

The City Council (the "Governing Body") of the City of Diamondhead, Mississippi (the "City") took up for consideration the matter of issuing a Tax Anticipation Note, Series 2012, of said City. After a discussion of the subject, Council Member Roberson offered and moved the adoption of the following resolution:

RESOLUTION DECLARING THE INTENTION OF THE CITY COUNCIL (THE "GOVERNING BODY") OF THE CITY OF DIAMONDHEAD, MISSISSIPPI (THE "CITY") TO ISSUE A TAX ANTICIPATION NOTE, SERIES 2012, OF SAID CITY IN THE MAXIMUM PRINCIPAL AMOUNT OF THREE HUNDRED THOUSAND DOLLARS (\$300,000) TO RAISE MONEY FOR THE CURRENT EXPENSES OF THE CITY FROM THE DATE OF ITS INCORPORATION, JANUARY 30, 2012, IN ANTICIPATION OF THE AD VALOREM TAXES TO BE COLLECTED FOR THE THEN CURRENT FISCAL YEAR; AND OTHER RELATED MATTERS.

WHEREAS, the Governing Body of the City hereby finds, determines, adjudicates and declares as follows:

1. The City is authorized by Section 21-33-325.1 of the Mississippi Code of 1972, as amended from time to time (the "Act"), to issue a note hereinafter proposed to be issued for the purposes and the amount set forth in paragraph 2 of this preamble.

2. It is necessary and in the public interest to issue a Tax Anticipation Note, Series 2012, in the principal amount not to exceed Three Hundred Thousand Dollars (\$300,000) to raise money for the current expenses of the City from the date of its incorporation, January 30, 2012, in anticipation of the ad valorem taxes to be collected for the then current fiscal year of the City (the "Project").

3. The Governing Body has determined that it is necessary to borrow \$300,000 and that said amount is not in excess of fifty percent (50%) of the anticipated revenue to be produced by the tax to be levied, against which such money is borrowed.

4. The Governing Body desires to issue a Tax Anticipation Note, Series 2012 (the "Note") in the aggregate principal amount not to exceed \$300,000.

5. Pursuant to the Act, the Note may be issued in anticipation of ad valorem taxes to be levied by the City, regardless of whether or not such borrowing shall create an indebtedness in excess of statutory limitations imposed upon cities by the State of Mississippi (the "State").

6. The Governing Body may borrow such money from any available fund in the municipal treasury, or from any other source, and the Governing Body has determined that it shall borrow the funds from Hancock Bank, Gulfport, Mississippi (the "Purchaser").

7. The Governing Body reasonably expects that it will incur expenditures prior to the issuance of the Note, which it intends to reimburse with the proceeds of the Note upon the issuance

thereof. This declaration of official intent to reimburse expenditures made prior to the issuance of the Note in anticipation of the issuance of the Note is made pursuant to Department of Treasury Regulations Section 1.150-2. The Project for which such expenditures are made is the same as described hereinabove. The maximum principal amount of debt expected to be issued for the Project is the amount hereinabove set forth.

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

SECTION 1. The Governing Body hereby declares its intention to issue a Tax Anticipation Note, Series 2012, of the City in the principal amount not to exceed in the principal amount not to exceed Three Hundred Thousand Dollars (\$300,000) to raise money for the Project. The Note will be a general obligation of the City payable as to principal and interest before March 15 of 2013 out of the first moneys collected by reason of the tax levy in anticipation of which such money is being borrowed. The amount of the Note will not exceed fifty percent (50%) of the anticipated, but then uncollected, revenue to be produced by the then current tax levy, or levies, against which such money is borrowed. The interest rate on the Note shall bear interest at a rate not greater than that allowed in Section 75-17-105, Mississippi Code of 1972, as amended from time to time.

SECTION 2. The Mayor and the City Clerk are hereby authorized to negotiate the sale of the Note to the Purchaser and are hereby directed to present the terms of such negotiation to the Governing Body for approval and ratification at a later date and time.

SECTION 3. The terms and conditions for the Note and the form of the Note shall be those agreed upon between the City and the party agreeing to purchase the Note which such terms and conditions shall be in compliance with this resolution.

SECTION 4. That said Note shall be dated the date of delivery thereof and shall mature no later than March 15, 2013 and is to bear interest not to exceed the legal rate of interest per annum for general obligation indebtedness of municipalities and will be substantially in the form of **EXHIBIT A** attached hereto.

(a) That the City in its discretion may receive the principal amount of the Note in multiple advances, as needed by the City. Interest shall begin to accrue on the principal amount of each advance only from the date of each such advance.

(b) That said Note shall be executed on behalf of said City by the signature of the Mayor of the City, countersigned by the City Clerk under the seal of the Governing Body of the City.

(c) That the Note is prepayable prior to its stated date of maturity either in whole or in part, at any time, at par plus accrued interest to the date of prepayment.

SECTION 5. That for the purpose of providing for the payment of the principal and interest of said Note as the same shall mature and accrue, there shall be pledged that said Note will be paid out of the first money collected from taxes for the year in which said Note is issued, in sums sufficient for said purpose, and the full faith, credit and resources of said City shall be and are hereby irrevocably pledged to the payment of said Note, both as to principal and interest,

and said Note shall be paid out of the first taxes collected for the year in which it is issued.

SECTION 6. There shall be appropriated out of any available funds of the City, a sufficient sum to make ample provision for the payment of said principal and interest according to the terms of said Note.

SECTION 7. The City hereby covenants that it will not make any use of the proceeds of the Note or do or suffer any other action that would cause: (i) the Note to be “arbitrage bonds” as such term is defined in Section 148(a) of the Internal Revenue Code of 1986, as amended (“Code”), and the Regulations promulgated thereunder; (ii) the interest on the Note to be included in the gross income of the Registered Owners thereof for federal income taxation purposes; or (iii) the interest on the Note to be treated as an item of tax preference under Section 57(a)(5) of the Code.

SECTION 8. The City represents as follows:

(a) The City shall timely file with the Ogden, Utah Service Center of 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 Note 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 Note 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 Note.

SECTION 9. In accordance with Section 148(f)(4)(D) (the “Smaller Issuer Exception” requirements) of the Code, the City represents that: (i) it is a governmental unit of the State of Mississippi and is empowered to exercise general taxing powers; (ii) the Note is not “private activity bonds” as defined in Section 141 of the Code; (iii) ninety-five percent (95%) or more of the net proceeds of the Note are to be used for local governmental activities of the City; and (iv) the aggregate face amount of the tax-exempt obligations (other than private activity bonds as defined in Section 141 of the Code and certain current refunding bonds described in Section 148(f)(4)(D) of the Code) issued by the City during calendar year 2012 is not expected to exceed \$5,000,000.

SECTION 10. In the event that the aggregate principal amount of the tax-exempt obligations (other than private activity bonds as defined in Section 141 of the Code and certain current refunding bonds described in Section 148(f)(4)(D) of the Code) issued by the City, or on behalf of the City, during calendar year 2012 exceeds \$5,000,000, or if the City otherwise fails to meet the Small Issuer Exception, the City hereby covenants that it shall make, or cause to be made, the rebate payments required by Section 148(f) of the Code in the manner described in Regulation of §§1.148-1 through 1.148-11, as such regulations and statutory provisions may be modified insofar as they apply to the Note.

SECTION 11. The City hereby designates the Note as “qualified tax-exempt

obligations” as defined in and for the purposes of Section 265(b)(3) of the Code. For purposes of this designation, the City hereby represents that:

(a) the City reasonably anticipates that the amount of tax-exempt obligations to be issued by it during the period from January 1, 2012 to December 31, 2012, and the amount of obligations designated as “qualified tax-exempt obligations” by it, will not exceed \$10,000,000 when added to the aggregate principal amount of the Note; and

(b) for purposes of this Section 13, the following obligations are not taken into account in determining the aggregate principal amount of tax-exempt obligations issued by the City: (i) a private activity bond as defined in Section 141 of the Code (other than a qualified 501(c)(3) bond, as defined in Section 145 of the Code); and (ii) any obligation issued to refund any other tax-exempt obligation (other than to advance refund within the meaning of Section 149(d)(5) of the Code) as provided in Section 265(b)(3)(c) of the Code.

SECTION 12. The interest on the Note is exempt from Federal income taxes under existing laws, regulations, rulings and judicial decisions with such exceptions as shall be required by the Internal Revenue Code of 1986. Under existing law, interest on the Note is exempt from present taxes imposed by the State of Mississippi and any county, municipality or other political subdivision of the State of Mississippi, except for inheritance, estate and transfer taxes.

SECTION 13. The principal amount of the Note is less than \$1,000,000 and said Note shall be sold to the Purchaser without a view for distributing said Note. Based on the foregoing, the Note will be exempt from the continuing disclosure requirements of Rule 15c2-12.

SECTION 14. The City reasonably expects that it will incur expenditures prior to the issuance of the Note, which it intends to reimburse with the proceeds of the Note upon the issuance thereof. This declaration of official intent to reimburse expenditures made prior to the issuance of the Note in anticipation of the issuance of the Note is made pursuant to Department of Treasury Regulations Section 1.150-2 (the reimbursement regulations). The Project for which such expenditures are made is the same as described hereinabove. The maximum principal amount of debt expected to be issued for the Project is the amount hereinabove set forth.

SECTION 15. Each of the following constitutes an event of default under this resolution:

(a) failure by the City to pay any installment of principal of or interest on any Note 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 resolution or in the Note, and the continuance thereof for a period of thirty (30) days after written notice thereof to the City by the Registered Owner of the then outstanding Note; or

(c) an Act of Bankruptcy occurs.

“Act of Bankruptcy” shall mean the 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.

SECTION 16. The Mayor, City Clerk and the other 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 resolution.

SECTION 17. 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 resolution, but this resolution shall be construed and enforced as if such illegal or invalid provision or provisions had not been contained herein.

Council Member Ackerman seconded the motion to adopt the foregoing resolution, and the question being put to a roll call vote, the result was as follows:

Mayor Ingraham	voted: <u>absent</u>
Council Member Dianne Ackerman	voted: <u>aye</u>
Council Member Hank Holcomb	voted: <u>aye</u>
Council Member Ernie Knobloch	voted: <u>aye</u>
Council Member Ron Rech	voted: <u>absent</u>
Council Member Dalton Roberson	voted: <u>aye</u>

The motion having received the affirmative vote of a majority of the members present, the Mayor declared the motion carried and the resolution adopted this the 4th day of June, 2012.

H. Holcomb
Mayor Pro Tem

ATTEST:
Due W. Foose
CITY CLERK

THIS IS TO CERTIFY THAT THE FOREGOING WAS APPROVED BY THE CITY OF DIAMONDHEAD, MISSISSIPPI, ON THE 4th DAY OF June, 2012.

Due W. Foose
CITY CLERK

EXHIBIT A
FORM OF NOTE

**UNITED STATES OF AMERICA
STATE OF MISSISSIPPI
CITY OF DIAMONDHEAD, MISSISSIPPI
TAX ANTICIPATION NOTE, SERIES 2012**

NO. R-1

\$ _____

<u>RATE OF INTEREST</u>	<u>DATE OF ORIGINAL ISSUE</u>	<u>DATE OF MATURITY</u>
_____ %	_____, 2012	March 15, 2013

REGISTERED OWNER:

PRINCIPAL AMOUNT: _____ **DOLLARS**

The City of Diamondhead, 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, the sum of

_____ **DOLLARS**

with interest thereon from the date hereof at the rate of _____ and _____ Percent (____%) per annum; provided, however, the City in its discretion may receive the principal amount of this Note in multiple advances, as needed by the City. Interest shall begin to accrue on the principal amount of each advance only from the date of each such advance. The amount of each advance will be recorded by the Clerk of the City in the place provided therefore on the reverse hereof, along with the date of such advance in the place provided therefor. Interest on the outstanding balance of the Note shall be payable on the maturity date (the "Interest Payment Date"), and the Note shall mature and be payable on the maturity date set forth herein.

Payment of the principal amount of this Note shall be made to the Registered Owner hereof who shall appear in the registration records of the City upon presentation and surrender of the Note.

The City further promises to pay interest on the principal amount stated above from the date of this Note at the rate of interest per annum set forth above, on the maturity date of the Note, to the Registered Owner hereof who shall appear in the registration records of the City.

Payments of principal of and interest on this Note shall be made by check or draft mailed to the 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 City by certified mail, return receipt requested, or such other method as may be subsequently prescribed by the City, such

notice to be received by the City not later than the 15th day preceding the maturity date of the Note.

The Note is prepayable prior to its stated date of maturity either in whole or in part, at any time, at par plus accrued interest to the date of prepayment.

This Note is the Note issued in the aggregate authorized principal amount of _____ Dollars (\$ _____) to raise money for the purpose of borrowing money in anticipation of taxes for the purpose of defraying the expenses of the City as authorized under Section 21-33-325.1 of the Mississippi Code of 1972, as amended from time to time (the "Act").

This Note is issued under the authority of the Constitution and statutes of the State of Mississippi, including the Act, and by the further authority of proceedings duly had by the Board of Supervisors of the City, including a resolution adopted on June 5, 2012 (the "Note Resolution").

The Note is registered as to both principal and interest.

This Note 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 City, but only in the manner, subject to the limitations in the Note Resolution, and upon surrender and cancellation of this Note. Upon such transfer or exchange, a new Note of like aggregate principal amount of the same maturity will be issued.

The City 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 the City shall be affected by any notice to the contrary.

The Note is and will continue to be payable as to principal and interest out of and secured by an irrevocable pledge of the first money collected from taxes for the year in which the Note is issued, in sums sufficient for said purpose, and the full faith credit and resources of the City shall be and are hereby irrevocably pledged to the payment of the Note, both as to principal and interest, and said Note shall be paid out of the first taxes collected for the year in which the Note is issued.

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

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 Note, in order to make the same a legal and binding general obligation 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. For the performance in apt time and manner of every official act herein required, and for the prompt payment of this Note, both principal and interest, the full faith and credit of the City are hereby irrevocably pledged.

IN WITNESS WHEREOF, the City has caused this Note to be executed in its name by the manual signature of the Mayor of the Board of Supervisors of the City, countersigned by the manual signature of the Clerk of the Board of Supervisors of the City, under the seal of the City, which said manual signatures and seal said officials adopt as and for their own proper signatures and seal, as of the ____ day of _____, 20__.

THE CITY OF DIAMONDHEAD, MISSISSIPPI

BY: _____
Mayor

COUNTERSIGNED:

City Clerk

(SEAL)

CERTIFICATE OF REGISTRATION AND AUTHENTICATION

This Note is the Note described in the within mentioned Note Resolution and is the Tax Anticipation Note, Series 20__ of Diamondhead, Mississippi.

THE CITY OF DIAMONDHEAD, MISSISSIPPI

BY: _____
City Clerk

Date of Registration and Authentication: _____

REGISTRATION CERTIFICATE

**STATE OF MISSISSIPPI
COUNTY OF HANCOCK**

I, the undersigned City Clerk of Diamondhead, Mississippi, do hereby certify that the within Note 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.

City Clerk

(SEAL)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

_____ (Name and Address of Assignee)

the within Note and does hereby irrevocably constitute and appoint _____,
_____, Mississippi, as Transfer Agent to transfer the same

ButlerSnow 9058789v1



August 2, 2012

Mr. Richard Rose
City Manager
City of Diamondhead, MS

RE: City of Diamondhead Tax Anticipation Note, Series 2012

Dear Mr. Rose,

Please accept this letter as further indication of our commitment to purchase the City of Diamondhead's Tax Anticipation Note, Series 2012, pursuant to the City's Note Resolution dated June 4, 2012. It is our understanding that the Note Resolution, as adopted, set the amount of the Note as not to exceed \$300,000.

We further understand that, as of the date of this letter, the City has not yet set its ad valorem millage for the upcoming fiscal year. As you know, the millage must be set before the Note may be issued. Furthermore, Mississippi law restricts the amount that may be borrowed to 50% of the anticipated, but uncollected, revenue to be produced by said levy. It is anticipated, and budgeted, by the City that 50% of its anticipated ad valorem revenue will far exceed the authorized maximum of \$300,000 set forth in the Note Resolution.

In recent discussions with you, you have stated that the City needs to place orders for certain items of equipment and supplies in order to have them on hand when they become needed. You estimate the cost of these items as \$60,000 and intend to pay for them out of the proceeds of the Note but are concerned about ordering them before the Note is actually issued.

The matters holding up the issuance of the Note, while critical, are procedural and do not affect our commitment to purchase the Note. Subject to any concerns that may be expressed by your legal counsel, we are not aware of any issues that should prevent you from ordering the equipment. This assumes that the millage will be set and the Note issued prior to payment on the equipment reaching a past due status with the vendor(s). That is an issue which is necessarily left to your discretion.

If you have further questions, please do not hesitate to call.

Sincerely,



Jason Thomas
Vice President