

MUSTANG CITY COUNCIL
MUSTANG TOWN CENTER
1201 N. MUSTANG RD.
ROOMS C & D
MUSTANG, OKLAHOMA 73064

JANUARY 11, 2016
6:00 P.M.

AGENDA SPECIAL MEETING

- A. CALL TO ORDER
- B. ROLL CALL
- C. DISCUSSION ITEMS
 - 1. **Discussion** regarding Facility User Agreements.
 - 2. **Discussion** regarding Drainage Channel Maintenance.
- D. EXECUTIVE SESSION
 - 1. **Discussion** of potential economic development opportunities, including the transfer of property and/or the creation of a proposal to entice a business to locate and/or remain in the City of Mustang; and, **Proposed Executive Session as authorized by 25 Okla. Stat. §307(C)(10).**
 - 2. **Discussion** regarding terms of Employment Agreement with City Attorney; and, **Proposed Executive Session as Authorized by 25 Okla. Stat. §307(B)(1, 2).**
- E. UPDATE ON MANAGEMENT RELATED ISSUES
- F. ADJOURNMENT

**TO: THE HONORABLE MAYOR AND COUNCIL
CITY OF MUSTANG**

**FROM: JUSTIN BATTLES
ASSISTANT CITY MANAGER**

RE: DISCUSSION REGARDING FACILITY USER AGREEMENTS

DATE: JANUARY 11, 2016

BACKGROUND:

In 2015 the Leisure Services Board and Park staff began work on updating the facility user agreements for groups that use the outdoor sports complex. These agreements give the City of Mustang the ability to hold the users groups accountable as well as protecting the user groups in their ability to utilize the facilities.

Agreements for Baseball, Soccer, and Softball were scheduled to be presented at the January 5, 2016 City Council meeting. At a previous meeting, Council requested hearing a citizen concern about a user group at the next work session. Mr. Rooney has met with the concerned citizen on two different occasions to discuss concerns.

Staff chose to bring the agreements to the work session for Council review and discussion with the intent to place the signed agreements on the January 19, 2016 agenda for final approval.

Sports Facility Agreement Wild Horse Park Baseball Facility

This Agreement, made and entered into this ____ day of _____, 2016, between the City of Mustang and the Mustang Improvement Authority (collectively called the "MIA") and the Mustang Youth Baseball Association a not for profit corporation (hereinafter called "Club");

WITNESSETH:

1. That the CITY for and in consideration of the covenants and agreements hereinafter set forth, and the performance on the part of the Club of all the terms hereof, does hereby enter into a Non-Exclusive Agreement with Club relative to the use of certain portions of the following described property, located within **Wild Horse Park**, situated in the City of Mustang, County of Canadian, State of Oklahoma, as described in Exhibit A, (hereinafter "Property") for the purposes set forth herein;

2. The purpose of this Agreement is to provide and promote baseball activities for the youth and other residents of the Mustang Community, and to promote the establishment, operation, and support of public recreational facilities and programs for the welfare of the people, all as authorized by 11 O.S. Sec. 33-101 et seq., and other applicable law.

3. That the term of this Agreement shall run from **January, 2016 through January 1, 2017**, and may be renewed upon approval by both parties for the next year.

4. For and in consideration of the use of said premises for the baseball activities as stated herein, said Club hereby agrees and covenants with the CITY that Club will:

a. Use the premises for athletic or recreational programs and facilities, and none other;

b. Maintain the entire premises herein in a good condition, free and clear of all debris or matter, by whatever description, through the entire term of this Agreement, **except that the CITY will provide for janitorial services and landscape maintenance in support areas which are defined as non-playing field areas within the complex at Wild Horse Park;**

c. Construct No permanent type construction on the premises without prior approval of the CITY. It is further understood that all construction plans will require CITY Engineer review **and written approval prior to commencement of construction; and the construction and improvement**, will be subject to CITY Inspection, and all City Code requirements. It is specifically understood that all permanent fixtures and or permanent type

construction will become property of the CITY upon its completion and acceptance by CITY and that this Agreement shall constitute the offer to CITY of same by Club. It is further specifically understood that Club will furnish an accounting of all monies furnished by the City of Mustang within five days of request and that any property, whether temporary or permanent, of any type, constructed or purchased in whole or in part with monies so furnished will become property of the CITY. It is further understood that any improvements may, at the discretion of the City Manager or his designee, be moved to another location and used for purposes compatible with those set forth in this Agreement.

d. Reserve unto the CITY, the right to control the use of the water in the area and to permit the CITY to limit the use or discontinue of the same altogether during periods of water shortage;

e. **By July 1 and December 1 or upon CITY request, Club will furnish to the City Manager or his designee financial statements of Club operations.**

f. Within calendar year and execution of this Agreement, Club will furnish to CITY information indicating the number of participants in the current programs.

g. Permit no activities to continue beyond the hour of midnight **without the prior approval from the City Manager or his designee** and all exterior lights except for security lights to be turned out within 15 minutes after the cessation of all such activities on the hour above stated;

h. Club will adhere to adopted bylaws by organization and can be held accountable to do so or agreement can be terminated following guidelines set forth in said agreement.

5. All teams must have head and assistant coaches that are certified through a course to be approved by the City Manager's designee. All coaches must have a background check prior to commencing coaching activities at said facility. Background check process must be approved by City Manager or his designee prior to executing the background check.

6. Club further agrees to the following:

a. To fully defend, protect, indemnify and hold harmless the CITY, its employees and agents, from and against each and every claim, demand or cause of action and any liability cost, expense (including but not limited to reasonable attorneys' fees and expense incurred in defense of the City of Mustang and/or the Mustang Improvement Authority), Damage or loss in connection therewith, which may be made or asserted by Club's employees or agents,

subcontractors, or any third party (including but not limited to Mustang Improvement and/ or the City of Mustang agents, servants or employees) on account of personal injury or death or property damage caused by, arising out of or in any way incidental to, or in connection with the Agreement hereunder, except such as may result solely from the CITY's negligence.

b. Club shall maintain, at its sole cost, the insurance coverage set forth below with companies satisfactory to the CITY with full policy limits applying but not less than as stated and named the City of Mustang as additional insured. A certificate evidencing the required insurance quoting the indemnification provision set forth in the Agreement shall be delivered to the CITY prior to commencement of the work and shall provide that any change restricting or reducing coverage or cancellation of any policies under which certificates are issued shall not be valid as respects the City of Mustang interest therein until the CITY has received 30- days notice in writing of such change or cancellation. Proof of such insurance shall be required before this Agreement becomes effective.

(i) Workman's Compensation Insurance as required by law and regulations applicable to and covering employees of Club.

(ii) Comprehensive General Liability Insurance including products/completed operation with limits of liability of not less than: Bodily Injury- \$1,000,000.00 each person, \$1,000,000.00 each occurrence /aggregate. This policy shall cover, among other risks, the contractual liability assumed under the indemnification provisions set forth in this Agreement.

(iii) Each policy shall be endorsed to provide waiver of subrogation rights in favor of the Mustang Improvement Authority and/or the City of Mustang, its agents and employees, and all other parties owning an interest in the property covered by this Agreement.

c. It is the express intent of this agreement that there be no lapse in insurance coverage, and it is further expressly provided that any change or cancellation in any such insurance shall not constitute a waiver of this term and condition of the Agreement.

d. The Club will require any subcontractors it may engage to maintain, at all times, while performing work on the premises, the insurance as set forth above, naming the City of Mustang as additional insured.

e. Failure of the Club to keep the required insurance policies in force and effect during the seasons described in this Agreement and during any extension hereof, shall constitute a breach of this Agreement, and shall automatically make this Agreement null and

void without further action of the CITY, and with no notice to the Club being required effective the date of expiration or termination of the insurance.

7. The CITY hereby reserves unto itself the right of ingress and egress over, through, under and across premises at all times necessary for purpose of maintaining, improving, repairing, extending, erecting, constructing water and sewer lines or other utilities, and for the purpose of all other governmental and municipal purposes, including the right to inspect and police said premises.

8. The Club will, at its expense, provide the labor necessary to staff the gate, umpire the games.

9. The CITY will, maintain and prepare the infields, groom and mow the grass in the outfields.

10. The CITY shall, maintain the sanitary toilet facilities, as required, and keep same clean and emptied as needed and required, and in a way acceptable to the State Health Department.

11. The CITY shall, at all times, have the right to go upon said premises and inspect same and determine if any of the covenants or conditions in this Agreement are being honored and maintained, and may make reports to the Club from time to time concerning same.

12. The CITY shall pay all electric, gas, water, sewer, sanitation or other utility bills.

13. The CITY hereby grants to the Club the non-exclusive right to use said premises during the term of this agreement so long as the use does not interfere with the use of the CITY subject to the terms of the Agreement hereinabove set forth.

14. It is understood and agreed that no right is granted or intended to be granted hereunder which the CITY does not have and all rights reserved therein to the CITY are expressly reserved herein.

15. Fees and/or admission charge: No fee shall be charged for parking. The admission charges shall not be excessive and shall be set in order to cater to the maximum number of people. Only those fees necessary to support the activity will be charged to those participating and the spectators. **All fees and any and all activities, which will generate funds for Club, including, but not limited to, registration fees, tournaments, etc., will be used for further expansion of leagues to perpetuate the proper use of said Property.** The Club shall pay to the CITY a fee of \$1.00 per paying gate entrant during league play and \$2.00 per paying

gate entrant during tournament play, which will be monitored through the City Manager's designee. In the event a tournament or league pass is sold the City shall receive percentage based upon the total. (Example, gate for league play is \$4.00, City receives \$1.00 which equals 25%, if league pass is sold for \$40 City will receive 25% of pass equaling \$10)

16. The exclusive concession privileges for sale of refreshments and goods associated with any athletic and recreational activities on the premises will be the sole responsibility of the CITY. All funds generated through the concession sales shall be the property of the CITY. Such concessions will promote the use of premises consistent with its dedication as a sports facility.

17. It is understood and agreed that this Agreement does not authorize the Club or anyone acting under, through or on its behalf to use any of the other facilities in said park and Club hereby agrees that no other facility shall be used without first clearing the same through the City Manager or designee of the City of Mustang, except for that area commonly designated for parking.

18. The Club shall furnish the City Manager or his designee a list of all dates and times they desire to use the Property and such schedule shall include the intended use; e.g., league play, tournament, etc. Such schedule shall be submitted no later than the fifteenth (15th) day of the February for spring activities, and the fifteenth (15th) day of August for fall activities. The City Manager's designee shall be notified in a timely manner of amendments to the schedule and upon proper notification by club; dates for submission of schedule may be extended.

19. Consideration shall be given to all organized youth teams, persons, and groups and for other recreational events outside the Club to use the area covered in this Agreement and the City Manager, or his designee may give permission for such. Such permission rests in the sole discretion of the City Manager, or designee. However, both Club and CITY shall exert good faith efforts to ensure and provide fairness in the availability of the premises. It is further provided and acknowledged that Club assumes no liability or responsibility for activities of persons or groups not affiliated with Club activities.

20. This Agreement shall not be transferred or assigned to any other organization or person or any other entity without the prior written consent of the CITY, and any attempt to assign or transfer the rights under this Agreement shall be null and void, and of no force and

effect, and shall constitute within itself, a cancellation of this Agreement. It is expressly understood that this provision includes, but is not limited to, any contracting or subcontracting arrangement.

21. Any violation of the City Code of the City of Mustang can constitute grounds for termination of this Contract by the CITY.

22. Except as otherwise provided, a breach of any of the covenants or agreements of this Agreement on the part of said Club will result in cancellation of said Agreement with 45 days written notice. No holding over after the term hereof shall constitute a renewal of this Agreement.

23. Notwithstanding the above, should Club fail in any respect to comply with the terms of this Agreement, except those provisions set forth in paragraph 6.e., and should CITY notify Club in writing of the matter in regard to which default is asserted, and should Club fail either to cure the default within 30 days after the giving of notice or to commence within 15 days to rectify the default and continue thereafter to use due diligence to rectify the default until it is fully rectified or cured, then the CITY may cancel this Agreement at any time thereafter during the continuance of the default by giving written notice to Club of the election to terminate. It is expressly agreed that Club shall in no event be liable for damages for default and that the sole remedy of CITY for any default of Club shall be to terminate this agreement pursuant to the provisions of paragraph 23. This paragraph shall not, however, relieve Club from liability for negligence or any other act for which it is directly responsible in damages.

24. In the event of a termination of this agreement, Club shall remove its personnel and personal property from the Premises. On the termination of this agreement for any reason, all improvements on the premises will be turned over to CITY and become the property of CITY.

However, if the CITY terminates this Agreement for any reason other than a default by the Club, or if the CITY refuses to renew the agreement before all the improvements have been completed and paid for by Club, CITY shall be liable for and shall assume the outstanding debt on any such improvements, provided that the improvements and indebtedness were approved by the CITY prior to the incurrence of same by Club.

25. Club members, guests, employees and associates will conduct his or her activity in a professional manner at all times. Any incident of an unprofessional nature that could

jeopardize the image or reflect adversely on City can and will be considered grounds for termination.

26. Club is responsible for providing information concerning appropriate safety equipment relating to each activity to each and all participants in their programs.

27. This Agreement may be amended by written agreement of the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.

CITY OF MUSTANG

By _____
Mayor

ATTEST:

City Clerk

MUSTANG YOUTH BASEBALL

ATTEST:

By _____
President
Mustang Youth Baseball

Vice President
Mustang Youth Baseball

Sports Facility Agreement Wild Horse Park Soccer Facility

This Agreement, made and entered into this ____ day of _____, 2016, between the City of Mustang (the "City") and the Mustang Youth Soccer Association, a not for profit corporation (hereinafter called "Club");

WITNESSETH:

1. That the CITY for and in consideration of the covenants and agreements hereinafter set forth, and the performance on the part of the Club of all the terms hereof, does hereby enter into a Non-Exclusive Agreement with Club relative to the use of certain portions of the following described property, located within **Wild Horse Park**, situated in the City of Mustang, County of Canadian, State of Oklahoma, as described in Exhibit A, (hereinafter "Property") for the purposes set forth herein;

2. The purpose of this Agreement is to provide and promote soccer activities for the youth and other residents of the Mustang Community, and to promote the establishment, operation, and support of public recreational facilities and programs for the welfare of the people, all as authorized by 11 O.S. Sec. 33-101 et seq., and other applicable law.

3. That the term of this Agreement shall run from **January, 2016 through January 1, 2017**, and may be renewed upon approval by both parties for the next year.

4. For and in consideration of the use of said Property for the soccer activities as stated herein, said Club hereby agrees and covenants with the CITY that Club will:

a. Use the Property for athletic or recreational programs and facilities, and for no other purpose;

b. Maintain the entire Property herein in a good condition, free and clear of all debris or matter, by whatever description, through the entire term of this Agreement

c. Construct no permanent construction on the Property without prior approval of the CITY. It is further understood that all construction plans will require CITY Engineer review, **written approval prior to commencement of construction and improvement**, and will be subject to CITY Inspection, and all City Municipal Code requirements. It is specifically understood that all permanent fixtures and or permanent type construction will become property of the CITY upon its completion and acceptance by CITY. It is further specifically understood that Club will furnish an accounting of all monies furnished by club funds within five

days of request and that any property, whether temporary or permanent, of any type, constructed or purchased in whole or in part with monies so furnished will become property of the City. It is further understood that any improvements may, at the discretion of the City Manager or his designee, be moved to another location and used for purposes compatible with those set forth in this Agreement.

d. Reserve unto the CITY, the right to control the use of the water in the area and to permit the CITY to limit the use or discontinue of the same altogether during periods of water shortage;

e. **By July 1 and December 1 or upon CITY's request, Club will furnish to the City Manager or his designee financial statements of Club operations.**

f. Upon City's request, Club will furnish to CITY information indicating the number of participants in the current programs.

g. Permit no activities to continue beyond the hour of 11:00 p.m. **without the prior approval from the Parks and Recreation Director** and all exterior lights except for security lights to be turned out within 15 minutes after the earlier of cessation of activities on the lighted field or the hour above stated;

5. **All coaches must have a background check prior to commencing coaching activities at said facility. Background check process must be approved by City Manager or his designee prior to executing the background check.**

6. Club further agrees to the following:

a. To fully defend, protect, indemnify and hold harmless the CITY, its employees and agents, from and against each and every claim, demand or cause of action and any liability cost, expense (including but not limited to reasonable attorneys' fees and expense incurred in defense of the City of Mustang and/or the Mustang Improvement Authority), damage or loss in connection therewith, which may be made or asserted by Club's employees or agents, subcontractors, or any third party (including but not limited to Mustang Improvement and/ or the City of Mustang agents, servants or employees) on account of personal injury or death or property damage caused by, arising out of or in any way incidental to, or in connection with the Agreement hereunder, except such as may result solely from the CITY's negligence.

b. Club shall maintain, at its sole cost, the insurance coverage set forth below with companies satisfactory to the CITY with full policy limits applying but not less than as stated and

name the City of Mustang and the Mustang Improvement Authority as additional insureds. A certificate evidencing the required insurance quoting the indemnification provision set forth in the Agreement shall be delivered to the CITY prior to commencement of the work and shall provide that any change restricting or reducing coverage or cancellation of any policies under which certificates are issued shall not be valid as respects the Mustang Improvement Authority and/or City of Mustang interest therein until the CITY has received 30 days prior notice in writing of such change or cancellation. Proof of such insurance shall be required before this Agreement becomes effective. All insurance shall be issued as occurrence basis policies.

(i) Workman's Compensation Insurance as required by law and regulations applicable to and covering employees of Club.

(ii) Comprehensive General Liability Insurance including products/completed operation with limits of liability of not less than: Bodily Injury- \$1,000,000.00 each person, \$1,000,000.00 each occurrence /aggregate. This policy shall cover, among other risks, the contractual liability assumed under the indemnification provisions set forth in this Agreement. All insurance shall be issued as occurrence basis policies.

(iii) Each policy shall be endorsed to provide waiver of subrogation rights in favor of the Mustang Improvement Authority and/or the City of Mustang, its agents and employees, and all other parties owning an interest in the property covered by this Agreement.

c. It is the express intent of this agreement that there be no lapse in insurance coverage, and it is further expressly provided that any change or cancellation in any such insurance shall not constitute a waiver of this term and condition of the Agreement.

d. The Club will require any subcontractors it may engage to maintain, at all times, while performing work on the Property, the insurance as set forth above, and naming the City of Mustang and the Mustang Improvement Authority as additional insureds.

e. Failure of the Club to keep the required insurance policies in force and effect during the term described in this Agreement and during any extension hereof, shall constitute a breach of this Agreement, and shall automatically make this Agreement null and void without further action of the CITY, and with no notice to the Club being required effective the date of expiration or termination of the insurance.

f. Club will adhere to adopted bylaws by organization and can be held accountable to do so or agreement can be terminated

7. The CITY hereby reserves unto itself the right of ingress and egress over, through, under and across the Property at all times necessary for purpose of maintaining, improving, repairing, extending, erecting, constructing water and sewer lines or other utilities, and for the purpose of all other governmental and municipal purposes, including the right to inspect and police said Property.

8. The Club will, at its expense, provide the labor necessary to staff the concession and referee the games.

9. The CITY will maintain and mow the grass on the playing fields, club may assist in mowing in the event they deem necessary.

10. The Club shall, maintain the sanitary toilet facilities, as required, and keep same clean and emptied as needed and required, and in a way acceptable to the State Health Department. The Club is also responsible for providing paper goods for facilities.

11. The CITY shall, at all times, have the right to go upon said Property and inspect same and determine if the covenants or conditions in this Agreement are being honored and maintained, and may make reports to the Club from time to time concerning same.

12. The CITY shall pay all electric, gas, water, sewer, sanitation or other utility bills.

13. The CITY hereby grants to the Club the non-exclusive right to use said Property during the term of this agreement so long as the use does not interfere with the use of the CITY subject to the terms of the Agreement hereinabove set forth.

14. It is understood and agreed that no right is granted or intended to be granted hereunder which the CITY does not have and if it is determined that this Agreement exceeded City's rights then this Agreement shall be null and void.

15. Fees and/or admission charge: No fee shall be charged for parking. All fees and any and all activities, which will generate funds for Club, including, but not limited to, registration fees, tournaments, etc., will be used for further expansion of leagues to perpetuate the proper use of said Property. The Club shall pay to the CITY a fee of \$5,000 per contract year.

16. Concession privileges for sale of refreshments and goods associated with any athletic and recreational activities operated by the Club on the Property will be the sole responsibility of the Club. All funds generated through the concession sales during Club activities shall be the property of the Club. All sales tax reporting will be sole responsibility of

the Club and follow Federal, State, and Municipal laws. Such concessions will promote the use of Property consistent with its dedication as a sports facility.

17. It is understood and agreed that this Agreement does not authorize the Club or anyone acting under, through or on its behalf to use any of the other facilities in said park and Club hereby agrees that no other facility shall be used without first clearing the same through the City Manager or designee of the City of Mustang, except for that area commonly designated for parking. It is also understood and agreed that Club shall have no right to grant any third person any license or other right to use the Property or any portion thereof for any purpose.

18. **The Club shall furnish the City Manager or his designee a list of all dates and times they desire to use the Property and such schedule shall include the intended use; e.g., league play, tournament, etc.** Such schedule shall be submitted no later than the fifteenth (15th) day of the February for spring/summer activities, and the fifteenth (15th) day of July for fall/winter activities. The City Manager's designee shall be notified in a timely manner of amendments to the schedule.

19. Consideration shall be given to all organized youth teams, persons, and groups and for other recreational events outside the Club to use the area covered in this Agreement and the City Manager, or his designee may give permission for such. Such permission rests in the sole discretion of the City Manager, or designee. However, both Club and CITY shall exert good faith efforts to ensure and provide fairness in the availability of the Property. It is further provided and acknowledged that Club assumes no liability or responsibility for activities of persons or groups not affiliated with Club activities.

20. This Agreement shall not be transferred or assigned to any other organization or person or any other entity without the prior written consent of the CITY, and any attempt to assign or transfer the rights under this Agreement shall be null and void, and of no force and effect, and shall, at City's option, constitute a termination of this Agreement. It is expressly understood that this provision includes, but is not limited to, any contracting or subcontracting arrangement.

21. Any violation of the City Code of the City of Mustang can constitute grounds for termination of this Contract by the CITY.

22. Except as otherwise provided, a breach of any of the covenants or agreements of this Agreement on the part of Club will result in cancellation of said Agreement with 45 days

prior written notice. No holding over after the term hereof shall constitute a renewal of this Agreement.

23. Notwithstanding the above, should Club fail in any respect to comply with the terms of this Agreement, except those provisions set forth in paragraph 6.e., and should CITY notify Club in writing of the matter in regard to which default is asserted, and should Club fail either to cure the default within 30 days after the giving of notice or to commence within 15 days to rectify the default and continue thereafter to use due diligence to rectify the default until it is fully rectified or cured, then the CITY may cancel this Agreement at any time thereafter by giving written notice to Club of the election to terminate. It is expressly agreed that Club shall in no event be liable for damages for default and that the sole remedy of CITY for any default of Club shall be to terminate this agreement pursuant to the provisions of paragraph 23. This paragraph shall not, however, relieve Club from liability for negligence or any other act for which it is directly responsible in damages.

24. In the event of a termination of this agreement, Club shall remove its personnel and non-permanent personal property from the Property. On the termination of this agreement for any reason, all improvements on the Property will be turned over to CITY and become the property of CITY.

However, if the CITY terminates this Agreement for any reason other than a default by the Club, or if the CITY refuses to renew the agreement before all the improvements have been completed and paid for by Club, CITY shall be liable for and shall assume the outstanding debt on any such improvements, provided that the improvements and indebtedness were approved by the CITY prior to the incurrence of same by Club.

25. Club members, guests, employees and associates will conduct his or her activity in a professional manner at all times. Any incident of an unprofessional nature that could jeopardize the image or reflect adversely on City can and will be considered grounds for termination.

26. Club is responsible for providing information concerning appropriate safety equipment relating to each activity to each and all participants in their programs.

27. This Agreement may be amended by written agreement of the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.

CITY OF MUSTANG

By _____
Mayor

|
ATTEST:

City Clerk

MUSTANG YOUTH SOCCER

ATTEST:

By _____
President

Secretary
Mustang Youth Soccer

Sports Facility Agreement Wild Horse Park Softball Facility

This Agreement, made and entered into this ____ day of _____, 2016, between the City of Mustang and the Mustang Improvement Authority (collectively called the "MIA") and the Mustang Youth Softball Association, a not for profit corporation (hereinafter called "Club");

WITNESSETH:

1. That the CITY for and in consideration of the covenants and agreements hereinafter set forth, and the performance on the part of the Club of all the terms hereof, does hereby enter into a Non-Exclusive Agreement with Club relative to the use of certain portions of the following described property, located within **Wild Horse Park**, situated in the City of Mustang, County of Canadian, State of Oklahoma, as described in Exhibit A, (hereinafter "Property") for the purposes set forth herein;

2. The purpose of this Agreement is to provide and promote softball activities for the youth and other residents of the Mustang Community, and to promote the establishment, operation, and support of public recreational facilities and programs for the welfare of the people, all as authorized by 11 O.S. Sec. 33-101 et seq., and other applicable law.

3. That the term of this Agreement shall run from **January 2016 through January 1, 2017**, and may be renewed upon approval by both parties for the next year.

4. For and in consideration of the use of said premises for the softball activities as stated herein, said Club hereby agrees and covenants with the CITY that Club will:

a. Use the premises for athletic or recreational programs and facilities, and none other;

b. Maintain the entire premises herein in a good condition, free and clear of all debris or matter, by whatever description, through the entire term of this Agreement, **except that the CITY will provide for janitorial services and landscape maintenance in support areas which are defined as non-playing field areas within the complex at Wild Horse Park;**

c. Construct No permanent type construction on the premises without prior approval of the CITY. It is further understood that all construction plans will require MIA Engineer review **and written approval prior to commencement of construction; and the construction and improvement**, will be subject to CITY Inspection, and all City Code requirements. It is specifically understood that all permanent fixtures and or permanent type

construction will become property of the CITY upon its completion and acceptance by CITY and that this Agreement shall constitute the offer to CITY of same by Club. It is further specifically understood that Club will furnish an accounting of all monies furnished by the City of Mustang within five days of request and that any property, whether temporary or permanent, of any type, constructed or purchased in whole or in part with monies so furnished will become property of the CITY. It is further understood that any improvements may, at the discretion of the City Manager or his designee, be moved to another location and used for purposes compatible with those set forth in this Agreement.

d. Reserve unto the CITY, the right to control the use of the water in the area and to permit the CITY to limit the use or discontinue of the same altogether during periods of water shortage

e. **By July 1 and December 1 or upon CITY request, Club will furnish to the City Manager or his designee financial statements of Club operations.**

f. Within calendar year and execution of this Agreement, Club will furnish to MIA information indicating the number of participants in the current programs.

g. Permit no activities to continue beyond the hour of midnight **without the prior approval from the City Manager or his designee** and all exterior lights except for security lights to be turned out within 15 minutes after the cessation of all such activities on the hour above stated unless requested by City Staff on duty for safety reasons;

h. Club will adhere to organizations adopted bylaws and can be held accountable to do so or agreement can be terminated following the guidelines set forth in said agreement

5. **All teams must have head and assistant coaches that are certified through a course to be approved by the City Manager's designee. All coaches must have a background check prior to commencing coaching activities at said facility. Background check process must be approved by City Manager or his designee prior to executing the background check.**

6. Club further agrees to the following:

a. To fully defend, protect, indemnify and hold harmless the CITY, its employees and agents, from and against each and every claim, demand or cause of action and any liability cost, expense (including but not limited to reasonable attorneys' fees and expense incurred in defense of the City of Mustang and/or the Mustang Improvement Authority), Damage or loss in

connection therewith, which may be made or asserted by Club's employees or agents, subcontractors, or any third party (including but not limited to Mustang Improvement and/ or the City of Mustang agents, servants or employees) on account of personal injury or death or property damage caused by, arising out of or in any way incidental to, or in connection with the Agreement hereunder, except such as may result solely from the CITY's negligence.

b. Club shall maintain, at its sole cost, the insurance coverage set forth below with companies satisfactory to the CITY with full policy limits applying but not less than as stated and named the City of Mustang as additional insured. A certificate evidencing the required insurance quoting the indemnification provision set forth in the Agreement shall be delivered to the CITY prior to commencement of the work and shall provide that any change restricting or reducing coverage or cancellation of any policies under which certificates are issued shall not be valid as respects the City of Mustang interest therein until the CITY has received 30- days notice in writing of such change or cancellation. Proof of such insurance shall be required before this Agreement becomes effective.

(i) Workman's Compensation Insurance as required by law and regulations applicable to and covering employees of Club.

(ii) Comprehensive General Liability Insurance including products/completed operation with limits of liability of not less than: Bodily Injury- \$1,000,000.00 each person, \$1,000,000.00 each occurrence /aggregate. This policy shall cover, among other risks, the contractual liability assumed under the indemnification provisions set forth in this Agreement.

(iii) Each policy shall be endorsed to provide waiver of subrogation rights in favor of the Mustang Improvement Authority and/or the City of Mustang, its agents and employees, and all other parties owning an interest in the property covered by this Agreement.

c. It is the express intent of this agreement that there be no lapse in insurance coverage, and it is further expressly provided that any change or cancellation in any such insurance shall not constitute a waiver of this term and condition of the Agreement.

d. The Club will require any subcontractors it may engage to maintain, at all times, while performing work on the premises, the insurance as set forth above, naming the City of Mustang as additional insured.

e. Failure of the Club to keep the required insurance policies in force and effect during the seasons described in this Agreement and during any extension hereof, shall

constitute a breach of this Agreement, and shall automatically make this Agreement null and void without further action of the CITY, and with no notice to the Club being required effective the date of expiration or termination of the insurance.

7. The CITY hereby reserves unto itself the right of ingress and egress over, through, under and across premises at all times necessary for purpose of maintaining, improving, repairing, extending, erecting, constructing water and sewer lines or other utilities, and for the purpose of all other governmental and municipal purposes, including the right to inspect and police said premises.

8. The Club will, at its expense, provide the labor necessary to staff the gate, umpire the games.

9. The CITY will, maintain and prepare the infields, groom and mow the grass in the outfields.

10. The CITY shall, maintain the sanitary toilet facilities, as required, and keep same clean and emptied as needed and required, and in a way acceptable to the State Health Department.

11. The CITY shall, at all times, have the right to go upon said premises and inspect same and determine if any of the covenants or conditions in this Agreement are being honored and maintained, and may make reports to the Club from time to time concerning same.

12. The CITY shall pay all electric, gas, water, sewer, sanitation or other utility bills.

13. The CITY hereby grants to the Club the non-exclusive right to use said premises during the term of this agreement so long as the use does not interfere with the use of the CITY subject to the terms of the Agreement hereinabove set forth.

14. It is understood and agreed that no right is granted or intended to be granted hereunder which the CITY does not have and all rights reserved therein to the CITY are expressly reserved herein.

15. Fees and/or admission charge: No fee shall be charged for parking. The admission charges shall not be excessive and shall be set in order to cater to the maximum number of people. Only those fees necessary to support the activity will be charged to those participating and the spectators. **All fees and any and all activities, which will generate funds for Club, including, but not limited to, registration fees, tournaments, etc., will be used for further expansion of leagues to perpetuate the proper use of said Property. The Club shall**

pay to the CITY a fee of \$1.00 per paying gate entrant during league play and \$2.00 per paying gate entrant during tournament play, which will be monitored through the City Manager's designee. In the event a tournament or league pass is sold the City shall receive percentage based upon the total. (Example, gate for league play is \$4.00, City receives \$1.00 which equals 25%, if league pass is sold for \$40 City will receive 25% of pass equaling \$10)

16. The exclusive concession privileges for sale of refreshments and goods associated with any athletic and recreational activities on the premises will be the sole responsibility of the CITY. All funds generated through the concession sales shall be the property of the CITY. Such concessions will promote the use of premises consistent with its dedication as a sports facility.

17. It is understood and agreed that this Agreement does not authorize the Club or anyone acting under, through or on its behalf to use any of the other facilities in said park and Club hereby agrees that no other facility shall be used without first clearing the same through the City Manager or designee of the City of Mustang, except for that area commonly designated for parking.

18. The Club shall furnish the City Manager or his designee a list of all dates and times they desire to use the Property and such schedule shall include the intended use; e.g., league play, tournament, etc. Such schedule shall be submitted no later than the fifteenth (15th) day of the February for spring activities, and the fifteenth (15th) day of August for fall activities. The City Manager's designee shall be notified in a timely manner of amendments to the schedule and upon proper notification by club; dates for submission of schedule may be extended.

19. Consideration shall be given to all organized youth teams, persons, and groups and for other recreational events outside the Club to use the area covered in this Agreement and the City Manager, or his designee may give permission for such. Such permission rests in the sole discretion of the City Manager, or designee. However, both Club and CITY shall exert good faith efforts to ensure and provide fairness in the availability of the premises. It is further provided and acknowledged that Club assumes no liability or responsibility for activities of persons or groups not affiliated with Club activities.

20. This Agreement shall not be transferred or assigned to any other organization or person or any other entity without the prior written consent of the CITY, and any attempt to

assign or transfer the rights under this Agreement shall be null and void, and of no force and effect, and shall constitute within itself, a cancellation of this Agreement. It is expressly understood that this provision includes, but is not limited to, any contracting or subcontracting arrangement.

21. Any violation of the City Code of the City of Mustang can constitute grounds for termination of this Contract by the CITY.

22. Except as otherwise provided, a breach of any of the covenants or agreements of this Agreement on the part of said Club will result in cancellation of said Agreement with 45 days written notice. No holding over after the term hereof shall constitute a renewal of this Agreement.

23. Notwithstanding the above, should Club fail in any respect to comply with the terms of this Agreement, except those provisions set forth in paragraph 6.e., and should CITY notify Club in writing of the matter in regard to which default is asserted, and should Club fail either to cure the default within 30 days after the giving of notice or to commence within 15 days to rectify the default and continue thereafter to use due diligence to rectify the default until it is fully rectified or cured, then the CITY may cancel this Agreement at any time thereafter during the continuance of the default by giving written notice to Club of the election to terminate. It is expressly agreed that Club shall in no event be liable for damages for default and that the sole remedy of CITY for any default of Club shall be to terminate this agreement pursuant to the provisions of paragraph 23. This paragraph shall not, however, relieve Club from liability for negligence or any other act for which it is directly responsible in damages.

24. In the event of a termination of this agreement, Club shall remove its personnel and personal property from the Premises. On the termination of this agreement for any reason, all improvements on the premises will be turned over to CITY and become the property of CITY.

However, if the CITY terminates this Agreement for any reason other than a default by the Club, or if the CITY refuses to renew the agreement before all the improvements have been completed and paid for by Club, CITY shall be liable for and shall assume the outstanding debt on any such improvements, provided that the improvements and indebtedness were approved by the CITY prior to the incurrence of same by Club.

25. Club members, guests, employees and associates will conduct his or her activity in a professional manner at all times. Any incident of an unprofessional nature that could jeopardize the image or reflect adversely on City can and will be considered grounds for termination.

26. Club is responsible for providing information concerning appropriate safety equipment relating to each activity to each and all participants in their programs.

27. This Agreement may be amended by written agreement of the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal the day and year first written above.

CITY OF MUSTANG

By _____
Mayor

ATTEST:

City Clerk

MUSTANG SOFTBALL ASSOCIATION

ATTEST:

By _____
President
Mustang Softball Association

Vice President
Mustang Softball Association

**TO: THE HONORABLE MAYOR AND COUNCIL
CITY OF MUSTANG**

**FROM: TIMOTHY ROONEY
CITY MANAGER**

**RE: DRAINAGE CHANNEL MAINTENANCE
FOLLOW-UP**

DATE: January 6, 2016

BACKGROUND:

At the November work session, the City Council directed staff to review the number of property owners that would need to be notified by the City of Mustang in the event the City were to move forward with the cleaning of the drainage channels in Shannon Place, Hunters Crossings, Savannah Lakes, Castle Rock, and Twin Brook additions.

A total of 117 property owners would need to be contacted from these additions. The cost for each certified mailing is \$6.74. The total cost is \$788.58. Staff did not go through the process of pulling ownership information for each parcel so there is a possibility that some of the properties identified could be owned by the same individuals, thus reducing the total number of notifications necessary.

I have attached the previous information provided to the Council for this item.

Properties Abutting Drainage Areas

Subdivision	Number of Properties	Certified and Return Receipt Cost	Total Cost
Hunters Crossing/ Chisholm Trails 1	31		
Castle Rock	31		
Shannon Place	25		
Twinbrook	18		
Savannah Lakes	12		
Total	117	6.74	788.58

**TO: THE HONORABLE MAYOR AND COUNCIL
CITY OF MUSTANG**

**FROM: TIMOTHY ROONEY
CITY MANAGER**

**RE: DRAINAGE CHANNEL MAINTENANCE
SILVERSTAR ESTIMATES**

DATE: November 4, 2015

BACKGROUND:

Staff will provide an overview of the drainage channel maintenance estimates received from SilverStar at Monday evening's meeting.

Silver Star Construction Co., Inc

2401 S. Broadway - Moore, Oklahoma 73160 – (405) 793-1725 / 1-800-375-1725 / Fax (405) 793-9989

To: Justin Battles

From: Steve Shawn

11-5-2015

Re: Cleaning of various drainage easements in Mustang.

Dear Justin:

Dale and I have inspected the drainage areas listed below. The estimated cost of cleaning the debris from the channels and hauling it off is listed below. The budgets were based on the maps and areas that you provided. In most instances we will use a mid size tack hoe with rubber pads to set a bobcat (skid steer) off in the channel and push the debris to the track hoe which would then load it into dump trucks. The Savannah lakes channel will require us to rent a mini-bobcat due to its narrow size. I am sure we will destroy some sod and sidewalk just gaining access to the Savanna Lakes channel so I have included some cost to replace that in my budget as well.

The Castle Rock drainage easement is in the worst shape and it would be best to try and obtain permission from the land owner to the south to gain access through his pasture to clean this easement. There will be considerable labor and chain saw work in several of the channels, cutting down trees and underbrush that are present. (It would be advisable to spray in upcoming years to keep this vegetation from coming back)

1. Shannon Place Drainage Easement	Budget Estimate:	\$ 4,016.30
2. Hunters Crossings Addition	Budget Estimate:	\$ 5,859.20
3. Savannah Lakes	Budget Estimate:	\$ 7,959.80
4. Castle Rock	Budget Estimate:	\$ 17,686.70
5. Twin Brook	Budget Estimate:	<u>\$ 3,558.90</u>

Total Budget \$39,080.90

Please let me know if you have any questions or concerns.

Thank You

Steve Shawn



City of Mustang Drainage Easements.

move debris

Shannon Place

Equipment and labor

Misc. equip. Chain Saws etc.	1	LS		\$ 75.00	\$ 75.00
Crew Truck	1	Day		\$ 102.80	\$ 102.80
Laborer	30	Hrs	(3 Men)	\$ 24.15	\$ 724.50
Tack Hoe	8	Hrs		\$ 139.80	\$ 1,118.40
Bob Cat	8	Hrs		\$ 65.35	\$ 522.80
Dump Truck (small trucks)	16	Hrs		\$ 79.40	\$ 1,270.40
Truck time to move Track hoe	4	Hrs		\$ 95.05	\$ 380.20
Total					\$ 4,016.30

Hunters Crossings

Equipment and labor

Misc. equip.. Chain Saws etc.	1	LS		\$ 125.00	\$ 125.00
Crew Truck	2	Days		\$ 102.80	\$ 205.60
Laborer	60	Hrs	(3 Men)	\$ 24.15	\$ 1,449.00
Tack Hoe	16	Hrs		\$ 139.80	\$ 2,236.80
Truck time to move Track hoe	4	Hrs		\$ 95.05	\$ 380.20
Bob Cat	8	Hrs		\$ 65.35	\$ 522.80
Dump Truck (small trucks)	16	Hrs		\$ 79.40	\$ 1,270.40
Total					\$ 5,859.20

Savannah Lakes

Equipment and labor

Laborer	60	Hrs	(3 Men)	\$ 24.15	\$ 1,449.00
Crew Truck	2	Day		\$ 102.80	\$ 205.60
Misc. equip. Chain Saws etc.	1	LS		\$ 125.00	\$ 125.00
Tack Hoe	16	Hrs		\$ 139.80	\$ 2,236.80
Truck time to move Track hoe	4	Hrs		\$ 95.05	\$ 380.20
Bob Cat	8	Hrs		\$ 65.35	\$ 522.80
Dump Truck (small trucks)	16	Hrs		\$ 79.40	\$ 1,270.40
Rent small Bobcat	1	LS		\$ 800.00	\$ 800.00
Replaces sod in side yard	1	LS		\$ 250.00	\$ 250.00
Replace sidewalk	6.5	SY		\$ 80.00	\$ 720.00
Misc. equip. Chain Saws etc.					
Total					\$ 7,959.80

Castle Rock

Equipment and labor

Laborer	150	Hrs	(3 Men)	\$ 24.15	\$ 3,622.50
Crew Truck	5	Day		\$ 102.80	\$ 514.00
Misc. equip. Chain Saws etc.	1	LS		\$ 200.00	\$ 200.00
Tack Hoe	40	Hrs		\$ 139.80	\$ 5,592.00
Truck time to move Track hoe	4	Hrs		\$ 95.05	\$ 380.20
Bob Cat	40	Hrs		\$ 65.35	\$ 2,614.00
Dump Truck (small trucks)	60	Hrs		\$ 79.40	\$ 4,764.00
Misc. equip. Chain Saws etc.					
Total					\$ 17,686.70

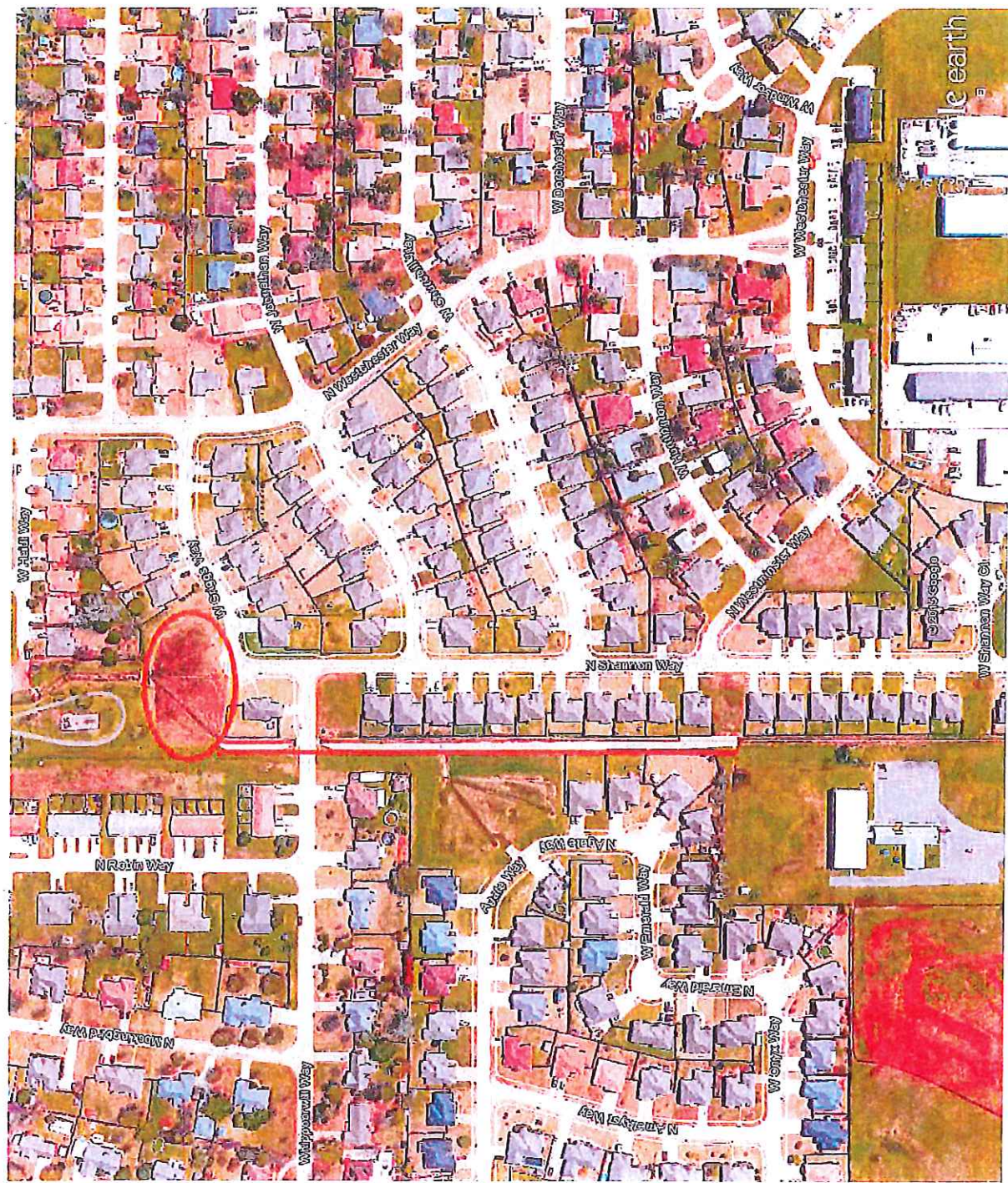
in Brook

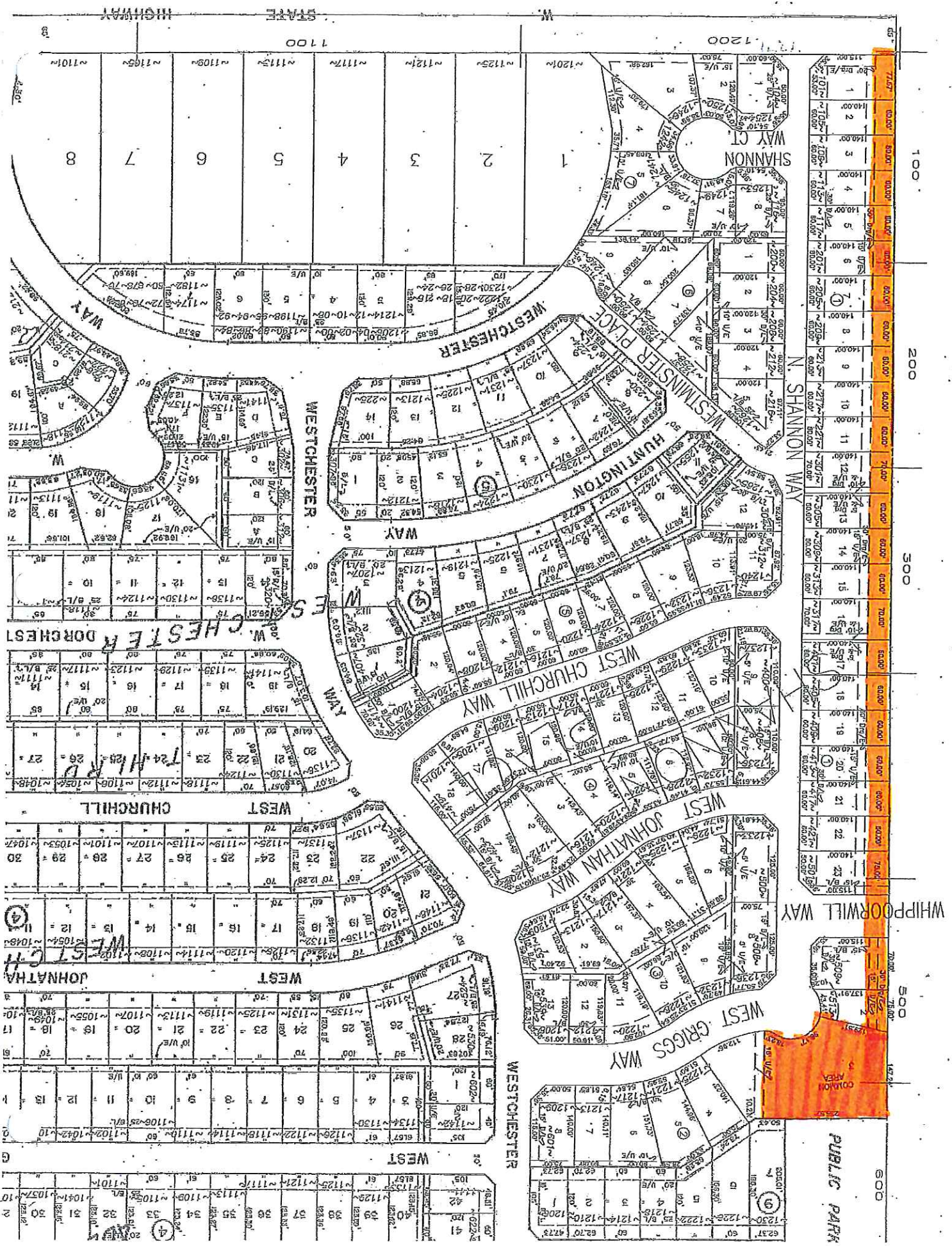
Equipment and labor

Laborer	30	Hrs	(3 Men)	\$ 24.15	\$ 724.50
Crew Truck	1	Day		\$ 102.80	\$ 102.80
Misc. equip. Chain Saws etc.	1	LS		\$ 75.00	\$ 75.00
Tack Hoe	8	Hrs		\$ 139.80	\$ 1,118.40
Truck time to move Track hoe	4	Hrs		\$ 95.05	\$ 380.20
Bob Cat	8	Hrs		\$ 65.35	\$ 522.80
Dump Truck (small trucks)	8	Hrs		\$ 79.40	\$ 635.20
Misc. equip. Chain Saws etc.				Total	\$ 3,558.90

Total Time to do the work would be about two weeks

Total estimate of all the projects \$ 39,080.90

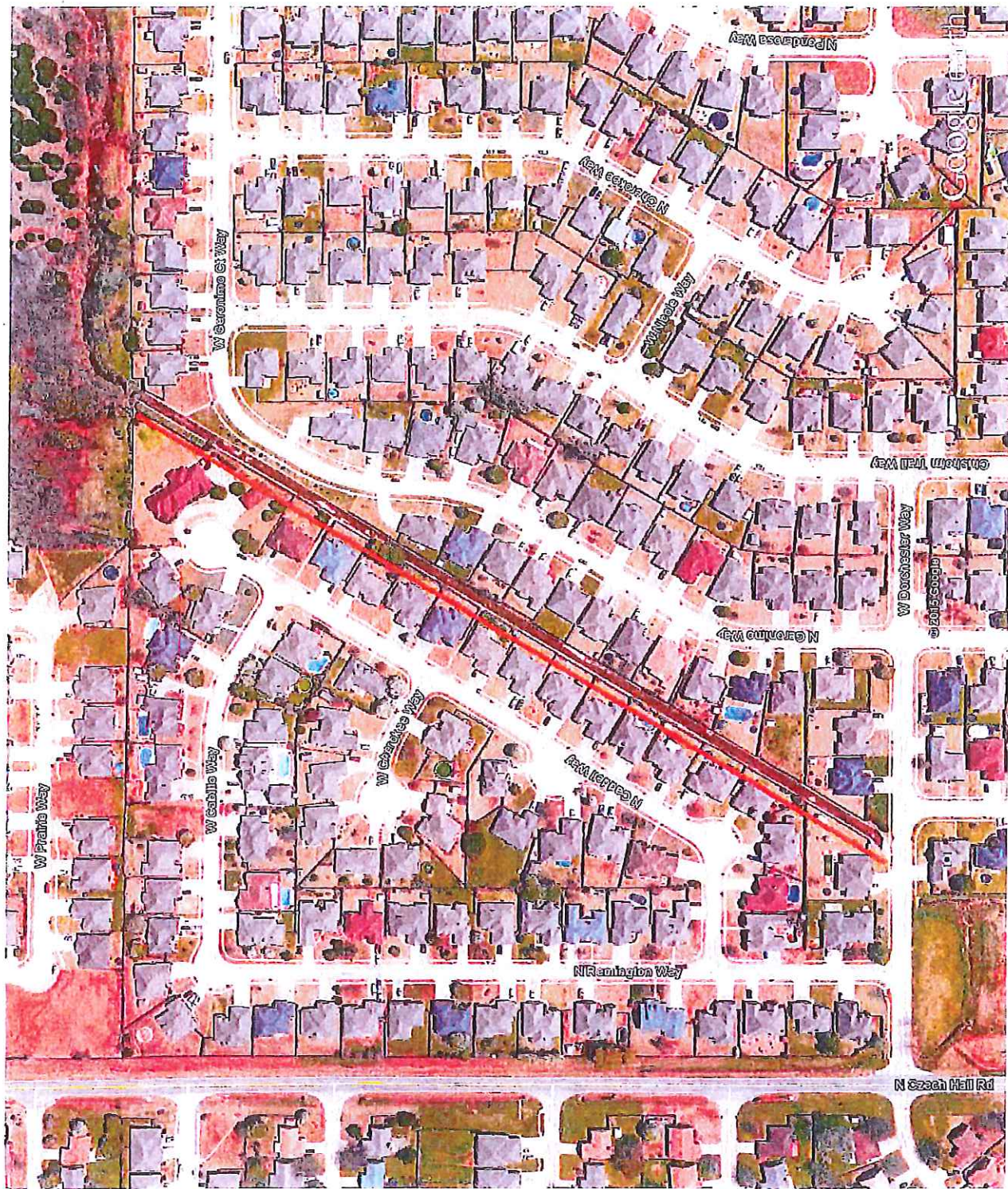
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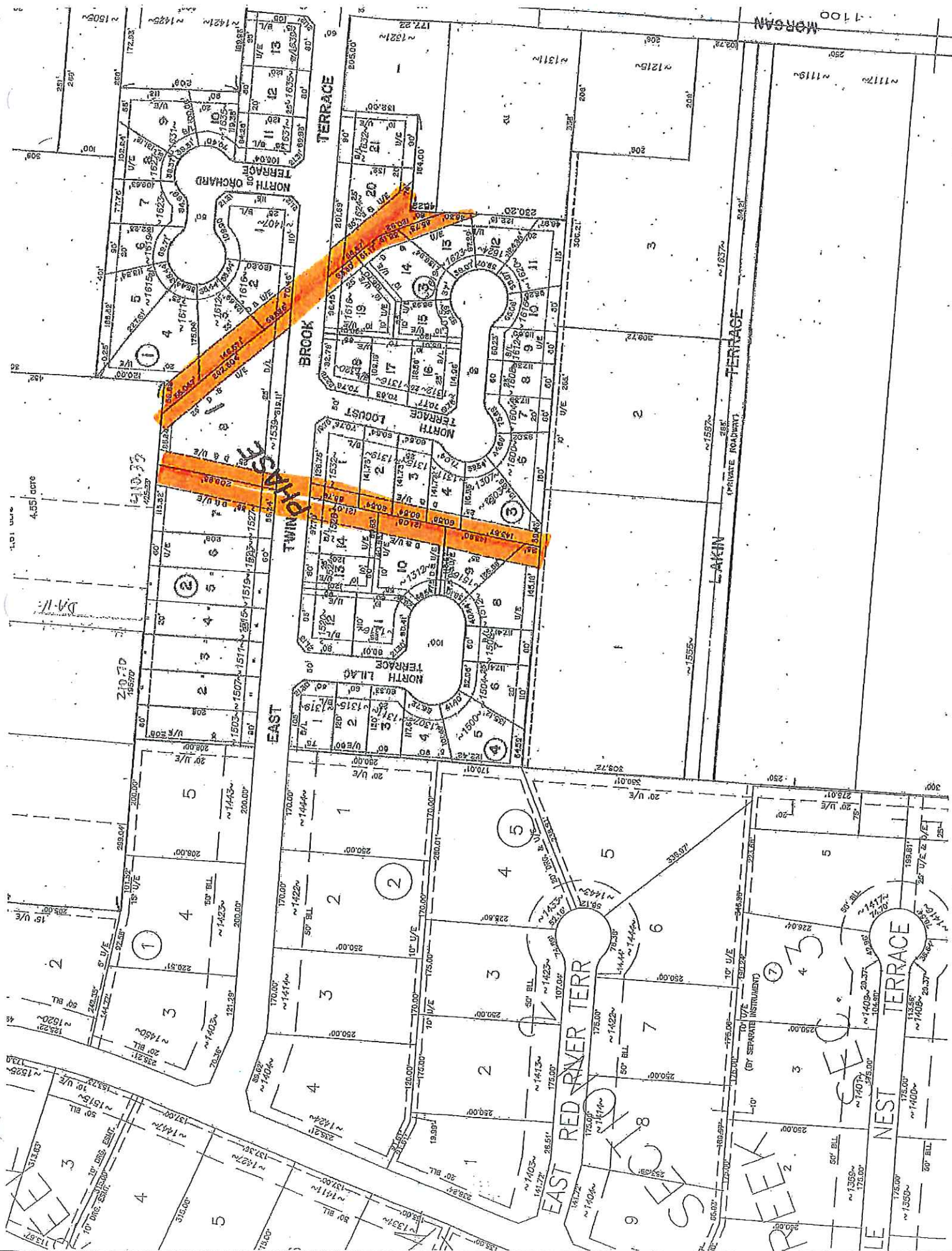
HUNTERS CROSSING ADDITION DRAINAGE AREA



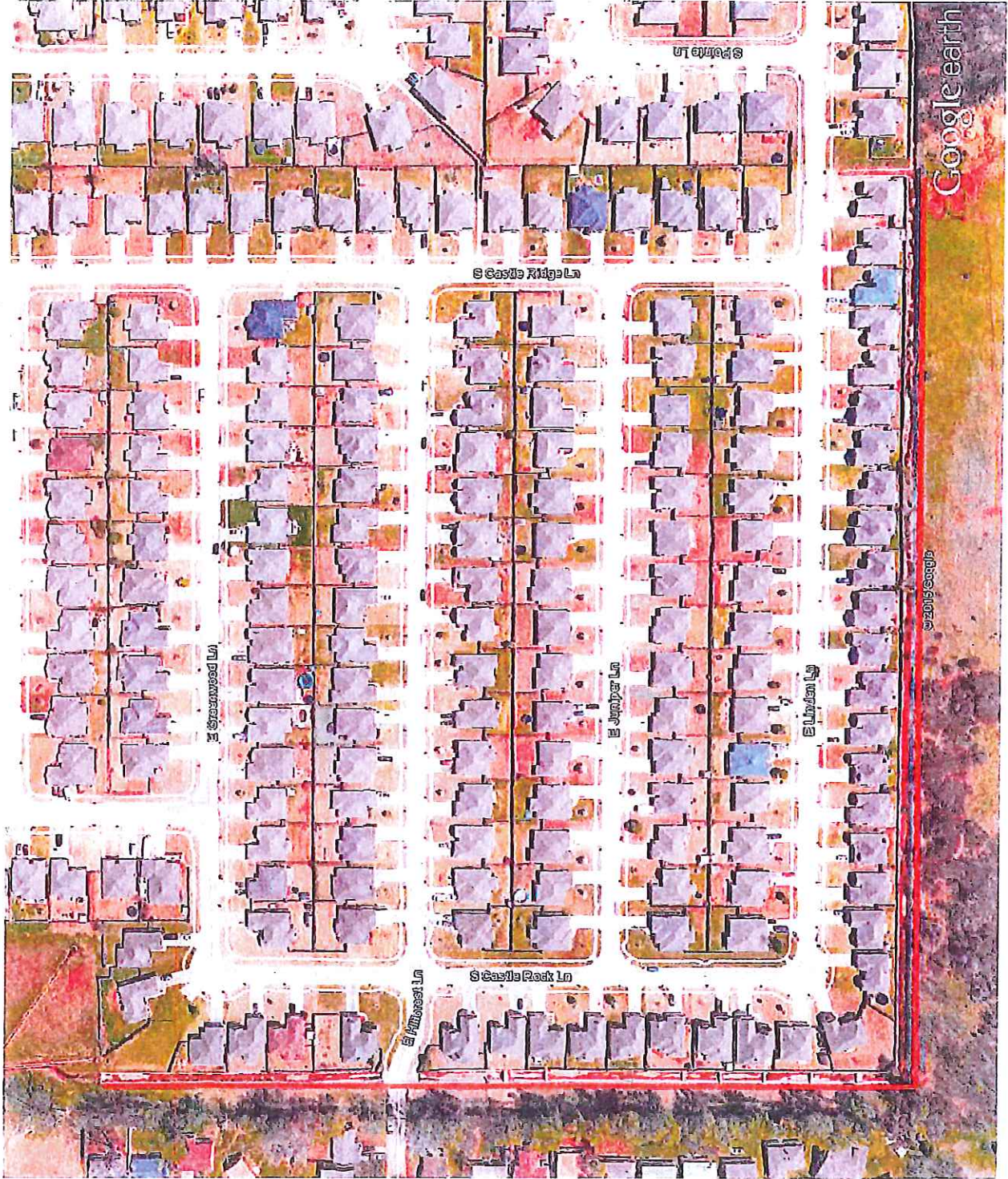


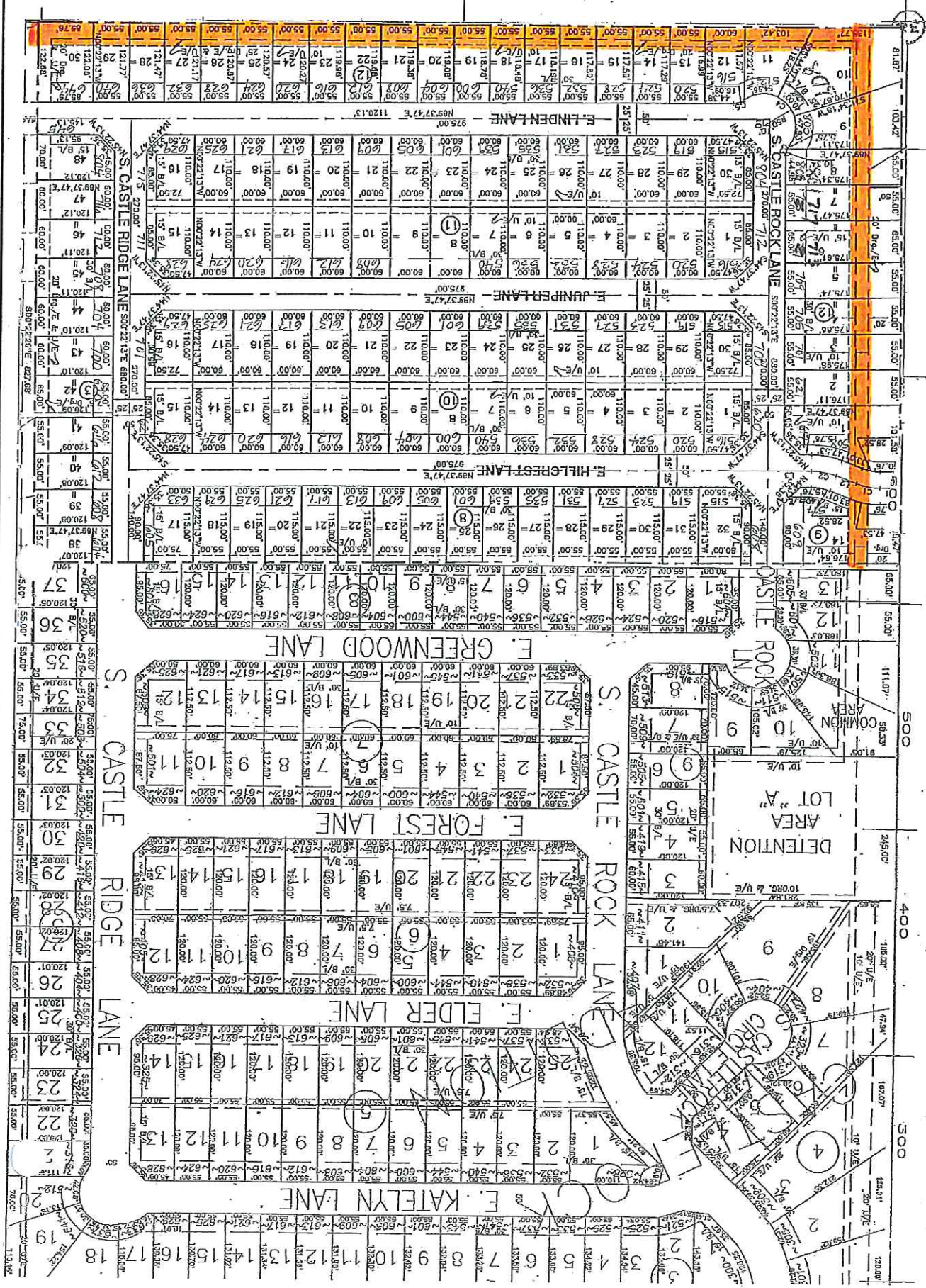
TWINBROOK ADDITION DRAINAGE AREAS



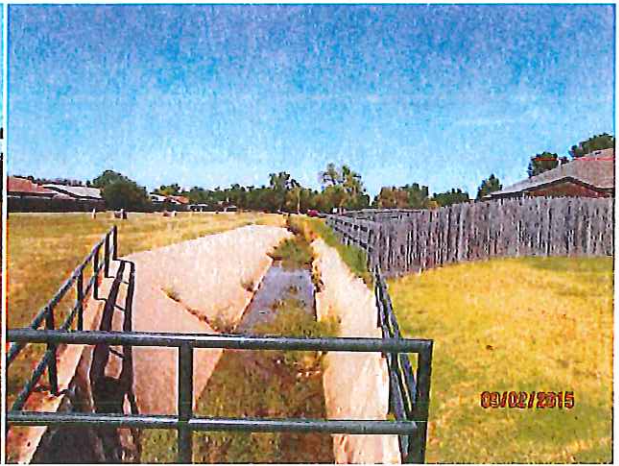
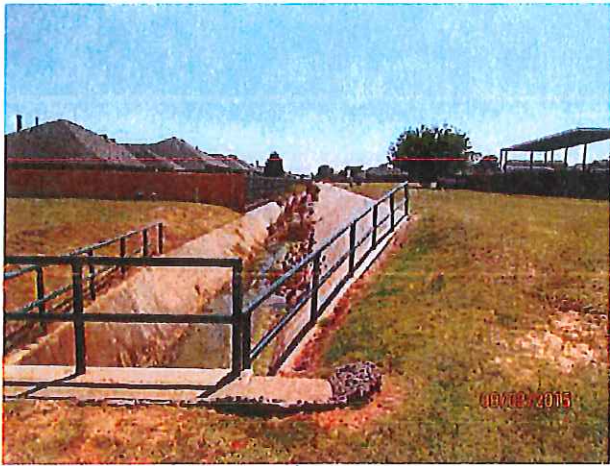


CASTLEROCK ADDITION DRAINAGE AREAS





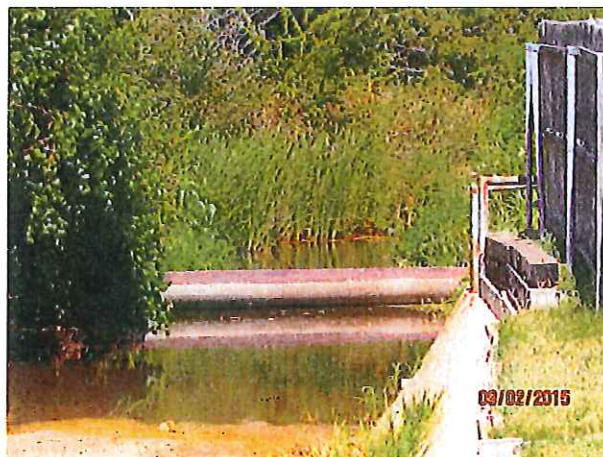
SHANNON PLACE



SAVANNAH LAKES



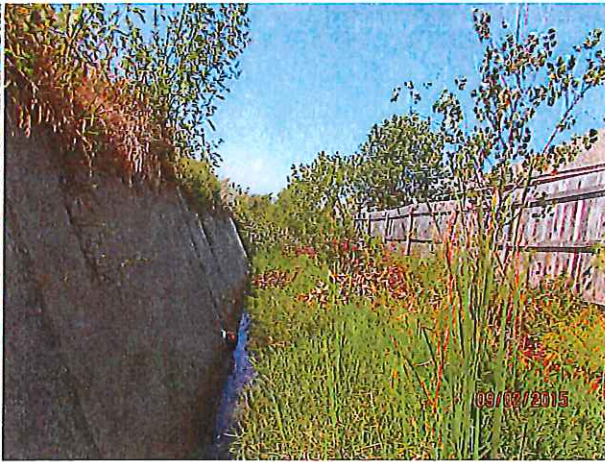
HUNTERS CROSSING



TWINBROOK



CASTLEROCK



CASTLEROCK CONTINUED...



CASTLEROCK CONTINUED...

