A RESOLUTION

BY PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE **01- R -1389**

A RESOLUTION AUTHORIZING PAYMENT IN THE AMOUNT OF $4,228.00 IN SETTLEMENT OF THE CLAIM OF JOHN H. BRIGHT AGAINST THE CITY OF ATLANTA

WHEREAS, John H. Bright has filed a claim against the City of Atlanta seeking damages arising out of several occurrences of sewer back ups to his property located at 325 St. John's Avenue, SW; and

WHEREAS, the property owned by Mr. Bright has been damaged due to several occurrences of sewer back ups due to a blockage in the mainline which the City had knowledge of prior to the overflow which occurred on June 13, 2001, specifically; and

WHEREAS, the City of Atlanta was on notice of said nuisance and yet the City failed to abate said nuisance; and

WHEREAS, inasmuch as the facts disclosed indicate said claim is not based on a claim of negligence, but is a nuisance which is not subject to a defense of sovereign immunity under the laws of the State of Georgia; and

WHEREAS, the claimant has asserted damages in the amount of $4,228.00 and has agreed to accept this sum in full and complete satisfaction and settlement of his claim against the City of Atlanta; and

WHEREAS, the City Attorney has recommended that the claim of John H. Bright be settled for the sum of $4,228.00.

THEREFORE, BE IT RESOLVED by the Council of the City of Atlanta, Georgia that $4,228.00 be paid by the City of Atlanta in satisfaction of any and all claims John H. Bright owner of property located at 325 St. John's Avenue, SW may have stemming from damages sustained to his property on or about June 13, 2001.

BE IT FURTHER RESOLVED that the Chief Financial Officer be and hereby authorized to pay the above mentioned sum from account number 2J01/529017/T31001.

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 01L0488 Date: August 16, 2001

Claimant /Victim JOHN H. BRIGHT
BY: (Atty)(Ins. Co.)
Address: 100 Tomahawk Drive, Sharpsburg, Georgia 30277
Subrogation: _____ Claim for Property damage $ 4,228.00 Bodily Injury $ _____
Date of Notice: 07/30/01 Method: Written, proper X Improper _____
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 06/13/01 Place: 325 St. John's Avenue, SW
Department Public Works Division: Sewer Operations
Employee involved _____ Disciplinary Action: _____

NATURE OF CLAIM: The claimant's property was damaged when the sewer backed up into same. The City was on notice of a problem with the sewer line prior to this incident.

INVESTIGATION:

Statements: City employee _____ Claimant _____ Others _____ Written _____ Oral _____
Pictures _____ Diagrams _____ Reports: Police _____ Dept Report X Other _____
Traffic citations issued: City Driver _____ Claimant Driver _____
Citation disposition: City Driver _____ Claimant Driver _____

BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial _____
Improper Notice _____ More than Six Months _____ Other _____ Damages reasonable X
City not involved _____ Offer rejected _____ Compromise settlement _____
Repair/replacement by Ins. Co. _____ Repair/replacement by City Forces _____
Claimant Negligent _____ City Negligent X Joint _____ Claim Abandoned _____

Respectfully submitted,

INVESTIGATOR - DIANNE C. MITCHELL

RECOMMENDATION:

Pay $ 4,228.00 Adverse Account charged: 1A01 _____ 2J01 X 2H01 _____
Claims Manager: _____ Concur/date 08-16-01
Committee Action: _____ Council Action _____

FORM 23-61

Mitchell
07/31/01

COUNCIL OF THE CITY OF ATLANTA
MUNICIPAL CLERK
City Hall
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

RECEIVED
JUL 30 2001
MUNICIPAL CLERK

RE: CLAIM FOR DAMAGES

Today's Date: 7-10-01

ENTERED - 8-1-01 - SB
01L0488 - DIANNE MITCHELL

Dear Municipal Clerk:

This is to notify the City of Atlanta that I have suffered damages in the amount sum of $ 4,228.00 property and /or $ 0.00 bodily injury for which I contend the City is liable.

1. Date of incident: 6/13/01 (month/day/year). 2. Time of Incident: unknown 3. Police called: ____ Yes ✓ No

4. Location of incident (including street address): 325 Saint John's Ave S.W Atlanta, GA 30315

5. Name of your insurance company: State Farm Policy No. 91-LR-8556-9

6. State what and how incident occurred: After 2 Heavy Rain Storms, The City Sewer System Backed Up Into my Rental Property, A House. The House Sustained Water Damage as Well a Foul Stench. I Had To Replace Carpet and Padding, Some Hardwood Flooring and Lancleum In The Bathroom. I Also Incurred a Cleaning Charge and A Loss of Rent For 1 Month of $1053. This was Inspected and Pictures Taken By Water Works Employee. Street Sewer System is Clogged!

7. ALL ESTIMATES AND DAMAGES ARE SUBJECT TO INSPECTION. THE MAKING OF FALSE CLAIMS WILL RESULT IN YOUR CLAIM BEING DENIED AND MAY RESULT IN CRIMINAL PROSECUTION!

8. The registered owner must make the claim for vehicle damages, complete the following and attach two (2) estimates of repair and proof of ownership of your vehicle (copy of the current tag receipt or title).

Your vehicle: N/A
(Make) (Year) (Tag Number) (Driver's Name)

City vehicle: N/A
(Make) (City Driver's Name) (Department/Bureau)

9. Witness: N/A
(Name) (Address) (Telephone Number)

10. The acknowledgement of this claim in no way waives the sovereign immunity of the City of Atlanta, as granted by State law, nor is it an admission of liability on behalf of the City of Atlanta and / or its employee(s).

11. This claim should be mailed immediately to the address shown above.

I HEREBY SWEAR OR AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND CORRECT.

John H Bright
Signature of Claimant

John H. Bright
(Print Claimant's Name)

100 Tomahawk Dr.
(Address)

Sharpsburg GA 30277
(City, State and Zip Code)

770-301-6201 (Work Number)
770-252-4540 (Home Number)

P.S: I had a Sction "8" Tennant Scheduled to Move In To The Property on July 2, 2001. She could not move in due to the Condition of the House, and subsequently Took another Property. This cost me a month's Rent of $1053.00 and I had to Refund Security Deposit of $500.

Below is a copy of Repair Invoice which my Insurance would Not Cover.

I have Also Included 2 Photos of Flooring Damage + Bathroom Fixtures where Sewage entered the House.

GENERAL RELEASE AND INDEMNIFICATION

CLAIM NUMBER **01L0488** $ **4,228.00**

IN CONSIDERATION of the sum of **FOUR THOUSAND TWO HUNDRED TWENTY-EIGHT AND NO/100** DOLLARS, to be paid by the CITY OF ATLANTA, the future receipt of which is hereby acknowledged, I do hereby, for myself, my heirs, executors, administrators, and assigns, release and forever discharge said City, its officers and employees, from any and all claims, demands, actions, causes of action, suits, damages, loss and expenses, of whatsoever kind or nature for or on account of anything that has heretofore occurred, and particularly for or on account of **property damage due to a sewer back up**

which occurred on or about the **13th** day of **June**, **2001**,

at or near **325 St. John's Avenue, SW**.

It is further understood and agreed that the payment of the above named sum is not to be considered as an admission on the part of the City, its officers, agents, servants or employees, of any liability whatsoever and the undersigned further covenants and agrees to indemnify and hold harmless the City of Atlanta, its officers, agents, servants and employees, from any and all claims, damages or costs which the said City of Atlanta, its officers, agents, servants and employees, may be called upon to make as a result of the event hereinbefore referred to.

And I now state that the only consideration for my signing this release and indemnification is the payment of the sum stated above; that no other promise or agreement of any kind or nature has been made to or with me by said City or its agents to cause me to sign this release, and that I fully understand the meaning and intent of this instrument.

WITNESS my hand and seal this 18th day of August, 2001.

John H Bright (LS)
JOHN H. BRIGHT

The above release was read and explained to, and signed by the said John H. Bright

_____ in our presence on the date above written.

Lisa A. Kemmerer
Lisa A. Kemmerer my commission expires: 08/23/02

Melissa Teal WITNESSES