

The Board of Mayor and Aldermen of the City of Waveland, Mississippi, met in Special Session at the Waveland City Hall Boardroom, 301 Coleman Avenue, Waveland, MS. on January 21, 2016 at 6:30 p.m. to take action on the following matters of City business.

**NOTICE OF MEETING (EXHIBIT A)**

**ROLL CALL**

Mayor Smith noted for the record the presence of Aldermen Burke, Richardson and Lafontaine along with Deputy City Clerk Tammy Fayard, and Gary Yarborough substituting for City Attorney Rachel Yarborough, who was absent from the meeting.

Also absent from the meeting were City Clerk Lisa Planchard (surgery) and Alderman Piazza.

**GROUND ZERO MUSEUM/CIVIC CENTER/OLD WAVELAND SCHOOL/  
SUBSTANTIAL COMPLETION/CERTIFICATE OF SUBSTANTIAL  
COMPLETION**

**Re: Certificate of Substantial Completion, Ground Zero Museum Improvements Project**

Alderman Burke moved, seconded by Alderman Lafontaine to approve the Certificate of Substantial Completion and authorize signatures thereon for the Ground Zero Museum Improvements and Repair Project, pending inspection by Mr. Bill Carrigee.

Mr. Yarborough confirmed with Architect, Allison Anderson (Unabridged Architecture) that this is to approve a date of Substantial Completion; it is not really material when the Board approves it, but only agreeing to the date when substantial completion is achieved. Mrs. Anderson said Substantial Completion was achieved and the Contractor is 100% complete with the project, has completed the punch list, and at the date of substantial completion has turned over the keys and the building to the City. She said there was a training meeting at that time training all interested employees with the City on the newly installed systems. Mr. Yarborough questioned whether Mr. Carrigee had not yet done his inspection to advise the Board whether he is of the opinion that the project is substantially complete. Mr. Yarborough said to Mrs. Anderson, "Your position is, and that of the Contractor's is, there's already been the date established, so all we're trying to do is verify that, so is there any harm to us waiting until Mr. Carrigee has actually done that and then will agree whether a substantial was reached on that date or not". Mrs. Anderson said the only exposure is the City has a Grant Agreement with MDA and that Grant has to be closed out before the end of January 2016; therefore, the Contractor was complete on the date the building was promised. She said the question is will Mr. Carrigee find something that they did not find or that the building official who was there at substantial completion didn't find. Mr. Yarborough asked if we are here requesting Final Payment. Ms. Anderson said she turned over all those final documents today and knew it was too late to get on the agenda tonight. Mr. Yarborough said that those would still need to be approved in advance of the grant deadline as well for reimbursement. The Mayor said Mr. Carrigee could do the inspection the following day. Mr. Yarborough said the Substantial Completion approval tonight could be contingent upon Mr. Carrigee's approval; however, the Final Payment still needs to be addressed prior to the end of January; he recommended approving all of the items in question after Mr. Carrigee does his inspection. Mr. Yarborough said if there is a January 31 deadline and assume the payments would be issued before January 31, 2016, he suggested having another Special Meeting to address the Final Payment issue, and Consent to Release of Surety, Release of Liens; all items required by the contract by then.

*No vote needed or taken at this time. This issue moved to the Special Meeting of 1/25/16.*

**SPECIAL MEETING/AGENDA/ADVERTISEMENTS**

**Re: Call for Special Meeting - Monday January 25, 2016 at 5:00 p.m.**

Alderman Burke moved, seconded by Alderman Lafontaine to schedule a Special Meeting on Monday January 25, 2016 at 5:00 p.m, authorizing the City Clerk to post all necessary notices for consideration of the day for Substantial Completion on the Ground Zero Museum Improvements Project and Final Payment, Issuance of Surety and all necessary documents related to closing out the project.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**INVOICES/CIVIC CENTER/GROUND ZERO MUSUEM/CITYWIDE DRAINAGE IMPROVEMENTS PROJECT/DRAINAGE IMPROVEMENTS PROJECT**

**Re: Invoices submitted for Ground Zero Museum Improvements Project by DCD Construction and Unabridged Architecture**

Alderman Lafontaine moved, seconded by Alderman Burke to **TABLE** items a & b. **(EXHIBIT - N/A)**

- a) Pay Application No. 3 from DCD Construction, Inc. in the amount of \$65,112.00 – Ground Zero Museum Improvements and Repairs. (Civic Center/Museum). **TABLE**
- b) Invoice #2 from Unabridged Architecture for professional services in the amount of \$2,400.00- Ground Zero Museum Improvements and Repairs. (Civic Center/Museum) **TABLE**

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**Re: Invoice No. 0078153 submitted by Pickering Firm, Inc. – Citywide Drainage Improvements Project**

Alderman Richardson moved, seconded by Alderman Burke to approve Invoice No. 0078153 from Pickering Firm, Inc. in the amount of \$1,724.10 – Citywide Drainage Improvements Project. **(EXHIBIT C)**

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**CITYWIDE DRAINAGE IMPROVEMENTS PROJECT/DRAINAGE IMPROVEMENTS PROJECT/CONSTRUCTION CHANGE DIRECTIVE/CHANGE ORDERS**

**Re: Change Order No. 1 for Additional Culverts – Citywide Drainage Improvements Project**

Alderman Richardson moved, seconded by Alderman Lafontaine to discuss and approve Change Order No. 1 in the amount of \$8,439.84 from Kappa Development to provide

Page \_\_\_\_\_  
Special Meeting of January 21, 2016  
6:00 P.M.

additional culverts to the Improved Channel 25 (Basin 25) – Citywide Drainage Improvements Project. **(EXHIBIT D)**

Engineer Andy Phelan, with Pickering Firm, was present to discuss Change Order No.1, namely the Brooks property, the family claimed they had pipes before Katrina and after the cleanup from Katrina got rid of those pipes; they could not access the west side of their property. He said they wanted the pipes replaced, but they had not signed a right of entry to do the ditch, so the ditch north and south of them has been done and would need to be connected. He said the Brooks said they would sign the right of entry if they got the pipes replaced. Mr. Phelan said all of this is what's in Change Order No. 1. Mr. Yarborough asked if the culverts had been contemplated in the original contract. Mr. Phelan said not for "their" property. Mr. Yarborough asked if culverts were generally contemplated in the contract. Mr. Phelan asked, "Throughout the project? Yes." Mr. Yarborough asked, "What was the nature of the requirements of the culverts." Mr. Phelan said it was just storm water conveyance. Mr. Yarborough asked if that would be related to individual property owners, as needed or how was that designed. Mr. Phelan said, "Largely just where there were culverts that were at an improper grade or that were in bad shape, or that were not sufficient to carry the design stormwater". Mr. Yarborough asked, "How is it placing a culvert here different than what's already contemplated in the contract." Mr. Phelan said, "Well, the argument we would make would be that since it was there pre-Katrina, it's kind of the same thing as the others where were replacing damaged culverts." Mr. Yarborough replied, "So the placement and replacements of the damaged culverts otherwise on other pieces of property is within Kappa's contract". Mr. Phelan said, "Yes". Mr. Yarborough said, "So if the argument is this is necessary because of the drainage project, why isn't this already in Kappa's Contract." Mr. Phelan said the argument would be that the culverts weren't there when the survey was done and so did not replace them because Pickering did not know they existed prior to Katrina. Mr. Yarborough said, "Now, the Scope of your project, was that for replacement of all culverts necessary to the contract and they gave you a lump sum price". Mr. Phelan said, "For Kappa, no we did individual price for every culvert that we were replacing." Mr. Yarborough said, "But they provided you a lump sum price for the entire contract." Mr. Phelan said, "They provided unit prices." Mr. Yarborough, "Within their lump sum price, provided unit prices for pay schedules." Mr. Phelan said, "Yes." Yarborough said, "And they provided you a lump sum contract price." Mr. Phelan said, "Well, it's not a lump sum contract." Yarborough asked, "What is the contract price". Phelan said, "In different culverts are different prices and we have several different culvert sizes, different material types, so each of the different material types and sizes would have a linear foot unit price." Mr. Yarborough said, "So is it your statement to the Board that this is inside or outside of the original contract from Kappa (Development)"? Mr. Phelan said, "This would be outside of the original, in so much as it is a change order to add pipes that were not in the original design". Mr. Yarborough said, "So when you submitted the design to Kappa, did you have specific culverts outlined in the design". Mr. Phelan said, "You mean anywhere, we didn't have at this location, but yeah, they're scattered throughout". Mr. Yarborough asked if Mr. Phelan was contemplating any other culverts at any locations that wasn't in the original design with Kappa, aside from this one. Mr. Phelan said he didn't think there were any more on the other Change Orders off the top of his head, he can go back through them, but if they are contemplating, they would be on a different Change Order. Mr. Yarborough asked if Mr. Phelan was eliminating culverts. Mr. Phelan said there are some that have been eliminated. Mr. Yarborough asked if there would be a deduct from the other ones that have already been eliminated. Mr. Phelan said, "Yes". Mr. Yarborough asked, "Would it be wise to go ahead and include the deducts within the same Change Order so they do not get more than the Original Contract price". Mr. Yarborough said, "Otherwise, you're going to be looking at a contract, there's going to be negotiating whether or not prior culverts should be removed or not and we're already giving them (Kappa) another \$8,000.00". Mr. Phelan said, "Well and we, as far as the negotiations, they signed off on these, we're not negotiating with them. We got prices before we came to ya'll." Mr. Yarborough he understood, but once the City executes this the City is done negotiating and are agreeing to it, so as concerns protecting the City, it may be prudent to give a deduct agreed to on the other culverts that are removed from the original contract. Mr. Phelan said, "Right, there are some in here". Mr. Yarborough asked, "Are those in that original, are there... others in other Change Orders." Phelan said, "Yea." Yarborough said, "That are here today". Phelan said,

“Yea”. Yarborough asked, “What are the ones that have deducts.” Mr. Phelan said, “A decrease on Change Order No. 3; there’s going to be some pipes that come off for the Herlihy area as part of sewer conflicts, force main and gravity; that one also has some replacement culverts because we’re moving some things to the Southside, and then on (Change Order) No. 4; I thought there was another culvert that came out on No. 4, let’s see. You got it on No. 4 as well, a couple of pipes coming out”. Mr. Yarborough asked, “How is the price of this culvert add being calculated, is that based on their unit price calculation from their bid.” Mr. Phelan said, “Yes”. Mr. Yarborough asked if Mr. Phelan agreed that that unit price is commercially reasonable. Mr. Phelan said, “Yes.” Mr. Yarborough asked if all of the presently known culvert deducts were included within these change orders, or are there ones outstanding? Mr. Phelan said that as far as he knew, off the top of his head, they are included. Mr. Yarborough said, “Board, if you accept this as a Change Order, A Change Order is a binding modification to the Contract. With that is a necessary finding under Mississippi Code Section 31-7-13(d) that it’s commercially reasonable, necessary to the original scope of the contract as it was originally bid, not intended to subvert the public bid process”. Mr. Yarborough asked if it is Kappa and AMEC’s position that the facts related to the Change Order No. 1 meet those required findings and is it their recommendation to the Board that they approve it based on those findings. Mr. Phelan said, “Yes.” Mr. Yarborough asked to let the record reflect that both AMEC and Kappa agree that those findings are factual and necessary for Change Order No. 1. Mr. Phelan said he and his colleague, Mr. Frank Parker, are with Pickering Firm. Mr. Yarborough asked to let it reflect that is a recommendation of Pickering (AMEC representative not present), the engineer of record that those factual findings and averments are accurate. Alderman Yarborough asked what the necessity for the 14 additional calendar days is. Mr. Phelan said it is for time lost for the rights of entries, mobilize to get out to fill in the blank space where there is concrete on either side. Mr. Yarborough asked if it is a “critical path item” to cause a 14-day delay, it doesn’t seem it would be. Mr. Phelan said, “The right-of-entry thing, it probably did”. Mr. Yarborough asked, “On this particular culvert... delayed the entire project 14 days”. Mr. Phelan said, “Yes”. Mr. Yarborough said the recommendation is for the 14-day additional contract price. Mr. Yarborough noted, “The day for completion, November 10, 2015 as modified; is that still within our grant timeline? Mr. Phelan said that would be an AMEC question, but believed it was would be because AMEC had gotten us an extension through the Change Order 5. Mr. Yarborough asked how many days in total are being requested in these Change Orders. Mr. Phelan said it was through February 29, 2016. Mr. Yarborough said, “So they’re already 4 months past the contract price. How much had been paid out to date to Kappa”? Mr. Frank Parker, Engineer with Pickering said, “Seventy percent, whatever that number is”. Mr. Phelan said he had the number. Mr. Yarborough asked if the LD amount is \$500 a day or how much is it? Mr. Parker said no, it was around \$300 or \$400. Mr. Phelan said the actual number was \$4,056,207.75. Mr. Yarborough said, “So that is all but \$1.5 million, so that’s at 72%; so you’re requesting four months of additional days in these change orders.” Mr. Phelan and Mr. Parker said, “Yes.” Mr. Yarborough added, “And none of these 14 days from this one could be subsumed within the others”. Mr. Phelan said, “No”. Mr. Yarborough said, “So Board, if you approve this, your approving not just the contract amendment and price, but also the change in the calendar day to November 10, 2015. And that is solely based on Right-of-entry issues”. Mr. Phelan said it was also to fill in the concrete and (inaudible).

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**CITYWIDE DRAINAGE IMPROVEMENTS PROJECT/DRAINAGE IMPROVEMENTS PROJECT/CONSTRUCTION CHANGE DIRECTIVE/CHANGE ORDERS**

**Re: Construction Change Directive in the amount of \$12,148.43 (formerly Change order 2)**

Alderman Lafontaine moved, seconded by Alderman Burke to discuss Change Order No. 2 from Kappa Development to extend Channel 44g-1 to allow for removal of improper grade in the existing channel and to replace the existing fabric-formed channel with a more traditionally, hydraulically efficient formed concrete channel in the amount of \$12,148.43 – Citywide Drainage Project. (See subsequent revised motion made below discussion).

During discussion, Mr. Phelan came forward to explain that this goes back and was on the plans, it's the ditch between the back of the Elementary School and Spanish Cove. Mr. Phelan said the first 150 feet had been done as part of an MDA grant probably about 2010. Mr. Phelan said they (Pickering) were not involved and they (the former contractor) had done what's called a fabric form ditch; the bubbly concrete, which appears to have heaved up and causing water to back up in that channel and holding water. Mr. Phelan said this change order would remove the first 150 feet. He said there's 150 ft. and there's a culvert, about 30 or 40 feet before it gets to the ditch that runs east/west just north of the Public Works yard. They would replace the "bubble ditch" with more traditional concrete ditch for the first 100 feet on the north side of that culvert; they would not touch the culvert, just pour up and around. Mr. Yarborough asked about the issue with the improper grade; is it a construction issue or is that, as it exists, an improper grade. Mr. Phelan said, "Kappa didn't touch that area, we butted up to it" and the ditch that we designed and they (Kappa), we couldn't have lessened the slope to meet at either; I think we're at a -.1% (slope), 1' in 1,000 feet". Mr. Yarborough asked Mr. Phelan if it was his position that as designed it's improper to handle that grade? Mr. Phelan said his position is that (inaudible) in the field is too high once this was built. Mr. Yarborough said, "You mean what was in the field when it was designed". Mr. Phelan said, "Yes, during the design, the in-situ conditions". Mr. Yarborough said, "And so the design is not proper to deal with what is existing in the channel". Mr. Phelan said his position is that it actually looks like it's higher, again he didn't know if it came up or the survey shots were off, but it looks like it's higher than they anticipated in the design. Mr. Yarborough asked Mr. Phelan if it is his position that this modification is necessary to allow Kappa to perform the intent of the contract. Mr. Phelan said, "Yes". Alderman Lafontaine asked if there were any elevation shots taken during construction that they could have adjusted on the ditch that Kappa is working on. Mr. Phelan said, "No, Pickering did not do the construction survey, Kappa does theirs. I know that it's backing it up almost to the..." Mr. Parker asked if the School had a retention pond that feeds into ditch. Phelan said that they do. Mr. Yarborough asked, "Is there anything that Kappa did in the field that modified this condition." Mr. Phelan said, "No". Mr. Yarborough said, "And what is the basis for the change of 14 days". Mr. Phelan said it was to complete the work; remobilize to there, tear out the old and put in the new. Mr. Yarborough said, "So they have already performed the work". Mr. Phelan said, "No". Mr. Yarborough asked for clarity, "What do you mean tear out the old and put in the new?" Mr. Phelan said tear out the old bubble ditch; the fabric form ditch. Mr. Yarborough asked if Pickering intended to request any additional design costs related to this modification. Mr. Phelan said. "No additional design costs, no." Alderman Lafontaine asked about the number of crews currently working on the project. Mr. Phelan said since December there has been so much rain, could not get out on the CSX, and have been waiting for the approval of these Change Orders; maybe two crews right now. Mr. Phelan said there was some paving this week and the contractor should be out cleaning the ditches next week. Mr. Parker said last week was the first week the Contractor had actually been able to work. Mr. Yarborough asked if Kappa has provided a Critical Path schedule. Mr. Phelan said they receive an updated schedule at the progress report meetings (next scheduled is tomorrow). Mr. Yarborough asked if this reflects as anything related to either one of these Change Orders in reference on the Critical Path schedule. Mr. Phelan said, "No". Mr. Yarborough said, "Well then if it's not on the Critical Path Schedule, then why are we recommending 14 additional days". Mr. Phelan said, "To do the additional work, I'm not sure I understand your question." Mr. Yarborough said, "They would be performing work on that portion of the project anyway because that's not been done to date; they would still have to mobilize and get to that site to complete the work". Mr. Parker said that was an area that was finished last spring. Mr. Yarborough asked why this area not completed before. Mr. Phelan said they did what was on the plans; this Change Order's been in the works for quite some time. Mr. Yarborough said, "So this is a part of the

project that already would have already been complete, but for the redesign”. Mr. Phelan said, “Yes, they finished what was on the plans”. Mr. Parker said perhaps about 95% of the area. Mr. Phelan said the only area in Area 1 on the plans that has not been completed is a 200 foot strip on the downstream side of the culvert in the Walmart parking lot. He said it is not even concrete, it’s “kind of re-grade”. Mr. Yarborough said, “Your options, Board, are you can do a Change Order to allow the days and the time, you can do a Construction Change Directive agreeing to the price, and reserving rights on the days”. Alderman Lafontaine said that he would like to reserve the rights on the days because this project is already 4 months behind schedule.

Mr. Yarborough asked the Board if they wanted to alter the motion *‘to approve a Construction Change Directive contingent upon Kappa’s approval of the cost modification on Change Order No. 2 and contingent upon them granting that increased cost of \$12,148.43 for the work detailed on the attachment to that Change Order as a Construction Change Directive reserving rights as to days.*

Alderman Lafontaine said, “Yes, and what does the Board do when we reserve the rights on it”. Mr. Yarborough said that would be resolved at closeout with the final payment closeout. Mr. Yarborough said, “They will, at the end of the project, it will be noted that they have within, typically within 21 days, under the General Conditions of the Contract, they have to be request days. If they have requested and they have not been approved, that will be reserved to the end for final payment.” (Mr. Yarborough asked Mr. Phelan to prepare the Construction Change Directive, circulate that, and get it back to the Deputy City Clerk for Mayor to sign that; it will need to be altered to the CCD forms instead of the change order forms. Yarborough said, “The change order contemplates an agreement on both days and time, and we don’t have an agreement on days right now.”

Alderman Lafontaine moved, seconded by Alderman Burke to approve a Construction Change Directive contingent upon Kappa’s approval of the cost modification on Change Order No. 2 and contingent upon them granting that increased cost of \$12,148.43 for the work detailed on the attachment to that Change Order as a Construction Change Directive reserving rights as to days. **(EXHIBIT E)**

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**CITYWIDE DRAINAGE IMPROVEMENTS PROJECT/DRAINAGE IMPROVEMENTS PROJECT/CONSTRUCTION CHANGE DIRECTIVE/CHANGE ORDERS**

**Re: Change Order 2 to Redesign Proposed Work along Herlihy Street – Citywide Drainage Improvements Project (formerly Change Order No. 3)**

Alderman Lafontaine moved, seconded by Alderman Burke to discuss and approve Change Order 2 from Kappa Development to redesign the proposed work along Herlihy Street to avoid a found sewer conflict on the north side of the road, and to lessen safety concerns with a large channel along a major east/west collector road in the City of Waveland in the amount of \$20,446.52- Citywide Drainage Improvements Project. **(EXHIBIT F)**

Alderman Lafontaine asked if Mr. Phelan found out if any of this was reimbursable. Mr. Phelan said they had not; AMEC gets with FEMA on that, but FEMA won’t consider them until they know the Board has approved them. Alderman Richardson asked when these clay pipes were found. Mr. Phelan said they were not located, they found the manholes; the force main also was not located. They will still have to dip underneath, but by crossing Herlihy would be going perpendicular to it, so they can dip it underneath instead of following it along. Mr. Yarborough asked what is the safety concern. Mr. Phelan said there was a meeting with the Mayor and Alderman Lafontaine and were not able to do what they wanted to do on the North side because of the conflicts and

discussed the south side where there would be problems with the slope and ditch too close to the road. Mr. Yarborough asked if the location of these other conflicting pipes was known when the project was designed. Mr. Phelan said he didn't believe they were located then. Mr. Yarborough asked if locates were done in advance of design. Mr. Phelan said there is no call to mandate design (inaudible) for survey locates to not get the construction locates yet. Mr. Yarborough asked if it was in house Pickering surveyors. Mr. Phelan said yes, Pickering surveyors did this. Mr. Yarborough asked if was Mr. Phelan's position under 31-7-13 that the amount is commercially reasonable and is a necessary modification to the contract to comply with this original design and intent. Mr. Phelan said yes, there were comparable to the original unit prices for similar items and seem to be comparable to what they see on other jobs. Mr. Yarborough asked as far as the work itself, is that necessary to the intent of the project then to complete it. Mr. Phelan said, "Yes". Mr. Yarborough asked if the \$20,446.52 brings the City above or below or where is the City as concerns the total project price. Mr. Phelan said, "It will work itself out at the end, at the time of Change Order No.3 going sequentially from 1 where we started, I mean we're above the original contract price, but still within the grant amount". Mr. Yarborough asked what is the basis for the 15-day request on this change order. Mr. Phelan said it would be the same to do the additional work, there was piping that was not considered, it was going to be open ditch, and now it's piping. Mr. Yarborough said, "So it is additional work for the Contractor". Mr. Phelan said, "Yes". Mr. Yarborough added, "Board if you make the finding to approve this Change Order, you will be approving the days and price as to modification of the original construct. You're making a factual finding based on the recommendation of Pickering Engineering that it is necessary and incidental to the contract within its original bid and commercially reasonable prices". Mr. Yarborough told the Board if they approve a Change Order they are agreeing to the days; if you do not agree to the days you would need to approve a Construction Change Directive, which is directing the Contractor to perform the work and reserving rights as for an agreement on the days. Mr. Yarborough said the nature of this modification, because there is in fact additional work with removal of the lines... Mr. Yarborough asked if this was a Critical Path item. Mr. Phelan said he did not have Kappa's schedule with him and did not feel authorized to say yes or no to that question without the contractors schedule in front of him. Mr. Yarborough said, "But you are recommending to the Board so you need to be able to.... The Board is here relying on your recommendation, so do you need time to look at that." Mr. Phelan said no, that Pickering has worked with the Contractor and agreed upon these days. Mr. Yarborough told Board members if they approve the days, they approve based on the recommendation of Pickering Engineering, and this is based on the statements of the Engineer of record, that additional movement of pipes when it's originally contemplated that it would be a open ditch work based on the original surveys; he then asked Mr. Phelan if that was accurate. Mr. Phelan said, "Yes". Mr. Yarborough said with that he believes that the days on this particular item may be justified. Mr. Yarborough asked what the current grant schedule is. Mr. Phelan said the original has already been extended once, he believes it was April 2016 that Chris (Nobles) had it moved to. Mr. Yarborough asked what is the current proposed practical completion date on their completion schedule. Mr. Phelan said Change Order goes through February 29. Mr. Yarborough asked, "But do they believe they're going to be done by February 29<sup>th</sup>". Mr. Phelan said, "They say, we've talked to them about it. They have said yes."

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**CITYWIDE DRAINAGE IMPROVEMENTS PROJECT/DRAINAGE IMPROVEMENTS PROJECT/CONSTRUCTION CHANGE DIRECTIVE/CHANGE ORDERS**

**Re: Change Order No. 4 – Citywide Drainage Improvements Project**

Page \_\_\_\_\_  
Special Meeting of January 21, 2016  
6:00 P.M.

Alderman Lafontaine moved, seconded by Alderman Burke to discuss and consider approving Change Order No. 4 from Kappa Development to address several latent conditions discovered during the course of construction, which include: **(EXHIBIT G)**

- a) Removing the upstream portion of Channel 44 (Station 37+00) to avoid several utility conflicts.
- b) Address utility conflicts on channel 36c (cased sewer crossing) and removal of culvert replacement on same channel per City's request (culvert determined to be in good shape).
- c) Removal of a pipe replacement on Channel 31A (Under Market Street) due to structure size and condition not being capable of having new larger pipe crossing. This channel does not negatively affect the benefit-cost-ratio (no potentially flooded structures in its vicinity).
- d) Add line items for individual utility crossings discovered during construction.
- e) Addition of concrete retaining walls or slope stabilization where in-situ soils do not support proposed cut.
- f) Add line item to remove poured-in-place culverts in lieu of precast box culverts.
- g) Add line item to remedy latent soil conditions for installation of concrete channel.

Mr. Yarborough asked Mr. Phelan to fill the Board in on his recommendation and the basis for that recommendation. Mr. Phelan said many of the items are items that are Utility Crossings that would have not been identified on the design plan, most being water and some sewer. He said one area, looking on the Change Order Justification Letter, being upstream near the Wastewater Treatment Plant where a lot of water, wastewater, force main, gravity sewer lines going through that area; a lot of those were fairly new construction and a lot fairly old construction. He said they did a revised benefit cost analysis, as they do in every Change Order letter to justify how it doesn't affect the original BCA so as to not affect the grant application. Mr. Phelan noted Alderman Piazza's concerns about cutting the road on 36c and performed an assessment and determined the culvert could stay in its existing condition. Mr. Phelan said there was a pipe replacement (no ditch connected to this) on 31a. Mr. Phelan said item e was regarding some items that were not identified during design or survey. Mr. Phelan said Item f addresses the pour in place culverts. Mr. Phelan discussed item g and had Burns Cooley Dennis, Inc. (Geotechnical Firm) to investigate the sinkhole (36-1), and were told these items do not appear to be anything of significance and recommended to plug with rock and sand. Mr. Yarborough said in general when the work is designed, what soil samples were done in advance of the design? Mr. Phelan said he didn't think any geotechnical was done in advance of design. Mr. Yarborough stated, "No geotechnical was submitted in the plans". Mr. Phelan said, "No". Mr. Yarborough asked what, if any of these items related to field orders already performed and asked which ones. Mr. Phelan said yes, and asked Mr. Frank Parker to address these issues. Mr. Yarborough asked which one had not been performed? Mr. Phelan said item 7 has not; the utility conflict would have had to have been done. Mr. Yarborough said, but it has been performed? Mr. Phelan said, "Yes". Mr. Yarborough asked if it had been performed pursuant to a field order. Mr. Phelan said there was no written field order issued. Mr. Yarborough asked if there was a verbal field order directive issued. Mr. Phelan said yes, by Pickering. Mr. Yarborough asked if there was any correspondence documenting the field order. Mr. Phelan said it would be in the RFI or in the daily inspection reports. Mr. Yarborough asked if they had received an RFI on each of these items or on some of the items. Mr. Phelan said that Mr. Parker believes we have one on all of them. Mr. Yarborough asked if they have responded to the RFI. Mr. Phelan said yes. Mr. Yarborough asked if in the RFI, did Kappa request any additional days or times or costs and if so, on which ones? Mr. Yarborough told them where he was going with the line of question, being 1. the latent defect is something that was not there and Pickering did not design. He said when you bid on the project, if it's designed there and that's what you go when you got there, that is not considered a latent defect. Mr. Yarborough said the second thing 2) if they have submitted an RFI, they have the obligation under the contract to submit a request for an additional days or costs within 21 days of the acknowledgement of the condition giving rise to the additional costs or time. Mr.

Yarborough said if they have RFI's the City needs to know when they submitted the additional request and when it was stated. He said thirdly, 3) if there is a field order, a field order is by definition something that contemplates no increase in cost of the contract price. Mr. Yarborough said he will not recommend to the Board that they approve a Field Order that's already been verified by the contractor; so he suggested to the Board that they **TABLE** proposed Change Order No. 4, since most of the items have already been performed anyway and so it's not impairing the performance of the work and will take it up once the questions are addressed.

Alderman Lafontaine moved, seconded by Alderman Burke to **TABLE** approving Change Order No. 4 from Kappa Development to address several latent conditions discovered during the course of construction, which include:

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

**CITYWIDE DRAINAGE IMPROVEMENTS PROJECT/DRAINAGE IMPROVEMENTS PROJECT/CONSTRUCTION CHANGE DIRECTIVE/CHANGE ORDERS**

**Re: Change Order No. 3 for work within the CSX Right of Way – Citywide Drainage Improvements Project (formerly Change Order 5)**

Alderman Burke moved, seconded by Alderman Richardson to discuss and approve Change Order No. 3 from Kappa Development to modify work within the CSX R.O.W. The majority of these changes are due to CSX changing site-specific requirements after the project bid date. This will decrease the contract amount by \$141,791.82 – Citywide Drainage Improvements Project. **(EXHIBIT H)**

Mr. Phelan said most of this is regarding the pipe crossings and the intent of the project has not changed, either way they had to get pipes across the railroad. Mr. Phelan said the design guidelines for CSX recommended the original way Pickering proposed in the bid, and then they had submitted plans for CSX review, which took a considerable amount of time for the review. Mr. Phelan said the project had been bid during the CSX review and CSX then came back and said they would like Pickering to consider doing the jack and boar steel casings instead of jacking the concrete pipe directly on both sides. Mr. Phelan said it's a different construction method, and said CSX probably felt it would have been less of a load on their railroad track or less likely to undermine the railroad track. Mr. Phelan said CSX wouldn't issue the permit until the modifications were complete. Mr. Phelan said on the letter and Change Order where it removes approximately 1,700 linear feet of concrete paved channel in 23b, this was for two reasons, 1) it didn't affect the benefit cost analysis and 2) Brent Anderson brought up some concerns with replacing a pipe under Nicholson Avenue, which prompted some of this and whether to consider doing the upstream portion; the portion that's being removed is upstream to the pipe. Mr. Phelan said they determined that would not be needed to meet the benefit cost obligations in the grant approval. Mr. Phelan said since CSX has since begun using a third party for their inspections and flagging. He said Kappa's position is they were not aware of this. Mr. Phelan said he's not sure when it happened, but nevertheless Kappa had included inspection and flagging in their bid and will cause an increase, so by taking out this portion it also benefits them by having their total flagging & inspection being roughly equal to their original design bid by taking this portion out. Mr. Phelan described the route of the ditch. Mr. Yarborough asked if this Change Order included the two additional bid items necessary for the right-of-way or is this going to be a later addition. Mr. Phelan said yes, these are included within this change order. Mr. Yarborough asked if this is all based on correspondence from CSX and is necessary to obtain the agreement on the right-of-way access. Mr. Phelan said yes. Mr. Yarborough asked if it's Mr. Phelan's recommendation that this work, Change Order and additional days are necessary to the scope of the project as far as completion within its original bid and commercially

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**Special Meeting of January 21, 2016**  
**6:00 P.M.**

reasonable. Mr. Phelan said, "Yes". Mr. Yarborough asked for the basis of the 62-day addition. Mr. Phelan said part of it was that Kappa has submitted something to the City and was not delivered to CSX for around 45 days, also there was a problem getting the flaggers with CSX out there because of conditions of the City's agreement with CSX. Mr. Yarborough asked if this was work that would have already been performed under their critical path schedule or is this work performed toward the end of their critical path schedule. Mr. Phelan said they have been wanting to do this one for a while. Mr. Yarborough asked if this is work already contemplated to have been done or is this something they had contemplated in the future for the critical path schedule. Mr. Phelan said, "Yes". Mr. Yarborough asked how long ago had they contemplated beginning this work under their most recent critical path schedule. Mr. Parker said, "September (2015)". Mr. Yarborough said, "September is the time they had in their most recent construction schedule". Mr. Parker said September was 6 weeks after they had given the information to the City to submit to CSX and they were ready to start work on the right of way and couldn't. Mr. Yarborough asked if it is the recommendation of the Engineers that this has delayed the project 62 days. Mr. Phelan said, "Yes, because over and above the issue with the City, CSX has also had some scheduling issues". Mr. Yarborough said so if the City approves this, the City is approving this with days and the change order will be ... for the record we have approved Change Order No. 1, we have not approved what was submitted as Change Order No. 2...it will be a Construction Change Directive. What was Change Order No. 3 will now be Change Order No. 2, but that will need to be modified to reflect the contract price and days because of the non-inclusion of days in submitted Change Order No. 2, which is now the Construction Change Directive. We'll also need, so if you're considering this, it will be with the modification of the contract price and the day schedule giving the prior agreements and not on Change Orders as submitted from Pickering of Change Order No. 1, Change Order No. 2 (which became the Construction Change Directive) and Change Order No. 3 which will now be Change Order No. 2.

Note: Change Order 5 will be Change Order No. 3.

Mr. Yarborough asked Mr. Phelan if it was his position that this is necessary and commercially reasonable pursuant to Mississippi Code Section 31-7-13d as your recommendation to the Board. Mr. Phelan said, "Yes".

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

Mr. Yarborough asked Mr. Phelan, regarding the amounts remaining under the contract, is it his opinion that it's sufficient in the event that the Contractor does not complete the work to complete the job as designed. Mr. Phelan said, "Yes". Mr. Yarborough asked if the City is still at 5% retention or are we at 2 ½ %. Mr. Parker answered 2 ½%. Mr. Yarborough said, "And when we reduced to 2 ½ % ya'll were of the opinion that there's enough money to fulfill it if something happened to Kappa". Mr. Phelan said, "Yes, I mean we reduced it pursuant per the terms of the contract, but yea (inaudible)".

***STATEMENT FROM MR. YARBOROUGH:***

***As Of 6:30 pm We Had The Notice Of Special Meeting Submitted To The Aldermen Of A One Hour Notice For A Special Meeting To Occur At 7:30 Pm Tonight; It's Going To Coincide With This Meeting. The One Agenda Item Is related To Discussion and Possible Motions Related to Travel for Waveland Police Department. These Meetings are now Coinciding and so we have a motion to discuss and potentially take action related to City of Waveland Police Department travel.***

**(EXHIBIT I)**

**POLICE DEPARTMENT/TRAVEL**

**Re: Discuss Travel as it Relates to the Police Department**

Alderman Lafontaine moved, seconded by Alderman Richardson to discuss and potentially taken action related to City of Waveland Police Department travel.

Mayor Smith explained to Police Chief David Allen that the Board's concern is that in light of all the open cases the Police Investigators have open and ongoing, that travel/training at this time is going to be a detriment to those cases.

Chief Allen said that sometimes these classes are months in advance; for example CIP and forensic classes (which do not happen often) and since the Police do not know what they will get day to day (currently are working a shooting and a suspicious death) so it's hard to schedule classes around cases. He said it's not the quantity of the classes, it's the quality; there are always classes popping up in Gulfport and Biloxi, but they are things that are not needed. He said, "We have to train, we're trying to make the Police Department better with training. The timing sometimes is bad, but I do believe we want our people to train." Alderman Lafontaine said, "We all want people to train and get better; we've all approved every one of the travels, but won't you agree with right now with everything that's happened in the last 2 to 3 months that we need all hands on deck." Chief Allen said that things happen sporadically so many of the cases that they have are things where it's not necessary having someone extra on the street that very second. They are currently working a certain case where having extra people on the streets will not affect that; they are working that and have suspects, have a plan in place for that that's happening. Alderman Lafontaine said he feels our NTF officer that works with the Sheriff's Office; right now, we need him in Waveland. Chief Allen said that officer has been working with the Waveland Police Department a lot more lately and cited an issue today as an example and that he has been assisting with local cases. Chief Allen reminded Board members that Police are required to maintain a certain number of hours each year in training. He mentioned that he will have to send at least one of the Investigators, if not 2, to Jackson tomorrow for an autopsy, since Dr. McGarry died (who performed them locally); autopsies are no longer being done locally. Chief Allen said he carefully schedules travel/training so that there is always an Investigator here and then Chief Allen steps up as needed to back up the Investigators; today he was taking pictures at a crime scene. The NTF officer would have been here today, but was subpoenaed and in court. He added that all of admin. is capable of working cases.

Alderman Burke said his position on all of the departments is that those certified departments, such as Police, Fire, Public Works, etc. are self-governing; that's your Chief, Tony Mallini is our Chief there (Fire Department). They're the ones who know best what's needed for their department, and because that's essentially the head of the department, if he says travel is what's best for his department, I don't think I can debate the travel or the need for software or not. If he says it will make it better, who am I to argue that it's not; that's our Police Chief. Chief Allen asked if we're hearing from the public that there's not enough Police presence. Alderman Richardson said no, he's not heard that yet, he is just concerned with the amount of crime that is picking up.

Investigator Matt Sekinger explained the Investigators' approach to solving cases and how much detailed work that is required and involved because of Constitutional rights and rights with search warrants, etc. He assured that Board that these last 3 or 4 cases are coming to an end; it's slow and methodical by design. They want to make sure when they 'get these guys they put them away for good'.

*Note: No action was necessary, no vote taken.*

**EXECUTIVE SESSION:**

**Re: Consider Entering Executive Session**

Alderman Lafontaine moved, seconded by Alderman Richardson to consider Executive Session to prompt a closed discussion, prospective litigation against KAPPA Development and General Contracting related to the Citywide Drainage Improvements Contract.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

*Note: Board members exited the Consideration of Executive Session room noting no action taken; there will be no Executive Session.*

**ADJOURN**

**Re: Adjourn at 8:50 p.m.**

Alderman Lafontaine moved, seconded by Alderman Burke to adjourn the meeting at 8:51 p.m. until Monday January 25, 2016, 5 p.m. for consideration of the Museum Substantial Completion issue and remaining invoices, including all matters related to final approval.

A vote was called for with the following results:

Voting Yea: Burke, Richardson, and Lafontaine

Voting Nay: None

Absent: Piazza

The foregoing minutes were presented to Mayor Smith on February 19, 2016.

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Lisa B. Planchard  
City Clerk

The Minutes of January 21, 2016 have been read and approved by me on this, the 19<sup>th</sup> of February 2016.

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Mike Smith  
Mayor

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