the Plans;

(18) maintain errors and omissions insurance relating to its provision of services hereunder;

(19) provide the various management reports set forth in Section 4.05 of this Agreement;

(20) prepare all statements of premiums and issue checks in payment of premiums; and

(21) assist the employer with all aspects of administration of the provisions of COBRA/HIPPA; and,

(22) assist the employer with the receipt of funds from retirees covered under the Plan; and

(23) assist the employer with periodic reviews and assessments of the Plan's performance. In conjunction with these reviews and assessments, L&W will make recommendations to the employer for changes to improve the Plan's performance. If the assessments required by the employer are beyond the scope of the L&W fee structure, the employer and L&W will negotiate the terms and fees for the additional assessments prior to commencements of such assessments; and

(24) provide services other services as may be delegated in writing to it by the Administrator.

## EXHIBIT "B"

Pursuant to Section 4.05 of the Claims Administrative Agreement, L&W shall provide the Employer with the following standard management reports:

(1) Benefit Analysis Report (RBA);

(2) Coverage Analysis Report (RCA);

(3) Fund Account Report (FR);

(4) Paid Claims Analysis (RPC);

(5) Billing/Claims Loss Ratio Report (BCLR);

(6) Individual Specific Analysis (ISA);

(7) Eligibility Report (EL);

(8) Life Volume Listing;

(9) Claim Lag Study (RLS);

## EXHIBIT "C"

## (Monthly Fees)

Pursuant to Section 5.01 of the Claims Administrative Agreement, the Employer shall tender to L&W on a monthly basis the following:

(1) **Administration Fees** (Rates in effect from 10/01/2012 through 09/30/2015).
L&W - $14.50 per covered employee (Including COBRA/HIPPA)

(2) **Precertification Review Fees** (Rates in effect from 10/01/2012 through 09/30/2013 and are subject to change every year at renewal).

L&W - $0.35 per covered employee
Rehab Review - $1.40 per covered employee

(3) **Reinsurance Premiums** (United States Fire Insurance Company)*
(Rates in effect from 10/01/2012 through 09/30/2013 and are subject to change every year at renewal).

Specific Coverage Per Category

| | |
|---|---|
| Employee Only | $ 100.80 |
| Employee & Spouse | $ 219.15 |
| Employee & Children | $ 174.77 |
| Employee & Family | $ 302.99 |

Aggregate Coverage

| | |
|---|---|
| Per Covered Employee | $ 5.76 |

(4) **Life Insurance Premiums** (Mutual of Omaha)* (Rates in effect from 10/01/2012 through 09/30/2014).

| | |
|---|---|
| $15,000 Per Employee | $0.20 per $1,000 of coverage |
| Accidental Death & Dismemberment | $0.03 per $1,000 of coverage |
| Dependent Life | $1.04 per dependent unit |

(5) **iHealth Program** (Rates in effect from 10/01/2012 through 09/30/2013 and are subject to change every year at renewal).

L&W - $1.00 per covered employee
AWAC - $4.00 per covered employee

(6) **MS Comprehensive Risk Pool**

MCRP - $3.00 per covered employee**

(7) **Vision** (Rates in effect from 10/01/2012 through 09/30/2013 and are subject to change every year at renewal).

L&W - $2.00 per covered employee

*The premiums shown in these categories are commissionable products. Lockard & Williams receives commissions on a monthly basis from the carriers supplying the products. These commissions are fully disclosed in the contracts executed by the Plan Sponsor.

** This is the current rate. Should the rate increase or decrease the City will be billed at the rate in effect for the period billed. The fees are assessed quarterly.

These premiums/fees, as approved by the City of Pascagoula on the _____ day of _____, 2012, are effective_____. By signature of its duly authorized representative below, the Plan Administrator agrees to be bound by the terms and provisions of the above amendment on or after the effective date hereof.

**City of Pascagoula**

By: _____

Title: _____

Date: _____

Councilman Stallworth made a motion to approve the Claims Administrative Agreement for the City's Group Health Insurance Plan with Lockard & Williams Insurance Services as presented and as recommended. The motion was seconded by Mayor Maxwell and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

(A copy of the related documents is filed in the minute file of this meeting and incorporated herein by reference.)

*****

The next item for consideration was the Order for the Docket of Claims as follows:

**ORDER**

**WHEREAS**, the attached docket of claims for the period of August 31, 2012, through September 14, 2012, has been presented to the City Council for allowance and approval; and

**WHEREAS**, the below claim numbers 08-03-01, 08-17-02, 08-31-03, and 08-04 have also been presented to the City Council for allowance and approval:

| August 3, 2012 | | Claim # 08-03-01 |
|---|---|---|
| 010 | General Fund | $ 442,585.76 |
| 400 | Pascagoula Utilities | 22,244.29 |
| 480 | Solid Waste Mgmt. | 555.89 |
| | Total | $ 465,385.94 |

| | | |
|---|---|---|
| August 17, 2012 | | Claim # 08-17-02 |
| 010 | General Fund | $ 442,328.12 |
| 400 | Pascagoula Utilities | 22,287.26 |
| 480 | Solid Waste Mgmt. | 555.89 |
| | Total | $ 465,171.27 |
| August 31, 2012 | | Claim # 08-31-03 |
| 010 | General Fund | $ 449,237.44 |
| 400 | Pascagoula Utilities | 22,330.58 |
| 480 | Solid Waste Mgmt. | 555.89 |
| | Total | $ 472,123.91 |
| Miscellaneous Claim | | Claim # 08-04 |
| 1000 | City Share FICA | $ 69,467.33 |
| 1100 | City Share Medicare | 16,246.43 |
| 7000 | City Share PERS | 158,253.70 |
| | Total | $ 243,967.46 |

**WHEREAS**, it appears that all of said claims are proper and should be allowed;

**NOW, THEREFORE, IT IS ORDERED** that all claims shown on said dockets are hereby allowed and approved for payment.

The above Order was introduced by Councilman Stallworth, seconded for adoption by Councilman Corder, and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". The Mayor then declared the Order adopted on the 18th day of September, 2012.

*****

Eddie Williams, City Attorney, briefed the Council on an application of VT Halter Marine, Inc. filed on August 7, 2012, wherein they are seeking permits to allow dredging and bulkhead construction at their facility in Pascagoula. VT Halter Marine, Inc. has requested that the City submit a letter to the Department of Marine Resources advising they have no objection to the application.

After discussion, Councilman Wolverton made a motion to authorize the Mayor to submit a letter to the Department of Marine Resources advising that the City of Pascagoula has no objection to the application and supports VT Halter Marine in its efforts to expand and improve its facility in Pascagoula. The motion was seconded by Councilman Stallworth and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder

"AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE". (Approved 9-18-12)

*****

Councilman Milstead expressed appreciation to the staff for the beautification efforts throughout the City. He stated things are looking better, however, there is more work to be done in this area.

*****

Councilman Abston encouraged everyone to participate in the United Way Program this year. The City Manager then recognized Regina Moore, Human Resources Generalist, and Doug Adams, Sergeant – Public Relations, Police Department, who coordinated efforts with our employees. Contributions from City employees totaled $6,105.00.

*****

Councilman Corder commended the Parks & Recreation Department on the football and cheerleader programs. He advised the soccer program will start next Saturday.

*****

There being no further business to come before the Council at this time, Councilman Corder made a motion to recess until Tuesday, September 25, 2012, at 6:00 p.m. to transact such business as may lawfully come before the Council. The motion was seconded by Councilman Tillman and received the following vote: Mayor Maxwell "AYE". Councilmen Abston "AYE", Corder "AYE", Milstead "AYE", Stallworth "AYE", Tillman "AYE", and Wolverton "AYE".

The meeting ended at 7:15 P.M.

APPROVE:

_____

Robert H. Maxwell, Mayor

ATTEST:

_____

Brenda Reed, Asst. City Clerk