

**CULLMAN CITY COUNCIL  
REGULAR MEETING  
April 12<sup>nd</sup>, 2010**

Mayor Townson, Council President Gudger, Council Member Page, Council Member Cook, Council Member Hollingsworth and Council Member Folsom met in the Council Chamber at 6:00 p.m. They discussed the traffic flow problem on U.S. Highway 278 West. Sain Associates in Birmingham gave a price proposal to complete a traffic study. Instead of spending \$8,900 a suggestion was made to ask Mr. Samuel Stewart of ALDOT to conduct a traffic flow study. This will be added to the agenda tonight.

Council Member Cook suggested adding a request to the agenda to allow bids to be taken for a knuckle-boom truck for the Sanitation Department. Traveler's Insurance will pay around \$85,000 for the wrecked garbage truck and Mr. Larry Jones, Department Head for the Sanitation Department, stated the need for a knuckle-boom truck was more urgent at this time. This will be added to the agenda.

Mr. Drew Nelson of Utility Engineering Consultants, LLC was present to discuss the agreement with Apel Machine and Supply Company, Inc and Berkley Regional Insurance Company for Mann Drive Sewer Project that was not completed by Gilco.

Trent Moore from the Cullman Times and Mr. Delton Blalock from the Cullman Tribune were also present for the pre-council meeting.

The Cullman City Council met in regular session on April 12<sup>nd</sup>, 2009 at 7:00 o'clock p.m. in the Lucille N. Galin Auditorium. Council President Garlan Gudger called the meeting to order and Mr. Mac Buttram presented the invocation.

A roll call by the City Clerk reflected the following. Present - Mayor Max A. Townson, President Garlan E. Gudger, Jr., Council Member Andy Page, Council Member Johnny Cook and Council Member Jenny Folsom and Council Member Clint Hollingsworth. Also present were City Attorney Roy Williams and City Clerk Ruth W. Rose. Absent - None.

Council Member Folsom made a motion to suspend the rules in order to consider the minutes from the meeting on March 22<sup>nd</sup>, 2010. Council Member Hollingsworth seconded the motion and motion carried on roll call vote. Council Member Page: Aye, Council Member Cook: Aye. Council President Gudger: Aye. Council Member Folsom: Aye. Council Member Hollingsworth: Aye. Nays:None.

Council Member Cook then moved to approve the minutes as written for March 22<sup>nd</sup>, 2010 and Council Member Page seconded the motion. Motion was approved by a voice vote. Ayes: All Nays: None.

Council Member Folsom made a motion to suspend the rules in order to dispense of reading the minutes from march 25<sup>th</sup>, 2010. Council Member Cook seconded the motion and motion was approved by a roll call vote. Council Member Page: Aye. Council Member Cook: Aye. Council President Gudger: Aye. Council Member Folsom: Aye. Council Member

Hollingsworth: Aye. Nays: None.

Council Member Cook made a motion to adopt the minutes as written on March 25<sup>th</sup>, 2010. Council Member Page seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

### **ADDITIONS/DELETIONS TO AGENDA**

Council Member Cook made a motion to add item #5 under Roman Numeral IX to allow the Sanitation Department to send out bid specifications for a knuckle-boom truck. Council Member Folsom seconded the motion and motion carried on a voice vote. Ayes: All. Nays: None.

Council Member Cook made a motion to add #6 under Roman Numeral IX to authorize the Mayor to request a traffic study on U.S. Highway 278 West with ALDOT. Council Member Hollingsworth seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: none.

A motion to delete item number 4 under Roman Numeral IX was made by Council member Cook and seconded by Council Member Folsom. The item was deleted by a voice vote. Ayes: All. Nays: None.

### **REPORTS OF STANDING COMMITTEES**

Council Member Andy Page - Police Committee - A Committee meeting was held on March 30<sup>th</sup>, 2010 at the Police Department. Chief Kenny Culpepper, Mayor Townson, Council Member Cook, Council Member Hollingsworth and Council Member Page were advised by Narcotics Director Officer Matt Gentry of the Sheriff's Department of the large usage and abuse of drugs, such as Meth in Cullman and Cullman County. The drug task force team ask for your help in reporting any suspicious activity you may be aware of.

Council President Garlan Gudger - Fire Committee - No Report.

Council Member Johnny Cook - Sanitation Committee - No Report.

Council Member Clint Hollingsworth - Street Committee - No Report.

Council Member Jenny Folsom - Finance Committee - No Report.

### **REPORTS OF OFFICERS**

Mayor Max A. Townson - A special birthday wish to our President Garlan Gudger who is celebrating his 35th birthday today.

### **COMMENTS FROM ANYONE NOT ON THE AGENDA**

Mr. Mac Buttram thanked the Mayor and Council for allowing him to address the group. He is a candidate for House of Representative District 12, which is West of U.S. Hwy 31. He will be on the ballott in June for the Primary Election and invites everyone to support him and his election campaign to keep the special quality of life for everyone in Cullman and Cullman County. He is a former Pastor of St. Andrews Church. He supports education and wants to help every child get a good education. He will stay after the meeting if anyone wishes to ask any questions or just talk with him or check out his website [macbuttram.com](http://macbuttram.com).

### **PETITIONS, APPLICATIONS, COMPLAINTS, APPEALS & COMMUNICATIONS**

A request from Dianne Federer to be placed on the agenda for a review of the revised business license. She was not present to discuss the request.

Mrs. Stacey White made a written request to host a Mother's Day Motorcycle Ride and Balloon Release for Families of the Missing. The event would be held at Sportsman Lake Park on Saturday, May 8, 2010 from 10:00 a.m. until 2:00 p.m. President Gudger asked Asst. Police Chief Sandlin and Fire Chief Reinhardt if they have reviewed the request. Both agreed the request had been reviewed and approved by their departments. Mr. Roy Williams, City Attorney verified the route of the motorcycle ride beginning and ending in the city limits. Council Member Folsom asked the total number of motorcycles involved. This is a first time for this event and unknown the number who will participate. Council Member Cook made a motion to approve the request and noted this is a county park and Cullman County Commission should be aware and grant approval for the event also. Council Member Hollingsworth seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

A budgeted request from Fire Chief Reinhardt to have O.F. Richter & Sons paint the truck bay floor and walls in Station #1 in the amount of \$1,215.00 was approved by a motion made by Council Member Cook. The motion was seconded by Council Member Folsom and approved by a voice vote. Ayes: All. Nays: None.

A motion to approve a budgeted request for Fire Chief Reinhardt to have the windows tinted at Fire Station #2 by Solar Shades in the amount of \$600.00 was made by Council Member Page. Council Member Folsom seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

A motion was made by Council Member Cook to allow bid specifications for a knuckle-boom

truck for the Sanitation Department to be sent out. Council Member Folsom seconded the motion. Council Member Cook explained the Sanitation Department Supervisor, Larry Jones, had made the request. A garbage truck was wrecked earlier this year and \$85,000 was paid by the insurance company. The Sanitation Department have 2 back-up garbage trucks but is in desperate need of a knuckle-boom truck. He would like to apply the insurance proceeds toward the purchase of a knuckle-boom truck. Council Members approved by a voice vote. Ayes: All. Nays: none.

Council Member Folsom made a motion to authorize Mayor Townson to make a request for a traffic flow study to be done on U.S. Hiway #278 West and Hickory intersection with ALDOT. Council Member Hollingsworth seconded the motion and motion was approved by a voice vote. Ayes: All. Nays: None.

### **RESOLUTIONS, ORDINANCES, ORDERS AND OTHER BUSINESS**

A motion was made by Council member Cook to adopt the following Resolution:

#### **Resolution 2010-45**

#### **RESOLUTION AUTHORIZING MAYOR TO ENTER AGREEMENT FOR SERVICES WITH APEL MACHINE & SUPPLY COMPANY, INC. AND BERKLEY REGIONAL INSURANCE COMPANY FOR MANN DRIVE SEWER PROJECT THAT WAS NOT COMPLETED BY GILCO**

WHEREAS, Apel Machine & Supply Company, Inc. has presented the attached proposal to provide services related to completing the sewer project on Mann Drive referred to as the "Project"; and

WHEREAS, the City has considered the scope of work which consists of completing the original contract within a 270 day period at a completion contract price of \$808,460.78 by the completion contractor ; and

WHEREAS, the City Council finds that it is in the best interest of the City to proceed with the work set out in the proposal ; now

THEREFORE, BE IT RESOLVED by the Cullman City Council that the Mayor is hereby authorized to sign an agreement with Apel Machine & Supply Company, Inc. And Berkley Regional Insurance Company for and on behalf of the City of Cullman to perform the services

related to the Project as set out in the original agreement for services.

ADOPTED this the 12<sup>th</sup> day of April, 2010.

/s/ Garlan E. Gudger, Jr.  
President of the City Council

ATTEST:

/s/ Ruth W. Rose  
City Clerk

Transmitted to the Mayor this the 12<sup>th</sup> day of April, 2010.

/s/ Ruth W. Rose  
City Clerk

APPROVED by the Mayor this the 12<sup>th</sup> day of April, 2010.

/s/ Max A. Townson  
Mayor

#### TENDER AGREEMENT

**THIS TENDER AGREEMENT** (hereinafter “Agreement”) made this 12<sup>th</sup> day of April, 2010 by and among The City of Cullman, AL (hereinafter “Owner”), Apel Machine & Supply Company, Inc. (hereinafter “Completion Contractor”) and Berkley Regional Insurance Company (hereinafter “Surety”).

**WHEREAS**, on or about August 1, 2007, Owner entered into a contract with Gilco Contracting, Inc. (“Gilco”) for Contract No. CUEC-2603, CWSRF Project No. CS010260-06, Mann Drive - Sanitary Sewer Improvements (hereinafter “The Original Contract”), which is made a part hereof by reference together with all documents and plans referred to therein; and,

**WHEREAS**, Surety, on behalf of Gilco, as principal, executed and delivered to Owner a performance bond #0119328 (hereinafter the “Gilco Performance Bond”) and a labor and material payment bond #0119328 (hereinafter the “Gilco Payment Bond”) in favor of Owner, as Oblige, in connection with The Original Contract; and,

**WHEREAS**, Gilco has ceased doing business and is now defunct, and Gilco is in default of its obligations under The Original Contract, the Gilco Performance Bond and the Gilco Payment Bond; and,

**WHEREAS**, Owner has called upon Surety, as the performance bond surety, to satisfy its obligations to Owner under the Gilco Performance Bond; and,

**WHEREAS**, Owner and Surety have agreed to a complete and final resolution of the obligations of Surety under the Gilco Performance Bond pursuant to which Surety has procured and hereby tenders Completion Contractor to Owner to perform The Original Contract; and

**WHEREAS**, Owner accepts Completion Contractor to perform The Original Contract; and,

**WHEREAS**, Completion Contractor has agreed to fully and faithfully perform and complete and to assume the obligations of The Original Contract and of Surety under the Gilco Performance Bond by agreeing to enter into this Agreement with Owner and Surety; and,

**WHEREAS**, Owner and Completion Contractor agree to modify the terms of The Original Contract to reflect that (i) the new contract price is the Completion Contract Price set forth in Paragraph 4 below, subject to adjustments for increases or decreases for actual quantities and for any change orders hereafter executed by Owner and Completion Contractor, (ii) Owner and Completion Contractor are bound by the Schedule of Items and Line Item Values set forth in Exhibit 'A' attached hereto, and (iii) the time for completion of The Original Contract is extended as provided in Paragraph 5 hereof.

**NOW THEREFORE**, in consideration of the promises made herein and other good and valuable consideration, Owner, Completion Contractor and Surety hereby mutually agree as follows:

**Section 1. Precatory Clauses:**

The precatory (Whereas) clauses above are made part of this Agreement as if fully set forth herein.

**Section 2. Original Contract Accounting:**

Owner and Surety acknowledge and agree that as of the date of this Agreement:

- (a) The present authorized amount of The Original Contract, including all approved change orders to date, and subject to adjustment for final quantities, is \$6,953,825.00;
- (b) Gilco was paid \$5,624,067.65 under The Original Contract;
- (c) The amount of The Original Contract and the amount paid to Gilco include stored materials and equipment, in the amount of \$272,542.80;
- (d) Owner has withheld retainage of \$173,845.63 on The Original Contract;
- (e) Work has been performed for which payment has been earned under The Original Contract in the amount of \$107,715.02 ("Prior Earned Payment") for which Owner has withheld payment;
- (f) The "Unpaid Contract Price" (consisting of the present authorized amount of The Original Contract, less cash payments to Gilco to date) is \$1,329,757.35; and

(g) The “Remaining Contract Value” (consisting of the unearned portion of the present authorized amount of The Original Contract) is \$1,048,196.70.

**Section 3. Performance of Contract:**

Completion Contractor hereby agrees to fully and faithfully perform and complete all work identified in The Original Contract and all change orders to The Original Contract approved to the date of this Agreement. The Original Contract, for purposes of this Agreement, shall be deemed to include the Contract, the Schedule of Items (excluding the Line Item Values) attached hereto as Exhibit “B”, all The Original Contract documents, plans, and specifications, all obligations, conditions, warranties and guarantees contained therein, as well as all laws, rules and regulations of Federal, State and Municipal authorities having authority over the work to be performed under The Original Contract.

**Section 4. Completion Contract Price:**

Completion Contractor agrees to perform all of the remaining work required by The Original Contract and change orders approved to date. Owner agrees to pay Completion Contractor for such performance in accordance with the payment provisions of The Original Contract at the firm unit Prices set forth in Exhibit A hereto (the “Completion Contract Price” presently totaling \$808,460.78, based on the estimated quantities and firm unit prices set forth in Exhibit A). The Completion Contract Price is subject to adjustment solely as provided in the adjustment terms of The Original Contract, including adjustment for such matters as increases or decreases in actual quantities and change orders according to the terms of the Original Contract. No adjustment shall be made for any insufficiency or deficiency in quality or quantity of stored materials, which shall be provided to Completion Contractor “as-is” at no cost to Completion Contractor in accordance with Paragraph 12.

**Section 5. Time for the Performance of the Work:**

Owner agrees that the time for performance of The Original Contract is hereby extended to the Completion Date as defined herein. Completion Contractor agrees to complete all work in accordance with the terms and conditions of The Original Contract within 270 (two-hundred seventy) continuous calendar days from the issuance of a Notice to Proceed (the “Completion Date”). Time is of the essence. Owner acknowledges that all issues pertaining to delays and liquidated damages for delays through the Completion Date are subsumed by this Agreement. Subject to time extensions that may hereafter be allowed as provided under the terms of The Original Contract and this Agreement with respect to the work to be performed by Completion Contractor hereunder, if Completion Contractor fails to achieve full completion and acceptance of all work in accordance with The Original Contract by the Completion Date, Completion Contractor shall be liable to and shall pay to Owner liquidated damages as specified in The Original Contract.

Surety shall be responsible to Owner for liquidated damages for delay in the amount of \$19,600. This amount shall be credited to Owner in connection with the final accounting under Paragraph 11, below. Owner acknowledges that all issues pertaining to delays and liquidated damages for delays through the Completion Date are subsumed by this Agreement.

**Section 6. Responsibility for Existing Work:**

Completion Contractor shall be responsible to Owner for all work performed by it or by Gilco. This responsibility includes all work necessary to correct latent defects in the work performed by Gilco. Separate consideration will be paid by Surety to Completion Contractor for assumption of this responsibility, as set forth in Paragraph 10.

**Section 7. Progress Payments:**

Owner agrees to pay Completion Contractor the Completion Contract Price (subject to adjustment for such matters as increases or decreases in actual quantities and for change orders) in accordance with the terms of The Original Contract. Completion Contractor agrees to look solely to Owner for the payment of the Completion Contract Price and hereby releases and forever discharges Surety from any obligations to pay same.

**Section 8. Completion Contractor's Assumption of Contract Obligations:**

Completion Contractor acknowledges and agrees that from and after the date of this Agreement, it and its surety assume all obligations to Owner of Gilco and Surety under The Original Contract and the Gilco Performance Bond. Completion Contractor hereby accepts assignment of, and assumes responsibility for, the following Gilco subcontracts, which have been ratified and are hereby assigned to Completion Contractor by Surety: R. B. Atkins & Associates, Inc. and Southern Industrial Construction Company. Copies of the ratified subcontracts shall be provided to Completion Contractor by Surety. Completion Contractor also accepts assignment of the ratified Birmingham Powder subcontract, which has been paid up currently, and which is in effect for blasting. Additional blasting is not contemplated, but in the event blasting becomes necessary, surety will be notified immediately and prior to incurring blasting costs. Surety will reimburse Completion Contractor directly for reasonable and necessary blasting costs, upon proof of payment for same in conjunction with the work of this Agreement.

**Section 9. Surety's Interim Statement of Accounts with Owner:**

Owner shall retain for its use in completing the Project the Unpaid Contract Price, in the present amount of \$1,329,757.35 (which amount includes \$281,560.65 in unpaid retainage and Prior Earned Payment, and which amount has not been adjusted to reflect final actual quantities). The Unpaid Contract Price, after final quantity adjustments, shall be accounted to Surety's obligations under the Gilco Performance Bond. Final accounting shall take place upon completion of the work by Completion Contractor, as set forth in Paragraph 11.

**Section 10. Surety's Payment to Completion Contractor:**

Simultaneous with the execution of this Agreement the Surety will pay Completion Contractor the liquidated amounts of \$25,000.00 for corrective work for identified Gilco defects, \$100,000.00 for assumption of responsibility for all work performed by Gilco including any unidentified or unknown

deficiencies in that work, and \$8,000.00 for payment and performance bond premium. In addition, Surety will pay \$3,175.93 to Completion Contractor for accrued subcontractor retention of R.B. Atkins & Associates, Inc. (\$1,090.00) and Southern Industrial Construction Company (\$2,085.93). Completion Contractor shall be responsible for paying such amounts to R.B. Atkins and Southern Industrial Construction in accordance with their ratified subcontracts and shall indemnify and hold Surety harmless against any failure to make payment of same.

**Section 11. Surety's Final Settlement With Owner at Project Completion:**

Upon completion of all work under The Original Contract and this Agreement, the Owner shall advise the Surety of the final quantities approved for payment. An accounting shall be made of The Original Contract value, as adjusted for final quantities, and liquidated damages (described in Paragraph 5), and Payments by Owner, including payments to Completion Contractor. Surety shall reimburse the Owner for net overruns, or Owner shall reimburse the Surety for net under runs, so that the final cost to Owner shall be the amount that Owner would have paid under The Original Contract. Such payment shall operate as final settlement of all accounts between Surety and Owner.

**Section 12. Stored Materials and Equipment:**

All materials and equipment, including but not limited to those identified in the bidding process, which are stored on site, or which are under the Owner's control, shall be made available free of charge to Completion Contractor for use in the performance of the work under this Agreement. All such materials and equipment shall be provided to and shall become the responsibility of the Completion Contractor for 1) use in the completion of the contract; 2) use elsewhere at the Contractor's option, or 3) removal from the site and proper disposal. Any such materials and equipment have been paid for by the Original Contractor, or will have been paid for by the Surety, prior to the execution of this Agreement. Completion Contractor has been afforded the opportunity, prior to bidding, to inspect and evaluate such materials and equipment, and no representations have been made to Completion Contractor, express or implied, in any of the Original Contract Documents or Re-Bid Documents regarding the quantity, quality, contract suitability, usefulness or any other aspect of same. Completion Contractor has agreed to be totally responsible for the verification of these materials and equipment. No quantity adjustment or additional compensation shall be paid in the event of any insufficiency or deficiency.

**Section 13. Acknowledgement by Owner of Full Performance by Surety:**

In consideration of the mutual promises and payments made by the parties hereunder, the sufficiency of all of said consideration being stipulated, Owner agrees that the Surety shall be deemed to have fully performed all obligations under The Original Contract and the Gilco Performance Bond, subject only to final settlement of accounts for overruns or under runs as provided in Paragraph 11. Hereafter, Owner shall look solely to the Completion Contractor and its surety for the completion of all work remaining under The Original Contract.

**Section 14. Completion Contractor Release:**

For and in consideration of the payments and mutual promises made by the parties hereto, the sufficiency of all of said consideration being stipulated, Completion Contractor, for itself, its successors and assigns, does, by these presents, hereby unconditionally release, acquit and forever discharge Surety, its agents, successors and assigns, from any and all claims, demands, rights, obligations and/or causes of action of whatever kind or nature, whether known or unknown, including, without limitation, claims under or arising out of The Original Contract, the Gilco Performance Bond and the Gilco Payment Bond and this Agreement.

**Section 15. Continuing Obligation of Surety to Unpaid Subcontractors and Suppliers of Gilco:**

Notwithstanding any general language to the contrary, it is specifically agreed that nothing contained herein shall release Surety from any obligations it may have under the Gilco Payment Bond only for the payment of outstanding and unpaid amounts (if any) properly due under the Gilco Payment Bond to subcontractors and suppliers for labor and/or material to Gilco in the performance of The Original Contract prior to the date hereof. Nothing herein contained shall be deemed a waiver of the amount of the Gilco Payment Bond or of Surety's rights or defenses under the Gilco Payment Bond as to any party, nor shall it be deemed an admission by Surety that any labor or materials or supplies were provided by any person or entity in connection with The Original Contract. Provided, however, Surety's obligation recited in this Paragraph 15 shall not extend to the accrued subcontractor retention of R.B. Atkins & Associates, Inc. and Southern Industrial Construction Co., which amounts shall be paid by Completion Contractor under the ratified and assigned subcontracts.

**Section 16. Owner's Assignment of Rights Against Gilco to Surety; Surety's Release of Claims Against Owner:**

In further consideration of the mutual promises contained in this Agreement, Owner does, for itself, its successors and assigns, hereby assign to Surety all right title and interest (including, but not limited to, any security interest and all rights of offset, recoupment or other similar remedy) that it has in and to any and all claims or causes of action against Gilco, its successors and assigns, or any principal of Gilco arising out of or in any way related to The Original Contract.

In further consideration of the mutual promises contained in this Agreement, Surety, for itself, Gilco and their successors and assigns, does hereby release Owner for any and all claims for change orders, extra work, differing site conditions, delay, interference or other claims for additional compensation under The Original Contract.

**Section 17. Owner Cooperation with Surety:**

Owner agrees to cooperate with Surety in any action brought by or against Surety involving Gilco, its successors and assigns or any indemnitor of Surety in connection with The Original Contract or any bond issued by Surety in connection with The Original Contract or any other contract between Owner and Gilco.

**Section 18. Contract Bond and Insurance Certificates Required of Completion Contractor:**

Simultaneous with the execution of this Agreement, Completion Contractor shall deliver to Owner a performance bond and a labor and material payment bond executed by a surety company acceptable to Owner, in the form required by The Original Contract and in the amount of the Completion Contract Price, and shall deliver all other Certificates of Insurance and Certifications required by The Original Contract.

**Section 19. Notice to Proceed to Completion Contractor:**

The parties hereto agree that Owner shall, after receipt of the bonds and certificates of insurance required by Paragraph 18 hereof, issue the notice to proceed hereunder to Completion Contractor in accordance with The Original Contract. The parties further agree that, from and after the date of this Agreement, Completion Contractor shall be responsible for the performance of The Original Contract and that Owner shall look solely to Completion Contractor or its surety for the performance of The Original Contract.

**Section 20. No Modification:**

This Agreement may not be modified unless in writing and executed by the parties hereto.

**Section 21. Choice of Law:**

This Agreement and any dispute of any nature, any claim or any suit arising out of either this Agreement or The Original Contract shall be governed by the laws of the State of Alabama in every respect.

**Section 22. Construction and Interpretation of Agreement:**

The language in all parts of this Agreement shall in all cases be construed simply, as a whole, and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation and that each party has been given the opportunity to independently review this Agreement with legal counsel. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, it shall not be construed strictly for or against any party.

Executed on the date set forth herein:

**The City of Cullman, Alabama**

By: \_\_\_\_\_

Max A. Townson, Mayor

**Apel Machine & Supply Company, Inc.**

By: \_\_\_\_\_

John Apel

**Berkley Regional Insurance Company**

By: \_\_\_\_\_

Ellen M. Caralley

Council Member Page seconded the motion and discussion followed. Council Member Cook explained the funds were already budgeted in 2007 when Gilco faulted on the contract and the insurance and bonding companies are supplementing the funds. Attorney Roy Williams stated he had reviewed the agreement and made a few changes before the final agreement was signed by John Apel and Ellen M. Caralley. The resolution was approved by a vocie vote. Ayes: All. Nays: none.

Council Member Folsom made a motion to approve Discount Tree Service, the low bidder for tree services in the following resolution:

**RESOLUTION NO. 2010-56  
Tree Services on 705 Cleveland Avenue S.W.  
Bid Award**

WHEREAS, bids were opened on April 1, 2010 at 2:00 pm for Tree Services located on 705 Cleveland Avenue, S.W. for the City of Cullman Arborist Department, and

WHEREAS, the following bids were opened from 8 vendors:

Burk’s Tree Service	Hanceville	850.00
Clemmon’s Tree Service	Cullman	899.00
Discount Tree Service	Crane Hill	600.00
Keller’s Tree Service	Cullman	850.00
Michael’s Tree Service	Addison	750.00
Newman’s Tree Service	Cullman	1,000.00
Marshall’s Tree Service	Hanceville	749.00
Reeves and Son, LLC	Vinemont	850.00

WHEREAS, the recommendation from Darrell Johns, Arborist for the City of Cullman is to award the bid to Discount Tree Service, the lowest bidder.

BE IT RESOLVED by the City Council of the City of Cullman, Alabama that the bid for the

tree service be awarded to Discount Tree Service of Crane Hill, AL at this time.

ADOPTED this the 12<sup>th</sup> day of April, 2010.

/s/ Garlan E. Gudger, Jr.  
President of the City Council

ATTEST:

/s/ Ruth W. Rose  
City Clerk

SEAL

APPROVED by the Mayor this the 12<sup>th</sup> day of April, 2010.

/s/ Max A. Townson  
Mayor

Council Member Cook seconded the motion and the resolution was adopted by a voice vote. Ayes: All. Nays: None.

Council Member Cook made a motion to adopt the following resolution for herbicide spraying:

**RESOLUTION NO. 2010-57**

**AWARDING OF BID FOR HERBICIDE SPRAYING**

WHEREAS, bids were opened on May 15, 2007 for herbicide spraying for the Sewer Department for a three (3) year period; and

WHEREAS, the following 7 vendors were mailed specifications to submit their bids :

1. SprayMax, Inc.	Tuscaloosa, AL	\$6,333.68
2. Helena Chemical Co.	Sturgis, MS	No Bid
3. NaturChem West, Inc.	Pelham, AL	No Response
4. Vegetation Management	Cullman, AL	No Response
5. Sweeping Corp of America	Nashville, TN	No Bid
6. Drennen Forestry Service	Cullman, AL	No Response
7. Precision Spraying & Mowing	Sylvester, GA	No Response

WHEREAS, the recommendation from Mr. Junior Heaton, Sewer Department Supt. is to renew this bid for the final year as quoted.

THEREFORE, BE IT RESOLVED by the City Council of the City of Cullman that the

contract be awarded to SprayMax, Inc. of Tuscaloosa, Alabama.

ADOPTED this the 12<sup>TH</sup> day of April , 2010.

/s/ Garlan E. Gudger, Jr.  
President of the City Council

ATTEST:

/s/ Ruth W. Rose  
City Clerk

APPROVED by the Mayor this the 12<sup>th</sup> day of April, 2010.

/s/ Max A. Townson  
Mayor

Council Member Hollingsworth seconded the motion and motion was approved by a voice vote.  
Ayes: All. Nays: None.

Council Member Folsom made a motion to adopt the following resolution:

**RESOLUTION NO. 2010-58**  
**AWARDING OF BID FOR ASBESTOS REMOVAL AND DISPOSAL**  
**FOR GRIEF BROTHERS PROPERTY**

WHEREAS, bids were opened on Monday, April 5<sup>th</sup>, 2010 AT 2:00 PM for Asbestos abatement services for buildings #1 and #3 according to specifications; and

WHEREAS, the following three vendors submitted their respective bids:

1. Alabama Abatement	Hanceville	\$1,950.00
2. M.H.M. Services	Huntsville	2,493.00
3. Action Environmental	Hanceville	7,710.00

WHEREAS, the recommendation from Jymalyn Redmond, Environmental Manager for Goodwyn, Mills and Cawood, is to award the bid to the lowest responsible bidder, Alabama Abatement with a base bid of \$1,950.00.

BE IT RESOLVED by the City Council of the City of Cullman, Alabama that the contract be awarded to Alabama Abatement of Hanceville, Alabama at this time.

ADOPTED this the 12<sup>th</sup> day of April, 2010.

/s/ Garlan E. Gudger, Jr.  
President of the City Council

ATTEST:

/s/ Ruth W. Rose  
City Clerk

APPROVED by the Mayor this the 12<sup>th</sup> day of April, 2010.

/s/ Max A. Townson  
Mayor, City of Cullman

Council Member Page seconded the motion and motion was approved by a voice vote. Ayes: All.  
Nays: none.

Council President Gudger asked Mr. Roy Williams, City Attorney to explain the next resolution. Mr. Williams stated the city hoped to have all the wholesale water contracts signed and ratified at the same time but due to Cullman County and Hanceville not signing at this time, the City of Cullman would proceed to ratify the signed contracts from 2009. Council Member Page made a motion to adopt the following resolution:

**RESOLUTION 2010-59**  
**A RESOLUTION TO RATIFY THE WATER PURCHASE**  
**AGREEMENTS DATED NOVEMBER 2009**

**WHEREAS**, the City of Cullman is a municipal corporation under the laws of the State of Alabama and is the owner of a water distribution system that supplies water to retail customers within the corporate limits of Cullman and in nearby unincorporated territories that operate water distribution systems; and

**WHEREAS**, the existing water purchase agreement dated April 1, 2000 is being modified to address the need for an additional water source to provide an adequate supply for all entities and will be effective until November 1, 2039; and

**WHEREAS**, the following entities signed the new water purchase agreement:

East Cullman Water Authority, Inc.	Leon Creel, Chairman
Johnson's Crossing Water System, Inc.	C. J. Burney, Chairman
VAW Water System, Inc.	Joel Thompson, Chairman
Walter Water Authority	E. H. Duke, Chairman

The City of Cullman planned to adopt all of the agreements at one city council meeting; and

**WHEREAS**, the Cullman County Commission and City of Hanceville have not signed and the City of Cullman will proceed with the entities signed above.

**NOW THEREFORE, BE IT RESOLVED** that this resolution of ratification is hereby formally adopted by the City Council of the City of Cullman.

**ADOPTED** this 12<sup>th</sup> day of April, 2010.

/s/ Garlan E. Gudger, Jr.  
President of City Council

ATTEST

/s/Ruth W. Rose  
City Clerk

**APPROVED** this 12<sup>th</sup> day of April, 2010.

/s/ Max A. Townson  
Mayor, City of Cullman

Council Member Folsom seconded the motion and motion was passed by a voice vote. Ayes: All. Nays: None.

Council President Gudger thanked Jymalyn Redmond, Environmental Manager for Goodwyn, Mills and Cawood for being here tonight to answer any questions regarding the bids that were opened today. Mr. Findley Frazer was present today to help Mr. Jerry Freeman with the bid tabulations. Council Member Cook made a motion to adopt the following resolution to award the bid for Grief Brothers Buildings Demolition to CiviCon, LLC for Option #1 in the amount of \$124,950.00:

**RESOLUTION NO. 2010-60**

**AWARDING OF BID FOR BUILDING DEMOLITION  
FOR GRIEF BROTHERS PROPERTY**

WHEREAS, bids were opened on Monday, April 12<sup>th</sup>, 2010 AT 12:00 Noon for demolition of buildings on the Grief Bros Property according to bid specifications; and

WHEREAS, the following Seven (7) vendors submitted their three (3) respective bids:

<u>Company Name</u>	<u>City</u>	<u>Option #1</u>	<u>Option #2</u>	<u>Add Alternative</u>
1. CiviCon, LLC	Cullman	\$124,950.00	\$115,190.00	\$17,830.00
2. M.C. Contracting	Stevenson	131,375.00	79,816.00	7,895.00
3. Joiner Construction	Vinemont	142,636.00	80,889.00	36,229.00
4. Builder-Contractor	Birmingham	165,235.00	100,447.00	25,000.00

5. Britt Demolition	Cullman	250,000.00	200,000.00	12,000.00
6. Waters Brothers	Decatur	288,972.27	153,003.68	15,990.62
7. Carcel & G. Const.	Logan	348,000.00	338,000.00	19,500.00

WHEREAS, the recommendation from W. Findley Frazer, Environmental Department Head for Goodwyn, Mills and Cawood, is to award the bid to the lowest responsible bidder, Civicon, LLC with a base bid of \$124,950.00.

BE IT RESOLVED by the City Council of the City of Cullman, Alabama that the contract be awarded to CiviCon, LLC of Cullman, Alabama at this time.

ADOPTED this the 12<sup>th</sup> day of April, 2010.

/s/ Garlan E. Gudger, Jr.  
President of the City Council

ATTEST:

/s/ Ruth W. Rose  
City Clerk

APPROVED by the Mayor this the 12<sup>th</sup> day of April, 2010.

/s/ Max A. Townson  
Mayor, City of Cullman

Council Member Folsom seconded the motion and asked for a brief description of the options 1 and 2. President Gudger explained the bid on Option #1 included the 3 buildings and slabs removed and Option #2 included buildings 1 and 2 complete with removing the slab and building #3 the slab would remain. The Resolution was approved by a voice vote. Ayes: All. Nays: None.

President Gudger stated the Planning Commission made a favorable recommendation to annex the property described in Ordinance No.2010-08. Council Member Folsom made a motion to suspend the rules in order to consider adopting this ordinance on the first reading. Council Member Cook seconded the motion and the Council Members were polled. Council Member Page: Aye. Council Member Cook: Aye. Council President Gudger: Aye. Council Member Folsom: Aye. Council Member Hollingsworth: Aye. Nays: None. The rules have been suspended. A motion to adopt the ordinance was made by Council Member Cook. The following Ordinance was read:

**ORDINANCE NO. 2010-08**

**AN ORDINANCE TO ANNEX CERTAIN PROPERTY INTO  
THE CITY LIMITS OF THE CITY OF CULLMAN, ALABAMA**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CULLMAN,  
ALABAMA, AS FOLLOWS:**

**SECTION 1. The City Council of the City of Cullman finds that**

**Clint Frey and/or Frey & Associates, Inc.**

**has petitioned the City under the provisions of Section 11-42-21 of the Code of Alabama, 1975, as amended, that the following described property, which property is owned by the petitioner, be annexed into the City of Cullman, to-wit:**

**A tract or parcel of land containing 7.88 acres, more or less and being a part of the Northwest Quarter of the Northeast Quarter of Section 35, Township 10 South, Range 3 West, Cullman County, Alabama and being more particularly described as follows:**

**Commence at a found P.K. nail marking the Northwest corner of said section 35 and run North 89 Degrees 57 Minutes 59 Seconds East, a distance of 2648.68 feet to judicial set Northwest corner of the Northwest Quarter of the Northeast Quarter of said section 35 CV=Case No. CV-80-5058); Thence run South 00 Degrees 33 Minutes 41 Seconds West, A distance of 582.78 feet to a 2 inch capped pipe; Thence run North 88 Degrees 10 Minutes 09 Seconds East, a distance of 823.28 feet to the point of beginning; Thence continue North 88 Degrees 10 Minutes 09 Seconds East, a distance of 788.00 feet to a point on the West right-of-way line of U.S. Highway No. 31 and being in a curve to the left having a central angle of 10 Degrees 31 Minutes 58 Seconds, a radius of 2862.13 feet and a chord bearing of North 24 Degrees 30 Minutes 59 Seconds West; Thence run along the arc of said curve an arc distance of 526.15 feet to a point marking the intersection of said West right-of-way line of U.S. Highway No. 31 with the South right-of-way line of County Road No. 715; Thence run along the said South right-of-way line of County Road No. 715 the following 4 courses:  
South 88 Degrees 53 Minutes 35 Seconds West, 178.76 Feet;  
North 85 Degrees 23 Minutes 46 Seconds West, 100.50 Feet;  
South 88 Degrees 53 Minutes 35 Seconds West, 100.00 Feet;  
North 85 Degrees 23 Minutes 46 Seconds West, 201.00 Feet; Thence South 01 Degrees 03 Minutes 36 Seconds East, departing said right-of-way line, a distance of 522.12 Feet to the point of beginning.**

**SECTION 2. That the Council has before it a map showing the relationship of the property proposed to be annexed to the corporate limits of the City of Cullman, and that said map is on file in the office of the City Clerk.**

**SECTION 3. That the City of Cullman does hereby annex as a part of its corporate limits the following described tracts or parcels of land, to-wit:**

**A tract or parcel of land containing 7.88 acres, more or less and being a part of the Northwest Quarter of the Northeast Quarter of Section 35, Township 10 South, Range 3 West, Cullman County, Alabama and being more particularly described as follows:**

**A tract or parcel of land containing 7.88 acres, more or less and being a part of the Northwest Quarter of the Northeast Quarter of Section 35, Township 10 South, Range 3 West, Cullman County, Alabama and being more particularly described as follows:**

**Commence at a found P.K. nail marking the Northwest corner of said section 35 and run North 89 Degrees 57 Minutes 59 Seconds East, a distance of 2648.68 feet to judicial set Northwest corner of the Northwest Quarter of the Northeast Quarter of said section 35 CV=Case No. CV-80-5058); Thence run South 00 Degrees 33 Minutes 41 Seconds West, A distance of 582.78 feet to a 2 inch capped pipe; Thence run North 88 Degrees 10 Minutes 09 Seconds East, a distance of 823.28 feet to the point of beginning; Thence continue North 88 Degrees 10 Minutes 09 Seconds East, a distance of 788.00 feet to a point on the West right-of-way line of U.S. Highway No. 31 and being in a curve to the left having a central angle of 10 Degrees 31 Minutes 58 Seconds, a radius of 2862.13 feet and a chord bearing of North 24 Degrees 30 Minutes 59 Seconds West; Thence run along the arc of said curve an arc distance of 526.15 feet to a point marking the intersection of said West right-of-way line of U.S. Highway No. 31 with the South right-of-way line of County Road No. 715; Thence run along the said South right-of-way line of County Road No. 715 the following 4 courses:  
South 88 Degrees 53 Minutes 35 Seconds West, 178.76 Feet;  
North 85 Degrees 23 Minutes 46 Seconds West, 100.50 Feet;  
South 88 Degrees 53 Minutes 35 Seconds West, 100.00 Feet;  
North 85 Degrees 23 Minutes 46 Seconds West, 201.00 Feet; Thence South 01 Degrees 03 Minutes 36 Seconds East, departing said right-of-way line, a distance of 522.12 Feet to the point of beginning.**

**said property to be zoned B-2. (General Business District)**

**SECTION 4. That a copy of this ordinance after its adoption, which ordinance includes a description of the property annexed to the City of Cullman, be filed in the office of the Judge of Probate of Cullman County, Alabama, the county in which the municipality is located.**

**SECTION 5. That this ordinance shall take effect upon its passage and publication as required by law.**

**ADOPTED this the 12<sup>th</sup> day of April, 2010.**

**/s/ Garlan E. Gudger, Jr.  
President of the City Council**

**Attest:**

**/s/ Ruth W. Rose  
City Clerk**

**TRANSMITTED to the Mayor this the 12<sup>th</sup> day of April, 2010.**

**/s/ Ruth W. Rose  
City Clerk**

**APPROVED this the 12<sup>th</sup> day of April, 2010.**

**/s/ Max A. Townson  
Mayor**

Council Member Page seconded the motion. Mayor Townson stated the City of Cullman Planning Commission had favorable reviews of this annexation. The Ordinance was adopted by a voice vote. Ayes: All. Nays: None. The Ordinance will be published in the Cullman Times on Sunday, April 18, 2010.

President Gudger asked for any other business to come before the Mayor and Council, being none a motion to adjourn was made by Council Member Cook. Council Member Hollingsworth seconded the motion and by a voice vote the meeting was adjourned at 7:29 p.m.