

**STATE OF MISSISSIPPI
COUNTY OF PEARL RIVER
CITY OF PICAYUNE**

Be It Remembered that the Mayor and City Council of the City of Picayune, Pearl River County, Mississippi, met at City Hall, 203 Goodyear Blvd., in said City, Tuesday, July 15, 2014, at 5:00 p.m. in regular session with the following officials present: Council Members Tammy Valente, Lynn Bumpers, Jan Stevens, and Larry Breland, City Manager Jim Luke and City Clerk Amber Hinton. Mayor Ed Pinero was absent.

It Being Determined a quorum was present, the following proceedings were held.

Opening prayer was given by Bro. Dale Claybough, followed by the Pledge of Allegiance led by Mayor Pro Temp Wayne Gouguet.

AT THIS TIME COUNCIL MEMBER JAN STEVENS PRESENTED RESOLUTIONS FOR THE ACCOMPLISHMENTS OF PYAA BASESBALL TEAMS. PICAYUNE BIG DAWGS 6 YEAR OLD TEAM PLACED THIRD AT THE 2014 USSSA WORLD SERIES, PICAYUNE ALLSTARS 10 YEAR OLD TEAM WERE USSSA STATE CHAMPIONS AND ALSO PLACED THIRD IN THE 2014 USSSA WORLD SERIES, AND THE PICAYUNE HEAT 12 YEAR OLD TEAM WERE USSSA STATE CHAMPIONS AND 2014 USSSA WORLD SERIES RUNNER'S UP.

ORDER TO APPROVE MINUTES

Motion was made by Council Member Valente, seconded by Council Member Bumpers to approve the Minutes for the City of Picayune dated July 1, 2014.

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ACKNOWLEDGE RECEIPT OF MONTHLY PRIVILEGE LICENSE REPORT

Motion was made by Council Member Valente, seconded by Council Member Bumpers to acknowledge receipt of monthly Privilege License report for the month of June 2014.

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City of Picayune
Browse Receipts [GENERAL FUND - OPERATING, by Date]

Receipts	Date	Deposit To	Drawer	Type	Reference	Lookup	Citation	Name	Description	Received	Deposit Date	We b
Def: 428015	6/02/2014	GENERAL FUND -Mail -Is OPERATING	-Is	Check	0001005	30611		THREE CUPS OF COFFEE LLC DBA, PICAYUNE FLORIST	2013-2014 PRIV LICENSE	10.00	6/09/2014	
Def: 428804	6/05/2014	GENERAL FUND -Mail -Is OPERATING	-Is	Cash	0025844	27076		1ST HERITAGE CREDIT	2013-2014 priv license	23.60	6/09/2014	
Def: 428910	6/05/2014	GENERAL FUND -Mail -Is OPERATING	-Is	Check	0002034	30598		DANCEWEAR CONNECTION	2012-2013 PRIV LICENSE	20.00	6/09/2014	
Def: 428944	6/05/2014	GENERAL FUND -Mail -Is OPERATING	-Is	Check	0010027	19189		PENLEY FAMILY DENTISTRY	2013-2014 PRIV LICENSE	49.40	6/09/2014	
Def: 431634	6/17/2014	GENERAL FUND -Mail -Is OPERATING	-Is	Check	0000522	30666		BONNIE BLUE BOUTIQUE	2013-2014 PRIV LICENSE	30.00	6/30/2014	
Def: 432057	6/18/2014	GENERAL FUND -Mail -Is OPERATING	-Is	Check	30691	30680		FUN JUMPERS BIG TIME VAPE SIGN	2013-2014 PRIV LICENSE	20.00	6/30/2014	
Def: 432225	6/19/2014	GENERAL FUND -Mail -Is OPERATING	-Is	Cash				STOP		20.00	6/30/2014	
Def: 432237	6/19/2014	GENERAL FUND -Mail -Is OPERATING	-Is	Cash				CMC STEEL FABRICATORS, INC	2013-2014 priv license	20.00	6/30/2014	
Def: 433707	6/26/2014	GENERAL FUND -Mail -Is OPERATING	-Is	Cash				HAPPY HOLLY'S FIREWORKS	2013-2014 PRIV LICENSE	20.00	6/30/2014	
Def: 433843	6/30/2014	GENERAL FUND -Mail -Is OPERATING	-Is	Cash				DOG-N-BURGER,	2013-2014 PRIV LICENSE	20.00	6/30/2014	
OP: 433907	6/30/2014	GENERAL FUND -Mail -Is OPERATING	-Is	Cash				YAMATO STEAK HOUSE	2013-2014 PRIVILEGE LICENSE	30.00	6/30/2014	
										263.00		

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The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ACKNOWLEDGE RECEIPT OF MONTHLY PUBLIC RECORDS REQUEST REPORT

REGULAR MEETING JULY 15, 2014

Motion was made by Council Member Valente, seconded by Council Member Bumpers to acknowledge receipt of monthly Public Records Request report for the month of June 2014.

CITY OF PICAYUNE REPORT OF PUBLIC RECORDS REQUESTS JUNE 2014				
DATE		SUBJECT MATTER	DATE FILLED/ DENIED	ACTION
06/30/14	PICAYUNE HOUSING AUTHORITY	#6 FINGERPRINTS	06/30/14	APPROVED
06/30/14	HANCOCK CO YOUTH COURT	RECORDS CHECK X 2	06/30/14	APPROVED
06/30/14	CODY HAMRICK	INCIDENT REPORT # 2014-06-2180	06/30/14	APPROVED
06/30/14	JIM WALTER II	INCIDENT REPORT # 2014-06-2182	06/30/14	APPROVED
06/30/14	USDC SOUTHERN DISTRICT	RECORDS CHECK X 2	06/30/014	APPROVED
06/27/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-06-0734	06/27/14	APPROVED
06/24/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-06-1445	06/27/14	APPROVED
06/27/14	AMBER NICOLE SPIERS	RECORDS CHECK	06/27/14	APPROVED
06/27/14	METROPOLITAN REPORTING BUREAU	ACCIDENT REPORT # 2013-06-0996	06/27/14	APPROVED
06/27/14	WILLIAM C HUTCHINSON	RECORDS CHECK	06/27/14	APPROVED
06/27/14	SMITH & OLDMIXON	ACCIDENT REPORT # 2013-05-1785	06/27/14	APPROVED
06/27/14	JAMES ANDREW MITCHELL	INCIDENT REPORT # 2014-05-2289	06/27/14	APPROVED
06/27/14	SMITH & OLDMIXON	ACCIDENT REPORT # 2014-06-0932	06/27/14	APPROVED
06/27/14	SMITH & OLDMIXON	ACCIDENT REPORT # 2014-06-0655	06/27/14	APPROVED
06/27/14	PROGRESSIVE GULF INSURANCE	INCIDENT REPORT # 2014-06-1418	06/27/14	APPROVED
06/27/14	METROPOLITAN REPORTING BUREAU	ACCIDENT REPORT # 2014-04-2469	06/27/14	APPROVED
06/27/14	PATRICK TASSELIN	INCIDENT REPORT # 2014-06-0969	06/27/14	APPROVED
06/27/14	JOELLEN KRANKEY	RECORDS CHECK	06/27/14	APPROVED
06/27/14	SOUTHERN LEGAL CLINICS	ACCIDENT REPORT # 2014-06-1418	06/27/14	APPROVED
06/26/14	JENNIFER SPIERS	RECORDS CHECK	06/26/14	APPROVED
06/26/14	THOMAS AULTMAN	OUT OF COUNTRY RECORDS CHECK	06/26/14	APPROVED
06/26/14	THOMAS MCFADDEN	ACCIDENT REPORT # 2014-06-1428	06/26/14	APPROVED
06/26/14	JUAN RILEY	ACCIDENT REPORT # 2014-06-0655	06/26/14	APPROVED
06/24/14	MEGAN BUTCHER	ACCIDENT REPORT # 2014-06-1860	06/24/14	APPROVED
06/24/14	FLORA WALKER	ACCIDENT REPORT # 2014-06-1682	06/24/14	APPROVED
06/23/14	ANITA BROWN	RECORDS CHECK	06/23/14	APPROVED
06/20/14	NICOLE ROCHELLE THOMPSON	RECORDS CHECK	06/20/14	APPROVED
06/20/14	EVA MARIE BRUNNEY WHITE	RECORDS CHECK	06/20/14	APPROVED
06/20/14	JOHN & RACHELLE ALT	RECORDS CHECK	06/20/14	APPROVED
06/18/14	MARGUERITE WHITE	ACCIDENT REPORT # 2014-05-1178	06/18/14	APPROVED
06/18/14	KEITH BILBO	ACCIDENT REPORT # 2014-05-1897	06/18/14	APPROVED
06/17/14	LACI CRAFT	VEHICLE BURGLARLY REPORT # 2014-06-1342	06/17/14	APPROVED
06/17/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-06-0932	06/17/14	APPROVED
06/17/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-06-0780	06/17/14	APPROVED
06/17/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-06-0814	06/17/14	APPROVED
06/17/14	POWELL TRANSPORTATION CO INC	ACCIDENT REPORT #2014-06-0923	06/17/14	APPROVED
06/17/14	USDC SOUTHERN DISTRICT	RECORDS CHECK	06/17/14	APPROVED
06/17/14	JACKSON FBI	RECORDS CHECK	06/17/14	APPROVED
06/16/14	LORETTA ACHESON	ACCIDENT REPORT # 2014-06-1107	06/16/14	APPROVED
06/16/14	AT & T	ACCIDENT REPORT # 2014-02-0836	06/16/14	APPROVED
06/12/14	SLIDELL ARMY RECRUITING CTR	RECORDS CHECK	06/12/14	APPROVED
06/11/14	MDOC	ACCIDENT REPORT # 2008-11-1700	06/11/14	APPROVED
06/11/14	MSDOH	RECORDS CHECK	06/11/14	APPROVED
06/11/14	FBI NICS	RECORDS CHECK	06/11/14	APPROVED
06/13/14	MS FBI	RECORDS CHECK	06/13/14	APPROVED

REGULAR MEETING JULY 15, 2014

06/13/14	DEPT OF PUBLIC SAFETY	RECORDS CHECK	06/13/14	APPROVED
06/12/14	METROPOLITAN REPORTING BUREAU	ACCIDENT REPORT # 2014-05-0656	06/12/14	APPROVED
06/12/14	METROPOLITAN REPORTING BUREAU	ACCIDENT REPORT # 2014-04-1463	06/12/14	APPROVED
06/12/14	VEDA LATHER	RECORDS CHECK	06/12/14	APPROVED
06/11/14	WMS WMS & MONTGOMERY	ACCIDENT REPORT # 2014-05-0775	06/11/14	APPROVED
06/11/14	MDOC	POLICE REPORT COLBY HILL	06/11/14	APPROVED
06/11/14	SENTRY INSURANCE	ACCIDENT REPORT # 2014-05-1741	06/11/14	APPROVED
06/11/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-06-0167	06/11/14	APPROVED
06/11/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-05-0412	06/14/14	APPROVED
06/11/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-05-2331	06/11/14	APPROVED
06/11/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-05-2532	06/11/14	APPROVED
06/11/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-06-0228	06/11/14	APPROVED
06/11/14	CAROL SPICER	ACCIDENT REPORT # 2014-06-0314	06/11/14	APPROVED
06/11/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-06-0314	06/11/14	APPROVED
06/11/14	USDC SOUTHERN DISTRICT	RECORDS CHECK	06/11/14	APPROVED
06/10/14	US MARINE CORPS RECRUITING	REQUEST LEFT BLANK		
06/09/14	MDOHS	REQUEST LEFT BLANK		
06/09/14	WILSERV	ACCIDENT REPORT # 2014-05-0034	06/09/14	APPROVED
06/09/14	METROPOLITAN REPORTING BUREAU	ACCIDENT REPORT # 2014-05-2340	06/09/14	APPROVED
06/09/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-03-0138	06/09/14	APPROVED
06/09/14	GJTBS	ACCIDENT REPORT # 2012-02-1063	06/09/14	APPROVED
06/02/14	KEMMELA PETIFFILS	COPY OF REPORT # 2008-08-0832 & 2011-04-1873	06/02/14	APPROVED
06/05/14	CHELSEA OLIVE	ACCIDENT REPORT # 2014-06-0152	06/05/14	APPROVED
06/05/14	HERSELL PULLENS	ACCIDENT REPORT # 2014-05-0928	06/05/14	APPROVED
06/05/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-05-0794	06/05/14	APPROVED
06/05/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-05-1671	06/05/14	APPROVED
06/05/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-05-2347	06/05/14	APPROVED
06/05/14	JAMES ESTAIN	ACCIDENT REPORT # 2014-05-1886	06/05/14	APPROVED
06/05/14	PEARL RIVER COUNTY UTILILITY AUTHORITY	ACCIDENT REPORT # 2014-05-1283	06/05/14	APPROVED
06/04/14	LA GAMING ENFORCEMENT	RECORDS CHECK	06/04/14	APPROVED
06/04/14	SGT KEITH SCHENCK	INCIDENT REPORT # 14-05-2231	06/04/14	APPROVED
06/03/14	NEW ORLEANS POLICE DEPARTMENT	RECORDS CHECK ON TRAVIS PAUL TRAHAN	06/03/14	APPROVED
06/02/14	HANCOCK CO YOUTH COURT	RECORDS CHECK	06/02/14	APPROVED
06/02/14	ROBERT MORGAN	ACCIDENT REPORT # 2014-05-1806	06/02/14	APPROVED
06/02/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-05-2175	06/02/14	APPROVED
06/02/14	LEXIS NEXIS	ACCIDENT REPORT # 2014-05-1886	06/02/14	APPROVED
06/02/14	ALBERT HATHORNE JR	ACCIDENT REPORT # 2014-06-1671	06/02/14	APPROVED
06/02/14	USDC SOUTHERN DISTRICT	RECORDS CHECK	06/02/14	APPROVED

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ACCEPT APPROVED PLANNING COMMISSION MINUTES

Motion was made by Council Member Valente, seconded by Council Member Bumpers to accept the approved Planning Commission Minutes dated May 13, 2014.

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ACCEPT PLANNING COMMISSION MINUTES

Motion was made by Council Member Valente, seconded by Council Member Bumpers to accept Planning Commission Minutes dated July 8, 2014.

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO BUY BACK CEMETERY PLOT

Motion was made by Council Member Valente, seconded by Council Member Bumpers to buy back cemetery plot from Dorothy Facundus who no longer wants her plot described as Plot 3, Lot 2, Block U U in New Palestine Cemetery, in the amount of \$450.00.

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE SALE OF PROPERTY TO HERITAGE PLASTICS

Motion was made by Council Member Valente, seconded by Council Member Stevens to approve the sale of property to Heritage Plastics and authorize Mayor and City Clerk to sign all necessary documents.

STATE OF MISSISSIPPI)
)
COUNTY OF PEARL RIVER)

CONTRACT FOR THE SALE AND PURCHASE OF REAL ESTATE

THIS AGREEMENT made and entered into, upon this, the ____ day of _____,
A.D. 2014, by and between the **CITY OF PICAYUNE, A MISSISSIPPI MUNICIPALITY**,
(Seller) and **HERITAGE PLASTICS, INC., A MISSISSIPPI CORPORATION**,
(Buyer/Purchaser).

Witnesseth:

For and in consideration of the mutual covenants hereinafter recited and the
further consideration of the sum of ONE HUNDRED SIXTY THOUSAND EIGHT
HUNDRED AND NO/100 Dollars (\$160,800.00), cash in hand paid, from Buyer, the
receipt and sufficiency of all of which is hereby acknowledged and confessed, Seller
hereby contracts and agrees to sell, and Buyer does hereby contracts and agrees to
purchase the hereinafter described real property subject to the following terms,
conditions and provisions, to-wit:

1. **Legal description of property:** A tract of real property located in the Industrial
Park of the City of Picayune, Pearl River County, Mississippi, comprised of 8.04
acres, more or less, as more specifically described pursuant to Exhibit "1"
attached hereto and incorporated herein by reference.
2. **Purchase price:** The purchase price shall be the aggregate total sum of ONE
HUNDRED SIXTY THOUSAND EIGHT HUNDRED AND NO/100 Dollars
(\$160,800.00) payable to the Seller at closing.

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- 3. Title and closing:** Seller shall deliver unto Purchaser a merchantable title to the hereinbefore described property. Should title to the hereinbefore property not be merchantable, then in that event, Seller shall take such steps within a reasonable time to cure any and all defects which render said title unmerchantable. It is understood and agreed that title to the subject property will be passed within thirty (30) days from the date of this contract. Should this contract expire before closing takes place, then, in that event, this Contract shall be cancelled forthwith, unless the Parties mutually agree to extend the term of this Contract in writing signed by both Parties upon terms agreeable to the Parties.
- 4. Closing costs:** Buyer shall be responsible for all closing costs including but not limited to attorney's fees, title insurance, the payment of any discount points to a lender, title insurance premiums, etc. Seller will be responsible for the payment of a Warranty Deed. The Parties shall be equally responsible for the Survey, and Appraisal(s).
- 5. Seller's Representations:** Seller represents and warrants to Purchaser that public water, and natural gas are available to service the Property at no less than one of the boundary lines of the Property for use by Purchaser.
- 6. Taxes:** State, County and/or City taxes for the year 2014, if any, will be prorated between the Parties at closing. All subsequent State, County, City and/or School District ad valorem taxes and assessments for all subsequent years shall be the responsibility of the Buyer.
- 7. Possession and Occupancy:** It is agreed between the Parties that the subject property will be delivered unto the Buyer at closing. Purchaser's operational

plans and specifications will be approved prior to Closing.

8. Special Provisions: The purchase/sale of the property is subject to the following conditions:

- A. It is agreed between the Parties hereto that no real estate broker or agent is in any way involved in the transaction covered by this Contract.
- B. It is agreed between the Parties that the subject property is to be purchased "As Is" and "Where Is", and that Seller makes no warranties relative to the subject real property, except for those warranties of title contained in the Warranty Deed executed by Seller to Buyer.
- C. Buyer acknowledges and recognizes that the hereinbefore described real property is located in an industrial development zone which is subject to certain restrictions, covenants and conditions which govern the use, occupancy and construction of any improvements located on the subject real property. These restrictions, covenants and conditions are attached hereto and incorporated herein as Exhibit "2", and shall bind the subject the real property being sold to the Buyer.
- D. Buyer also acknowledges and recognizes that the hereinbefore described real property is located in an industrial development zone which is subject to the laws of the State of Mississippi, Agricultural and Industrial Statutes, Sections 57-3-1 et. seq., Mississippi Code of 1972 as Amended.
- E. Seller shall have ninety (90) days from the date of the execution of this Agreement to remove any equipment or personal property from the subject land to be sold to the Purchaser/Buyer.

9. **Notices:** All written notice to the Parties hereunder shall be mailed to Parties at the following addresses:

Seller's address: City of Picayune
C/O City Manager's Office
203 Goodyear Blvd.
Picayune, MS 39466
Phone Number : (601) 798-9770

Buyer's address: Heritage Plastics, Inc.
c/o Michael J. Dvornak
1002 Hunt Street
Picayune, MS 39466
Phone Number: (601) 798-8663

Agreed to, this the _____ day of _____, A.D., 2014.

Seller: CITY OF PICAYUNE, A
MISSISSIPPI MUNICIPALITY

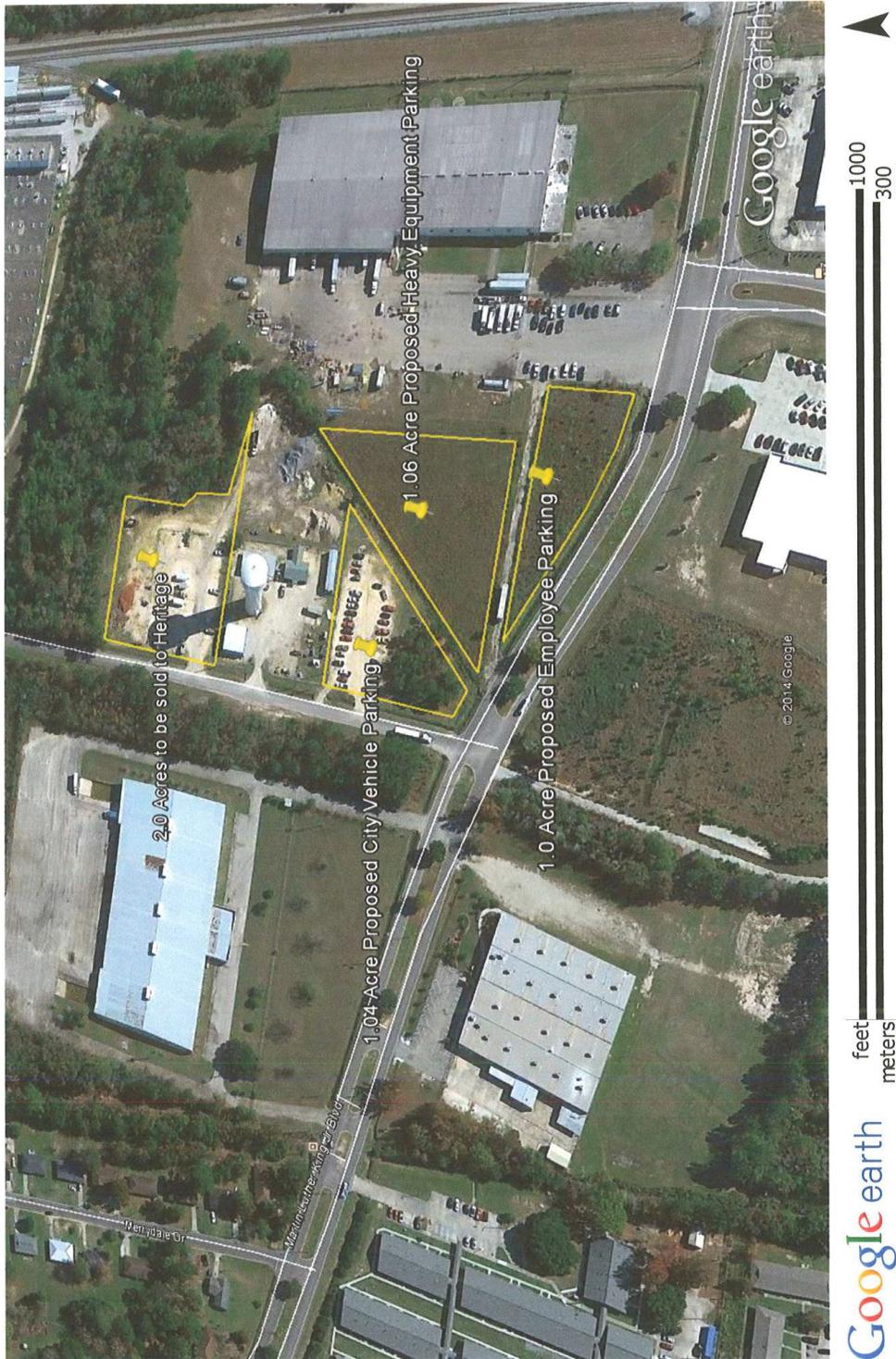
BY: _____
ED PINERO, MAYOR

BY: _____
AMBER HINTON, CITY CLERK

Buyer: HERITAGE PLASTICS, INC., A
MISSISSIPPI CORPORATION

BY: _____
PRESIDENT

STATE OF MISSISSIPPI)
)
COUNTY OF PEARL RIVER)



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The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

**MOTION TO APPLY FOR MISSISSIPPI DEVELOPMENT AUTHORITY
INFRASTRUCTURE PROGRAM GRANT**

Motion was made by Council Member Breland, seconded by Council Member Stevens to apply for Mississippi Development Authority Infrastructure Program Grant and authorize Mayor to sign all related documents.

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO APPROVE HOME OCCUPATION LICENSE AT 1305 AUSBORN RD

Motion was made by Council Member Breland, seconded by Council Member Stevens to accept Planning Commission recommendation to approve Home Occupation License at 1305 Ausborn Road to operate a daycare subject to City obtaining a copy of license from the State to operate.

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AT THIS TIME COUNCIL MEMBER TAMMY VALENTE EXITED THE MEETING

MOTION TO APPROVE VARIANCE FOR PARKING AT 1403 SOUTH HAUGH AVE

Motion was made by Council Member Stevens, seconded by Council Member Bumpers to accept Planning Commission recommendation to approve request to allow a variance for one year extension for use of gravel parking lot for the Resurrection Life Ministries Worship Center at 1403 South Haugh Avenue.

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero and Council Member Valente

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AT THIS TIME COUNCIL MEMBER TAMMY VALENTE RETURNED TO MEETING

MOTION TO DENY REQUEST FOR CONDITIONAL USE AT 306 STEVENS STREET

Motion was made by Council Member Breland, seconded by Council Member Valente accept Planning Commission recommendation to deny request from Rochelle Holiday for a Conditional Use and a Parking Variance for "The Scare House" that was to be located at 306 Stevens Street which is zoned C-2.

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO APPROVE CHANGE ORDER #1-FEMA PROJECT NO. DR-1604-MS-0332

Motion was made by Council Member Breland, seconded by Council Member Tammy Valente to approve Change Order #1-FEMA Project No. DR-1604-MS-0332.

<u>CONTRACT CHANGE ORDER</u>			
OWNER: <u>City of Picayune</u>			
CONTRACTOR: <u>Gulf Coast Custom Homes, LLC.</u>			
CHANGE ORDER NUMBER: <u>1</u>			
PROJECT NAME: <u>FEMA Project No. DR-1604-MS-0332</u>			
REASON FOR CHANGE: <u>Adjustment of existing sewer main in conflict with the bottom of the concrete channel.</u>			
YOU ARE HEREBY REQUESTED TO COMPLY WITH THE FOLLOWING CHANGES FROM THE CONTRACT PLANS, SPECIFICATIONS AND CONTRACT DOCUMENTS: (USE ADDITIONAL SHEETS IF REQUIRED)			
ITEM NO.	DESCRIPTION OF CHANGE(S) (QUANTITIES, ETC.)	UNIT COST	TOTAL CONTRACT COST
CCO1-1	Sewer Main Adjustment (Lump Sum)	\$ 2,500.00	\$ 2,500.00
TOTAL CONTRACT CHANGE			
ORIGINAL CONTRACT AMOUNT:		\$	\$ 307,270.61
CURRENT CONTRACT AMOUNT:		\$	\$ 307,270.61
THIS CONTRACT CHANGE:		\$	\$ 2,500.00
REVISED CONTRACT AMOUNT:		\$	\$ 309,770.61
CURRENT CONTRACT COMPLETION DATE:			October 3, 2014
TIME EXTENSION REQUIRED BY CHANGE:			0 Days
REVISED CONTRACT COMPLETION DATE:			October 3, 2014
<small>THIS DOCUMENT SHALL BE AN AMENDMENT TO THE CONTRACT AND ALL PROVISIONS OF THE CONTRACT WILL APPLY.</small>			

RECOMMENDED BY: _____ ENGINEER _____ DATE _____

ACCEPTED BY: _____ CONTRACTOR _____ DATE _____

REVIEWED BY: _____ ADMINISTRATOR _____ DATE _____

APPROVED BY: _____ OWNER _____ DATE _____

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO APPROVE CHANGE ORDER #2 FOR THE SYSTEM WIDE CAST IRON GAS MAIN REPLACEMENT PROJECT

REGULAR MEETING JULY 15, 2014

Motion was made by Council Member Stevens, seconded by Council Member Valente to approve Change Order #2 for the System Wide Cast Iron Gas Main Replacement Project.

Contract Change Order

OWNER: City of Prichard
 CONTRACTOR: T.L. Wallace Construction, Inc.
 DATE: July 7, 2014
 CHANGE ORDER #: 2
 PROJECT NAME: System-Wide Cast Iron Gas Main Replacement Project

REASON FOR CHANGE: Add Pay Item 02570-W as indicated below to be installed the gas mains at various locations to protect the tracer wire from deteriorating over time.

(You are hereby requested to comply with the following changes from the contract plans, specifications, and contract documents)

Item No.	Description of Change	Unit	Original Quantity	Adjusted Quantity	Unit Cost:	Total Contract Cost
02570-W	1 Pound Anode	LS	0	25	\$ 136.80	\$ 3,420.00
This Contract Change:						\$ 3,420.00
Original Contract Amount:						\$ 1,717,240.00
Current Contract Amount:						\$ 1,725,408.36
Revised Contract Amount:						\$ 1,728,828.36
Current Completion Date:						12/26/2014
Time Extension Required By Change:						0
Revised Contract Completion Date:						12/26/2014

THIS DOCUMENT SHALL BE AN AMENDMENT TO THE CONTRACT AND ALL PROVISIONS OF THE CONTRACT WILL APPLY.

Recommend By: _____
 Engineer Date

Accepted By: _____
 Contractor Date

Approved By: _____
 Owner Date

Approved By: _____
 Funding Agency Date

QA1700C052\Documents\Contract Documents\Change Order\CCO2-System Wide Cast Iron Gas Main Replacement.xlsx

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

**MOTION TO APPROVE THE DESIGN AND CONSTRUCTION PHASE
ENGINEERING CONTRACT FOR THE GOODYEAR BLVD-GREENSPACE-2014
LPRVF GRANT PROJECT**

Motion was made by Council Member Stevens, seconded by Council Member Valente to approve the Design and Construction Phase Engineering Contract for the Goodyear Blvd-Greenspace-2014 LPRVF Grant Project and authorize Mayor's signature on related documents.



July 9, 2014

Mayor Ed Pinero, Jr.
City of Picayune
815 North Beech Street
Picayune, Mississippi 39466

RE: City of Picayune
Goodyear Boulevard Greenspace – 2014 LPRVF Grant
Engineering Services

Dear Mayor Pinero:

Thank you for allowing us the opportunity to assist you with this project. According to the laws set forth by the Mississippi State Board of Registration for Professional Engineers and Surveyors, we can only submit a cost estimate for providing professional services if we are selected for the work based on our qualifications. Therefore, we are submitting this not to exceed cost estimate portion of this proposal with the understanding that it is for budgetary estimate purposes only and is not being used for comparative pricing of the other professional firms. I have reviewed the engineering and surveying work required in connection with the above referenced. I am pleased to provide this letter of agreement for the following engineering services:

I. Design and Bidding Phase

Dungan Engineering, P.A. will provide all engineering and surveying necessary for the development of the construction drawings, details, and specifications for the "Goodyear Boulevard Greenspace – 2014 LPRVF Project." The intent of this project is to install a wrought iron fence and a pavestone entrance off Goodyear Boulevard. We will prepare all bidding documents for the parking project and make recommendations to the City Council on how to proceed once the bids are received.

II. Construction Phase

Dungan Engineering, P.A. will provide construction observation during all phases of the construction contract. These construction observations will be necessary to insure quality of work and to maintain detailed records of the quantities of materials used by the Contractor.

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III. Professional Fees

Dungan Engineering, P.A. proposes to provide all necessary engineering and drafting services, as outlined above, for a lump sum fee equal as outlined below:

- Design and Bidding Phase – \$8,000.00
- Construction Phase - \$6,000.00

We would expect to start our services immediately after receipt of written confirmation you had accepted our proposal. We intend to perform this work in accordance with generally accepted engineering and surveying principles.

If you accept this proposal please execute both copies of this Letter of Agreement and return one (1) to our office. This letter of agreement is subject to the attached thirty (30) "General Terms and Conditions".

Thanks again for your consideration. We look forward to working with you on this project. If you have any questions or comments, please call me.

Sincerely,

A handwritten signature in black ink, appearing to read 'BW', is written over a horizontal line.

Brooks Wallace, P.E.
Vice President
Dungan Engineering, P.A.

Accepted By _____
City of Picayune

Enclosures

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P (601) 799-1037 | F (601) 799-0480

GENERAL TERMS AND CONDITIONS

1. **Relation Between Engineer and Client.** Engineer shall serve as Client's professional engineering consultant in those phases of the Project to which this Agreement applies. The relationship is that of a buyer and seller of professional services and it is understood that the parties have not entered onto any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client.
2. **Responsibility of the Engineer.** Engineer will strive to perform services under this Agreement in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any agreement between the Client and any other party concerning the Project, the Engineer shall not have control of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction; or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any contractor or subcontractor, or any other engineer, architect or consultant not under contracts to the Engineer to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project.

Engineer shall determine the amounts owing to the construction contractor and recommend in writing payments to the contractor in such amounts. By recommending any payment, the Engineer will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made to check the quality or quantity of the contractor's work.

3. **Responsibility of the Client.** Client shall provide all criteria and full information as to his requirements for the Project, including budgetary limitations. Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project.

Client shall give prompt written notice to the Engineer whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of Engineer's services, or any defect or nonconformance in the work of any construction contractor.

Client shall examine all documents presented by Engineer, obtain advice of an attorney or other consultant as Client deems appropriate for such examinations and provide decisions pertaining thereto within a reasonable time so as not to delay the service of the Engineer.

4. **Designation of Authorized Representatives.** Each party shall designate one or more persons to act with authority in its behalf with respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the party.
5. **Ownership of Documents.** Drawings, specifications, reports and any other documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be the property of Client. Engineer shall have the right to retain copies of all documents and drawings for its files.
6. **Reuse of Documents.** All documents, including drawings and specifications furnished by Engineer pursuant to this Agreement, are intended for use on the Project only. They should not be used by Client or others on extensions of the Project or on any other project. Any reuse, without written verification or

adaption by Engineer, shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting therefrom.

7. **Opinions of Cost.** Since the Engineer has no control over the cost of labor, materials, equipment or services furnished by the contractor, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, the Engineer cannot and does not guarantee that proposals, bids or actual construction costs will not vary from his opinions or estimates of construction costs.
8. **Changes.** Client reserves the right by written change order or amendment to make changes in requirements, amount of work or engineering time schedule adjustments; and Engineer and Client shall negotiate appropriate adjustments in fee and/or schedule acceptable to both parties to accommodate any changes.
9. **Delays.** If the Engineer's services are delayed by the Client, or for other reasons beyond the Engineer's control, for more than one year, the fee provided for in this Agreement shall be adjusted equitably.
10. **Subcontracts.** Engineer may subcontract portions of the services, but each subcontractor must be approved by Client in writing.
11. **Suspension of Services.** Client may, at any time, by written order to Engineer, require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the services covered by the order. Client, however, shall pay all costs associated with suspension including all costs necessary to maintain continuity and the staff required to resume the services upon expiration of the suspension of work order. Engineer will not be obligated to provide the same personnel employed prior to suspension when the services are resumed in the event the period of any suspension exceeds 30 days. Client will reimburse Engineer for the costs of such suspension and remobilization.
12. **Termination.** This Agreement may be terminated by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by the Engineer either before or after the termination date shall be reimbursed by Client.
13. **Notices.** Any notice or designation required to be given by either party hereto shall be in writing and, unless receipt of such notice is expressly required by the terms hereof, it shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereinafter furnish to the other party by written notice as herein provided.
14. **Indemnification.** Engineer shall indemnify and hold harmless Client from Client's loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage arising out of the sole negligent act, error or omission of Engineer.

Client shall indemnify and hold harmless Engineer from Engineer's loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) on property damage arising out of the sole negligent act, error or omission of Client.

In the event of joint or concurrent negligence of Engineer and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligency (including that of third parties) which caused the personal injury or property damage.

Client shall not be liable to the Engineer, and the Engineer shall not be liable to the Client, for any special,

REGULAR MEETING JULY 15, 2014

incidental or consequential damages, including, but not limited to, loss of use and loss of profit, incurred by either party due to the fault of the other, regardless of the nature of this fault, or whether it was committed by the Client of the Engineer or their employees, agents or subcontractors, by reason of services rendered under this Agreement.

15. **Legal Proceedings.** In the Event's employees are at any time required by Client to provide testimony, answer interrogatories or otherwise provide information ("testimony") in preparation for or at a trial, hearing, proceeding or inquiry ("proceeding") arising out of the services that are the subject of this Agreement, where Engineer is not a party to such a proceeding, Client will compensate Engineer for its services and reimburse Engineer for all related direct costs incurred in connection with providing such testimony. This provision shall be of no effect if the parties have agreed in a separate agreement or an amendment to this Agreement to terms which specifically supersede this provision, nor shall this provision apply in the event Client engages Engineer to provide expert testimony or litigation support, which services shall be the subject of a separate agreement or an amendment to this Agreement.
16. **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
17. **Insurance.** Within the context of prudent business practices, Engineer shall endeavor to maintain workmen's compensation and unemployment compensation of a form and in an amount as required by state law; comprehensive liability with maximum limits of \$500,000/\$1,000,000; automotive liability with maximum limits of \$50,000/\$500,000; and professional liability insurance with an annual limit of \$500,000. Client recognizes that insurance market is erratic and Engineer cannot guarantee to maintain the coverages identified above.
18. **Information Provided by the Client.** The Engineer shall indicate to the Client the information needed for rendering of services hereunder. The Client may elect to provide this information (including services by others) to the Engineer. In this case, the Client recognizes that the Engineer cannot assure the sufficiency of such information. Accordingly, the Engineer shall not be liable for any claims for injury or loss arising from errors, omissions or inaccuracies in documents or other information provided by the Client. In addition, the Client agrees to compensate the Engineer for any time spent or expenses incurred in defending such claim or in making revisions to his work as a direct or indirect result of information provided by the Client which is sufficient.
19. **Subsurface Conditions and Utilities.** Client recognizes that a comprehensive sampling and testing program implemented by trained and experienced personnel of Engineer of Engineer's subconsultants with appropriate equipment may fail to detect certain hidden conditions. Client also recognizes that actual environmental, geological and geotechnical conditions that Engineer properly inferred to exist between sampling points may differ significantly from those that actually exist.

Engineer will locate utilities which will affect the project from information provided by the Client and utility companies and from Engineer's surveys. In that these utility locations are based, at least in part, or information from others, Engineer cannot and does not warrant their completeness and accuracy.
20. **Hazardous Materials.** When hazardous materials are known, assumed or suspected to exist at a project site, Engineer is required to take appropriate precautions to protect the health and safety of his personnel, to comply with the applicable laws and regulations and to follow procedures deemed prudent to minimize physical risks to employees and the public. Client hereby warrants that, if he knows or has any reason to assume or suspect that hazardous materials may exist at the project site, he will inform Engineer in writing prior to initiation of services under this Agreement.

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Client agrees that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. Engineer agrees to notify Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. Client waives any claim against Engineer and agrees to indemnify, defend and hold

REGULAR MEETING JULY 15, 2014

Engineer harmless from any claim or liability for injury or loss arising from Engineer's encountering unanticipated hazardous materials or suspected hazardous materials. Client also agrees to compensate Engineer for any time spent and expenses incurred by Engineer in defense of any such claim.

21. **Risk Allocation.** The Client recognizes that Engineer's fee includes an allowance for funding a variety of risks which affect the Engineer by virtue of his agreeing to perform services on the Client's behalf. One of these risks stems from the Engineer's potential for human error. In order for the Client to obtain the benefits of a fee which includes a lesser allowance for risk funding, the Client agrees to limit the Engineer's liability to the Client and all construction contractors arising from the Engineer's professional acts, errors, or omissions, such that the total aggregate liability of the Engineer to all those named shall not exceed \$50,000 or the Engineer's total fee for the services rendered on this project, whichever is greater.
22. **Anticipated Change Orders.** Client recognizes and expects that a certain amount of imprecision and incompleteness is to be expected in construction contract documents; that contractors are expected to furnish and perform work, materials and equipment that may reasonably be inferred from the contract documents or from the prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for; and that a certain amount of change orders are to be expected. As long as Engineer provides services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions, client agrees not to make any claim against Engineer for cost of these change orders unless these costs become a significant part of the construction contract amount. In no case will Client make claim against Engineer for costs incurred in the change order work is a necessary part of the Project for which Client would have incurred cost if work had been included originally in the contract documents unless Client can demonstrate that such costs were higher through issuance of the change order than they would have been if originally included in the contract documents in which case any claim of Client against Engineer will be limited to the cost increase and not the entire cost of the change order.
23. **Payment.** Engineer shall submit monthly statements to Client. Payment in full shall be done upon receipt of the invoice. If payments are delinquent after 30 days from invoice date, the Client agrees to pay interest on the unpaid balance at the rate of one percent per month. Payment for Engineer's services is not contingent on any factor except Engineers ability to provide services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.
24. **Force Majeure.** Neither Client nor Engineer shall be liable for any fault or delay caused by contingency beyond their control including, but not limited to, acts of God, wars, strikes, walkouts fires, natural calamities, or demands or requirements of governmental agencies.
25. **Compliance with Laws.** To the extent they apply to its employees or its services, the Engineer shall comply with all applicable United States, state, territorial and commonwealth laws, including ordinances of any political subdivisions or agencies of the United States, any state, territory, or commonwealth thereof.
26. **Separate Provisions.** If any provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall be valid and binding.
27. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the principal place of business of the Engineer.
28. **Amendment.** This Agreement shall not be subject to amendment unless other instrument is executed by duly authorized representatives of each of the parties.
29. **Entire Understanding of Agreement.** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with

respect to the subject matter hereof that conflict with the terms of this Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.

30. **Design without Construction Phase Services.** Should Client provide Construction Phase services with either Client's representatives or a third party, Engineer's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase.

It is understood and agreed that if Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by Client, then Client assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the Engineer that may be in any way connected thereto.

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

**MOTION TO APPROVE REQUEST TO ADVERTISE FOR GOODYEAR
BOULEVARD-GREENSPACE-2014 LPRVF GRANT PROJECT**

Motion was made by Council Member Valente, seconded by Council Member Stevens to approve request to advertise for Goodyear Boulevard-Greenspace-2014 LPRVF Grant Project.

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO APPROVE THE DESIGN PHASE ENGINEERING CONTRACT FOR PUBLIC WORKS FACILITY MODIFICATION-WITTHAUER LOCATION

Motion was made by Council Member Breland, seconded by Council Member Stevens to approve the Design Phase Engineering Contract for Public Works Facility Modification-Witthauer Location-contingent upon sale of property to Heritage Plastics.



July 10, 2014

Mayor Ed Pinero, Jr.
City of Picayune
815 North Beech Street
Picayune, Mississippi 39466

RE: City of Picayune
Public Works Facility Modification – Whitthauer Location
Engineering Services

Dear Mayor Pinero:

Thank you for allowing us the opportunity to assist you with this project. According to the laws set forth by the Mississippi State Board of Registration for Professional Engineers and Surveyors, we can only submit a cost estimate for providing professional services if we are selected for the work based on our qualifications. Therefore, we are submitting this not to exceed cost estimate portion of this proposal with the understanding that it is for budgetary estimate purposes only and is not being used for comparative pricing of the other professional firms. I have reviewed the engineering and surveying work required in connection with the above referenced. I am pleased to provide this letter of agreement for the following engineering services:

I. Design and Bidding Phase

Dungan Engineering, P.A. will provide all engineering and surveying necessary for the development of the construction drawings, details, and specifications for the "Public Works Facility Modification – Whitthauer Location." The intent of this project is to place limestone and install a chain link fence around two dedicated areas. We will prepare all bidding documents for the project and make recommendations to the City Council on how to proceed once the bids are received.

II. Professional Fees

Dungan Engineering, P.A. proposes to provide all necessary engineering and drafting services, as outlined above, for a lump sum fee equal as outlined below:

- Design and Bidding Phase – \$7,200.00

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We would expect to start our services immediately after receipt of written confirmation you had accepted our proposal. We intend to perform this work in accordance with generally accepted engineering and surveying principles.

If you accept this proposal please execute both copies of this Letter of Agreement and return one (1) to our office. This letter of agreement is subject to the attached thirty (30) "General Terms and Conditions".

Thanks again for your consideration. We look forward to working with you on this project. If you have any questions or comments, please call me.

Sincerely,

A handwritten signature in black ink, appearing to read 'BW', is written over the typed name.

Brooks Wallace, P.E.
Vice President
Dungan Engineering, P.A.

Accepted By _____
City of Picayune

Enclosures

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REGULAR MEETING JULY 15, 2014

GENERAL TERMS AND CONDITIONS

1. **Relation Between Engineer and Client.** Engineer shall serve as Client's professional engineering consultant in those phases of the Project to which this Agreement applies. The relationship is that of a buyer and seller of professional services and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client.
2. **Responsibility of the Engineer.** Engineer will strive to perform services under this Agreement in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any agreement between the Client and any other party concerning the Project, the Engineer shall not have control of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction; or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any contractor or subcontractor, or any other engineer, architect or consultant not under contracts to the Engineer to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project.

Engineer shall determine the amounts owing to the construction contractor and recommend in writing payments to the contractor in such amounts. By recommending any payment, the Engineer will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made to check the quality or quantity of the contractor's work.

3. **Responsibility of the Client.** Client shall provide all criteria and full information as to his requirements for the Project, including budgetary limitations. Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project.

Client shall give prompt written notice to the Engineer whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of Engineer's services, or any defect or nonconformance in the work of any construction contractor.

Client shall examine all documents presented by Engineer, obtain advice of an attorney or other consultant as Client deems appropriate for such examinations and provide decisions pertaining thereto within a reasonable time so as not to delay the service of the Engineer.

4. **Designation of Authorized Representatives.** Each party shall designate one or more persons to act with authority in its behalf with respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the party.
5. **Ownership of Documents.** Drawings, specifications, reports and any other documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be the property of Client. Engineer shall have the right to retain copies of all documents and drawings for its files.
6. **Reuse of Documents.** All documents, including drawings and specifications furnished by Engineer pursuant to this Agreement, are intended for use on the Project only. They should not be used by Client or others on extensions of the Project or on any other project. Any reuse, without written verification or

REGULAR MEETING JULY 15, 2014

adaptation by Engineer, shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting therefrom.

7. **Opinions of Cost.** Since the Engineer has no control over the cost of labor, materials, equipment or services furnished by the contractor, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, the Engineer cannot and does not guarantee that proposals, bids or actual construction costs will not vary from his opinions or estimates of construction costs.
8. **Changes.** Client reserves the right by written change order or amendment to make changes in requirements, amount of work or engineering time schedule adjustments; and Engineer and Client shall negotiate appropriate adjustments in fee and/or schedule acceptable to both parties to accommodate any changes.
9. **Delays.** If the Engineer's services are delayed by the Client, or for other reasons beyond the Engineer's control, for more than one year, the fee provided for in this Agreement shall be adjusted equitably.
10. **Subcontracts.** Engineer may subcontract portions of the services, but each subcontractor must be approved by Client in writing.
11. **Suspension of Services.** Client may, at any time, by written order to Engineer, require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the services covered by the order. Client, however, shall pay all costs associated with suspension including all costs necessary to maintain continuity and the staff required to resume the services upon expiration of the suspension of work order. Engineer will not be obligated to provide the same personnel employed prior to suspension when the services are resumed in the event the period of any suspension exceeds 30 days. Client will reimburse Engineer for the costs of such suspension and remobilization.
12. **Termination.** This Agreement may be terminated by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by the Engineer either before or after the termination date shall be reimbursed by Client.
13. **Notices.** Any notice or designation required to be given by either party hereto shall be in writing and, unless receipt of such notice is expressly required by the terms hereof, it shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereinafter furnish to the other party by written notice as herein provided.
14. **Indemnification.** Engineer shall indemnify and hold harmless Client from Client's loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage arising out of the sole negligent act, error or omission of Engineer.

Client shall indemnify and hold harmless Engineer from Engineer's loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) on property damage arising out of the sole negligent act, error or omission of Client.

In the event of joint or concurrent negligence of Engineer and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties) which caused the personal injury or property damage.

Client shall not be liable to the Engineer, and the Engineer shall not be liable to the Client, for any special,

REGULAR MEETING JULY 15, 2014

incidental or consequential damages, including, but not limited to, loss of use and loss of profit, incurred by either party due to the fault of the other, regardless of the nature of this fault, or whether it was committed by the Client of the Engineer or their employees, agents or subcontractors, by reason of services rendered under this Agreement.

15. **Legal Proceedings.** In the Event's employees are at any time required by Client to provide testimony, answer interrogatories or otherwise provide information ("testimony") in preparation for or at a trial, hearing, proceeding or inquiry ("proceeding") arising out of the services that are the subject of this Agreement, where Engineer is not a party to such a proceeding, Client will compensate Engineer for its services and reimburse Engineer for all related direct costs incurred in connection with providing such testimony. This provision shall be of no effect if the parties have agreed in a separate agreement or an amendment to this Agreement to terms which specifically supersede this provision, nor shall this provision apply in the event Client engages Engineer to provide expert testimony or litigation support, which services shall be the subject of a separate agreement or an amendment to this Agreement.
16. **Successors and Assigns.** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns; provided however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
17. **Insurance.** Within the context of prudent business practices, Engineer shall endeavor to maintain workmen's compensation and unemployment compensation of a form and in an amount as required by state law; comprehensive liability with maximum limits of \$500,000/\$1,000,000; automotive liability with maximum limits of \$50,000/\$500,000; and professional liability insurance with an annual limit of \$500,000. Client recognizes that insurance market is erratic and Engineer cannot guarantee to maintain the coverages identified above.
18. **Information Provided by the Client.** The Engineer shall indicate to the Client the information needed for rendering of services hereunder. The Client may elect to provide this information (including services by others) to the Engineer. In this case, the Client recognizes that the Engineer cannot assure the sufficiency of such information. Accordingly, the Engineer shall not be liable for any claims for injury or loss arising from errors, omissions or inaccuracies in documents or other information provided by the Client. In addition, the Client agrees to compensate the Engineer for any time spent or expenses incurred in defending such claim or in making revisions to his work as a direct or indirect result of information provided by the Client which is sufficient.
19. **Subsurface Conditions and Utilities.** Client recognizes that a comprehensive sampling and testing program implemented by trained and experienced personnel of Engineer of Engineer's subconsultants with appropriate equipment may fail to detect certain hidden conditions. Client also recognizes that actual environmental, geological and geotechnical conditions that Engineer properly inferred to exist between sampling points may differ significantly from those that actually exist.

Engineer will locate utilities which will affect the project from information provided by the Client and utility companies and from Engineer's surveys. In that these utility locations are based, at least in part, or information from others, Engineer cannot and does not warrant their completeness and accuracy.
20. **Hazardous Materials.** When hazardous materials are known, assumed or suspected to exist at a project site, Engineer is required to take appropriate precautions to protect the health and safety of his personnel, to comply with the applicable laws and regulations and to follow procedures deemed prudent to minimize physical risks to employees and the public. Client hereby warrants that, if he knows or has any reason to assume or suspect that hazardous materials may exist at the project site, he will inform Engineer in writing prior to initiation of services under this Agreement.

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Client agrees that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. Engineer agrees to notify Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. Client waives any claim against Engineer and agrees to indemnify, defend and hold

REGULAR MEETING JULY 15, 2014

Engineer harmless from any claim or liability for injury or loss arising from Engineer's encountering unanticipated hazardous materials or suspected hazardous materials. Client also agrees to compensate Engineer for any time spent and expenses incurred by Engineer in defense of any such claim.

21. **Risk Allocation.** The Client recognizes that Engineer's fee includes an allowance for funding a variety of risks which affect the Engineer by virtue of his agreeing to perform services on the Client's behalf. One of these risks stems from the Engineer's potential for human error. In order for the Client to obtain the benefits of a fee which includes a lesser allowance for risk funding, the Client agrees to limit the Engineer's liability to the Client and all construction contractors arising from the Engineer's professional acts, errors, or omissions, such that the total aggregate liability of the Engineer to all those named shall not exceed \$50,000 or the Engineer's total fee for the services rendered on this project, whichever is greater.
22. **Anticipated Change Orders.** Client recognizes and expects that a certain amount of imprecision and incompleteness is to be expected in construction contract documents; that contractors are expected to furnish and perform work, materials and equipment that may reasonably be inferred from the contract documents or from the prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for; and that a certain amount of change orders are to be expected. As long as Engineer provides services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions, client agrees not to make any claim against Engineer for cost of these change orders unless these costs become a significant part of the construction contract amount. In no case will Client make claim against Engineer for costs incurred in the change order work is a necessary part of the Project for which Client would have incurred cost if work had been included originally in the contract documents unless Client can demonstrate that such costs were higher through issuance of the change order than they would have been if originally included in the contract documents in which case any claim of Client against Engineer will be limited to the cost increase and not the entire cost of the change order.
23. **Payment.** Engineer shall submit monthly statements to Client. Payment in full shall be done upon receipt of the invoice. If payments are delinquent after 30 days from invoice date, the Client agrees to pay interest on the unpaid balance at the rate of one percent per month. Payment for Engineer's services is not contingent on any factor except Engineers ability to provide services in a manner consistent with that standard of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.
24. **Force Majeure.** Neither Client nor Engineer shall be liable for any fault or delay caused by contingency beyond their control including, but not limited to, acts of God, wars, strikes, walkouts fires, natural calamities, or demands or requirements of governmental agencies.
25. **Compliance with Laws.** To the extent they apply to its employees or its services, the Engineer shall comply with all applicable United States, state, territorial and commonwealth laws, including ordinances of any political subdivisions or agencies of the United States, any state, territory, or commonwealth thereof.
26. **Separate Provisions.** If any provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions shall be valid and binding.
27. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the principal place of business of the Engineer.
28. **Amendment.** This Agreement shall not be subject to amendment unless other instrument is executed by duly authorized representatives of each of the parties.
29. **Entire Understanding of Agreement.** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with

respect to the subject matter hereof that conflict with the terms of this Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.

30. **Design without Construction Phase Services.** Should Client provide Construction Phase services with either Client's representatives or a third party, Engineer's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase.

It is understood and agreed that if Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by Client, then Client assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the Engineer that may be in any way connected thereto.

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

**MOTION TO ADVERTISE FOR PUBLIC WORKS FACILITY MODIFICATION-
WITTHAUER LOCATION**

Motion was made by Council Member Stevens, seconded by Council Member Valente to approve request to advertise for Public Works Facility Modification-Witthauer Location-contingent upon sale of property to Heritage Plastics.

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE TO SURPLUS FOR AUCTION PROPERTY DESCRIBED AS 2001 FORD CROWN VICTORIA

Motion was made by Council Member Breland, seconded by Council Member Valente to approve surplus for auction property described as 2001 Ford Crown Victoria VIN # 2FAFP71W91X1180198 with proceeds to go to Special Police Drug Fund.

CITY OF PICAYUNE

**POLICE DEPARTMENT
AUTHORIZATION TO SURPLUS**

COMPLETE IN DUPLICATE

PROPERTY IDENTIFICATION NUMBER (SERIAL #): 2FAFP71W91X180198

DESCRIPTION: 2001 FORD CROWN VICTORIA

RESPONSIBLE PARTY: POLICE DEPARTMENT

CURRENT LOCATION OF PROPERTY. POLICE DEPARTMENT

LOCATION AFTER SURPLUS AUTHORIZATION: TURNING POINT AUCTION

RECOMMENDED DISPOSITION OF PROPERTY:

- DISCARD, JUNK
- SELL AS SCRAP
- SELL/SURPLUS AS USABLE EQUIPMENT OR PARTS
- TRADE - IN ON PURCHASE OF NEW EQUIPMENT
- TRANSFER

REASON FOR SURPLUS OF PROPERTY: THIS VEHICLE IS NO LONGER COST EFFICIENT TO OPERATE DUE TO MAINTENANCE COSTS. IT WOULD BE BETTER UTILIZED BY SENDING TO AUCTION WITH THE PROCEEDS GOING TO THE SPECIAL POLICE DRUG FUND

REQUEST:

APPROVED DISAPPROVED

Major Ricky Frierson
SIGNATURE OF BUREAU COMMANDER

7/7/14
DATE OF REQUEST

APPROVED DISAPPROVED

[Signature]
SIGNATURE OF DEPARTMENT CHIEF

07-07-14
DATE OF REQUEST

IF TRANSFERRED TO ANOTHER CITY DEPARTMENT, ENTER DATE TRANSFERRED _____

RECEIVED BY DEPARTMENT: _____

SIGNATURE OF DEPARTMENT SUPERVISOR

APPROVED DISAPPROVED

[Signature]
SIGNATURE OF CITY MANAGER

7-7-14
DATE OF SIGNATURE

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The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST TO ALLOW RETIRING MAJOR RICKY FRIERSON TO PURCHASE HIS SERVICE WEAPON

Motion was made by Council Member Stevens, seconded by Council Member Bumpers to allow retiring Major Ricky Frierson to purchase his assigned duty weapon Glock Model 27, Serial # WUM699, for \$1.00 in accordance with MS State Statute 45-9-131.

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO ADJOURN

Motion was made by Council Member Stevens, seconded by Council Member Valente to adjourn.

The following roll call was made:

VOTING YEA: Mayor Pro Temp Gouguet, Council Members Valente, Bumpers, Stevens and Breland

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Ed Pinero

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

Ed Pinero, Mayor

ATTEST:

Amber Hinton, City Clerk