

Tuesday
August 14, 2012
Gautier, Mississippi

BE IT REMEMBERED THAT A SPECIAL MEETING of the Mayor and Members of the Council of the City of Gautier, Mississippi was held August 14, 2012 4:00 PM in the in City Hall Municipal Building, 3330 Highway 90, Gautier, Mississippi.

Those present were Mayor Tommy Fortenberry, Council Members Johnny Jones, Hurley Ray Guillotte, Gordon Gollott, Mary Martin, City Manager Samantha Abell, Interim City Clerk Teresa Montgomery, City Attorney Robert Ramsay and other concerned citizens. Absent were Councilman Scott Macfarland and Councilman Adam Colledge.

**SPECIAL MEETING AGENDA
CITY OF GAUTIER, MISSISSIPPI
CITY HALL COUNCIL CHAMBERS
August 14, 2012 @ 4:00 PM**

- I. Call to Order
 - 1 Prayer
 - 2 Pledge of Allegiance
- II. Agenda Order Approval
- III. Announcements **(None)**
- IV. Presentation Agenda **(None)**
- V. Public Agenda
 - 1 Agenda Comments
- VI. Business Agenda
 - 1 Consider Order approving Docket of Claims
 - 2 Discuss FY 2013 Budget Projections
 - 3 Discuss FY 2012 Cultural Support Plan for FY 2013
- VII. Consent Agenda **(None)**

**STUDY AGENDA
CITY OF GAUTIER, MISSISSIPPI
August 14, 2012**

- 1 Discuss Citizen Comments**
- 2 Discuss Council Comments**
- 3 Discuss City Manager Comments**
- 4 Discuss Interim City Clerk Comments**
- 5 Discuss City Attorney Comments**

Recess until August 21, 2012
www.gautier-ms.gov

Motion was made by Mayor Fortenberry to amend agenda to add the following Business Items:

- 1 Consider Order approving Docket of Claims**
- 2 Lowe's Land Donation**
- 3 Paving Beasley Road**
- 4 Discuss FY 2013 Budget Projections**
- 5 Discuss FY 2012 Cultural Support Plan for FY 2013**

Motion was seconded by Councilwoman and the following vote was recorded:

AYES: Tommy Fortenberry
Johnny Jones
Hurley Ray Guillotte
Gordon Gollott
Mary Martin

NAYS: None

ABSENT: Scott Macfarland
Adam Colledge

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

ORDER NUMBER 197-2012

IT IS HEREBY ORDERED by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the Docket of Claims is hereby approved, provided that all entries thereon are true, correct, properly entered and not fraudulent.

IT IS FURTHER ORDERED that the City Manager or Interim City Clerk is authorized to execute any and all documents necessary.

Motion was made by Councilman Gollott, seconded by Councilman Jones and the following vote was recorded:

AYES: Tommy Fortenberry
Johnny Jones
Hurley Ray Guillotte
Gordon Gollott
Mary Martin

NAYS: None

ABSENT: Scott Macfarland
Adam Colledge

MAYOR

ATTEST:

INTERIM CITY CLERK

PASSED AND ADOPTED by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of August 14, 2012.

Docket of Claims
 Release date from 08/14/2012 thru 08/14/2012

Pund	Name of Claimant	Trans #	Release Date	Claim Date	Claim Number	Check Number	Claim Amount	Approved/Disapproved
001	MARK CARTER	122531	08/14/2012	08/09/2012			1,000.00	
	Account Number	Description	Invoice #	Date	P.O.		Amount	
	001-090-645	MASONRY:DE LA FOREST SIGN	08082012	08/08/2012			500.00	
	001-090-645	MASONRY:COLLEGE PARK SIGN	08082012	08/08/2012			500.00	
FUND TOTAL	1 Claims	to	Checks	1 Total	1,000.00 Manual	Held	Total	1,000.00

Motion was made by Mayor Fortenberry to approve the acceptance of a Land Donation from Lowe's to the City of Gautier and a drainage easement from the City to Lowe's. Motion was seconded by Councilwoman Martin and the following vote was recorded:

AYES: Tommy Fortenberry
Johnny Jones
Hurley Ray Guillotte
Gordon Gollott
Mary Martin

NAYS: None

ABSENT: Scott Macfarland
Adam Colledge

Motion passed

**CITY OF GAUTIER
MEMORANDUM**

To: Samantha Abell, City Manager
From: Dennis Reeves, Director of Public Works
Through:
Date: August 14, 2012
Subject: Lowe's Land Donation / Drainage Easement
Downtown Streetscape Project

REQUEST:

This item consists of a request to the City Council to approve the acceptance of a Land Donation from Lowe's to the City of Gautier, and a drainage easement from the City to Lowe's.

BACKGROUND:

The Downtown Streetscape project requires additional property on Dolphin Drive to accommodate the Round-a-About.

DISCUSSION:

The round-a-bout on Dolphin Drive requires a small acquisition of right of way for the additional traffic lane. While performing survey investigations for this property, the City's surveying consultant discovered an error on the original Lowe's survey. During reconciliation procedures of this error, conversations between Lowe's and the City led to a finding of mutual benefit for the donation of additional property adjacent to the round-a-bout for placement of a shelter, and public enjoyment of the detention ponds.

RECOMMENDATION:

It is recommended that the City Council approve the "Stipulated Settlement Agreement" and "Permanent Drainage Easement" between the City of Gautier and Lowe's, along with the associated Exhibits.

ATTACHMENT(S):

Stipulated Settlement Agreement
Permanent Drainage Easement
Exhibits (2)

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (“Agreement”) entered into this ____ day of _____, 2012, by and between Lowe’s Home Centers, Inc. (“Lowe’s”) and the City of Gautier, Mississippi (“City”);

WITNESSETH:

WHEREAS, Lowe’s is the fee simple owner of certain real property located in Gautier, Mississippi, as described in the Warranty Deed recorded in the public records of Jackson County, Mississippi in Book 1465, Page 80, and Book 1465, Page 91 (hereinafter “Lowe’s Property”); and

WHEREAS, City is a political subdivision of the State of Mississippi; and

WHEREAS, the Lowe’s Property, as of the date of this Agreement, is developed and operating as a Lowe’s Home Improvement Center with all site related improvements necessary to so utilize the property including, but not limited to, a building, parking lot, signage, stormwater retention system including ponds, landscaping and lighting; and

WHEREAS, City needs to acquire from Lowe’s one tract out of the Lowe’s Property, which includes a stormwater retention ponds which is part of Lowe’s stormwater retention system, and the City needs to acquire property for the purpose of constructing the Town Center project (hereinafter “the Project”); and

WHEREAS, City will maintain the ponds for Lowe’s and convey to Lowe’s drainage and utility easement granting Lowe’s the right to use the ponds for its drainage needs and the right to locate and maintain certain improvements within City right of way.

NOW, THEREFORE, in consideration of the premises herein contained, the parties agree to and hereby enter into this Agreement, waive appraisal, Notice, trial by jury and consent to any Order or action which may include the following provisions:

1. Donation to City of Portion of Lowe’s Property. City shall acquire fee title to one tract out of the Lowe’s Property identified collectively as Parcel 1. This property interest is more specifically described by the legal descriptions and sketch attached hereto and incorporated herein as **Exhibit “A”**.

2. Conveyance by City of Non-Exclusive Drainage Easement. City shall convey a non-exclusive drainage easement to Lowe’s over the land area described by the legal descriptions and sketches attached hereto as **Exhibit “1”**. Pursuant to this drainage easement, Lowe’s shall have the right to discharge and transmit drainage under, through and across the land area described by the legal description and sketch attached hereto as **Exhibit “1”** into a

stormwater retention pond identified by the Project's construction plans as Lowe's Ponds to be located on the land area described by the legal description and sketch attached hereto as **Exhibit "1" (hereinafter "Lowe's Replacement Ponds")**. The Lowe's Ponds shall be maintained to accommodate Lowe's stormwater runoff at the same rates and volumes which flow, as of the date of this Agreement, from that portion of Lowe's property, more specifically described by the legal description and sketch attached hereto and incorporated herein as **Exhibit "2"**, into the existing Lowe's stormwater retention ponds located within Parcel 1 (**hereinafter "Lowe's Drainage Requirements"**). The form of the drainage easement is attached as **Exhibit "1"**. The parties agree to the form of the drainage easement. City shall be responsible for the recording fees and any other fees required to record the Drainage Easement.

3. Lowe's Right to Discharge into City's Stormwater Pond. Lowe's shall have the right into perpetuity to discharge and transmit stormwaters from that portion of Lowe's Remainder Property, which is more specifically described by the legal description and sketch attached hereto and incorporated herein as **Exhibit "2"**, into the Lowe's Ponds on the lands described in **Exhibit "1"**. The Lowe's Ponds shall, at the sole cost and expense of City, be designed, permitted, constructed, owned, operated and maintained by the City to provide the necessary water quality volume and water quantity attenuation volume so as to accommodate Lowe's Drainage Requirements and comply with all applicable rules, regulations and statutes. In consideration for the City's obligations in paragraph 4, Lowe's, its successors and assigns, shall ensure, at their sole cost and expense, that the Lowe's Remainder Property complies with all federal, state, regional and local regulations, ordinances, statutory requirements, and permits applicable to stormwater quality and quantity as amended from time to time, including, but not limited to, discharge quality and quantity, preventive maintenance, proper disposal, and spill prevention and response requirements. These provisions and requirements contained herein constitute covenants running with the land; they are agreed to by City and Lowe's for their benefit and for the benefit of the owner and future owners of fee simple title to all or a part of the property identified by the legal description and sketch attached hereto as **Exhibit "2"** (hereinafter "Lowe's Remainder Property"), and its grantees, successors, assigns, and lessees.

4. City's Right of Entry; Lowe's Right to Perform Work on City's Stormwater Retention Pond. Lowe's hereby grants a right of entry to City onto that portion of the Lowe's Remainder Property located immediately adjacent to the westerly boundary line of Lowe's Remainder Property for the purpose of allowing the City's to fulfill its obligations under this Agreement. In the event City fails to complete and maintain in a commercially reasonable and timely manner, or abandons the Lowe's Ponds, or its responsibilities under Paragraph 3 of this Agreement, Lowe's shall have the right, but not the obligation, to enter the City's property and perform such work as Lowe's deems necessary to accommodate Lowe's Drainage Requirements. Lowe's shall provide the City with ten (10) days written notice prior to commencing such work. However, in the event the work would only utilize manual methods to correct the issue, Lowe's shall have the right to immediately enter the City's property and no such notice to the City shall be required. Lowe's shall be entitled to reimbursement of all costs incurred for performing such work.

5. Conveyance by City of Utility Easement. City will convey an easement to Lowe's over the land area described by the legal description and sketch attached hereto and incorporated herein as **Exhibit "1"** authorizing Lowe's, at its sole cost and expense, to continue to locate, maintain, replace and repair, as needed, certain improvements including backflow preventers, valves and devices, concrete slab and vault, meters and fire flow equipment.

6. Conformity of Lowe's Remainder Property with City Code. This Agreement is contingent upon Lowe's obtaining the necessary administrative waiver, permit(s) and/or approval(s) from the City of Gautier recognizing the Lowe's Remainder Property is legally conforming for its use as a retail home improvement store, and Lowe's will not be required to meet any further City code or regulatory requirements resulting from City's construction of the Project and/or conveyance by Lowe's of Parcel 1 and the easements to City. The City must accept any changes or modifications to open space, setback, buffer, and signage within the Lowe's Remainder Property created by the Project and/or conveyance by Lowe's of Parcel 1 and the easements to City.

7. Compensation to be Paid by City to Lowe's. Lowe's is donating this property to the City and shall have and recover from City the sum of \$0.00 as full compensation for the property interests to be acquired by City, which includes compensation for the property and easement interests acquired, real estate damages and business damages.

8. City will Construct Project in Substantial Compliance with Plans; Access to Lowe's Property During Project Construction. City shall construct the Project including the Lowe's Ponds in substantial accordance with the Project's construction plans, a copy of which is attached hereto and incorporated herein as **Exhibit "3"**.

9. City's Responsibilities for Obtaining Property Interests and Permits for Construction of the Project. City shall be solely responsible, at its sole cost and expense, for obtaining any and all real property interests, subordinations, necessary approvals and permits from any affected owners or governmental entities prior to beginning any construction of the Project on any property conveyed by Lowe's to City, or on Lowe's Remainder property. Nothing in this Agreement shall be construed as a waiver of any permitting requirements, unless otherwise provided for in this Agreement, for any improvements made by City upon property taken (or acquired) by City, and City shall at all times be required to fully comply with any and all applicable statutes, regulations or rules with regard to any such improvements. Nothing herein subjects the City to permitting requirements which it is not otherwise subject to or is exempt from.

10. City's Responsibilities for Conflicts with Utilities. City shall be solely responsible for locating and identifying potential conflicts with any utilities located on any property conveyed by Lowe's to City or on Lowe's Remainder property. Adjustments for actual conflicts and responsibility for any damages to any utilities shall be the sole responsibility and cost of City.

11. City Agrees to Indemnify and Hold Harmless Lowe's. Without waiving any defense or limitations provided by law, City shall indemnify, defend and hold Lowe's harmless from and against any and all liens, losses, liabilities, costs and expenses (including reasonable attorney's fees) arising out of and to the extent of City's negligent acts or default under the terms of this Agreement occurring after but not before the Effective Date of this Agreement as to the following:

a. incurred in connection with Lowe's conveyance of Parcel 2 and the easements described herein;

b. City's construction, operation and maintenance responsibilities as to Lowe's Ponds, conveyance drainage pipe, outfall drainage pipes, and related drainage structures; and

Nothing in this Agreement shall be construed to create any third party beneficiary rights in any person or entity not a party to this Agreement.

16. Lowe's Agrees to Indemnify and Hold Harmless City. Lowe's shall indemnify, defend and hold City harmless from and against any and all liens, losses, liability, costs and expenses (including reasonable attorney fees) arising out of and to the extent of Lowe's negligent acts or default under the terms of this Agreement after but not before the Effective Date of this Agreement including, but not limited to,

Lowe's stormwater and discharge into Lowe's Ponds or drainage structures for which City has an easement or is responsible fails to meet surface water criteria or violation of any local, state or federal ordinance, rules or regulation, including, but not limited to, Suwannee River Water Management District and its successors.

17. Notices. All notices, demands and requests (collectively the "notice") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been given as of the date such notice is (i) delivered to the Party intended, (ii) delivered to the then designated address of the Party intended, or (iii) rejected at the then designated address of the Party intended, provided such notice was sent prepaid. The initial addresses of the Parties shall be:

Lowe's: Lowe's Home Centers, Inc.
P.O. Box 1111
N. Wilkesboro, North Carolina 28656
(1605 Curtis Bridge Road, Wilkesboro, NC 28697)
Attention: Property Management Dept.

with a copy to: Lowe's Home Centers, Inc.
P.O. Box 10000
 Mooresville, North Carolina 28115
(1000 Lowe's Blvd., Mooresville, NC 28117)
Attention: Legal Dept. (NBLG6)

_____ City: _____

Attn: _____

Upon at least ten (10) days prior written notice, each Person shall have the right to change its address to any other address within the United States of America.

18. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties to this Agreement and shall be deemed to be both a benefit for and a burden on and flowing with the Lowe's Remainder Property.

19. Time of the Essence. Time is of the essence in the performance under this Agreement.

20. Survivability of Agreement. This Agreement and the obligations and representations of the parties herein shall be incorporated into and survive the entry of the Stipulated Order of Taking and Final Judgment and conveyance of Parcel 1 and the other easement interests as set forth in this Agreement.

21. Entire Agreement. This Agreement constitutes the entire and final expression of the parties with regard to the subject matter hereof.

22. Applicable Governing Laws. This Agreement shall be governed by and construed in accordance with Mississippi Law.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

LOWE'S HOME CENTERS, INC.

Print: _____

Print: _____

By _____

Print: _____

Title: _____

CITY OF GAUTIER, a political subdivision
of the State of MISSISSIPPI

Print: _____

Print: _____

By _____

Print: _____

Title: _____

This instrument prepared by
and to be returned to:

Deutsch, Kerrigan & Stiles
ATTN: Jason B. Purvis
2510 14th Street, Suite 1001
Gulfport, MS 39501

PERMANENT DRAINAGE EASEMENT

THIS PERMANENT DRAINAGE EASEMENT is made and executed as of the ____ day of _____, 2012 (hereinafter "Effective Date"), by and between the CITY OF GAUTIER, a political subdivision of the State of Mississippi whose mailing address is, 3330 U.S. Highway 90, Gautier, MS, **GRANTOR** (sometimes herein "City"), and **LOWE'S HOME CENTERS, INC.**, a North Carolina corporation, whose mailing address is 1000 Lowes Boulevard, Mooresville, NC 28117, **GRANTEE** (sometimes herein "Lowe's").

WITNESSETH:

WHEREAS, Lowe's is the fee simple owner of certain real property located in Gautier, MS, as described in the Warranty Deed recorded in the public records of Jackson City, Mississippi in Official Records Book 1465, Page 91 and Book 1465, Page 80 (hereinafter "Lowe's Property"); and

WHEREAS, City is a political subdivision of the State of Mississippi; and

WHEREAS, City is acquiring or has acquired from Lowe's through deed from Lowe's the property described in Schedule "1" attached hereto. Said property includes a Lowe's stormwater retention pond and related drainage pipes and structures; and

WHEREAS, City will use a portion of the property described in Schedule "1" and will maintain the storm water retention ponds for Lowe's to be used in part to accommodate Lowe's stormwater runoff at the rates and volumes which flow as of the date of this Agreement from that portion of Lowe's property more specifically described by the legal description and sketch attached hereto and incorporated herein as Schedule "2" located adjacent to the property described in Schedule "1"; and

WHEREAS, City will convey under the terms and conditions of this Agreement a perpetual, nonexclusive permanent drainage easement to Lowe's over the land areas described in Schedules "1" for the purposes herein stated.

NOW, THEREFORE, for and in consideration of the covenants and agreements stated in this Permanent Drainage Easement, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, City hereby covenants, agrees and binds itself as follows:

1. City, at its sole cost and expense, shall operate and maintain a stormwater retention pond on a portion of the land area described by the legal description and sketch attached hereto as Schedule "1" (hereinafter "Lowe's Ponds Parcel") to provide the necessary water quality volume and water quantity attenuation volume to accommodate Lowe's stormwater runoff at the same rates and volumes which flow as of the date of the Easement from that portion of Lowe's property described by the legal description and sketch attached hereto as Schedule "2" into the existing Lowe's stormwater retention pond located within the property described in Schedule "1" (hereinafter "Lowe's Drainage Requirements"). City, at its sole cost and expense, shall further construct, maintain, operate and replace, as needed, a conveyance drainage pipe on the land areas described in Schedule "2" for the purpose of transmitting and conveying Lowe's Drainage Requirements from Lowe's property as described in Schedule "2". City, at its sole cost and expense, shall maintain the Lowe's Ponds, conveyance drainage pipe, outfall drainage pipes and related drainage structures in good condition and repair and in compliance with applicable laws, ordinances, rules and regulations of any governmental entity with jurisdiction over the Lowe's Ponds.

2. City does hereby convey a perpetual, nonexclusive drainage easement to Lowe's on, over, under, upon, through and across the land areas described by the legal descriptions and sketches attached hereto and incorporated herein as Schedule "2" for the following:

a. Lowe's shall have the right to convey, discharge, transmit, hold and treat drainage from that portion of Lowe's property described in Schedule "2" into the Lowe's Ponds, as of the Effective Date of this Easement on the land area described in Schedule "1" for the purpose of accommodating Lowe's Drainage Requirements; and

3. Lowe's shall have the right of reasonable access in, over, upon, through and across all the lands described in Schedule "1" to ensure that Lowe's Drainage Requirements are met. Lowe's shall not unreasonably interfere with City's use and intended purposes for the City's lands.

4. Lowe's shall have no responsibility or liability, financial or otherwise, as to the easement areas described in Schedule "1", the Lowe's Ponds, or the other drainage related improvements to be constructed and located therein. In the event the City fails to maintain the Lowe's Ponds, outfall drainage pipes, conveyance drainage pipe, or related drainage structures in good condition and repair or in compliance with applicable laws, ordinances, rules and regulations of any governmental entity with jurisdiction over the Lowe's Replacement Pond, Lowe's may, at its sole discretion, enter upon the lands described in Schedule "1" to perform such work as Lowe's deems necessary to accommodate Lowe's Drainage Requirements. Lowe's shall be entitled to reimbursement from City of costs incurred for such work.

5. City may, at its sole cost and expense, expand, modify or enlarge the Lowe's Ponds for the purpose of accommodating stormwater related to future City projects. In the event City utilizes Lowe's Replacement Pond for its future drainage, the City shall continue to comply with the terms of this Easement, including but not limited to, accepting and accommodating Lowe's drainage in accordance with Lowe's Drainage Requirements.

6. City shall, without waiving any defense or limitations provided by law, indemnify, defend and hold Lowe's harmless from and against any and all liens, losses, liabilities, costs and expenses (including attorney's fees) arising out of and to the extent of City's negligent acts or default under the terms of this easement.

7. Lowe's shall, without waiving any defense or limitations provided by law, indemnify, defend and hold City harmless from and against any and all liens, losses, liabilities, costs and expenses (including attorney's fees) arising out of and to the extent of Lowe's negligent acts or default under the terms of this easement.

8. This Drainage Easement is entered into pursuant to the Stipulated Settlement Agreement between the parties dated this _____ day of _____, 2012, and recorded in Official Records Book _____, Page _____, public records, City of Gautier, Mississippi, and shall inure to the benefit of and shall be binding upon Lowe's and City, and their respective successors and assigns.

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

Signed, and delivered in
The presence of:

**CITY OF GAUTIER, a political
subdivision of the State of Mississippi**

Witness

By: _____
Signature

Printed Name

Print Name and Title of Person Signing

Witness

Address

Printed Name

City, State and Zip Code

(Signature of Two Witnesses Required by _____ Law)

STATE OF _____
CITY OF _____

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the state and City aforesaid to take acknowledgments, personally appeared _____, as _____ of _____, well known to me to be, or who has produced _____ as identification, the person described in and who executed the foregoing instrument and he acknowledged before me that he executed the same.

Witness my hand and official seal this _____ day of _____, 2012.

(Notary Seal)

Notary Signature

Printed Notary Name

Notary Public in and for the
City and state aforesaid
My Commission Expires: _____

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

ORDER NUMBER 198-2012

IT IS HEREBY ORDERED by the Mayor and Members of the Council of the City of Gautier, Mississippi, that the City is hereby authorized to submit a request for Jackson County to pave Beasley Road from Highway 90 to William Payne Adams on or before August 29, 2012.

IT IS FURTHER ORDERED that the City Manager or Interim City Clerk is authorized to execute any and all documents necessary.

Motion was made by Mayor Fortenberry, seconded by Councilwoman Martin and the following vote was recorded:

AYES: Tommy Fortenberry
Johnny Jones
Hurley Ray Guillotte
Gordon Gollott
Mary Martin
Adam Colledge

NAYS: None

ABSENT: Scott Macfarland

MAYOR

ATTEST:

INTERIM CITY CLERK

PASSED AND ADOPTED by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of August 14, 2012.

Mayor and Council discussed FY 2013 Budget Projections. No action was taken.

Mayor and Council discussed FY 2012 Cultural Support Plan for FY 2013. No action was taken.

Motion was made by Mayor Fortenberry, seconded by Councilwoman Martin and unanimously carried to recess the meeting until August 21, 2012 at 6:30 PM.

APPROVED BY:

MAYOR

ATTEST:

INTERIM CITY CLERK

Submitted for approval of the Mayor and Council of the City of Gautier, Mississippi at the meeting of September 18, 2012.