



AGENDA

FORT SMITH BOARD OF DIRECTORS REGULAR MEETING

JULY 20, 2010 ~ 6:00 P.M.

**FORT SMITH PUBLIC SCHOOLS
SERVICE CENTER
3205 JENNY LIND ROAD**

THIS MEETING IS BEING TELECAST LIVE ON THE CITY CABLE ACCESS CHANNEL 6

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENTATION BY MEMBERS OF THE BOARD OF DIRECTORS OF ANY ITEMS OF BUSINESS NOT ALREADY ON THE AGENDA FOR THIS MEETING

(Section 2-37 of Ordinance No. 24-10)

APPROVE MINUTES OF THE JULY 6, 2010 REGULAR MEETING

ITEMS OF BUSINESS:

1. Presentations:
 - GFOA Distinguished Budget Award for the 2009 City Budget
 - Good Neighbor Awards
2. Ordinance amending Chapter 20, Article II of the Fort Smith Code of Ordinances regarding alarm systems ~ *tabled at July 6, 2010 Regular Meeting ~*
3. Items regarding animal services:
 - A. Resolution authorizing a contract between the Sebastian County Humane Society and the City of Fort Smith, Arkansas
 - B. Ordinance amending Chapter 4, Article II, of the Fort Smith City Code of Ordinances regulating the impoundment of animals
4. Ordinance amending Chapter 18 Article III of the Fort Smith Municipal Code regarding park rules

5. Ordinance ordering the owners of certain dilapidated and substandard structures to demolish same, authorizing the City Administrator to cause the demolition of such structures to occur and for other purposes (*1101 North 15th Street, 717 North 34th Street, 1236 South 12th Street and 3211 North 28th Street*)
6. Ordinance amending Chapter 2, Article IV, of the Fort Smith Code of Ordinances to create a nepotism policy relating to elected officials
7. Ordinance authorizing 2010 budget reductions
8. Consent Agenda
 - A. Resolution approving the designation of a new trustee for the Series 2004 City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds (*Gerber Products Company Project*)
 - B. Resolution accepting bids for the purchase of a four-wheel drive loader backhoe (\$58,141.24)
 - C. Resolution approving the design and improvements to Cisterna Plaza
 - D. Resolution authorizing partial payment to The Burgess Company, Inc. for the construction of Midland Boulevard 30-Inch Water Transmission Line (\$581,573.02)
 - E. Resolution authorizing partial payment to Crossland Heavy Contractors, Inc. for construction of the Lake Fort Smith Water Treatment Plant - Contract 3 (\$927,049.44)
 - F. Resolution accepting the project as complete and authorizing final payment to Wilson Brothers Construction Company, Inc. for the Ramsey Tributary Basin MC05 Sewer Improvements (\$58,219.25)
 - G. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Mid-America Environmental for Lee Creek Water Treatment Plan Residuals Lagoon Cleaning (\$189,000.00)
 - H. Resolution authorizing Change Order Number One with Kraus Construction Company, LLC for construction of the Rye Hill Sewer Outfall Phase Two (\$31,430.50)
 - I. Resolution authorizing acquisition of real property interests for the Rye Hill Sewer Outfall Phase IV Improvements Project (\$9,582.10)

- J. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Wilson Brothers Construction Company, Inc. for the Rye Hill Sewer Outfall Phase IV (\$1,174,815.00)
- K. Resolution authorizing the Mayor to execute Amendment Number One to the agreement for engineering services with Mickle Wagner Coleman, Inc. for the Rye Hill Sewer Outfall Line Improvements (\$145,000.00)

OFFICIALS FORUM ~ presentation of information requiring no official action
(Section 2-36 of Ordinance No. 24-10)

- A. Mayor
- B. Directors
- C. City Administrator

EXECUTIVE SESSION

Appointments: Housing Assistance Board (1), Parks and Recreation Commission (1) and Transit Advisory Commission (2)

CITIZENS FORUM ~ presentation of information by citizens ~ an opportunity for citizens to present matters to the Mayor and Board of Directors which involve the city government and are not directly related to items considered on the agenda for this meeting. *Presentations are limited to 2 minutes for each citizen*
(Section 2-44(b) of Ordinance No. 24-10)

ADJOURN

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 20, ARTICLE II, OF THE FORT SMITH
CITY CODE OF ORDINANCES REGULATING ALARM SYSTEMS

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE
CITY OF FORT SMITH, ARKANSAS, that:

Sections 20-31, 20-33, and 20-34 of Chapter 20, Article II (Alarm Systems), of the Fort Smith Municipal Code are amended to read as follows and said Chapter is also amended to add Section 20-35:

Sec. 20-31. Definitions.

For the purpose of this article, certain words and phrases shall be defined as specified below:

Alarm system shall mean any mechanical, electrical or other device that is arranged, designed or used to signal the occurrence in the city of a burglary, robbery or other criminal activity requiring urgent attention and to which police personnel are expected to respond ("police alarm system") and any mechanical, electrical or other device that is arranged, designed or used to signal the occurrence in the city of a fire requiring urgent attention and to which fire personnel are expected to respond ("fire alarm system"). Alarm systems include those through which police or fire personnel are notified directly or indirectly by way of a third party which monitors alarm systems and reports such signals to the police or fire department, or those designed to register a signal which is audible, visible or in other ways perceptible outside a protected building, structure or facility so as to notify persons in the neighborhood beyond the lot where the signal is located who in turn may notify the police department or fire department of the signal. Alarm systems do not include those affixed to automobiles or auxiliary devices installed by telephone companies to protect telephone equipment or systems which might be damaged or disrupted by the use of an alarm system. Alarms in separate structures or locations are to be counted as separate systems even though owned, leased, contracted for or controlled by the same person or entity.

Alarm User shall mean any person or entity that purchases, leases, contracts for or otherwise obtains and operates an alarm system installed by an alarm / security company authorized to do so by the Arkansas Board of Private Investigators and Private Security Agencies.

Responsible Individual shall mean an individual who is able and has agreed to:

- (1) Receive notification of an Alarm System activation at any time;
- (2) Respond to the Alarm Site within thirty (30) minutes at any time; and,
- (3) Grant access to the Alarm Site and deactivate the Alarm System upon request.

False alarm shall mean an alarm signal eliciting a response by the police department or fire

department when a situation requiring a response by the police department or fire department does not in fact exist. False alarm does not include an alarm signal caused by conditions of nature or other extraordinary circumstances not reasonably subject to control by the alarm system operator or alarm system customer. Alarms resulting from the following conditions are not considered false alarms:

- (1) Criminal activity or unauthorized entry;
- (2) Fire;
- (3) Telephone or cable line cut or malfunction, verified in writing to the city by at least a first-line telephone or cable company supervisor;
- (4) Electrical service interruption, verified in writing to the city by the local power company;
- (5) Communication to the police department or fire department before a unit arrives to investigate clearly indicating that the alarm resulted from authorized entry, authorized system test or other noncriminal or nonfire cause;
- (6) An alarm caused on the reasonable but mistaken belief that a burglary, robbery or other criminal offense or fire emergency is in progress;
- (7) Fire alarm activated by pull box or other similar device; and,
- (8) Alarms generated during a grace period not longer than thirty (30) days during the original installation or during substantial modifications to an alarm system (verified by alarm system installer).

Sec. 20-33. Charges for excessive false alarms.

- (a) The police or fire personnel at the scene, or subsequently the designee of the chief of the police or fire department, shall provide written notice to the alarm system user on each false alarm at a given location. The notification may take the form of a written report left at the location of the alarm. The written report shall advise the alarm user of the following: it is the alarm user's responsibility to take proper corrective action to reduce false alarms; the false alarm charge as provided in this article; and, that on the fourth and subsequent false alarm at the same location during each calendar year the alarm user will be billed as provided in this article.
- (b) Upon the fourth and upon each subsequent false alarm at the same location during any calendar year period, the notice provided for in (a) above shall include notice of the assessment of the following charge applicable to the fourth and applicable to each subsequent false alarm at the same location during a calendar year period, i.e., \$100.00 for each such false alarm.
- (c) Additional to any notice provided pursuant to (a) and (b), a copy of any notice issued

pursuant to (b) above shall be provided to the alarm system user at any address for the alarm system user provided by the alarm system company which installed or which provides maintenance or other services for the alarm system user.

(d) Within ten (10) days of receipt of any notice provided for in this section, including the notice of charge for false alarm provided for in (b) and (c) above, the alarm system user shall have the right to a hearing at which the alarm system user may produce any information to indicate that the determination of false alarm or the determination of charge for false alarm is improper. In addition, the alarm system user may request a hearing to submit proof that the defect in the alarm system which caused the false alarm has been repaired and, with such proof, to request a waiver of the charge. A request for hearing regarding a false alarm responded to by the police department shall be presented to the chief of police or to his or her designee. A request for hearing regarding a false alarm responded to by the fire department shall be presented to the fire chief or to his or her designee. Within five (5) days of receipt of such request for hearing, the applicable chief, or his or her designee, shall advise the alarm system user of a time and place for the hearing. The hearing officer shall determine the false alarm and charge issues and, in addition, upon submission of proof that the faulty equipment causing the false alarm has been repaired so that the system is in proper working order, may waive the charge. Within five (5) days following the hearing, the chief, or the chief's designee, shall issue a notice to the alarm system user of the final determination of the city regarding the matter.

(e) After reasonable efforts have been made to collect from the alarm system user the charge referred to in subsection (b) above, the city administrator, or his or her designated agent, shall be authorized to refer any unpaid account of thirty (30) or more days to the qualified and licensed attorneys at law contracted to provide legal services pursuant to sections 2-111--2-113 of this Code for the purpose of filing an action in a court of appropriate jurisdiction to collect the unpaid charges.

Sec. 20-34. Provision of current address for alarm system users.

(a) It shall be unlawful for any person or entity, which has installed or which provides maintenance or other services for an alarm system owned by an alarm system user, to refuse to provide a current address for any alarm system user to the city police or fire departments upon written request. Both city police and fire departments, including those departments' dispatch center, shall not request or obtain alarm system user information except when needed by either department while responding to, or at the scene of an alarm.

(b) Any person or entity determined to have violated the provisions of this section shall be deemed guilty of a misdemeanor and shall be subject to punishment as provided in section 1-9 of the Code of Ordinances.

Sec. 20-35. Duties of the Alarm User.

Each Alarm User shall:

- (1) Maintain the Alarm Site and the Alarm System in a manner that will minimize or eliminate False Alarms;**
- (2) Make every reasonable effort to have a Responsible Individual available at the Alarm Site within thirty (30) minutes after an Alarm Dispatch Request; and,**
- (3) Not activate an Alarm System for any reason other than an occurrence of an event that the Alarm System was intended to report.**

This Ordinance adopted this ____ day of _____, 2010.

APPROVED:

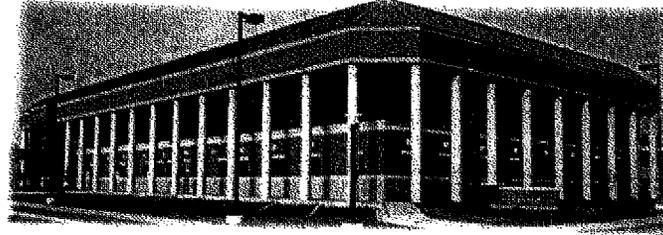
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney
Publish 1 time



Fort Smith Police Department

Kevin Lindsey, Chief of Police

INTERDEPARTMENTAL MEMORANDUM

To: Dennis Kelly, City Administrator

From: Kevin Lindsey, Chief of Police

Subject: Alarm Ordinance Revision

Date: July 9, 2010

Attachments:

The purpose of this memorandum is to present revised changes to the Alarm Ordinance, Section 20-31 et. seq. of the Fort Smith Municipal Code, to the Board of Directors as requested at their June 22nd, 2010 Study Session and regular Board of Director meeting held on July 6th, 2010. Board members requested that proposed changes to the false alarm ordinance, Section 20-34, Provision Of Current Address For Alarm System Customers, be amended with language that precludes the fire and police departments from obtaining complete lists of clients from alarm companies. The requested change is included in the revised false alarm ordinance for presentation and consideration by the Board of Directors at the regular July 20, 2010 meeting.

Citizen comments voiced at the July 6, 2010 regular Board of Director meeting questioned the legality of the current and proposed false alarm ordinance citing that the ordinance was illegal and unenforceable. Staff has consulted with the City Attorney, and it is their opinion that the imposition of a fee for false alarms would be a valid exercise of the City's police powers. For further, see enclosed letter from Wyman R. Wade, Jr.

Staff reviewed the literature and website provided by the June 22, 2010 Study Session regarding false alarm reduction. The literature, sponsored by the Security Industry Association, mainly focuses on alarm system operations. It includes recommendations on settings for the general operation of an alarm system. Although the information within the packet is useful, it seems to be more under the purview and expertise of an alarm installation company.

Staff also researched a website for the False Alarm Reduction Association (FARA). The website contained literature to educate alarm system users that a poorly used, installed, or

maintained system can cause significant problems to the home owner and emergency personnel. The website hosted models for alarm ordinances that in theory, are designed to reduce the number of false alarms. The FARA website recommends the formulation of an Alarm Advisory Board that includes members of the community, alarm companies, and local law enforcement. The board would regularly meet to review and recommend False Alarm reduction efforts to a governing authority. The idea incorporates theories of community policing that our department adheres to during our daily duties without the necessity for an established board. Staff noted several entries within their suggested ordinance that our department and Board of Directors sternly oppose. These entries include; the implementation of an Alarm Administrator, requirement of registering the alarm on a yearly basis (permit), and the suspension of response after a predetermined number of false alarms within a year. However, in reviewing the ordinance regarding burglar alarms, staff noticed numerous similarities to our proposed ordinance.

Neither resource gave any pertinent information that would require any changes to our current proposed ordinance changes. It is the staff's recommendation that the proposed ordinance be approved with the listed changes as requested by the Board of Directors.

DAILY & WOODS

A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

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July 14, 2010

Chief Kevin Lindsey
Fort Smith Police Department
100 South 10th Street
Fort Smith, AR 72901

HANDCARRY

Re: Fees For False Alarms

Dear Chief Lindsey:

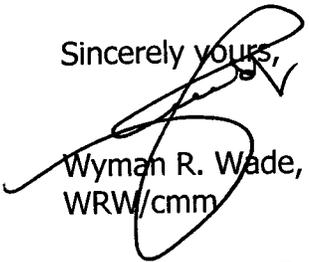
A question has been posed as to whether the City may impose a fee for responding to a false alarm. As it relates to users of an alarm system, it is our opinion that such a fee may be imposed.

A somewhat similar question was put to the Arkansas Attorney General and, in Opinion No. 2002-221, the Arkansas Attorney General noted that the "regulation of . . . alarm systems businesses shall be exclusive to the Arkansas Board of Private Investigators and Private Security Agencies." A.C.A. § 17-40-106(a) (Repl. 2001). In that opinion, it was also noted that the statute provides that "any city . . . shall be permitted to require a business operating within its jurisdiction to register without fee and may adopt an ordinance to require users of alarm systems to obtain revocable permits without fee." *Id.* at (c).

The Attorney General then opined that, while the statutory scheme places the exclusive regulation of "alarm systems businesses" in the Arkansas Board of Private Investigators and Private Security Agencies, there is no prohibition on a city, acting within the scope of its police powers, enacting an ordinance applicable to alarm system users. Accordingly, if the City were to require users of alarm systems to obtain a revocable permit without fee and/or to assess a penalty to alarm system users for excessive false alarms, it is our opinion that it would be a valid exercise of the City's police powers.

I trust that this responds to your query. If you have additional questions, please let us know.

Sincerely yours,



Wyman R. Wade, Jr.
WRW/cmm

cc: Mr. Ray Gosack
Sgt. Daniel Grubbs

ARTICLE II. ALARM SYSTEMS*

Sec. 20-31. Definitions.

For the purpose of this article, certain words and phrases shall be defined as specified below:

Alarm system shall mean any mechanical, electrical or other device that is arranged, designed or used to signal the occurrence in the city of a burglary, robbery or other criminal activity requiring urgent attention and to which police personnel are expected to respond ("police alarm system") and any mechanical, electrical or other device that is arranged, designed or used to signal the occurrence in the city of a fire requiring urgent attention and to which fire personnel are expected to respond ("fire alarm system"). Alarm systems include those through which police or fire personnel are notified directly or indirectly by way of a third party which monitors alarm systems and reports such signals to the police or fire department, or those designed to register a signal which is audible, visible or in other ways perceptible outside a protected building, structure or facility so as to notify persons in the neighborhood beyond the lot where the signal is located who in turn may notify the police department or fire department of the signal. Alarm systems do not include those affixed to automobiles or auxiliary devices installed by telephone companies to protect telephone equipment or systems which might be damaged or disrupted by the use of an alarm system. Alarms in separate structures or locations are to be counted as separate systems even though owned, leased, contracted for or controlled by the same person or entity.

Alarm User Customer shall mean any person who purchases, leases, contracts for or otherwise obtains and operates an alarm system installed by an alarm / security company authorized to do so by the Arkansas Board of Private Investigators and Private Security Agencies.

Responsible Individual shall mean an individual who is able and has agreed to:

- (1) Receive notification of an Alarm System activation at any time;
- (2) Respond to the Alarm Site within thirty (30) minutes at any time; and,
- (3) Grant access to the Alarm Site and deactivate the Alarm System upon request.

False alarm shall mean an alarm signal eliciting a response by the police department or fire department when a situation requiring a response by the police department or fire department does not in fact exist. False alarm does not include an alarm signal caused by conditions of nature or other extraordinary circumstances not reasonably subject to control by the alarm system operator or alarm system customer. Alarms resulting from the following conditions are not considered false alarms:

- (1) Criminal activity or unauthorized entry;
- (2) Fire;
- (3) Telephone or cable line cut or malfunction, verified in writing to the city by at least a first-line telephone or cable company supervisor;
- (4) Electrical service interruption, verified in writing to the city by the local power company;

- (5) Communication to the police department or fire department before a unit arrives to investigate clearly indicating that the alarm resulted from authorized entry, authorized system test or other noncriminal or nonfire cause;
 - (6) An alarm caused on the reasonable but mistaken belief that a burglary, robbery or other criminal offense or fire emergency is in progress;
 - (7) Fire alarm activated by pull box or other similar device; and
 - (8) Alarms generated during a grace period not longer than thirty (30) days during the original installation or during substantial modifications to an alarm system (verified by alarm system installer).
- (Code 1976, § 24-16; Ord. No. 15-00, § 1, 4-4-00)

Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 20-33. Charges for excessive false alarms.

(a) The police or fire personnel at the scene, or subsequently the designee of the chief of the police or fire department, shall provide written notice to the alarm system user on each false alarm at a given location. The notification may take the form of a written report left at the location of the alarm. The written report shall advise the alarm user ~~customer~~ of the following: ~~that;~~ it is the alarm user's ~~customer's~~ responsibility to take proper corrective action to reduce false alarms; ~~shall inform the customer~~ of the false alarm charge as provided in this article; and, ~~shall inform the customer~~ that on the ~~seventh~~ fourth and subsequent false alarm at the same location during each calendar year the alarm user ~~customer~~ will be billed as provided in this article.

(b) Upon the fourth and upon each subsequent false alarm at the same location during any calendar year period, the notice provided for in (a) above shall include notice of the assessment of the following charge applicable to the fourth and applicable to each subsequent false alarm at the same location during a calendar year period: \$100.00 for each such false alarm.

~~Upon the seventh and subsequent false alarms at the same location during any calendar year period, the notice provided for in (a) above shall include notice of the assessment of the following charges applicable to the seventh and subsequent false alarms at the same location during a calendar year period:~~

- ~~(1) Charge for seventh false alarm . . . \$25.00~~
- ~~(2) Charge for eighth false alarm . . . 50.00~~
- ~~(3) Charge for ninth false alarm . . . 75.00~~
- ~~(4) Charge for tenth and all subsequent false alarms . . . 100.00~~

(c) Additional to any notice provided pursuant to (a) and (b), a copy of any notice issued pursuant to (b) above shall be provided to the alarm system user ~~customer~~ at any address for the customer provided by the alarm system company which installed or which provides maintenance or other services for the alarm system user. ~~customer.~~

(d) Within ten (10) days of receipt of any notice provided for in this section, including the notice of charge for false alarm provided for in (b) and (c) above, the alarm system user shall have the right to a hearing at which the alarm system user ~~customer~~ may produce any information to indicate that the determination of false alarm or the determination of charge for

false alarm is improper. In addition, the alarm system user customer may request a hearing to submit proof that the defect in the alarm system which caused the false alarm has been repaired and, with such proof, to request a waiver of the charge. A request for hearing regarding a false alarm responded to by the police department shall be presented to the chief of police or to his or her designee ~~another city employee designated by the chief of police~~. A request for hearing regarding a false alarm responded to by the fire department shall be presented to the fire chief or to his or her designee ~~another city employee designated by the chief~~. Within five (5) days of receipt of such request for hearing, the applicable chief, or his or her designee, shall advise the alarm system user customer of a time and place for the hearing. The hearing officer shall determine the false alarm and charge issues and, in addition, upon submission of proof that the faulty equipment causing the false alarm has been repaired so that the system is in proper working order, may waive the charge. Within five (5) days following the hearing, the chief, or the chief's designee, shall issue a notice to the alarm system user customer of the final determination of the city regarding the matter.

(e) After reasonable efforts have been made to collect from the alarm system user customer the charge referred to in subsection (b) above, the city administrator, or his designated agent, shall be authorized to refer any unpaid account of thirty (30) or more days to the qualified and licensed attorneys at law contracted to provide legal services pursuant to sections 2-111--2-113 of this Code for the purpose of filing an action in a court of appropriate jurisdiction to collect the unpaid charges.

(Code 1976, § 24-18; Ord. No. 15-00, § 3, 4-4-00; Ord. No. 3-02, § 5, 1-22-02)

Sec. 20-34. Provision of current address for alarm system users customers.

(a) It shall be unlawful for any person or entity, which has installed or which provides maintenance or other services for an alarm system owned by an alarm system user customer, to refuse to provide a current address for any alarm system user customer to the city police or fire departments upon written request. Both city police and fire departments, including those departments' dispatch center, shall not request or obtain alarm system user information except when needed by either department while responding to, or at the scene of, an alarm.

(b) Any person determined to have violated the provisions of this section shall be deemed guilty of a misdemeanor and shall be subject to punishment as provided in section 1-9 of the Code of Ordinances.

(Ord. No. 15-00, § 4, 4-4-00)

Sec. 20-35. Duties of the Alarm User:

(1) Maintain the Alarm Site and the Alarm System in a manner that will minimize or eliminate False Alarms;

(2) Make every reasonable effort to have a Responsible Individual available at the Alarm Site within thirty (30) minutes after an Alarm Dispatch Request; and,

(3) Not activate an Alarm System for any reason other than an occurrence of an event that the Alarm System was intended to report.

Opinion No. 2002-221

August 29, 2002

The Honorable M. Olin Cook
State Representative
266 South Enid Avenue
Russellville, AR 72801-4534

Dear Representative Cook:

I am writing in response to your request for my opinion on various questions arising from the following facts:

The Russellville City Council recently passed an ordinance that required citations to be issued to area businesses that exceed a preset number of false alarms caused by security systems. This has become a problem for the Russellville schools.

You have further provided me a copy of the recently passed Ordinance 1750, which provides for either criminal or civil penalties in the form of fines imposed upon any alarm system provider, alarm system monitor and/or alarm system user deemed responsible for allowing excessive false alarms to issue from any given location during the course of a calendar year. The ordinance further prohibits the installation of automatic dialing telephone alarm systems, imposes certain conditions on alarm system monitoring and directs that all alarm system monitoring companies “[o]btain all necessary business licenses as required by the City and the State of Arkansas.” The ordinance directs that any civil or criminal fines imposed “shall be heard in the City of Russellville District Court.”

Against this backdrop, you have posed the following questions:

Can the City of Russellville take action against another state entity?

Can the City of Russellville levy a civil penalty against the school district?

RESPONSE

With respect to your first question, the city is not a “state entity,” as your question implies, and it would be foreclosed from “taking action” against a true “state entity” by the doctrine of sovereign immunity. Ark. Const. art. 5, § 20. With respect to your second question, I believe a court would in all likelihood uphold the city’s authority to levy a civil penalty against a school district pursuant to Ordinance 1750 for multiple false alarms issuing from any given school. However, although your questions do not directly raise the issue, I believe the provisions of the ordinance purporting to regulate the businesses of alarm installation and monitoring are invalid in light of A.C.A. § 17-40-106, which locates the authority to impose such regulations exclusively in the Arkansas Board of Private Investigators and Private Security

Agencies.

Question 1: Can the City of Russellville take action against another state entity?

I consider the term “another” in your question somewhat confusing, since it implies that Russellville is itself a “state entity.” A city is a political subdivision of the state, but it is not a “state entity” of the sort that might, for instance, be entitled to invoke the state’s sovereign immunity from suit pursuant to Ark. Const. art. 5, § 20. The distinction between “political subdivisions” and “state entities” such as state agencies, boards and commissions is recognized in the statute defining the jurisdiction of the State Claims Commission, an arm of the legislature that constitutes the only entity authorized to hear claims against the state:

Except as otherwise provided by law, the Arkansas State Claims Commission shall have exclusive jurisdiction over all claims against the State of Arkansas and its several agencies, departments, and institutions but shall have no jurisdiction of claims against municipalities, counties, school districts, or any other political subdivisions of the state.

A.C.A. § 19-10-204(a).

Given the factual context of your question, I suspect your reference to “another state entity” might be to the Russellville School District. Like a municipality, a school district is not a “state entity” of the sort entitled to sovereign immunity. In *Dermott Special School District v. Johnson*, 343 Ark. 90, 96, 32 S.W.3d 477 (2000), the Arkansas Supreme Court offered the following regarding the relationship of school districts to the state:

It would appear that a school district is in the same legal category as a housing authority. Both are created by the General Assembly, both are termed, and are body corporates, and both may sue and be sued. In *Fagan Electric Co., Inc. v. Housing Authority, City of Blytheville*, 216 Ark. 932, 228 S.W.2d 39, we held that these public corporations are no more an agency of the State than is any other corporation as to which the State has done nothing except to bring into existence. Similarly, the State’s connection with school districts has been limited to the act of bringing such districts into being.

Accord Muse v. Prescott School District, 223 Ark. 789, 791-92, 349 S.W.2d 329 (1961) (noting that a school district is a political subdivision, not an agency of the state, and hence not entitled to sovereign immunity).

To answer your question, then, assuming the referenced “state entity” were indeed that – namely, an arm of the state itself – sovereign immunity would preclude the city of Russellville from “taking action” against it either in Russellville District Court or any other court. As discussed above, the law clearly directs that any action for monetary recovery against the state proceed before the Claims Commission or not at all. I will address in my response to your next question the city’s potential ability to “take action” against the school district.

Question 2: Can the City of Russellville levy a civil penalty against the school district?

Although a school district does not have sovereign immunity, it does have a limited immunity from suit pursuant to A.C.A. § 21-9-301, which provides:

It is declared to be the public policy of the State of Arkansas that all counties, municipal corporations, school districts, special improvement districts, and all other political subdivisions of the state and any of their boards, commissions, agencies, authorities, or other governing bodies shall be immune from

liability and from suit for damages except to the extent that they may be covered by liability insurance. No tort action shall lie against any such political subdivision because of the acts of its agents and employees.

However, I do not believe this statute would apply to preclude the city from regulating and penalizing the school district. As reflected in the statute's final sentence, the legislature's limited grant of immunity to school districts applies only to actions in tort, a category of claim that does not include the violation of an ordinance.

In my opinion, then, neither sovereign nor statutory immunity would invalidate the ordinance with respect to the school district. However, the question remains whether one political subdivision has the authority to regulate another. In considering this question, one leading commentator has offered the following:

School districts are not uncommonly within the same boundaries as a general purpose government. Whether or not such districts are bound by municipal zoning and building regulations may depend on state policy regarding education and the reasonable local implementation of that policy. . . . [W]here constitutional and statutory provisions indicate education is to be regarded as a central state function, a school district may be exempted from local building regulations in constructing a school building. However, where state policy also favors local control over school affairs, school districts may not be so exempt. Further, school districts have been more consistently bound by local zoning as to school construction sites, and off-street parking.

Additionally, the court may also look to the relative importance of the interest served from a local point of view where the interlocal dispute involves overlapping jurisdictions. Accordingly, a county's police power interest prevailed over a city's interest in equitable distribution of available parking space where the city desired to install parking meters on a sea wall that protected against erosion.

Eugene McQuillin, *The Law of Municipal Corporations* § 3A.15, at 457-58 (3d ed. 1999) (footnotes omitted).

Assuming a court were to follow the foregoing analysis, the proper approach in this case would be to balance the interests of the two political subdivisions – namely, the city's interest in avoiding the needless diversion of its police resources on false alarms against the district's interest in regulating its own affairs, including security matters. [I] As McQuillin points out in his treatise: "Such competing interests or overlapping responsibilities cannot be reduced to a rigid mathematical formula." McQuillan, *supra* at §3A.18, at 462. By way of illustration and elaboration, he continues:

Reasonable municipal regulations that are designed not to prevent construction and operation of a special district's plant, but rather to provide for the health and welfare of the municipality's residence [sic] in connection with the plant's construction and operation are not in fatal conflict with the special district's constitutive legislation. However, a special district is not required to obtain the permission of a municipality to undertake its statutorily authorized operations, although it is subject to a municipality's reasonable regulations to insure that the activities of the district are safely conducted. Furthermore, a municipality is not required to demonstrate its good-faith ability to enforce its ordinances as to the public at large prior to enforcement against a special district, in the absence of evidence that the municipality intended selective enforcement.

Whether an ordinance directed at a special purpose unit is reasonable is a question of law. The standard of evaluation is whether a municipality has abused its discretion in enacting the ordinance, which must be presumed valid until the facts show abuse. The relevant facts include the evil sought to be remedied,

the effect of the ordinance on citizens, and the effect upon the city should they not be applied.

Id. (footnotes omitted).

It does not appear to be the case, then, that some structural principle of government would necessarily preclude the city of Russellville from enacting an ordinance binding on the Russellville School District. Rather, determining the validity of the ordinance as applied to the district would probably entail asking, first, whether as a general proposition sanctioning the issuance of excessive false security alarms constitutes a valid exercise of the municipal police power and, second, if so, whether the strength of the city's interest in exercising that power over public, as well as private, entities outweighs the strength of the school district's interest in operating autonomously, subject to oversight by the Board of Education. See *Lavender v. City of Rogers*, 232 Ark. 673, 675, 339 S.W.2d 598 (1960) (noting that municipalities retain some regulatory authority over school construction notwithstanding the broad statutory grant of authority to the State Board of Education).

With respect to the scope of the police power, the Arkansas Supreme Court has observed:

[M]unicipalities have the power and duty to make reasonable provisions for the safety of persons and property and municipal authorities have wide discretion in these matters. See *City of Ft. Smith v. Van Zandt*, 197 Ark. 91, 122 S.W.2d 187 (1938). In *Phillips v. Town of Oak Grove*, 333 Ark. 183, 968 S.W.2d 600 (1998), we stated that a city has the plenary authority to exercise its police power to protect public health and safety which is founded on public necessity. *Id.* at 189, 968 S.W.2d at 603. In fact, the mere possibility of public harm is a sufficient basis for a municipality to regulate under its police power. *Id.* at 191, 968 S.W.2d at 604.

Smith v. City Of Arkadelphia, 336 Ark. 42, 46-47, 984 S.W.2d 392 (1999). As statutory foundation for the police power, A.C.A. § 14-43-602 provides:

Any city of the first class is authorized to perform any function and exercise full legislative power in any and all matters of whatsoever nature pertaining to its municipal affairs including, but not limited to, the power to tax.

Section 14-55-102 of the Code further provides:

Municipal corporations shall have power to make and publish bylaws and ordinances, not inconsistent with the laws of this state, which, as to them, shall seem necessary to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such corporations and the inhabitants thereof.

Section 14-55-502(a) of the Code further provides:

The town or city council in all cities or incorporated towns in this state are authorized and empowered to prescribe penalties for all offenses in violating any ordinance of the city or town not exceeding the penalties prescribed for similar offenses against the state laws by the statutes of this state.

In my opinion, unless state law expressly provides otherwise, these statutes would clearly empower a city to cite businesses, if not necessarily schools, for excessively reporting false alarms caused by security systems. However, these statutes must be read in conjunction with A.C.A. § 17-40-106, the only statute that directly addresses the issue of fire-alarm regulation:

(a) The regulation of investigation, security, and alarm systems businesses shall be exclusive to the Arkansas Board of Private Investigators and Private Security Agencies.

(b) Licensees and employees of licensees, under the provisions of this chapter, shall not be required to obtain any authorization, permit, franchise, or license from, or pay another fee or franchise tax to, or post bond in, any city, county, or other political subdivision of this state to engage in the business or perform any service authorized under this chapter.

(c) However, any city or county shall be permitted to require a business operating within its jurisdiction to register without fee and may adopt an ordinance to require users of alarm systems to obtain revocable permits without fee.

Subsection (a) of this statute vests the authority to regulate "alarm systems businesses" exclusively in the Arkansas Board of Private Investigators and Private Security Agencies." This provision casts into question the validity of those sections of the ordinance purporting to regulate businesses engaged in the installation and monitoring of alarm systems. However, it has absolutely no bearing on the provisions of the ordinance regulating alarm system users, a category wholly distinct from "alarm systems businesses."^[2] In my opinion, then, the city was acting within the scope of its police powers in enacting the provisions of this ordinance applicable to alarm system users.^[3]

The question remains, however, whether Ordinance 1750 should be read as applying only to private users or whether it should be applied to the schools as well. As suggested above, authority in other jurisdictions suggests that this inquiry should involve a weighing of the city's and the school district's respective interests, with the focus being on whether subjecting the school district to the ordinance would best serve the public interest. A court would likely answer this question in the affirmative if it concluded that keeping police officers available to confront actual emergencies would be more important than sparing the school district the effort and expense of installing and maintaining efficient security systems.

Assistant Attorney General Jack Druff prepared the foregoing, which I hereby approve.

Sincerely,

MARK PRYOR
Attorney General

MP:JD/cyh

^[1]The strength of a school district's autonomy as a political subdivision is suggested in the following passage from *Wynne Public Schools v. Lockhart*, 72 Ark. App. 24, 29-30, 32 S.W.3d 47 (2000): The courts have been reluctant to interfere with the authority of local school boards to handle local problems. Our position was well stated in *Safferstone v. Tucker*, 235 Ark. 70, 357 S.W.2d 3 (1962): "In this State a broad discretion is vested in the board of directors of each school district in the matter of directing the operation of the schools and a chancery court has no power to interfere with such boards in the exercise of that discretion unless there is a clear abuse of it and the burden is upon those charging such an abuse to prove it by clear and convincing evidence." See also A.C.A. § 6-13-620(1) (charging the board of directors with the "care and custody of the schoolhouse, grounds, and other property belonging to the district").

^[2]□ The ordinance contains a boilerplate severability clause that a court would in all likelihood honor to salvage the legislation's valid provisions.

[3]□ I find it odd that A.C.A. § 17-40-106 is totally silent regarding what conduct might justify revoking a user's security-system permit, as subsection (c) authorizes a city to do. Whatever the answer, this issue does not appear to bear directly on your request, since Ordinance 1750 imposes no licensing requirement on users and hence does not include license revocation among the range of penalties applicable to users.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING A CONTRACT BETWEEN THE SEBASTIAN COUNTY HUMANE SOCIETY AND THE CITY OF FORT SMITH, ARKANSAS

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

The attached contract for services with the Sebastian County Humane Society is hereby approved, and the Mayor, his signature being attested by the City Clerk, is hereby authorized to execute said contract.

This Resolution adopted this _____ day of _____, 2010.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Approved as to form



NPR

CONTRACT

THIS AGREEMENT MADE AND ENTERED INTO this _____ day of _____, 2010, by and with the City of Fort Smith, hereinafter referred to as "City" and the Sebastian County Humane Society, hereinafter referred to as "SCHS".

In exchange of the mutual considerations set forth herein, the parties agree as follows:

1. Pursuant to the terms set forth in the Agreement, Sebastian County Humane Society (SCHS) agrees to provide an impoundment facility for animals for the benefit of the City of Fort Smith and, as described herein, the City agrees to provide payment to SCHS for the providing of such impoundment facility.
2. Term. Subject to the termination rights provided for in this paragraph, the term of this agreement shall commence on _____, 2010 and shall continue through _____, 20___. Either party, in its sole discretion and after providing thirty days' written notification to the other party, may terminate this Agreement with or without cause.
3. Payment by City. The City will pay for the services of SCHS in the amount of \$15.00 per day per animal (up to a maximum number of days prescribed hereafter) for housing canines (5 days; 10 days if the owner is in the custody of law enforcement), felines (domestic: 3 days; feral: 1 day), livestock (5 days), and wildlife (5 days) except for skunks in accordance with Section 5(D) of this contract. Skunks will be transported and released by animal control wardens at a pre-determined location. At the end of each monthly period in the contract term, SCHS will submit a billing to the City in accordance with the terms of the contract, to be paid by the City within thirty days of receipt of billing.
4. Inspections. At least once each quarter, the animal control supervisor for the City of Fort Smith will conduct an unannounced inspection of the SCHS kennel area to assure cleanliness, maintenance and animal care issues are at acceptable standards. The animal control supervisor will immediately notify SCHS of any deficiencies and will document his/her findings in a file to be kept at the Fort Smith Police Department.
5. Duties and Services of SCHS:
 - A) SCHS will furnish all facilities, employees, administration, maintenance, utilities, food, veterinarian and other services for impounded animals and be responsible for any and all other expenses, except as otherwise indicated in this agreement, necessary to operate the

impoundment facility. The impoundment facilities shall consist of the admissions building and the housing of animal control wardens located at 3800 Kelley Highway in Fort Smith. The facilities shall be properly maintained at all times during the term of the Agreement and, although the facilities may be enlarged by the addition of presently non-described facilities, at no time shall the facilities be reduced to less than those currently existing.

- B) Portions of the facilities shall be provided to the Animal Wardens of the City for their use on a daily, twenty four hour basis, during the term of this Agreement. At all times, the Animal Wardens of the City shall have reasonable access to the areas of the facilities currently utilized by the Animal Wardens.
- C) SCHS recognizes that the facilities shall be considered a City impoundment facility for the purposes of the Fort Smith Code of Ordinances. SCHS shall comply with the care of animals provisions set forth in the Fort Smith Code of Ordinances, which may be amended from time to time.
- D) SCHS will receive and impound all animals delivered to it by the Animal Wardens of the City and others as authorized by the Fort Smith Code of Ordinances, and shall maintain said animals according to the provisions of the Fort Smith City Code of Ordinances, which may be amended from time to time. Injured or diseased animals will be examined by the shelter manager as to the extent of the injury or disease. Injured or diseased animals capable of being held in reasonable comfort will be held the complete five day holding period. Severely injured or diseased animals may be subject to euthanasia prior to the completion of the five days holding period when necessary to prevent animal suffering. The maximum hold period for felines will be three (3) calendar days for domestic felines, and one (1) calendar day for feral felines. Vicious animals will be subject to euthanasia as outlined in the Fort Smith Municipal Code of Ordinances, which may be amended from time to time, unless being quarantined for rabies observation. The holding period for an animal belonging to an owner under custody of law enforcement or the court system for criminal charges will be ten (10) days. A judicial court order will supersede any aforementioned holding periods. SCHS will document the holding period and basis for euthanasia of all animals. SCHS will include costs for holding animals held for cruelty cases, property owner surrenders, and quarantines in their monthly billing to the City.
- E) SCHS agrees to the release of impounded animals pursuant to the provisions of the Fort Smith City Code of Ordinances, which may be amended from time to time. Capture and impoundment fees shall be collected pursuant to the provisions of the Fort Smith Code of Ordinances. A ten dollar (\$10.00) impounding fee and a fifteen dollar (\$15.00) per day boarding fee for each animal boarded will be collected from all animal owners prior to release of their animal(s) by the facility.
- F) SCHS will maintain an inventory of live cat traps for use by City residents only. SCHS will secure a deposit of \$25.00 from the resident for each trap, which is refundable upon return of the trap(s). SCHS will provide the traps within twenty-four (24) hours of the

time traps are requested by City residents. SCHS shall have the right to dispose of all cats in accordance with the provisions of the City's animal control regulations. The City agrees to provide or to reimburse SCHS for the purchase of up to forty (40) traps annually to replace those that may be lost, damaged or destroyed. The amount of money paid by the City for these cat traps shall not exceed One-thousand Eight-hundred and Four Dollars (\$1,804.00) per calendar year. SCHS shall maintain accurate records of all cat traps.

- G) SCHS will maintain a "lost and found" log for animals in the Fort Smith and surrounding areas to facilitate the return of animals to animal owners. SCHS will make reasonable attempts to contact animal owners who have registered for the "lost and found" log of SCHS. The "lost and found" log will be checked: each time a stray animal is admitted into the shelter; each morning against lost and found reports in the Times Record; and each time a lost and found report is received by SCHS. Upon identification of a lost animal the animal owner will be contacted for verification. Where reunions of animals and owners are confirmed, SCHS may remove names from the "lost and found" log. All animal listings may be purged after one month unless the owner/finder specifically requests otherwise. Lost and found reports shall be updated weekly.
- H) SCHS will offer micro-chipping for a reasonable fee.
- I) SCHS will provide a monthly report to the City. The report will contain by category for Dogs, Cats and Others the following information:
- Number of strays admitted by Animal Wardens;
 - Number of quarantine admissions by SCHS personnel;
 - Number of animals cleared from quarantine by a licensed veterinarian;
 - Number of animals held for cruelty cases and/or property owner surrenders;
 - Number of animals reclaimed by owners;
 - Number of adoptions through SCHS;
 - Number of animals euthanized;
 - Current number of animals in the shelter.
- J) SCHS shall comply with the sterilization provisions of A.C.A. § 20-19-103
- K) The City will be responsible for all animals seized by the Animal Wardens from the time such animals are taken up until delivery to the impoundment facility at which time SCHS will assume all responsibility for the impounded animals.
- L) When animal control picks up severely injured animals with identification or owner information after regular SCHS hours of operation, the Animal Warden responsible for picking up the animal will contact the shelter manager or the Executive Director of SCHS

to receive a determination with regard to the necessity for immediate veterinary attention at a local emergency care facility selected by the SCHS. When it is decided the animal should be seen by an emergency care facility, it is agreed between the City of Fort Smith and the SCHS that the City will bear the cost incurred as a result of the medical attention provided by the emergency care facility. The Animal Warden will clearly indicate on the impound receipt where the animal was taken and what action was required.

- M) Severely injured or diseased animals that appear to be stray, or beyond medical assistance will be humanely euthanized by certified staff of SCHS. The City agrees to incur payment liability for euthanizing canines, felines, livestock, and wildlife that are picked up by Animal Control and deemed to be beyond medical treatment by the SCHS Executive Director or Shelter Manager.
- N) Animal Wardens shall maintain a list of all animals having been immediately euthanized due to injuries or disease and all stray companion animals picked up already deceased. Said list shall give a description of the animal, where it was picked up, when it was picked up and the disposition of the animal.
- O) Any animal(s) impounded for cruelty violations must be seen by a veterinarian as soon as possible after the impoundment. A written record of the evaluation and all activities relating to the event will be kept for any legal proceedings which may be sought. The City agrees to incur payment liability for veterinary examinations of canines, felines, livestock, and wildlife that are picked up by Animal Control for cruelty violations.
- P) Animal Wardens will keep SCHS personnel informed of the status of any legal proceedings relating to animals impounded at the facility. To expedite animals being returned to their owner, Animal Wardens will carefully check each animal picked up for evidence of identification that might lead to an owner being contacted. Any relevant information will be clearly documented on the Animal Warden's impound slip submitted to SCHS personnel. SCHS personnel will contact the owner to pick up the animal.
- Q) SCHS shall comply with the following standards for the care of animals impounded at SCHS facilities:
- All animals shall be humanely treated;
 - Animals shall be provided with sufficient water and food daily;
 - Animals shall not be confined to one (1) area in such numbers that access to food, water and appropriate bedding is not readily accessible; and,
 - Any animal kept in an enclosure must be able to stand, turn or stretch to its full length. Walking or running exercise will be offered on a regular basis.

R) The City agrees that the officers of the Fort Smith Police Department, according to schedule and dispatching decisions made in the sole discretion of the City, shall be made available to City Animal Warden officers and employees of SCHS for the purpose of enforcing and administering the animal control ordinances of the City. In accordance with sterilization provisions of A.C.A. § 20-19-103 (Repl. 2005), the City of Fort Smith will release all impounded dogs only (a) to the owner of the dog prior to delivery to SCHS or (b) to SCHS.

6. Default and Enforcement. If either party to this Agreement makes a determination that the other party is in default of any of that party's duties and obligations under the Agreement, the first party shall issue a written notification describing the alleged default and shall cause same to be delivered to the defaulting party. Any party receiving such a notice shall have the period of ten days in which to cure, remedy the described default or to respond in writing to the first party. Unless resolved by the written response, the representatives of the parties shall meet to discuss a resolution of the dispute within thirty (30) days of the original notice. Both parties to this Agreement reserve all legal rights and remedy with reference to enforcement of this Agreement.

7. Because the SCHS will be receiving monies from The City under this Agreement, the SCHC understands that its records and meetings relating to monies received and services provided under this Agreement may become subject to the provisions of the Arkansas Freedom of Information Act.

**THIS AGREEMENT EXECUTED PURSUANT TO RESOLUTION NO. _____
OF THE GOVERNING BODY OF THE CITY OF FORT SMITH AND PURSUANT TO
THE AUTHORIZATION OF THE GOVERNING BODY OF SCHS ADOPTED ON
_____, 2010**

CITY OF FORT SMITH

MAYOR

ATTEST:

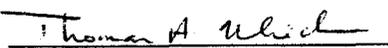
CITY CLERK

SEBASTIAN COUNTY HUMANE SOCIETY

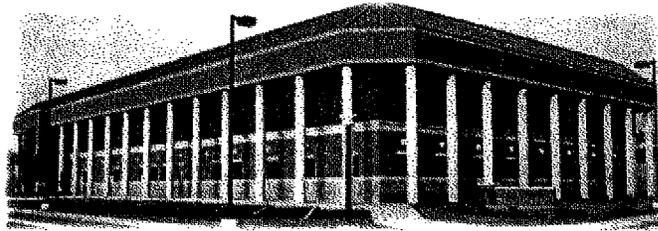


EXECUTIVE DIRECTOR

ATTEST:



SECRETARY



Fort Smith Police Department

Kevin Lindsey, Chief of Police

INTERDEPARTMENTAL MEMORANDUM

To: Dennis Kelly, City Administrator

From: Kevin Lindsey, Chief of Police

Subject: Contract with Sebastian County Humane Society

Date: July 13, 2010

After several months of negotiation the Fort Smith Police Department has completed work on a contract with the Sebastian County Humane Society. The main area of contention being compensation paid to the Humane Society for animals it receives from the City. The new compensation is calculated at a rate of \$15.00 per day per animal rather than a set yearly fee as in previous years. This figure was agreed upon after extensive negotiation with the Humane Society and is believed to be fair to all parties involved. This new compensation agreement will allow the City to take certain measures that might result in lowering the overall cost to the City. Such measures include lowering the number of days for which an animal may be kept from six days to five days, and lowering the hold time for felines (domestic: three days, feral: 1 day). Staff will also be proposing amendments to the current Animal Ordinance, changing the number of days an animal can be held in the ordinance to coincide with the Humane Society contract and increasing the impoundment fee that an animal's owner might be responsible for paying from \$10.00 to \$15.00 per day for each day an animal is impounded.

The City of Fort Smith has continued to operate in cooperation with the Sebastian County Humane Society notwithstanding a current contract since December 31st, 2009. Passage of this contract is recommended. Contracts with the Humane Society have typically been set at two year terms and it is believed that such a term for this contract would be appropriate.

Please contact me if you have questions or need additional information.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE II, OF THE FORT SMITH CITY CODE OF ORDINANCES REGULATING THE IMPOUNDMENT OF ANIMALS

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

Chapter 4, Article II, of the Fort Smith Municipal Code is amended to read as follows:

Sec. 4-36. Notice; redemption period; disposition.

The animal warden shall keep all impounded animals, except felines, for a period of five (5) days from the date of impounding; and, during that period, the animal warden shall notify or make diligent effort to notify the owner of such impounding, and of the proposed destruction or sale of the animal. The maximum hold period for felines will be three (3) calendar days for domestic felines, and one (1) calendar day for feral felines. When an animal carries the owner's address, the notice shall be certified by letter, return receipt requested. In all other cases, the animal warden shall make a diligent effort to notify the owner. If, at the expiration of the five (5) days from notice, such impounded animal has not been redeemed by the owner, it shall be sold or destroyed as hereinafter provided for. Injured animals will be examined by the director of the impoundment facility (currently the Sebastian County Humane Society (SCHS) shelter management and head technician) as to the extent of injuries. Injured animals capable of being held in reasonable comfort will be held the complete five-day stray holding period. Severely injured animals may be subject to euthanasia prior to the completion of the five-day stray holding period when necessary to prevent animal suffering. Diseased or vicious animals will not be subject to euthanasia prior to the expiration of the five-day stray holding period. The director of the impoundment facility (currently SCHS) will document the holding period and basis for euthanasia of all animals.

Sec. 4-38. Fees for animal control services.

The owner of any impounded animal may redeem such animal at any time prior to sale or destruction by payment to the animal control division of the Fort Smith Police Department of a ten dollar (\$10.00) impounding fee plus a maintenance fee of fifteen dollars (\$15.00) per day for each day, or part thereof, that such animal shall have been impounded. Should a local veterinary clinic request disposal of an animal carcass, the following fee schedule shall apply: Twenty dollars (\$20.00) for disposal of any animal carcass that weighs fifty (50) pounds or less; forty dollars (\$40.00) for disposal of any animal carcass weighing in excess of fifty (50) pounds; and, if two (2) or more carcasses are picked up during a service call to a veterinary clinic, the

foregoing fee shall apply to the first animal carcass and a fee of ten dollars (\$10.00) shall be assessed for each and every additional carcass beyond the first carcass taken into custody and disposed.

This Ordinance adopted this ____ day of _____, 2010.

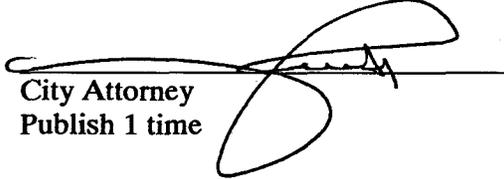
APPROVED:

Mayor

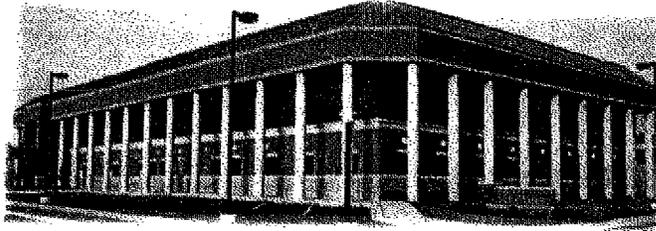
ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney
Publish 1 time



Fort Smith Police Department

Kevin Lindsey, Chief of Police

INTERDEPARTMENTAL MEMORANDUM

To: Dennis Kelly, City Administrator
From: Kevin Lindsey, Chief of Police
Subject: Proposed Amendment to the Animal Ordinance
Date: July 13, 2010

After several months of negotiation the Fort Smith Police Department has completed work on a contract with the Sebastian County Humane Society. Based on the terms of the new contract it will be necessary to amend Chapter 4 Article II, Sections 4-36 and 4-38 to coincide with said contract. The changes being recommended are attached as Exhibit A.

In Chapter 4, Article II, Section 4-36 of the current Ordinance the maximum hold time for animals is set at six days. Staff would propose that the maximum hold period be amended to five days (except felines) in accordance with the proposed contract with the Sebastian County Humane Society. Feral felines will only be held for a maximum period of one day and domestic felines will only be held a maximum period of three days under the proposed ordinance amendment.

In Chapter 4, Article II, Section 4-38 of the current Ordinance the owner of any impounded animal may redeem their animal by paying a \$10.00 impounding fee plus a maintenance fee of \$9.00 per day for which an animal is impounded. Staff would propose an increase to \$15.00 per day fee for which an animal is impounded in order to offset the cost incurred by the City of Fort Smith for housing the impounded animal at the Sebastian County Humane Society.

After careful review of Chapter 4, Article II, Sections 4-36 and 4-38, staff would propose that the amendments be accepted in accordance with the proposed contract with the Sebastian County Humane Society.

Please contact me if you have questions or need additional information.

Exhibit A

Sec. 4-36. Notice; redemption period; disposition.

The animal warden shall keep all impounded animals, except felines, for a period of ~~six (6)~~ five (5) days from the date of impounding; and during that period the animal warden shall notify or make diligent effort to notify the owner of such impounding, and the proposed destruction or sale of the animal. The maximum hold period for felines will be three (3) calendar days for domestic felines, and one (1) calendar day for feral felines. When an animal carries the owner's address, the notice shall be certified by letter, return receipt requested. In all other cases, the animal warden shall make a diligent effort to notify the owner. If, at the expiration of the five (5) days from notice, such impounded animal has not been redeemed by the owner, it shall be sold or destroyed as hereinafter provided for. Injured animals will be examined by the director of the impoundment facility (currently the Sebastian County Humane Society (SCHS) shelter management and head technician) as to the extent of injuries. Injured animals capable of being held in reasonable comfort will be held the complete ~~six-day~~ five-day stray holding period. Severely injured animals may be subject to euthanasia prior to the completion of the ~~six-day~~ five-day stray holding period when necessary to prevent animal suffering. Diseased or vicious animals will not be subject to euthanasia prior to the expiration of the ~~six-day~~ five-day stray holding period. The director of the impoundment facility (currently SCHS) will document the holding period and basis for euthanasia of all animals.

Sec. 4-38. Fees for animal control services.

The owner of any impounded animal may redeem such animal at any time prior to sale or destruction by payment to the animal control division of the Fort Smith Police Department of a ten dollar (\$10.00) impounding fee plus a maintenance fee of ~~nine fifteen~~ fifteen dollars (~~\$9.00~~ \$15.00) per day for each day, or part thereof, that such animal shall have been impounded. Should a local veterinary clinic request disposal of an animal carcass, the following fee schedule shall apply: Twenty dollars (\$20.00) for disposal of any animal carcass that weighs fifty (50) pounds or less; forty dollars (\$40.00) for disposal of any animal carcass weighing in excess of fifty (50) pounds; and, if two (2) or more carcasses are picked up during a service call to a veterinary clinic, the foregoing fee shall apply to the first animal carcass and a fee of ten dollars (\$10.00) shall be assessed for each and every additional carcass beyond the first carcass taken into custody and disposed.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 18, ARTICLE III, OF THE
FORT SMITH MUNICIPAL CODE REGARDING PARK RULES

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF
FORT SMITH, ARKANSAS, THAT:

SECTION 1: Sections 18-63 and 18-70 of Chapter 18, Article III (Park Rules), of the
Fort Smith Municipal Code are hereby amended as follows and said chapter is also amended
to add Sections 77 through 80:

Sec. 18-63. Riding bicycles, motorcycles, scooters.

The use of motorized vehicles including, but not limited to cycles, scooters, or 4
wheelers on any park area or on the trails system other than paved public traffic ways
is expressly prohibited. The prohibition shall not apply to individuals restricted to the
use of motorized wheelchairs, public work vehicles or emergency responders.

Sec. 18-70. Damage or removal of park property.

No person shall cut, injure, deface, remove or disturb any tree, shrub, building,
fence, bench or other structure, apparatus or property; or pick, cut or remove any
shrub bush or flower; or damage, mark, or write upon any building, fence, bench or
other structure within any park area.

Sec. 18-77. Sale or soliciting of goods and services.

The sale, solicitation, or exhibit of goods or services is prohibited in any park
area. This prohibition shall not apply to vendors and individuals holding a valid Parks
and Recreation Department permit or special events approved by the Parks and
Recreation Department.

Sec. 18-78. Motorboats

The use of any manned motorized water craft in the lake at Carol Ann Cross
Park is prohibited. However, trolling motors and paddled water craft are allowed as
well as remote control model boats. The prohibition shall not apply to authorized city
water craft or for emergency responders' water craft.

Sec. 18-79. Tennis Courts.

The use of tennis courts in any park is restricted to the sport of tennis including
the play of matches, lessons and camps, leagues and tournaments, and other

approved tennis activities. The use of tennis courts for soccer, skate boarding, and cycling is prohibited.

Sec. 18-80. Skate Park.

The use of the skate park is restricted to skate boards, bicycles, and roller blades.

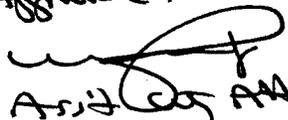
Passed and approved this _____ day of July, 2010.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved:

Assistant Attorney
Publish 1 Time



Memo:

July 15, 2010

To: Dennis Kelly, City Administrator
From: Mike Alsup, Director of Parks and Recreation
Re: Amendments to Chapter 18, Parks, Recreation, Etc.

Mike Alsup

The Parks and Recreation Commission recommends approval of amendments proposed by staff to the City Code revising two current sections and adding four new sections. The recommendations better define issues experienced in the parks and trail system and provide the ability to enforce the rules governing parks and other facilities.

Revisions to Section 18-63 and Section 18-70 update these sections to better define the current issues. Adding the trails system to Section 18-63 gives protection to trail users and the trails. The trails are intended to be used by walkers, joggers, cyclists, and other non-motorized modes of transportation. The exemption in this section will allow for times city vehicles in the course of maintaining the trails and parks need access to these areas as well as emergency vehicles. Adding the word "damage" to Section 18-70 provides for the enforcement of damaging amenities in the parks. Damage is typically seen on playgrounds and the skate park equipment, and in restroom facilities in the parks.

The recommendation includes four new sections to cover the sale of goods and services in parks, the use of boats at Carol Ann Cross Park Lake, and the approved use of the tennis courts and the skate park. Each of these are current park rules but are not a part of the City code. Including them in the Code will allow for enforcement of the rules.

Section 18-77 will allow for enforcement of the Department's rules governing the sale of goods and services in city parks. Sponsors of special events are approved by the Department and allowed to sell or have sold concessions and other related goods during the event. The Department has a permit procedure for concessionaires wanting to sell in the parks. An example of this is ice cream vendors. Some of the requirements are to hold a current city business license and health department permit. The concessionaires pay a ten percent commission on their sales in the parks. Section 18-78 addresses the current rule allowing paddled boats, boats with electric trolling motors, and remote control boats in the lake at Carol Ann Cross Park. Other motorized watercraft are not allowed in the lake. Section 18-79 addresses the use of tennis courts for activities other than tennis. The maintenance staff replaces the nets or repairs the fences weekly due to the use of the courts for soccer, skate boarding, and cycling. Section 18-80 includes the approved uses of the skate park which are skate boards, bicycles, and roller blades. Motorized vehicles are not allowed in the skate park.

If you have any questions, please call me.

ORDINANCE NO. _____

AN ORDINANCE ORDERING THE OWNERS OF CERTAIN DILAPIDATED AND SUBSTANDARD STRUCTURES TO DEMOLISH SAME, AUTHORIZING THE CITY ADMINISTRATOR TO CAUSE THE DEMOLITION OF SUCH STRUCTURES TO OCCUR, AND FOR OTHER PURPOSES.

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

WHEREAS, certain owners of real property have caused or allowed certain tracts of real property to deteriorate to the condition that such tracts of real property and the improvements thereon are now, and for several months prior hereto have been dilapidated, unsightly, unsafe, unsanitary, noxious and detrimental to the public welfare, and

WHEREAS, the condition of such tracts of property and the improvements located thereon are in violation of the City Ordinances and the statutes of the State of Arkansas.

NOW, THEREFORE,

SECTION 1: It is the opinion of the Board of Directors that the hereinafter described tracts of real property, and the improvements located there, are dilapidated, unsafe and otherwise detrimental to the public health and constitute structural, fire and health hazards:

STREET ADDRESS:

1101 NORTH 15TH STREET - LOT 12, BLOCK 105; SCHOOL ADDITION

717 NORTH 34TH STREET -LOT 21, BLOCK 8: EAST END PLACE

1236 SOUTH 12TH STREET - N 6' LOT 16, ALL LOT 17, BLOCK A; SULPHUR SPRINGS TOWN

3211 NORTH 28TH STREET - LOT 5, BLOCK 3; BROCKMANS FLORAL

SECTION 2: The owners of the tracts of real property described in Section 1 are hereby ordered to remove or raze the improvements located on the said tracts of property and to remedy the unsightly and unsanitary conditions otherwise located on said tracts of real property within thirty (30) days from the date of this ordinance.

*Approved as to form
JFE
Publish 1 time*

SECTION 3: With reference to said tracts of real property and improvements located there for which the order contained in Section 2 of this ordinance has not been complied with within thirty (30) calendar days from the date of passage of this ordinance, the City Administrator is hereby authorized to execute a contract, based on the bid(s) accepted on the date of this action or at a later date, for the removal or razing of the described improvements on the tracts of real property in order to remedy the unsightly and unsanitary conditions located on said tracts of property.

SECTION 4: The provisions of this ordinance are hereby declared to be severable to the extent that a decision by any court of competent jurisdiction determining that any portion of this ordinance or any application thereof is unconstitutional, invalid or otherwise illegal shall not affect the constitutionality, validity or legality of the other provisions and/or applications of the ordinance.

SECTION 5: Emergency Clause. It is hereby found and declared by the Board of Directors that the dilapidated, unsanitary condition of the tracts of real property and improvements described herein constitute an immediate menace to the health, welfare and safety of the citizens of the City so that an emergency is hereby declared and that this ordinance shall be effective from and after the date of its passage.

PASSED AND APPROVED this _____ day of _____ 2010.

APPROVED:

Mayor

ATTEST:

City Clerk



MEMORANDUM

Building Safety Division

TO: Dennis Kelly, City Administrator
FROM: Jimmie Deer, Building Official
DATE: July 12, 2010
SUBJECT: Unsafe Structures

The following structures have been damaged and/or deteriorated to a condition that has caused the Building Department to condemn them. The property and the improvements, thereon are now, and for several months prior hereto, have been dilapidated, unsafe, unsightly, unsanitary, obnoxious and detrimental to the public welfare and are found to be in violation of the Ordinances of the City of Fort Smith.

The property descriptions and owners are:

1101 North 15th Street - Lot 12, Block 105; School Addition

Owners: Alicia Ann Freeman Cindy Lonsway Don Leon Eisen Jr.
1150 Farley Cir #A 910 N. 16th Street 2101 S. Cleveland Street
Greenwood, AR 72936 Fort Smith, AR 72901 Amarillo, TX 79103-1218

1236 South 12th Street - N 6' Lot 16, All Lot 17, Block A; Sulphur Springs Town

Owners: Christian Pedersen
P.O. Box 8231
Fort Smith, AR 72902

3211 North 28th Street - Lot 5, Block 3; Brockmans Floral

Owners: Herman Gonzales
3211 North 28th Street
Fort Smith, AR 72904

717 North 34th Street - Lot 21, Block 8; East End Place

Owners: Barney Hudson Debra L Click Living Trust
3821 Presley Avenue Apt 4 2325 Skye Rd
Fort Smith, AR 72903-1770 Fort Smith, AR 72908

The owners of these properties have been notified according to the procedures outlined in Section 16-88 of the Fort Smith Municipal Code. The property owners were notified by certified mail and posting the same letters on the buildings. The letter or notice contains information concerning the appeal procedure outlined in Section 16-91 of the Municipal Code. The Code specifies that they must file any appeals within fifteen (15) days from the date of service. The owner(s) of the subject properties did not file an appeal within the fifteen (15) day period nor have they requested an appeal hearing since that deadline has passed.

Page 2, Unsafe Structures:

1101 North 15th Street - The Structure has been without water service since June 19, 2009. The property was posted and unsafe notices were sent out to the owners on April 28, 2010 and of the owners signed for the notices on April 30, 2010 and the other two was sent back return to sender. As of today the owners have not been in contact with us and no building permits have been obtained or repairs been made to the structure.

1236 South 12th Street - The structure has been without water service since April 2009 and has burnt. The property was posted and unsafe notices were sent to the owners on May 27, 2010. I spoke with the owner on June 8, 2010 and June 11, 2010 and he stated he would try and borrow money to have the structure taken down if not the City could proceed. As of today's date the owner has taken no action on the structure.

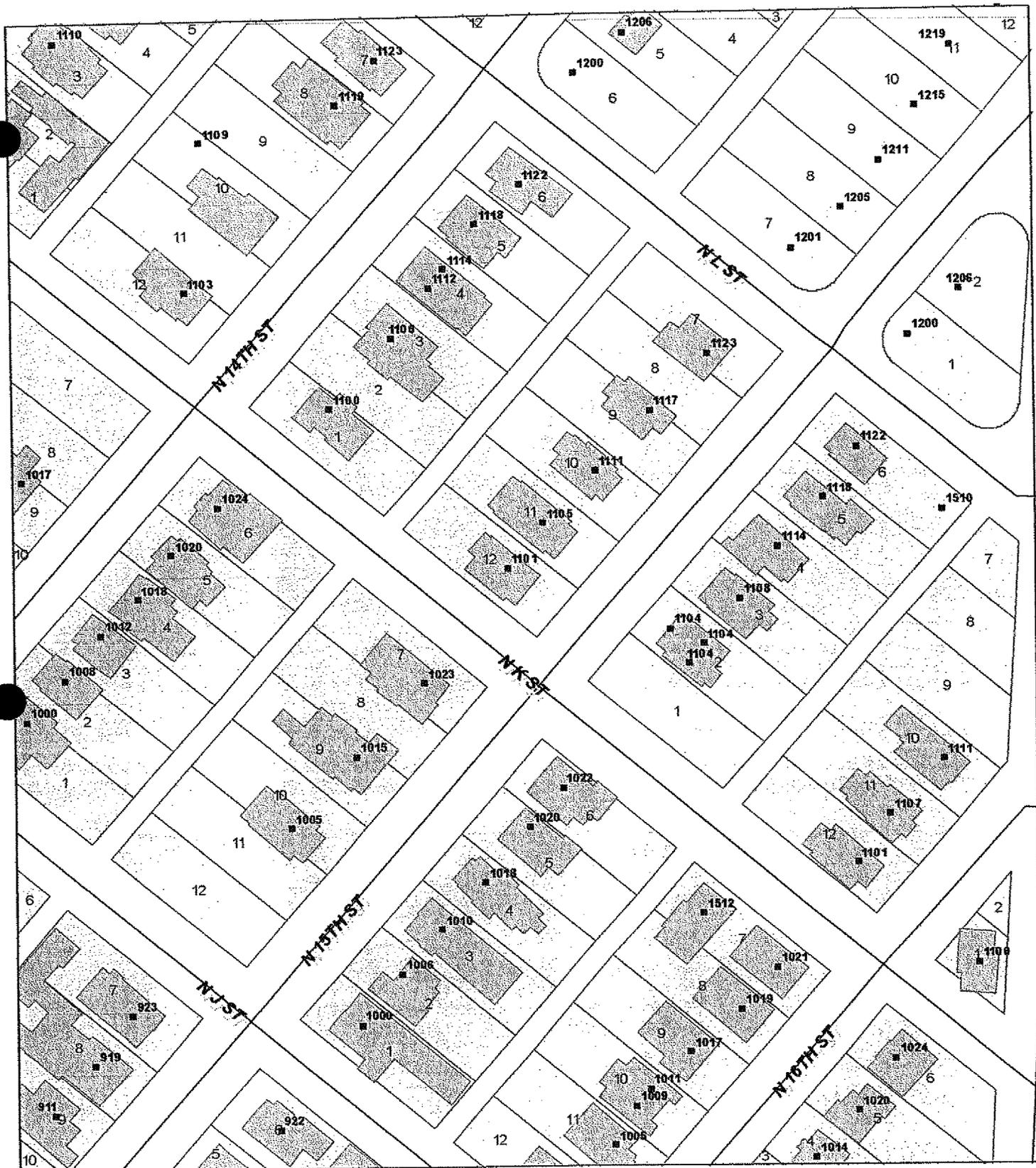
3211 North 28th Street - The structure has been without water service since March 4, 2010. The property was posted and unsafe notices were sent to the owners on May 19, 2010 and the owners signed for the notices on May 28, 2010. I spoke to the owners on June 11, 2010 and they were to obtain permits to demolish the structure but as of today's date they have not proceeded with any action.

717 North 34th Street - The structure has been without water service since March 20, 2009 and has burnt. The property was posted and unsafe notices were sent to the owners on May 27, 2010 and the owners signed for the letters. I have spoken with the owners and they stated they did not have the funds to repair and as of today's date the owners have taken no action as to repair the structure.

Therefore, I am recommending this matter be referred to the Board of Directors for their review. An Ordinance will be prepared that will order the property owners to demolish or repair the buildings within thirty (30) calendar days and if such work has not occurred, the staff will be authorized to have the structures removed.

Please contact me if you have any questions or if we need to discuss this matter in more detail.

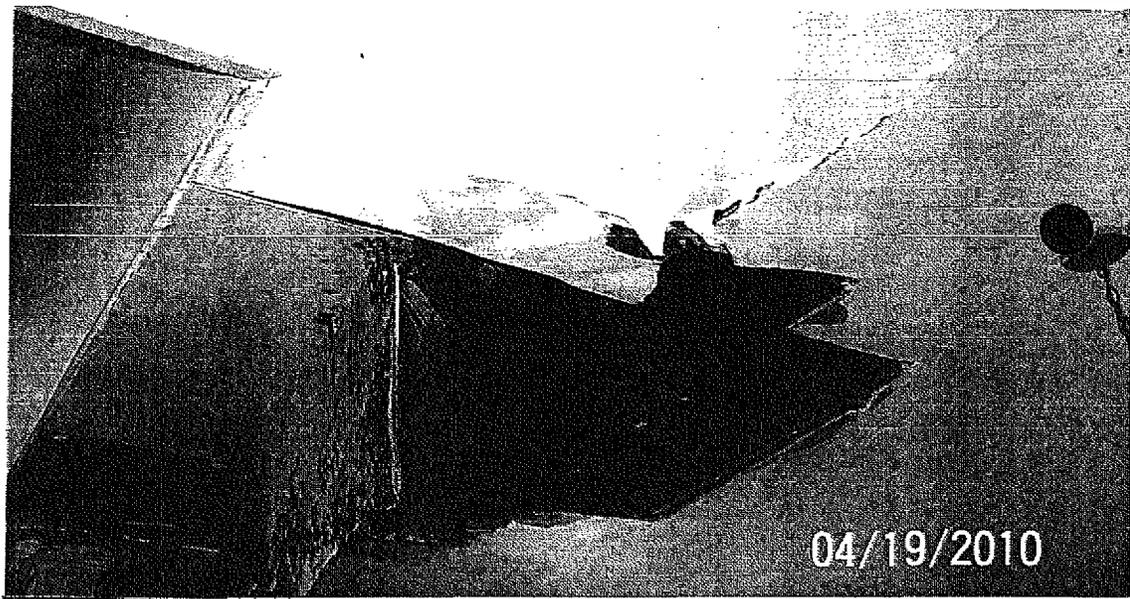
CC: Wally Bailey



1101 North 15th Street



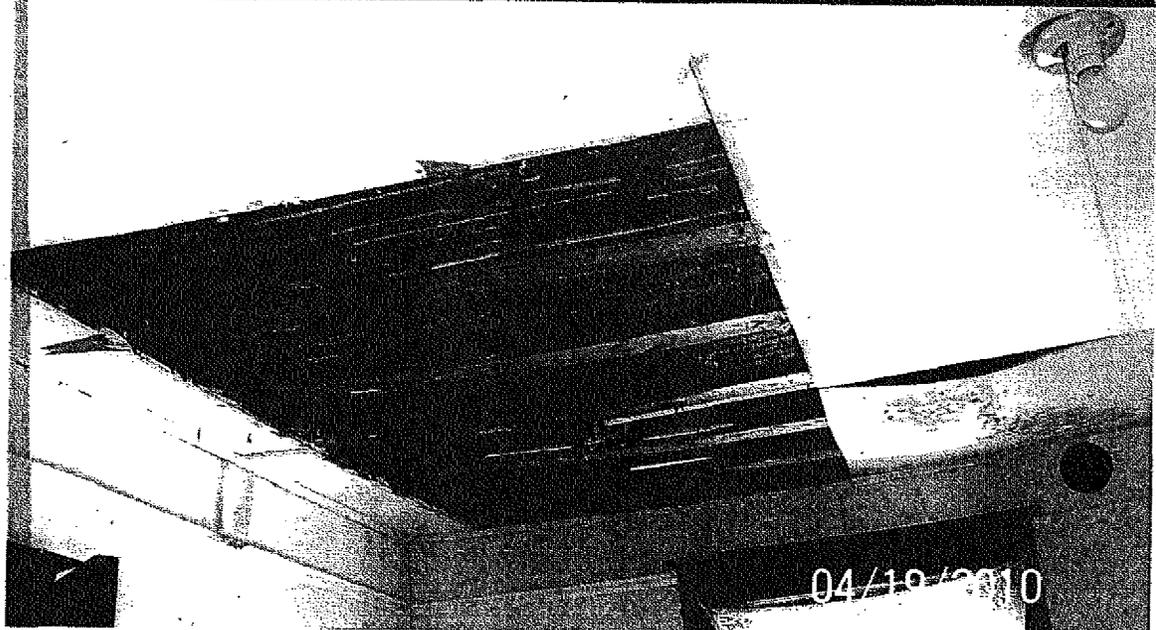




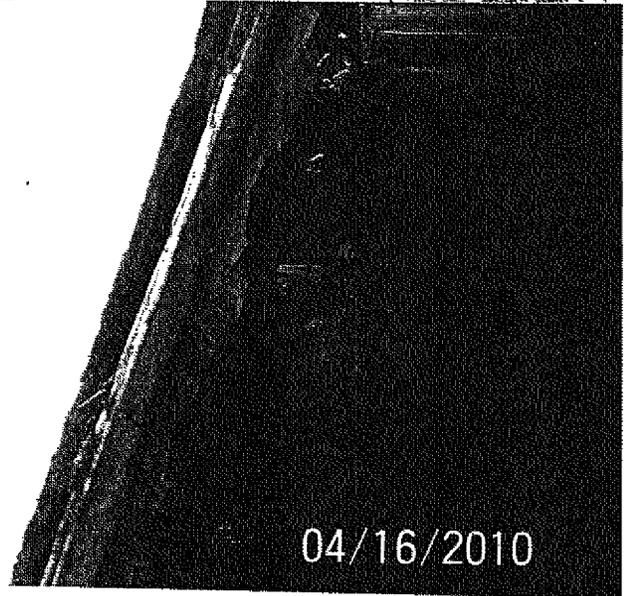
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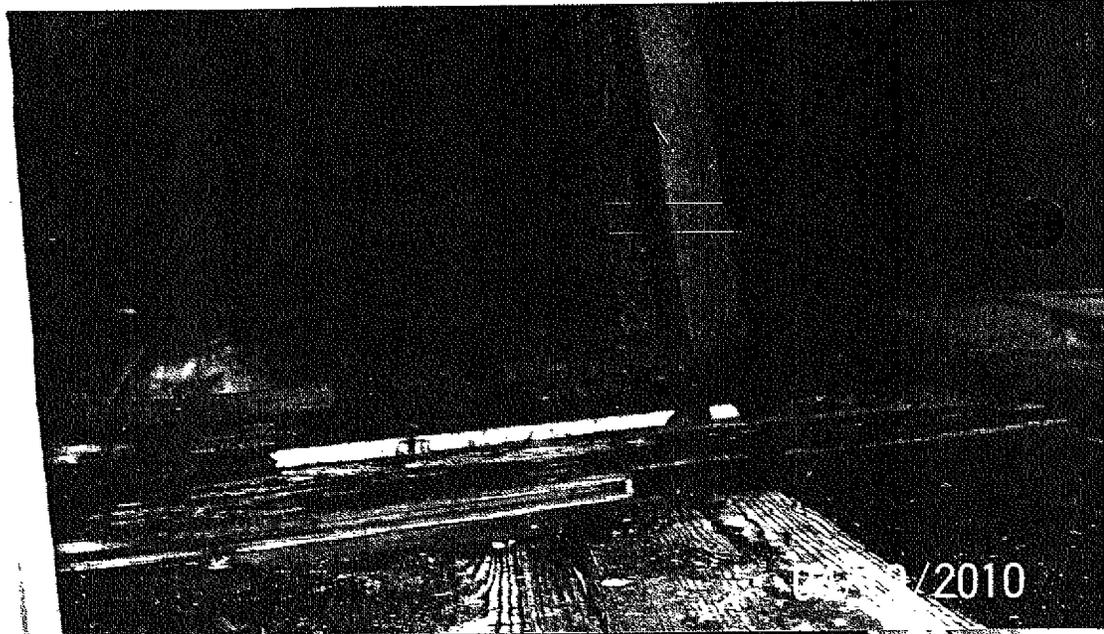


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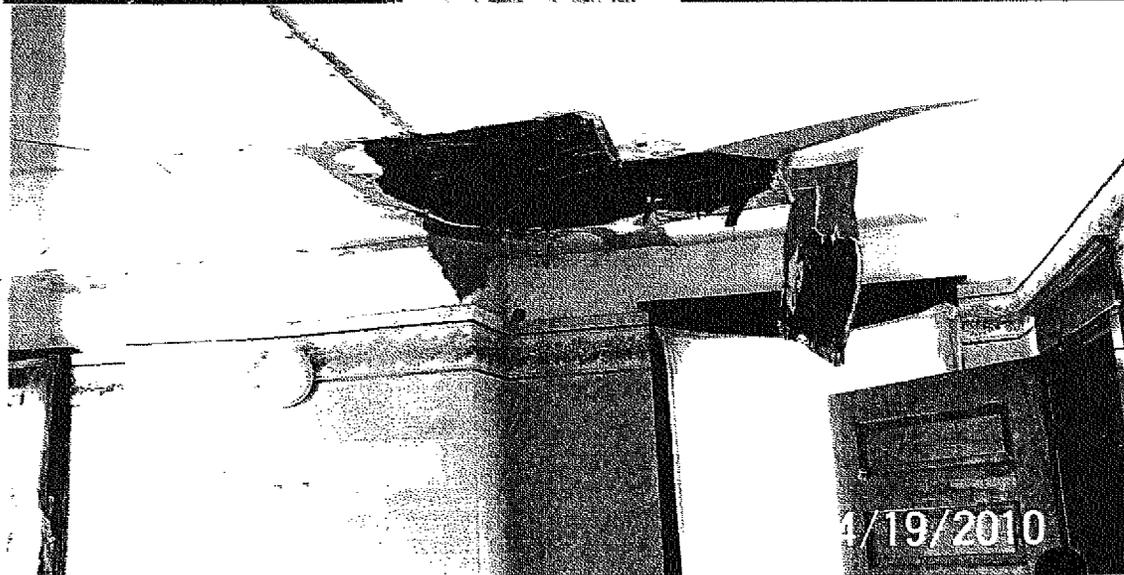




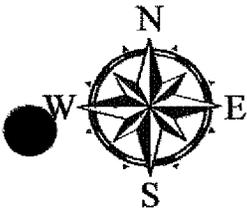
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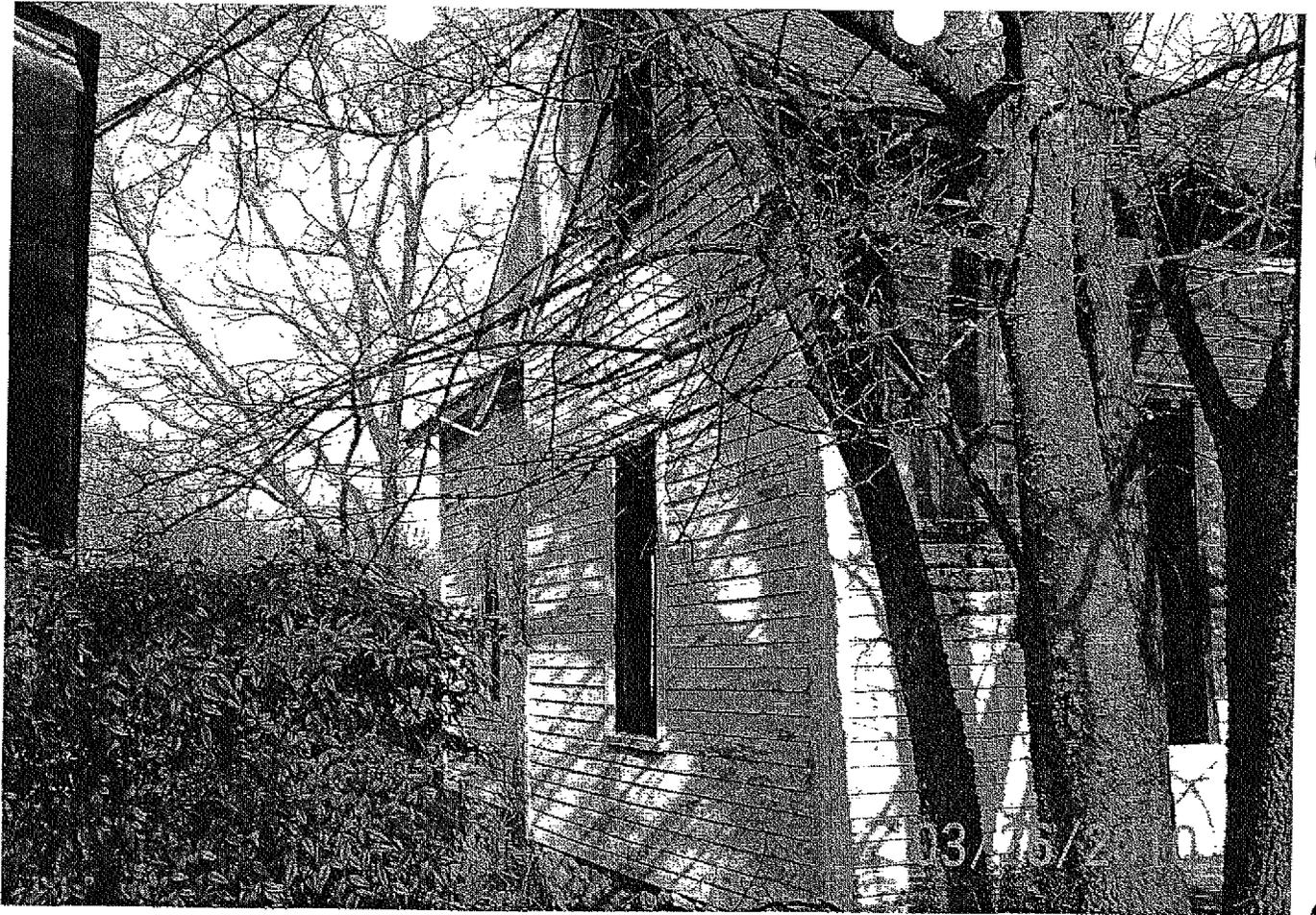
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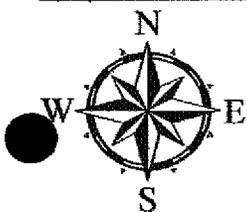
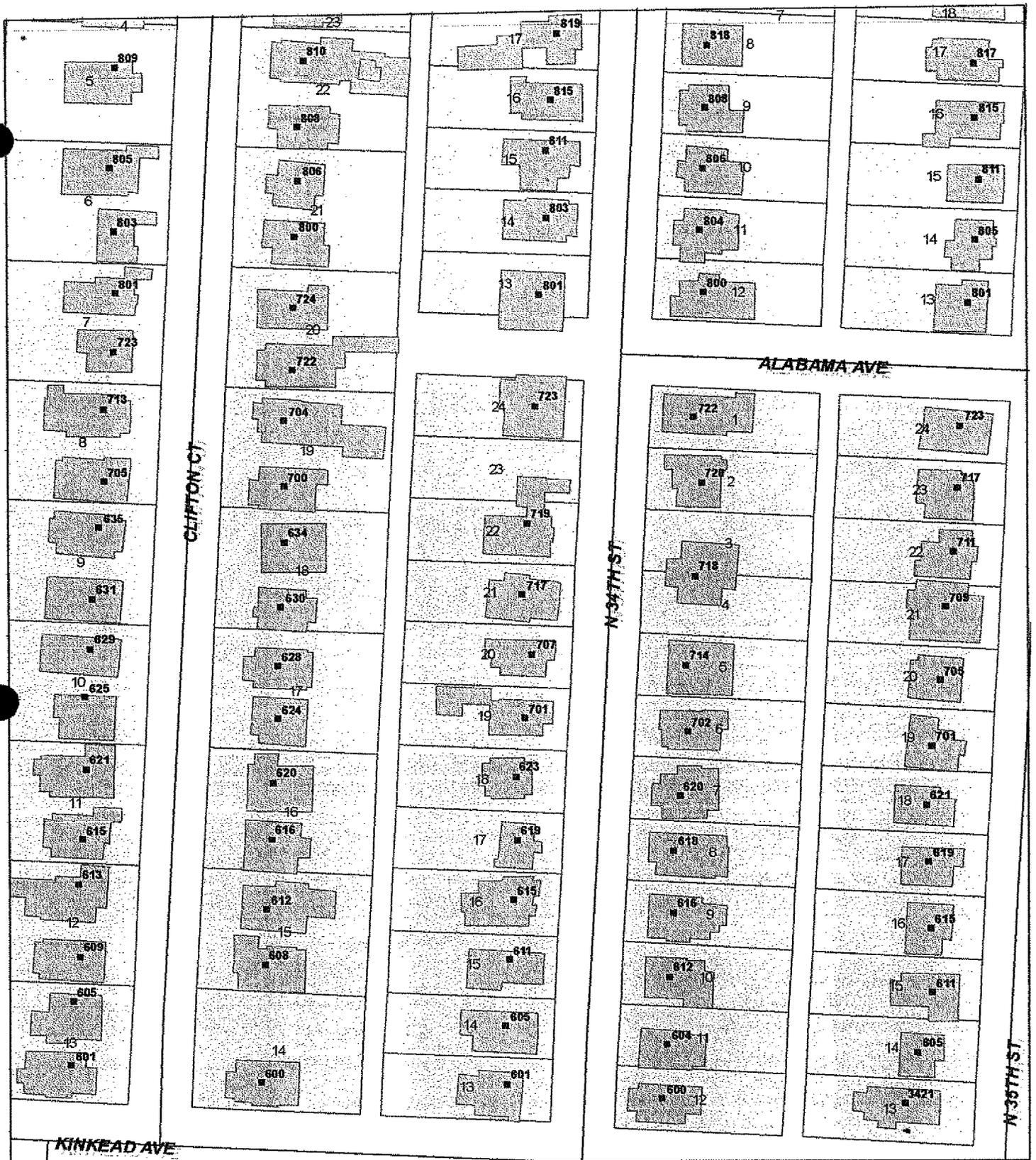


1236 South 12th Street

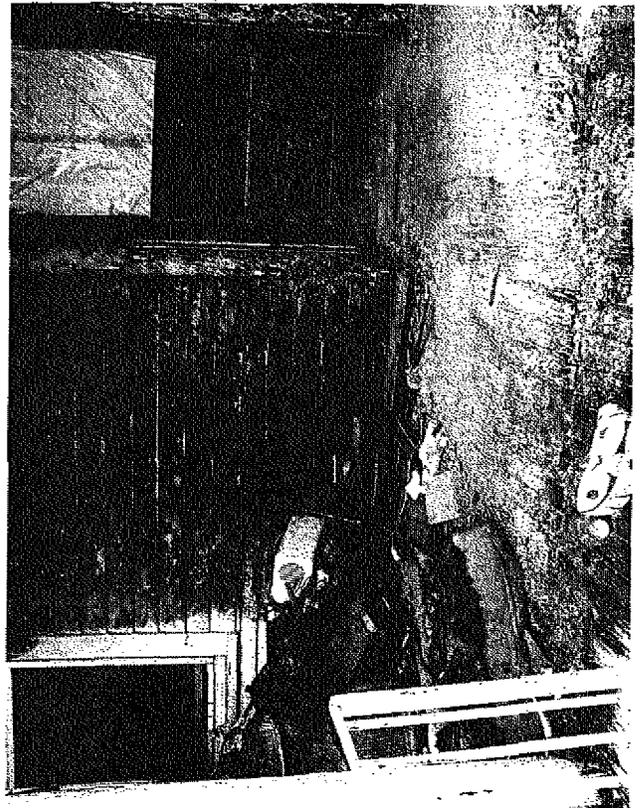
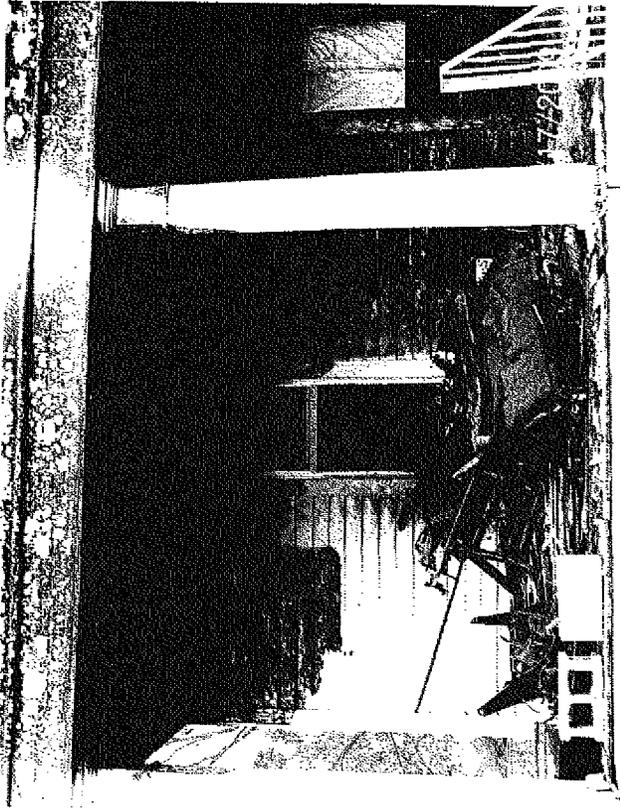


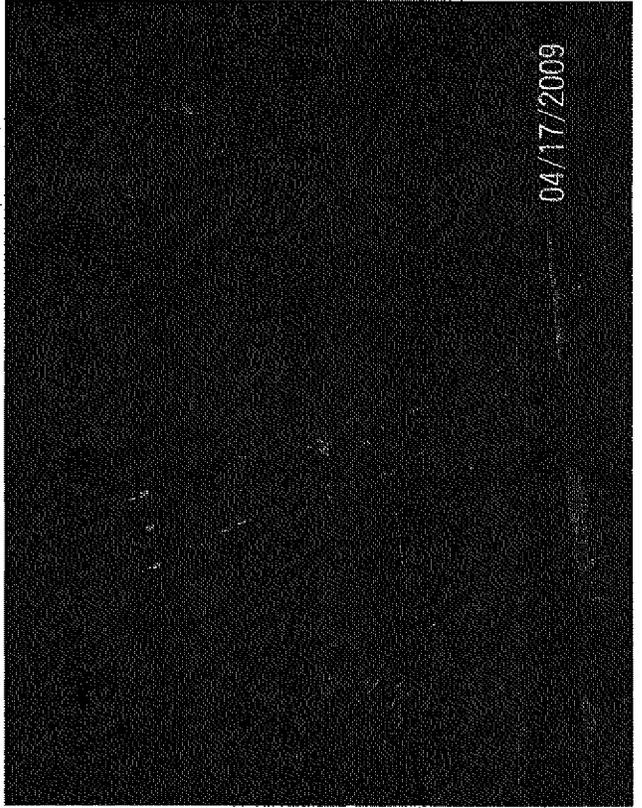
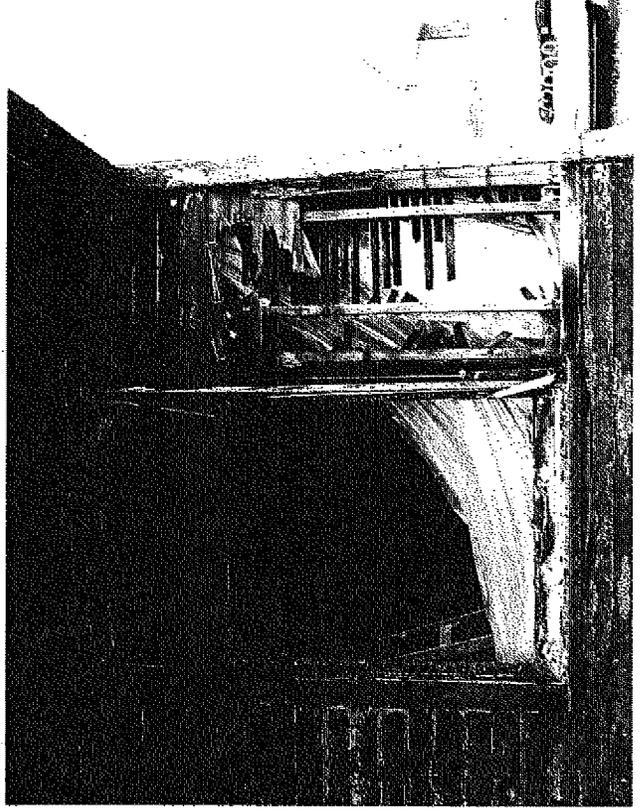
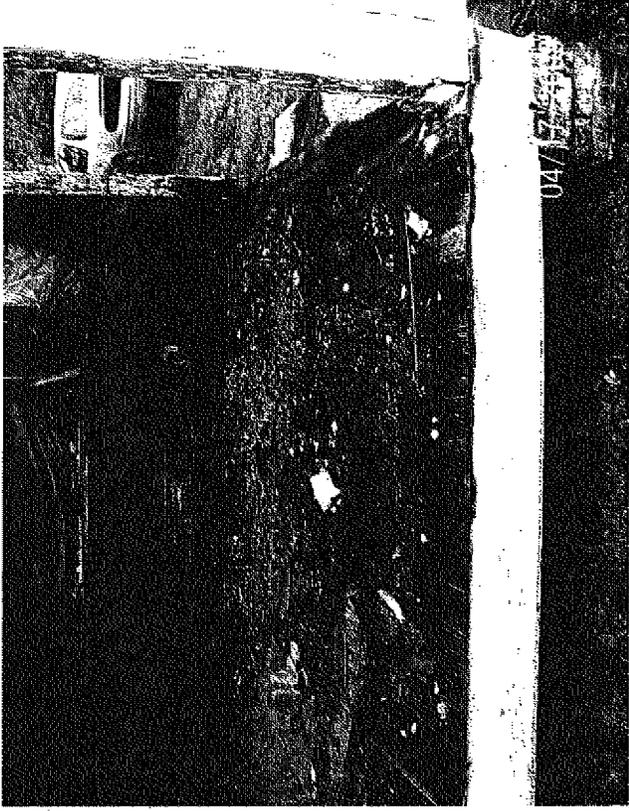


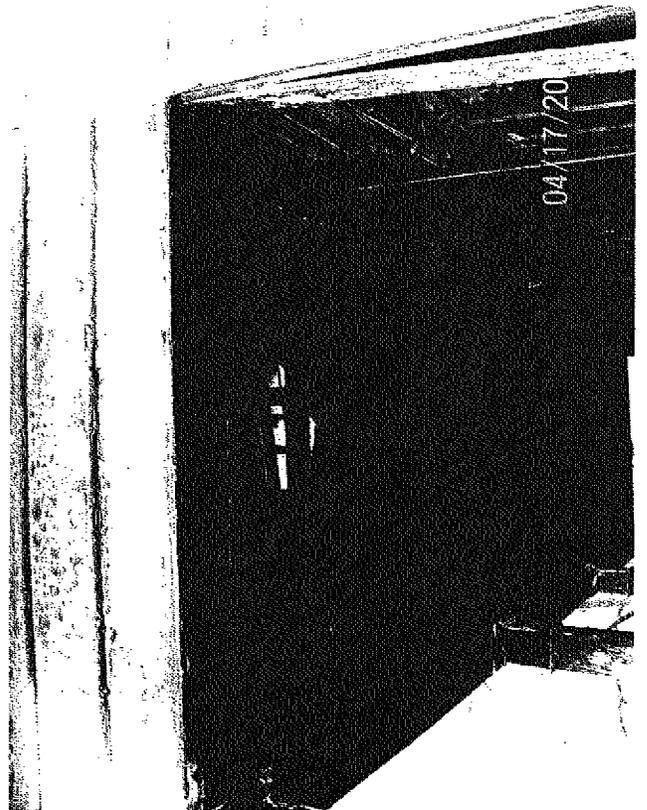
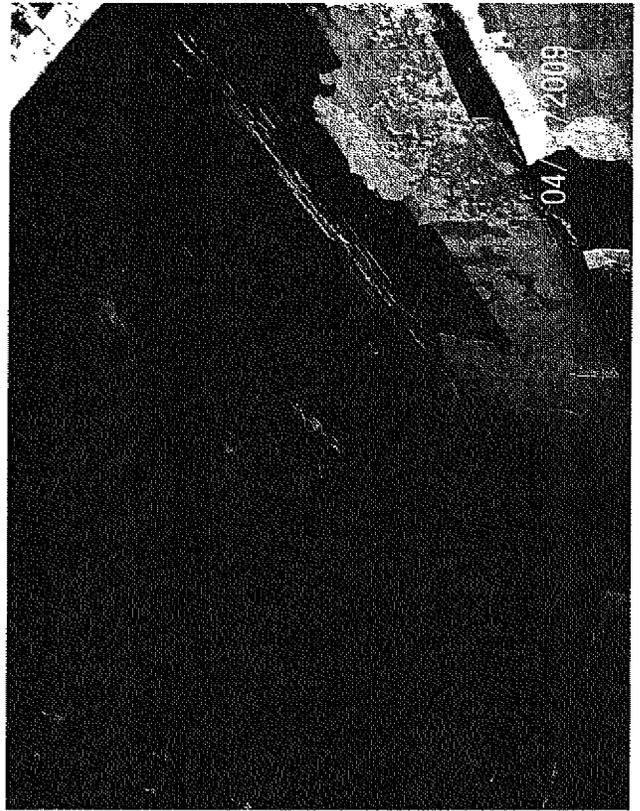
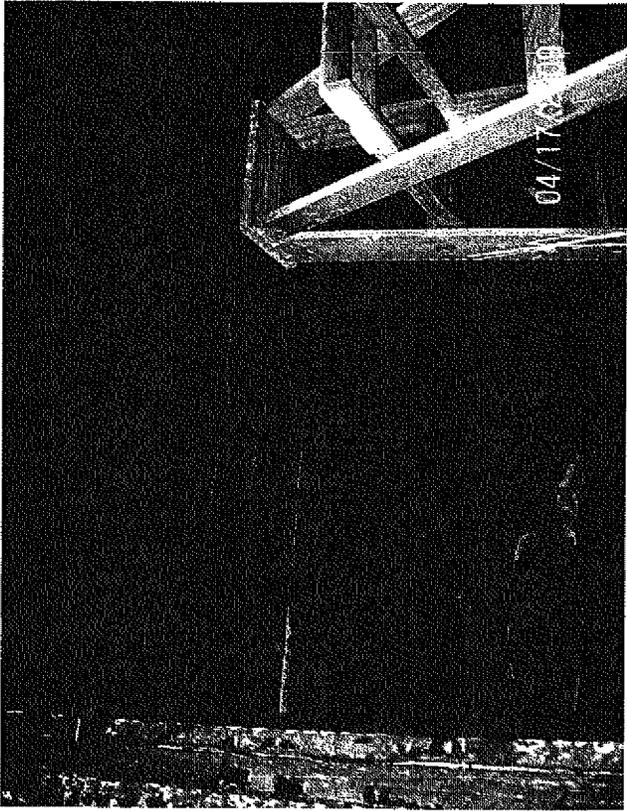


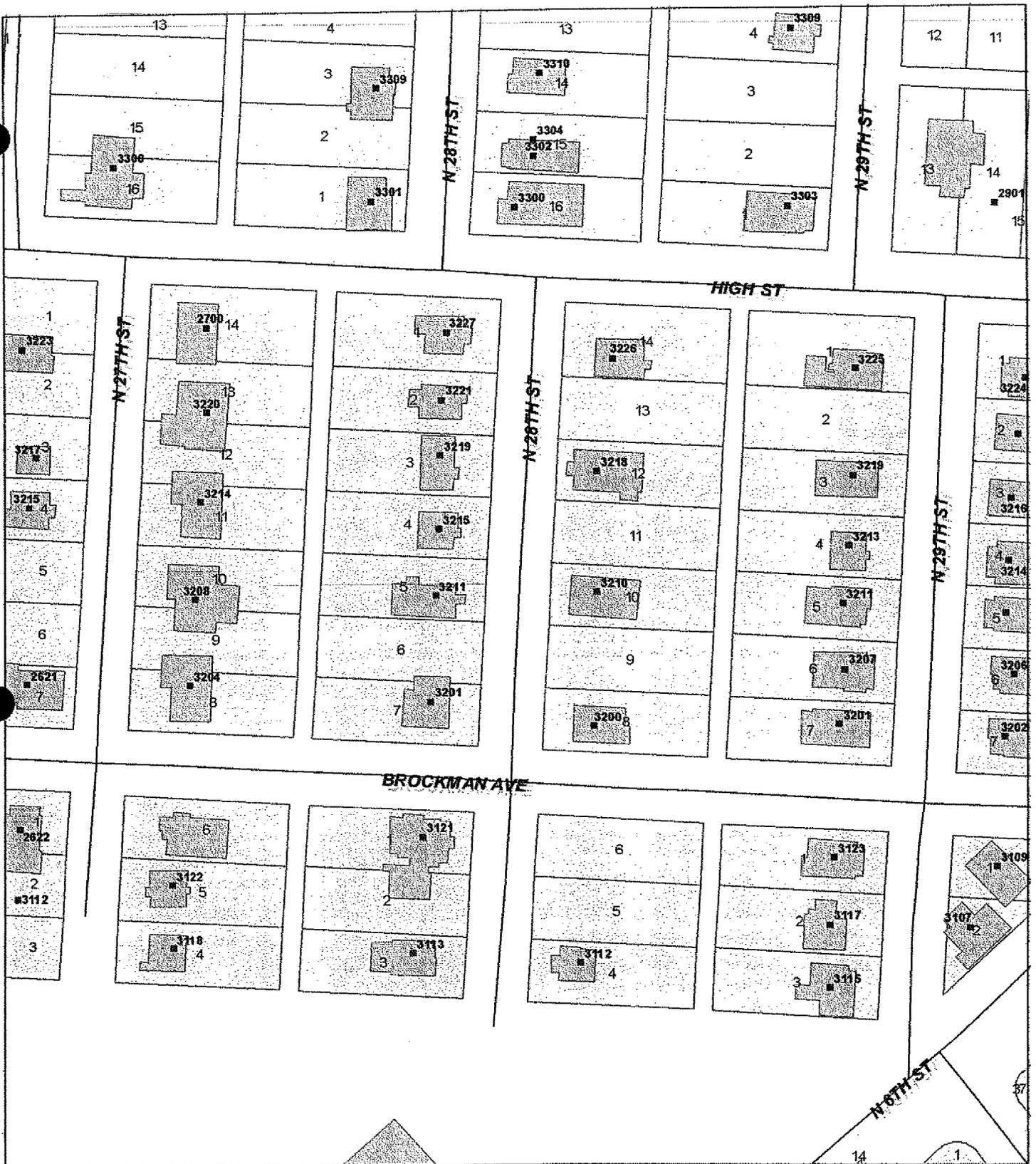


717 North 34th Street



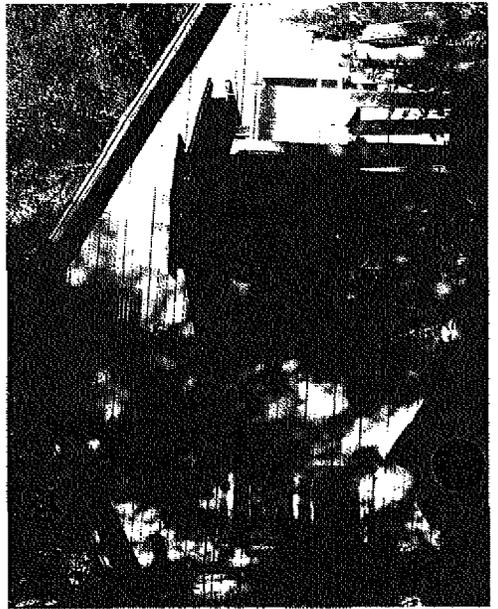
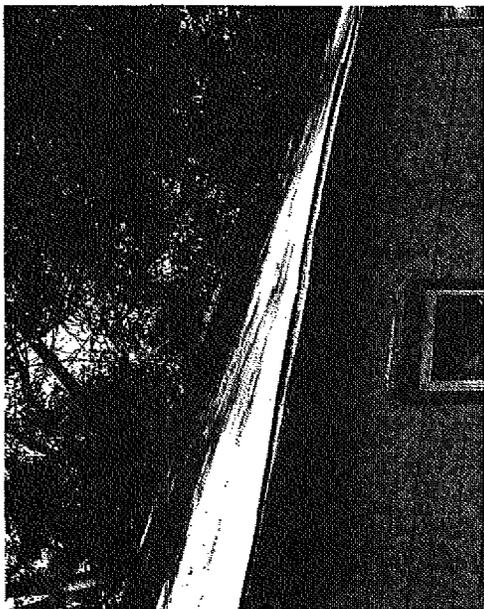
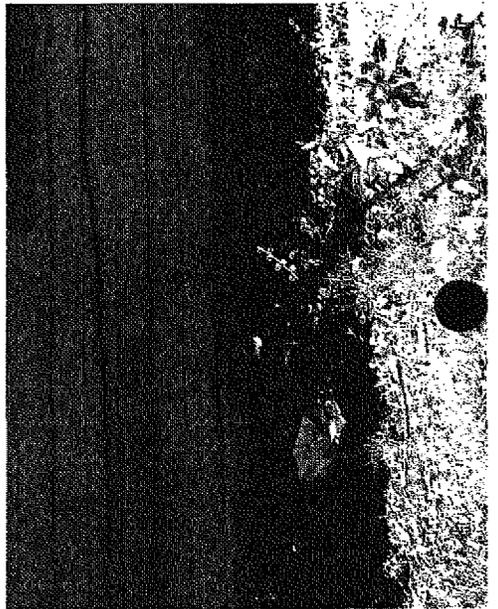
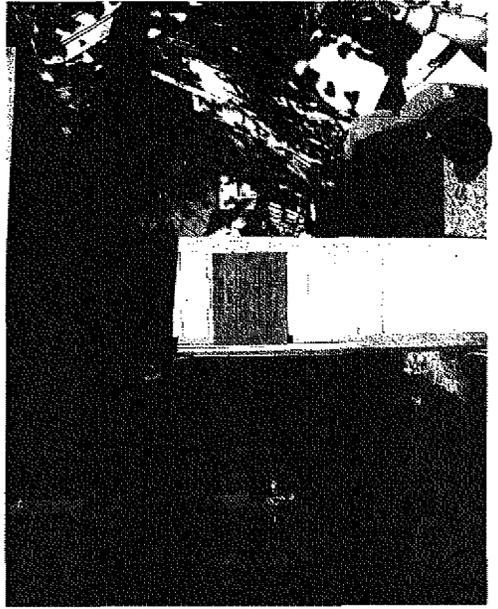
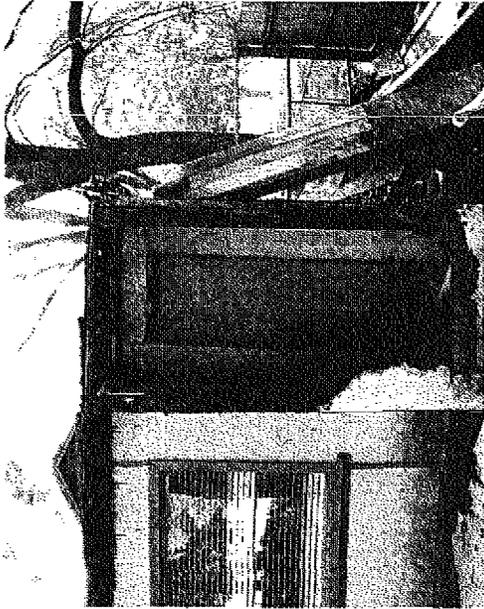


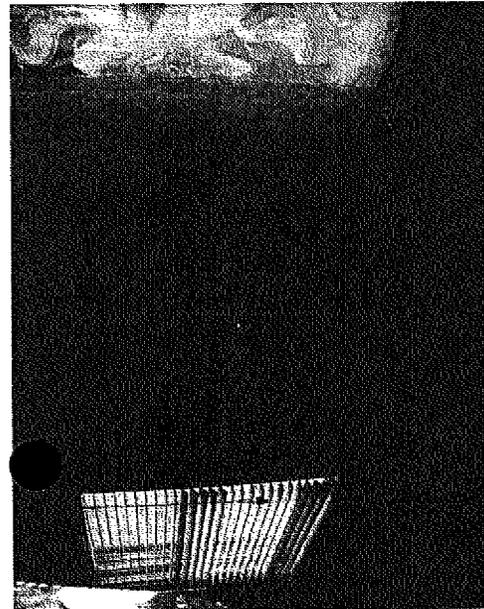
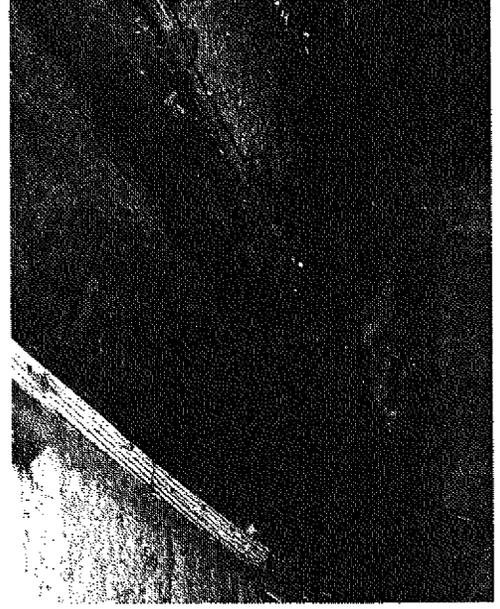
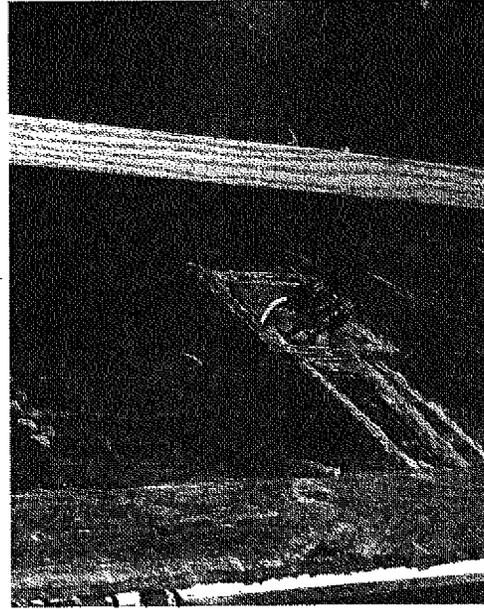
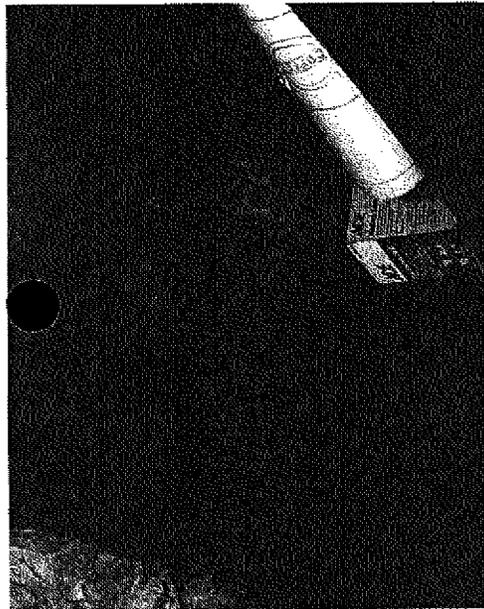
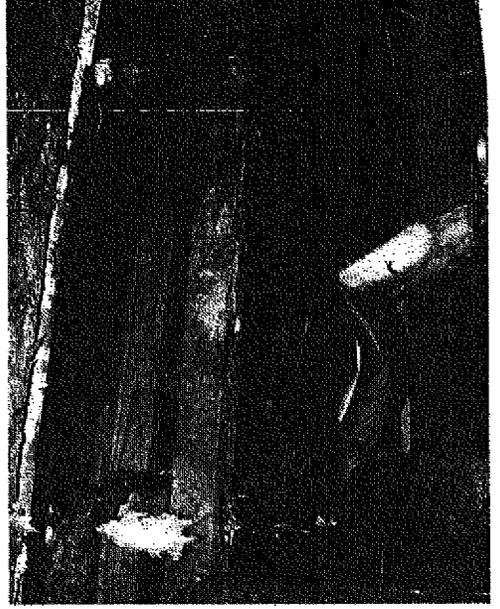


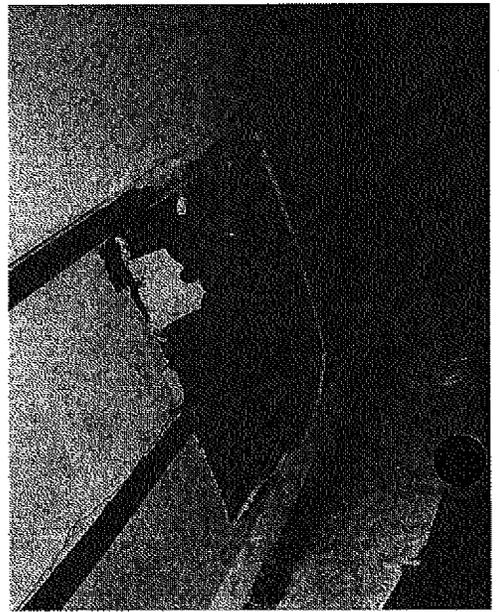
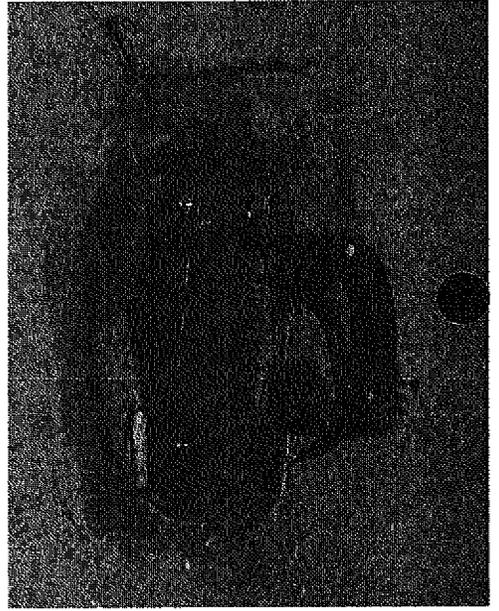
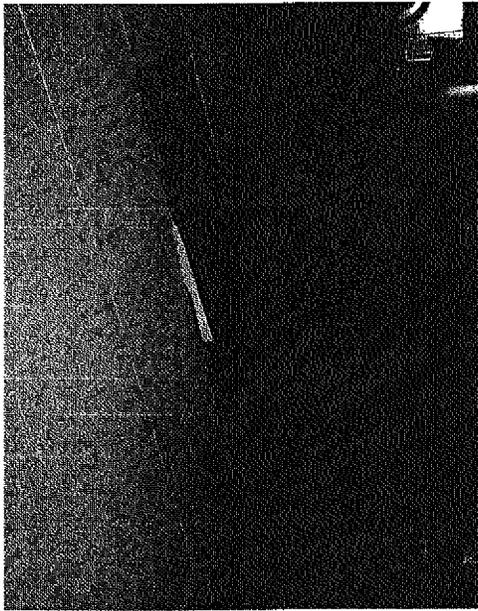
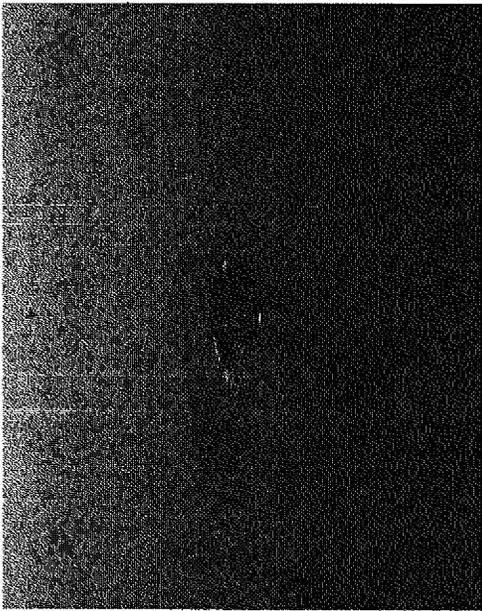
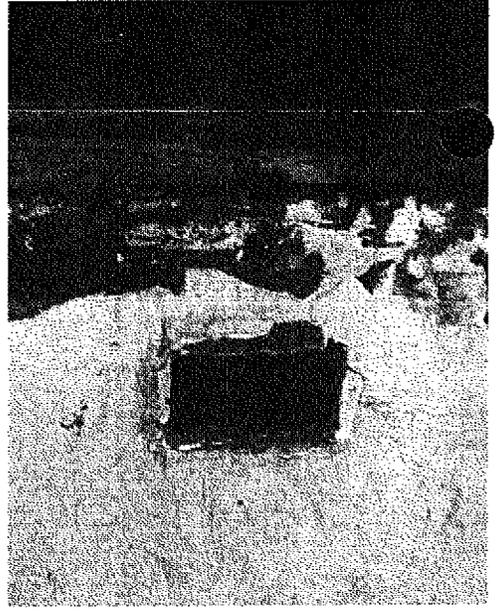
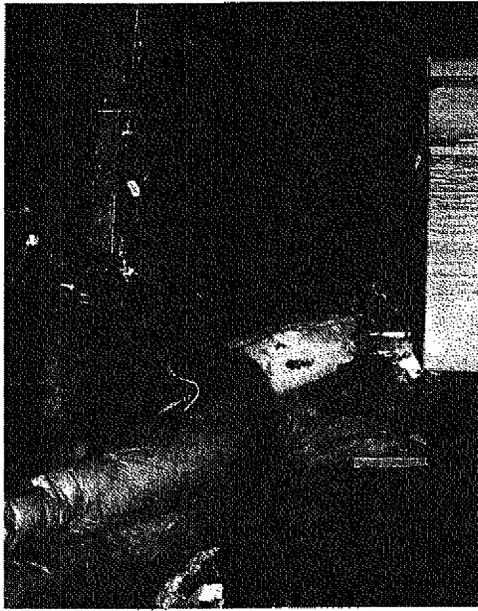


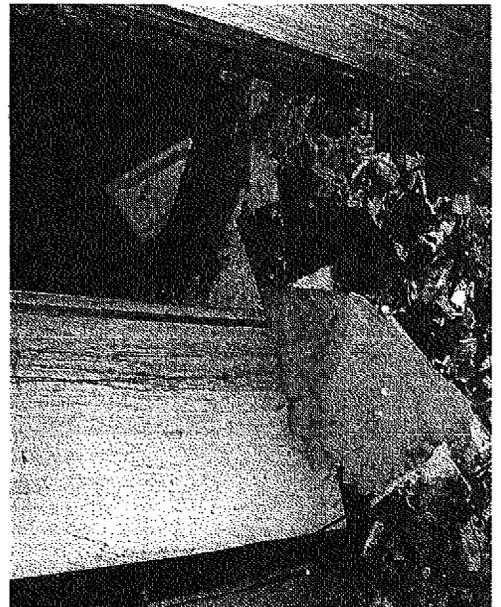
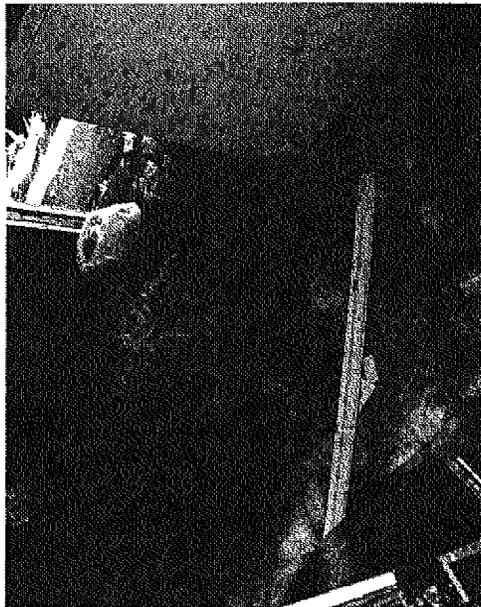
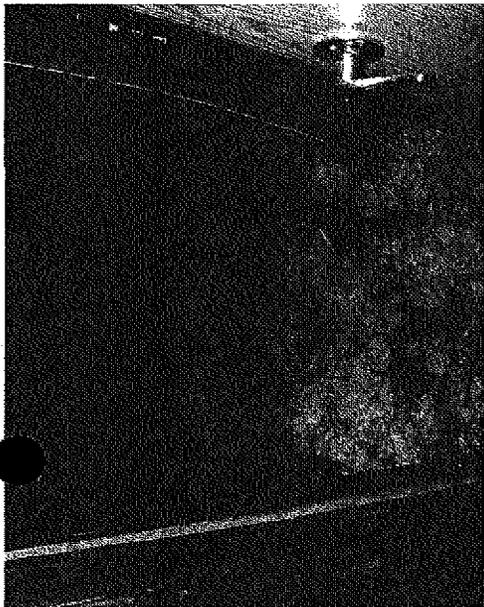
3211 North 28th Street

S-U-10









6.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING CHAPTER 2, ARTICLE IV,
OF THE FORT SMITH CODE OF ORDINANCES TO CREATE A
NEPOTISM POLICY RELATING TO ELECTED OFFICIALS**

**BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE
CITY OF FORT SMITH, ARKANSAS, THAT:**

SECTION 1: Chapter 2, Article IV, of the Fort Smith Code of Ordinances is hereby amended to add thereto Sections 2-96, 2-97 and 2-98 as follows:

Section 2-96. Prohibited Elected Official/Employee Relationships.

- a. No person who is a relative or family member of any elected official of the City shall be an employee of the City. This applies to full-time, part-time, and seasonal employment.
- b. For the purposes of this section, "Family Member" or "Relative" shall refer to: spouse; child; parent; sibling; grandparent; grandchild; father-in-law; mother-in-law; brother-in-law; sister-in-law; stepfather; stepmother; stepsibling; half-brother; half-sister; nephew; niece; first cousin; aunt; uncle; or foster child.

Section 2-97. Prohibited Former Elected Official/Contract for Services Relationships.

For a period of two (2) years following termination of the term of office of an elected official of the City, the former elected official may not be appointed as an employee of the City nor may the former elected official have an interest in any contract or job for work or services to be furnished or performed for the City.

SECTION 2: Severability.

If any portion of this Ordinance is declared to be invalid by a court of competent jurisdiction, it shall not affect the remaining portions of the Ordinance, which shall remain in full force and effect.

This Ordinance adopted this _____ day of _____, 2010.

APPROVED:

Mayor

ATTEST:

City Clerk

*Approved as to form
JFC
Publish 1 time*

MEMORANDUM
July 16, 2010

TO: Dennis Kelly, City Administrator

FROM: Cindy Remler, City Clerk



RE: Nepotism Policy ~ Elected Officials

At the July 13th study session, Director Settle presented the attached ordinance and received board concurrence to place the matter on the July 20th regular meeting agenda.

The ordinance has been prepared by City Attorney Jerry Canfield, and he will be available at the meeting to answer any questions.

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING 2010 BUDGET REDUCTIONS

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: The following personnel positions are to remain vacant for the remainder of 2010, unless otherwise noted:

- | | |
|--|--|
| 4106 Planning & Zoning- | Planner I |
| 4201 District Court- | Deputy Court Clerk I |
| 4301 Finance- | Accounting Technician-(Until September 1, 2010) |
| 4304 Utility Billing/Customer Service- | Rate & Financial Analyst-(Until September 1, 2010) |
| Police Department- | 2-Lead Dispatchers |
| | Telecommunicator |
| | Cadet |
| | Senior Clerk II |
| | Meter Enforcement Officer |

SECTION 2: The meals provided at Board of Directors meetings shall be discontinued immediately.

SECTION 3: The City contributions to the Health and Wellness Fund from the operating programs are to be reduced during the remainder of 2010 by the amount necessary to cover budget shortfalls in the General Fund that are not covered by the authorizations above.

THIS ORDINANCE ADOPTED THIS _____ DAY OF _____, 2010.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

*Approved as to form
JSC
No publication required*



MEMORANDUM

July 15, 2010

TO: Dennis Kelly, City Administrator

FROM : Kara Bushkuhl, Director of Finance *Kara*

SUBJECT: 2010 Budget Reductions

The Board's direction to cover the General Fund revenue shortfall in 2010 is to use the position vacancies savings reported as of July 7, 2010, discontinue provision of meals at Board of Directors meetings, and use the available fund balance in the Health and Wellness Fund. These three actions are explained as follows:

The 10 vacant positions reports as of July 7, 2010 results in a total reduction to the 2010 Budget of \$353,610. This is \$15,600 less than previously reported because the reimbursement from Sebastian County for the vacant District Court position must be reduced from General Fund revenue. The allocations among City funds is:

General Fund	\$272,161
Street Maintenance Fund	2,176
Water & Sewer Operating Fund	36,759
Sanitation Operating Fund	5,664
Parking Authority Fund	<u>36,850</u>
Total	<u>\$353,610</u>

The discontinuance of meals at Board of Directors meeting will save approximately \$1,700 for the remainder of 2010. The allocation of this savings among the City's funds is:

General Fund	\$ 731
Street Maintenance Fund	136
Water & Sewer Operating Fund	629
Sanitation Operating Fund	<u>204</u>
Total	<u>\$ 1,700</u>

The use of the available balance in the Health and Wellness Fund to cover the remainder of the shortfall may be managed by reducing each operating programs contribution to the Fund during the remainder of 2010. By using this method, the City is in effect reducing operating costs and decreasing the available balance in the Health and Wellness Fund. The amount of reductions necessary for the General Fund is \$990,845. Therefore, the amount of health plan contribution reductions allocated for the General Fund must be \$717,953 (\$990,845 less \$272,161 less \$731). In order to spread a like reduction among the City's operating fund, the allocation of reduced health plan contributions is:

General Fund	\$ 717,647
Street Maintenance Fund	70,588
Water & Sewer Operating Fund	270,588
Sanitation Operating Fund	<u>117,647</u>
Total	<u>\$ 1,176,470</u>

As we progress further into 2010 and have a better handle on the actual shortfall, the amount of health plan contribution reductions may be increased as necessary.

The attached ordinance provides for the above explained actions. If you have any questions or require more information, please let me know.

RESOLUTION NO. _____

**A RESOLUTION APPROVING THE DESIGNATION
OF A NEW TRUSTEE FOR THE SERIES 2004
CITY OF FORT SMITH, ARKANSAS TAXABLE
INDUSTRIAL DEVELOPMENT REVENUE BONDS
(GERBER PRODUCTS COMPANY PROJECT)**

WHEREAS, the passage and approval of Ordinance No. 90-03 authorized the issuance of Series 2004 City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds for the Gerber Products Company project; and

WHEREAS, Section 4 of Ordinance No. 90-03 authorized the execution of an Indenture, which Indenture named JPMorgan Chase Bank, N.A. as the Trustee for the bonds; and

WHEREAS, the City of Fort Smith has been advised that JPMorgan Trust Company has sold its corporate trust business to

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Fort Smith, Arkansas that:

The City of Fort Smith hereby accepts the resignation of JPMorgan Trust Company as Trustee and approves the appointment of The Bank of New York Mellon as Trustee for the Series 2004 City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds issued for the Gerber Products Company project. The Mayor is hereby authorized to execute an Agreement of Resignation, Appointment and Acceptance for this change in Trustees.

This Resolution passed this _____ day of July, 2010.

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk



No Publication Required



MEMORANDUM

July 14, 2010

TO: Dennis Kelly, City Administrator

FROM: Ray Gosack, Deputy City Administrator

SUBJECT: Series 2004 Industrial Revenue Bonds for Gerber

In 2003, the Board of Directors approved the issuance of up to \$65 million in industrial revenue bonds for upgrades to Gerber Products' Fort Smith plant. The bonds were issued in 2004.

The bond documents named JPMorgan Chase as the bond trustee. JPMorgan Chase has recently sold its bond trustee business to The Bank of New York Mellon. The city must approve the resignation of JPMorgan Chase and the appointment of The Bank of New York Mellon as the bond trustee. Gerber has been advised of this change, and has not objected to it.

Attached for the board's consideration is a resolution approving the change in trustees for the series 2004 Gerber industrial revenue bonds. The staff recommends approval.

Attachment

cc: David Yates, Gerber Products Company
Gordon Wilbourn, Kutak Rock (bond counsel)

101 Barclay St., 7W
New York, NY 10286
diana.f.torres@bnymellon.com



THE BANK OF NEW YORK MELLON

June 24, 2010

City of Fort Smith
P. O Box 1908
Fort Smith, AR 72903
Attn: Ray Gosack

RE: City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds
(Gerber Products Company Project) Series 2004

Dear Mr. Gosack,

This letter is written as a follow up to the sale by JPMorgan Trust Company, N.A. ("JPM") of its corporate trust business to The Bank of New York Mellon and its affiliates ("BNYM"). In order to formalize the transfer of the above referenced account(s) and related documents, files, records, assets and property from JPM to BNYM, we have prepared the attached Agreement of Resignation, Appointment and Acceptance ("Tri-Party Agreement"). This form has been approved by both of the Banks' legal departments.

Enclosed you will find three (3) sets for execution. Please sign all sets and return them to me. I will then forward them to other parties for their signature and they will return all sets to me. Upon receipt of those, I will forward a completely executed document for your records.

If you have any questions, please contact me. Thank you for your prompt attention and for allowing us to continue to serve your corporate trust needs.

Sincerely,

Diana Torres
Relationship Manager
212-815-6955

Enclosures

AGREEMENT OF RESIGNATION, APPOINTMENT AND ACCEPTANCE

THIS AGREEMENT OF RESIGNATION, APPOINTMENT AND ACCEPTANCE (this "Agreement") dated as of July __, 2010, by and among JPMorgan Chase Bank, National Association, a national banking association organized and existing under the laws of the United States of America (the "Resigning Trustee"), CITY OF FORT SMITH, ARKANSAS, a duly organized and existing city of the first class under the laws of State of Arkansas (the "Issuer") and The Bank of New York Mellon, a banking corporation organized and existing under the laws of the State of New York (the "Successor").

WHEREAS, the Resigning Trustee or its predecessor in interest and the Issuer entered into the Trust Indenture set forth on the attached Schedule 1 (the "Trust Indenture[s]"); terms defined in the Trust Indenture shall have such defined meanings herein unless otherwise provided), pursuant to which the Issuer's Bonds, as set forth on the attached Schedule 1, (the "Bonds") were issued and the Resigning Trustee has been acting in the capacities assigned to it by the Trust Indenture (all such applicable roles being hereinafter included in the term the "Trustee");

WHEREAS, the Purchase and Assumption Agreement, dated as of April 7, 2006, as the same may be amended from time to time (the "Purchase Agreement"; terms defined in the Purchase Agreement shall have such defined meanings herein unless otherwise provided), by and between The Bank of New York Company, Inc. and JPMorgan Chase & Co., provides for the sale of the Resigning Trustee's Corporate Trust Business including the Trust Indenture, to the Successor on or after the Closing Date specified under the Purchase Agreement (the "Closing Date");

WHEREAS, pursuant to the Trust Indenture[s], the Resigning Trustee desires to resign as the Trustee, the Issuer desires to appoint the Successor as Trustee and the Successor desires to accept appointment as Trustee.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I Succession

Section 1.01. Resignation of Resigning Trustee. The Resigning Trustee resigns as the Trustee as of the close of business on the date of this Agreement (the "Effective Date"). The Issuer accepts such resignation and waives any required notice thereof.

Section 1.02. Appointment of Successor. The Issuer appoints the Successor to serve as Trustee, with all the authority, rights, powers and immunities vested in, and all duties and obligations binding on, the Trustee, on the Effective Date. In accordance with the provisions of the Trust Indenture[s], all rights, powers, duties and immunities of the Trustee, shall be vested in and undertaken by the Successor.

Section 1.03. Acceptance of Appointment; Notice to Bondholders. The Successor accepts its appointment as Trustee by the Issuer with all the authority, rights, powers and immunities vested in the Trustee and agrees to serve as Trustee and to perform the duties and obligations of the Trustee, on the Effective Date. The Successor agrees to notify the registered holders of the Bonds of the resignation of the Resigning Trustee and its appointment as Trustee to the extent, if any, and in the manner, if any, required by the Trust Indenture[s].

Section 1.04. Assignment of Powers and Property; Delivery of Documents. The Resigning Trustee, as provided in Section 2.1 of the Purchase Agreement, hereby confirms and assigns to the Successor, in trust under the Trust Indenture[s], all property, rights, powers, duties, trusts, immunities and obligations of the Resigning Trustee as Trustee. The Resigning Trustee confirms that it has transferred to the Successor (a) all moneys, securities and other assets held under the Trust Indenture[s], (b) all documents relating to the trust

created by the Trust Indenture[s] and (c) any other information in respect of the Bonds required under the Purchase Agreement.

Section 1.05. Further Assurances. The Resigning Trustee agrees, upon reasonable request of the Successor, to execute, acknowledge and deliver such further instruments of transfer and further assurances and to do such other things as may reasonably be required for more fully and certainly vesting and confirming in Successor all the property, rights, powers, duties, trusts, immunities and obligations of the Resigning Trustee as Trustee.

ARTICLE II Representations and Warranties

Section 2.01. Representations and Warranties of the Issuer. The Issuer hereby represents and warrants to the Successor as follows:

- (a) the Trust Indenture[s] and the Bonds were validly and lawfully executed and delivered or issued by the Issuer and constitute obligations of the Issuer enforceable as provided therein by the Successor, subject to laws affecting creditors' rights and equitable principles;
- (b) the Issuer has performed or fulfilled each covenant, agreement and condition on its part to be performed or fulfilled under the Trust Indenture[s] on or prior to the date hereof; and
- (c) to the best knowledge of the Issuer, no event of default under the Trust Indenture[s] has occurred and is continuing.

Section 2.02. Representations and Warranties of Resigning Trustee. Resigning Trustee hereby represents and warrants to Successor as follows:

- (a) resigning Trustee is a national banking association, and is duly organized and existing under the laws of the United States of America;
- (b) from the date of the Purchase Agreement until October 1, 2006, the Trust Indenture has not been amended or supplemented;
- (c) from the date of the Purchase Agreement until October 1, 2006, Resigning Trustee has received no notice of any event of default under the terms of the Trust Indenture[s]; and
- (d) to the best knowledge of the Resigning Trustee, there is no suit, action, claim or proceeding pending or threatened against the Resigning Trustee related to the Bonds, the Trust Indenture[s], or Resigning Trustee's administration of the trusts created under the Trust Indenture[s].

Section 2.03. Representations of Successor. The Successor hereby represents and warrants to Resigning Trustee and the Issuer as follows:

- (a) The Successor is a banking corporation, and is duly organized and existing under the laws of the State of New York; and
- (b) The Successor is qualified and eligible to serve as Trustee under the Indenture[s].

ARTICLE III Miscellaneous

Section 3.01. Applicable Law. This Agreement shall be construed under the laws of the State of New York without application of its conflict of laws provisions.

Section 3.02. Counterparts. This Agreement may be executed in a number of counterparts, each of which shall constitute an original, but such counterparts shall together constitute but one and the same instrument.

Section 3.03. Preservation of Rights. Except as expressly provided herein, nothing contained in this Agreement shall in any way affect the obligations or rights of the Issuer, the Resigning Trustee, the Successor or any holder of the Bonds under the Trust Indenture[s]. As between the Resigning Trustee and the Successor, nothing in this Agreement, express or implied, is intended or shall be construed to modify, expand or limit in any way the rights or obligations of the parties under, and the terms of, the Purchase Agreement.

Section 3.04. Severability. In the event any provisions of this Agreement shall be held invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 3.05. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Resigning Trustee, the Successor and the Issuer and their respective successors and assigns.

Section 3.06. Amendments. This Agreement shall be amended only in a writing signed by the parties hereto.

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have executed this Agreement by their duly authorized corporate officers as of the date first above written.

CITY OF FORT SMITH, ARKANSAS

By: _____
Title:

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION

By: _____
Title:

THE BANK OF NEW YORK MELLON

By: _____
Title:

SCHEDULE 1

- 1. Trust Indenture between City of Fort Smith, Arkansas (Issuer) and JPMorgan Chase Bank, N.A. (Trustee) relating to City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds (Gerber Products Company Project) Series 2004 dated as of November 1, 2004**

- 2. City of Fort Smith
PO Box 1908
Fort Smith, AR 72903
Attention: Mayor**

8B

RESOLUTION NO. _____

**A RESOLUTION ACCEPTING BIDS FOR THE PURCHASE OF A
FOUR-WHEEL DRIVE LOADER BACKHOE**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY
FORT SMITH, ARKANSAS, THAT:

The bid, as indicated by enclosure on the attached Bid Tabulation
5303-SF-BA for the purchase of a four-wheel drive loader backhoe for \$58,141.24
from Warrior of Arkansas, is accepted.

This Resolution adopted this _____ day of July, 2010.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Approved as to form:

JSC

- No Publication Required
- Publish _____ Times

Interoffice Memorandum

TO: Dennis Kelly, City Administrator
FROM: Alie Bahsoon, Purchasing Manager *AB*
SUBJECT: Loader Backhoe Bid Tabulation
DATE: July 9, 2010
BID TAB: 5303-SF-BA



You will find attached the bid tabulation for a loader backhoe for use by the City of Fort Street Department ("Street Drainage", Program 5303).

Funding for this backhoe is available and has been appropriated for in the 2010 Budget out of the "Reserve for Street Equipment-Sinking Fund Account" in the amount of \$85,000.

I recommend that the bid noted by enclosure on the attached tabulations, be accepted.

Please let me know should you have any questions.

Memo

To: Alie Bahsoon, Purchasing Manager
From: Bob Wright, Director of Streets and Traffic Control 
Date: July 15, 2010
Re: Backhoe Information

You will find attached the bid tabulation for a loader backhoe for use by the City of Fort Street Department (Street Drainage, Program 5303).

This backhoe is a replacement of a 1999 Caterpillar 416C (Asset #333) with over 5,600 hours that is being traded in for \$17,000. Our existing backhoe is old and has well met its useful life of 11 years. The operating parts are worn out, the hydraulic system is weak, the extension is in need of major repairs and the boom and bucket are loose. This piece of equipment is also causing some safety concerns.

The department currently operates with three (3) backhoes. The backhoe (with jaw bucket) to be replaced is used to pick up debris in public right-of-way after storms and replace drainage inlets.

The lowest bid, Alma Tractor, does not include a bucket (an oversight by the sales associate) and does not have limited slip traction control which is a vital component of our operations. Since the backhoe and jaw bucket is used for laying pipe, digging ditches, and for debris removal, the limited slip differential helps improve traction for all types of terrain and working conditions.

I recommend that we accept the second lowest bid from Warrior of Arkansas.

Please let me know should you have any questions.

**Tbulation of Bids - City of Fort Smith
 our-Wheel Drive, Backhoe Loader**

Bid Tab #5303-SF-BA

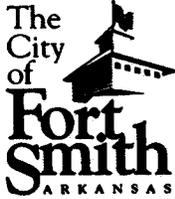
Vendor	Cost (Tractor & Cutter)	Trade-In	Total Cost (New less Trade-in)	Delivery Terms	Make & Model
Alma Tractor & Equip. Alma, AR	\$65,898.68	\$14,000.00)	\$51,898.68 *	7 days	2010 New Holland B95 BTC
Warrior of Arkansas Fort Smith, AR	\$75,141.24	\$17,000.00)	\$58,141.24 ✓	45 days	2010 John Deere 310SJ
Hugg & Hall Fort Smith, AR	\$86,138.00	\$16,000.00)	\$70,138.00	90 days	2010 Volvo BL70
Riggs CAT Fort Smith, AR	\$76,972.00	\$16,500.00)	\$60,472.00	150 days	2010 Caterpillar 420E

Bids Advertised: 06/15/10

Bids Opened: 06/30/10

✓ Awarded Bid

* Does not meet bid specifications (did not include buet; no limited slip traction control)



CITY OF FORT SMITH

Purchasing Department
P.O. Box 1908
623 Garrison Avenue, Suite 522
Fort Smith, AR 72902-1908

Bid No. 5303SF-BA

INVITATION TO BID

Closing Date:
Wed., June 30, 2010 @ 2:00 p.m.

Subject: 4 (four) Wheel Drive Backhoe Loader

Company _____	Name _____ <small>[PRINT OR TYPE]</small>
Federal Tax I.D. No. _____	Signature* _____
Street Address _____	Title _____
State _____ Zip Code _____	<i>*Authorized Signature: The signer declares under penalty of</i>
Tel. No. _____ Fax No. _____	<i>perjury that she/he is authorized to sign this document and bind</i>
E-Mail _____	<i>the company or organization to the terms of this agreement.</i>

SUBMITTED BIDS MUST HAVE AN ORIGINAL SIGNATURE.

FOR CONSIDERATION AS A RESPONSIVE BID, THE FOLLOWING IS REQUIRED:

1. Bid must be submitted on official City bid forms (this bid document).
2. All information on this Invitation to Bid cover page must be completed.
3. This cover page must be signed with an original signature.
4. Bid must be submitted on or before the exact closing date and time. Bids received after the exact closing date and time will NOT be opened nor considered.

For Further Information Concerning This Bid, Please Contact:

ALIE BAHSOON, Purchasing Manager

Phone: (479) 784-2267

Fax: (479) 784-2484

Email: abahsoon@FortSmithAR.gov

It is the intention of the City of Fort Smith, Arkansas to solicit bids for **One (1) Four Wheel Drive Loader Backhoe** per the enclosed specifications, suitable for use by the City of Fort Smith Street Department ("City"). The proposed shall be provided in compliance with the minimum equipment specifications incorporated here-in. The quoted price shall include all unit accessories, transportation, dealer preparation costs and manufacturer's standard warranty. The complete unit shall comply with all applicable Federal and State of Arkansas laws and guidelines. The bidder shall be required to complete the equipment specification sheet(s) included with the bid and submit same with their bid proposal. To complete this bid packet, the bidder is instructed to insert an "X" if the unit does or does not meet the minimum requirements. All additions, exceptions, or variations to the specifications shall be noted in writing on a separate sheet. The proposed manufacturer and model number must also be furnished. Detailed specifications of the loader backhoe offered must accompany the bid at the time of opening. Any and all standard equipment, supplies, parts and/or attachments not specifically mentioned but necessary to furnish a complete unit shall be included and installed by the successful bidder. Where any major unit other than specified by trade name is proposed to be furnished, the bidder must furnish specification comparisons of such units with that called for.

Please note that any manufacturer's name, trade name, brand name, or catalog number used in these specifications are for the purpose of describing and establishing general quality levels. Such references are not intended to be restrictive. The equipment shall be a current standard production, 4 wheel drive loader backhoe, equivalent to a John Deere 310SJ Series, Case 580 SM, a New Holland B95B LR, a Caterpillar 420E, **or an approved equal** which meets or exceeds the quality of the specifications listed and approved by the City. The unit shall be ready for immediate use and delivered within 30 days or less (unless noted otherwise) to the Street Department located at 3900 Kelley Hwy, Fort Smith, Arkansas. **Any questions regarding these specifications shall be directed to Mr. Bob Wright, Director, at (479) 784-2361 or to Alie Bahsoon, Purchasing Manager, at (479) 784-2267.**

Though not anticipated, in the event that an addendum to this solicitation is necessary, it will be posted no later than 5 (five) days prior to the bid opening date on the City of Fort Smith website (www.fsark.com), under the Purchasing Department found under the "*Department and Services*" heading. It shall be the bidder's responsibility to check the website and to ensure that the bidder has a complete and up-to-date package.

NOTE: Do not add any sales tax to this bid. Section GR-34 (E), of the Arkansas Sales & Use Tax Regulations exempts the City of Fort Smith from paying taxes on such units. (see also Arkansas Code 26-52-410 (a))

The City of Fort Smith wishes to trade-in a 1999 Caterpillar 416C (Asset #333) 4x4 backhoe with bucket with approximately 5,700 hours. The trade-in is available for inspection at the Fort Smith Street Department. You may contact Bob Wright for assistance to inspect the backhoe at (479) 784-2361. The cost of the backhoe should not include the cost for trade-in. The cost of

the trade-in shall be listed separately and be independent of the cost of the new backhoe. Should the City accept the trade-in value proposed by the bidder, the trade-in value will be subtracted from the selling price upon purchase.

- 1. COST OF NEW BACKHOE \$ _____
- 2. TRADE IN VALUE (Asset 333) \$ _____
- 3. TOTAL COST FOR BACKHOE
MINUS TRADE IN VALUE. \$ _____

YEAR/MAKE/MODEL BID: _____

Guaranteed delivery date after purchase order is issued shall be _____.
If delivery date is not met, liquidated damages shall be assessed at the rate of \$100.00 per day for each day past the delivery due date. _____ *Initials of bidder.*

- ◆ Bid opening date: Wednesday, June 30, 2010 at 2:00 p.m. at 623 Garrison Avenue, Room 522.
- ◆ Be certain to fill out the attached form: "*Vendor Information*".
- ◆ Though not anticipated, in the event that an addendum to this solicitation is necessary, it will be posted no later than 4 (four) days prior to the bid opening date on the City of Fort Smith website (www.fsark.com), under the Purchasing Department found under the "*Department and Services*" heading. It shall be the bidder's responsibility to check the website and to ensure that the bidder has a complete and up-to-date bid package. Receipt of addendum shall be acknowledged in bid packet.
- ◆ Mail or hand-deliver your bids to the following address:
City of Fort Smith, Purchasing Department
P O Box 1908
623 Garrison Avenue, Room 522
Fort Smith, AR 72902
- ◆ The following information must be on the sealed envelope that you are submitting:
Vendor Name & Address
Title of bid: "4WD Backhoe Loader"
Bid Number: "5303-SF-BA"
Bid opening date: "June 30, 2010"
- ◆ Include a business card of individual filling out the bid or is an approved representative.

PURCHASING DEPARTMENT
CITY OF FORT SMITH
(479) 784-2268
purchasing@fortsmithar.gov

Minimum Specifications

All equipment furnished shall be new without repair, and shall be manufacturer's latest model including all the interior and exterior trim and appointments listed by the manufacturer as standard equipment and must meet all equipment requirements by State and Federal safety and emission regulations. Loader and backhoe shall be bid as one (1) unit.

NOTE: A copy of the bidder's specifications for this loader/backhoe shall be submitted with the bid. The bidder shall attach to this bid, a separate sheet of paper labeled "*Exception(s) to Bid Conditions and Specifications,*" listing any/all variations from or exceptions to the conditions and specifications of this bid. The successful bidder shall have a parts and service store in the Fort Smith area with an ample supply of parts and must be able to provide same day service work, if necessary.

Unit shall be safety inspected, cleaned, lubricated, serviced and ready for immediate duty. Unit is to include permanent type coolant protection to 20 degrees below zero. The City of Fort Smith reserves the right to take up to five (5) working days to make acceptance inspection.

4 WD Backhoe Minimum Specifications			
ENGINE			
Shall be built by manufacturer of Loader/Backhoe; shall be Tier III emission certified, turbo-charged, 4 cylinder, diesel engine; minimum SAE Net Peak Horse Power required is 93 SAE Net Peak Horsepower.			
DIFFERENTIALS			
Automatic, traction control limited slip mechanical front wheel drive/electric, foot actuated, and 100% locking rear.			
HYDRAULIC SYSTEM			
Open Center, Tandem Gear Type Pumps. Minimum 28 gpm for loader and minimum 36 gpm for backhoe; Auxiliary Hydraulics.			

TRANSMISSION			
4 Speed Forward/3 Speed Reverse with POWERSHIFT on steering column, with hydraulic reverser; Clutch Cut-Off equipped.			
BRAKES			
Service Brakes: Power assisted, inboard, hydraulic, multiple wet-disc, self-adjusting, and self-equalizing; sealed and oil cooled; Parking & Emergency Brake shall be independent of service brake; shall be Electrically Spring Applied Hydraulically Released and shall be capable of holding full weight of machine on a slope.			
BACKHOE MINIMUM SPECIFICATIONS			
Backhoe must be equipped with outside extending Extend-a-Hoe. Must be in the 15' digging depth (retracted) class. Backhoe must be five (5) function valve. Backhoe controls to be pilot controls . Backhoe must have boom lock operable from operator's seat and operable at engine idle speed. Swing dampener and hydraulic cushion for transport. Backhoe MUST HAVE Excavator Style (Banana Boom) Boom. Backhoe must be equipped with a 24"/7.5 cubic foot heavy duty backhoe jaw bucket with five (5) teeth (minimum 1000 lbs. front counterweight), equivalent to Wayne Roy bucket with all the necessary hydraulics for proper bucket operation.			
STABILIZERS			
Shall have stabilizers with reversible stabilizer pads for dirt or street applications. Stabilizers shall be operable from operator's seat; Minimum stabilizer operating spread of 11'4"/minimum overall spread of 13'3"			

Loader Minimum Specifications			
Loader with three (3) function hydraulics and single lever control. Must be equipped with return to dig and boom float. Requires a 1.32 cubic yard with auxiliary cutting edge. Loader to have clutch cut-off button on loader lever.			
OTHER			
STEERING: Conforming with ISO5010	Hydraulic power assisted		
Batteries	12 Volt, 950 CCA		
Electrical Volts/Alternator Amps	12 / 90		
Tires - 4 WD Front Rear	12.5/80-18 8-PlyPR 21L-24 8-Ply		
Operating Weight	18,000 lbs.		
Four Wheel Drive: Shall have mechanical front wheel drive limited slip; shall be controlled with on/off electronic switch. Front axle is to be sealed and waterproof.			

CAB:

The unit shall be equipped with the manufacturer's regularly advertised fully enclosed ROPS/FOPS cab. The enclosed cab shall be equipped with, but not limited to the following: 2 doors; front & rear powered windshield wipers with washer(s) for both; factory-installed heat (with defroster) and air conditioning (A/C) system (dealer-installed systems are not acceptable); audible alarms for engine coolant temp, oil change, engine oil pressure; a rotary hand throttle and easy-to-operate foot throttle, horn, L.E.D. turn signals, light controls, and storage/tool box; fabric covered deluxe suspension swivel seat with armrest and lumbar support; tilt steering wheel; ride control; gauges for engine coolant temp, oil temp, fuel, tachometer, hour meter and voltmeter; warning lights for engine air restriction, engine oil pressure, hydraulic filter, and parking brake

LIGHTING:

Shall be equipped with headlights, rear flood lights, rear tail and stop lights; shall have front and rear flashers/turn lights.

SAFETY PLAQUES AND DECALS:

Product safety plaques or decals shall be furnished and shall be affixed at the operator's station and at any hazardous area. The safety plaques or decals shall describe the nature of the hazard, level of hazard seriousness, how to avoid the hazard, and the consequence of human interaction with the hazard. Permanent plaques are preferred to decals. Also, a permanent lubrication plaque shall be furnished and shall be visible from the outside of the machine. The plaque shall notate all lubrication points and recommended periodic oil changes and lubrication intervals.

MANUALS:

Successful bidder shall supply one (1) copy of the current operator's manual and instructions, service and repair manuals, and parts manual shall be provided. Manual(s) containing illustrated parts list(s) and operating and service instructions for the unit and engine shall be delivered with the unit. The manual(s) shall be as detailed as possible outlining all necessary service and operating instructions for unit delivered. Parts list(s) shall cover all components of the unit. Necessary warnings and safety precautions shall be included. Parts list(s) may be furnished in CD-ROM media.

DELIVERY:

Delivery shall be F.O.B. to 3900 Kelley Hwy, Fort Smith, AR within 30 days of purchase. The time of delivery may be considered in determining the successful bidder if greater than 30 days.

TRAINING AND PREVENTIVE MAINTENANCE:

The vendor shall provide the services of a competent factory trained technician thoroughly trained in the use and operation of the unit to the City of Fort Smith a minimum of four hours instruction on safety, operation and preventive maintenance of the unit. These services shall be provided after the unit has been delivered and is ready for operation but prior to payment. The training shall take place on the City's premises at a time and date mutually agreed upon by the vendor and the City.

WARRANTY:

The unit shall be warranted against all defects in material and workmanship for a period of not less than 12 months on entire loader/backhoe or 2000 hours, whichever comes first. If manufacturer's standard warranty period exceeds 12 months, then the standard warranty period shall be in effect. The warranty shall begin on the date the unit is determined to meet specifications and is accepted into the City's fleet. Please submit a detailed statement of the warranty offered with this bid.

OPTIONAL WARRANTY:

Warranty on power train and hydraulics for 60 months or 4,000 hours, whichever comes first. Additional cost of warranty shall be listed separately. ~~Additional warranty for a total of 12-month minimum on entire loader/backhoe; and 60 months or 4,000 hours minimum (whichever occurs first) on engine, power train and hydraulic systems. Additional costs for such warranty shall be listed separately.~~

Vendor Information

COMPANY NAME _____

Please print

CONTACT _____

Please print

E-MAIL ADDRESS _____

Please include a business card of the individual submitting this proposal or is an approved representative of the company bidding.

TITLE _____

ADDRESS _____

CITY _____ **STATE** ____ **ZIP** _____

PHONE _____ **FAX** _____

TAX PAYER I.D. NUMBER _____

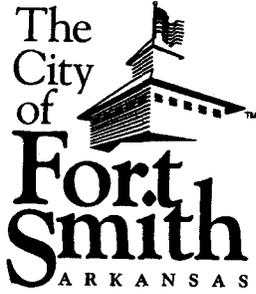
GENERAL NATURE OF BUSINESS

Conditions for Bidding

1. Do not include Federal Excise Tax in bid.
2. State Manufacturer, Brand Name, Model, etc. for each item where applicable.
3. Do not include Federal Excise Tax in bid.
4. State Manufacturer, Brand Name, Model, etc. for each item where applicable.
5. Samples of items, when required, must be furnished free, and, if not called for within 30 days from date of bid opening will be disposed of by City.
6. Bids received after stated date and time will not be considered, nor opened.
7. Guarantees and warranties should be attached as a part of the bid as they may be a consideration in awarding a contract.
8. Delivery and contract completion dates are to be shown as these dates may, where time is of the essence, determine the contract award. The City may nullify a contract award for non-compliance.
9. Signature Required: This bid MUST be signed with the firm name and by an authorized officer, employee, or agent.
10. Deviations from specifications and alternate bids must be clearly shown with complete information. They may or may not be considered.
11. SALES TAX: List sales tax separately, unless noted otherwise. Any bid not showing the amount of sales tax separately will be considered as "TAX INCLUDED IN BID PRICE".
12. Freight and other delivery charges to destination at designated City facility must be included in bid. Charges may not be added after the bid is opened.
13. DISCOUNTS: When applicable, show rate, total amount, and latest day any discount will be allowed after receipt of article and invoice; otherwise City will deduct allowed discount when payment is made.
14. If unit prices and extensions thereof do not coincide, the City will accept the unit price.
15. All prices quoted will remain firm for at least 90 days after date of the bid opening, unless otherwise specified by the City or bidder.
16. In the event of two or more identical low bids, the contract may be awarded arbitrarily or for any reason to any of such bidders or split in any proportion between said two or more bidders at discretion of City. Any ambiguity in any bid as the result of omission, error, lack of clarity or non-compliance by the bidder with specifications, instructions, and all conditions of bidding shall be construed in the light most favorable to the City.
17. "All or None" bid must be considered only when bidder states on bid form. "All or None" bidding is considered an "alternate".
18. All contracts shall produce NEW commodities, fresh stock, latest model and design. Re-conditioned or re-manufactured items will not be accepted.
19. Latest specifications, drawings, sketches or other descriptive literature containing detailed information as to design, construction and operation shall be included.
20. All necessary parts, accessories and tools for satisfactory operations of the units shall be furnished whether or not they specifically mentioned in these specifications. Bidder shall submit a list of tools and equipment they propose to furnish.
21. Any protest of specifications or bidding process must be received in writing by the Purchasing Department at least five (5) days prior to the specified bid opening date.
22. Any protest of bid award must be in writing and received by the Purchasing Department no later than three (3) days after notice of intent to award has been made. If said item requires Board of Directors approval, written protest must be received by the Purchasing Department no later than five (5) days prior to the next Board of Directors meeting at which the recommended bid award will be considered.
23. The City will not be responsible for lost or misplaced bids due to vendor omission of bid item and/or bid opening date information on the outside of the sealed bid envelope. Failure by vendor to note said information on the bid envelope may result in the bid not being considered.

THE CITY RESERVES THE RIGHT TO ACCEPT PART OR ALL OF ANY SPECIFIC BID OR BIDS AND TO ACCEPT ANY BID OR BIDS WITH OR WITHOUT TRADE-IN. THE CITY FURTHER RESERVES THE RIGHT TO REJECT ALL BIDS, OR PART OR ALL OF ANY SPECIFIC BID OR BIDS.

THE CITY OF FORT SMITH IS AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER



CITY OF FORT SMITH
Purchasing Department
P.O. Box 1908
623 Garrison Avenue, Suite 522
Fort Smith, AR 72902-1908

ADDENDUM #1

Attention: All Bidders
Date: June 15, 2010
Subject: Addendum to Bid No. 5303-SF-BA (Loader Backhoe)

Please **note** the following changes made to the above referenced bid specifications:

- Page 5, under the section “**Backhoe Minimum Specifications**”, the backhoe control SHALL be “pilot controls” and NOT “two lever.”
- Page 8, “**Optional Warranty**”, it should read as follows:

“Warranty on power train and hydraulics for 60 months or 4,000 hours, whichever comes first. Additional cost of warranty shall be listed separately.”

Please disregard the following:

~~Additional warranty for a total of 12-month minimum on entire loader/backhoe; and 60 months or 4,000 hours minimum (whichever occurs first) on engine, power train and hydraulic systems. Additional costs for such warranty shall be listed separately.~~

I acknowledge that I have read and understood the clarifications & amendments relating to this Invitation to Bid.

Name of Organization: _____

Please Print

Name of Representative: _____

Sign & Print Name

RESOLUTION NO. _____

A RESOLUTION APPROVING THE DESIGN AND IMPROVEMENTS TO CISTERNA PLAZA

WHEREAS, the River Valley Botanical Gardens has approached the Park Commission regarding the redesign and improvements to Cisterna Plaza; and

WHEREAS, the River Valley Botanical Gardens has agreed to raise the funds needed for the redesign and improvements to Cisterna Plaza; and

WHEREAS, the Parks and Recreation Commission approves of the redesign and improvements to Cisterna Plaza; and

WHEREAS, Cisterna Plaza is a downtown park depicting that Fort Smith is a sister city with Cisterna, Italy and denotes the beauty of Cisterna, Italy and Fort Smith and should therefore be improved to show such.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Fort Smith, Arkansas that:

The City of Fort Smith hereby approves of the redesign and improvements recommended for Cisterna Plaza.

This Resolution passed this _____ day of July, 2010.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved
[Signature]
Asst City Attorney
NPR



Memo:

July 15, 2010

To: Dennis Kelly, City Administrator
From: Mike Alsup, Director of Parks and Recreation
Re: Cisterna Park Improvements

Mike Alsup

The City of Fort Smith, Arkansas and Cisterna, Italy formed a bond as sister cities. It was said that the importance of the union between our cities was "...an affirmation of real peace for all mankind..." Cisterna was the site of a battle in World War II between German forces and the United States Army. "Cisterna selected Fort Smith for a "sister city" because it was the birthplace of General William O. Darby, leader of the Rangers who fought so valiantly to free their city." In 1984 a delegation from Cisterna visited Fort Smith to formalize the plan. In 1985 the Fort Smith Board of Directors approved a resolution declaring Fort Smith sister city to Cisterna. In 1987 a delegation of about twenty-five from Fort Smith visited Cisterna to seal the bond with a personal visit. Cisterna is located thirty-two miles southeast of Rome with a population of about 20,000.

The River Valley Botanical Gardens (RVBG) has organized a proposal for improvements to Cisterna Park and has been working with the Parks Department on the concept. RVBG is a not for profit 501(c) 3 organization whose vision is to see a botanical garden built and operating in Fort Smith as an educational experience. Gardens and green spaces are known to improve quality of life and provide other benefits to people. Improving the quality of our parks and green spaces is important to us now and for our future. The proposed improvements to Cisterna Plaza will enhance the beauty of the east end of our downtown corridor. Quality of life is connected to our green spaces in the urban environment, and improvements like this are known to encourage new business development and retain existing business. The RVBG plans to pursue funding for this project privately requiring no funding from the City. With approval, RVBG plans to begin work when funding is received.

The proposed improvements will make the park more appealing by softening its appearance through reducing the amount of concrete surfaces and improving the appeal of the park by adding color through landscaping. Amenities proposed are park benches and picnic tables, improved lighting, a new clock, trash receptacles, and bike rack. Opening the park visibly to Garrison Avenue, Towson Avenue, and North 10th Street traffic will be inviting to the public and improve security. The estimated cost of the proposed improvements is \$80,000 which RVBG will raise through fund raising efforts. Park staff will oversee construction and installation of the project.

If you have any questions, please call me.

Cisterna Park Improvements

- fountain
- landscape
- existing trees to remain
- turf
- m/bike rack
- bench
- trash can
- new tree
- light

TABLE
 List of Proposed Improvements
 See Color Key for Symbols and
 See 100% Street Plan
 Date: 10/28/27



10 0 10
 Scale in Feet

RESOLUTION NO. _____

8 D

RESOLUTION AUTHORIZING PARTIAL PAYMENT TO THE BURGESS
COMPANY, INC., FOR THE CONSTRUCTION OF MIDLAND
BOULEVARD 30-INCH WATER TRANSMISSION LINE

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT
SMITH, ARKANSAS, that:

Partial payment number seven to The Burgess Company, Inc., in the amount \$581,573.02
for the construction of the Midland Boulevard 30-Inch Water Transmission Line, Project Number
07-04-C1, is hereby approved.

This Resolution adopted this _____ day of July 2010.

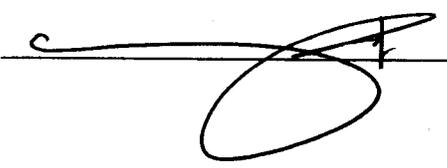
APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



npr

INTER-OFFICE MEMO

TO: Dennis Kelly, City Administrator

DATE: July 8, 2010

FROM: Steve Parke, Director of Utilities

SUBJECT: Midland Boulevard 30-Inch Water Transmission Line
Project Number 07-04-C1

The Burgess Company, Inc., has submitted partial pay request number seven in the amount of \$581,573.02 for work completed on the Midland Boulevard 30-Inch Water Transmission Line. Work is progressing at the scheduled rate. A project summary sheet is attached for your information.

The attached Resolution authorizes payment to Burgess Company, Inc. Should you or members of the Board have any questions or desire additional information, please call.

attachment

pc: Ray Gosack

Project Summary

Project Status: In progress

Project name: Midland Boulevard 30-Inch Water
Transmission Line

Today's Date: July 8, 2010

Project number: **07-04-C1**

Staff contact name: Steve Parke

Project engineer: Atkins Engineering, Inc.

Staff contact phone: 784-2231

Project contractor: The Burgess Company, Inc.

Notice to proceed issued: December 7, 2009

Completion date: October 13, 2010

	Dollar Amount	Contract Time (Days)
Original contract	\$3,138,441.00	330
Change orders: Number One	\$100,989.00	0
Total change orders	\$100,989.00	<u>0</u>
Adjusted contract	<u>\$3,239,430.00</u>	<u>330</u>
Payments to date (as negative):	\$ (1,530,078.37)	47.2%
Amount of this payment (as negative)	\$ (581,573.02)	18.0%
Retainage held	\$161,971.50	
Contract balance remaining	\$1,127,778.61	34.8%
Amount Over (under) as a percentage		3.2%

Final Comments:

8 E

RESOLUTION NO. _____

RESOLUTION AUTHORIZING PARTIAL PAYMENT TO **CROSSLAND
HEAVY CONTRACTORS, INC., FOR CONSTRUCTION OF THE LAKE
FORT SMITH WATER TREATMENT PLANT - CONTRACT 3**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT
SMITH, ARKANSAS, that:

Partial payment number ten to Crossland Heavy Contractors, Inc., in the amount of
\$927,049.44, for construction of the Lake Fort Smith Water Treatment Plant - Contract 3,
Project Number 07-09-C3, is hereby approved.

This Resolution adopted this _____ day of July 2010.

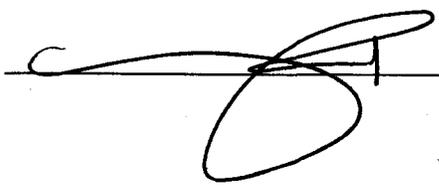
APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



npr

INTER-OFFICE MEMO

TO: Dennis Kelly, City Administrator

Date: July 6, 2010

FROM: Steve Parke, Director of Utilities

SUBJECT: Lake Fort Smith Water Treatment Plant Improvements - Contract 3
Project Number 07-09-C3
Partial Payment to Crossland

Crossland Heavy Contractors, Inc., has submitted partial pay request number ten in the amount of \$927,049.44 for work completed on the Lake Fort Smith Water Treatment Plant Improvements - Contract 3. A project summary sheet is attached for your information. The quality of Crossland's work continues to be very good and they are still on schedule to complete the project by the contract completion date. Major items of work completed during the time period covered by this pay request are as follows:

- Sitework
- Site Piping
- Site Electrical
- Clarification Facility
- Clarification Flow Splitter Structure
- Filter Flow Splitter Structure
- Main Electrical Building
- Backwash Pump Station
- Chemical Building
- Flume Connection

The attached Resolution authorizes payment to Crossland. Should you or members of the Board have any questions or desire additional information, please call.

attachment

pc: Ray Gosack

Project Summary

Project Status: In progress

Project name: Lake Fort Smith Water Treatment Plant
Improvements – Contract 3

Today's Date: July 6, 2010

Project number: **07-09-C3**

Staff contact name: Steve Parke

Project engineer: Burns & McDonnell, Inc.

Staff contact phone: 784-2231

Project contractor: Crossland Heavy Contractors, Inc.

Notice to proceed issued: August 31, 2009

Completion Date: December 27, 2011

	Dollar Amount	Contract Time (Days)
Original contract	\$31,641,000.00	785
Change orders:		
Change Order No. 1	\$22,902.00	14
Change Order No. 2	\$89,078.00	49
Total change orders	\$111,980.00	<u>63</u>
Adjusted contract	<u>\$31,752,980.00</u>	<u>848</u>
Payments to date (as negative):	\$-11,563,171.71	
Amount of this payment (as negative)	\$-927,049.44	
Retainage held	\$1,387,802.35	
Contract balance remaining	\$19,262,758.85	
Amount Over as a percentage	1.00%	

Final Comments:

To date contractor has completed 28.5% of project. (Does not include payment for materials stored)

RESOLUTION NO. _____

8 F

RESOLUTION ACCEPTING THE PROJECT AS COMPLETE AND AUTHORIZING
FINAL PAYMENT TO WILSON BROTHERS CONSTRUCTION COMPANY, INC.,
FOR THE RAMSEY TRIBUTARY BASIN MC05 SEWER IMPROVEMENTS

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT
SMITH, ARKANSAS, that:

SECTION 1: The construction of the Ramsey Tributary Basin MC05 Sewer
Improvements, Project Number 09-04-C2, is accepted as complete.

SECTION 2: Final payment to Wilson Brothers Construction Company, Inc., in the
amount of \$58,219.25, is hereby approved.

This Resolution adopted this _____ day of July 2010.

APPROVED:

Mayor

ATTEST

City Clerk

APPROVED AS TO FORM:



npr

INTER-OFFICE MEMO

TO: Dennis Kelly, City Administrator

DATE: July 12, 2010

FROM: Steve Parke, Director of Utilities

SUBJECT: Ramsey Tributary Basin MC05 Sewer Improvements
Project Number 09-04-C2

This project consisted of constructing 1,900 feet of 12 and 15-inch sanitary sewer lines along the south property line of the School Service Center. This work was needed to prevent wet weather sanitary sewer overflows at the service center. A location map showing the improvements is attached.

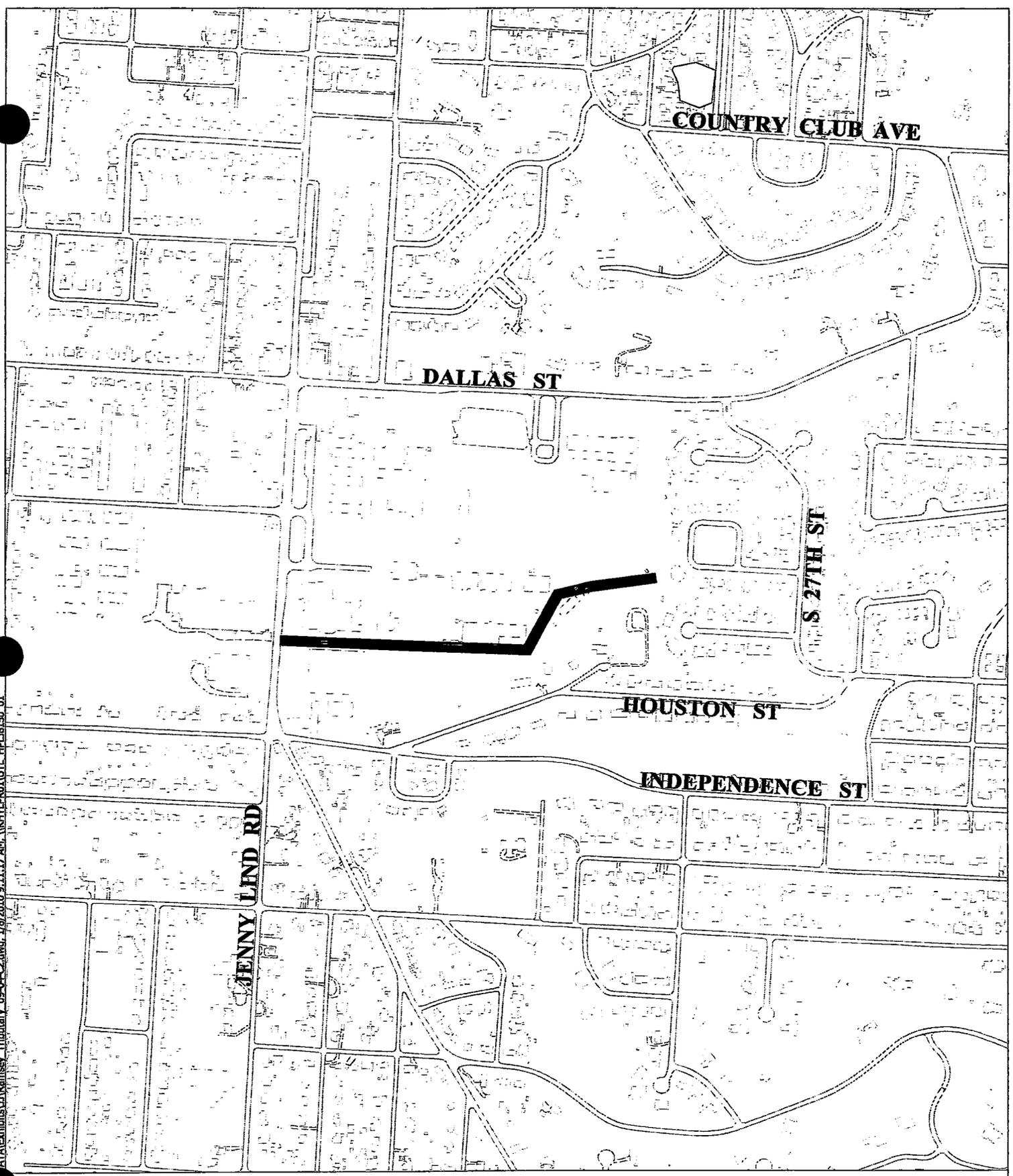
Wilson Brothers Construction Company, Inc., has completed the project, and attached is a Resolution accepting the project as complete and authorizing final payment in the amount of \$58,219.25. It is my recommendation that the project be accepted as complete.

Should you or members of the Board have any questions or need additional information, please call me.

attachment

pc: Ray Gosack

O:\UtilityDept\General\ATA\Exhibits\1\Ramsey_Tributary_09-04-C2.dwg_16/2010.9:11:17 AM, WERRY, PROJ\UTL_HPI\09150_01



**RAMSEY TRIBUTARY
BASIN MC05 SEWER IMPROVEMENTS
PROJECT 09-04-C2
PROJECT VICINITY MAP**



Project Summary

Project Status: Complete

Project name: Ramsey Tributary Basin MC05 Sewer Improvements

Today's Date: July 12, 2010

Project number: **09-04-C2**

Staff contact name: Steve Parke

Project engineer: Morrison-Shipleigh Engineers, Inc.

Staff contact phone: 784-2231

Project contractor: Wilson Brothers Construction Company, Inc.

Notice to proceed issued: March 15, 2010

Completion date: June 13, 2010

	Dollar Amount	Contract Time (Days)
Original contract	\$463,955.50	90
Change orders: Number One	\$0.00	0
Total change orders	\$0.00	<u>0</u>
Adjusted contract	<u>\$463,955.50</u>	<u>90</u>
Payments to date (as negative):	\$-336,964.16	72.6%
Amount of this payment (as negative)	\$-58,219.25	12.5%
Retainage held	\$0.00	
Contract balance remaining	\$68,772.09	14.8%
Amount Over (under) as a percentage	-14.8%	

Final Comments:

8 G

RESOLUTION NO. _____

RESOLUTION ACCEPTING THE BID OF AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH MID AMERICA ENVIRONMENTAL FOR LEE CREEK WATER TREATMENT PLANT RESIDUALS LAGOON CLEANING

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

SECTION 1: The bid of Mid America Environmental for the performance of the Lee Creek Water Treatment Plant Residuals Lagoon Cleaning, Project Number 10-12-C1, is hereby accepted.

SECTION 2: The Mayor is hereby authorized to execute a contract with Mid America Environmental for an amount of \$189,000.00, for performing said services.

This Resolution adopted this _____ day of July 2010.

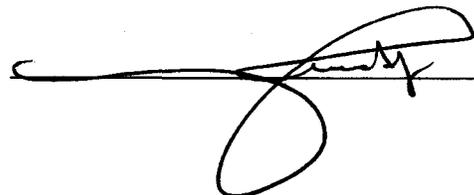
APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

 _____ npr

INTER-OFFICE MEMO

TO: Dennis Kelly, City Administrator

DATE: July 12, 2010

FROM: Steve Parke, Director of Utilities

SUBJECT: Lee Creek Water Treatment Plant Residuals Lagoon Cleaning
Project Number 10-12-C1

The Lee Creek water treatment plant has two lagoons with accumulated treatment residuals which needs to be removed. There is approximately 13,000 cubic yards of material to be removed from the lagoons. This project includes the removal and disposal of the material.

The lowest responsive bid was submitted by Mid America Environmental in the amount of \$189,000.00. Funds are available within the departments budget to pay for these services.

Should you or members of the Board have any questions or desire additional information, please call.

attachment

pc: Ray Gosack

Tabulation of Bids Received

Page 1 of 1

Project Name

Lee Creek Water Treatment Plant Residuals Lagoon Cleaning
Project No. 10-12-C1

Bid Opening

July 6, 2010
2:00 P.M.

Bids Received

Mid America Environmental Ozark, AR	\$ <u>189,000.00</u>
Terra Renewal Russellville, AR	\$ <u>305,850.00</u>

RESOLUTION NO. _____

8 H

RESOLUTION AUTHORIZING CHANGE ORDER NUMBER ONE WITH
KRAUS CONSTRUCTION COMPANY, LLC, FOR CONSTRUCTION OF THE
RYE HILL SEWER OUTFALL PHASE TWO

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT
SMITH, ARKANSAS, that:

Change Order Number One, Project No. 08-08-C2, with Kraus Construction Company,
LLC, in the amount of \$31,430.50, adjusting the contract amount to \$1,440,611.50 and adding
120 calendar days to the contract time, is hereby approved.

This Resolution adopted this _____ day of July 2010.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

 npr

INTER-OFFICE MEMO

TO: Dennis Kelly, City Administrator

DATE: July 13, 2010

FROM: Steve Parke, Director of Utilities

SUBJECT: Rye Hill Sewer Outfall Phase 2
Project Number 08-08-C2
Change Order Number One

The Rye Hill Sewer Outfall Phase 2 project is the second of four phases to provide sewer service into the southern growth areas of the city. This phase, located on Chaffee Crossing, also fulfilled the city's commitment to support economic development by providing sewer service to the future Pradco and Mitsubishi sites. Exhibits which show the four phases of the Rye Hill sewer outfall project and specifically phase 2 are attached.

Rye Hill Phase 2 was awarded to Kraus Construction Company in an amount of \$1,409,181.00 and the notice-to-proceed issued on August 31, 2009. The contractor diligently pursued the work but experienced delays due to rain and snow. During September and October 2009 we had 17.5 inches of rainfall, 10 inches above normal, and during December through March we had 18.5 inches of snow, which was 2.6 inches above normal. Kraus Construction tried to use two crews laying pipe to keep the project on schedule but because of wet ground conditions at times could only use one crew in the dryer of the two areas. The difficult working conditions caused by the above normal rain and snow support the need to add an additional 90 days to the contract time. Additionally, an adjustment to the contract's unit price quantities associated with reconstructing the crossing of Custer Road and adjustment of the water line crossing at Little Vache Grasse Creek resulted in an increase to the contract amount of \$8,670.50. This time extension and price adjustments are included as part of Change Order Number One for this project.

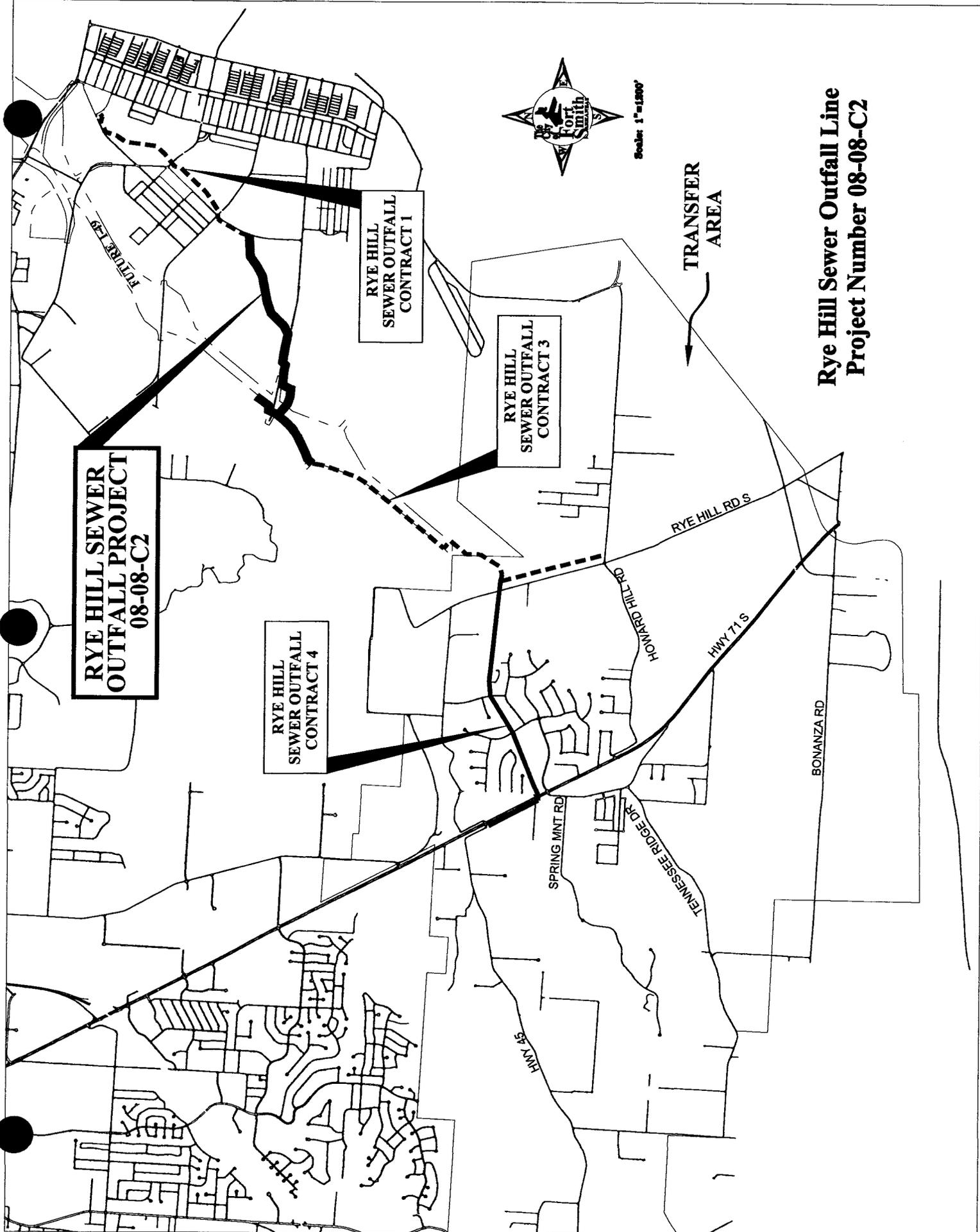
Staff has also determined from the review of the final site boundaries for the Mitsubishi development that they are adjusted from those used to plan the sewer extension to serve that area and made as part of Rye Hill Phase 2. The earlier sewer line extension should now be lengthened by 355 feet so that it may reach an additional industrial development site of approximately 30 acres. Kraus Construction has agreed to perform that work using the unit price quantities bid as part of the Rye Hill Phase 2 project. That work will add \$22,760.00 to the contract amount and require an additional 30-day time extension. Staff recommends that the sewer line extension be made as part of the Rye Hill Phase 2 construction and included as part of Change Order Number One.

Change Order Number One with Kraus Construction Company, in the amount of \$31,430.50, adjusting the contract amount to \$1,440,611.50 and adding 120 calendar days to the contract time is being recommended by staff. Funding for this work is available within the project budget established for the Rye Hill sewer outfall line made part of the 2008 series revenue bonds. A Resolution authorizing those changes and adjusting the final contract amount from \$1,409,181.00 to \$1,440,611.50 is attached.

Should you or members of the Board have any questions or desire additional information, please let me know.

attachment

pc: Ray Gosack



**RYE HILL SEWER
OUTFALL PROJECT
08-08-C2**

**RYE HILL
SEWER OUTFALL
CONTRACT 4**

**RYE HILL
SEWER OUTFALL
CONTRACT 1**

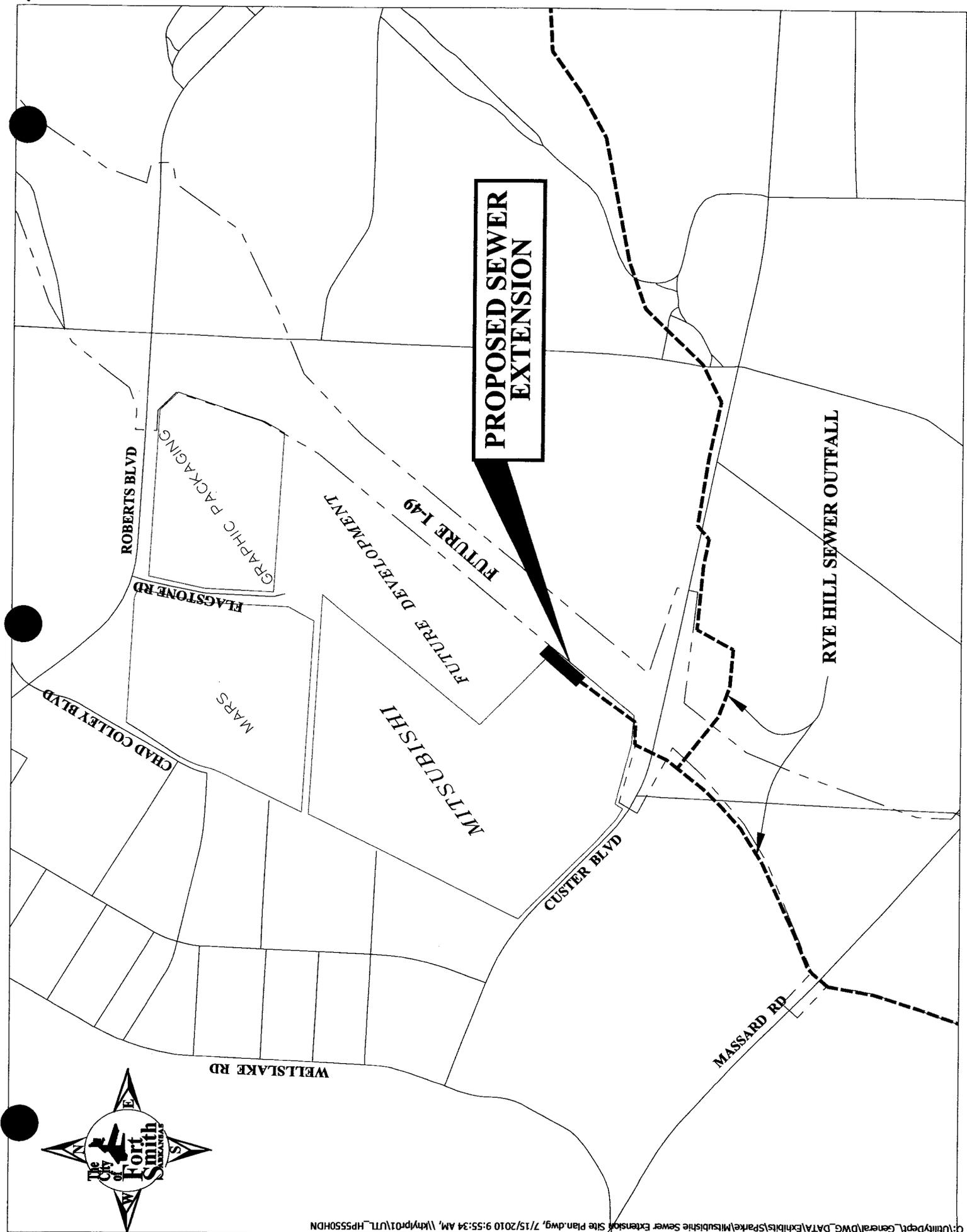
**RYE HILL
SEWER OUTFALL
CONTRACT 3**

**TRANSFER
AREA**



Scale: 1"=100'

**Rye Hill Sewer Outfall Line
Project Number 08-08-C2**



RESOLUTION NO. _____

**RESOLUTION AUTHORIZING ACQUISITION OF REAL PROPERTY INTERESTS
FOR THE RYE HILL SEWER OUTFALL PHASE IV IMPROVEMENTS**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH,
ARKANSAS, that:

The City Administrator and the City Attorney are hereby authorized to acquire by the exercise of the City's power of eminent domain, if necessary, a sanitary sewer easement on the following property for the Rye Hill Sewer Outfall Phase IV Improvements, Project Number 08-08-C4:

<u>Tract No.</u>	<u>Property Owner</u>	<u>Appraised Value</u>
26	Johnson Real Estate, LLC	\$ 9,582.10

Until acquisition by the City, authorization set forth in Property Acquisition Policy Resolution R-40-05 on May 17, 2005 are continued in effect in the event the property owner desires to agree to acquisition at the appraised value set forth in the resolution.

This Resolution adopted this _____ day of July 2010.

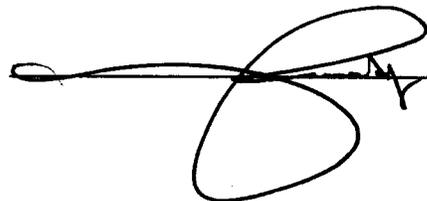
APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

 _____ npr

INTER-OFFICE MEMO

TO: Dennis Kelly, City Administrator

DATE: July 16, 2010

FROM: Steve Parke, Director of Utilities

SUBJECT: Rye Hill Sewer Outfall Phase 4
Project Number 08-08-C4

Under a companion Resolution staff is recommending that the Board award the construction contract for the Rye Hill Sewer Outfall Phase 4. The project requires the acquisition of sewer easements on 24 properties. Twenty-three of these easements have been acquired at their appraised value. The owners of property for the one remaining easement needed, Johnson Real Estate, LLC, have not accepted the city's offer based upon an appraised value. An exhibit which shows the required easement area is attached. In order for the construction of the project to proceed on schedule, it is necessary that the city initiate an eminent domain action to acquire the easement from the following property owner:

<u>Tract Number</u>	<u>Property Owner</u>	<u>Appraised Value</u>
26	Johnson Real Estate, LLC	\$9,582.10

Staff recommends that the attached Resolution authorizing the city administrator and city attorney to proceed with eminent domain to acquire the needed easement be submitted to the Board for their approval at its next scheduled meeting. As always, representatives of the city will continue to negotiate with the property owner in an effort to reach a mutually agreeable settlement.

Should you or the Board have any questions or desire additional information, please let me know.

attachment

pc: Ray Gosack

Line Table For Tract 26		
LINE	LENGTH	BEARING
L1	171.59'	S58°56'43"W
L2	23.42'	N33°40'06"E
L3	133.95'	N58°56'44"E
L4	19.25'	S89°45'54"E



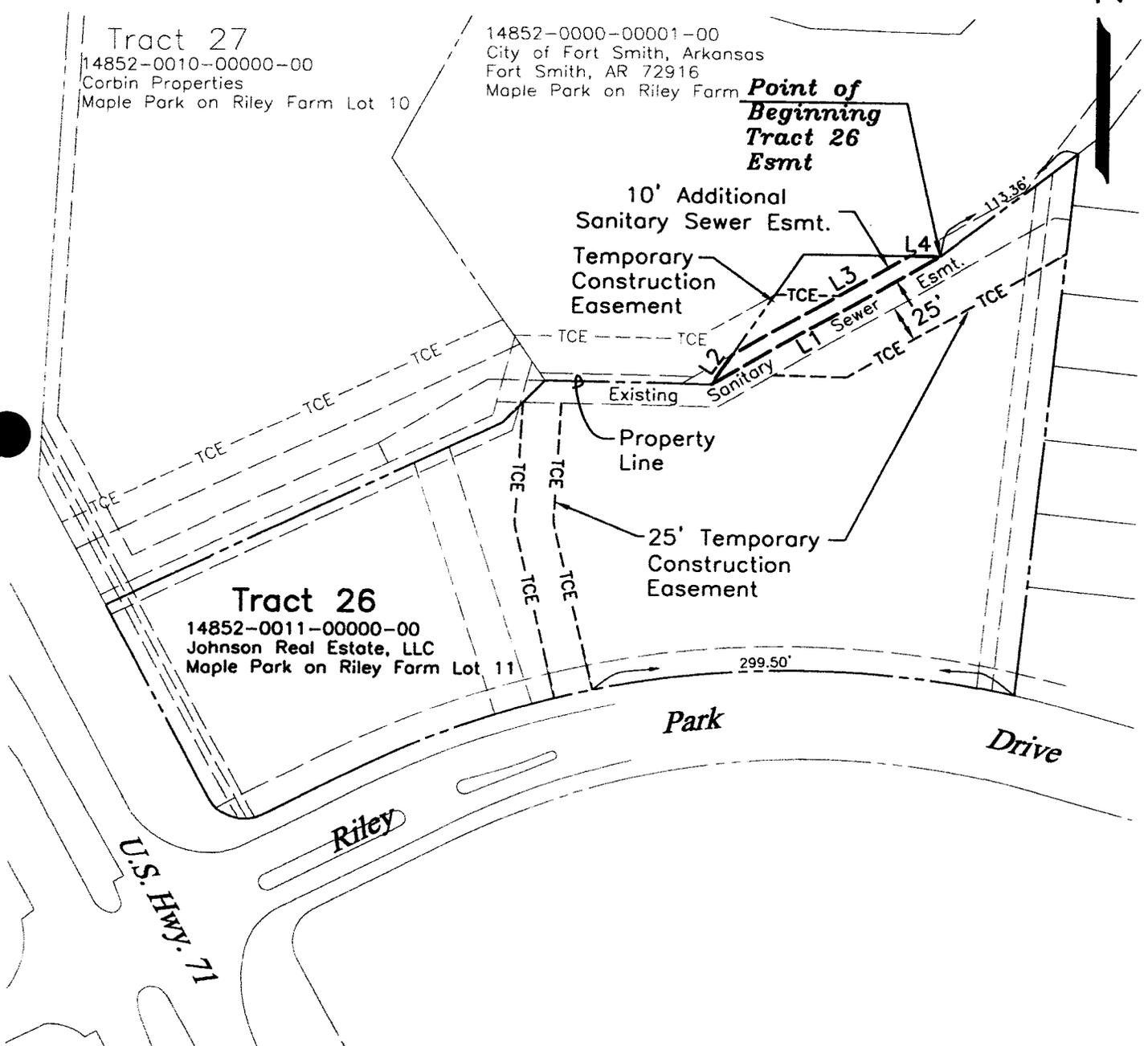
Tract 27
 14852-0010-00000-00
 Corbin Properties
 Maple Park on Riley Farm Lot 10

14852-0000-00001-00
 City of Fort Smith, Arkansas
 Fort Smith, AR 72916
 Maple Park on Riley Farm

Point of Beginning Tract 26 Esmt

10' Additional Sanitary Sewer Esmt.
 Temporary Construction Easement

Tract 26
 14852-0011-00000-00
 Johnson Real Estate, LLC
 Maple Park on Riley Farm Lot 11



TRACT 26

Scale 1"=100'

RYE HILL SEWER OUTFALL PHASE IV

Revised June 29, 2010

8 J

RESOLUTION NO. _____

**RESOLUTION ACCEPTING THE BID OF AND AUTHORIZING THE MAYOR
TO EXECUTE A CONTRACT WITH WILSON BROTHERS CONSTRUCTION
COMPANY, INC., FOR THE RYE HILL SEWER OUTFALL PHASE IV**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT
SMITH, ARKANSAS, that:

SECTION 1: The bid of Wilson Brothers Construction Company, Inc., for the
construction of the Rye Hill Sewer Outfall Phase IV, Project 08-08-C4, is hereby accepted.

SECTION 2: The Mayor is hereby authorized to execute a contract with Wilson Brothers
Construction Company, Inc., for an amount of 1,174,815.00., for performing said construction.

This Resolution adopted this ____ day of July 2010.

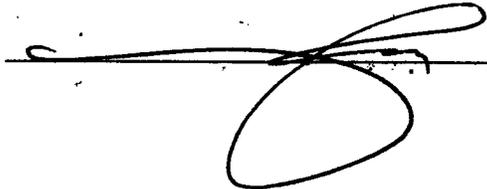
APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



npr

INTER-OFFICE MEMO

TO: Dennis Kelly, City Administrator

DATE: July 12, 2010

FROM: Steve Parke, Director of Utilities

SUBJECT: Rye Hill Sewer Outfall Phase IV
Project Number 08-08-C4

Bids for construction of the Rye Hill Sewer Outfall Phase IV were received on July 13, 2010 with the low bid submitted by Wilson Brothers Construction Company, Inc., for an amount of \$1,174,815.00. The other bidders and their bid amounts are shown on the attached bid tabulation sheet. Funding for the construction of the Rye Hill sewer outfall line is identified as part of the 2008 Water and Sewer Revenue Bonds. The attached Resolution authorizes the award of the construction contract to Wilson Brothers Construction Company, Inc., in the amount of their bid.

Should you or members of the Board have any questions or desire additional information, please call.

attachment

pc: Ray Gosack

Tabulation of Bids Received

Page 1 of 1

Project Name

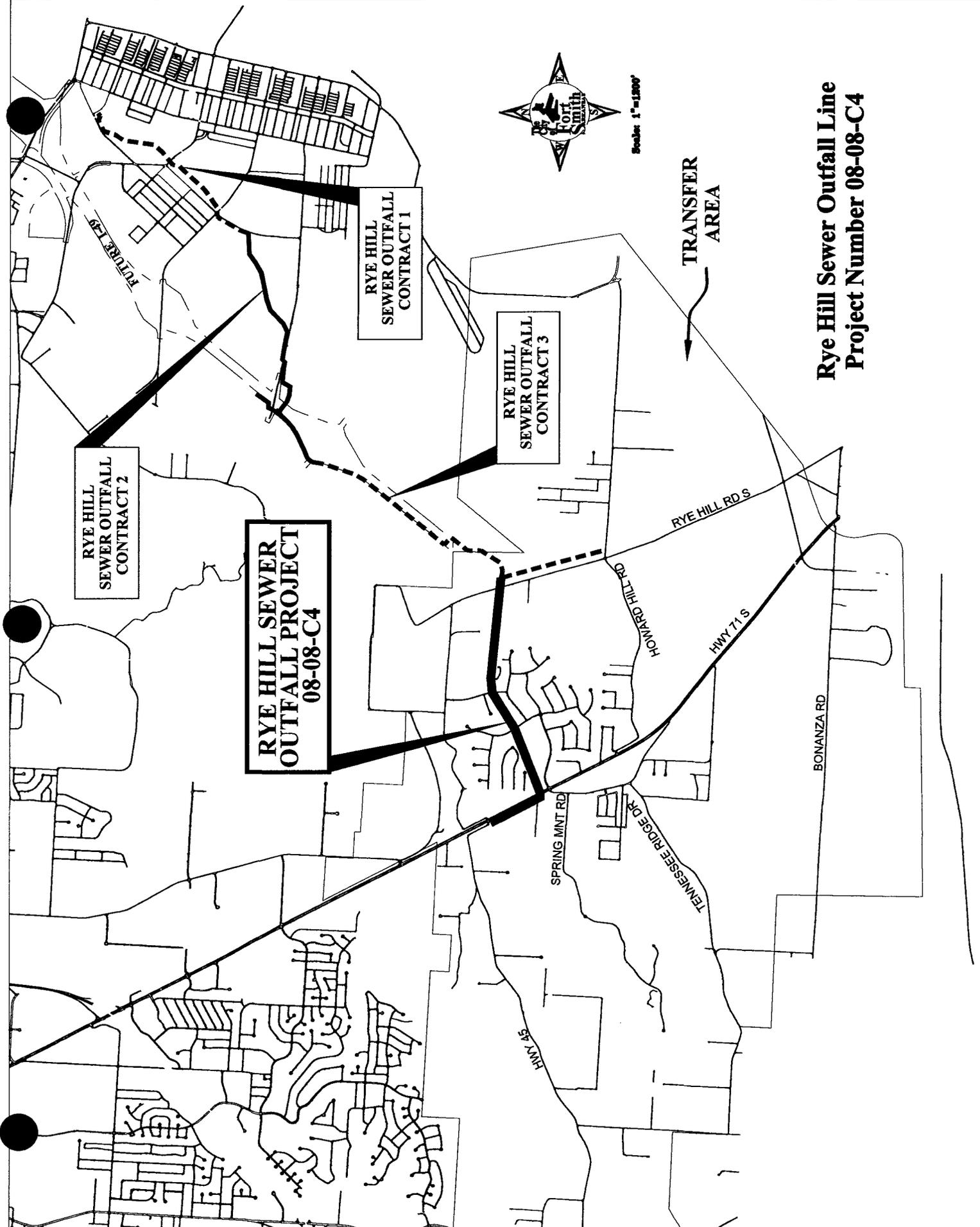
Rye Hill Sewer Outfall Phase IV
Project No. 08-08-C4

Bid Opening

July 13, 2010
2:00 P.M.

Bids Received

Wilson Brothers Construction Alma, AR	\$ <u>1,174,815.00</u>
Goodwin & Goodwin Fort Smith, AR	\$ <u>1,617,377.00</u>
Kraus Construction Fort Smith, AR	\$ <u>1,788,455.00</u>
Crawford Construction Fort Smith, AR	\$ <u>1,898,074.00</u>
S & J Construction Jacksonville, AR	\$ <u>2,496,064.65</u>



RYE HILL
SEWER OUTFALL
CONTRACT 2

RYE HILL SEWER
OUTFALL PROJECT
08-08-C4

RYE HILL
SEWER OUTFALL
CONTRACT 1

RYE HILL
SEWER OUTFALL
CONTRACT 3

TRANSFER
AREA



Scale: 1"=1200'

**Rye Hill Sewer Outfall Line
Project Number 08-08-C4**

8 K

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AMENDMENT NUMBER ONE TO THE AGREEMENT FOR ENGINEERING SERVICES WITH MICKLE WAGNER COLEMAN, INC., FOR THE RYE HILL SEWER OUTFALL LINE IMPROVEMENTS

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

SECTION 1: Amendment Number One to the Agreement for Engineering Services with Mickle Wagner Coleman, Inc., for the Rye Hill Sewer Outfall Line Improvements, is hereby approved.

SECTION 2: The Mayor is hereby authorized to execute Amendment Number One, in the amount of \$145,000.00.

This Resolution adopted this _____ day of July 2010.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

npr

INTER-OFFICE MEMO

TO: Dennis Kelly, City Administrator

DATE: July 14, 2010

FROM: Steve Parke, Director of Utilities

SUBJECT: Rye Hill Sewer Outfall Improvements
Engineering Authorization Number Five

On July 15, 2008, the Board authorized an agreement with Mickle Wagner Coleman, Inc., in the amount of \$685,020 to provide engineering design and inspection services for the Rye Hill sewer outfall line. The project identified at that time divided construction into three phases which, when completed, would extend gravity sewer lines from the eastern Fort Smith city limits on Chaffee Crossing, southwesterly to a point in the vicinity of Highway 71 and Riley Park Drive. The first two phases of construction are now complete. The third phase was subsequently divided into two phases and additional lines added in response to changes in development patterns in the city's southern growth area. Construction of the third phase is currently underway and bids were recently opened on phase four. A Resolution for award of bid for Phase 4 construction is included as a companion Board item.

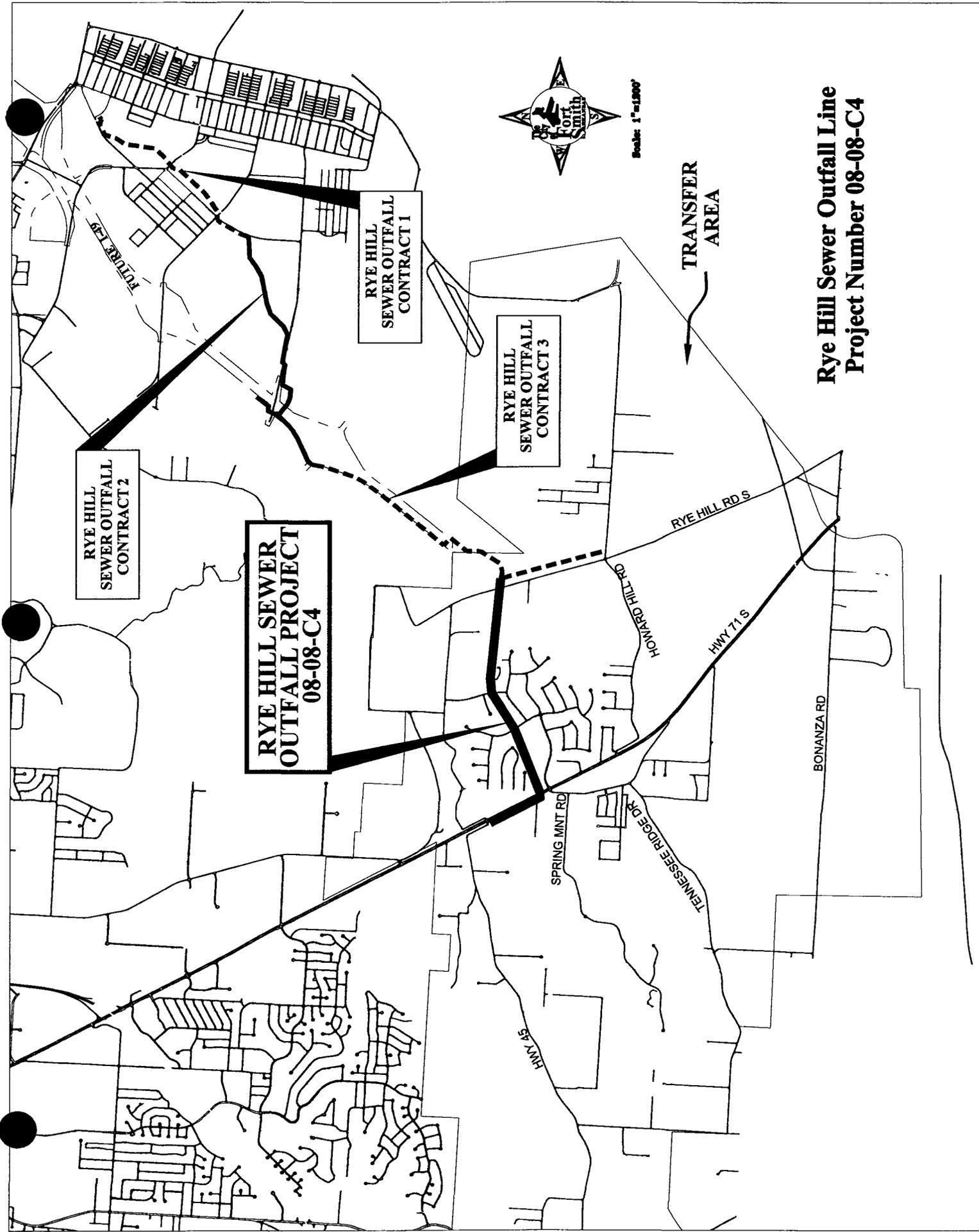
To date four authorizations under the original engineering agreement have been approved by the Board providing design, bidding and inspection services for the first three phases of the project plus design and bidding phase services for the fourth phase. With award of bid for construction of Phase 4 it will be necessary to amend the original agreement by the addition of \$145,000 to provide the additional construction phase services. This will increase the original agreement amount from \$685,020 to \$830,020. This total represents 15.6 percent of the total cost of \$5.32 million for construction of all four phases of the Rye Hill Sewer Outfall and is within the expected range for engineering services.

I have attached a Resolution authorizing the Mayor to sign Amendment Number One to the Agreement with Mickle Wagner Coleman, Inc., for an amount of \$145,000.00. Funds for this authorization are available from the 2008 Revenue Bonds.

Should you or members of the Board have questions or need any additional information, please let me know.

attachment

pc: Ray Gosack



Rye Hill Sewer Outfall Line Project Number 08-08-C4



MEMORANDUM

TO: Mayor and Board of Directors
FROM: Wendy Beshears, Administrative Assistant
DATE: July 14, 2010
SUBJECT: Housing Assistance Board

Mr. Larry Combs of the Housing Assistance Board has resigned effective June 28, 2010.

The applicant available at this time is:

Madeline Marguette 7818 Valley Forge Rd

Appointments are by **the Board of Directors**. One appointment is needed; the term will expire April 30, 2011.



MEMORANDUM

TO: Mayor and Board of Directors
FROM: Wendy Beshears, Administrative Assistant
DATE: July 15, 2010
SUBJECT: Parks and Recreation Commission

The term of Ms. Virginia Waldon of the Parks and Recreation Commission will expire August 31, 2010. There has been no reply from Ms. Waldon regarding reappointment.

The applicants available at this time are:

John Huffman	8301 Clover Drive
Andrew Smith	9225 Rosewood Drive
Madeline Marguette	7818 Valley Forge Rd
Brent Alexander	11707 Southcrest Drive

Appointments are by the **Board of Directors**. One appointment is needed; the term will expire August 31, 2015.



MEMORANDUM

TO: Mayor and Board of Directors
FROM: Wendy Beshears, Administrative Assistant
DATE: July 15, 2010
SUBJECT: Transit Advisory Commission

The terms of Mr. Randy Burress and Mr. William Loyd of the Transit Advisory Commission will expire July 15, 2010. Mr. Burress would like to be reappointed to this commission. There has been no reply from Mr. Loyd regarding reappointment.

The applicants available at this time are:

John Huffman	8301 Clover Drive
Charles Poole	5800 Grand Avenue #609

Appointments are by the Mayor confirmed by the Board of Directors. Two appointments are needed; the term will expire July 15, 2013.

AGENDA ~ **Summary**

FORT SMITH BOARD OF DIRECTORS REGULAR MEETING

JULY 20, 2010 ~ 6:00 P.M.

**FORT SMITH PUBLIC SCHOOLS
SERVICE CENTER
3205 JENNY LIND ROAD**

THIS MEETING IS BEING TELECAST LIVE ON THE CITY CABLE ACCESS CHANNEL 6

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

All present, except Directors Gary Campbell and Cole Goodman

PRESENTATION BY MEMBERS OF THE BOARD OF DIRECTORS OF ANY ITEMS OF BUSINESS NOT ALREADY ON THE AGENDA FOR THIS MEETING

(Section 2-37 of Ordinance No. 24-10)

Information available by viewing rebroadcast of the meeting on City Access Channel 6 or City website

APPROVE MINUTES OF THE JULY 6, 2010 REGULAR MEETING

Unanimously approved as written

ITEMS OF BUSINESS:

1. Presentations:
 - GFOA Distinguished Budget Award for the 2009 City Budget
 - Good Neighbor Awards
2. Ordinance amending Chapter 20, Article II of the Fort Smith Code of Ordinances regarding alarm systems ~ *tabled at July 6, 2010 Regular Meeting ~ Approved 5 in favor, 0 opposed / Ordinance No. 31-10*
3. Items regarding animal services:
 - A. Resolution authorizing a contract between the Sebastian County Humane Society and the City of Fort Smith, Arkansas
Approved 5 in favor, 0 opposed / Resolution No. R-136-10

- B. Ordinance amending Chapter 4, Article II, of the Fort Smith City Code of Ordinances regulating the impoundment of animals
Approved 5 in favor, 0 opposed / Ordinance No. 32-10
- 4. Ordinance amending Chapter 18 Article III of the Fort Smith Municipal Code regarding park rules
Approved 5 in favor, 0 opposed / Ordinance No. 33-10
- 5. Ordinance ordering the owners of certain dilapidated and substandard structures to demolish same, authorizing the City Administrator to cause the demolition of such structures to occur and for other purposes (1101 North 15th Street, 717 North 34th Street, 1236 South 12th Street and 3211 North 28th Street)
Approved 5 in favor, 0 opposed / Ordinance No. 34-10
- 6. Ordinance amending Chapter 2, Article IV, of the Fort Smith Code of Ordinances to create a nepotism policy relating to elected officials
Approved 5 in favor, 0 opposed to table consideration pending further discussion at the upcoming July 27, 2010 study session
- 7. Ordinance authorizing 2010 budget reductions
Approved 5 in favor, 0 opposed / Ordinance No. 35-10
- 8. Consent Agenda
 - A. Resolution approving the designation of a new trustee for the Series 2004 City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds (Gerber Products Company Project)
Approved 5 in favor, 0 opposed / Resolution No. R-137-10
 - B. Resolution accepting bids for the purchase of a four-wheel drive loader backhoe (\$58,141.24)
Approved 5 in favor, 0 opposed / Resolution No. R-138-10
 - C. Resolution approving the design and improvements to Cisterna Plaza
Approved 5 in favor, 0 opposed / Resolution No. R-139-10
 - D. Resolution authorizing partial payment to The Burgess Company, Inc. for the construction of Midland Boulevard 30-Inch Water Transmission Line (\$581,573.02)
Approved 5 in favor, 0 opposed / Resolution No. R-140-10
 - E. Resolution authorizing partial payment to Crossland Heavy Contractors, Inc. for construction of the Lake Fort Smith Water Treatment Plant - Contract 3 (\$927,049.44)
Approved 5 in favor, 0 opposed / Resolution No. R-141-10

- F. Resolution accepting the project as complete and authorizing final payment to Wilson Brothers Construction Company, Inc. for the Ramsey Tributary Basin MC05 Sewer Improvements (\$58,219.25)
Approved 5 in favor, 0 opposed / Resolution No. R-142-10
- G. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Mid-America Environmental for Lee Creek Water Treatment Plan Residuals Lagoon Cleaning (\$189,000.00)
Approved 5 in favor, 0 opposed / Resolution No. R-143-10
- H. Resolution authorizing Change Order Number One with Kraus Construction Company, LLC for construction of the Rye Hill Sewer Outfall Phase Two (\$31,430.50)
Approved 5 in favor, 0 opposed / Resolution No. R-144-10
- I. Resolution authorizing acquisition of real property interests for the Rye Hill Sewer Outfall Phase IV Improvements Project (\$9,582.10)
Approved 5 in favor, 0 opposed as amended to include language to accept settlement offer from property owner / Resolution No. R-145-10
- J. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Wilson Brothers Construction Company, Inc. for the Rye Hill Sewer Outfall Phase IV (\$1,174,815.00)
Approved 5 in favor, 0 opposed / Resolution No. R-146-10
- K. Resolution authorizing the Mayor to execute Amendment Number One to the agreement for engineering services with Mickle Wagner Coleman, Inc. for the Rye Hill Sewer Outfall Line Improvements (\$145,000.00)
Approved 5 in favor, 0 opposed / Resolution No. R-147-10

OFFICIALS FORUM ~ presentation of information requiring no official action
(Section 2-36 of Ordinance No. 24-10)

- A. Mayor
- B. Directors
- C. City Administrator

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EXECUTIVE SESSION

Appointments: **Housing Assistance Board**
No action taken

Parks and Recreation Commission

Madeline Marguette

Term expires August 31, 2015

Transit Advisory Commission

Randy Burress (reappointment)

Charles Poole

Terms expire July 15, 2013

CITIZENS FORUM ~ presentation of information by citizens ~ an opportunity for citizens to present matters to the Mayor and Board of Directors which involve the city government and are not directly related to items considered on the agenda for this meeting. *Presentations are limited to 2 minutes for each citizen*

(Section 2-44(b) of Ordinance No. 24-10)

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ADJOURN