

**CITY OF BLOOMINGTON
CITY COUNCIL MEETING AGENDA
109 E. OLIVE
MONDAY, JULY 8, 2013, 7:00 P.M.**

- 1. Call to order**
- 2. Pledge of Allegiance to the Flag**
- 3. Remain Standing for a Moment of Silent Prayer**
- 4. Roll Call of Attendance**
- 5. Public Comment**
- 6. Recognition/Appointments**
 - A. Presentation by Christine Randall, Illinois State University Graduate Student – Homelessness Project. *(10 minutes)***
- 7. “Consent Agenda”**
 - A. Council Proceedings of June 24, 2013. (Recommend that the reading of the minutes of the previous Council Proceedings of June 24, 2013 be dispensed with and the minutes approved as printed.)**
 - B. Bills and Payroll. (Recommend that the Bills and Payroll be allowed and the orders drawn on the Treasurer for the various amounts as funds are available.)**
 - C. Rescind Bid Award for White and Yellow High Durability Latex Traffic Line Paint and Glass Beads for Pavement Marking Material to Sherwin Williams and Award the Bid to Diamond Vogel, Lowest Responsible Bidder. (Recommend that the bid award for White and Yellow High Durability Latex Traffic Line Paint and Glass Beads for Pavement Marking Material to Sherwin Williams, Bloomington, IL, be rescinded and the bid be awarded to Diamond Vogel, Bloomington, IL, for the remainder of FY 2014, in an amount not to exceed \$62,705.50, and the Purchasing Agent be authorized to issue a Purchase Order.)**

- D. Intergovernmental Agreement with McLean County Regional Planning Commission, (MCRPC). (Recommend that the Intergovernmental Agreement with MCRPC be approved, the Mayor and City Clerk be authorized to execute the necessary document and the payment approved, in the amount of \$27,868.)**
- E. Professional Services Contract for the Bloomington Center for the Performing Arts. (Recommend that the contracts with Brady Entertainment, Inc. and Zydyco, Inc. be approved, in the amount of \$77,000, and the Mayor and City Clerk be authorized to execute the necessary documents.)**
- F. Resolution Regarding Temporary Closing of State Right of Ways for Community Event. (Recommend that the Resolution be adopted.)**
- G. Suspension of Ordinances to Allow Consumption of Alcohol at Lake Bloomington's Davis Lodge on October 19, 2013. (Recommend that the Ordinance suspending Section 26(d) of Chapter 6 and Section 701 of Chapter 31 to allow the suspension and consumption of alcohol at the Lake Bloomington Davis Lodge on October 19, 2013 be passed.)**
- H. Suspension of Ordinances to Allow Consumption of Alcohol at Miller Park Pavilion on November 16, 2013. (Recommend that the Ordinance suspending Section 26(d) of Chapter 6 and Section 701 of Chapter 31 to allow suspension and consumption of alcohol at the Miller Park Pavilion on November 30, 2013 be passed.)**
- I. Suspension of Ordinance to Allow Consumption of Alcohol at Miller Park Pavilion on March 15, 2014. (Recommend that the Ordinance suspending Section 26(d) of Chapter 6 and Section 701 of Chapter 31 to allow suspension and consumption of alcohol at the Miller Park Pavilion on March 15, 2014 be passed.)**
- J. Easement Agreement Between City and Ameren Illinois Company. (Recommend that the Easement Agreement with Ameren Illinois Company be approved and the Mayor and City Clerk be authorized to execute the necessary documents.)**
- K. Petition submitted by Alex A. and Larry Calvert Requesting Approval of Rezoning from R – 1C, Single Family Residential District to C- 1, Office District, for the Property Commonly Located at 1028 E. Front St. (Recommend that the Rezoning be approved and the Ordinance passed.)**
- L. Petition submitted by Andy Streenz, Lawrence Wheat, John P. Wheat, Vincente Adame and Chad Seeman Requesting Approval of the Vacation of the East West Alley Bounded by Lee St. on the West and Roosevelt St. on the East. (Recommend that the Vacation be approved and the Ordinance passed.)**

8. "Regular Agenda"

- A. Analysis of Bids for Repair Market St. Parking Garage. (Recommend that the bid for Market St. Parking Garage be awarded to J. Gill and Co., in the amount of \$414,393, and the Mayor and City Clerk be authorized to execute the necessary documents.) (10 minutes)**
- B. Acceptance of Harwood Pl. Street Lighting Study and Recommendation to Replace Existing Street Lights with New Decorative Lights, Budget Approval and Budget Amendment. (Recommend that the Harwood Pl. Street Lighting Study and its recommendation be accepted, new light poles and fixtures be purchased, in the amount of \$29,962.10, the Purchasing Agent be authorized to issue a Purchase Order, and the Budget Amendment Ordinance passed.) (10 minutes)**
- C. Customer Service Agreement with Central Illinois Regional Broadband Network, LLC (CIRBN). (Recommend that the Customer Service Agreement with CIRBN be approved and the Mayor and City Clerk be authorized to execute the necessary documents.) (15 minutes)**
- D. Central Illinois Regional Broadband Network, LLC (CIRBN) Membership. (Recommend that CIRBN membership be approved and the Mayor and City Clerk be authorized to execute the necessary documents.) (20 minutes)**

9. City Manager's Reports and Discussion

10. Mayor's Discussion

11. Aldermen's Discussion

12. Executive Session - cite section

13. Adjournment

14. Notes



FOR COUNCIL: July 8, 2013

SUBJECT: Council Proceedings of June 24, 2013

RECOMMENDATION/MOTION: That the reading of the minutes of the previous Council Proceedings of June 24, 2013 be dispensed with and the minutes approved as printed.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Objective 1.d. City services delivered in the most cost-effective, efficient manner.

BACKGROUND: The Council Proceedings of June 24, 2013 have been reviewed and certified as correct and complete by the City Clerk.

In compliance with the Open Meetings Act, Council Proceedings must be approved within thirty (30) days after the meeting or at the Council's second subsequent regular meeting whichever is later.

In accordance with the Open Meetings Act, Council Proceedings are made available for public inspection and posted to the City's web site within ten (10) days after Council approval, 5 ILCS 120/2.06(b).

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Not applicable.

Respectfully submitted for Council consideration.

Prepared by: Tracey Covert, City Clerk

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. Draft Council Proceedings for June 24, 2013

Motion:

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			

**ITEM 7A WILL BE DISTRIBUTED VIA
ADDENDUM ON FRIDAY, JULY 5, 2013**



FOR COUNCIL: July 8, 2013

SUBJECT: Bills and Payroll

RECOMMENDATION/MOTION: That the bills and payroll be allowed and orders drawn on the Treasurer for the various amounts as funds are available.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Objective 1.d. City services delivered in the most cost-effective, efficient manner.

BACKGROUND: The list of bills and payrolls will be posted on the City's website on Wednesday, July 3, 2013 by posting via the City's web site.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Total disbursements information will be provided via addendum.

Respectfully submitted for Council consideration.

Prepared by: Tracey Covert, City Clerk

Financial & budgetary review by: Patti-Lynn Silva, Director of Finance

Recommended by:

David A. Hales
City Manager

Motion:

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			



FOR COUNCIL: July 8, 2013

SUBJECT: Rescind Bid Award for White and Yellow High Durability Latex Traffic Line Paint and Glass Beads for Pavement Marking Material to Sherwin Williams and Award the Bid Diamond Vogel, Lowest Responsible Bidder

RECOMMENDATION/MOTION: That the bid award for White and Yellow High Durability Latex Traffic Line Paint and Glass Beads for Pavement Marking Material to Sherwin Williams, Bloomington, IL, be rescinded and the bid be awarded to Diamond Vogel, Bloomington, IL, for the remainder of FY 2014, in an amount not to exceed \$62,705.50, and the Purchasing Agent be authorized to issue a Purchase Order.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Objective 2a. Better quality roads and sidewalks.

BACKGROUND: At the March 26, 2012 Council Meeting, Public Works Department's Streets and Sewers Division received permission to purchase a new self-propelled traffic line painting machine from E-Z Liner Industries. This machine requires the pavement marking beads to be loaded mechanically and the traffic line paint to be drawn from fifty-five (55) gallon drums. A bid specification was created which allows for the purchase of traffic line paint to be used not only with the new machine but also with the existing walk behind traffic line painting machines.

Bids received for FY 2013 (last year) – information given for reference only

On July 10, 2012 at 11:00 a.m. bids were opened and read. A total of five (5) bids were received. The five (5) bids are as follows:

Vendor	Traffic Line Paint and Beads
AllStates Coatings Company	\$42, 794.90
Ennis Paint	\$61, 644.185
Diamond Vogel Paints**	\$78,398.25
Sherwin Williams	\$89, 177.35
Don Smith	No Bid

**Recommended – awarded last year

Bids received for FY 2014

On April 23, 2013 at 3:00 p.m. bids were opened and read. A total of three (3) bids were received. The three (3) bids are as follows:

Vendor	Traffic Line Paint and Beads
Diamond Vogel **	\$62,705.50
Ennis Paint	\$57,800.50
Sherwin Williams	\$51,555.00

**Diamond Vogel met all of the bid specifications and delivery needs of the City. Diamond Vogel stores the paint for the City and only requires a twenty-four (24) hour notice for delivery.

Ennis Paint could only delivery in pallets from out of state. Due to the City's limited storage area, this company was unable to meet our needs.

Sherwin Williams did not indicate in their bid that they also delivered in pallets from out of state and needed a thirty (30) day lead time on delivery. Due to the limited City's storage facility, the City cannot accept pallets of paint. This bid was originally awarded to Sherwin Williams at the Council's June 10, 2013 meeting.

The white and yellow high durability traffic line paint and glass beads for pavement marking provided by Diamond Vogel Paints, Bloomington, IL is recommended for the following reasons:

1. The paint specification provided by this vendor meets and/or exceeds the bid specification submitted by staff.
2. This bead specification provided by this vendor meets and/or exceeds the bid specification submitted by staff.
3. This is the lowest price while meeting all of the bid specifications, without exception. The other vendors failed to include the addendum to the bid specification with their bid packet.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public notice of the bid was published in the Pantagraph on April 5, 2013. Three (3) bid packages were provided. A total of three (3) bids were received.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$77,175 for purchase of traffic paint in line item 10016120-71096. The total cost to purchase the paint requested for traffic line paint is \$62,705.50. There are sufficient budgeted funds on hand to pay for the traffic line paint. Stakeholders may locate this purchase in the FY 2014 General Fund Budget document on page #331.

Respectfully submitted for Council consideration.

Prepared by: Jim Karch, P.E., Director of Public Works

Reviewed by: Cathy Link, Interim Purchasing Agent.

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Recommended by:

David A. Hales
City Manager

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			



FOR COUNCIL: July 8, 2013

SUBJECT: Intergovernmental Agreement with McLean County Regional Planning Commission

RECOMMENDATION/MOTION: That the Intergovernmental Agreement with the McLean County Regional Planning Commission, (MCRPC), be approved, the Mayor and City Clerk be authorized to execute the necessary document and the payment approved, in the amount of \$27,868.

STRATEGIC PLAN LINK:

STRATEGIC PLAN SIGNIFICANCE: The City's relationship with the MCRPC actually assists the City to affect all of its strategic plan goals. While the primary thinking might be of land use regulation and planning; MCRPC services to the City also allow us to promote prosperity, strengthen our neighborhoods, and support sustainability.

BACKGROUND: The MCRPC has been providing long term planning for the City, Town of Normal and McLean County for many years. Their functions include such things as long range transportation needs, comprehensive plans, public mapping services, etc. The three (3) government entities as well as state and federal grants provide the operational funding for the MCRPC.

Over the past several years the City has seen their contribution to MCRP vary widely, this has included two (2) past fiscal years (2009 and 2010) where payment was not required (the MCRPC used some of their reserves to assist the City, Town and County in these tough financial times). This year the City's contribution has been set at \$27,868.

Fiscal Year	City Contribution
2009	0
2010	0
2011	\$23,023
2012	\$24,244
2013	\$23,239
2014	\$27,868

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The Planning and Code Enforcement's Planning Division budgeted \$25,000 in account #1001-5420-74025 for payment of this services agreement this year.

Respectfully submitted for Council consideration.

Prepared by: Mark Woolard, City Planner

Reviewed by: Mark Huber, Director – PACE

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy Ervin, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. Intergovernmental Agreement

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			

REGIONAL PLANNING SERVICE AGREEMENT

This agreement is entered into as of the 1st day of July, 2013, by and between the McLean County Regional Planning Commission (hereinafter referred to as the “Commission”) and the City of Bloomington (hereinafter referred to as the “City”).

The parties do mutually agree as follows:

A. Period of Agreement

This agreement shall remain in full force and effect through June 30, 2014.

B. Long Range Planning Services

The Commission shall maintain a permanent professional planning staff capable of performing, or causing to be performed, a long range planning work program, including the following activities:

1. Assist the City in the periodic updating of plans and ordinances that pertain to planning and development, including the Comprehensive plan and zoning ordinances and subdivision regulations as needed.
2. Prepare or coordinate the preparation and updating of reports that are an integral part of the McLean County Transportation Study, including the Unified Work Program (UWP), Long Range Transportation Plan (LRTP), and the Transportation Improvement Program (TIP).
3. Coordinate the development and management of the regional geographic information system (GIS) as per separate intergovernmental agreement.
4. Maintain a web site to post statistical data, plans and studies, and other planning related information to serve as a resource for local governments and the public.
5. Provide assistance in the preparation of applications for federal or state funding as needed.
6. Attend meetings of county and municipal government and civic organizations or other groups interested in planning and development as requested and as schedules permit.
7. Provide technical assistance as needed and requested in matters of long range planning and development.

C. Staff

The Commission shall employ a Director of the Commission and other employees as necessary and authorized by the budget. It is agreed by all parties that the City short range planner will be available to assist the Commission staff to accomplish the activities specified in “B” above as applicable to the City of Bloomington.

D. Financing

The City of Bloomington will remit to the Commission the sum of TWENTY-SEVEN THOUSAND EIGHT HUNDRED SIXTY EIGHT AND 00/100 DOLLARS (\$27,868.00) for deposit in the accounts of the Commission upon the City's receipt of an invoice for said amount.

Mayor - City of Bloomington
Date

City Clerk - City of Bloomington

Chairman
Date
McLean County Regional Planning
Commission

Executive Director
McLean County Regional Planning
Commission



FOR COUNCIL: July 8, 2013

SUBJECT: Professional Services Contract for the Bloomington Center for Performing Arts

RECOMMENDATION: That the contracts with Brady Enterprises Entertainment, Inc. and Zydyco, Inc. be approved, in the amount of \$77,000, be approved and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 3. Grow the local economy; Goal 5. Great place – livable, sustainable City; and Goal 6. Prosperous Downtown Bloomington.

STRATEGIC PLAN SIGNIFICANCE: Objective 3.e.- Strong working relationship among the City, businesses, economic development organizations; Objective 5.d. Appropriate leisure and recreational opportunities responding to the needs of residents; Objective 6.c. Downtown becoming a community and regional destination.

BACKGROUND: Staff respectfully requests approval of contracts to engage persons and/or groups represented by: Monterey International and WME Entertainment, LLC to perform entertainment services in the Bloomington Center for the Performing Arts, (BCPA). Contract expenses for the contracts will be \$77,000. The contract prices cover the artist fees for the performances coming to the BCPA in September and November 2013. For proprietary and competitive advantage reasons we do not mention the acts by name in the staff back up report. As is standard industry practice, some artist contracts require some additional expenses for items such as travel, meals and lodging that vary from artist to artist. Travel expenses and local lodging fees occur less often. However virtually all artists are provided with meals and non-alcoholic beverages.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: The selection of these artists was coordinated with the Cultural Commission and the BCPA's Programming Advisory Committee. Staff and community advisors agree that the visiting professionals would attract broad, positive community involvement and contribute to the public service mission of the BCPA.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$511,300 in line item 10014125-70218-20000. The purpose of these \$77,000 contracts is to engage persons and/or groups represented by: Brady Enterprises Entertainment, Inc. and Zydyco, Inc. to provide entertainment services in the BCPA. Note this is only a portion of the total budget. The cost of this service will be offset by revenue generated from ticket sales, grants, playbills, concessions, and corporate advertisement and sponsorships. These revenues are also targeted to offset the additional artist expenses for travel, meals and lodging. With the incorporation of the BCPA Fund into the General Fund in FY 2014, stakeholders may locate this purchase in the FY 2014 General Fund Budget document on page #408.

Respectfully submitted for Council consideration.

Prepared by: Joel Aalberts, Performing Arts Manager

Reviewed by: John Kennedy, Director of Parks, Rec. & Cultural Arts

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Fazzini				Alderman Black			
Alderman Fruin				Alderman Sage			
Alderman McDade				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman Mwilambwe							
				Mayor Renner			



FOR COUNCIL: July 8, 2013

SUBJECT: Resolution Regarding Temporary Closing of State Right of Ways for Community Event

RECOMMENDATION: That the Resolution be adopted.

STRATEGIC PLAN LINK: Goal 5. Great Place – Livable, Sustainable City.

STRATEGIC PLAN SIGNIFICANCE: Objective 5.d. Appropriate leisure and recreational opportunities responding to the needs of residents.

BACKGROUND: The Illinois Department of Transportation (IDOT) requires that Council adopt a Resolution requesting permission to close or hinder traffic on a State Route.

Typically the City only has two (2) requests each year for parades on a State Route, (US Route 51) which involves the Memorial Day, Labor Day and Christmas Parades. IDOT has requested that each municipality that experiences multiple parades on a State Route pass one (1) blanket Resolution at the beginning of each calendar year in order to minimize paperwork and manpower expenses.

Therefore, staff respectfully requests that Council adopt the Parade Resolution and further, that the Mayor and City Clerk be authorized to execute the necessary document. Upon adoption and execution, the Resolution will be forwarded to IDOT.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Not applicable.

Respectfully submitted for Council consideration.

Prepared by: Tracey Covert, City Clerk

Reviewed by: Jim Karch, Director of Public Works

Reviewed by: John Kennedy, Director of Parks, Rec & Cultural Arts

Reviewed by: R. T. Finney, Interim Police Chief

Reviewed by: Barbara J. Adkins, Deputy City Manager

Reviewed as to legal sufficiency: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. Resolution

Motion: **Recommend that the Resolution be adopted.**

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Fazzini				Alderman Black			
Alderman Fruin				Alderman Sage			
Alderman Lower				Alderman Schmidt			
Alderman McDade				Alderman Stearns			
Alderman Mwilambwe							
				Mayor Stockton			

RESOLUTION NO. 2013 –

WHEREAS, the BN Jaycees and Bloomington Cycle Racing Team are sponsoring the Bloomington Jaycee Criterium, which event constitutes a public purpose;

WHEREAS, this Bloomington Jaycee Criterium will require the temporary closure of two lanes of Route 51, a State Highway in the City of Bloomington, Illinois from Jefferson Street north to Market Street;

WHEREAS, Section 4-408 of the Illinois Highway Code authorizes the Department of Transportation to issue permits to local authorities to temporarily close portions of State Highways for such public purposes;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Bloomington that permission to close Route 51 from Jefferson Street north to Market St. as above designated, be requested of the Department of Transportation.

BE IT FURTHER RESOLVED that this closure shall occur during the approximate time period between 11:00 a.m. to 7:00 p.m. on August 24, 2013.

BE IT FURTHER RESOLVED that this closure is for the public purpose of a bicycle race.

BE IT FURTHER RESOLVED, that the City of Bloomington assumes full responsibility for the direction, protection and regulation of the traffic during the time the bicycle race is in effect.

BE IT FURTHER RESOLVED, that police officers or authorized flaggers shall, at the expense of the City of Bloomington be positioned at the end of the closed section and at other points (such as intersections) as may be necessary to assist in direction traffic through the route.

BE IT FURTHER RESOLVED, that police officers, flaggers, and officials shall permit emergency vehicles in emergency situations to pass through the closed area as swiftly as is safe for all concerned.

BE IT FURTHER RESOLVED, that all debris shall be removed by the City of Bloomington prior to reopening the State highway.

BE IT FURTHER RESOLVED, that such signs, flags, barricades, etc., shall be used by the City of Bloomington as may be approved by the Illinois Department of Transportation. These items shall be provided by the City of Bloomington.

BE IT FURTHER RESOLVED, that the closure of two lanes of traffic shall be marked according to the Illinois Manual on Uniform Traffic Control Devices.

BE IT FURTHER RESOLVED, that an occasional break shall be made in the procession so that traffic may pass through. In any event, adequate provisions will be made for traffic on intersecting highways pursuant to conditions noted above.

BE IT FURTHER RESOLVED, that the City of Bloomington hereby agrees to assume all liabilities and pay all claims or any damage which shall be occasioned by the closing described above.

BE IT FURTHER RESOLVED, that the City of Bloomington hereby agrees to assume all liabilities and pay all claims for any damage which shall be occasioned by the closing described above and to hold harmless the State of Illinois from all claims arising from the requested road closings.

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to the Department of Transportation to serve as a formal request for the permission sought in this resolution and to operate as part of the conditions of said permission.

ADOPTED on this 8th day of July, 2013.

APPROVED on this ____th day of July, 2013.

Tari Renner
Mayor

ATTEST:

Tracey Covert
City Clerk



FOR COUNCIL: July 8, 2013

SUBJECT: Suspension of Ordinances to Allow Consumption of Alcohol at Lake Bloomington's Davis Lodge on October 19, 2013

RECOMMENDATION/MOTION: That the Ordinance suspending Section 26(d) of Chapter 6 and Section 701 of Chapter 31 to allow the suspension and consumption of alcohol at the Lake Bloomington Davis Lodge on October 19, 2013 be passed.

STRATEGIC PLAN LINK: Goal 5. Great place – livable, sustainable City.

STRATEGIC PLAN SIGNIFICANCE: Objective 5.d. Appropriate leisure and recreational opportunities responding to the needs of residents.

BACKGROUND: The Bloomington Liquor Commissioner Tari Renner called the Liquor Hearing to order to hear the request of Dr. Jamie Kear and Vince Scott to allow moderate consumption of alcohol at their October 19, 2013 wedding reception to be held at Davis Lodge. Present at the hearing were Liquor Commissioners Tari Renner, Geoffrey Tompkins and Jim Jordan; George Boyle, Asst. Corporation Counsel, Bob Wall, Asst. Police Chief, and Tracey Covert, City Clerk, and Gail Kear, mother of the bride and request representative.

Commissioner Renner opened the liquor hearing and requested that the requestor's representative address this request. Gail Kear, mother of the bride, addressed the Commission. Her daughter was planning a small private wedding and reception at Lake Bloomington's Davis Lodge on October 19, 2013. Attendance was estimated at 100 people. The wedding would be a family event. The food would be self catered as Davis Lodge had a full kitchen. Famous Liquors, located at 1404 E. Empire St., would be retained to provide beer and wine service including champagne. Guest transportation would be provided via shuttle. The goal was no one who attended the wedding would drive under the influence. Ms. Kear requested permission to allow liquor service at Davis Lodge for her daughter's wedding. The wedding was scheduled for 2:00 p.m. and reception would start at 4:00 p.m. The Davis Lodge must be vacated by midnight.

Commissioner Jordan questioned if draft beer would be served. Ms. Kear responded affirmatively plus wine including champagne. Famous Liquors would provide two (2) bartenders. The kitchen window which opened out on to the porch would be used for liquor service.

Motion by Commissioner Tompkins, seconded by Commissioner Jordan that the request of Dr. Jamie Kear and Vince Scott to allow moderate consumption of alcohol at the Lake Bloomington Davis Lodge for their October 19, 2013 wedding be approved.

Motion carried, (unanimously).

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: The Agenda for the June 11, 2013 Meeting of the Liquor Commission was placed on the City's web site. There also is a list serve feature for the Liquor Commission.

FINANCIAL IMPACT: None.

Respectfully submitted for Council consideration.

Recommended by:

Tari Renner
Mayor

Attachments: Attachment 1. Ordinance

Motion:

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			

ORDINANCE NO. 2013 -

AN ORDINANCE SUSPENDING PORTIONS OF SECTION 701 OF CHAPTER 31 AND SECTION 26(d) OF CHAPTER 6 OF THE BLOOMINGTON CITY CODE FOR A WEDDING RECEPTION AT THE LAKE BLOOMINGTON DAVIS LODGE

WHEREAS, Dr. Jamie Kear and Vince Scott are planning to hold their wedding reception at the Lake Bloomington Davis Lodge from 3:00 p.m. to 11:55 p.m. on October 19, 2013; and

WHEREAS, Dr. Jamie Kear and Vince Scott have requested permission from the City to serve beer and wine during this event; and

WHEREAS, in order to legally possess alcohol in a City Park, Section 701(a), (b) and (c) of Chapter 31 of the Bloomington City Code, which prohibits the drinking, selling and possessing alcohol beverages with the City parks and Section 26(d) of Chapter 6 of the Bloomington City Code, which prohibits possession of open alcohol on public property must be suspended;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, ILLINOIS;

Section 1: That Sections 701(a), (b) and (c) of Chapter 31 and Section 26(d) of Chapter 6 of the Bloomington City Code, 1960, as amended, are suspended for the duration of the wedding reception at the Lake Bloomington Davis Lodge on October 19, 2013 under the conditions set forth in the rental agreement.

Section 2: Except for the date of date set forth in Section 1 of this Ordinance, Sections 701(a), (b) and (c) of Chapter 31 and Section 26(d) of Chapter 6 of the Bloomington City Code, 1960, shall remain in full force and effect. Nothing in this Ordinance shall be interpreted as repealing said Sections 701(a), (b) and (c) of Chapter 31 and Section 26(d) of Chapter 6.

Section 3: This Ordinance shall be effective on the date of its passage and approval.

Section 4: This Ordinance is adopted pursuant to the home rule authority granted the City of Bloomington by Article VII, Section 6 of the 1960 Illinois Constitution.

PASSED this 8th day of July, 2013.

APPROVED this ___th day of July, 2013.

APPROVED:

Tari Renner
Mayor

ATTEST:

Tracey Covert
City Clerk



FOR COUNCIL: July 8, 2013

SUBJECT: Suspension of Ordinances to Allow Consumption of Alcohol at Miller Park Pavilion on November 16, 2013

RECOMMENDATION/MOTION: That the Ordinance suspending Section 26(d) of Chapter 6 and Section 701 of Chapter 31 to allow the suspension and consumption of alcohol at the Miller Park Pavilion on November 30, 2013 be passed.

STRATEGIC PLAN LINK: Goal 5. Great place – livable, sustainable City.

STRATEGIC PLAN SIGNIFICANCE: Objective 5.d. Appropriate leisure and recreational opportunities responding to the needs of residents.

BACKGROUND: The Bloomington Liquor Commissioner Tari Renner called the Liquor Hearing to order to hear the request of Janelle Dodge and Amanda Stenger to allow moderate consumption of alcohol at their November 30, 2013, civil union reception to be held at Miller Park Pavilion. Present at the hearing were Liquor Commissioners Tari Renner, Geoffrey Tompkins and Jim Jordan; George Boyle, Asst. Corporation Counsel, Bob Wall, Asst. Police Chief, and Tracey Covert, City Clerk, and Janelle Dodge, partner and request representative.

Commissioner Renner opened the liquor hearing and requested that the requestor's representative address this request. Janelle Dodge, partner, addressed the Commission. Her civil union was scheduled for November 30, 2013 at the Miller Park Pavilion. She planned to invite 125 guests. Famous Dave's, located at 1603 B Morrissey Dr., would be retained to provide food and beverage service, which would be limited to beer and wine only. The civil union was scheduled for 5:00 p.m. The reception would start at 6:00 p.m. The Miller Park Pavilion must be vacated by 11:00 p.m.

Motion by Commissioner Tompkins, seconded by Commissioner Jordan that the request of Janelle Dodge and Amanda Stenger to allow moderate consumption of alcohol at the Miller Park Pavilion for their November 30, 2013 civil union be approved.

Motion carried, (unanimously).

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: The Agenda for the June 11, 2013 Meeting of the Liquor Commission was placed on the City's web site. There also is a list serve feature for the Liquor Commission.

FINANCIAL IMPACT: None.

Respectfully submitted for Council consideration.

Recommended by:

Tari Renner
Mayor

Attachments: Attachment 1. Ordinance

Motion:

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			

ORDINANCE NO. 2013 -

**AN ORDINANCE SUSPENDING PORTIONS OF SECTION 701 OF CHAPTER 31 AND
SECTION 26(d) OF CHAPTER 6 OF THE BLOOMINGTON CITY CODE FOR A
WEDDING RECEPTION AT THE MILLER PARK PAVILION**

WHEREAS, and Janelle Dodge and Amanda Stenger are planning to hold their civil union reception at the Miller Park Pavilion from 5:00 p.m. to 11:00 p.m. on November 30, 2013; and

WHEREAS, Janelle Dodge and Amanda Stenger have requested permission from the City to serve beer and wine during this event; and

WHEREAS, in order to legally possess alcohol in a City Park, Section 701(a), (b) and (c) of Chapter 31 of the Bloomington City Code, which prohibits the drinking, selling and possessing alcohol beverages with the City parks and Section 26(d) of Chapter 6 of the Bloomington City Code, which prohibits possession of open alcohol on public property must be suspended;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, ILLINOIS;

Section 1: That Sections 701(a), (b) and (c) of Chapter 31 and Section 26(d) of Chapter 6 of the Bloomington City Code, 1960, as amended, are suspended for the duration of the civil union reception at the Miller Park Pavilion on November 30, 2013 under the conditions set forth in the rental agreement.

Section 2: Except for the date of date set forth in Section 1 of this Ordinance, Sections 701(a), (b) and (c) of Chapter 31 and Section 26(d) of Chapter 6 of the Bloomington City Code, 1960, shall remain in full force and effect. Nothing in this Ordinance shall be interpreted as repealing said Sections 701(a), (b) and (c) of Chapter 31 and Section 26(d) of Chapter 6.

Section 3: This Ordinance shall be effective on the date of its passage and approval.

Section 4: This Ordinance is adopted pursuant to the home rule authority granted the City of Bloomington by Article VII, Section 6 of the 1960 Illinois Constitution.

PASSED this 8th day of July, 2013.

APPROVED this ____th day of July, 2013.

APPROVED:

Tari Renner
Mayor

ATTEST:

Tracey Covert
City Clerk



FOR COUNCIL: July 8, 2013

SUBJECT: Suspension of Ordinances to Allow Consumption of Alcohol at Miller Park Pavilion on March 15, 2014

RECOMMENDATION/MOTION: That the Ordinance suspending Section 26(d) of Chapter 6 and Section 701 of Chapter 31 to allow the suspension and consumption of alcohol at the Miller Park Pavilion on March 15, 2014 be passed.

STRATEGIC PLAN LINK: Goal 5. Great place – livable, sustainable City.

STRATEGIC PLAN SIGNIFICANCE: Objective 5.d. Appropriate leisure and recreational opportunities responding to the needs of residents.

BACKGROUND: The Bloomington Liquor Commissioner Tari Renner called the Liquor Hearing to order to hear the request of Ashley Wilburn and Brandon Daugherty to allow moderate consumption of alcohol at their March 15, 2014, wedding reception to be held at Miller Park Pavilion. Present at the hearing were Liquor Commissioners Tari Renner, Geoffrey Tompkins and Jim Jordan; George Boyle, Asst. Corporation Counsel, Bob Wall, Asst. Police Chief, and Tracey Covert, City Clerk, and Ashley Wilburn, bride and request representative.

Commissioner Renner opened the liquor hearing and requested that the requestor's representative address this request. Ashley Wilburn, bride, addressed the Commission. Her wedding was scheduled for March 15, 2014 at the Miller Park Pavilion. She planned to invite 150 guests. A Renee, located at 306 N. Center St., Suite 102, would be retained to provide liquor service, which would be limited to beer and wine only. The wedding was scheduled for 6:00 p.m. The reception would start at 7:00 p.m. The Miller Park Pavilion must be vacated by 11:00 p.m.

Commissioner Jordan questioned who would dispense the alcohol. Ms. Wilburn stated A Renee's staff would be responsible for the liquor service.

Motion by Commissioner Tompkins, seconded by Commissioner Jordan that the request of Ashley Wilburn and Brandon Daugherty to allow moderate consumption of alcohol at the Miller Park Pavilion for their November 30, 2013 wedding be approved.

Motion carried, (unanimously).

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: The Agenda for the June 11, 2013 Meeting of the Liquor Commission was placed on the City's web site. There also is a list serve feature for the Liquor Commission.

FINANCIAL IMPACT: None.

Respectfully submitted for Council consideration.

Recommended by:

Tari Renner
Mayor

Attachments: Attachment 1. Ordinance

Motion:

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			

ORDINANCE NO. 2013 -

**AN ORDINANCE SUSPENDING PORTIONS OF SECTION 701 OF CHAPTER 31 AND
SECTION 26(d) OF CHAPTER 6 OF THE BLOOMINGTON CITY CODE FOR A
WEDDING RECEPTION AT THE MILLER PARK PAVILION**

WHEREAS, Ashley Wilburn and Brandon Daugherty are planning to hold their wedding reception at the Miller Park Pavilion from 5:00 p.m. to 11:00 p.m. on March 15, 2014; and

WHEREAS, Ashley Wilburn and Brandon Daugherty have requested permission from the City to serve beer and wine during this event; and

WHEREAS, in order to legally possess alcohol in a City Park, Section 701(a), (b) and (c) of Chapter 31 of the Bloomington City Code, which prohibits the drinking, selling and possessing alcohol beverages with the City parks and Section 26(d) of Chapter 6 of the Bloomington City Code, which prohibits possession of open alcohol on public property must be suspended;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, ILLINOIS;

Section 1: That Sections 701(a), (b) and (c) of Chapter 31 and Section 26(d) of Chapter 6 of the Bloomington City Code, 1960, as amended, are suspended for the duration of the wedding reception at the Miller Park Pavilion on March 15, 2014 under the conditions set forth in the rental agreement.

Section 2: Except for the date of date set forth in Section 1 of this Ordinance, Sections 701(a), (b) and (c) of Chapter 31 and Section 26(d) of Chapter 6 of the Bloomington City Code, 1960, shall remain in full force and effect. Nothing in this Ordinance shall be interpreted as repealing said Sections 701(a), (b) and (c) of Chapter 31 and Section 26(d) of Chapter 6.

Section 3: This Ordinance shall be effective on the date of its passage and approval.

Section 4: This Ordinance is adopted pursuant to the home rule authority granted the City of Bloomington by Article VII, Section 6 of the 1960 Illinois Constitution.

PASSED this 8th day of July, 2013.

APPROVED this ___th day of July, 2013.

APPROVED:

Tari Renner
Mayor

ATTEST:

Tracey Covert
City Clerk



FOR COUNCIL: July 8, 2013

SUBJECT: Easement Agreement Between the City and Ameren Illinois Company.

RECOMMENDATION/MOTION: That the Easement Agreement with Ameren Illinois Company be approved and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 5. Great place – livable, sustainable City.

STRATEGIC PLAN SIGNIFICANCE: Objection 5a. This project will improve electric energy services for the City's residents.

BACKGROUND: Ameren Illinois is proposing to construct a new 345 kilovolt (kV) electrical transmission line between the existing Brokaw and South Bloomington substations. The Brokaw substation is located near the intersection of Ireland Grove and north Towanda Barnes Rd. The South Bloomington substation is located near the intersection of East Lafayette and Easy St. The project will also include modifications at the existing South Bloomington substation.

In the event of an outage concurrently affecting two (2) existing 138 kV circuits interconnecting Brokaw substation and the South Bloomington substation, (both circuits are carried on a common tower line), or the coincident outage of the existing two (2) 345/138 kV transformers at the Brokaw substation during peak load conditions, other transmission facilities would be stressed and voltage collapse in the Bloomington area would likely result. The proposed 345 kV transmission line between the existing Brokaw and South Bloomington substations and modifications at the South Bloomington substation will provide a strong source for electricity to the Bloomington area. The project would alleviate the stress on other transmission facilities during such outage events and maintain voltage support. The project's in-service date is June 2015.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: None.

FINANCIAL IMPACT: Ameren Illinois will pay \$5,400 for the easement.

Respectfully submitted for Council consideration.

Prepared by: Rosalee Dodson, Asst. Corporation Counsel

Reviewed by: Jim Karch, Director of Public Works

Financial & budgetary review by: Timothy Ervin, Budget Officer

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. Easement Agreement
Attachment 2. Easement Diagram

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			

This area to be used for recording information only.

TRANSMISSION EASEMENT

THIS AGREEMENT, made this _____ day of _____, 20__, by and between CITY OF BLOOMINGTON, an Illinois municipal corporation created and existing under and by virtue of the laws of the State of Illinois, hereinafter referred to as Grantor, and AMEREN ILLINOIS COMPANY d/b/a AMEREN ILLINOIS, an Illinois corporation, its successors, assigns, agents, lessees, tenants, contractors, sub-contractors, and licensees, hereinafter referred to as Grantee, WITNESSETH:

For and in consideration of the sum of Ten Dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged and other good and valuable consideration to be paid to Grantor by Grantee within ninety (90) days from the date hereof or the release of this easement from any liens or encumbrances of record, whichever date is later, Grantor does grant, bargain, sell, convey, and confirm unto Grantee the perpetual right and easement in width in, on, upon, along, over, through, across, and under the following described lands situated in **MCLEAN** County, Illinois, more particularly described as follows, and also depicted on Exhibit "A" attached hereto and made a part hereof.

EASEMENT

Part of Lot One (1) in the Northeast Quarter (NE 1/4) of the School Commissioner's Subdivision of Section Sixteen (16), Township Twenty Three (23) North, Range Two (2) East of the Third Principal Meridian, Bloomington Township, McLean County, Illinois as per plat recorded in Book 2, Page 136 of the records in the Recorder's Office of McLean County, Illinois, and a part of the Northwest Quarter (NW 1/4) of Section Fifteen (15), Township Twenty Three (23) North, Range Two (2) East of the Third Principal Meridian, Bloomington Township, McLean County, Illinois and described as follows:

Beginning at a point on the East line of Lot One (1) in the Northeast Quarter (NE 1/4) of the School Commissioner's Subdivision of Section Sixteen (16), Township Twenty Three (23) North, Range Two (2) East of the Third Principal Meridian, McLean County, Illinois as per plat recorded in Book 2, Page 136 of the records in the Recorder's Office of McLean County, Illinois, said point being Seventy Six and Two Hundredths (76.02) feet North of the Southeast

Corner of said Lot One (1) and also, being the West line of the Northwest Quarter (NW 1/4) of Section Fifteen (15), Township Twenty Three (23) North, Range Two (2) East of the Third Principal Meridian, McLean County, Illinois and the centerline of South Bunn Street; thence North, along the East line of said Lot One (1), a distance of Thirty Three and Forty Seven Hundredths (33.47) feet to a point, said point being on the North Right of Way line of Trilakes Road; thence Southeasterly a distance of Four Hundred Sixty Six and Forty Eight Hundredths (466.48) feet to a point, said point being the intersection of the Westerly Right of Way line of former Illinois Central Gulf Railroad Right of Way and the Southwesterly Right of Way line of City of Bloomington Right of Way (formerly Conrail) as per document number 2004-00008844 of the records in the Recorder's Office of McLean County, Illinois; thence North, along the Westerly Right of Way line of former Illinois Central Gulf Railroad Right of Way, a distance of Ninety Six and Thirty Eight Hundredths (96.38) feet to the Southwesterly Right of Way line of Norfolk Southern Railway Company (formerly Norfolk & Western Railroad), also, being the Northeasterly Right of Way line of the City of Bloomington Right of Way (formerly Conrail); thence Northwesterly, along the City of Bloomington Right of Way (formerly Conrail), on a curve to the Right having a radius of Two Thousand Eight Hundred Ninety Four and Seventy Nine Hundredths (2894.79) feet and a chord of Sixty Six and Forty Six Hundredths (66.46) feet to a point; thence Northwesterly a distance of Four Hundred Ninety Eight and Twenty Seven Hundredths (498.27) feet to a point on the Southwesterly Right of Way line of the City of Bloomington Right of Way (formerly Conrail); thence Southeasterly, along the Southwesterly Right of Way of the City of Bloomington Right of Way (formerly Conrail), on a curve to the Left having a radius of Three Thousand Four and Seventy Nine Hundredths (3004.79) feet and a chord of One Hundred Sixty Nine and Ninety Eight Hundredths (169.98) feet to the Point of Beginning and containing 0.601 acres, more or less.

TAX ID NUMBER: 21-06-300-019 (pt)

Together with the perpetual right, permission, privilege, and authority in Grantee to survey, stake, construct, reconstruct, erect, place, keep, operate, maintain, inspect, patrol, add to the number of and relocate at will, at any time, and from time to time, in, on, upon, along, over, through, across, and under the herein described easement a line or lines, conduits and appurtenances, crossarms, wires, cables, transformers, anchors, guy wires, foundations, footings, and any other appurtenances, for the purpose of transmitting electric energy or other power, and for telecommunications; to trim, cut, clear or remove, at any time, and from time to time, by any means whatsoever, from said easement or the premises of the Grantor adjoining the same on either side, trees, brush, and any and all obstructions of whatsoever kind or character which, in the judgment of Grantee, may endanger the safety of, or interfere with, the surveying, staking, construction, reconstruction, erection, placement, retention, operation, maintenance, inspecting, patrolling, addition to and relocation of, Grantee's facilities; and the right of ingress and egress to, from, and over the herein described easement and any of the adjoining lands of the Grantor at any and all times for doing anything necessary or convenient in the exercise of the rights herein granted; also the privilege of removing at Grantee's option at any time, any or all of Grantee's improvements erected in, on, upon, over, and under the herein described easement.

The Grantor agrees that it will not erect any building or structure or create or permit any hazard or obstruction of any kind or character which, in the judgment of Grantee, will interfere

with the surveying, staking, construction, reconstruction, erection, placement, retention, operation, maintenance, inspection, patrolling, addition to and relocation of, Grantee's facilities.

The Grantor warrants and covenants unto Grantee that, subject to liens and encumbrances of record at the date of this easement, Grantor is the owner of the above described land and has full right and authority validly to grant this easement, and that Grantee may quietly enjoy the premises.

Grantee shall be responsible for actual damages occurring on the herein described property as a result of the construction, operation, maintenance or repair of Grantee's facilities and shall reimburse the owner hereof for such loss or damages.

TO HAVE AND TO HOLD the easement aforesaid, with all and singular the rights, privileges, appurtenances and immunities hereto belonging or in anywise appertaining unto said Grantee, its successors, assigns, agents, lessees, tenants, contractors, subcontractors, and licensees, forever.

The easement conveyance made hereby shall run with the land, and this agreement shall be binding upon and inure to the benefit of the successors, assigns and legal representatives of the parties hereto.

IN TESTIMONY WHEREOF, the said CITY OF BLOOMINGTON, has hereunto caused its corporate seal to be affixed and these presents to be signed by its Mayor and attested to by its City Clerk this _____ day of _____, 20__.

Grantor: CITY OF BLOOMINGTON

By: _____
Tari Renner, Mayor

Attest:

Tracey Covert, City Clerk

STATE OF ILLINOIS)
) SS
COUNTY OF MCLEAN)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that _____, personally known to me to be the Mayor of CITY OF BLOOMINGTON, an Illinois municipal corporation, and _____, personally known to me to be the City Clerk of said Corporation, whose names are subscribed to the foregoing instrument, appeared before me this

day in person and severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument of writing as Mayor and City Clerk of said Corporation and caused the corporate seal of said Corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said Corporation, as their free and voluntary act, and as the free and voluntary act and deed of said Corporation, for the uses and purposes therein set forth.

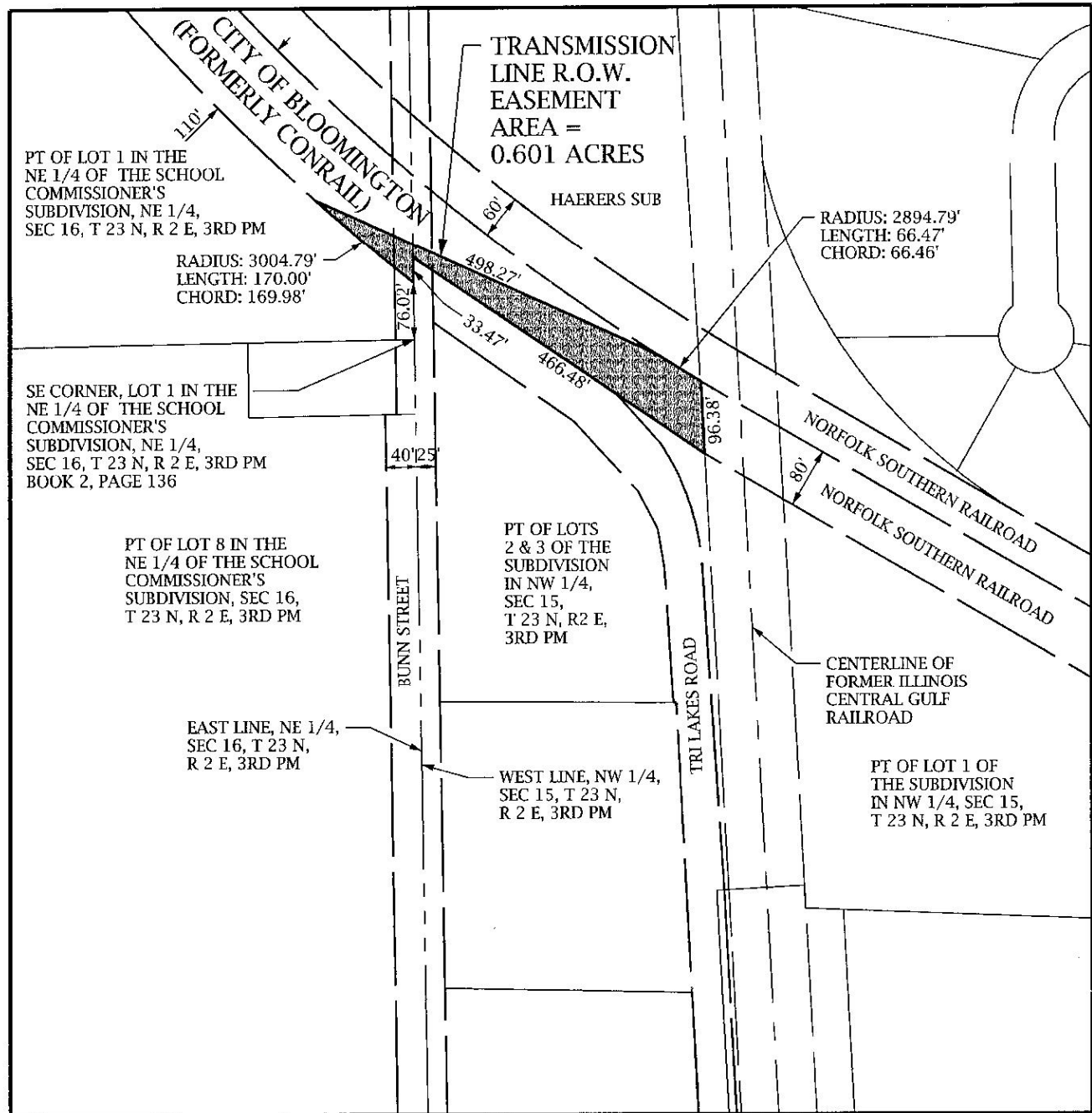
Given under my hand and notarial seal this _____ day of _____, 20__.

Notary Public

Prepared by: Ameren Services

Return to: Ameren Services
Attention: Real Estate
300 Liberty Street
Peoria, IL 61602

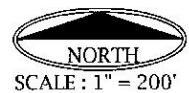
EXHIBIT "A"



WTG File Number : AMN-2010MK-187.0

DATE: 11-26-12

OWNER: CITY OF BLOOMINGTON
TAX ID: 21-06-300-019 (PT)



SECTION: N.W. 1/4, SEC. 15 & N.E. 1/4, SEC. 16
TOWNSHIP/RANGE: T. 23 N., R. 2 E., 3RD P.M.
TOWNSHIP NAME: BLOOMINGTON





FOR COUNCIL: July 8, 2013

SUBJECT: Petition submitted by Alex A. and Larry Calvert Requesting Approval of a Rezoning from R - 1C, Single Family Residential District to C - 1, Office District, for the Property Commonly Located at 1028 E. Front St.

RECOMMENDATION/MOTION: That the Rezoning be approved and the Ordinance passed.

STRATEGIC PLAN LINK: The rezoning will facilitate the objectives of residents feeling safe in their homes and neighborhoods and the retention of growth of current local businesses.

STRATEGIC PLAN SIGNIFICANCE: If approved the rezoning will enable the construction of additional off street parking spaces for the funeral home resulting in less funeral home visitors parking on Front St. This should lessen the congestion on Front St. enabling the residents to feel safer. Even though there are no plans to expand the building, the rezoning and subsequent parking should foster the image of a strong and growing local business.

BACKGROUND: The petitioner owns the existing funeral home located adjacent to Washington St. and Front St. as well as the vacant subject site and the vacant lot to its east. If the rezoning is changed all of these properties will create a C - 1 rectangular shaped district.

The proposed rezoning will be compatible with the adjacent funeral home site and should not create any nuisance for the immediate adjacent parcels as a squared off parking lot is intended to be built and such will be screened from the neighbors. This site is relatively small, (approximately 60' x 124'), and is not likely to substantially increase the development potential beyond parking expansion for the funeral home.

On June 12, 2013, the Planning Commission voted 10 - 0 to recommend approval of the petition. The petitioner explained that they have worked with the neighbors and the school regarding how the new off street parking will enable less parking on the street. No one from the public spoke in opposition to or in support of the petition.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public notice was published in the Pantagraph in accordance with City Code. In accordance with the Zoning Code, (Ordinance No. 2006-137), courtesy copies of the Public Notice were mailed to approximately seventy-nine (79) property owners within 500'. In addition, a public notice/identification sign was posted on the property.

FINANCIAL IMPACT: The financial impact on City revenues and services should not change with the approval of the rezoning.

Respectfully submitted for Council consideration.

Prepared by: Mark Woolard, City Planner

Reviewed by: Mark R. Huber, Director - PACE

Financial & budgetary review by: Timothy Ervin, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. Petition
Attachment 2. Ordinance
Attachment 3. Legal description
Attachment 4. Maps (3)
Attachment 5. Planning Commission Report
Attachment 6. Planning Commission draft Minutes
Attachment 7. Mailing labels

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			

PETITION FOR ZONING MAP AMENDMENT

State of Illinois)
) ss:
County of McLean)

TO: THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF
BLOOMINGTON, McLEAN COUNTY, ILLINOIS

NOW COME ALEX A. CALVERT and LARRY L. CALVERT, hereinafter referred to
as your Petitioners, respectfully representing and requesting as follows:

1. That your Petitioners are the Owners of the property described on Exhibit "A"
which is attached hereto and made a part hereof by this reference.

2. That said premises presently have a zoning classification of R - 1C, Single Family
Residence District under the provisions of Chapter 44 of the Bloomington City Code, 1960;

3. That the present zoning on said premises is inappropriate due to error in original
zoning, technological changes altering the impact or effect of the existing land uses, or the area
in question having changed such that said present zoning is no longer contributing to the public
welfare;

4. That your Petitioners hereby request that the Official Zoning Map of the City of
Bloomington, McLean County, Illinois be amended to reclassify said premises into the C – 1,
Office District classification;

5. That said requested zoning classification is more compatible with existing uses
and/or zoning of adjacent property than the present zoning of said premises; and

6. That said requested zoning classification is more suitable for said premises and
the benefits realized by the general public in approving this petition will exceed the hardships
imposed on your Petitioners by the present zoning of said premises.

WHEREFORE, your Petitioners respectfully pray that the Official Zoning Map of the
City of Bloomington, McLean County, Illinois be amended by changing the zoning classification
of the above described premises from R - 1C, Single Family Residence District to C – 1, Office
District.

Respectfully submitted,

ALEX A. CALVERT and
LARRY L. CALVERT

ORDINANCE NO. 2013 -

**AN ORDINANCE REZONING PROPERTY IN THE CITY OF BLOOMINGTON
FROM R - 1C, SINGLE FAMILY RESIDENCE DISTRICT TO C – 1, OFFICE
DISTRICT**

WHEREAS, there was heretofore filed with the City Clerk of the City of Bloomington, McLean County, Illinois, a Petition for Rezoning of certain premises hereinafter described on Exhibit “A”; and

WHEREAS, the Bloomington Planning Commission, after proper notice was given, conducted a public hearing on said Petition; and

WHEREAS, the City Council of said City has the power to pass this Ordinance and rezone said premises.

NOW THEREFORE BE IT ORDAINED by the City of Bloomington, McLean County, Illinois:

1. That the premises hereinafter described on Exhibit “A” shall be and the same are hereby rezoned from R - 1C, Single Family Residence District to C – 1, Office District.

2. The Official Zoning Map of said City shall be amended to reflect these changes in the zoning classification.

3. This Ordinance shall take effect immediately upon passage and approval.

PASSED this 8th day of July, 2013.

APPROVED this ____th day of July, 2013.

MAYOR

ATTEST:

CITY CLERK

DISAPPROVED:

MAYOR

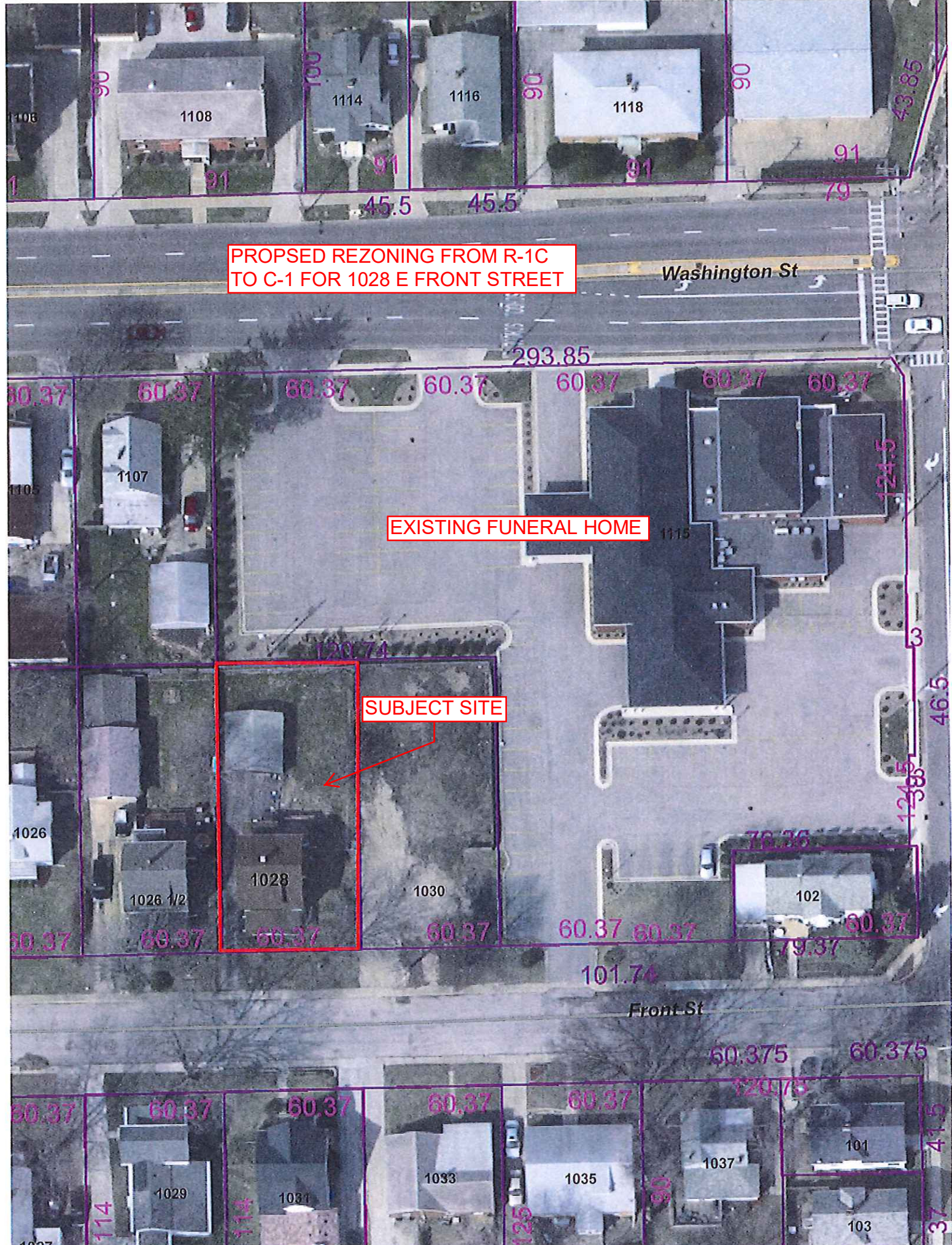
REASON:

EXHIBIT “A”

Lot 36 in E. Rodgers Addition to the City of Bloomington, according to the Plat thereof recorded March 17, 1855 in Book 3 of Plats, page 284, in McLean County, Illinois

Parcel ID: 21-03-306-036

(1028 E. Front Street, Bloomington, Illinois)

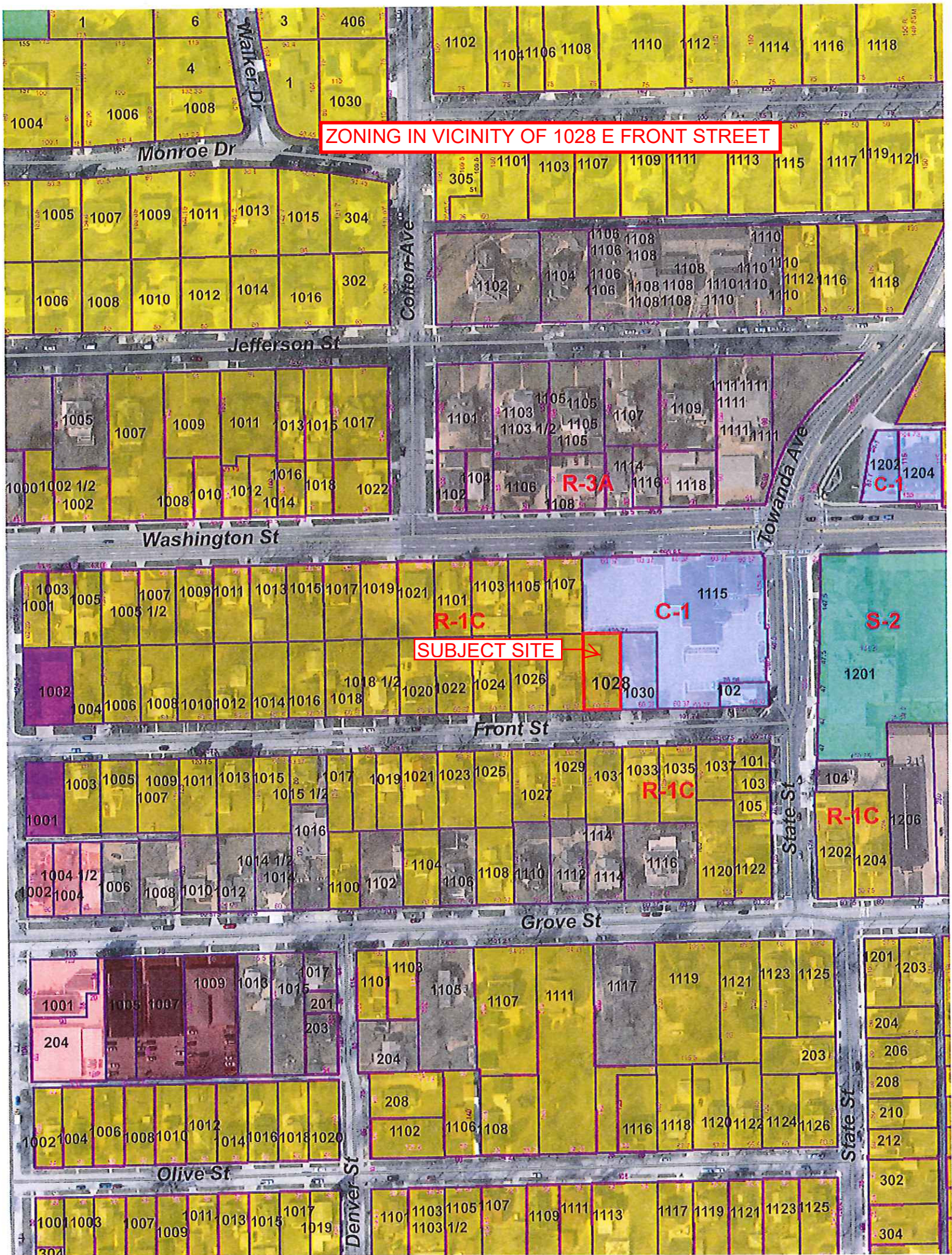


PROPOSED REZONING FROM R-1C
TO C-1 FOR 1028 E FRONT STREET

EXISTING FUNERAL HOME

SUBJECT SITE

ZONING IN VICINITY OF 1028 E FRONT STREET



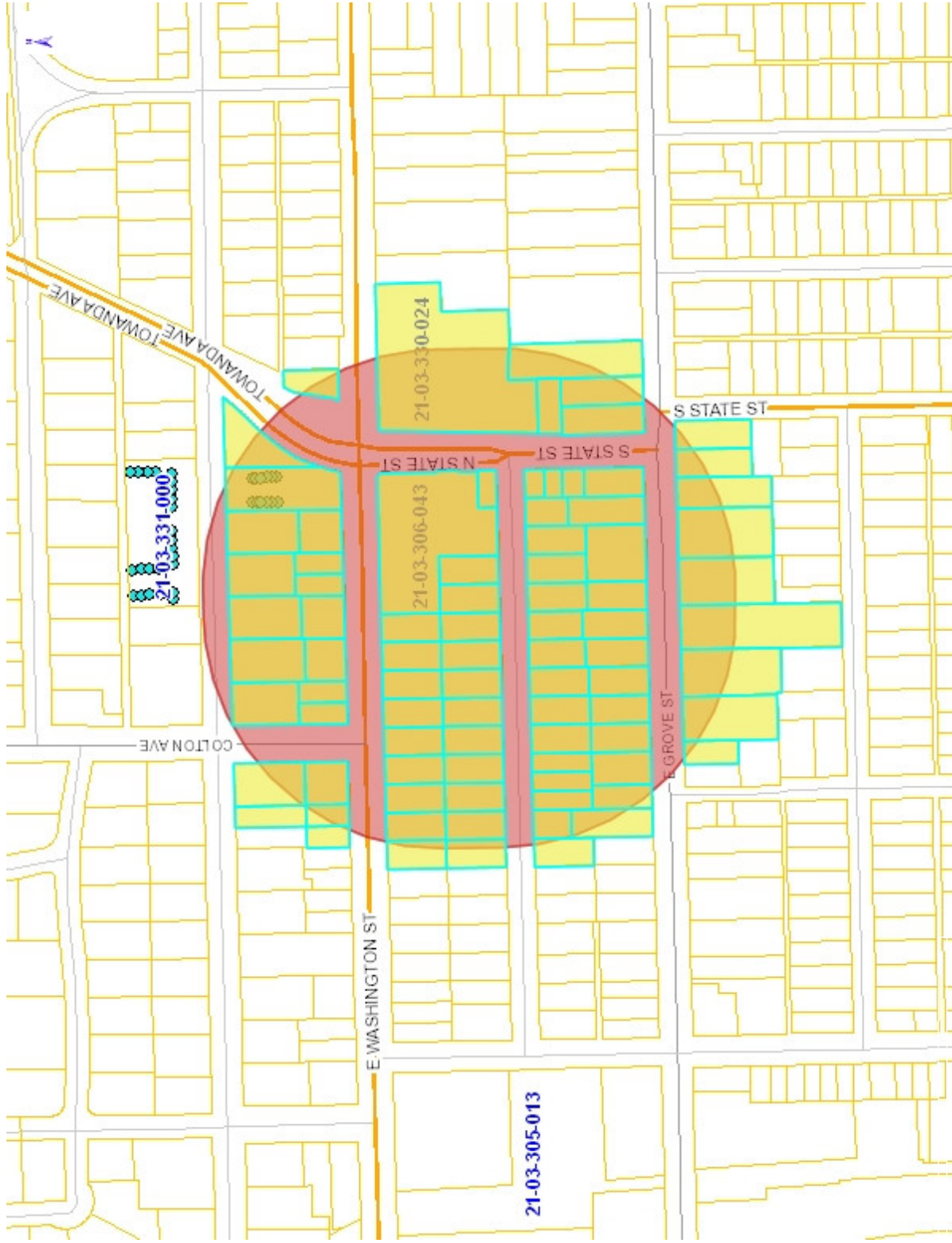


Map of Parcels Whose Owners Notified of Rezoning Petition for 1028 E. Front



Legend

- Parcels
- Condo_Improve
- Interstates
- US_Highways
- State_Highways
- County_Highways
- County_Rd
- PAVED
- UNPAVED
- City_Streets
- ALLEY
- CITY_ARTERIAL
- CITY_COLLECTOR
- CITY_STREET
- PRIVATE_STREET
- Railroad
- County



Notes

By using any McGIS products or services, you indicate your acceptance of the Licensing Agreement: <http://www.McGIS.org/License>

0.2 Miles

0.08

1: 5,094

Printed: 5/30/2013 3:25:37 PM

To: Bloomington Planning Commission
From: Staff

Subject: **Case Z-03-13** Public hearing and review on the petition submitted by Alex A. and Larry Calvert, requesting the approval of a rezoning from R-1C, Single-Family Residential District to C-1, Office District, for the property commonly located at 1028 E. Front Street.

BACKGROUND INFORMATION:

Adjacent Zoning

North: C-1, Office District
South: R-1C, Single-Family Residence
East: C-1, Office District
West: R-1C, Single-Family Residence

Adjacent Land Uses

North: Funeral Home
South: Single-Family
East: Vacant
West: Single-Family Residence

The Comprehensive Plan calls for low/medium residential.

The applicant owns the subject site which is vacant as well as the vacant lot to the east and the adjacent funeral home property. The proposed zoning change will create a C-1 rectangular shaped district.

The proposed rezoning will be compatible with the adjacent funeral home site and should not create any nuisance for the immediate adjacent parcels as it will likely be expanded as a squared off parking lot and will be screened. It may also alleviate some congestion on Front Street as there will be more room for off street parking. However some other possible uses for the site allowable in the C-1 District could be relatively intense and impact the neighbors. This site is relatively small (about 60' x 124') and is not likely to substantially increase the development potential besides that of the funeral home. However continued expansion and additional rezoning requests of residential lots to C-1 should be discouraged and noted that we may not support any future rezoning of a nearby property.

STAFF RECOMMENDATION:

Staff recommends the planning commission pass a motion recommending that the City Council rezone the property in Case Z-03-13 from R-1C, Single-Family Residential District to C-1, Office District, for the property located at 1028 East Front Street.

Respectfully submitted,

Mark Woolard
City Planner

**UNAPPROVED MINUTES
BLOOMINGTON PLANNING COMMISSION
REGULAR MEETING,
WEDNESDAY, JUNE 12, 2013, 4:00 P.M.
COUNCIL CHAMBERS, CITY HALL
109 E. OLIVE ST., BLOOMINGTON, ILLINOIS**

MEMBERS PRESENT: Mr. J Balmer, Chairperson Stan Cain, Mr. Rex Diamond, Mrs. Julie Morton, Mr. Jim Pearson, Mr. Bill Schulz, Mr. Ryan Scritchlow, Mr. David Stanczak, Mr. Charles Stuckey, Mr. Robert Wills

MEMBERS ABSENT: None

OTHERS PRESENT: Mr. Kevin Kothe, City Engineer
Mr. Mark Woolard, City Planner

CALL TO ORDER: Chairperson Cain called the meeting to order at 4:00 P.M.

ROLL CALL: Mr. Woolard called the roll. A quorum was present.

PUBLIC COMMENT: None

REGULAR AGENDA:

Case Z-03-13 Public hearing and review on the petition submitted by Alex A. and Larry Calvert, requesting the approval of a rezoning from R-1C, Single-Family Residential District to C-1, Office District, for the property commonly located at 1028 E. Front Street.

Chairperson Cain introduced the petition. Mr. Woolard stated the location is adjacent to an existing parking lot that serves the funeral home. This does not appear to be a spot zone as there is another C-1 zone across Washington Street. Although other uses besides a funeral home could go in this district it is still fairly restrictive and not wide open like other business zones. This will enable squaring off of the parking lot but he cautioned that we would not necessarily approve additional rezonings as it might alter the character of the neighborhood. Staff is recommending approval of the petition. Mr. Balmer asked how much contact has been made with the neighbors. Mr. Woolard stated he contacted one neighbor who said they did not have any problem with the petition.

Chairperson Cain opened the public hearing. Mr. William C. Wetzel, 115 W. Jefferson Street Suite 400, explained he advised the petitioner to be prepared for possible concerns from neighbors but Calvert has proved themselves by what they have done in the past for parking which was applauded by the neighbors. He reached out to them before this application was submitted.

Mr. Alex Calvert of 7572 Alexander Road in Heyworth explained they have been here before and have worked with the neighbors and the schools. He said it is tight on Front Street. The area at 1030 E. Front was granted a rezoning and then the adjacent neighbor wanted to move so they acquired the site and they razed the homes. The parking lot will be blacktop and will be lit but not invasive. He said there will be less parking on the street.

Chairperson Cain asked if there were any members of the audience who wished to speak in favor, opposition or who had questions regarding this case and no one spoke. Chairperson Cain closed the public hearing.

Mr. Wills moved that the Planning Commission pass a motion recommending the City Council approve case Z-03-13. Mr. Balmer seconded the motion which passed by a vote of 10 to 0 with the following votes being cast on roll call:

Mr. Cain--yes; Mr. Stuckey--absent; Mr. Wills--yes; Mrs. Morton--absent; Mr. Pearson--yes; Mr. Balmer--yes; Mr. Schulz--yes; Mr. Scritchlow--yes; Mr. Stanczak--yes; Mr. Diamond--yes.

1014 E FRONT ST
BLOOMINGTON IL 617014240

415 N RIDGELAND AVE
OAK PARK IL 60302

1015 E WASHINGTON
BLOOMINGTON IL 61701

9520 N 2200 East Rd
Downs IL 617369635

3003 MORNINGSIDE DR
BLOOMINGTON IL 617046237

501 Wattford Dr
Bloomington IL 617041241

1016 E FRONT
BLOOMINGTON IL 61701

PO BOX 1448
BLOOMINGTON IL 617021448

1016 E GROVE ST
BLOOMINGTON IL 617014204

1017 E JEFFERSON ST
BLOOMINGTON IL 61701

1107 E JEFFERSON ST
BLOOMINGTON IL 61701

1202 E Washington St
Bloomington IL 617014244

1707 E Hamilton Rd
Bloomington IL 617049607

1019 E WASHINGTON ST
BLOOMINGTON IL 617014146

501 WATFORD
BLOOMINGTON IL 61704

1104 E WASHINGTON ST
BLOOMINGTON IL 617014149

101 S STATE ST
BLOOMINGTON IL 61701

1037 E FRONT ST
BLOOMINGTON IL 61701

1204 E Grove St
Bloomington IL 617014213

11 STRAWBERRY RD
BLOOMINGTON IL 617042833

1526 BECKENHAM DR
BLOOMINGTON IL 617047629

1106 E GROVE ST
BLOOMINGTON IL 617014211

300 E MONROE
BLOOMINGTON IL 61701

1104 E GROVE
BLOOMINGTON IL 61701

1120 E GROVE
BLOOMINGTON IL 61701

PO BOX 1115
BLOOMINGTON IL 617021115

1122 E GROVE
BLOOMINGTON IL 61701

PO Box 1986
Bloomington IL 617021986

201 S CENTER CLINTON IL 61727	1026 1/2 E FRONT BLOOMINGTON IL 61701	1018 E WASHINGTON ST BLOOMINGTON IL 61701
1115 E WASHINGTON ST BLOOMINGTON IL 617014148	1109 E JEFFERSON ST BLOOMINGTON IL 617014144	1111 E GROVE BLOOMINGTON IL 61701
1103 E GROVE ST BLOOMINGTON IL 617014210	322 Fieldcrest Ct Normal IL 617616252	1116 E WASHINGTON ST BLOOMINGTON IL 617014149
1116 E GROVE ST BLOOMINGTON IL 617014211	109 E OLIVE ST BLOOMINGTON IL 61701	1301 W WASHINGTON BLOOMINGTON IL 61701
	PO BOX 12 SECOR IL 617710072	1107 E WASHINGTON BLOOMINGTON IL 61701
2307 Nesselwood Dr Wesley Chapel FL 335435119	111 W FRONT ST BLOOMINGTON IL 617015004	1022 E FRONT ST BLOOMINGTON IL 617014240
1020 E FRONT BLOOMINGTON IL 61701	1026 E FRONT ST BLOOMINGTON IL 61701	1125 E GROVE ST BLOOMINGTON IL 617014210
1123 E. GROVE BLOOMINGTON IL 61701	1121 E GROVE ST BLOOMINGTON IL 617014210	1019 E FRONT ST BLOOMINGTON IL 61701
1017 1/2 E Front St Bloomington IL 617014239	1029 E FRONT ST BLOOMINGTON IL 617014239	1027 E FRONT BLOOMINGTON IL 61701
1025 E FRONT ST BLOOMINGTON IL 617013732	1035 E FRONT ST BLOOMINGTON IL 617014239	1031 E FRONT ST BLOOMINGTON IL 61701

1021 E FRONT ST
BLOOMINGTON IL 61701

1701 SWEETBRIAR
BLOOMINGTON IL 61701

1108 E GROVE ST
BLOOMINGTON IL 61701

1114 E GROVE ST
BLOOMINGTON IL 617014211

1100 E GROVE ST
BLOOMINGTON IL 61701

1114 EAST WASHINGTON ST
BLOOMINGTON IL 61701

115 KENDAHL COURT
HUDSON IL 61748

1107 E GROVE ST
BLOOMINGTON IL 617014210

1105 E GROVE ST
BLOOMINGTON IL 617014210

PO BOX 1115
BLOOMINGTON IL 61702

19446 E 850 NORTH RD
BLOOMINGTON IL 61704

107 PARKVIEW DR
BLOOMINGTON IL 617012035

11202 E GROVE ST
BLOOMINGTON IL 617014213

300 E MONROE ST
BLOOMINGTON IL 617014083

1018 E FRONT ST
BLOOMINGTON IL 617014240

36 PEBBLEBROOK COURT
BLOOMINGTON IL 61704

1033 E FRONT ST
BLOOMINGTON IL 617013732

1119 E GROVE ST
BLOOMINGTON IL 617014210

1108 REDWOOD
BLOOMINGTON IL 61701

1024 E FRONT ST
BLOOMINGTON IL 617013732

1018 1/2 E FRONT ST
BLOOMINGTON IL 61701

1017 E FRONT ST
BLOOMINGTON IL 617014239

102 N STATE ST
BLOOMINGTON IL 617014207

201 S CENTER
CLINTON IL 61727



FOR COUNCIL: July 8, 2013

SUBJECT: Petition submitted by Andy Streenz, Lawrence Wheat, John P. Wheat Vincente Adame, and Chad Seeman Requesting Approval of the Vacation of the East West Alley bounded by Lee St. on the west and Roosevelt St. on the east

RECOMMENDATION/MOTION: That the Vacation be approved and the Ordinance passed.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services and Goal 4. Strong neighborhoods.

STRATEGIC PLAN SIGNIFICANCE: Objective 1a. Since the alley will not need to be maintained by the City there should be a cost savings realized over several years. Objective 4a. Resident feeling safe in their homes and neighborhoods. The Vacation will result in the immediate neighborhood being safer.

BACKGROUND: The petitioners desire to vacate the east-west alley which extends from the Lee St. to Roosevelt St. If the alley is closed, it should mitigate negative impacts on the adjacent properties since it will eliminate cut through traffic. It will also eliminate the use of the alley for drug trafficking along at least two (2) of the petitioners' lots once a fence is installed.

Public Works prefers to see alleys such as these closed because it saves maintenance cost.

The Planning Commission reviewed the petition and held a public hearing on May 22, 2013. One person representing the petitioners spoke in support of the petition emphasizing the need for safety from traffic and those running drugs. No one from the public spoke in opposition to or in support of the petition. The Planning Commission voted 10 - 0 to recommend approval of the petition.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public notice was published in the Pantagraph in accordance with City Code. Courtesy copies of the Public Notice were mailed to adjoining property owners.

FINANCIAL IMPACT: The financial impact on the funding of City services should not be significantly impacted. However there should be some cost savings since the City will no longer have to maintain the alley.

Respectfully submitted for Council consideration.

Prepared by: Mark Woolard, City Planner

Reviewed by: Mark Huber, Director – PACE

Reviewed by: R.T. Finney, Interim Police Chief

Financial & budgetary review by: Timothy Ervin, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. Petition
Attachment 2. Ordinance
Attachment 3. Legal description
Attachment 4. Plat
Attachment 5. Maps (2)
Attachment 6. Planning Commission draft Minutes
Attachment 7. Planning Commission Report
Attachment 8. Mailing labels

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			

**PETITION FOR VACATION OF AN EAST WEST ALLEY BOUND BY LEE ST.,
LOCUST ST., ROOSEVELT ST. AND MULBERRY ST.**

STATE OF ILLINOIS)
) ss.
COUNTY OF MCLEAN)

TO: THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF
BLOOMINGTON, MCLEAN COUNTY, ILLINOIS

Now comes Andy Streenz, Lawrence Wheat, John P. Wheat, Vicente Adame and Chad Seeman,
hereinafter referred to as your Petitioners, respectfully representing and requesting as follows:

1. That your Petitioners are interested as property owners in the adjacent premises hereinafter described in Exhibit A attached hereto and made a part hereof by this reference;
2. That your Petitioners seek approval of the vacation of an East West Alley adjacent to their premises;
3. That said vacation of an east west alley is reasonable and proper because such alley is not needed for public right of way by said City, its only use being the location of existing or proposed utilities.

WHEREFORE, your Petitioners pray that the east west alley be vacated with such reservation of utility easements as may seem proper.

Respectfully submitted,

By: Andy Streenz
Lawrence Wheat
John P. Wheat
Vincente Adame
Chad Seeman

ORDINANCE NO. 2013 - _____

AN ORDINANCE PROVIDING FOR THE VACATION OF AN EAST WEST ALLEY

WHEREAS, there was heretofore filed with the City Clerk of the City of Bloomington, McLean County, Illinois, a petition requesting the vacation of an east west alley; and

WHEREAS, said petition complies in all respects with the ordinances of said City and the statutes of the State of Illinois in such case made and provided; and

WHEREAS, the City Council of said City has the power to pass this Ordinance and grant said vacation; and

WHEREAS, it is reasonable and proper to vacate said alley as requested in this case.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, MCLEAN COUNTY, ILLINOIS:

1. That the east west alley is hereby vacated.
2. The aforesaid vacation notwithstanding, the City reserves to itself and to all utilities an easement the full width of the vacated east west alley for the purpose of laying, installing, maintaining, repairing, removing, or replacing such facilities as they may deem appropriate.
3. That this ordinance shall be in full force and effective as of the time of its passage and approval.

PASSED this 8th day of July, 2013.

APPROVED this ____th day of July, 2013.

Mayor

ATTEST:

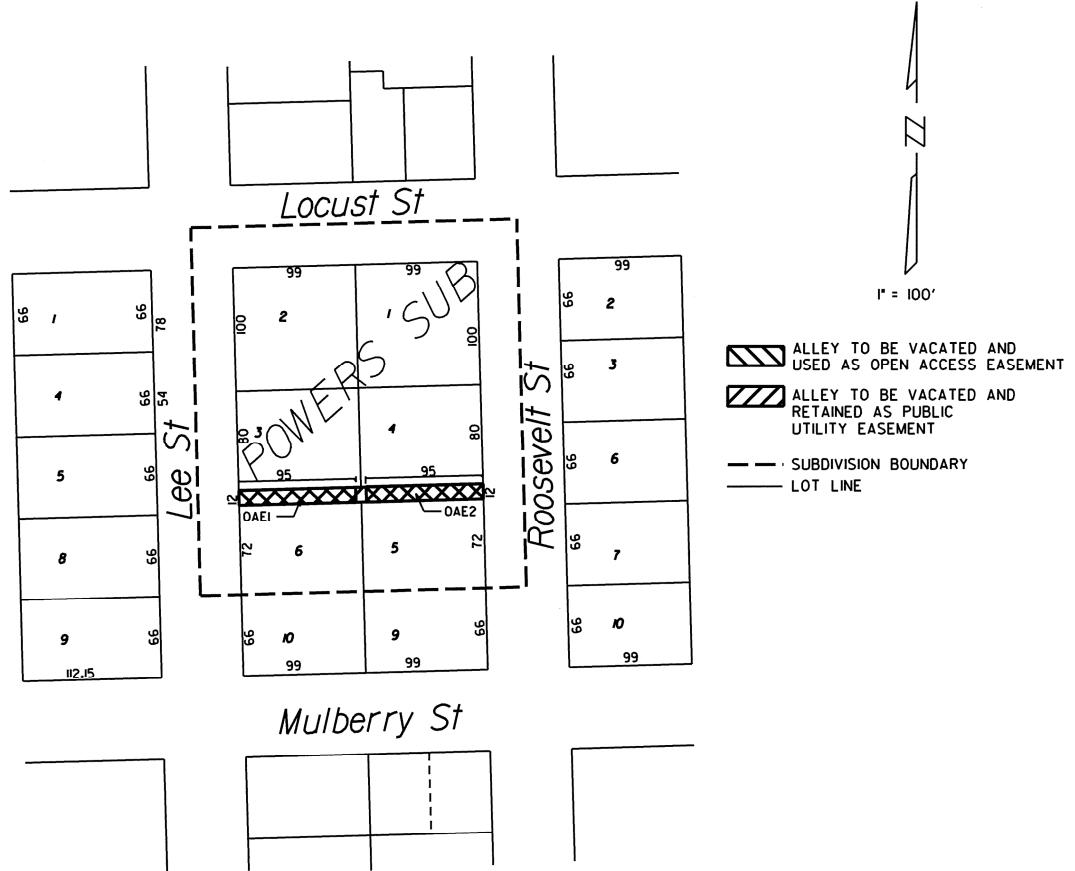
City Clerk

EXHIBIT A

An east west alley bounded by Lee St. on the west, Locust St. on the north, Roosevelt St. on the east and Mulberry St. on the south.

ALLEY VACATION PLAT

PART OF THE W¹/₂, NW¹/₄ OF SECTION 4
T23N, R2E, 3 PM



DESCRIPTION OF ALLEY TO BE VACATED AS PUBLIC R.O.W. AND RETAINED AS PUBLIC UTILITY EASEMENT

ALL THAT PORTION OF ALLEY RUNNING EAST-WEST IN POWERS SUB, BOUNDED BY LOCUST ST ON NORTH, ROOSEVELT ST ON EAST, MULBERRY ST ON SOUTH, AND LEE ST ON WEST, THE SAID POWERS SUB IS LOCATED IN THE W¹/₂ OF THE NW¹/₄ OF SECTION 4, TOWNSHIP 23 NORTH, RANGE 2 EAST, 3RD PM.

DESCRIPTION OF OPEN ACCESS EASEMENT (OAE1)

THE WEST 95 FEET OF THE PREVIOUSLY DESCRIBED ALLEY TO BE VACATED

DESCRIPTION OF OPEN ACCESS EASEMENT (OAE2)

THE EAST 95 FEET OF THE PREVIOUSLY DESCRIBED ALLEY TO BE VACATED

I HEREBY CERTIFY THAT THIS IS A TRUE PLAT
COMPILED FROM THE RECORDS OF THE CITY OF
BLOOMINGTON, FOR THE PURPOSE OF ALLEY
VACATION AND OPEN ACCESS EASEMENT.

KEVIN KOTHE, P.E.
CITY ENGINEER
CITY OF BLOOMINGTON, ILLINOIS

DATE

PROPOSED VACATION OF ALLEY



Alley Map



25 12.5 0 25 Feet



**UNAPPROVED MINUTES
BLOOMINGTON PLANNING COMMISSION
REGULAR MEETING,
WEDNESDAY, JUNE 12, 2013, 4:00 P.M.
COUNCIL CHAMBERS, CITY HALL
109 E. OLIVE ST., BLOOMINGTON, ILLINOIS**

MEMBERS PRESENT: Mr. J Balmer, Chairperson Stan Cain, Mr. Rex Diamond, Mrs. Julie Morton, Mr. Jim Pearson, Mr. Bill Schulz, Mr. Ryan Scritchlow, Mr. David Stanczak, Mr. Charles Stuckey, Mr. Robert Wills

MEMBERS ABSENT: None

OTHERS PRESENT: Mr. Kevin Kothe, City Engineer
Mr. Mark Woolard, City Planner

CALL TO ORDER: Chairperson Cain called the meeting to order at 4:00 P.M.

ROLL CALL: Mr. Woolard called the roll. A quorum was present.

PUBLIC COMMENT: None

REGULAR AGENDA:

V-02-13. Public hearing and review on the petition submitted by Andy Streenz, Lawrence Wheat, John P. Wheat and Chad Seeman, requesting the vacation of the east west alley bounded by Lee Street on the west and Roosevelt on the east, and located south of Locust Street and north of Mulberry Street.

Chairperson Cain introduced the petition. Mr. Woolard identified the location of the 12 foot alley and said staff does see any adverse impacts with the closure. The drives and garages will still have access. Staff recommends approval of the closure. There was discussion on whether after the vacation there will be sufficient width for the access drives. Mr. Kothe stated in the vacation plat there is an open access easement from both ends of the alley and a utility easement will be retained. The city will have one less alley to maintain and the owners will be able to solve the problem of cut through traffic from nonadjacent residents. The easement will be conveyed with the property.

Chairperson Cain opened the public hearing. Andy Streenz of 611 N. Lee stated the reason to close the alley is they see a lot of foot traffic in the neighborhood. One of the four properties was recently busted for running drugs and those people walk close to his house. Also drivers tend to use it as a short cut and go too fast. All utility owners have signed off and the city does minimal upkeep as it has gravel and grass. All four property owners will still have street access.

Chairperson Cain asked if there were any members of the audience who wished to speak in favor, opposition or who had questions regarding this case and no one spoke. Chairperson Cain closed the public hearing.

Mr. Stuckey moved that we recommend to the City Council passage of case V-02-13 which vacates the east-west alley bounded by Lee on the west and Roosevelt on the east. Mrs. Morton

seconded the motion which passed by a vote of 10 to 0 with the following votes being cast on roll call:

Mr. Cain--yes; Mr. Stuckey--yes; Mr. Wills--yes; Mrs. Morton--yes; Mr. Pearson--yes; Mr. Balmer--yes; Mr. Schulz--yes; Mr. Scritchlow--yes; Mr. Stanczak--yes; Mr. Diamond--yes.

To: Bloomington Planning Commission

From: Staff

Subject: V-02-13. Public hearing and review on the petition submitted by Andy Streenz, Lawrence Wheat, John P. Wheat and Chad Seeman, requesting the vacation of the east west alley bounded by Lee Street on the west and Roosevelt on the east, and located south of Locust Street and north of Mulberry Street.

This petition is a request to vacate the full alley which extends from the Lee Street right of way to the Roosevelt Street right of way. The alley is 12 feet wide. If the alley is closed there should not be any adverse impact on neighboring properties since all existing driveways and garages will have access to Lee Street or Roosevelt Avenue. See the attached aerial photograph. Public Works prefers to see alleys such as these closed because it saves maintenance cost.

RECOMMENDATION

City staff recommends that the Bloomington Planning Commission pass a motion recommending City Council approval of this petition in **Case V-02-13** to vacate the aforementioned alley.

Respectfully submitted,

Mark Woolard
City Planner

ADJACENT PROPERTY OWNERS NOTIFIED OF ALLEY VACATION

STREENZ, ANDREW W & MARIE A

611 N LEE

BLOOMINGTON, IL 61701

ADAME, VINCENTE & JENNIFER

1111 E GROVE

BLOOMINGTON, IL 61701

SEEMAN, CHAD

208 PRAIRIE RIDGE DR

LEXINGTON , IL , 61753

WHEAT, CAMILLA M

609 N LEE

BLOOMINGTON, IL 61701



FOR COUNCIL: July 8, 2013

SUBJECT: Analysis of the Bids for Repair Market St. Parking Garage

RECOMMENDATION: That the bid for Market St. Parking Garage Repair be awarded to J. Gill and Co., in the amount of \$414,393, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Objective 2d. Well designed, well maintained City facilities emphasizing productivity and customer service.

BACKGROUND: In 2011, staff had a condition report of the Market St. Parking Garage completed by Walker Restoration Consultants, engineering firm. Phase Two of the project was originally bid in 2012. The bids came back too high and were rejected by Council. Phases Two and Three were combined for bid in 2014. Based on the estimate of \$504,000, from the consultant, staff budgeted \$550,000 this year for the recommended repairs. The original estimate from Walker included a new roof for the Post Office housed in the garage. The Post Office roof replacement was removed by staff from this bid and will bid separately in July 2013.

The repair will consist of:

Concrete Floor Repair	Precast Tee Repair
Stair Nosing Repair	Concrete Ceiling Repair
Concrete Beam Repair	Concrete Column Repair
Concrete Wall Repair	Expansion Joint Repair and Replacement
Cracks and Joint Repair	Mechanical – Drainage
Protective Sealer	Brick/Masonry Repairs
Traffic Topping	Paint Traffic Markings.

The base bid required a one (1) year warranty for labor and material. An alternate for four (4) additional years warranty was also included in the bid. The warranty will cover all material and labor for call back repairs for work completed under the bidding documents.

This work is expected to provide twelve to fifteen, (12 – 15) years of normal parking garage usage before major repairs are needed as long as the maintenance is kept up. A major expense would be \$50,000. or more.

On June 13, 2013, bids were opened and publicly read at City Hall. The bid consists of a base bid for repairing selected areas on all levels of the garage and one (1) alternate. Alternate 1 was for the cost of four (4) additional years of warranty.

Analysis of the Bids is:

Company	Location	Base Bid	Alt. 1	Total Bid
J. Gill and Co.**	South Holland, IL	\$389,993.00	\$24,400	\$414,393.00
Western Waterproofing Co.	Springfield, IL	\$429,850.00	\$1,430	\$431,280.00
Truesdale Corp.	Tempe, AZ	\$448,488.00	\$80,080	\$528,528.00
E & H Restoration	Davenport, IA	\$575,072.44	\$10,395	\$585,467.44
Takao Nagai Concrete Restoration		\$669,397.50	\$10,000	\$679,397.00
Structural Preservation Systems, LLC	Elgin, IL	\$681,555.00	\$73,000	\$754,555.00

** Low and recommended bidder

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public bid notice was published in the local newspaper on May 23, 2013.

FINANCIAL IMPACT: The references of J. Gill and Co. were checked and found to be in order. Staff recommends the contract be awarded to J. Gill and Co. in the account of \$414,393. Walker Restoration Consultants 2013 estimated cost without roof replacement: \$450,000. A total of \$550,000 is budgeted for this project of which \$50,000.00 is being held in reserve for the replacement roof.

The FY 2014 Capital Improvement Fund Budget appropriated \$550,000 for repairs at the Market St. Parking Deck in line item 40100100-72520. The total cost for the repairs is \$414,393. This does not include roof repairs for the portion over the post office. Stakeholders may locate this purchase in the FY 2014 Other Funds and Capital Improvement Program Budget document on page #106.

Respectfully submitted for Council consideration.

Prepared by:	Jerry Walker, Facilities Supervisor
Reviewed by:	Mark R. Huber, Director – PACE
Reviewed by:	Cathy Link, Purchasing Agent
Reviewed by:	Barbara J. Adkins, Deputy City Manager
Financial & budgetary review:	Timothy Ervin, Budget Officer
Legal review by:	J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. Agreement
Attachment 2. Capital Improvements Program FY 2014 – FY 2018, page 300

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			

AGREEMENT

THIS AGREEMENT, Made and entered into on *July, 8 2013*, by and between *J. Gill And Company* first party, also hereinafter referred to as "Contractor", and the City of Bloomington, a municipal corporation, second party.

WITNESSETH:

THAT WHEREAS, the City of Bloomington did on *May, 23 2013*, by advertisement, call for bids for furnishing all labor and material for the repair of the *Market Street Parking Garage Structural Repairs, Bloomington, IL*, project for said City.

AND WHEREAS, in pursuance of said call for bids said first party, did on *June, 13 2013*, submit this bid to said City of Bloomington for furnishing all of the labor and materials for the repair of said *Market Street Parking Garage Structural Repairs, Bloomington, IL*, project for said City on file in the office of the City Clerk of said City. A copy of which specifications, plans and profiles of said improvement on file in the City Clerk's Office are hereby referred to and made a part hereof by reference, and said first party being the lowest responsible bidder was awarded the contract for the construction of the said improvement, which bid of said Contractor is hereto attached and made a part hereof.

THEREFORE, it is covenanted and agreed upon the part of said first party that in consideration of the amounts to be paid by said City, he will furnish all labor, tools, machinery and materials for the demolition of said improvement complete, in accordance with the said plans, profiles and specifications, call for bids, and said contractor's bid, each herein set out and made a part hereof.

IT IS FURTHER AGREED that said Contractor will furnish a bond to the City of Bloomington in the penal sum of *\$389,993.00, Three Hundred Eighty Nine Thousand Nine Hundred ninety Three Dollars and No Cents*, executed by said contractor and at least two responsible persons as sureties or by some surety company satisfactory to the said City of Bloomington and the City Council, as a guarantee that said Contractor faithfully will perform the work in accordance with this agreement.

Said bond shall be conditioned to save and keep harmless said City from any and all claims, demands, loss, suits, costs, expenses and damages which may be made, brought, sustained or recovered against said City by reason of any negligence, default or failure of the said contractor in building, constructing or completing said improvement and its appurtenances, or any part thereof, and that said improvement when constructed shall be free from all defects and remain in good order and condition for one year from its completion and acceptance, ordinary wear and tear, and damage resulting from accident or willful destruction excepted; which bond is attached hereto and made a part hereof.

IT IS FURTHER AGREED that said work will be completed *as outlined in the bid specs for the Market street Parking Garage Structural Repairs project, Bloomington IL*.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that whenever the said City may deem necessary, additional or new bond shall be furnished by said Contractor with such sureties as will be satisfactory to the said City Council, as a guarantee that said Contractor will faithfully perform the work in accordance with the terms of this agreement.

IT IS FURTHER AGREED that should said Contractor fail to complete the work within the time herein specified for doing the same, then he shall pay the expense of the City Inspector or Inspectors from the date specified for completion until said work is completed. Or if the time for completion of the work under this contract is extended at the request of said Contractor, then he shall pay the expense of the Inspector during such extended time until completion, and shall pay to the City all other expenses created by reason of such failure to complete said work in the specified time or by reason of such time being extended.

This agreement shall not be assigned, nor any part of the work subcontracted without the written consent of the City of Bloomington endorsed hereon, and in no case shall such consent relieve the party of the first part from the obligations herein entered into by said party, or change the terms of this agreement.

IT IS FURTHER STIPULATED AND AGREED by and between the parties hereto that all ordinances now in force in the City of Bloomington respecting and regulating public improvement, not in conflict with the terms of this contract, shall be a part and parcel of this contract.

The number of inspectors to be placed on said work shall be determined by the City of Bloomington, but if at any time on account of a disregard of any of the provisions of this contract by the said first party, or on account of the failure of said first party to faithfully perform the work in accordance with this contract, additional inspectors shall be deemed necessary by said City, the pay of such additional inspectors shall be charged to said Contractor and be deducted from the amount due said Contractor on final settlement under this contract.

The Contractor and all persons employed on the work shall obey the instruction of the City Facilities Manager or the Inspector on said work. Any person who shall refuse or neglect to so obey, or who shall be deemed incompetent by said City Facilities Manager or said Inspector shall at once be removed from the work by the Contractor when so required by said Facilities Manager or Inspector.

The City of Bloomington hereby covenants and agrees, in consideration of the faithful performance of the covenants and agreements in this contract specified to be kept and performed by first party, to pay party of the first part, when this contract shall be wholly carried out and completed upon the part of the said Contractor, and when said work shall have been finally accepted by said City of Bloomington, the amounts set forth in first party's bid in manner as herein and in said call for bids provided.

IT IS FURTHER AGREED AND UNDERSTOOD that the work to be done pursuant to this contract shall be done under the direction and to the satisfaction of the City of Bloomington, and that, except as otherwise provided in the said ordinance or the judgment of the court, said

City, except as by law provided, or any officer thereof, shall not be liable for any portion of the expense of said work, nor for any delinquency or persons or property assessed.

THE TOTAL CONTRACT AMOUNT will include:

Base Bid -	\$389,993.00
Alternate 1 -	\$ 24,400.00 Extended five year warrantee.
Total Contract Amount	\$414,393.00

This contract and the bond herein provided, shall be signed in triplicate and be subject to the approval of the City of Bloomington.

IN TESTIMONY WHEREOF the said first party has hereunto set his hand and seal, and the City of Bloomington has caused this agreement to be signed by its Mayor, its corporate seal to be attached, and said signing and sealing to be attested by its City Clerk on the day and year first above written.

(Seal)

ATTEST;

Tracey Covert, City Clerk

CITY OF BLOOMINGTON

By: _____
MAYOR TARI RENNER

WITNESS:

CONTRACTOR (Seal)

J. Gill And Company

By: _____
Agent for J. Gill And Company.

CITY OF BLOOMINGTON
CAPITAL IMPROVEMENTS PROGRAM FY 2014- FY 2018

<i>FUNDING SOURCE(S)</i>	<i>DEPARTMENT</i>	<i>CITY CONTACT PERSON</i>	<i>WARD</i>
Capital Improvement	Parking	Jerry Walker	4
<i>PROJECT TITLE</i>		<i>ACCOUNT NUMBER</i>	
Market Street Parking Garage repairs		40100100-72520	
<i>PROJECT DESCRIPTION/JUSTIFICATION</i>			
Phases two and three of the Market street garage repairs. In 2007 the Farnsworth group inc. engineering firm did a condition assessment of the Market street parking garage. In their report they recommended \$1,150,000 in repairs to extend the useful life of the garage 10 to 15 years. They recommended \$560,000 in immediate restructural repairs. Carl Walker, a parking garage restoration engineering firm was hired to assess and identify priority items. Their assessment identified an estimated \$350,000 in priority items that needed immediate attention. The work was bid out and awarded to Western Waterproofing for \$216,997.50. With engineering costs included this first phase was completed in fall 2010 for \$250,000. Phase two and three recommended restoration has an estimated cost of \$550,000. This will include new drain piping, electrical work, lighting, restriping, and more concrete restoration. Phase three will include any final restoration items needed to extend the useful life of the garage.			
Summer 2011		Fall 2011	
DESIGN BID:		DESIGN BID:	
DESIGN:		DESIGN:	
CONSTRUCTION BID:		CONSTRUCTION BID:	
CONSTRUCTION:		CONSTRUCTION:	
EXPENSES	FY 2014	FY 2015	FY 2016
PLANNING/DESIGN	\$0	\$0	\$0
LAND	\$0	\$0	\$0
CONSTRUCTION	\$550,000	\$0	\$0
EQUIPMENT/FURNISHINGS	\$0	\$0	\$0
TOTAL	\$550,000	\$0	\$0
REVENUES	FY 2014	FY 2015	FY 2016
GENERAL FUND	\$0	\$0	\$0
MOTOR FUEL TAX	\$0	\$0	\$0
CAPITAL IMPROVEMENT	\$550,000	\$0	\$0
WATER	\$0	\$0	\$0
SANITARY SEWER	\$0	\$0	\$0
STORM WATER	\$0	\$0	\$0
PARKING	\$0	\$0	\$0
GRANTS/OTHER	\$0	\$0	\$0
TOTAL REVENUES	\$550,000	\$0	\$0
OPERATING	FY 2014	FY 2015	FY 2016
PERSONNEL	\$0	\$0	\$0
MAINT./OPERATIONS	\$0	\$0	\$0
CAPITAL OUTLAY	\$0	\$0	\$0
TOTAL OPERATING COST	\$0	\$0	\$0
(OPERATING REVENUES)	\$0	\$0	\$0

OPINION OF PROBABLE CONSTRUCTION COST

OPINION OF PROBABLE CONSTRUCTION COST									
				2010 Immediate Repairs		2011 Repairs and Waterproofing		2012 Repairs and Waterproofing	
Description				Unit	Unit Price	Quantity	Total	Quantity	Total
001 Project Mobilization				L.S.			\$ 17,000.00		\$ 8,900.00
002 Project General Requirements				L.S.			\$ 22,600.00		\$ 11,900.00
Concrete Repairs									
C1	C/P Topping Repair (Topside)	S.F.	50.00	520	\$ 26,000.00	200	\$ 10,000.00	100	\$ 5,000.00
C2	Precast Tee Spall Repair (Underside)	S.F.	95.00	820	\$ 77,900.00	150	\$ 14,250.00	100	\$ 9,500.00
C3	Precast Tee Edge Repair (Underside)	S.F.	100.00	380	\$ 38,000.00	120	\$ 12,000.00	100	\$ 10,000.00
C4	Shear Connector Repair (Reweld)	Ea.	75.00	50	\$ 3,750.00	70	\$ 5,250.00	70	\$ 5,250.00
C5	Shear Connector Replacement	Ea.	150.00	50	\$ 7,500.00	70	\$ 10,500.00	70	\$ 10,500.00
C6	Precast Tee Stem Repair	L.F.	120.00	70	\$ 8,400.00	30	\$ 3,600.00	30	\$ 3,600.00
C7	Precast Beam Spall Repair	S.F.	120.00	250	\$ 30,000.00	40	\$ 4,800.00	40	\$ 4,800.00
C8	Spandrel Panel Support Repair	Ea.	1,800.00	2	\$ 3,600.00		-		-
C9	Bumper Wall Spall Repair (Interior Face)	S.F.	75.00	90	\$ 6,750.00		-		-
C10	Bumper Wall Spall Repair (Exterior Face)	S.F.	150.00	36	\$ 5,400.00	20	\$ 1,500.00	20	\$ 1,500.00
C11	Column Spall Repair	S.F.	75.00	40	\$ 3,000.00	20	\$ 1,500.00	20	\$ 1,500.00
C12	C/P Wall Spall Repair	S.F.	75.00	80	\$ 6,000.00	20	\$ 1,500.00	20	\$ 1,200.00
C13	Concrete Diaphragm Repair at Stairs (Topside)	S.F.	60.00	80	\$ 4,800.00				
C14	Concrete Spall Repair at Stairs (Underside)	S.F.	110.00	60	\$ 6,600.00	20	\$ 2,200.00	20	\$ 2,200.00
Waterproofing Repairs									
W1	Install New Deck Coating at PC Joints	S.F.	3.40	1,000	\$ 3,400.00	300	\$ 1,020.00	300	\$ 1,020.00
W2	Recoat Existing Deck Coating at Crossovers, Joints, and C/P Slab	S.F.	3.25	3,000	\$ 9,750.00	1,000	\$ 3,250.00	1,000	\$ 3,250.00
W3	Selective Tee Joint Sealant Replacement	L.F.	6.50	1,500	\$ 9,750.00	5,000	\$ 32,500.00	5,000	\$ 32,500.00
W5	Root & Seal Cracks	L.F.	5.80	600	\$ 3,480.00	200	\$ 1,160.00	200	\$ 1,160.00
W6	Clean and Coat Exposed PC Connectors	L.S.			\$ -		\$ -		\$ -
W7	Chemical Injection at Leaking Wall Cracks	L.F.	40.00	40	\$ 1,600.00		-	40	\$ 3,200.00
W8	Expansion Joint Header Material Repair	L.F.	80.00	20	\$ 1,600.00		-		-
W9	Install Sealer at Supported Slabs	S.F.	0.80		\$ -	81,000	\$ 64,800.00	62,200	\$ 49,760.00
Miscellaneous									
M1	Replace Damaged Drain Grates	Ea.	125.00	15	\$ 1,875.00		\$ -		\$ -
M2	Drainage Repairs	L.S.	200.00	15	\$ 12,000.00		\$ 20,000.00		\$ -
M3	Remove and Replace Damaged Stair Treads	Ea.	200.00	15	\$ 3,000.00		\$ -		\$ -
M4	Brick Repairs	S.F.	70.00	120	\$ 8,400.00	40	\$ 2,800.00	40	\$ 2,800.00
Subtotals:					\$ 322,155.00		\$ 242,030.00		\$ 169,540.00
Suggested Contingency @ 15%:					\$ 48,300.00		\$ 36,300.00		\$ 25,400.00
Estimated Construction Budget:					\$ 370,455.00		\$ 278,330.00		\$ 194,940.00
Estimated Eng./Testing Fees (10%):					\$ 32,000.00		\$ 27,800.00		\$ 19,500.00
Estimated Total Project Cost:					\$ 402,455.00		\$ 306,130.00		\$ 214,440.00



FOR COUNCIL: July 8, 2013

SUBJECT: Acceptance of the Harwood Pl. Street Lighting Study and Recommendation to Replace Existing Street Lights with New Decorative Lights, Budget Approval and Budget Amendment

RECOMMENDATION/MOTION: That the Harwood Pl. Street Lighting Study and its recommendation be accepted, new black light poles and fixtures be purchased, in the amount of \$29,962.10, the Purchasing Agent be authorized to issue a Purchase Order, and the Budget Amendment Ordinance passed.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Objective 2.d. By replacing the existing street lights which no longer work, it allows the neighborhood to retain a similar decorative style of lighting while becoming more energy efficient and improving safety both from an electrical hazard and a falling hazard.

BACKGROUND: The twelve (12) existing decorative street lights on Harwood Pl. are no longer operational as of March 18, 2013 when a pole was knocked over and broken. This resulted in failure of the electrical system including a special control transformer. Prior to that event several bulbs had burned out for which replacement bulbs were no longer available. This had prompted a study to assist in deciding the best course of action to deal with an obsolete electrical system along with light poles and concrete bases that have significant deterioration.

The 1923 decorative street lighting system on Harwood Pl. is the same type of street lighting system that was replaced in 2012 on Country Club Pl. as part of the Locust Colton CSO Elimination Phase 1 Construction Project. These old street light systems are wired in series with a type of coaxial wiring that has no ground. They required special 22.8 volt, 6.6 amp incandescent bulbs that are no longer available. In addition, a special button was required to be replaced in the lamp socket each time the bulb burned out. This special single use button allowed the rest of the street lights to stay on after a bulb failed. These buttons are also no longer available.

To help determine what options are available and their approximate costs including a life cycle cost analysis, the Farnsworth Group was retained on January 14, 2013 to study the Harwood Pl. Street Lights. Two (2) public meeting were held at City Hall to obtain residents input regarding the study and possible options. The final report has been provided to the Council. The recommended option is B1 – 10' which is a decorative pole made by Sternberg Lighting, Roselle, IL. This pole is similar to the City standard light pole used on Country Club Pl., in the Downtown, and on Tanner St. The pole is three feet (3') shorter than City standard as recommended by the study. The existing Harwood poles are about ten feet (10') tall. The

recommended globe is an acorn style used on Country Club Pl. which is similar to the existing globes on Harwood. The estimated cost for this option is \$94,500 installed.

In an order to restore the street lighting as quickly as possible to this neighborhood, staff recommends that the poles and fixtures be ordered immediately. Lead time for delivery on poles like these can be anywhere from three to four (3 – 4) months. The poles are built to order and the number ordered affects the price per pole. Staff recommends purchasing fourteen (14) poles and globes in order to have replacements on hand. A quote of \$29,962.10 was obtained for fourteen (14) poles and head assemblies. Staff recommends utilizing the 2013 Traffic Signal Maintenance Contract to have the old system removed, new foundations, underground conduit, junction boxes, and wiring installed. Once the new poles arrive, City Electricians can wire the poles and install them on the new concrete bases.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Two (2) public meetings were held at City Hall regarding the Harwood Pl. Street Lights. The first meeting was held on February 5, 2013 to present an overview of the issues and gather resident input. The second meeting was held on June 18, 2013 to present the report prepared by the Farnsworth Group and obtain feedback on the recommendations presented in the report. A letter providing notice of each meeting was mailed to each property along Harwood Pl. and posted on the City's web site.

FINANCIAL IMPACT: The FY 2014 Budget did not appropriate funds for this project. As mentioned in the background section, staff recommends this issuance of a \$29,962.10 budget amendment in the Engineering Department line item 10016210-71190 (Other Supplies). As a result of the City's bolstered financial position, staff expects the \$29,962.10 will be offset by savings in other line items within the Engineering Department in FY 2014 or the City's fund balance could be used to offset this expenditure. Stakeholders may locate the Engineering Department Budget within the FY 2013 General Fund Budget document on pages #347 and #348.

Prepared by: Jim Karch, P.E., Director of Public Works

Reviewed by Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy Ervin, Budget Officer

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. Ordinance
Attachment 2. Map
Attachment 3. Harwood Place Street Lighting Study
Attachment 4. Quotation – Springfield Electric

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			

ORDINANCE NO. 2013 - ____

**AN ORDINANCE AMENDING THE BUDGET ORDINANCE
FOR THE FISCAL YEAR ENDING APRIL 30, 2014**

WHEREAS, on April 8, 2013 by Ordinance Number 2013 - 18, the City of Bloomington passed a Budget and Appropriation Ordinance for the Fiscal Year Ending April 30, 2014, which Ordinance was approved by Mayor Stephen F. Stockton on April 9, 2013; and

WHEREAS, a budget amendment is needed as detailed below;

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, ILLINOIS:

Section One: Ordinance Number 2013 - 18 (the Budget and Appropriation Ordinance for the Fiscal Year Ending April 30, 2014) is further hereby amended by inserting the following line items and amounts presented in Exhibit #1 in the appropriate place in said Ordinances.

Section Two: Except as provided for herein, Ordinance Number 2013 - 18 shall remain in full force and effect, provided, that any budgeted or appropriated amounts which are changed by reason of the amendments made in Section One of this Ordinance shall be amended in Ordinance Number 2013 - 18.

Section Three: This Ordinance shall be in full force and effect upon its passage and approval.

PASSED the 8th day of July, 2013.

APPROVED the ____th day of July, 2013.

APPROVED:

Tari Renner
Mayor

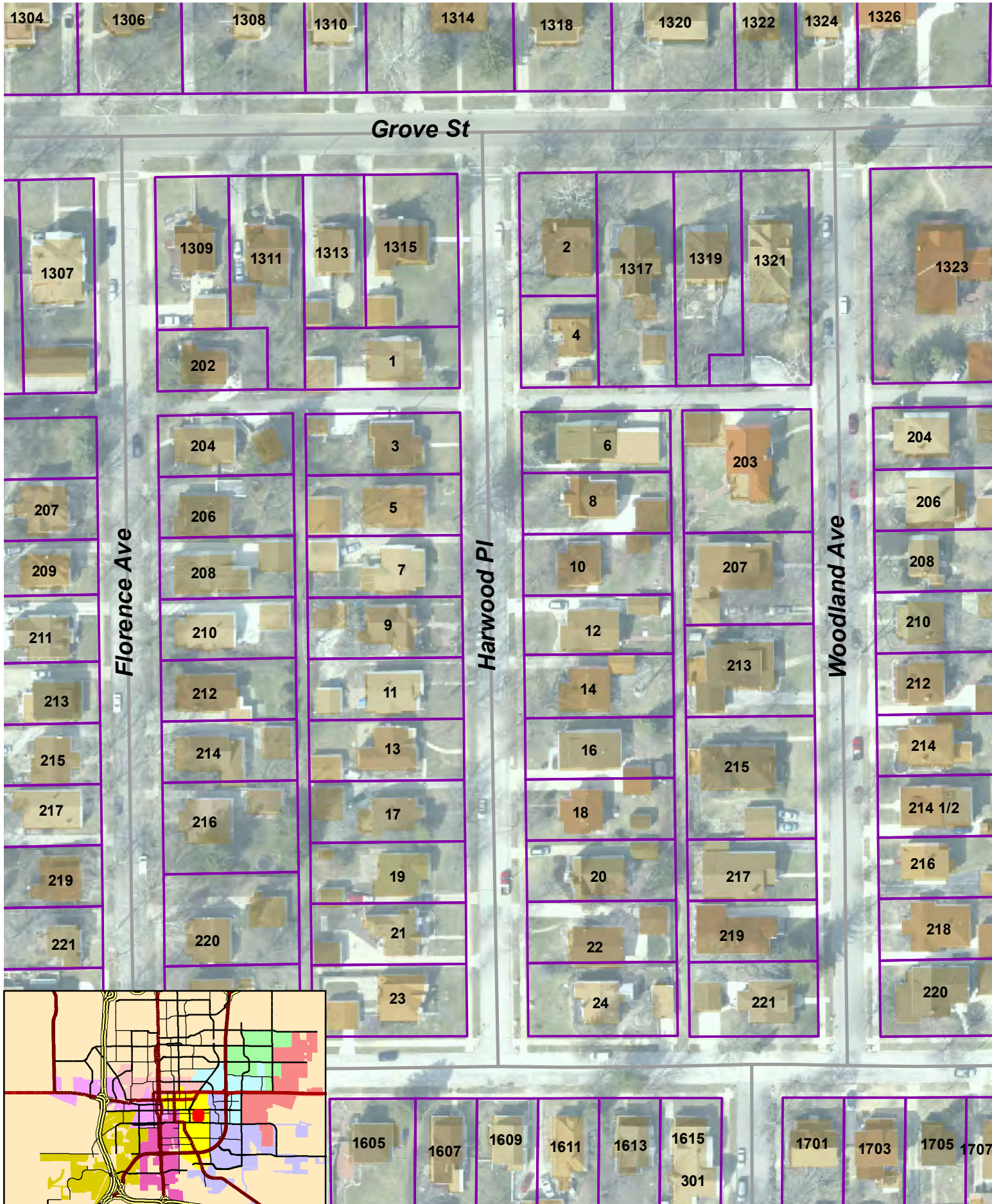
ATTEST:

Tracey Covert
City Clerk

Exhibit #1

Fund	Account Name	Revised Budget	Description
General Fund	Other Supplies	<u>(\$29,962.10)</u>	Purchase poles and light fixtures for Harwood Street
Overall Impact on City Budget:		<u><u>(\$29,962.10)</u></u>	

Harwood Street Lights





902 Four Seasons Rd.

Bloomington, IL 61701

Phone: (309) 663-5331

Fax: (309) 662-4099

Date: 06/25/2013

QUOTATION

Customer: CITY OF BLOOMINGTON

Quotation Number: **2 - 143679**

Address: CITY OF BLOOMINGTON

Estimated Delivery: _____

BLOOMINGTON IL 61701

Attn: CHRIS KANE

Project: HARWOOD
BLOOMINGTON IL

Freight Terms:



F.O.B. Factory-Freight Allowed



F.O.B. Factory

Quotation Expires: **07/25/2013**

ITEM	QTY	VENDOR	CAT.#	DESCRIPTION	PRICE	U	TOTAL
F1	14	STERNBERG		A850WA/BD5-PT/5410FP5/INC 120V MED BK POLE AND HEAD ASSEMBLY W/ 1 - EIKO SP85/41/MED	2140.15	E	29962.10

TOTAL = 29962.10

We thank you for this opportunity to submit our quotation and sincerely hope that it will meet your approval. Should you have any questions concerning this quote, please contact: **Rick Epley**

Page 1

Phone (309) 661-5311

Bloomington
(309) 663-5331
Mattoon
(217) 235-5671

Carbondale
(618) 457-7570
Moline
(309) 797-3361

Champaign
(217) 351-7600
Mt Vernon
(618) 242-6331

Danville
(217) 442-5282
Peru
(815) 223-2650

Decatur
(217) 875-8000
Rockford
(815) 223-2650

East Peoria
(309) 694-2000
Springfield
(217) 788-2100



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Project: HARWOOD
BLOOMINGTON IL

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F.O.B. Factory-Freight Allowed



F.O.B. Factory

Quotation Expires: 07/25/2013

ITEM	QTY	VENDOR	CAT.#	DESCRIPTION	PRICE	U	TOTAL
STANDARD TERMS AND CONDITIONS							
PRICING AND SHIPPING TERMS Unless otherwise specified, all prices by Springfield Electric Supply Company are subject to change without notice. Prices do not include sales, use, excise, or similar taxes and, where applicable, such taxes shall be billed as a separate item and paid by the purchaser. Unless otherwise noted, all sales are made F.O.B. point of shipment; in all cases, title shall pass upon delivery to the carrier at point of shipment. Claims for shortage, loss or damage of material while in transit are subject to regulations of the carrier and are the responsibility of the purchaser. Springfield Electric will render assistance to secure proper adjustment but will not assume responsibility. Concealed damage for direct ship material must be brought to the attention of the carrier within five days of receipt of shipment. Claims for shortages must be noted on the freight bill at the time of delivery. PAYMENT TERMS Invoices are eligible for the applicable cash discount if paid by the 10th of the month following the billing date. Thereafter, terms are net. Invoices not paid by the end of the month following purchase are subject to a finance charge. Shipment will be made on our regular payment terms to customers who have established credit. All other terms and conditions of the open account agreement shall apply. WARRANTIES Any warranties are those made by the manufacturer. Springfield Electric Supply Company (Seller) hereby expressly DISCLAIMS ALL WARRANTIES either express or implied, including among others, any implied warranty of MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of the enclosed item(s). Sellers liability for breach of any warranty is limited to the purchase price of the item(s) sold, and excludes all other damages including, among others, incidental and consequential damages. Any and all representation, promises, warranties or statements by sellers agent that differ in any manner from the above terms shall be given no force or effect, and buyer may not rely thereon. LIMITATION OF LIABILITY Springfield Electric Supply Company's liability shall be limited to the replacement of the goods or a refund of the purchase price. In no case shall Springfield Electric Supply Company be held liable for incidental damages or any labor charges. RETURN POLICY Material may not be returned without prior authorization. Current stock items in original cartons will be accepted for exchange or credit. Springfield Electric reserves the right to apply a restocking charge to credits issued for return material. Non-stock special order items are not returnable without permission of the manufacturer and are subject to any charges they may impose.							

TOTAL = 29962.10

We thank you for this opportunity to submit our quotation and sincerely hope that it will meet your approval. Should you have any questions concerning this quote, please contact:

Rick Epley

Page 2

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East Peoria
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Springfield
(217) 788-2100

Harwood Place Street Lighting Study

City of Bloomington



Provided By:



2709 McGraw Drive | Bloomington, IL 61704
Phone | 309-663-8435

City of Bloomington – Public Works
Department
P.O. Box 3157
Bloomington, IL 61702-3157
Ph. 309-424-2435

Table of Contents

Executive Summary3

Existing Conditions4

Description of Potential Options6

Resident Feedback10

Cost Analysis11

Recommendations14

Figure 12: Study Summary.....16

Potential 100-Year Plan Analysis17

Executive Summary

Farnsworth Group has conducted an evaluation of the existing street lighting on Harwood Place in Bloomington, Illinois. The objective of this study was to evaluate different replacement and refurbishment options for the decorative light poles, as well as the existing concrete bases, circuit wiring and luminaires. Farnsworth Group has also been asked to provide analysis of these options and present a final recommendation for the City's consideration. Preceding this study, a public meeting was held with the residents of Harwood Place, City staff, and Farnsworth Group in order for the residents to share their thoughts and ideas about potential options of replacement or refurbishment.

The existing, cast iron light poles on Harwood Place have been in use for 90 years and are victims of aging wiring, outdated lamp sockets, and corrosion. The City no longer stocks any similar replacement poles that would match the existing poles and is unable to obtain replacement incandescent lamps. Field review of the existing poles indicates extensive corrosion, especially that of the interior structural pole/base connections and the connections to the concrete foundations. The extent of visible corrosion and the inability to predict the extent of existing damage creates questions related to the structural integrity of the poles, causes increased construction risk, and poses many unpredictable financial expenditures for the City.

Farnsworth Group has reviewed various options for the next course of action to the Harwood Place street lighting system. Many factors were considered including system costs, life expectancy, availability of replacements, resident input, difficulty to discern the extent of existing corrosion and associated structural integrity, and adherence to City policies. Farnsworth Group recommends the following for the City's consideration: to replace the existing cast iron poles with a new 10-foot tall "Hamilton" cast aluminum pole with an acorn fixture, that the City use a lower wattage lamp than their standard and that all underground electrical, concrete pole bases, lighting control system be replaced with new, including a new utility transformer as required by Ameren.

Existing Conditions

History

The history of the decorative street lighting at Harwood Place can be traced back to April 23, 1923 when W.S. Harwood and Thomas F. Harwood submitted to the City that 12, single light, 10 foot, ornamental, cast iron poles be erected on Steele Avenue, now known as Harwood Place. The system was connected to the City's No. 6 series street lighting circuit. Upon completion of the installation, the decorative lighting system was turned over to the City for ownership and maintenance. The 12 light poles are arranged in a staggered pattern except at both ends of the street, in which case one pole stands at each corner. Because of their staggered spacing, not all residents have a decorative pole in front of their home. As of February of 2013, Harwood Place nor the surrounding neighborhoods have been declared an area of Historic Preservation by the Bloomington Historic Preservation Committee.



Figure 1 - An existing 10 foot decorative light pole and fixture on the corner of E. Grove Street and Harwood Place.

Technical

As stated above, the ornamental street lights are connected to a series lighting circuit and utilize an incandescent lamp that is no longer available to the City for purchase. Incandescent lamps as a whole are being phased out of production due to their excessive power consumption and short life span compared to the newer technology available today. As of late February 2013, three fixtures on Harwood Place remain unlit due to faulty wiring and excessive lamp burn outs. Even if some of the existing lamps from the Country Club Place street lighting job were able to be salvaged, in a short time from now, the City would be in the same situation they are today due to the short remaining life span that a used, incandescent lamp would have. Additional lifespan from used incandescent lamps with delicate filaments, being moved from one fixture to another would be very minimal and unjustifiable in respect to the maintenance costs. The City would prefer to use the same lamp and socket that is currently being used on other fixtures that have been installed around Bloomington in the past decade. This will not only greatly reduce lamp burn outs, but will simplify product stocking for the City.

Due to the material deterioration of the light poles manufactured in the early 1920's, the street lighting system is lacking some aspects that do not promote public safety according to today's standards. When installed, no equipment ground conductor was circuited along with the phase wires, which poses a shock hazard to the maintenance staff and the general public if an electrical short were to occur. Also, because of corrosion, many of the wiring access doors at the base of the poles do not have any hardware or latching mechanism, making them extremely easy to remove and also difficult to secure back into place on the pole base. This could lead to unwanted or accidental wire tampering by wildlife or the general public. While to date no known shock or electrocution has occurred by tampering, these types of activities are never

predictable. The City would be liable for such an event, and should take the proper steps to ensure that such an incident has a much lower probability of occurring for the good of public safety.

Conditions

The condition of the decorative poles and fixtures vary from pole to pole, but several items stand out and bring to question concerns of structural integrity and opinions of aesthetic appeal.



Figure 2 - An existing pole base foundation shown sunk into the soil allowing increased weathering around the base.



Figure 3 - An existing concrete foundation deteriorating beneath a pole base.

Figure 2 shows an example of a pole base on Harwood Place. Between the weight of the heavy cast iron pole and the concrete foundation, the unit has sunk down into the soil. This does not allow water to drain properly and causes pooling around the base of the pole. This excess water increases corrosion in a crucial structural point where the pole base is fastened to the foundation anchor bolts in the concrete. The sunken base also subjects the pole and finish to additional damages by means of lawn mowers and other yard trimming tools.

Figure 2 also shows how these poles were installed with no setback from the curb. Today, Illinois Department of Transportation (IDOT) has guidelines that state: "For curbed facilities, the minimum horizontal clearance to an obstruction is 1.5 ft. measured from the face of the curb." This is an additional buffer space for vehicles that may come too close to the curb while driving, helps minimize the risk of being struck by a snow plow, and gives additional room for plowed snow. While a mandate such as this may have not been around in the early 1920's, today's increased traffic and road usage also increases the risk of the light poles being damaged or struck. Residents have stated that several poles have been knocked down by vehicles and snow plows in the past, and there are visible signs that some of these units have been previously repaired from these events.

Figure 3 displays deterioration to a concrete base while Figure 4 demonstrates some of the interior corrosion of these cast iron poles. According to a materials repair contractor, this deterioration is not surprising with cast iron material at its age of 90 years; however, it is possible that much of the rust could just be spreading across the surface rather than penetrating too far into the metal itself. Figure 5 shows an example of the mismatching aesthetics of the street lights due to replacing the units subject to vehicle collisions over the years. Many acorn

diffusers continue to yellow with age, while some replaced diffusers are pure white in color. Pole finishes have been weathered away and are not providing the protection or aesthetic appeal that they once did.

Due to recent events, one pole has been struck by a vehicle and has been damaged beyond reasonable repair. A key structural component that connects the pole to the base has been broken in three places and the decorative post top fitter has sustained damage. Attempting to repair the pole back to its original structural integrity may prove to be near impossible and will be costly to the City. Structural integrity is a mandatory requirement due to the extreme weight of the poles and the liability that the City may have if the pole fell on a passerby on the nearby sidewalk or roadway.



Figure 4 – Interior deterioration shown in one of the 12 decorative pole bases.

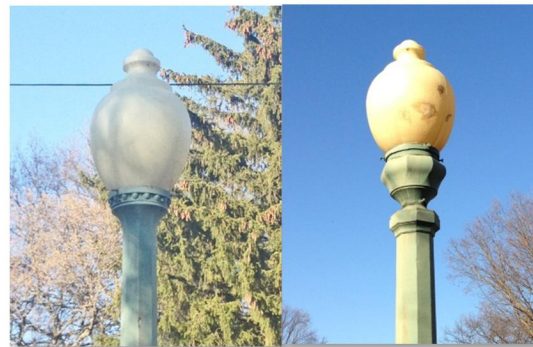


Figure 5 – Due to replacements from wear or damage, some poles and acorn diffusers do not match the others, leading to a non-uniform look.

Description of Potential Options

Between the collaboration of the residents of Bloomington, City staff, and Farnsworth Group, potential options involving the repair/replacement of the street lighting system have been analyzed below. The City has already expressed that a few items in the system are to be mandatory replacement items in order to repair damaged or non-functioning components, and to ensure continued safety of the citizens and their maintenance staff. These items include: all underground electrical wiring from the utility meter to all of the light poles, new wiring splices in the pole bases, providing new City standard lamp sockets in all poles, replacement of concrete foundations, ensuring secure hardware for the wiring access doors, and the replacement of any lighting control devices.

Option	Description
A	Refurbish
	This option would entail the necessary steps in an attempt to restore the existing cast iron poles to an acceptable condition for reuse. The poles would first need to

be carefully removed from their concrete bases. Previous comparable jobs suggest that using a cutting torch for removal of the 90-year-old anchor bolts is a likely possibility. This could result in costly repairs for the damages caused by the tool. Next, a materials repair contractor will need to individually examine and identify the poles in need of any welding repairs. The City would need to include a cost allowance for repairs to any damages to the poles from corrosion or those that incur during removal and transport. Wiring access door repairs, and any other additions or repairs needed to secure the new socket into place shall also be considered. Repair prices can vary greatly depending upon the severity of the damage, assuming that the pole is still repairable. These damages are nearly impossible to predict prior to removal and transport but provide a definite cause for concern as the brittle nature of cast iron could cause the poles to sustain extensive stress cracking or fracturing while being lifted and moved for the first time in 90 years.

If all welding repairs are completed successfully, the poles would then need to be moved to a refurbishing shop for sandblasting, epoxy primer, a coat of paint and a polyurethane finish coat. The estimated life span of the refurbished finish only was roughly estimated by a materials contractor to be anywhere from 5-20 years. After being finished, the contractor would then have to package the poles and transport them again back to Harwood Place.

It is important to note that the Harwood Place streetscape currently has only 10 existing and matching, cast iron poles. Of the remaining two, one is a non-matching unit, and the other has been recently damaged beyond reasonable repair. Farnsworth has identified one out matching and complete cast iron pole assembly from the recent Bloomington Country Club Place project that could potentially be utilized at Harwood Place. There were two other similar poles salvaged from the same project, however one is damaged beyond repair and the other has a fitter that has broken off as well as a broken wiring door. These salvaged poles are all of similar material and age of the Harwood Place poles. Even utilizing the one completely assembled salvaged pole would still not leave enough units to complete a matching streetscape. Also, if City chose to refurbish the one non-matching pole along with the other 11, there would be no poles to replace any of those that become damaged before, during or after the refurbishment process. The City no longer stocks any similar style light poles or any pole of the same height.



Figure 6 – Two of the similar style poles shown in the City of Bloomington's salvage yard.



Figure 7 – Shows the damaged pole salvaged from the Bloomington Country Club Place project with a broken base and center bracket.

In addition to this option, all the City required upgrades listed above would need to be provided. This option contains the greatest amount of risk and poses many unpredictable expenditures for the City, making it difficult to accurately associate it with a cost. If this option were to be chosen by the City, the refurbished poles would become a specialty item and there would be no matching replacements if one was to become further damaged by corrosion or stuck by a vehicle or snow plow. If a refurbished pole were ever damaged, a custom replacement built to match would have to be ordered from the factory. These units would be very expensive and in addition, it would be unlikely that the new pole's finish would match that of the refurbished poles.

B Replacement

This option entails the complete replacement of the 90 year old decorative cast iron poles, fixtures, concrete foundations and all other listed requirements by the City listed above. The new poles would be cast aluminum and manufactured by the Sternberg Lighting company in Roselle, Illinois. Sternberg Lighting does not offer a cast iron pole option as the industry standard of light pole material has shifted to cast aluminum over 60 years ago. This was due to increased life expectancy and feasibility of installation and repair. Sternberg Lighting has been in operation since 1923 suggesting that providing matching pole replacements for any damaged units over the life of the poles would be a very likely possibility. According to the factory, their pole finish alone has an estimated design life of 50 years with the potential for the pole itself able to last much longer. This option is much more predictable in its estimated costs as well as its useful life span compared to the unpredictability of refurbished, 90-year-old cast iron.

The City has designated the "Hamilton" style pole as a standard for their decorative street lighting in the past decade and would like to use this same pole on Harwood Place to simplify stocking of spare poles. Another replacement pole option of the "Champaign" style pole is also considered because of its similar design to the existing poles on Harwood Place.

Option B1

Figure 8 below shows the City’s standard “Hamilton” decorative pole option. It features an acorn fixture atop a fluted 5” diameter pole with a hexagonal, decorative base. The pole is constructed of cast aluminum with a powder coated black finish. The City standard pole height is 13 feet (Option B1-13’). This option of pole is also available in a 10-foot version. Because the existing Harwood Place poles are 10 feet, a review of this option (Option B1-10’) will be considered as well.

Option B2

Figure 9 below depicts the cast aluminum, decorative “Champaign” style pole offered by Sternberg Lighting. It is virtually identical in design to the existing octagonal decorative poles on Harwood Place. The same acorn luminaire shown in Figure 8 would be installed atop this pole. The factory standard, 12 foot version of this pole will be considered as a replacement option (Option B2-12’). This style pole is not available with a 10 foot standard height. For an additional fee, however, Sternberg Lighting could modify the 12-foot version down to 10 feet and design and manufacture a fitter (or neck) that would be similar to that of the existing cast iron poles. This replacement option (Option B2-10’) would become a similar match to the 90-year-old poles standing today.

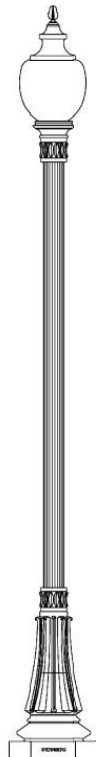


Figure 8 – Hamilton Style Pole
Option B1-13’
Option B1-10’

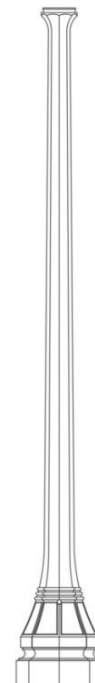


Figure 9 – Champaign Style Pole
Option B2-12’
Option B2-10’

C Utility Furnished

This re-light option was briefly discussed at the pre-study, public meeting with the residents as a viable re-light option for the City to consider. There are two different options for the Utility design. For Option C1, the City would remove the entire decorative street lighting system and request a 30-foot, gray, Utility provided street light (Figure 10) at each end of the street as well as one every 250 feet, according to the City's design standards. Option C2 will utilize the Utility's standard decorative option (Figure 11) and provide a 1:1 replacement of the existing poles and fixture locations on Harwood Place. The C2 option would not meet the City's design guidelines and a special exception would need to be made (see paragraph under "Recommendations" for more information). Both of the Utility furnished options would remove the entire street lighting system maintenance responsibility from the City, requiring them to pay a monthly lease per the number of fixtures used and any electricity consumed.



Figure 10 – *Standard utility option C1.*



Figure 11 – *Standard utility decorative option C2.*

Resident Feedback

Representatives of nine of the twenty-four different households on Harwood Place voiced their opinions via email, or attended a pre-study public meeting on February 5th, 2013. An additional meeting was also arranged for a particular resident whom was unable to attend the public meeting. During the public meeting residents asked questions, listen to the City engineer discuss why action is required, and freely voice their opinions on the matter. The residents expressed their desire to keep the street lighting as it adds uniqueness to their neighborhood due to its history and antique look. When asked about the mismatching poles and acorn colors, one resident said, "We like the yellowing. It's part of the neighborhood." This statement, while maybe not unanimously agreed upon by all the residents, shows that the aesthetics and uniformity of the street lights come secondary to their history. The residents also commented that keeping some sort of decorative lighting on their street would be desired if the old poles

were not able to be reused, though expressed concern that the City standard decorative poles would be too tall and too bright. The unique street lighting system was one deciding factor for some in the purchase of their homes and felt that eliminating it completely would reduce the resale value of their home. Residents fully rejected the option of Utility furnished street lighting stating that they should still be able to maintain a decorative option.

Cost Analysis

A cost benefit analysis was performed for the Harwood Place lighting options to compare the estimated system material and installation costs for each viable option. This analysis is based upon pricing estimates and the experience of local contractors in the lighting industry, as well as previous comparable street lighting jobs performed by the City of Bloomington. All prices for decorative pole options have been based upon the products of Sternberg Lighting, based in Roselle, IL.

Summary of Costs

Option	Design	Pole / Fixture Cost	Required Upgrades	System Installed Total
A	Refurbish	\$22,100	\$66,900	\$89,000 *
B1 - 13' **	New Cast Aluminum	\$28,800	\$66,900	\$95,700 *
B1 - 10'	New Cast Aluminum	\$27,600	\$66,900	\$94,500 *
B2 - 12'	New Cast Aluminum	\$33,600	\$66,900	\$100,500 *
B2 - 10'	New Cast Aluminum	\$46,800	\$66,900	\$113,700 *
C1	Utility Provided	\$27.84 per mo.	\$62,900***	\$62,900 + \$27.84 per mo.*
C2	Utility Provided	\$143.28 per mo.	\$51,300***	\$51,300 + \$143.28 per mo.*

Estimates rounded to the nearest hundred.

** Energy costs per mo. not included.*

*** Denotes City standard option similar to the poles on Country Club Place.*

**** Price includes Utility work required, pole/base removal, curb/gutter repairs and site restoration.*

Figure A-1 – Shown above is a summary of the associated costs per option.

In Figure A-1 'Summary of Costs', both Utility options C1 and C2 are shown to be a lesser cost than purchasing new, decorative, cast aluminum poles and refurbishing the old units. Of the new pole options, option B1-10' is the least expensive while refurbishing the existing units in option A is approximately \$5,000 less.

The following information in this section supplements these summarized costs of Figure A-1.

New Decorative Pole Prices

Option / Pole Style	Height	Price Per Pole & Acorn Fixture	Set Total (12)
B1 - Hamilton	13'	\$2,400	\$28,800
B1 - Hamilton	10'	\$2,300	\$27,600
B2 - Champaign	12'	\$2,800	\$33,600
B2 - Champaign	10'	\$3,900	\$46,800

Figure A-2 – Cost comparison shown between the two different style decorative poles and heights discussed above. Prices include estimated distributor/contractor markups of 25% and are based on an order quantity of 12 units. Unit prices vary upon order quantity. Costs rounded to the nearest hundred.

Required Upgrades Labor & Material Breakdown

Description	Line Total
Existing Pole/Base Removal	\$3,600
Curb/Gutter Repairs	\$4,800
New Concrete Bases	\$12,000
1500' Wire Bore*	\$20,000
Wire – (3) #6 AWG	\$1,300
Pole Installations	\$12,000
Control Panel and Equipment	\$2,500
Site Restoration	\$2,000
Subtotal	\$58,200
15% Contingency	\$8,700
Total	\$66,900

* Includes one road crossing.

Figure A-3 – Cost estimate for City required upgrades. Costs rounded to the nearest hundred.

Refurbishing Costs

Many local crafts were called upon for a price quote for pole refurbishment including welding, sand blasting and electrical contracting. For a few instances, the tradesman would not provide an exact price because of all the unknowns in the process of handling 90-year-old cast iron. Also included in the refurbishing cost estimate, are the transporting of the heavy, existing units to the various repair shops and the use of any specialized equipment to do so. The greatest pricing unknown for the refurbishment process are the material repairs and welding of the damaged units and components. Based upon a brief visual inspection of a welding contractor, a ballpark figure of \$1,000 was estimated for the visual exterior repairs only. Any repairs to the wiring doors, internal pole damages (including anchor bolt tabs) or the damages incurred during

removal and transport would be an additional cost on an as needed basis. (See Option A description in section “Description of Potential Options” for more information on repairs). For estimating purposes, an allowance of 4 hours per pole at \$90 material / labor per hour can be applied to each pole, for a total repair estimate of \$4,320. An estimate of \$350 was given for the sandblasting and re-finishing (primer, paint and clear finish) of the cast iron poles by Associated Sandblasting. The remainder of the refurbishing costs would be the result of electrical upgrades, new diffuser acorns, and extra contractor labor for careful removal, reinstallation and the costs of transporting and the use of specialized lifting equipment.

Estimate of Pole Refurbishing Costs

Description	Line Total
Sandblast, Paint, Seal	\$4,200
Exterior & Interior Metal Repairs	\$4,300
Pole Transport*	\$7,200
New Internal Electrical Socket/Wiring	\$2,400
New White Acorn Diffuser	\$1,100
Subtotal	\$19,200
15% Contingency	\$2,900
Total	\$22,100

*Estimate based upon 12 refurbished decorative poles.
Costs rounded to the nearest hundred.*

**Estimated \$200 per move, per pole including protective materials for finished pole transport back to site.*

Figure A-4 – Estimated cost of refurbishment based upon available information.

Recommendations

Ownership and maintenance upkeep of the street lighting system at Harwood Place was given to the City of Bloomington after being purchased by private citizens W.S. and Thomas Harwood in 1923. Now in 2013, 90-years later, it is time to consider the next major overhaul for the street lighting system.

Farnsworth Group agrees with the City that an immediate replacement of the electrical circuit wiring is required. The concrete bases are also recommended for replacement in order to ensure a minimum 1.5 foot clearance from the face of the curb and ensure structural integrity.

After considering the options, Farnsworth Group recommends that the City provide new decorative cast aluminum street light poles for each of the 12 existing locations. Figure 12 below summarizes the factors considered in making this recommendation. By replacing the poles with new cast aluminum units, the city is not restricting themselves to repairing the existing poles again or ordering expensive, custom replacements if they become damaged in the future by automobiles or snow plows. Any new, cast aluminum units that become damaged can be easily matched by the factory for a uniform and aesthetically pleasing system that the City strives to achieve. The new poles will ensure a quality powder coated finish with an estimated design life of 50 years. Also considered in this recommendation was the fact that if the City were to refurbish the existing poles, the concrete bases would need to be poured back with the 12" diameter anchor bolt circle. If after the estimated 5-20 year lifespan of the refurbished pole finish the City wanted to install their standard decorative pole option, the old bases would need to be removed and new bases pour to match the 14" diameter anchor bolt pattern of the "Hamilton" style pole. And finally, new cast aluminum poles will come with a solid and secure wiring access door, latches and stainless steel hardware to ensure that no unauthorized personnel will have access to circuit voltage for the life of the pole.

Farnsworth Group recommends the particular replacement option of B1-10' "Hamilton" style pole for the City's consideration. In the neighborhood of the recent comparable project at Country Club Place, the City standard, 13-foot, "Hamilton" series light poles were used. In comparison, the residences on Country Club Place are much larger than those on Harwood Place. The average distance from the curb to the front door is approximately double that of those on Harwood Place. The spacing of the fixtures is also much further apart than those on Harwood Place. Harwood Place includes fixtures on both sides of the street as opposed to just one side on Country Club Place. And finally, the mature and closer spaced foliage provides a larger canopy over the street compared to the openness of Country Club Place. It is in the opinion of Farnsworth Group that a 13-foot pole would not be as aesthetically pleasing to the eye and fit the nature of the smaller residential neighborhood compared to a 10-foot pole. A pole height of 10-feet would better suit the enclosed residential street than the open, street-lit areas around town installed with the taller poles such as: Country Club Place, Tanner Street and the downtown square. Option B1-10' is the same City standard pole design, just in a shorter height. Due to the same reasons above, Farnsworth Group also recommends that the City consider using a lower wattage lamp in lieu of the same wattage lamps used on Country Club Place.

In regards to City Code of street lighting, per Article 9.02 of the City of Bloomington's DESIGN STANDARDS, part C states that a minimum 23,000 lumen high pressure sodium luminaire shall be mounted at a minimum of 30 feet at the intersection of all minor streets with arterial and collector streets. This section also specifies that an 8,700 lumen high pressure sodium luminaire

shall be mounted at a minimum height of 25 feet with a minimum spacing of 250 feet. There is no City foot-candle requirement for minor streets. Harwood Place would be considered a minor street. A street lighting system similar to the existing would not meet the requirements of lamp type, fixture mounting height and lumens required at the intersection of a minor and collector street. A street lighting system similar to the existing would also not meet the lamp type and mounting height for a minor street. Special approval, similar to that given to the Country Club Place project would have to be given by the City in order for this system to meet its design standards. For projects in the past, the City has typically taken into consideration the special nature of any antique street lighting and has grandfathered in the lighting system under the current lighting standards.

In order for the resident's to have a greater impacting decision on the future of their street lighting system, there exists the option to take partial ownership and share with the City in their initial maintenance costs. This can be done by the formation of a Special Assessment Street Lighting District with the Harwood Place residents. A Street Lighting District is created when property owners within a specific neighborhood desire special street lighting or more lighting than the City's standard level of lighting and those residents are willing to be assessed for the additional costs of the desired lighting. The special assessment is levied against real estate parcels which are identified as having received a direct and unique "benefit" from the public street lighting project. The special assessment is levied for the purpose of paying for the additional installation costs above those provided by the City's Design and Construction Standards, and for maintenance and energy costs greater than those typically incurred from the City's standard street lighting installation.

Figure 12 on the next page summarizes the options and items of consideration included in this study and Figure 13 and 14 summarize two possible replacement/refurbishment schedules and associated costs estimated out for approximately the next 100 years.

Study Summary

Option	System Cost	Life Expectancy of Finish	Matching Factory Replacements Available?	Resident's Opinion	Construction Risk	Adherence to City Lighting Standards?
A	\$89,900 *	5 -20 yrs.	No	Desired	Significant	Special approval required
B1 - 13'	\$95,700 *	50 yrs.	Yes	Only if not refurbished	Minimal	Special approval required
B1 - 10'	\$94,500 *	50 yrs.	Yes	Only if not refurbished	Minimal	Special approval required
B2 - 12'	\$100,500 *	50 yrs.	Yes	Only if not refurbished	Minimal	Special approval required
B2 - 10'	\$113,700 *	50 yrs.	Yes	Only if not refurbished	Minimal	Special approval required
C1	\$62,900 + \$27.84 per mo.*	Utility Maintained	N/A	Not Desired	None	Yes
C2	\$51,300 + \$143.28 per mo.*	Utility Maintained	N/A	Not Desired	None	Yes

*Energy costs not included.

-Life expectancies are estimations.

-The shaded option represents Farnsworth Group's recommended course of action to the City.

Figure 12 – Summary analysis of the street lighting replacement options. Farnsworth recommends the option B1 – 10' as the appropriate course of action for the street lighting replacement.

Potential 100-Year Plan Analysis

The following analysis is an estimation of system costs for three potential options of replacement. Option No. 2 directly corresponds to the plan of action recommended by Farnsworth Group.

100-Year Plan Summary

Plan No.	Approximate Life Cycle Expectancy (Years)	Total Cost	Cost Amount Above City Standard Utility Street Lighting	Plan of Actions
1	100	\$96,308	-	Use City standard Utility installation (Option C1). Maintenance and repair costs are the responsibility of the Utility.
2	119	\$152,600	\$56,292	Replace existing (Option B1-10') and then refurbish as needed in the future.
3	109	\$224,500	\$128,192	Refurbish existing poles (Option A) and then replace with new (Option B1-10') and refurbish as needed in the future.

Figure 13 – Summary of the three different plan analyses shown below.
Plan No. 2 corresponds to Farnsworth Group's recommended plan of action.

Plan #1 – Replace Existing Lights with City Standard Utility Street Lighting

Replacing the existing system with the Utility Standard will remove all responsibility of maintenance from the City and only requires a monthly payment to the Utility.

Construction Sequence for 100 Yrs.	(Est. Life Expectancy) / # of Yrs. from 2013	Option Cost
C1	(--*) / 0	\$62,900
Utility monthly costs for 100 yrs.	(--*) / 100	\$33,408
	/ 100 Years	
	Total Cost:	\$96,308

- Estimate of four (4) Utility poles was used.
- Inflation not factored into prices.
- Assumes pole damage costs paid for by Utility.
- Electricity costs not accounted for.
- * Life expectancy assumed not a factor for the City.

Figure 14 – Shows an example replacement schedule over the next 100 years utilizing Option C1 as the first course of action by the City.

Plan #2 – Replace Existing Lights with New Lights

Replacing the existing poles with new (Option B1-10') will last an estimated 50 years after which the poles could then potentially be refurbished three times to extend the useful life to beyond 100 years.

Construction Sequence for 100 Yrs.	(Est. Life Expectancy) / # of Yrs. from 2013	Option Cost
B1-10'	(50) / 0	\$94,500
Pole Refurbish	(23) / 50	\$22,100 *
Pole Refurbish	(23) / 73	\$18,000 **
Pole Refurbish	(23) / 96	\$18,000 **
	/ 119 years	
Total Cost:		\$152,600

- Averages of life expectancy ranges have been used.
- Lifespan of refurbished aluminum poles estimated by factory 5-40 years.
- Inflation not factored into prices.
- Assumes pole damage costs absorbed in refurbishing costs.
- * Same refurbishing cost as shown in report on pg. 13.
- ** Refurbishing cost less socket/wire and acorn diffuser

Figure 15 – Shows an example replacement schedule over 100 years utilizing Option B1-10' as the first course of action by the City.

Plan #3 – Refurbish Existing Lights

Refurbishing the existing poles (Option A) extends the life expectancy of the pole finish for an estimated 13 years after which replacement poles are required (Option B1-10'). These replacements could then potentially be refurbished twice to achieve beyond 100 years of useable life.

Construction Sequence for 100 Yrs.	(Est. Life Expectancy) / # of Yrs. from 2013	Option Cost
A	(13) / 0	\$89,900
B1-10'	(50) / 13	\$94,500
Pole Refurbish	(23) / 63	\$22,100 *
Pole Refurbish	(23) / 86	\$18,000 **
	/ 109 Years	
Total Cost:		\$224,500

- Averages of life expectancy ranges have been used.
- Assumed only one refurbishment of existing poles.
- Lifespan of refurbished aluminum poles estimated by factory 5-40 years.
- Inflation not factored into prices.
- Assumes pole damage costs absorbed in refurbishing costs.
- * Same refurbishing cost as shown in report on pg. 13.
- ** Refurbishing cost less socket/wire and acorn diffuser

Figure 16 – Shows an example replacement schedule over the next 100 years utilizing Option A as the first course of action by the City.



FOR COUNCIL: July 8, 2013

SUBJECT: Customer Service Agreement with Central Illinois Regional Broadband Network, LLC (CIRBN)

RECOMMENDATION/MOTION: That the Customer Service Agreement with CIRBN be approved and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Objective 1e. Partnering with others for the most cost effective service delivery.

BACKGROUND: The State of Illinois Department of Central Management Services (CMS) was awarded a federal grant on August 1, 2010 in the amount of \$17.6 million for the planning, design, and construction of a fiber optic network. Illinois State University (ISU) is a sub-recipient of the CMS grant. CIRBN is the fiber optic network which has been constructed by ISU with grant funds. The network is high-speed, (40 billion bits per second). Pursuant to the terms of the grant, only governmental, educational, and non-profit entities may be served by CIRBN. It may be possible for CIRBN to lease excess bandwidth to private Internet providers.

The grant requires all construction to be completed by July 31, 2013, at which time CIRBN, will be responsible for all future administration of the network. CIRBN is already a legal entity. CIRBN has prepared a Customer Service Agreement for those entities who desire to obtain broadband services from it.

Discussion/Analysis

Staff has reviewed the Customer Service Agreement and recommends approval. The agreement will give the City access to the high speed fiber optic system for a monthly charge of \$2,564.35, (\$30,772.26 annually). The City will be able to use a total of 1,168 Mb/sec. It will have fiber optic network access for nine (9) sites at 1 GB/sec per site. The City currently pays \$2,850 per month for considerably slower access. The monthly payment for the CIRBN service is approximately \$286 less than the current high speed service, therefore the City will experience a slight financial savings.

The Town of Normal has entered into a Customer Service Agreement with CIRBN.

The service agreement is for a one (1) year term during which rates may not be increased.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: CIRBN, and Town of Normal.

FINANCIAL IMPACT: The FY 2014 General Fund Budget appropriated \$34,519 for the monthly fees for the purchase of high speed internet in line item 10011610-71340. The annual fee for this agreement with CIRBN to provide high speed internet access is estimated at \$30,772.20 (\$2,564.35 * 12 months). Stakeholders may locate this purchase in the FY 2014 General Fund Budget document on page #186.

Respectfully submitted for Council consideration.

Prepared by: Scott Sprouls, Director – Information Services

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy Ervin, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. Customer Service Agreement

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			

Central Illinois Regional Broadband Network
Customer Service Agreement

Central Illinois Regional Broadband Network
Customer Service Agreement

The Customer Service Agreement ("Agreement") between the Board of Trustees of Illinois State University ("University") on behalf of Central Illinois Regional Broadband Network and the Customer (collectively the "Parties").

Recitals:

WHEREAS, the University received Federal funds to create the Central Illinois Regional Broadband Network ("Network"), an open access broadband network to provide Internet connectivity to facilities and communities throughout Central Illinois;

WHEREAS, the Board of Trustees of Illinois State University owns or will own optical fiber network assets constituting the Network and the University intends to transfer and assign these assets and this Agreement to CIRBN, LLC, a non-profit Illinois limited liability company, formed to manage the Network on behalf of local communities;

WHEREAS, Customer desires to use the Network and obtain Services on the terms and conditions of this Agreement;

WHEREAS, Customer acknowledges this Agreement will be assigned by the University to CIRBN, LLC, and CIRBN, LLC, will thereafter, assume all University responsibilities and obligations under this Agreement;

THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the Parties hereby agree that this Agreement sets forth the terms and conditions which apply to the Services (as hereinafter defined) provided to the Customer.

1. Terms: For purposes of this Agreement

1.1. The term "CIRBN" refers to the University, and after assignment of the Agreement in accordance with Section 11, the term "CIRBN" will refer to CIRBN, LLC.

1.2. The term "Customer" refers to the entity listed on Exhibit A.

2. Service:

2.1. Obligations to Customer. CIRBN will:

- 2.1.1. Own and maintain the Network with facilities for providing Intranet and Internet services in the service areas outlined on the map on the CIRBN website:
<http://www.cirbn.org/index.php/map>.
- 2.1.2. Make Services available to Customer as set forth on Exhibit A, subject to the terms, conditions and obligations contained herein and based on the selections made by the Customer. Services may include: a) Subscriber Services (Internet & Intranet, or both) or b) Service Provider Services as designated on the Service Plan, Service Level Agreement, and Schedule of Fees (Exhibit A).
- 2.1.3. Conduct Service Connection Testing (as provided for in Section 3.1) to test Customer connectivity to the Network.
- 2.1.4. Provide the Equipment (as defined below), as applicable, needed by Customer at its site or other locations to access the Network.
- 2.1.5. Manage and maintain the Network and provide high-speed connections to the Internet and Intranet in accordance with this Agreement.
- 2.1.6. Maintain appropriate security to protect the security, privacy and confidentiality of the content Customer passes over the Network.
- 2.1.7. Perform regular and emergency maintenance on the Network including upgrades, configuration changes or enhancement to the Network and Equipment, as necessary or desirable in CIRBN's judgment.
- 2.1.8. Provide technical support to Customers as set forth in this Agreement.
- 2.1.9. Monitor the use of the Network, the Services, Equipment and facilities to help to ensure its use by Customer is in compliance with this Agreement and applicable law.

Central Illinois Regional Broadband Network Customer Service Agreement

2.2. **No Undertaking.** By offering individually negotiated services to Customers, CIRBN is not undertaking to provide any common carrier or telecommunications service offering to Customer. In the event a regulatory authority makes a determination that the services being provided are subject to common carrier or telecommunications service regulation, CIRBN may elect to terminate or modify the Agreement, Exhibit A, or terms available on the CIRBN website (www.cirbn.org) (including the Schedule of Fees) on reasonable notice without penalty as CIRBN deems necessary.

2.3. **Term of Service & Termination.**

2.3.1. **Service Connection Testing Period & Initial Term.** The contract will commence on the Contract Date listed on Exhibit A. CIRBN will provide Customer with Services for an initial period designated on Exhibit A ("Testing Period") commencing on the date of the initial activation of Customer's Equipment during which time CIRBN shall conduct Service Connection Testing. After completion of the Service Connection Testing, CIRBN will initiate regular Services under this Agreement on the Service Connection Date (as defined below). These Services will be provided for a one (1) year period ("Initial Term") commencing on the Service Connection Date listed on Exhibit A, unless earlier terminated in accordance with this Agreement. CIRBN agrees not to increase its rates for Services during the Initial Term.

2.3.2. **Renewal.** After the Initial Term, this Agreement shall be automatically renewed for successive terms of duration equal to the initial Term (each a "Renewal Term") unless terminated in accordance with this Agreement.

2.3.3. **Termination.** Customer may terminate this Agreement by providing CIRBN with thirty (30) days' prior written notice. Subject to applicable law, the Customer expressly agrees that all applicable monthly fees or other charges will accrue until this Agreement has terminated, the Services have been disconnected, and all Equipment has been returned to CIRBN. Early termination of this Agreement will result in an early termination fee in an amount equal to 50% of the monthly charges scheduled to be charged to the Customer (as calculated from the effective date of termination) during the timing remaining in the Initial Term or Renewal Term, as applicable. CIRBN may suspend or discontinue providing the Service generally, or terminate the Service, either in whole or in part, or terminate this Agreement with 30 days prior written notice, at any time in its sole discretion. If CIRBN discontinues providing the Service generally or terminates the Service for a reason other than the Customer's breach of this Agreement, the Customer will be responsible only for charges accrued through the date of termination, including a pro-rated portion of the final month's charges, and the Customer will not be charged the Early Termination Fee.

3. **Service & Equipment.**

3.1. **Service Connection Testing:**

3.1.1. During the Service Connection Testing Period, the Customer's Equipment will be activated initially. CIRBN will conduct testing of the Network, the Customer connection, and Equipment prior to offering regular Service to the Customer. During this Period, Services provided to the Customer will remain under development and the Customer may experience Equipment failure, Service Interruptions or other impairment of the Customer's ability to access the Network.

3.1.2. The Customer acknowledges that the purpose of the Period is to allow for identification of defects or other issues with the Network, and understands that during this period the Customer should use caution when relying on the correct functioning or performance of the Network.

3.1.3. After completion of the Service Connection Testing, CIRBN will establish regular Service for the Customer, the "Service Connection Date," and notify the Customer that Service has been established.

3.2. **Equipment.** CIRBN will provide customer premises equipment needed by Customer to access the CIRBN network including but not limited to: an Ethernet switch and any other Equipment listed by CIRBN on Exhibit A. ("Equipment"). CIRBN shall retain ownership and exclusive control of management of all Equipment during the term of this Agreement unless other documented terms are agreed to by the parties. The Customer hereby acknowledges that CIRBN owns all right title and interest in all Equipment and that the Customer may not sell, assign, rent, or transfer the Equipment.

3.3. **Equipment and Installation Warranty.** CIRBN warrants to Customer that the Equipment and its Installation by CIRBN will be substantially free from material defects in material and workmanship, under normal use in compliance with instructions, for a period of one (1) year from the Service Connection Date ("Limited Warranty"). This Limited Warranty excludes any defects resulting from

Central Illinois Regional Broadband Network Customer Service Agreement

lightning strike, abuse, misuse, neglect, theft, vandalism, fire, unusual physical or electrical stress, water, extremes of temperature, an act of God, the Customer's failure to comply with CIRBN's policies or other instructions provided by CIRBN, actual or attempted alteration of or additions to the Equipment not approved by CIRBN, any damage or defect resulting from equipment or interface provided by the Customer or the Customer's management or use of such equipment, or any other cause beyond the reasonable control of CIRBN, all as determined by CIRBN (collectively, "Excluded Causes"). The Limited Warranty does not include any damage to non-CIRBN assets. Repair or replacement, in CIRBN's discretion, of the Equipment and providing Services as outlined in this Agreement are CIRBN's only responsibility, and your exclusive remedy, for breach of any warranty regarding the Equipment or the Services, as applicable. This Limited Warranty is personal to the Customer, and will terminate immediately upon expiration or termination of this Agreement.

- 3.4. Maintenance: Customer agrees not to mishandle, abuse, misuse, or improperly store or operate the Equipment, including using the Equipment with equipment electrically or mechanically incompatible with, or of inferior quality to, the Equipment. Customer agrees to contact CIRBN immediately if the Equipment is not working properly.
- 3.5. Damaged/Defective Equipment: If CIRBN deems Equipment has a manufacturing defect the Limited Warranty will apply if it has not expired. If the Equipment fails as a result of a manufacturing defect after the Limited Warranty has expired or fails for any other reason, the Customer may request that CIRBN deliver replacement Equipment in accordance with fees maintained on the CIRBN website: www.cirbn.org. Replacement Equipment may or may not be the same model as the original Equipment. In the event the Equipment is lost, stolen, damaged, destroyed or otherwise not returned promptly to CIRBN, the Customer agrees to pay the current replacement cost of the Equipment.
- 3.6. Technical Support: If Equipment is inoperable or the Customer requires other technical assistance, support is available to Customers through phone or email in accordance with procedures available on the CIRBN website at www.cirbn.org.
- 3.7. Service and Maintenance Procedures:
 - 3.7.1. In the event of a problem with Service or Equipment provided by CIRBN, Customer may contact technical support at the CIRBN 24x7 operations center to report an incident. Contact information is available for the Customer at the CIRBN website: www.cirbn.org.
 - 3.7.2. Depending on the nature of the problem, CIRBN may at its option schedule an appointment to visit your location. The Customer agrees to cooperate by all reasonable means to allow a CIRBN representative to inspect its facilities and Equipment to resolve a problem.
 - 3.7.3. The Customer agrees that CIRBN is not obliged to service any customer-provided equipment including, but not limited to, router, switch, computer, laptop, and software. In the event that CIRBN determines in its sole judgment that the problem was caused by Customer's equipment, Customer negligence, lack of knowledge, Customer software, Customer-installed wiring or hardware, or any problem not caused by CIRBN, the Customer will pay for the service appointment and reasonable charges for repair. In some cases, CIRBN may decline to undertake the repair.
 - 3.7.4. If a problem is not resolved to the Customer's satisfaction, the Customer may contact CIRBN with concerns or complaints.
 - 3.7.5. Charges for Services are listed on the CIRBN website: www.cirbn.org. Additional charges may apply for certain maintenance, trouble isolation and support services and if a technician is dispatched. Charges may be per technician, may vary depending on when services are performed (e.g. time of day and weekday, holiday, or weekend) and may include a minimum charge regardless of the actual number of hours worked.
- 3.8. Return of Equipment:
 - 3.8.1. Portable Equipment: Upon termination of this Agreement, the Customer must promptly return CIRBN Equipment as identified in Section 3.2 (excluding any Equipment that may be permanently affixed to the Customer's premises) to CIRBN by contacting the CIRBN business office to coordinate a drop-off time. Contact information for the business office can be found on the CIRBN website: www.cirbn.org. CIRBN will, at its option, either a) charge Customer for the replacement cost of the Equipment if CIRBN does not receive the Equipment within 30 days after termination or the Agreement or b) charge or continue to charge in accordance with the Schedule of Fees until CIRBN receives the Equipment.
 - 3.8.2. Permanent Equipment: CIRBN Equipment located at the Customer's premises that is permanently affixed or otherwise covered by a Collocation Agreement, including fiber, remains CIRBN's property and any future use of this Equipment must be authorized by and

Central Illinois Regional Broadband Network Customer Service Agreement

negotiated with CIRBN. A Collocation Agreement includes any agreement whereby CIRBN has installed "backbone fiber" and other necessary equipment at the Customer site(s) as part of the infrastructure to support the Network.

4. **Customer Obligations & Responsibilities**

4.1. Customer Representations & Warranties. Customer represents and warrants as follows:

- 4.1.1. Customer has all necessary power and authority to enter this Agreement and to perform all of its obligations under this Agreement and that the party executing this Agreement is at least 18 years old and is authorized to execute the same on behalf of the Customer.
- 4.1.2. This Agreement has been duly and validly authorized, executed and delivered by Customer and constitutes its valid and binding obligation.
- 4.1.3. Customer holds all required regulatory authorizations, licenses, and permits to perform this Agreement according to its terms.
- 4.1.4. Customer's obligations under this Agreement do not conflict with any other agreement.
- 4.1.5. Customer will also be bound by the terms of the Agreement, Service Plan and Schedule of Fees, and any additional terms or policies that may appear on the CIRBN website at www.cirbn.org from time to time which are incorporated herein by reference.
- 4.1.6. Customers acknowledge that a portion of the network is funded through a federal grant, and that CIRBN may have unique responsibilities under the terms of the grant that may require CIRBN, at its discretion, to take action to maintain its compliance.

4.2. Customer Obligations. During the term of this Agreement, the Customer agrees to:

- 4.2.1. Ensure that the Customer's use of the Services is in accordance with this Agreement and its purposes.
- 4.2.2. Disseminate the policies and purposes of this Agreement to its personnel and agents at each of its sites.
- 4.2.3. Ensure that traffic using the Network to access and use other networks meets all criteria of those networks. Prohibit and prevent any entity not approved for connection by CIRBN from accessing, connecting to or interconnecting with the Network in any manner or by any means.
- 4.2.4. Pay the required fees in accordance with the selected Service Plan and Schedule of Fees.
- 4.2.5. Pay any separate fees if the Customer uses another service provider in order to access the CIRBN Network.
- 4.2.6. Provide appropriate equipment (including terminal equipment and communication devices) to access the Network and to replace, at its expense, this equipment if it reaches the end of its useful life or at the expiration of the manufacturer's support period. Customer is solely responsible for maintaining such equipment. CIRBN makes no representations or warranties pursuant to this agreement, either express or implied, regarding such equipment including, without limitation, warranties of merchantability, fitness for a particular purpose, non-infringement, accuracy, and integration and specifically disclaims such warranties, whether express or implied.
- 4.2.7. Assume responsibility for content coming over the Network, it being acknowledged by Customer that CIRBN provides unfiltered and uncensored access to the Internet.
- 4.2.8. Report any breaches or suspected breaches of such security, invasions of privacy or violations of confidentiality.
- 4.2.9. Comply with any and all applicable Federal, State and local laws, rules and regulations in connection with the Services, its use of the Services, and this Agreement and cooperate fully with CIRBN or entities with appropriate jurisdiction and/or authority in investigating and policing the use of the Network.
- 4.2.10. On Exhibit A, provide CIRBN with the name(s), address(es), and contact information for a) a responsible, knowledgeable and technically qualified contact for Customer, available for contact 24 hours a day, seven days a week to serve as Customer's primary support point of contact with CIRBN for purposes of this Agreement and its performance and b) a primary administrative and billing contact. Customer shall notify CIRBN within 30 days if this information changes.
- 4.2.11. Except as provided in Exhibit A, not sell, resell, rent, lease or otherwise share the Services with any third party without the prior written consent of CIRBN. In the event, a Customer provides Service Provider Services to a third party under Section 4.3.1(b), the Customer

Central Illinois Regional Broadband Network Customer Service Agreement

must ensure that any such party agrees to abide by the Terms and Conditions of this Agreement, including but not limited to Sections 3.3, 3.4, 3.8, 4.1, 4.2, 4.3, 6, 7, 8, 9, 10 and 11.

- 4.3. Restrictions on Use of the Service. Customer agrees to use the Service in accordance with the following terms and conditions.
- 4.3.1. Service Plan Use. CIRBN provides three types of monthly service plans: a) Internet Subscriber, b) Intranet Subscriber, and c) Service Provider, as described in Exhibit A. Customer acknowledges that its usage of Service is in accordance with its selected Service Plan. In the event CIRBN determines that your Service usage is not in accordance with your Service Plan, CIRBN reserves the right, at its sole discretion, to modify your service plan and Service.
- 4.3.2. Network Management.
- 4.3.2.1. Customer acknowledges that speed and bandwidth available to each computer or device connected to the Network may vary for reasons including, but not limited to the number of Customers, computers or devices connected to the Network, the amount of data being transferred over the Network, and available bandwidth. Customer agrees that CIRBN retains the right, in its sole and absolute discretion, to employ network management activities including, but not limited to (i) reducing, limiting, or otherwise restricting uplink and downlink speeds and transfer rates, (ii) reducing or limiting peer-to-peer sessions during periods of high network congestion, (iii) preventing the delivery of spam, (iv) detecting malicious Internet traffic and preventing the distribution of viruses or other harmful code or content, (v) using other tools and techniques to control bandwidth overuse; and (vi) reserves the right take other actions, including removal of Equipment and/or disconnecting Customers, to protect the Network. Except as otherwise provided in this Agreement, CIRBN does not apply any prioritization, rate limiting or blocking based on source, destination, protocol or port. CIRBN recognizes that all Customers are entitled to access lawful Internet content and application(s) of their choice without unfair or discriminatory bandwidth restrictions. Accordingly, CIRBN offers all Customers open access to the Internet and does not discriminate against nor preclude any legal use of services or legal access to content or to any application.
- 4.3.2.2. Customer acknowledges that CIRBN is a sub-recipient of Federal broadband funding grants and that either the University or CIRBN may, in their sole discretion, modify the Agreement or operations to maintain compliance with the terms and conditions of the grant.
- 4.3.3. File Security. Customer acknowledges that it is possible for third parties to monitor data traffic over the CIRBN Network. If Customer desires to secure transmission of its communications, then it will be required to provide for encryption in its application(s) software. Customer also assumes full responsibility for the establishment of appropriate security measures (including with limitation, the selection of passwords, firewalls and the like) to control access to Customer's equipment and information.
- 4.3.4. Internet Content. Customer understands that content and materials on the Internet are created and maintained by third parties and that portions of such materials may be sexually explicit, obscene, offensive, or illegal. Customer acknowledges that areas accessible on or through the Services may contain material that is unsuitable for minors (persons under 18 years old) and agrees to supervise minors' use of the Services through Customer's account. Customer hereby ratifies and confirms any actions taken, obligations incurred, or any promises or permissions made by a minor using Customer's account. In no event shall CIRBN be liable to any person or entity, either directly or indirectly, with respect to any materials from third parties accessed through the services. Customer assumes total responsibility and risk for Customer's use of the services and Internet generally. CIRBN disclaims any and all responsibility for content contained in any third party material provided via the Internet in any manner, including through hyperlinks.
- 4.3.5. Acceptable Use. Customer agrees to:
- 4.3.5.1. Ensure that all users accessing the Network through this Agreement maintain the highest standards of ethical conduct, Internet etiquette, accountability and responsibility in the use of the Network and related services and facilities, including strict compliance with the policies of network providers accessed by Customer.

Central Illinois Regional Broadband Network Customer Service Agreement

- 4.3.5.2. Use the Network, Services, and Equipment in strict accordance with all copyrights, trademarks, patents and other proprietary rights applicable to such use for the purposes of this Agreement.
- 4.3.5.3. Not use the Service for any unlawful, abusive, or fraudulent purpose, including without limitation, using the Service in a way that a) interferes with CIRBN's ability to provide service to CIRBN customers; b) avoids Customer's obligation to pay for the Services; c) constitutes a criminal offense; d) gives rise to a civil liability; or e) otherwise violates any law, order, ordinance, governmental requirement, regulation, or this Agreement.
- 4.3.5.4. Upon notice from CIRBN indicating abuse (Originating SPAM, virus, hacking DoS/DDoS attacks or other compromised activity) take appropriate and timely measures to secure or disconnect any user nodes attached to and receiving services from the Network.
- 4.3.5.5. Be responsible for all access to the Services through Customer's account or password(s), whether or not authorized by Customer, and for any and all fees and expenses incurred for the Services.
- 4.3.5.6. Not upload, post, or otherwise publish on, through or over the Services, and must not seek on, through or over the Services, any software, file, information, communication, or other content which: (a) violates or infringes upon the rights of CIRBN or any third party; (b) adversely affects the performance or availability of the Services; or (c) contains any virus, worm, cancelbot, harmful component, or corrupted data.
- 4.3.5.7. Not use the Services for any illegal purposes or for the transmission of material that is abusive, threatening, unlawful, harassing, libelous, invasive of another's privacy, harmful, vulgar, obscene, tortuous, otherwise objectionable, or in violation of this Agreement.
- 4.3.5.8. CIRBN reserves the right to modify these Acceptable Use requirements at any time by updating the Acceptable Use Policy on the CIRBN website: www.cirbn.org.

5. Fees and Payment

- 5.1. For Services provided under the Agreements, Customer shall pay CIRBN for the Services in accordance with the Schedule of Fees included in Exhibit A or as otherwise updated on the CIRBN website: www.cirbn.org. All applicable excise, value added, utility, sales or use taxes, if any, or other regulatory or other surcharges or cost pass-throughs, shall be billed or charged to Customer as separate items and shall be paid by Customer, or in lieu thereof, Customer shall provide CIRBN with a tax exemption certificate acceptable to the taxing authorities.

5.2. Payment Terms:

- 5.2.1. Statements. Upon execution of this Agreement, Customer will designate an Administrative/Billing Contact on Exhibit A as the address to which CIRBN will send billing or other important notifications.
- 5.2.2. Payment Schedule: Payment must be received before the Service Connection Date in accordance with the Schedule listed on Exhibit A. The payment schedule is such that payment is in advance for service of the upcoming month. If the Customer pays more than is due, then the credit balance will be applied to subsequent monthly invoices and the credit will be indicated on the monthly invoice. If payment is not received by the due date, interest charges of 1.5% per month, prorated on a daily basis, will be charged on the outstanding balance and will continue to accrue until the balance is paid in full. The monthly service fee plus any interest charges must be paid in full in order to bring the account balance in good standing. If balances are not paid in full by due dates, service may be suspended or terminated at the sole discretion of CIRBN. If service is suspended, there will be a re-activation fee as specified on the CIRBN website (www.cirbn.org) in addition to the monthly payment(s) due plus any interest charges on delinquent balances. If service is terminated due to delinquent payment(s), then the Customer will incur an early termination fee (as described in Section 2.3.3) associated with the contract balance, as well as, any legal and collection costs associated with collecting the balance due. If a Customer has service suspended or terminated or has a history of continued late payments, CIRBN may require a deposit from the Customer in order to reactivate service or continue offering service to the Customer in the future. This deposit would be refundable if, at the end of the contract length, service is not renewed by either party and the account has no balance due. CIRBN will provide to Customer an email statement for each billing cycle showing payments, credit

Central Illinois Regional Broadband Network Customer Service Agreement

purchases and other charges. A paper invoice is available to be sent through the U.S. mail for an additional charge.

- 5.2.3. **Advance Payments.** Payment for the Services is "in advance" and must be received by CIRBN on or before the first day of the subsequent 30-day billing period (the "Due Date"), except that any overage charges for Services used in excess of Customer's plan will be billed during the month immediately following the overage. All fees, charges and payment obligations of Customer must be paid in U.S. dollars.

5.2.3.1. Customer may also incur charges from third party providers that are separate and apart from the amounts billed by CIRBN. These could include, without limitation, purchasing offerings over the Internet, video downloads or interactive options. Customer agrees that all such charges are the Customer's sole responsibility. In addition, the Customer is solely responsible for protecting the security of credit card information provided to others in connection with Customer's transactions with third parties.

- 5.2.4. **Disputes:** The Customer must notify CIRBN in writing no later than thirty (30) days after receiving the CIRBN statement if Customer disputes any CIRBN charges on that statement or such dispute will be deemed waived. CIRBN will resolve all billing disputes in its sole discretion. Any chargebacks without CIRBN's prior approval will be subject to applicable service charges as per the company's policy.

- 5.2.5. Additional terms relating to pricing, billing, and payment which are incorporated into the Schedule of Fees and this Agreement are set forth on the CIRBN website (www.cirbn.org).

6. Use and Control of Information; Privacy

- 6.1. **Use of Customer Information.** CIRBN may provide Customer information to third parties or governmental entities when required or permitted by law; to establish rights or obligations under this Agreement; or to protect CIRBN's or others rights or property regarding the Services or the Services of other Customers from fraudulent, abusive, or unlawful use of. Additionally, CIRBN may access and use information regarding your bandwidth usage and performance of your Equipment to perform registration, maintenance, support, and other service-quality activities, verify AUP compliance and network performance.

- 6.2. **Use of Marks:** Neither CIRBN nor Customer shall directly or indirectly hold itself out as or otherwise create the impression that it is sponsored, authorized, endorsed by, affiliated with, or an agent of the other Party or affiliate or successor thereof, including but not limited to using the name CIRBN or the name of Customer, or of any affiliate, or any colorable imitation thereof in, or as part of, any Party name or trade name (collectively, the "Marks") or in any other confusing or misleading manner without the written consent of the other Party. The Parties acknowledge that all Marks are the exclusive property of the Party that is lawfully registered to hold such Marks. CIRBN may utilize Customer Marks in its advertising with Customer's prior consent. Customer shall not use the Marks for any other purpose without the express prior written consent of CIRBN.

7. **Modifications:** CIRBN may change this Agreement or the Service, including modifying or deleting any provision of this Agreement, upgrading, changing, discontinuing augmenting, or revising any aspect or feature of the Services, from time to time by posting a revised version of the Agreement or announcing Service changes on CIRBN's website: www.cirbn.org. The Customer will be notified via email after the changes are posted on the website. Such changes will become effective once the Customer has been notified. If the Customer objects to the changed terms, or the terms is materially adverse to the Customer, the Customer may terminate this Agreement and will not be subject to an early termination fee as described in Section 1.2.3.

8. Disclaimer of Warranties and Exclusion of Liability:

- 8.1. **LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES SHALL CIRBN, ITS EMPLOYEES, AGENTS, OR AFFILIATES BE LIABLE FOR ANY COSTS OR DAMAGES ARISING DIRECTLY OR INDIRECTLY FROM CUSTOMER'S USE OR INABILITY TO USE THE SERVICE OR THE INTERNET INCLUDING ANY INDIRECT, INCIDENTAL, EXEMPLARY, MULTIPLE, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES. THIS LIMITATION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, LOSS OF BUSINESS, OR ANY OTHER BASIS, EVEN IF CIRBN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, CIRBN'S LIABILITY IN SUCH JURISDICTIONS SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW. IN ANY EVENT, THE CUMULATIVE LIABILITY OF ANY CIRBN PARTY TO CUSTOMER FOR ANY AND ALL CLAIMS RELATING TO THE USE OF THE SERVICE WILL NOT EXCEED

Central Illinois Regional Broadband Network
Customer Service Agreement

THE TOTAL AMOUNT OF SERVICE FEES PAID DURING THE THREE MONTHS IMMEDIATELY PRECEDING A CLAIM. CIRBN DOES NOT WARRANT OR GUARANTEE THAT THE SERVICE CAN BE PROVISIONED TO YOUR LOCATION EVEN IF CIRBN HAS ACCEPTED YOUR ORDER FOR THE SERVICE.

THE CIRBN PARTIES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS IN CONNECTION WITH THE SERVICES RESULTING FROM: OTHER CUSTOMERS ACCESSING YOUR COMPUTER; SECURITY BREACHES; EAVESDROPPING; DENIAL OF SERVICE ATTACKS; INTERCEPTION OF TRAFFIC SENT OR RECEIVED USING THE SERVICE; CUSTOMER'S RELIANCE ON OR USE OF THE SERVICE INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS REGARDLESS WHEREVER YOUR DATA ARE MAINTAINED; DELAYS IN OPERATION, TRANSMISSIONS, CORRUPTION OF DATA, INVALID DESTINATIONS OR ANY FAILURE OF PERFORMANCE OF THE SERVICE, THE USE OF THE SERVICE, OR A THIRD PARTY THAT INFRINGES THE COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, OR OTHER INTELLECTUAL PROPERTY RIGHTS, PROPRIETARY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY; THE ACCURACY, COMPLETENESS, AND USEFULNESS OF ALL PRODUCTS OR OTHER INFORMATION; OR THE MERCHANTABILITY OF ANY MERCHANDISE OR OTHER ITEMS PROVIDED OR SOLD BY THIRD PARTY WEB SITES.

THE FOREGOING LIMITATIONS APPLY TO THE ACTS, OMISSIONS, NEGLIGENCE AND GROSS NEGLIGENCE OF THE CIRBN PARTIES WHICH, BUT FOR THIS PROVISION, WOULD GIVE RISE TO THE CAUSE OF ACTION AGAINST ANY CIRBN PARTY IN CONTRACT, TORT, OR ANY OTHER LEGAL DOCTRINE. YOUR EXCLUSIVE AND ONLY REMEDIES UNDER THIS AGREEMENT ARE AS EXPRESSLY SET FORTH THIS AGREEMENT. ANY WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY ALSO HAVE OTHER RIGHTS UNDER CERTAIN LAWS IN CERTAIN STATES WHICH DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES.

- 8.2. **DISCLAIMERS AND WARRANTIES.** EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, THE CUSTOMER ACKNOWLEDGES THAT THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. CIRBN AND ITS SUPPLIERS AND VENDORS DO NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF VIRUSES, OR OTHER HARMFUL COMPONENTS. CIRBN AND ITS SUPPLIERS AND VENDORS MAKE NO EXPRESS WARRANTIES AND WAIVE ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE REGARDING ANY MERCHANDISE, INFORMATION OR SERVICE PROVIDED THROUGH CIRBN OR THE INTERNET GENERALLY. NO ADVICE OR INFORMATION GIVEN BY CIRBN, ITS SUPPLIERS OR VENDORS WILL CREATE A WARRANTY.

9. **Indemnification:**

- 9.1. Customer Indemnification. Customer shall indemnify CIRBN and its partners, parents, subsidiaries, affiliates, directors, officers, employees and agents from and against any claims, demands or liability (including any losses, costs, expense, and attorney's fees) arising out of or resulting from any injury (including death) to persons or damage to property caused, directly, indirectly, by the Services of the CIRBN Network, Services or Equipment or arising from or in connection with any breach or violation by Customer of any of the terms and conditions contained in this Agreement. This Section shall not relieve Customer from any liability it may have for its own negligence, whether by act or omission, and the negligence, whether by act or omission, of its employees, agents, officers, and directors. The obligations contained in this Section shall survive the termination of this Agreement.
- 9.2. CIRBN Indemnification. Subject to the terms and conditions set forth in this Agreement including by not limited to Section 8.1 and 8.2, CIRBN agrees to indemnify and hold harmless the Customer from and against any and all claims, costs and expenses (collectively, the "Liabilities"), arising from or in connection with any breach or violation by CIRBN of any of the covenants or agreements contained in this Agreement. This Section shall not relieve CIRBN from any liability it may have for its own negligence, whether by act or omission, and the negligence, whether by act or omission, of its employees, agents, officers, and directors. The obligations and covenants contained in this Section shall survive the termination of this Agreement.

10. **Breach:**

- 10.1. CIRBN shall notify Customer of any breaches of the terms of this Agreement by Customer or any individual acting directly or indirectly under color of authority of Customer. Customer shall have

Central Illinois Regional Broadband Network Customer Service Agreement

such time as CIRBN, in its sole and absolute discretion specifies in its notice of breach, to cure such breach. In the event such breach is not cured within the notice period, this Agreement may be terminated by CIRBN without further notice, obligation or liability to Customer.

11. Assignment:

11.1. CIRBN Assignment:

11.1.1. The parties agree that University may, without notice, assign this Agreement to CIRBN, LLC, an Illinois non-profit limited liability company. After such assignment is completed, the Parties agree that CIRBN, LLC shall assume and serve as the successor-in-interest to the Board of Trustees of Illinois State University with respect to all CIRBN obligations outlined in this Agreement. Upon assignment, Customer agrees to release University from any and all claims, actions, judgments, liabilities, proceedings and costs, including reasonable attorneys' fees and other costs of defense and damages, resulting from Assignor's performance under the Agreements prior to the assignment.

11.2. Assignment of Agreement; Liability for Unauthorized Use. Customer may not assign this Agreement or any of its obligations hereunder without CIRBN's prior written consent.

12. Miscellaneous:

12.1. Notice to CIRBN. All inquiries and notices shall be addressed to CIRBN at contact identified on CIRBN website at www.cirbn.org.

12.2. Choice of Law. This Agreement will be governed by the laws of the State of Illinois, without reference to its choice of law rules.

12.3. Entire Agreement: This Agreement consists of all the terms and conditions contained herein which articulate the full and complete understanding of the Parties pertaining to the subject matter of this Agreement. This Agreement supersedes any prior or subsequent understandings, proposals, representations, discussions, and/or agreements (oral or written), absent a specific reference therein superseding this Agreement.

12.4. Survival. To the extent permitted by law, paragraphs 3, 4.2, 5.1, 5.2, 7, 8, 9 shall survive the termination of this Agreement.

12.5. Severability. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, the Parties shall negotiate in good faith to agree on a substitute provision that is legal and enforceable and is as nearly possible consistent with the intentions underlying the original provision. If the remainder of this Agreement is not materially affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

12.6. Force Majeure. Notwithstanding any other provision of this Agreement, neither party shall be deemed in default of this Agreement for delay, failure in performance, loss or damage due to any of the following force majeure conditions: fire, strike, embargo, explosion, power irregularities, earthquake, nuclear accident, volcanic action, flood, war, water, the elements, labor disputes, civil or military authority, acts of God or public enemy, inability to secure products or transportation facilities, acts or omissions of common carriers or other causes beyond their reasonable control, whether or not similar to the foregoing. Any delay resulting from force majeure shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable.

12.7. Remedies. The rights and remedies of Customer hereunder shall not be mutually exclusive; i.e., the exercise of one (1) or more of the provisions hereof shall not preclude the exercise of any other provision hereof. Customer acknowledges, confirms and agrees that damages may be inadequate for a breach or a threatened breach of this Agreement and, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy. Nothing contained in this Agreement shall limit or affect any rights at law or by statute or otherwise for a breach or threatened breach of any provision hereof, it being the intent of this provision to clarify that the respective rights and obligations of the Parties shall be enforceable in equity as well as at law or otherwise.

12.8. No Third Party Rights: This Agreement is made only between the Parties hereof and shall not established rights in any third party as a third party beneficiary or otherwise.

12.9. Headings: The section headings in this Agreement are inserted as a matter of convenience and in no way define, limit, or describe the scope of extent of such section, or affect the interpretation of this Agreement.

Central Illinois Regional Broadband Network
Customer Service Agreement

12.10. Interpretation. The construction of this Agreement shall not be construed against the Party causing its preparation but shall be interpreted on the basis of the plain meaning of the terms used which have been reviewed by both Parties in consultation with their respective counsel. Should any provision of this Agreement be found for any reason to be illegal or unenforceable, the same shall not affect the validity of the remaining portions and provisions.

Signatures:

Board of Trustees of Illinois State University on behalf of CIRBN:

Authorized Signature

Date

Daniel T. Layzell

Print Name

Vice-President for Finance & Planning

Title

City of Bloomington

Authorized Signature

Date

Print Name

Title

Central Illinois Regional Broadband Network
Customer Service Agreement - Exhibit A

**Customer Service Agreement
Exhibit A**

The terms and conditions of this Exhibit A are in addition to the CIRBN Customer Service Agreement by and between CIRBN and the Customer.

Contract Date: 5/13/2013

1. Customer's Contact Information

Organization Name: City of Bloomington

Account/Billing Number: 24726-070-075

Contract Number: 24726-070-075-01

Primary Support Contact: Name: _____ Title: _____ Phone: _____ Day: _____ Evening: _____ E-mail: _____	Secondary Support Contact: Name: _____ Title: _____ Phone: _____ Day: _____ Evening: _____ E-mail: _____
Primary Administrative / Billing Contact: Name: _____ Title: _____ Phone: _____ Day: _____ Evening: _____ E-mail: _____	

2. Service Connection Testing Options:

- ☒ **"Service Connection Testing":** CIRBN will conduct Service Connection Testing for all Customers prior to the Customer's Service Connection Date. During this period, CIRBN will verify network connectivity between the Network and Customer and verify the Customer's connectivity is at the level specified in the selected Service Plan. The testing will occur in advance of the Service Connection Date and CIRBN will contact the Customer to make arrangements for the testing.
- ☐ **"BETA Testing": Customers may also select to participate in the BETA Testing Option.** This option provides a Customer with an opportunity using Customer's staff to test and simulate Customer's connectivity to the Network using Customer's own applications and equipment. CIRBN will consult with BETA Testing Customers to solicit feedback regarding operation of the Network during the testing period. CIRBN will contact the Customer to make specific arrangements for the BETA testing.

During the Service Connection Testing Period, the Customer's Equipment will be activated in advance of the service delivery date. During this Period, Services provided to the Customer will remain under development and the Customer may experience Equipment failure, Service Interruptions or other impairment of the Customer's ability to access the Network.

Central Illinois Regional Broadband Network
Customer Service Agreement - Exhibit A

CIRBN will provide your Service Connection Date.

Your Service Connection Date is: 08/01/2013

Service Contract Term: 08/01/2013 to 07/31/2014

3. Customer Equipment & Customer Site Identification Information:

The Equipment provided to Customer includes an Ethernet switch and associated cabling.

Your Customer site identification is a unique name associated with your connection at a specific Customer site that CIRBN will use to manage your connection to the Network. CIRBN may also use your Customer site identification to assist in troubleshooting any Network connection or service issues you may experience.

Your Customer Site Identification is / are:

Customer Site ID	Customer Site Address
Normal - 540	1531 Fort Jesse, Normal, IL 61761
Bloomington - 588	109 E Olive St, Bloomington, IL 61701
Bloomington - 598	1206 S Lee St, Bloomington, IL 61701
Bloomington - 610	4040 E Oakland, Bloomington, IL 61704
Bloomington - 612	1911 E Hamilton Rd, Bloomington, IL 61704
Bloomington - 648	115 E Washington St, Bloomington, IL 61701
Bloomington - 652	2301 E Empire St, Bloomington, IL 61704
Bloomington - 653	1705 S Morris Ave, Bloomington, IL 61701
Bloomington - 656	1813 Springfield Rd, Bloomington, IL 61701

4. Customer Service Plan Options:

/ Subscribers - Internet

Subscribers consume both Internet (bandwidth to access systems/services outside of the Network) and Intranet bandwidth (bandwidth within the Network). Cost of this service is dependent upon the level of Internet service being sought and the number of sites being serviced. CIRBN can provide Internet addresses to Subscriber Customers if needed to support the connectivity of computers and other devices associated with the Customer network. Internet bandwidth connected to the CIRBN Network that is allocated to a Subscriber Customer shall be shared by physical site designated by the Subscriber Customer. Each of these sites will be connected to CIRBN through a high-speed fiber-optic circuit to support both Intranet and Internet connectivity.

Central Illinois Regional Broadband Network
Customer Service Agreement - Exhibit A

☐ **Subscribers - Intranet**

Intranet Subscribers can only utilize Intranet bandwidth and do not have access to Internet resources through CIRBN. Cost of this service is dependent upon the number of sites being serviced. CIRBN **will not** provide Internet addresses to support the connectivity of computers and other devices associated with an Intranet subscriber network.

☐ **Service Providers**

Organizations that are Service Providers resell Internet bandwidth and/or provide services consumed by users. Through CIRBN, these organizations can purchase Internet bandwidth at a graduated cost per unit. Service providers will also be provided with Intranet connectivity to CIRBN in order to directly deliver services to users. With the exception of the Equipment, a Service Provider is responsible for all costs and/or equipment necessary to connect to the CIRBN infrastructure.

5. Schedule of Fees

Regular Recurring Charges

Name	Service	Quantity
City of Bloomington	Internet	1,168 Mb/s
Bloomington Fire Station #2	Intranet	1 Gb/s
Bloomington Fire Station #3	Intranet	1 Gb/s
Bloomington Fire Station #4	Intranet	1 Gb/s
Bloomington Fire Station #6	Intranet	1 Gb/s
Lincoln Leisure Center	Intranet	1 Gb/s
Fort Jesse Pump Station	Intranet	1 Gb/s
Government Center	Intranet	1 Gb/s
Mayor's Office & City Clerk	Intranet	1 Gb/s
Parks Maintenance Building	Intranet	1 Gb/s
Total Customer Monthly Cost		\$2,564.35

Central Illinois Regional Broadband Network
Customer Service Agreement - Exhibit A

Non-Recurring Charges

Service Description	Quantity	Cost
Total Customer NRC Cost		\$0

6. Billing Schedule:

Payment for the Services is "in advance" and must be received by CIRBN on or before the first day of the Service Connection Date. The due date for all subsequent bills will be on the first date of the month. All fees, charges and payment obligations of Customer must be paid in U.S. dollars. Customer may pay for more than one month of service upfront if they wish. Information regarding where to send payment will be included on each bill and is also available on CIRBN's website: www.cirbn.org.

7. Service Level Agreement

CIRBN's goal is for 100% uptime of Services available through the Network. A Service Interruption occurs when the Customer's Port is unable to transmit and receive data. A Service Interruption Period starts when a Customer reports the interruption of service to CIRBN and ends when Service is restored. CIRBN's website (www.cirbn.org) provides additional details regarding CIRBN's maintenance procedures and schedules.

In the event of a Service Interruption, Customer may request credits against future monthly charges as set forth in this Agreement. CIRBN will provide credits for service disruptions unless applicable restrictions or exclusions apply. Service Interruption credits shall be calculated as follows:

Each cumulative hour that occurs associated with a Service Interruption Period qualifies Customer for a credit of two hours of charges pro-rated from the monthly recurring charge. The maximum credit for a single outage for any specific Service Interruption will be one month's recurring charge.

Customer shall be responsible for all maintenance and repair of the Customer provided connection facilities and equipment on the Customer's side of the Customer Port. Notwithstanding any other provision herein, the above credits shall be the sole and exclusive remedy of Customer for Service Interruptions.

Restrictions and Exclusions

A Service Interruption will not be deemed to have occurred in the event that the Service is unavailable or impaired due to any of the following reasons:

- a. Interruptions on a Service not provided in accordance with your selected Service Plan.
- b. Interruptions that are a result of failures of circuits, equipment or any other facilities or services that are outside of the Network.

Central Illinois Regional Broadband Network
Customer Service Agreement - Exhibit A

- c. Interruptions caused by the negligence, error or omission of Customer or others authorized by Customer to use or modify Customer's service;
- d. Interruptions due to failure of power at Customer premises or failure or poor performance of Customer premise equipment;
- e. Interruptions during any period in which CIRBN or its agents are not afforded access to the premises where the access lines associated with Customer's service are terminated, provided such access is reasonably necessary to prevent a degradation or to restore service;
- f. Interruptions during any period when CIRBN has posted on the CIRBN website (www.cirbn.org) or communicated to Customer in any other manner that Customer's service will be unavailable for maintenance or rearrangement purposes, or Customer has released the service to CIRBN for the installation of a customer service order;
- g. Interruptions during the CIRBN standard maintenance window as set forth on the CIRBN website (www.cirbn.org);
- h. Interruptions during any period when Customer elects not to disrupt the Customer's Service for testing and/or repair and continues to use it on an impaired basis;
- i. Interruptions resulting from force majeure events beyond the reasonable control of CIRBN as defined in this Agreement including, but not limited to, acts of God, government regulation, labor strikes, national emergency or war (declared or undeclared);
- j. Interruptions resulting from Customer's use of Service in an unauthorized or unlawful manner;
- k. Interruptions resulting from a CIRBN disconnect for Customer's breach of a term set forth in the Agreement pursuant to which CIRBN is providing the service to Customer;
- l. Interruptions due to improper or inaccurate network specifications provided by Customer;
- m. Special configurations of the standard Service that have been mutually agreed to by CIRBN and Customer; provided, however, CIRBN may provide a separate service level agreement to Customer for those special configurations; or
- n. Interruptions related to fiber lateral and fiber Customer Premise Equipment;
- o. Interruptions due to service that has been filtered or terminated due to abuse (Originating SPAM, virus, hacking DoS/DDoS attacks or other compromised activity); or
- p. Interruptions or service degradation caused by exceeding the capacity of the last mile circuit.



FOR COUNCIL: July 8, 2013

SUBJECT: Central Illinois Regional Broadband Network, LLC (CIRBN) Membership

RECOMMENDATION/MOTION: That CIRBN membership be approved and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Objective 1e. Partnering with others for the most cost effective service delivery.

BACKGROUND: The State of Illinois Department of Central Management Services (CMS) was awarded a federal grant on August 1, 2010 in the amount of \$17.6 million for the planning, design, and construction of a fiber optic network. Illinois State University (ISU) is a sub-recipient of the CMS grant. CIRBN is the fiber optic network which has been constructed by ISU with grant funds. The network is high-speed, (40 billion bits per second). Pursuant to the terms of the grant, only governmental, educational, and non-profit entities may be served by CIRBN. It may be possible for CIRBN to lease excess bandwidth to private Internet providers.

The grant requires all construction to be completed by July 31, 2013, at which time CIRBN will be responsible for all future administration of the network. CIRBN is already a legal entity.

On August 22, 2012, Articles of Incorporation were filed with the Illinois Secretary of State for CIRBN.

As you know, an LLC is a limited liability company, a legal entity which has many of the same attributes as corporations. Members of the LLC are not liable for acts of the LLC itself. In the event of insolvency, civil judgments, etc., a creditor cannot force the individual members of the LLC to satisfy a debt or judgment out of the assets of the individual member.

“Members” of LLCs are much the same as “directors” of a corporation. Members of CIRBN must be a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, a governmental unit, or a wholly owned subsidiary of a state or political subdivision. This is consistent with the purposes for which the broadband network was built, (to provide broadband network services to not-for-profit organizations and educational and governmental units).

Currently, CIRBN members are ISU and the Town of Normal. Heartland Community College is also considering joining. It is anticipated that in the future other non-profit organizations will be requested to join as members.

There are pros and cons to joining as a member.

Reasons in favor of joining:

- It gives the City a greater voice in guiding the future mission of CIRBN; e.g., whether CIRBN will hire any full-time employees, the extent to which much or all of the day-to-day activities of CIRBN will be conducted through contracts with third-party service providers, whether CIRBN will have a physical business office, etc. These decisions will, of necessity, be made in the very near future. If the City declines to join, it will, of course, not have a voice in these decisions.
- As a major customer of CIRBN, the City has an interest in the administration of the network, which it can protect by being a member of CIRBN.
- The City would be sharing the burden of administering CIRBN with the other governmental, educational, and non-profit entities who are running this organization for the greater good.

Reasons against joining as a member:

- The City is not required to join in order to have the benefits of CIRBN as a customer. Declining to join CIRBN avoids diluting the City mission and distracting officials and employees.
- If there are too many governmental members of CIRBN, it raises the possibility of litigation over the applicability of the Open Meetings Act and the Freedom of Information Act, (as pointed out above, it is anticipated that CIRBN will increase the number of private non-profit members in the near future).
- The possibility that CIRBN's business plan is too optimistic, and even though legally the City is not liable for CIRBN expenses if operating costs exceed revenues, there may be political pressure for the City to subsidize CIRBN in order to keep it a going concern.
- Fear of the unknown.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: CIRBN and Town of Normal.

FINANCIAL IMPACT: The background section of the Council memorandum does not indicate any initial membership fees to join CIRBN. Over the past few months, staff has been involved with the coordination and development of plans to use City facilities to support the infrastructure of this venture. In regards to the pros and cons, please refer to the background section. At this time, it is unknown whether there will be a future financial commitment on part of the City.

Respectfully submitted for Council consideration.

Prepared by:

Scott Sprouls, Director – Information Services

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy Ervin, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. Member Agreement

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			

CIRBN, LLC

Operating Agreement of **CIRBN, LLC**,
an Illinois Limited Liability Company
Effective as of August 22, 2012

ARTICLE 1. DEFINITIONS

THIS Operating Agreement is made and entered into as of August 22, 2012, by and between the Members, _____, whose signatures appear on the signature page hereof.

WITNESSETH:

WHEREAS, **TODD E. BUGG** filed Articles of Organization for **CIRBN, LLC** with the Secretary of State of Illinois on August 22, 2012.

NOW, THEREFORE, the parties agree as follows:

1.01 Definitions. The following terms used in this Operating Agreement shall have the following meanings:

A. "Act" shall mean the Illinois Limited Liability Company Act at 805 ILCS 180/1-5, et seq.

B. "Articles of Organization" shall mean the Articles of Organization of **CIRBN, LLC** as filed with the Secretary of State of Illinois, as amended from time to time.

C. "Code" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

D. "Company" shall refer to **CIRBN, LLC**.

E. "Entity" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization.

F. "Majority Interest" shall mean one or more Interests of Members which in the aggregate constitute at least 75% of all Percentage Interests in the Company.

G. "Member/Manager" shall mean one or more member/managers. References to the Member/Manager in the singular or as him, her, it, itself, or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be.

H. "Member" shall mean each of the parties who executes a counterpart of this Operating Agreement as a Member and each of the parties who may hereafter become Members. **A Member of CIRBN, LLC must be an exempt organization under Section 501(c)(3) of the Internal Revenue Code, a governmental unit, or a wholly owned instrumentality of a state or political subdivision thereof. A Member that fails to**

maintain its status as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, a governmental unit, or a wholly owned instrumentality of a state or political subdivision thereof, shall cease to be a Member immediately, and shall not be entitled to any of the assets of the Company or any rights of a Member as herein set forth.

I. "Membership Interest" shall mean a Member's entire interest in the Company including such Member's Economic Interest and the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Operating Agreement and the Act.

J. "Operating Agreement" shall mean this Operating Agreement as originally executed and as amended from time to time.

K. "Percentage Interest" shall mean, for any Member, the percentage interest in the Company as set forth on Exhibit A, as may be changed from time to time by the majority vote of the members.

L. "Persons" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.

M. "Reserves" shall mean funds set aside or amounts allocated to reserves which shall be maintained in amounts deemed sufficient by the Managers for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

N. "Treasury Regulations" shall include proposed, temporary and final regulations promulgated under the Code.

ARTICLE 2. FORMATION OF COMPANY

2.01 Formation. **CIRBN, LLC** has been organized as an Illinois Limited Liability Company by executing and delivering Articles of Organization to the Illinois Secretary of State in accordance with and pursuant to the Act.

2.02 Name. The name of the Company is **CIRBN, LLC**

2.03 Principal Place of Business. The principal place of business of the Company within the State of Illinois shall be 302 Hovey Hall Campus Box 175, Normal, Illinois. The Company may locate its places of business and registered office at any other place or places as the Managers may deem advisable.

2.04 Registered Office and Registered Agent. The Company's initial registered office shall be at the office of its registered agent at 751 N. Main Street, Bloomington, Illinois, and the name of its initial registered agent shall be Todd E. Bugg. The registered office and registered agent may be changed by filing the address of the new registered office and/or the name of the new registered agent with the Illinois Secretary of State pursuant to the Act.

2.05 Term. The term of the Company shall be perpetual, unless the Company is earlier dissolved in accordance with either the provisions of this Operating Agreement or the Act.

ARTICLE 3. BUSINESS OF COMPANY (EXEMPT PURPOSES ONLY)

The Company is organized exclusively for exempt purposes under Section 501(c)(3) of the Internal Revenue Code, and may not carry on activities not permitted to be carried on by an organization described in Section 501(c)(3). It shall operate exclusively to further its exempt charitable purposes and those of its Members. Specifically, it will oversee and maintain a network providing high-speed, low-cost internet connectivity to communities and counties throughout Central Illinois, funded by a combination of federal and state grants as well as private contributions.

ARTICLE 4. NAMES AND ADDRESSES OF MEMBERS

The names and addresses of the Members are as follows:

NAME	ADDRESS
The Board of Trustees of Illinois State University	302 Hovey Hall, Campus Box 175, Normal, IL 61790

ARTICLE 5. RIGHTS AND DUTIES OF MEMBER/MANAGERS

5.01 Management. The business and affairs of the Company shall be managed by Member/Managers.

A. The Member/Managers shall direct, manage and control the business of the Company. Except for situations in which the approval of the Members is expressly required by this Operating Agreement or by non-waivable provisions of the Act, the Member/Managers shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business.

Each Member/Manager shall delegate sufficient authority to a representative who may participate in meetings of the Member/Managers and who may consent to all matters set forth above without further approval of a board of directors, council, or other governing entity of the Member/Manager, except in matters which would cause the Member/Manager to expend its own funds or undertake a direct liability.

B. Notwithstanding the above, with regard to all significant or material transactions significantly affecting the Company, including, but not limited to acquisitions by the Company of substantial assets or other businesses, a sale of all or substantially all of the assets of the Company, a sale of any real estate owned by the Company, incurring substantial debt by the Company or pledging Company assets as collateral, or the dissolution of the Company, said decisions shall not be made solely by the Member/Managers, but shall be made by the Members, and then only upon majority vote of the Members.

5.02 Number, Tenure and Qualifications. All Members in good standing shall be Member/Managers of the Company.

5.03 Certain Powers of the Member/Managers. Without limiting the generality of Section 5.01, the Member/Managers shall have power and authority, on behalf of the Company:

A. To acquire property from any Person as the Member/Managers may determine, whether or not such Person is directly or indirectly affiliated or connected with any Member/Manager or Member;

B. To borrow money for the Company from banks, other lending institutions, the Member/Manager, Members, or affiliates of the Member/Managers or Members on such terms as the Member/Managers deem appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Member/Managers, or to the extent permitted under the Act, by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Member/Managers;

C. To purchase liability and other insurance to protect the Company's property and business;

D. To hold and own Company real and personal properties in the name of the Company;

E. To invest Company funds in time deposits, short-term governmental obligations, commercial paper or other investments;

F. Upon the affirmative vote of the Members holding at least 75% of all Percentage Interests in the Company, to dispose of all or substantially all of the assets of the Company as part of a single transaction or plan as long as such disposition is not in violation of or a cause of a default under any other agreement to which the Company may be bound. In any event, said assets shall be transferred exclusively to exempt organizations or for exempt purposes under Section 501(c)(3) of the Internal Revenue Code;

G. To execute on behalf of the Company all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments, bills of sale; leases; and any other instruments or documents necessary to the business of the Company;

H. To employ accountants, legal counsel, managing agents or other experts to perform services for the Company;

I. To enter into any and all other agreements on behalf of the Company, in such forms as the Member/Managers may approve; and

J. To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business, including, but not limited to:

- i. Developing and approving strategic planning for the Company;
- ii. Developing/revising rate/fee structure;
- iii. Providing and/or revising/removing service offerings;
- iv. Defining and approving major capital expenditures;
- v. Employment of employees of the Company, including hiring, terminating, setting compensation and benefits.

5.04 Unless authorized to do so by this Operating Agreement or by the Member/Managers of the Company, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Member/Managers to act as an agent of the Company in accordance with the previous sentence.

5.05 Liability for Certain Acts. Each Member/Manager shall perform its duties as Manager in good faith, in a manner it reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Member/Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, wilful misconduct or a wrongful taking by the Member/Manager.

5.06 Bank Accounts. The Member/Managers may from time to time open bank accounts in the name of the Company, and shall appoint those who shall have signatory powers on any such accounts.

5.07 Meetings. Meetings of the Member/Managers, for any purpose or purposes, may be called by any Member/Manager. Action to be taken by the Member/Managers shall be by simple majority of all the Member/Managers.

5.08 Place of Meetings. The Member/Managers may designate any place as the place of meeting for any meeting of the Member/Managers.

5.09 Notice of Meetings. Except as otherwise provided in this Agreement, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than fourteen (14) days nor more than fourteen (14) days before the date of the meeting, either personally or by mail, by or at the direction of the Member/Managers calling the meeting, to each Member/Manager entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two calendar days after being deposited in the United States mail, addressed to the Member/Manager at its address as it appears on the books of the Company, with postage thereon prepaid.

5.010 Meeting of All Member/Managers. If all of the Member/Managers shall meet at any time and place, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

5.011 Action by Member/Managers Without a Meeting. Action required or permitted to be taken at a meeting of Member/Managers may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member/Manager entitled to vote and delivered to the _____ for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when all Member/Managers entitled to vote have signed the consent, unless the consent specifies a different effective date.

5.012 Waiver of Notice. When any notice is required to be given to any Member/Manager, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

5.013 Telephonic or other Meetings. A Member/Manager may participate in a meeting of Member/Managers by means of conference telephone, email, video conferencing, or similar communications equipment enabling all Member/Managers participating in the meeting to hear or communicate with one another. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

ARTICLE 6. RIGHTS AND OBLIGATIONS OF MEMBERS

6.01 Limitation of Liability. Each Member's liability shall be limited as set forth in this Operating Agreement, the Act and other applicable law.

6.02 Company Debt Liability. A Member will not be personally liable for any debts or losses of the Company, except as required by law.

6.03 List of Members. Upon the written request of any Member, the Member/Managers shall provide a list showing the names, addresses and Membership Interests of all Members.

6.04 Approval of Transfer of All Assets. The Members shall have the right, by the affirmative vote of members holding at least **75%** of all Percentage Interests in the Company to approve the transfer of all, or substantially all, of the Company's assets which is to occur as part of a single transaction or plan. **In any event, said assets shall be transferred exclusively to exempt organizations or for exempt purposes under Section 501(c)(3) of the Internal Revenue Code.**

6.05 Company Books. The Member/Managers shall maintain and preserve, during the term of the Company, the accounts, books, and other relevant Company documents. Upon reasonable written request, each Member shall have the right, at a time during ordinary business hours, as reasonably determined by the Member/Managers, to inspect and copy, at the requesting Member's expense, the Company documents identified in Section 1-40 of the Act, and such other documents which the Member/Managers, in their discretion, deems appropriate.

6.06 Effect of Failure of Member to Maintain Exempt Status. If a Member fails to maintain status as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, a governmental unit, or a wholly owned instrumentality of a state or political subdivision thereof, the Member shall

immediately forfeit its Membership and, from that point forward, shall not be entitled to any benefits of Membership or distribution of any asset or property of the Company.

6.07 Enforcement of Rights in the Company. The Members of the Company, all of whom shall be exempt organizations under Section 501(c)(3) of the Internal Revenue Code, a governmental unit, or a wholly owned instrumentality of a state or political subdivision thereof, shall expeditiously and vigorously enforce all of their rights in the Company and will pursue all legal and equitable remedies to protect their interests in the Company

ARTICLE 7. MEETINGS OF MEMBERS

7.01 Meetings. Meetings of the Members, for any purpose or purposes, may be called by the Member/Managers or by any Member or Members **holding at least 75%** of the Percentage Interests.

7.02 Place of Meetings. The Members may designate any place as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal place of business of the Company in the State of Illinois.

7.03 Notice of Meetings. Except as provided in Section 7.04, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than **fourteen (14)** nor more than **fourteen (14)** days before the date of the meeting, either personally or by mail, by or at the direction of the Member/Managers or Member or Members calling the meeting, to each Member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered two calendar days after being deposited in the United States mail, addressed to the Member at its address as it appears on the books of the Company, with postage thereon prepaid.

7.04 Meeting of All Members. If all of the Members shall meet at any time and place, either within or outside of the State of Illinois, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

7.05 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

7.06 Quorum. **To constitute a quorum, Members holding a majority of all Percentage Interests, represented in person or by proxy, shall be required.** In the absence of a quorum at any such meeting, a majority of the Percentage Interests so represented may adjourn the meeting from time to time for a period not to exceed sixty days without further notice. However, if the adjournment is for more than sixty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a

quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Percentage Interests whose absence would cause loss of a quorum.

7.07 Manner of Acting. If a quorum is present, the affirmative vote of Members holding **a majority of all Percentage Interests in the Company** shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, by the Articles of Organization, or by the Operating Agreement. Unless otherwise expressly provided herein or required under applicable law, only Members who have a Membership Interest may vote or consent upon any matter and their vote or consent, as the case may be, shall be counted in the determination of whether the matter was approved by the Members.

7.08 Proxies. At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Managers of the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

7.09 Action by Members Without a Meeting. Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member entitled to vote and delivered to the Managers of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date.

7.010 Waiver of Notice. When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

7.011 Telephonic or other Meetings. A Member may participate in a meeting of Members by means of conference telephone, email, video conferencing, or similar communications equipment enabling all Members participating in the meeting to hear or communicate with one another. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

ARTICLE 8. TAX MATTERS PARTNER

The Board of Trustees of Illinois State University is designated the "Tax Matters Partner" (as defined in Code Section 6231), and is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including, without limitation, administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The Members agree to cooperate with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings.

ARTICLE 9. TRANSFERABILITY AND RIGHT OF WITHDRAWAL

9.01 General. Except as otherwise specifically provided herein, no Interest Holder shall have the right, as to all or any part of its Membership Interest to:

A. sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration, (collectively, "sell"); or

B. gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy).

9.02 Prohibition on Transfer for Consideration. No Member shall sell, assign, pledge, transfer, exchange or otherwise transfer its Membership Interest for consideration or any kind.

9.03 Limitation on Gift Transfer. No Member shall gift, assign or transfer its Membership Interest for no consideration to another entity unless that entity qualifies as a legal Member of the Company as defined in Article 1.P. of this Agreement.

9.04 Withdrawal of Member. A Member may withdraw from the Company at any time by giving notice of intent to withdraw to the Member/Managers.

ARTICLE 10. ADDITIONAL MEMBERS

10.01 From the date of the formation of the Company, any Entity acceptable to the Members by their majority vote thereof may become a Member in this Company either by the issuance by the Company of Membership Interests for such consideration as the Members by their majority votes shall determine, or as a transferee of a Member's Membership Interest or any portion thereof, subject to the terms and conditions of this Operating Agreement.

10.02 A new Member of the Company may not be accepted unless the proposed Member qualifies as a legal Member of the Company as defined in Article 1.H. of this Agreement.

ARTICLE 11. DISSOLUTION AND TERMINATION

11.01 Dissolution.

A. The Company shall be dissolved upon the occurrence of any of the following events:

1. when the period fixed for the duration of the Company shall expire pursuant to Section 2.05 hereof; or,

2. by the written agreement of those Members holding at least 75% of all Percentage Interests in the Company;

B. Notwithstanding anything to the contrary in this Operating Agreement, if a Member or Members owning Percentage Interests which in the aggregate constitute **at least 75% of all Percentage Interests in the Company** vote to dissolve the Company at a meeting of the Company pursuant to Article 7., then all of the Members shall agree in writing to dissolve the Company on the date agreed upon or in the event of no agreement, as soon as possible, but in any event not more than thirty days thereafter.

11.02 Winding Up, Liquidation and Distribution of Assets.

A. Upon dissolution, an accounting shall be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Member/Managers shall immediately proceed to wind up the affairs of the Company.

B. If the Company is dissolved and its affairs are to be wound up, the Member/Managers shall:

1. Discharge all liabilities of the Company, and establish such Reserves as may be reasonably necessary to provide for contingent liabilities of the Company,

2. Transfer all of the Company's assets as promptly as practicable exclusively to exempt organizations or for exempt purposes under Section 501(c)(3) of the Internal Revenue Code.

C. Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated.

D. The Member/Manager(s) shall comply with all requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

11.03 Articles of Dissolution. When all debts, liabilities and obligations of the Company have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets of the Company have been distributed, articles of dissolution as required by the Act, shall be executed in duplicate and filed with the Illinois Secretary of State.

11.04 Effect of Filing of Articles of Dissolution. Upon the filing of articles of dissolution with the Illinois Secretary of State, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Act. The Managers shall have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company, except that any assets or property of the Company shall be distributed exclusively to exempt organizations or for exempt purposes under Section 501(c)(3) of the Internal Revenue Code.

11.05. Federal Security Interest in Company Property. Notwithstanding anything herein to the contrary, The United States Government shall have a security interest in any and all of the Company's property interests for the estimated useful life of the equipment, fiber and other assets used in the creation of the

broadband network owned and administered by the Company and funded by the original grant issued to Illinois State University for such purpose, and any subsequent grants that fund property interests owned by the Company.

ARTICLE 12. MISCELLANEOUS PROVISIONS

12.01 Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Operating Agreement shall be deemed to have been sufficiently given or served for all purposes if (1) either by actual delivery of the notice into the hands of the parties thereunto entitled; (2) or by the mailing of the notice in the U.S. mail, certified mail, return receipt requested; or (3) sent by nationally recognized, overnight delivery service, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Operating Agreement. The notice shall be deemed to be received in case (1) on the date of its actual receipt by the party entitled thereto and in cases (2) or (3) on the date of its mailing or deposit with such delivery service. The failure or refusal of any party to accept any notice given pursuant to this paragraph shall be conclusively deemed receipt thereof and knowledge of its contents.

12.02 Books of Account and Records. Proper and complete records and books of account shall be kept or shall be caused to be kept by the Member/Managers in which shall be entered fully and accurately all transactions relating to the Company's business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. The books and records shall at all times be maintained at the principal place of business of the Company.

12.03 Application of Illinois Law. This Operating Agreement and its interpretation shall be governed exclusively by its terms and by the laws of the State of Illinois, and specifically the Act.

12.04 Waiver of Action for Partition. Each Member irrevocably waives during the term of the Company any right that it may have to maintain any action for the partition with respect to the property of the Company.

12.05 Amendments. This Operating Agreement may not be amended except in writing by the affirmative vote of Members holding **75% of all Percentage Interests in the Company. Any amendments to this Agreement shall be consistent with Section 501(c)(3) of the Internal Revenue Code. Additionally, an amendment converting the Company to a for-profit entity, or merging the Company into an existing for-profit entity, shall be of no effect.**

12.06 Execution of Additional Instruments. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations and other instruments necessary to comply with any laws, rules or regulations.

12.07 Construction. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

12.08 Headings. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

12.09 Waivers. The failure of any party to seek redress for default of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a default, from having the effect of an original default.

12.010 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any other remedy. Said rights and remedies are given in addition to any other legal rights the parties may have.

12.011 Severability. If any provision of this Operating Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

12.012 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

12.013 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company.

12.014 Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

12.015 Entire Agreement. This Operating Agreement supersedes all agreements previously made between the parties relating to its subject matter. There are no other understandings or agreements between them. It contains the entire agreement of the parties. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

12.016 Incorporation of Exhibits, Annexes, and Schedules. The Exhibits, Annexes, and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

CIRBN, LLC

IN WITNESS WHEREOF, the parties hereto have caused their signatures, or the signatures of their duly authorized representatives, to be set forth below on the day and year first above written.

DRAFT/Confidential/Proprietary

CIRBN, LLC

EXHIBIT A

LIST OF MEMBER/MANAGERS:

DRAFT/Confidential/Proprietary



ADDENDUM I

BLOOMINGTON CITY COUNCIL AGENDA

JULY 8, 2013

ADDITION TO CONSENT AGENDA

- Item 7A. Council Proceedings for June 24, 2013. (Recommend that the reading of the minutes of the previous Council Proceedings of June 24, 2013 be dispensed with and the minutes approved as printed.) *Draft Council Proceedings attached.*
- Item 7B. Bills and Payroll. (Recommend that the bills and payroll be allowed and orders drawn on the Treasurer for the various amounts as funds are available.) *City Council Memorandum with Attachment 1.*
- Item 7M. Petition filed by FOB Development, Inc., requested approval of the Preliminary Plan for a Portion of Empire Business Park, Third Revision, for Property Commonly Located north of IL Rt. 9 and east of Trinity Ln. (Recommend that the item be remanded to the Planning Commission's July 24, 2013 meeting.)

**COUNCIL PROCEEDINGS
PUBLISHED BY THE AUTHORITY OF THE CITY COUNCIL
OF BLOOMINGTON, ILLINOIS**

The Council convened in regular Session in the Council Chambers, City Hall Building, at 7:00 p.m., Monday, June 24, 2013.

The Meeting was opened by Pledging Allegiance to the Flag followed by moment of silent prayer.

The Meeting was called to order by the Mayor who directed the City Clerk to call the roll and the following members answered present:

Aldermen: Judy Stearns, Kevin Lower, David Sage, Robert Fazzini, Jennifer McDade, Scott Black, Karen Schmidt, Jim Fruin and Mayor Tari Renner.

Alderman absent: Mboka Mwilambwe.

City Manager David Hales, City Clerk Tracey Covert, and Corporate Counsel Todd Greenburg were also present.

The following was presented:

SUBJECT: Council Proceedings of June 10, 2013

RECOMMENDATION/MOTION: That the reading of the minutes of the previous Council Proceedings of June 10, 2013 be dispensed with and the minutes approved as printed.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Objective 1.d. City services delivered in the most cost-effective, efficient manner.

BACKGROUND: The Council Proceedings of June 10, 2013 have been reviewed and certified as correct and complete by the City Clerk.

In compliance with the Open Meetings Act, Council Proceedings must be approved within thirty (30) days after the meeting or at the Council's second subsequent regular meeting whichever is later.

In accordance with the Open Meetings Act, Council Proceedings are made available for public inspection and posted to the City's web site within ten (10) days after Council approval, 5 ILCS 120/2.06(b).

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Not applicable.

Respectfully submitted for Council consideration.

Prepared by: Tracey Covert, City Clerk

Recommended by:

David A. Hales
City Manager

Motion by Alderman Fazzini, seconded by Alderman Fruin that the reading of the minutes of the previous Council Proceedings of June 10, 2013 be dispensed with and the minutes approved as printed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Bills and Payroll

RECOMMENDATION/MOTION: That the bills and payroll be allowed and orders drawn on the Treasurer for the various amounts as funds are available.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Objective 1.d. City services delivered in the most cost-effective, efficient manner.

BACKGROUND: The list of bills and payrolls will be posted on the City's website on Thursday, June 20, 2013 by posting via the City's web site.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Total disbursements information will be provided via addendum.

Respectfully submitted for Council consideration.

Prepared by: Tracey Covert, City Clerk

Financial & budgetary review by: Patti-Lynn Silva, Director of Finance

Recommended by:

David A. Hales
City Manager

Motion by Alderman Fazzini, seconded by Alderman Fruin that the Bills and Payroll be allowed and the orders drawn on the Treasurer for the various amounts as funds are available.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Purchase of Floor Coating and Wall Coverings for the US Cellular Coliseum

RECOMMENDATION/MOTION: That the purchase of floor coating and wall coverings for the US Cellular Coliseum from Garage Flooring Coating of Central Illinois, Leroy, IL be approved, in the amount of \$110,778, and the Purchasing Agent be authorized to issue a Purchase Order for same.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Objective 2.d. Customer friendly, easily accessible city facilities and buildings.

BACKGROUND: Two (2) years ago the City coated the public bathrooms and ramps with a garage floor cover to assist with the maintenance and appearance of the US Cellular Coliseum, (USCC). Central Illinois Arena Management (CIAM) staff noticed a reduction in man hours in maintaining these areas of fifteen percent (15%). CIAM staff anticipates the same percentage decrease on the concourse maintenance. The concourse concrete over the past several years, CIAM staff has noticed stress cracks. The process will grind out, cover and remove these stress cracks, which will create a safer environment for patrons.

CIAM staff has noticed over the past several years that in the main dressing room hallway there are a number of marks of spray paint from hockey teams on the wall. Garage Floor and Coating has a product which removes and prevents graffiti, called Hydro Poly, this product will be applied to the walls to prevent spray paint marks. This area is where all of the performers are and the appearance in this area should be kept as high quality as possible.

The following areas will be completed with this purchase:

- CONCOURSE
- VIP HALL FLOOR and WALLS
- APA HALL FLOOR and WALLS
- VIST HALL WALLS
- BLAZE HALL WALLS
- REFEREE HALL WALLS, SHOWER FLOOR, CEILING and WALLS
- STAGE HAND SHOWER FLOOR, CEILING and WALLS
- SHOWER #6 FLOOR, CEILING and WALLS
- SHOWER #7 FLOOR, CEILING and WALLS
- SHOWER #8 FLOOR, CEILING and WALLS

The City's Purchasing Agent did not release bids for this project. This is sole source purchase. CIAM requested and received a quotation from Garage Floor Coating. Quotation was received on March 11, 2013. Per their letter, the use of ECO CorFlex products are exclusively designed for and formulated for Garage Floor Coating. The entire line of ECO CorFlex products are all proprietary to our dealer and franchise network and aren't available to the general public, contractors or retail locations

If the purchase is approved, CIAM anticipates the components and parts should be completed by August 2013.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: None.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$85,000 for the purchase of floor and wall coverings in line item 57107110-79990. The total cost to cover the recommended areas is \$110,778, which exceeds the total appropriation by \$25,778. The City will delay two (2) other capital projects, (installation of additional storage room and the installation of additional security cameras), within the USCC to offset the \$25,778 purchase of the floor and wall coverings. The two (2) delayed capital projects will be added to the capital projects for the USCC in FY 2015. Stakeholders may locate this purchase in the FY 2014 Other Funds & Capital Improvement Program Budget document on page #219.

Respectfully submitted for Council consideration.

Prepared by: John Butler, President CIAM

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy L Ervin, CPFO, MS, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion by Alderman Fazzini, seconded by Alderman Fruin that the purchase of floor coating and wall coverings for the US Cellular Coliseum from Garage Flooring Coating of Central Illinois, Leroy, IL, be approved, in the amount of \$110,778, and the Purchasing Agent be authorized to issue a Purchase Order.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Proposal and Approval of Contract for 2013 Pavement Preservation

RECOMMENDATION/MOTION: That the proposal for 2013 Pavement Preservation be awarded to Corrective Asphalt Materials, LLC, in the amount of \$200,000, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Goal 2. Upgrade City infrastructure and facilities; Goal 3. Strong neighborhoods; and Goal 5. Great place – livable and sustainable City by maintaining the street infrastructure within the City.

BACKGROUND: At the January 28, 2013 meeting, Council directed the Public Works Department to negotiate the 2013 Pavement Preservation Program. In 2011, Corrective Asphalt Materials, LLC, South Roxana, IL was the sole bidder for this work. The Pavement Preservation has been negotiated each year since 2011. The Reclamite Rejuvenator material used is proprietary and they are the sole source distributor/applicator for our region.

Included in this year's contract is increased use of CRF Restorative Seal for streets that have aged beyond the time frame to apply Reclamite alone. Several CRF trials have been done on

City streets since 2007 with positive results. Kenyon Court had a CRF test application applied in 2007 that still looks good. If the whole street had been treated, it would not be included in resurfacing contract for this year. The price totals listed below are based on unit prices of \$0.83 per square yard for Reclamite, (last year was \$0.82), and \$2.46 per square yard for CRF.

Rejuvenator – Reclamite	\$154,052.15
CRF Restorative Seal	\$ 45,756.00
Street Sweeping and Cleaning – Before Treatment	\$ 4,000.00
Base Price	\$203,808.15

Alt 1 (Credit for providing Material Stockpile Site) (\$ 3,825.00)

Base + Alt 1 **\$199,983.15**

Engineer's Estimate \$194,256.10

Budget \$200,000.00

Reclamite is an emulsion made up of specific petroleum oils and resins. It penetrates into the top layer of asphalt pavement and brings the Maltene and Asphaltene ratio back to a proper balance. The rejuvenating process keeps the pavement flexible, so both cracking and road fatigue are reduced. It also seals the pavement from air and water, slowing the oxidation process and reducing the loss of small aggregate.

CRF is an emulsion containing Reclamite and eleven percent (11%) asphalt. It provides more of a seal coat and is covered with a thick layer of lime screenings which blend into the surface and help to fill voids and cracks.

These types of treatments are designed to keep the good streets good condition. Streets are treated with Reclamite the same year when they are resurfaced to get the maximum benefit from the Reclamite. A map of the streets scheduled to be treated under this contract was provided to the Council.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$4,000,000 for the overall City Pavement Program of which \$200,000 is allocated for pavement preservation in line item 40100100-72530. Funds within the City's Pavement Program are allocated as follows: General Resurfacing \$2,500,000, Street & Alley Repair \$1,000,000, Pavement Preservation \$200,000, Street and Alley Maintenance \$200,000 and Street micro-resurface \$100,000. This memo addresses the Pavement Preservation which compiles five percent (5%) of the City's Pavement Program. Staff recommends the entire \$200,000 be expended on the pavement preservation program, which will exactly match the budget appropriation. Stakeholders may locate this line item in the FY 2014 Other Funds and Capital Improvement Program Budget document on page #106.

Prepared by: Jim Karch, P.E., Director of Public Works
Reviewed by: Barbara J. Adkins, Deputy City Manager
Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Manager
Legal review by: J. Todd Greenburg, Corporation Counsel
Recommended by:

David A. Hales
City Manager

Motion by Alderman Fazzini, seconded by Alderman Fruin that the proposal for 2013 Pavement Preservation be awarded to Corrective Asphalt Materials, LLC, South Roxanna, IL, in the amount of \$200,000, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Amendment to the Professional Services Agreement with A & R Mechanical, Inc.

RECOMMENDATION/MOTION: That the Amendment to the agreement with A & R Mechanical, Inc. be approved, in the amount of \$13,414, for additional work related to the installation of the lime dust collection system.

STRATEGIC PLAN LINK: Goal 2: Reliable utility services necessary for daily life.

STRATEGIC PLAN SIGNIFICANCE: Objective 4: Well designed, well maintained City facilities emphasizing productivity and customer service.

BACKGROUND: The Water Treatment Plant utilizes lime, (a water treatment chemical made from limestone), to reduce the hardness of the water which is delivered to the customers of the City's Water Department. In terms of water quality, hardness is generally viewed as the amount of dissolved calcium and magnesium that occurs naturally in water supplies. Water in the Midwest may be particularly hard due to the amount of limestone found in the natural geological

structure of the Midwest. Over time, water dissolves limestone as it comes into contact with the limestone which in turn intensifies the hardness found in the water supply.

The addition of lime in the water treatment process will reduce the hardness of the treated water. The lime dust collector system is an integral portion of the treatment facility which is used when lime is unloaded at the Water Treatment Facility. Lime is unloaded multiple times per week. The prior system used by the City has incurred operational problems which include but are not limited to difficulty in the exchange of the filter bags, obsolescence of the filter bags and an overall decline in the general capability of the system to remove dust.

The lime dust collection project was competitively bid and awarded to A & R Mechanical, Inc. on April 11, 2011 for \$107,000. This amendment would completely close out this project.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: There were no community groups contacted for this item as it is a routine matter.

FINANCIAL IMPACT: The FY 2014 Water Fund Purification Budget appropriated \$25,000 for water plant construction and improvement in the Water Purification Fund in line item 50100130-72590. This amendment will require the payment of an additional \$13,414. The projected fund balance for the Water Fund as of April 30, 2013 is \$17,406,227. Stakeholders may locate this purchase in the FY 2014 Capital, Enterprise, and Other Fund Budget document on page #145.

Respectfully submitted for Council consideration.

Prepared by: Craig M. Cummings, Director of Water

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion by Alderman Fazzini, seconded by Alderman Fruin that the Amendment to the agreement with A & R Mechanical, Inc. be approved, in the amount of \$13,414, for additional work related to the installation of the lime dust collection system.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Amendment to the Professional Services Agreement with Johnston Contractors, Inc.

RECOMMENDATION/MOTION: That the Amendment to the agreement with Johnston Contractors, Inc. be approved, in the amount of \$7,376.22, for additional work related to the installation of the direct injection carbon dioxide project.

STRATEGIC PLAN LINK: Goal 2: Reliable utility services necessary for daily life.

STRATEGIC PLAN SIGNIFICANCE: Objective 4: Well designed, well maintained City facilities emphasizing productivity and customer service.

BACKGROUND: The Water Treatment Plant uses lime, (a water treatment chemical made from limestone), to reduce the hardness of the water it delivers to the customers of the City's Water Department. Hardness is generally viewed as the amount of dissolved calcium and magnesium that occurs naturally in water supplies. Water in the Midwest can be particularly hard because of the amount of limestone that is found throughout the Midwest. Over time, water will dissolve limestone that it comes in contact with which in turn increases the hardness of the water.

The addition of lime increases the pH of the water to levels where the water is very alkaline and is not acceptable to regulators and customers. The pH of water refers to the acidity or alkaline nature of the water. Once the pH of the water is increased to that alkaline level, it must be lowered. This is accomplished through the use of carbon dioxide, (the same gas that gives pop its fizz), which forms a weak acid when injected into the water and thus lowers the pH to acceptable levels. The proposed system takes carbon dioxide and directly injects it into the water in a very efficient manner. This direct injection system, due to its efficiency, will reduce the amount of carbon dioxide that is used each year and as an added benefit, the use of this system is expected to reduce the incrustation of calcium compounds on the interior of some of the pipes in the Water Treatment Facility. This will, in turn, increase the hydraulic capacity of the Water Treatment Facility.

During construction, various changes were directed by staff to be made to the installation of the pH control system that resulted in this amendment.

The direct injection carbon dioxide project was competitively bid and awarded to Johnston Contractors, Inc. on January 10, 2011 for \$525,600. This amendment will completely close out this project.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: There were no community groups contacted for this item as it is a routine matter.

FINANCIAL IMPACT: The FY 2014 Water Fund Purification Budget appropriated \$25,000 for water plant construction and improvement in the Water Purification Fund in line item 50100130-72590. This amendment will require the payment of an additional \$7,376.22. The projected fund balance for the Water Fund as of April 30, 2013 is \$17,406,227. Stakeholders may locate this purchase in the FY 2014 Capital, Enterprise, and Other Fund Budget document on page #145.

Respectfully submitted for Council consideration.

Prepared by: Craig M. Cummings, Director of Water

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion by Alderman Fazzini, seconded by Alderman Fruin that the Amendment to the agreement with Johnston Contractors, Inc. be approved, in the amount of \$7,376.22, for additional work related to the installation of the direct injection carbon dioxide project.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Frontier Maintenance Renewal

RECOMMENDATION/MOTION: That the Maintenance Agreement with Frontier be approved, in the amount of \$39,756.49, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: This agreement allows with City to support and maintain defined services and levels of service in the 911 Communications Center.

BACKGROUND: This maintenance renewal covers 911 phone equipment located in the Communications Center. The term of the agreement is one (1) year and the level of service is twenty-four (24) hours a day, seven (7) days a week with a four (4) hour response time for major failures.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$42,000 for the maintenance agreement with Frontier Communications in line item 10015118-70530. The total cost for this maintenance agreement is \$39,756.49, which is \$2,243 or 5.3% below the budget appropriation. Stakeholders may locate this purchase in the FY 2013 General Fund Budget document on page #266

Respectfully submitted for Council consideration.

Prepared by: Darren R. Wolf, Communications Center Manager

Reviewed by: R.T. Finney, Interim Chief of Police

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion by Alderman Fazzini, seconded by Alderman Fruin that the Maintenance Agreement with Frontier be approved, in the amount of \$39,756.49, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Ratification of Contract with Local 49 Firefighters

RECOMMENDATION/MOTION: That the Contract be ratified.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Objective 1.d. City services delivery in the most cost effective, efficient manner and Objective 1.e. Partnering with others for the most cost effective service delivery.

BACKGROUND: On June 22, 2012, Local 49 and the City staff began negotiating the terms for a collective bargaining agreement to replace the agreement which expired on April 30, 2012. The expired agreement has been placed on the City's web site. The parties were able to reach Tentative Agreements on the following issues:

Article 1 Recognition

- Update contract language to include Paramedics.

Section 2.1 Check off of Union Dues

- Union dues deducted on the first two (2) pay periods of the month.

Section 2.2 Fair Share of Collective Bargaining Administration

- Fair Share deducted on the first two (2) pay periods of the month.

Section 2.3 Fair Share of Living Expenses

- Fair Share of Living Expenses deducted on first two (2) pay periods of the month.

Article 4 Equipment and Allowance

- Increase the shoe allowance from \$100 to \$150 annually.
- Two (2) belts per uniform allotment.

Section 5.1 Sick Leave

- Run FMLA time concurrent with Sick Leave.

Section 5.2 Administrative Duty

- Employees on paid injury or sick leave may be required to participate in training activities within the employee's restrictions.

Section 12.2 Workday

- Eliminate outside employment work, except miscellaneous calls, during periods of down time.

Article 18 Union Business

- Increase Union Business Leave to 120 hours per fiscal year.

Article 24.1 Position Bidding

- Assign position for any employee with less than two (2) years of service.

Section 24.2 Firefighters

- Change the bid from May 1 to November 1 of each calendar year.

Section 25.2 Captain Promotional Process Eligibility

- Change eligibility requirement to a Fire Officer I.

Section 25.3. Asst. Chief Promotional Process Monitoring

- Change eligibility requirement to a Fire Officer II

Section 28.1 Salaries

May 1, 2012	1.5%
November 1, 2012	1.5%
May 1, 2013	1.5%
November 1, 2013	1.5%
May 1, 2014	1.5%
November 1, 2014	1.5%

- Delete the Firefighter pay scale

Section 28.2 Holiday Pay

- Update holiday pay language to remove restrictions on when holiday time is paid.

New Section – Agree to meet and negotiate changes to the recall, call in procedure, leave scheduling and shift bid, if needed, to accommodate the new Time and Attendance System.

New Section – Checks will be mailed for employees who do not have direct deposit.

New Section – Addition of an EMS Supervisor per shift. This position will be compensated at the Firefighter Paramedic Rank at the appropriate rate of service, plus 7% for all hours worked.

The parties agreed on all issues with exception of the reduction of Sick Leave Buy Back for employees hired after the ratification of the agreement. Council directed staff to arbitrate this issue. The parties agreed to execute the contract on all issues except the Sick Leave Buy back. The Arbitration date on the Sick Leave Buy Back was June 17, 2013.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Council and Local 49.

FINANCIAL IMPACT: The financial impact of the tentative agreements includes:

- Additional twenty-four (24) hours of Union Leave.
- Increase of seven percent (7%) for one (1) existing staff person per shift.

- Based on the percentage increases list above, the base wages with longevity are estimated to increase by \$603,222 over the three (3) year period of the contract.
 - FY 2013 - \$188,355.95
 - FY 2014 - \$208,921.72
 - FY 2015 - \$205,944.63

Respectfully submitted for Council consideration.

Prepared by: Angie Brown, Human Resources Specialist

Reviewed by: Emily Bell, Director of Human Resources
Mike Kimmerling Fire Chief
James Baird, Clark Baird Smith, LLP

Financial & budgetary review by: Timothy Ervin, Budget Manager

Legal review by: James Baird, Clark Baird Smith, LLP
J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion by Alderman Fazzini, seconded by Alderman Fruin that the Contract be ratified.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Application of Smashburger Acquisition Peoria, LLC d/b/a Smashburger, located at 1401 N. Veterans Pkwy., requesting an RBS liquor license which would allow the sale of beer and wine only by the glass for consumption on the premises seven (7) days a week

RECOMMENDATION/MOTION: That an RBS liquor license for Smashburger Acquisition Peoria, LLC, d/b/a Smashburger, located at 1401 N. Veterans Pkwy., be created, contingent upon compliance with all applicable health and safety codes.

STRATEGIC PLAN LINK: Goal 4. Grow the local economy.

STRATEGIC PLAN SIGNIFICANCE: Objective 4.a. Retention and growth of current local business.

BACKGROUND: The Bloomington Liquor Commissioner Tari Renner called the Liquor Hearing to order to hear the application of Smashburger Acquisition Peoria, LLC d/b/a Smashburger, located at 1401 N. Veterans Pkwy., requesting an RBS liquor license which would allow the sale of beer and wine only by the glass for consumption on the premises seven (7) days a week. Present at the hearing were Liquor Commissioners Tari Renner and Jim Jordan; George Boyle, Asst. Corporation Counsel, Bob Wall, Asst. Police Chief, and Tracey Covert, City Clerk, and Joseph Zappala, District Manager and Applicant representative.

Commissioner Renner opened the liquor hearing and requested that the Applicant representative address this request. Joseph Zappala, District Manager and Applicant representative, addressed the Commission. He was present to represent the corporate office. The corporate office was purchasing the restaurant from the franchisee. The application was for the same liquor license classification as the existing one.

Commissioner Renner questioned the responsible party. Mr. Zappala noted that the corporate office was located in Denver, CO. As District Manager, Mr. Zappala would be here in the City at least one (1) time every one to two (1 – 2) weeks. He currently oversaw eleven (11) stores. He added that beer sales were limited to two to three percent (2 – 3%) of total sales.

Commissioner Jordan questioned the onsite manager. Mr. Zappala noted that the existing staff would be retained. Smashburger offered five to six (5 – 6) varieties of bottled beer. The management staff, (General Manager, Asst. Manager, or Shift Manager), handled all beer sales and service.

George Boyle, Asst. Corporation Counsel, addressed the applicant. He questioned the current operations. Mr. Zappala informed the Commission that the current franchisee held three (3) stores. The corporate office was purchasing all three (3) stores. Mr. Boyle described this application as a change of ownership.

Mr. Boyle questioned when the business sale would be completed. Mr. Zappala believed that the sale of the business was scheduled for June 17, 2013. Mr. Zappala was directed to provide proof of sale to the City Clerk's Office.

Motion by Commissioner Jordan, seconded by Commissioner Renner that application of Smashburger Acquisition Peoria, LLC, d/b/a Smashburger, located at 1401 N. Veterans Pkwy., for an RBS liquor license which would allow the sale of beer and wine only by the glass for consumption on the premises be approved.

Motion carried, (unanimously).

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public notice was published in the Pantagraph on June 3, 2013 in accordance with City Code. In accordance with City Code, approximately seventeen (17) courtesy copies of the Public Notice were mailed on June 3, 2013. In addition, the Agenda for the June 11, 2013 Meeting of the Liquor Commission was placed on the City's web site. There also is a list serve feature for the Liquor Commission.

FINANCIAL IMPACT: This is an existing RBS liquor license. Annual fee for a RBS liquor license is \$1,110.

Recommended by:

Tari Renner
Mayor

Motion by Alderman Fazzini, seconded by Alderman Fruin that an RBS liquor license for Smashburger Acquisition Peoria, LLC, d/b/a Smashburger, located at 1401 N. Veterans Pwky., be created, contingent upon compliance with all applicable health and safety codes.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Transfer of a Pump Station, Force Main, and Force Main Easement to the Bloomington Normal Water Reclamation District, (BNWRD)

RECOMMENDATION/MOTION: That the Council authorize the execution of all documents necessary to transfer the Kickapoo Creek Pump Station and force main, along with the force main easement, to BNWRD.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Goal 1.e. Partnering with others for the most cost effective service delivery. The City and BNWRD previously agreed that the force main and the easement containing the force main would be transferred by the City to BNWRD, thus using economies of scale to permit basic services to be supplied at reasonable cost to taxpayers.

BACKGROUND: On April 27, 2009, the City and BNWRD entered into an intergovernmental agreement in which various parcels owned would be transferred to the other. One of those properties was the Kickapoo Creek pump station and force main, which was constructed by the City for use with the Ireland Grove Sewer before BNWRD's Randolph Township facility came on line. The City had intended to decommission the pump station and convert the force main to a gravity sewer. BNWRD requested that the pump station and force main be retained for backup in case of disruption in service at the Randolph Township facility. Pursuant to Article III, Paragraph 2 of the April 27, 2009 Intergovernmental Agreement, staff is requesting the Council authorize the execution of all documents necessary to transfer the Kickapoo Creek Pump Station and force main, along with the force main easement, to BNWRD. The Council was provided with a copy of the Easement.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: None.

FINANCIAL IMPACT: City staff will remove the force main, easements and pump station as an asset within the financial statements of the City. This impact is not available at this time. As part of the Intergovernmental Agreement, BNWRD was required to compensate the City \$30,000 for the generator at the pump station.

Respectfully submitted for Council consideration.

Prepared by: J. Todd Greenburg, Corporation Counsel

Reviewed by: Jim Karch, Director of Public Works

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Recommended by:

David A. Hales
City Manager

EASEMENT

This Indenture Witnesseth that City of Bloomington, a municipal corporation, hereinafter referred to as "Grantor", for and in consideration of ONE DOLLAR AND OTHER GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged grants, conveys, quit claims and dedicates to the Bloomington Normal Water Reclamation District, hereinafter referred to as "Grantee", a permanent utility easement across the following described property for the purpose of clearing, trenching for, laying, constructing, operating, altering, maintaining and removing a force main and all necessary appurtenances thereto, which easement is depicted on the plat attached hereto and is described as follows:

Description of Property:

Tract 1: The Northwest Quarter of the Northwest Quarter of Section 23, Township 23 North, Range 2 East of the Third Principal Meridian, McLean County, Illinois.

Tract 2: A part of the Northeast Quarter of the Northeast Quarter of Section 22, Township 23 North, Range 2 East of the Third Principal Meridian, described as follows: Commencing at a point 264 feet south of the Northeast Corner of said Section 22; thence west parallel to the North line of said Section 916 feet to the right-of-way of the Ohio, Indiana and Western Railway; thence southeasterly along said right-of-way to the South Line of the Northeast Quarter of the Northeast Quarter of said Section 22; thence east to the Southeast Corner of the Northeast Quarter of the Northeast Quarter of said Section 22; thence north to the Place of Beginning, in McLean County, Illinois.

Description of Centerline of Force Main Easement:

Commencing at the Southwest Corner of said Tract 1; thence east 551.93 feet along the South Line of said Tract 1; thence north 68 feet along a line which forms an angle to the right of 90°-00'-00" with the last described course to the Point of Beginning. From said Point of Beginning, thence west 243.09 feet along a line which is parallel with the South line of said Tract 1 and which forms an angle to the left of 270°-00'-00" with the last described course; thence northwest 668.90 feet along a line which forms an angle to the left of 135°-00'-00" with the last described course; thence west 186.62 feet along a line which forms an angle to the left of 270°-00'-00" with the last described course; thence northwest 504.69 feet along a line which forms an angle to the left of 163°-36'-53" with the last described course; thence northwest 159.05 feet along a line which forms an angle to the left of 133°-55'-43" with the last described course to a point on the North Line of said Tract 2 lying 23.25 feet east of the Northwest Corner thereof.

Permanent Force Main Easement: A strip of land 20 feet in width lying 10 feet on east side of said Centerline.

PIN # 21 – 14 – 300 - 013 and 21 – 22 – 200 - 012

The grant of this Easement is subject to the following terms and conditions:

1. Grantee shall have through its employees, agents and/or contractors the free right of ingress and egress over and across the easement property insofar as such right of ingress and egress is necessary for the proper use of any right granted herein.

2. Grantee agrees to repair or pay Grantor for any damage to Grantor's property resulting from Grantee's exercise of the rights granted hereunder, including without limitation any damage to landscape materials, drainage lines, water mains, sewers or fences. Grantee further agrees that anytime it digs into, excavates or otherwise disturbs the surface area of the easement, it will restore any such surface area so disturbed to its pre-existing condition.

3. Grantee agrees to indemnify and hold Grantor harmless from any and all liability, damage, expense, cause of action, suits or claims of judgment arising from injury to persons and/or property on the above-described premises which arise out of the act, or failure to act, or

negligence of Grantee, its agents, employees or assigns in the exercise of the rights under this Grant of Easement.

4. Grantor may not place, build, construct or erect any permanent structure on the permanent or temporary easement area without the express, written consent of the City.

5. The terms, conditions and provisions of this Grant of Easement as herein set forth shall be binding upon and inur to the benefit of the heirs, successors and assigns of the respective parties hereto and shall run with title to the land.

DATED this 25th day of June, 2013.

CITY OF BLOOMINGTON

By: Tari Renner
Mayor

Attest:

Tracey Covert
City Clerk

STATE OF ILLINOIS)
) ss.
COUNTY OF McLEAN)

I, the undersigned, a notary public in and for said County in the State aforesaid, DO HEREBY CERTIFY, that Tari Renner, personally known to me to be the Mayor of the City of Bloomington, and Tracey Covert, personally known to me to be the City Clerk of said Municipal Corporation, whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk they signed and delivered the said instrument of writing as Mayor and City Clerk of said Municipal Corporation, and caused the seal of said Municipal Corporation to be affixed thereto, pursuant to authority given by the City Council of said Municipal Corporation as their free and voluntary act, and as the free and voluntary act and deed of said Municipal Corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this ____ day of June, A.D. 2013.

Jan Scherff
Notary Public

Motion by Alderman Fazzini, seconded by Alderman Fruin that Council authorize the execution of all documents necessary to transfer the Kickapoo Creek Pump Station and force main, the Easement be approved, the Mayor and City Clerk be authorized to execute the necessary documents and the deed recorded.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Petition from FOB Development, Inc., Requesting Approval of a Final Plat for the Empire Business Park Subdivision, Fourth (4th) Addition, commonly located on Cornelius Dr., and east of Airport Rd.

RECOMMENDATION/MOTION: That the Final Plat be approved and the Ordinance passed.

STRATEGIC PLAN LINK: Goal 4. Great place – livable, sustainable City.

STRATEGIC PLAN SIGNIFICANCE: Objective 4.a. Retention and growth of local businesses.

BACKGROUND: This subdivision is located south of Golden Eagle South Subdivision, west of Airport Park Subdivision, north of Empire St., (IL Route 9), and east of Airport Rd. The Final Plat is in conformance with the Second Revised Preliminary Plan approved on December 14, 2009. The parcel is west of the corner of Cornelius Dr. and Trinity Ln. and north of the new Advocate BroMenn Medical Office Building. A professional office building is planned for the new lot.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: FOB Development.

FINANCIAL IMPACT: The cost of all public improvements, platting and recording is borne by the petitioner. The future commercial property may generate revenues in terms of property and potential sales taxes.

Respectfully submitted for Council consideration.

Prepared by: Jim Karch, PE, CFM, Director of Public Works

Reviewed by: Barbara J. Adkins, Deputy City Manager

ORDINANCE NO. 2013 - 37

**AN ORDINANCE APPROVING THE FINAL PLAT OF THE
EMPIRE BUSINESS PARK FOURTH ADDITION SUBDIVISION**

WHEREAS, there was heretofore filed with the City Clerk of the City of Bloomington, McLean County, Illinois, a Petition for approval of the Final Plat of the Empire Business Park Fourth Addition Subdivision, legally described in Exhibit "A" attached hereto and made a part hereof by this reference; and

WHEREAS, said Petition requests the following exemptions or variations from the provisions of the Bloomington City Code-1960, as amended: None; and

WHEREAS, said Petition is valid and sufficient and conforms to the requirements of the statutes in such cases made and provided and the Final Plat attached to said Petition was prepared in compliance with requirements of the Bloomington City Code except for said requested exemptions and/or variations; and

WHEREFORE, said exemptions and/or variations are reasonable and in keeping with the intent of the Land Subdivision Code, Chapter 24 of the Bloomington City Code-1960, as amended.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, MCLEAN COUNTY, ILLINOIS:

1. That the Final Plat of the Empire Business Park Fourth Addition Subdivision and any and all requested exemptions and/or variations be, and the same is hereby approved.
2. That this Ordinance shall be in full force and effective as of the time of its passage this 24th day of June, 2013.

APPROVED:

Tari Renner
Mayor

ATTEST:

Tracey Covert
City Clerk

EXHIBIT “A”

A Part of the Southwest Quarter of Section 31, Township 24 North, Range 3 East of the Third Principal Meridian, in the City of Bloomington, McLean County, Illinois, more particularly described as follows: Beginning at the Northwest Corner of Empire Business Park Subdivision Third Addition in the City of Bloomington, Illinois, per plat recorded June 26, 2012 as Document No. 2012-15866 in the McLean County Recorder’s Office, said Northwest Corner also being a point on the South Right-of-Way Line of Cornelius Road per the final plat of Central Catholic/McGraw Park Subdivision in the City of Bloomington, Illinois, per Ordinance No. 2002-90 approved by the Bloomington City Council. From said Point of Beginning, thence West 510.00 feet along said South Right-of-Way Line; thence South 281.86 feet along a line which forms an angle to the right of 90°-00’-00” with said South Right-of-Way Line; thence East 510.00 feet along a line which forms an angle to the right of 90°-00’-00” with the last described course; thence North 281.86 feet along the Southerly extension of the West Line of said Empire Business Park Subdivision, Third Addition and said West Line which forms an angle to the right of 90°-00’-00” with the last described course to the Point of Beginning.

Said property contains 3.300 acres, more or less.

Motion by Alderman Fazzini, seconded by Alderman Fruin that the Final Plat be approved and the Ordinance passed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Text Amendment to Chapter 8. Animals and Fowls, Identification and Regulation of Vicious and Dangerous Dogs

RECOMMENDATION/MOTION: That the Text Amendment be approved and the Ordinance be passed.

STRATEGIC PLAN LINK: Goal 3: Strong neighborhoods; Objective a: Residents feeling safe in their homes and neighborhoods.

STRATEGIC PLAN SIGNIFICANCE: Proposed ordinance amendments encourage responsible pet ownership and enhance staff’s ability to properly identify potentially problem animals, provide safe and equitable restrictions on declared animals, and hold liable irresponsible pet owners.

UPDATES TO THIS MEMO SINCE THE MAY 28, 2013 CITY COUNCIL MEETING:

Updates have been added to pages 2 and 3 of this staff memo and to the Ordinance Amending Bloomington City Code Chapter 8.

TIMELINE OF EVENTS: In November 2012, Council directed staff to review current ordinances as they pertain to animal control due to an extremely unfortunate incident on October 25, 2012 which resulted in two (2) citizens being hospitalized after a severe dog attack. Since this time, staff members have invested a significant amount of time reviewing current ordinances, researching alternative policies, and reviewing Police and Animal Control Warden's workload statistics and activity reports.

The last time the City amended the Animal Control Ordinance was in April 2006. At that time, Council adopted a text amendment adding Section 85 to Chapter 8 of the City Code, "Establishing Penalties for Failure to Register a Dog and Authorizing the Seizure of Unregistered Dogs". The language was not aimed at owners of specific breeds of animals, but at irresponsible pet owners. The general idea was that dogs who attack other animals or humans are owned by irresponsible people; if the City and County had the authority to seize dogs which did not display dog tags, the hope was that this would take more potentially dangerous animals off the streets, out of the hands of irresponsible owners, and reduce the amount of attacks.

On Thursday, April 11, 2013, City staff issued a detailed report of their findings to the Public Safety Committee on the City's activity pertaining to animal control issues from 2006 to present, along with proposed ordinance amendments to address the issues of concern. (City staff had prepared Dangerous Vicious Dog Report, which was provided to the Council.). The Public Safety Committee unanimously voted to present the issue to the Council at a future meeting. The report and proposed ordinance amendments were the result of a number of meetings held between George Boyle, Asst. Corporate Counsel, Robert Wall, Asst. Police Chief, James Hall, Police Officer, Marshall Thomson, McLean County Animal Control Center Director, and Alex McElroy, Asst. to the City Manager.

On Monday, May 13, 2013, City staff presented the proposed ordinance amendment to the full Council for consideration. At that time, certain concerns were expressed by the Wish Bone Canine Animal Rescue, (WBCAR), group regarding the proposed ordinance. The Council voted to lay over the issue to the next Council meeting to allow City staff time to speak with WBCAR, the McLean County Humane Society, and any other interested party to discuss any concerns related to the proposal.

On Tuesday, May 21, 2013, City staff members George Boyle, Asst. Corporate Counsel, and Alex McElroy, Asst. to the City Manager joined Mayor Tari Renner, Alderman Kevin Lower, and Alderwoman Judy Stearns in a meeting with WBCAR members and Dr. Tim Anderson, Interim Humane Society Director and veterinarian at the Hawthorne Park Animal Care Center. Based on staff's discussion with the WBCAR group and the concerns presented, staff incorporated three (3) additional measures into the proposed policy:

- 1.) Language was added to Section 50(c)(3) and 50(k)(4). Those sections had previously provided that any dog that has been found to be a dangerous or vicious dog in any other

jurisdiction shall be considered as a dangerous or vicious dog in the City. The added language exempts dogs that are found dangerous or vicious in other jurisdictions solely because of their breed.

- 2.) Section 83(e) was changed to provide that in the event the appeal of a declaration that a dog is subject to euthanasia is denied, the dog shall be euthanized no sooner than 5 days after denial of the appeal. This clarifies and expands the time within which a dog owner who loses such an appeal may seek redress in the courts. Staff had previously proposed a timeline of no sooner than two (2) days. It is important to note that the current City ordinance does not require any minimum time lapse before an acting agent may euthanize an animal after denial of an appeal.
- 3.) Section 83(d)(9) was changed so the amount of liability insurance required to be purchased by the owner of a vicious dog is \$250,000 instead of \$200,000. Concern was expressed by the WBCAR group that owners of vicious dogs would not be able to obtain liability insurance for the animals, staff's research indicates otherwise. However, staff did find after speaking with a State Farm agent that the amount of \$200,000 in coverage did not exist and that the coverage came in the form of \$100,000 or \$250,000 or \$500,000. \$250,000 was the chosen coverage recommended by staff and is estimated to cost between \$100 - \$150 per month.

At the Tuesday, May 28, 2013, Council Meeting, staff brought the proposed ordinance amendment back to Council for consideration as directed. WBCAR organization attended the meeting with members interested in the ordinance being laid again over for further discussion. WBCAR group provided Council with a seven (7) item list of concerns regarding the proposed ordinance and recommendations for further amendments. Council voted to remand the issue back to the Public Safety Committee for further discussion and analysis.

On Thursday, May 30, 2013, City staff placed a spotlight article on the home page City's web site advertising the proposed ordinance amendment and the June 13, 2013 Public Safety Committee meeting regarding the topic. The spotlight article allowed visitors to leave comments regarding the proposed ordinance amendments which have been collected for Council review. (The Council was provided with a copy of the web site comments regarding the proposed Ordinance).

On Friday, June 7, 2013, the Police Department issued a letter of support for staff's proposed ordinance amendment. (The Council was provided with a copy of said letter).

On Tuesday, June 11, 2013, the Humane Society of Central Illinois issued correspondence to staff stating in their opinion the changes to the language was good and they supported passage of the ordinance. (The Council was provided with a copy of said email.)

On Thursday June 13, 2013, the Public Safety Committee met again on the issue and voted to suspend the rules to allow members of the public to voice their concerns. Only one (1) organization was present at the meeting and had a representative speak on their behalf. No other members of the public present at the meeting addressed the Committee. While addressing the Committee, the WBCAR representative presented the following concerns:

1. The length of time in which an owner may seek redress in court in the case where an appeal of a dog subject to euthanasia is denied.
2. Addition of a rehabilitation clause to provide a mechanism in which a dog declared dangerous or vicious may earn a repeal of the declaration.
3. Clear definition of ownership to include and provide for foster situations to allow an animal deemed vicious to be taken back by the foster organization.
4. Concern over individual's ability to obtain insurance for animals declared vicious.
5. Concern that in the definition of the proposed language: "*Vicious Dog*" definition: *2. Any dog with a known propensity, tendency or disposition to attack without provocation, to cause injury or to otherwise endanger the safety of human beings or domestic animals...* the intention was to be breed specific.

The Public Safety Committee then brought the meeting back to order. The concerns expressed by WBCAR were addressed by Committee members and City staff as follows:

1. City staff reiterated that after speaking with the WBCAR group on May 21st, staff amended the proposed language to allow for five (5) *days after the denial of an appeal* from the previous *two (2) days from the date of the hearing*. Currently, City ordinance does not require any minimum time lapse before an acting agent may euthanize an animal after denial of an appeal. This amendment more than doubled staff's original recommendation and allows individuals potentially more than five (5) days to seek redress in court.
2. City staff stated that a rehabilitation clause has not been considered at this time because such a process has not yielded quantifiable evidence of success in staff's research. Staff did state that such a process could be considered in the future after proper research and analysis has been conducted on rehabilitation processes.
3. After some discussion, the Committee directed staff to discuss the issue of clear ownership with WBCAR before the Council June 24, 2013 meeting.
4. Staff stated that such insurance does exist based on their research and was quoted \$167 per month for \$250,000 liability coverage.
5. Staff stated that none of the proposed language is intended to be breed specific.

The Public Safety Committee then voted unanimously to have the proposed policy brought back to the full Council for consideration with the direction to staff to discuss with WBCAR the issue of a clear definition of ownership as cited above, (bullet 3). In correspondences with WBCAR following the Public Safety Committee meeting, staff amended Section 83 (d) 2. with the following language to address this concern: "*It shall be illegal for an owner or keeper of a vicious dog to sell, foster or give away the dog. In the event the dog declared vicious is being kept at a foster home operating pursuant to a permit provided by an animal shelter or foster agency licensed by the Department of Agriculture of the State of Illinois, the dog may be returned to the animal shelter or foster agency issuing the permit. The animal shelter or foster agency receiving the dog back from the foster home shall be bound by and comply with the provisions of this sub-section, (d), pertaining to the requirements for keeping dogs declared vicious, and shall not sell, foster or give away the dog.*" This language parallels the language within the Illinois Animal Control Act (510 ILCS 5/2.16).

ADDITIONAL RESEARCH: The issue and challenge of establishing fair, equitable, and responsible animal control policies is not unique to the City. Communities nationwide are experimenting with new legislative measures to address the public safety aspect of pet ownership. Some communities have decided to focus policy toward specific breeds of animals. Denver, CO enacted a citywide ban on pit bulls requiring all pit bulls in the community be removed and/or euthanized. The state of Ohio passed legislation that labeled all pit bulls as “vicious dogs” and subject to vicious dog requirements and restrictions regardless of the absence of any behavioral concerns. (See: http://www.cbalaw.org/_files/publications/lawyers-quarterly/Vicious%20Dogs%20in%20Ohio.pdf) On May 22, 2012, the Ohio legislation was amended to no longer target a specific breed, but to require any dog owner having an animal identified by a jurisdiction as being vicious carry a minimum liability insurance of \$100,000. According to staff’s research, this approach has been the more popular emerging trend in public policy.

Fourteen (13) states have passed legislation requiring liability insurance be obtained for animals declared vicious, (or in some cases dangerous), these include: Delaware, Georgia, Michigan, Minnesota, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, and Washington. (See: <http://www.insurancequotes.com/home-insurance-blacklisted-breeds/>) According to a study performed by the Insurance Information Institute (III) and State Farm, dog bites accounted for more than one-third of all homeowners’ insurance liability claims paid out in 2012, costing \$489 million. (See: http://www.iii.org/issues_updates/dog-bite-liability.html) State Farm reported that it paid out more than \$108 million as a result of its 3,760 dog bite claims in 2012. An analysis of homeowners insurance data by the III found that the average cost paid out for dog bite claims was \$29,752 in 2012. (Source: Insurance Information Institute, State Farm)

Year	Value of Claims (\$ millions)	Number of Claims	Average Cost Per Claim
2003	\$324.20	16,919	\$19,162
2004	\$319.00	15,630	\$20,406
2005	\$321.10	14,295	\$22,464
2006	\$322.30	14,661	\$21,987
2007	\$356.20	14,531	\$24,511
2008	\$387.20	15,823	\$24,461
2009	\$412.00	16,586	\$24,840
2010	\$412.60	15,770	\$26,166
2011	\$490.80	16,695	\$29,396
2012	\$489.70	16,459	\$29,752
Percent of Change 2003 – 2012	51.4%	-1.6%	55.3%

Dog bite incidents can unfortunately be very severe and result in major medical expenses. Due to inflated costs of medical care, many experts recommend \$300,000 in dog bite coverage in case of a severe injury. (See: <http://www.insureme.com/general-insurance/dangerous-dogs-pose-insurance-debate>) Homeowners and renters insurance policies typically cover dog bite liability. Most policies provide \$100,000 to \$300,000 in liability coverage. (See:

http://www.iii.org/issues_updates/dog-bite-liability.html) If the claim exceeds the limit, the dog owner is responsible for all damages above that amount, including legal expenses. Most insurance companies insure homeowners with dogs.

A December 2010 report from the Agency for Healthcare Research and Quality indicates that the number of Americans hospitalized because of dog bites increased by nearly 100% over a fifteen (15) year period. In 2008, approximately 9,500 Americans received serious dog bites, compared with approximately 5,100 in 1993. The increase was far greater than population growth, and pet ownership increased only slightly during the period. Experts were not able to explain the increase. Children under five (5) and adults sixty-five (65) and older were more likely to be hospitalized after a bite. Nearly fifty percent (50%) of those hospitalized required treatment for skin and tissue infections and more than half received procedures such as skin grafts or wound debridement, with treatment costing an average of \$18,200 per patient.

A requirement for animal owners to carry liability insurance for animals declared vicious is a growing trend noted in staff's research. Des Moines, IA recently amended their City ordinance to require \$100,000 in liability insurance be carried for animals declared vicious. The neighboring community of Ankeny, IA followed suit shortly after requiring \$150,000 in liability insurance for vicious animals. Royal Oak, MI, (Detroit, MI suburb), requires \$1,000,000 in liability insurance for vicious and/or dangerous dogs. (See: <http://detroit.cbslocal.com/2013/05/15/royal-oak-ordinance-requires-dangerous-dog-insurance/>)

A requirement to carry insurance is not unique to current Illinois state law. There are currently minimum car insurance requirements in Illinois and anyone caught operating a motor vehicle without proper insurance is subject to fines and penalties. State law does not require insurance companies to provide minimum insurance coverage to potential clients, as private companies they have the discretion to provide insurance on a case-by-case basis. Rather, state law places the responsibility on the individuals and requires them to obtain a certain level of insurance if they wish to drive. It is staff's recommendation that owners of animals that have been identified as vicious, (meaning it has proven to City officials that it has a propensity to attack and act violently), be required to carry minimum liability insurance in the event the animal should attack and inflict harm on a human or other animal a second time.

The proposed ordinance amendments reflect staff's research into current animal control public policy trends. There are many provisions within the amendments that would give animal owners more rights than under current policy. Some brief highlights of the proposed ordinance amendments include:

- Expansion of the definition of "dangerous dog" to include any dog that has been declared dangerous by any other jurisdiction with the exception of any dog declared dangerous that are found dangerous in other jurisdictions solely because of their breed.
- Expansion of the definition of "vicious dog" to include any dog that has been declared vicious by any other jurisdiction with the exception of any dog declared vicious that are found vicious in other jurisdictions solely because of their breed.
- Redefined definition of "enclosure" for a vicious dog, eliminating height requirements for enclosure and focusing on the ability of the enclosure to prevent the animal from escaping.

- Adding a requirement for owners of a dog declared vicious by the City to retain liability insurance with a single limit of \$250,000 to \$500,000 per occurrence and show proof of obtaining insurance to the Police Department.
- Requirement for any dog declared vicious to be micro-chipped and registered with the micro-chip company in the owner's name and listing address where the dog is currently located.
- Requirement for any vicious dog owner to notify the United States Post Office and utility providers in writing of the vicious dog declaration or the disposition of any appeal of the declaration. The owner will be required to provide proof of the notification to the Police Department.
- Redefined the definition of "injury" to state any wound that is serious enough to require medical or veterinary treatment regardless of whether medical or veterinary treatment is sought.
- Redefined owner to include any firm, limited liability company or corporation, keeping, possessing or harboring a dog or cat. Staff has experienced issues with enforcement efforts in situations where dogs were being fostered. Ownership of the fostered dogs was not clear as the animal was currently being temporarily held for the care of a potential new owner. *These concerns have not risen from the operations of the WBCAR group.* But staff has found that not all foster groups or temporary situations operate as responsibly as has been the experience with WBCAR. This amendment will place clear ownership on any dogs currently being fostered.
- Addition of Section 83 (a) which clearly defines procedures for declaring a dog dangerous, vicious or subject to euthanasia. This section provides more rights to animal owners and allows hearing officers to consider more evidence and circumstances when deciding on a declaration, (i.e. the size of the animal, the history of the animal, the circumstances leading up to the bite incident, etc.).
- Addition of Section 83(e) to provide that in the event the appeal of a declaration that a dog is subject to euthanasia is denied, the dog shall be euthanized no sooner than five (5) days after denial of the appeal.

Staff's research into animal control policies also included a review of the Town of Normal's Animal Control Ordinance, the Illinois Animal Control Act, the American Bar Association's policy recommendations, and the Illinois Administrative Procedures Act. The proposed ordinance amendments reflect certain aspects of all of these policies and represent staff's recommendation to best enhance the City's ability to properly identify potentially problem animals, provide safe and equitable restrictions on declared animals, and penalize irresponsible pet owners.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: McLean County Animal Control Center, Humane Society of Central Illinois, and WBCAR.

FINANCIAL IMPACT: None.

Respectfully submitted for Council consideration.

Prepared by:

Alex McElroy, Asst. to the City Manager

Legal review by:

George D. Boyle, Asst. Corporation Counsel

Recommended by:

David A. Hales
City Manager

ORDINANCE NO. 2013 - 38

**AN ORDINANCE AMENDING BLOOMINGTON
CITY CODE CHAPTER 8**

BE IT ORDAINED by the City Council of the City of Bloomington, Illinois:

SECTION 1. That Bloomington City Code Chapter 8, Sections 50, 53, 54 and 83 shall be and the same are hereby amended to read as follows: (additions are indicated by underlining; deletions are indicated by strikeouts):

SEC. 50 DEFINITIONS.

(a) “Animal shelter” means a facility operated, owned, or maintained by a duly incorporated humane society, animal welfare society, or other non-profit organization for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals. “Animal shelter” also means any veterinary hospital or clinic operated by the veterinarian or veterinarians licensed under the Veterinary Medicine and Surgery Practice Act of 2004 which operates for the above mentioned purpose in addition to its customary purposes.

~~(a) (b) Bitten.~~ “Bitten” means seized with the teeth or jaws so that the person or thing seized has been nipped or gripped or has been wounded or pierced, and includes contact of saliva with any break or abrasion of skin.

~~(b) (c) Cat.~~ “Cat” includes all animals, male and female, of the feline species.

(d) “Dangerous Dog” means:

1. Any dog that behaves in a manner that a reasonable person would believe poses a serious and unjustified threat of physical injury or harm to a person or a companion animal; or
2. Any dog that without justification bites a person or other animal, whether on public or private property, that does not cause injury; or
3. Any dog that has been declared a dangerous dog by any other jurisdiction, provided that such finding was not based solely upon the breed of the dog.
4. No dog shall be deemed a dangerous dog if it bites, attacks or menaces a trespasser on the property of its owner, or harms or menaces anyone who has tormented or abused it, or is performing in the line of duty as a professionally trained dog for law enforcement.

~~(e) (e) Dog.~~ “Dog” includes all animals, male and female, of the canine species.

(f) “Dog subject to euthanasia” means:

1. Any dog which has killed or severely injured any person or dog; or
2. Any dog which has rabies; or
3. Any dog previously declared a vicious dog which subsequently bites a person or animal causing injury to that person or animal; or
4. Any dog previously declared a vicious dog, which, when unmuzzled, in an aggressive or terrorizing manner approaches any person in an apparent attitude of attack on any street, sidewalk, public or private property other than the property of the owner of the dog; or
5. Any dog previously declared a vicious dog which subsequently is found running at large; or
6. Any dog previously declared a vicious dog which is not kept in the manner required for keepers of vicious dogs.
7. Any dog previously declared a vicious dog which is found without current registration or vaccinations.

(g) “Enclosure” means a fence or structure capable of preventing the animal from escaping at any time. It shall be securely locked at all times. If the enclosure is a room within a residence, it shall not have direct access to common areas of the building or to outdoors, unless it leads directly to an outdoor enclosure, capable of preventing the animal from escaping that is securely locked. An owner or keeper of a vicious dog must have a secure fenced enclosure in which to exercise the dog.

(h) “Impounded” means taken into the custody of the Animal Control Center where City of Bloomington personnel have authority to take animals.

(i) “Injury” means any wound serious enough to require medical or veterinary treatment, regardless of whether medical or veterinary treatment is actually sought, obtained or provided.

~~(d)~~ (j) Owner. “Owner” means any person having a right of property in an animal, or who keeps or harbors an animal, or who has it in his care, or acts as its custodian, or who knowingly permits a dog to remain on any premises occupied by him or her. or persons keeping or harboring a dog or cat or having it in their care or acting as its custodian or permitting a dog or cat to remain on or about any premises occupied by such person(s). In the event that the owner, harbinger, or keeper of any dog or cat is a minor, the parent or guardian of such minor shall be responsible ~~to ensure~~ for ensuring that all provisions of this Ordinance are complied with and it shall be illegal for such parent or guardian to fail to prohibit any violation of this Code by a minor.

(k) “Person” means any individual, firm, corporation, limited liability company, partnership, society, association or other legal entity.

~~(e)~~ (l) ~~Running at Large.~~ “Running at Large” means being off the premises of the owner and not under restraint or not under physical control of the owner or an authorized person either by leash, cord or chain. Control referred to as voice control is not physical control when off the premises of the owner.

(m) “Vicious Dog” means:

1. Any dog that when unprovoked bites or attacks a human being or other animal on either public or private property; or
2. Any dog with a known propensity, tendency or disposition to attack without provocation, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or
3. Any dog which has been found to be a dangerous dog on three separate occasions in this or any other jurisdiction provided that such finding was not based solely upon the breed of the dog; or
4. Any dog that has been found to be a vicious dog in any other jurisdiction, provided said declaration is not based solely upon the breed of the dog.
5. No dog shall be deemed a vicious dog if it bites, attacks or menaces a trespasser on the property of its owner, or harms or menaces anyone who has tormented or abused it, or is performing in the line of duty as a professionally trained dog for law enforcement.

SEC. 53 RECLAMATION OF IMPOUNDED ANIMAL.

(a) Any impounded dog or cat may be reclaimed by:

- (1) payment of a City of Bloomington release fee of \$50.00 ~~30.00~~; and
- (2) signing an acknowledgment of ownership of the animal; and
- (3) complying with all applicable rules and regulations and by paying all charges and fees pertaining to the impoundment and care of the animal imposed by McLean County Animal Control. ~~complying with all applicable rules, regulations and fees of any involved animal shelter.~~

~~(b) If any dog or cat is impounded a second or subsequent time, the owner shall be charged with the offense which caused the impounding in addition to paying any fees referred to herein.~~

(b) (e) Any impounded dog or cat which has been placed in the McLean County Animal Control ~~Shelter~~ by a representative of the City of Bloomington shall be subject to all of the rules, regulations and fees that apply to other similar types of animals that are in or may be placed in the Shelter.

SEC. 54 ANIMALS NOT RECLAIMED.

(a) With the exception of animals impounded for a 10-day quarantine period as provided in sub-section (b) of this Section, any animal not reclaimed within 7 business days of impoundment shall become the property of McLean County Animal Control;

(b) For animals subject to a 10-day quarantine period, any animal not reclaimed within 5 business days from the date the quarantine ends shall become the property of McLean County Animal Control.

SEC. 83 DANGEROUS AND VICIOUS DOGS; DOGS SUBJECT TO EUTHANASIA.

(a) Procedures for Declaring a dog dangerous, vicious or subject to euthanasia:

1. Any person may file a complaint with the Police Department seeking to have a dog declared dangerous, vicious or subject to euthanasia. The Police Chief or his or her designee shall review and investigate the complaint and, if the criteria for declaring a dog dangerous, vicious or subject to euthanasia have been met, shall make the appropriate declaration and provide written notification of the declaration to the owner of the dog. Said notification shall include the basis for the declaration, the declaration, any restrictions placed on keeping the animal, and notice of the right to appeal the declaration.
2. An owner of a dog declared dangerous, vicious or subject to euthanasia shall have the right to appeal the declaration, provided that the owner files a written request to appeal said declaration with the Bloomington Police Department no later than seven days after receiving notification. If no written request for appeal is made in the time provided, the owner of the dog subject to the declaration shall have 14 days from the date of notification within which to comply with all requirements pertaining to the declaration. If a written request for an appeal is timely made, a hearing shall be held on the appeal in an expeditious manner, no later than 30 days from the date the owner requests an appeal.
3. The hearing shall be informal and strict rules of evidence shall not apply. The owner may be represented by counsel, present oral and written evidence, and may cross-examine witnesses. The hearing shall be held before an Assistant Police Chief or other hearing officer duly authorized by the Chief of Police. In making a determination on any appeal of a declaration, the hearing officer shall consider the criteria and definitions

set forth in Section 50 of this Chapter. The hearing officer may also consider the following:

- (i) the circumstances of the incident or incidents giving rise to the declaration;
- (ii) the nature and extent of any injury caused to humans or animals as the result of the incident or incidents giving rise to the declaration;
- (iii) the size of the dog subject to the declaration;
- (iv) whether the dog subject to declaration was current on its registration and vaccinations at the time of the most recent incident forming the basis for the declaration;
- (v) any previous history of the dog subject to the declaration involving incidents of threat, attack or injury to human beings or other animals;
- (vi) the history of the owner of the dog subject to the declaration, including prior incidents involving animals owned or kept by the owner, whether said animals have been current on their registrations and vaccines, and the conditions under which they have been kept.

~~(a) — Definitions.~~

~~(1) — Vicious dog means:~~

- ~~(a) — Any individual dog that when unprovoked, inflicts, bites or attacks a human being or other animal either on public or private property.~~
- ~~(b) — Any dog with a known propensity, tendency or disposition to attack without provocation, to cause injury or to otherwise endanger the safety of human beings or domestic animals.~~
- ~~(c) — Any dog which has been found to be a “dangerous dog” upon three (3) separate occasions.~~
- ~~(d) — No dog shall be deemed “vicious” if it bites, attacks, or menaces a trespasser on the property of its owner or harms or menaces anyone who has tormented or abused it or is performing in the line of duty as a professionally trained dog for law enforcement or professional guard duties.~~

~~(2) — Dangerous dog means any dog which when either unmuzzled, unleashed, unattended or otherwise unrestrained or leashed but uncontrolled by its owner or a member of the owner's family, in an aggressive or terrorizing manner approaches any person in a menacing fashion or in an apparent attitude of attack upon streets, sidewalks, or any public property or places.~~

~~(3) — Enclosure means a fence or structure of at least six (6) feet in height, forming or causing an enclosure suitable to prevent the entry of young children, and suitable to confine a vicious dog in conjunction with other measures which may be taken by the owner or keeper, such as tethering of a vicious dog. Such enclosure shall be securely enclosed and locked and designed with secure sides, top and bottom and shall prevent the animal from escaping from the enclosure in any manner.~~

~~(4) — Impounded means taken into the custody of the public pound where the City of Bloomington personnel has authority to take animals.~~

(b) Disposition of Appeals.

1. The hearing officer shall inform the owner in writing of the disposition of any appeal within 5 days of the date of the hearing. If the appeal is denied and the declaration upheld, the owner shall have 14 days from receipt of the written notification of the disposition of appeal within which to comply with all requirements pertaining to the declaration.
2. Appeal of the determination of the hearing officer shall be as provided by the Illinois Administrative Procedures Act.

(c) Requirements for Keeping Dogs Declared Dangerous.

1. Any person owning or keeping a dog declared dangerous must be in compliance with the requirements of this Section within 14 days of the receipt of notification of the declaration or within 14 days of the receipt of a decision of an appeal upholding the dangerous dog declaration. Failure to comply with this Section may also result in fines, fees and court costs being assessed against the owner. Each failure to comply with a provision of this Section shall constitute a separate offense. Each day an owner fails to comply with a provision of this Section shall constitute a separate offense.
2. It is illegal for any person to create a public nuisance by permitting any dangerous dog to be kept on the owner's property in violation of Section 81(a) of this Chapter. Guide dogs for blind or hearing impaired persons, support dogs for the physically handicapped and professional guard or police owned dogs are exempt from the provisions of this Section, provided an attack or injury to a person occurs while the dog is performing duties as expected.

3. Any dog declared dangerous shall be spayed or neutered.
4. Any dog declared dangerous shall be micro-chipped and registered with the micro-chip company in the owner's name with a current address where the dog is located.
5. The owner of a dog declared dangerous shall purchase a "Dangerous Dog Tag" from McLean County Animal Control. The tag must be affixed to the dog's collar in a manner so that it can be seen. Said tag shall be worn by the dog at all times. Registration for the dangerous dog tag must be renewed annually at McLean County Animal Control.
6. The owner of a dangerous dog shall be required to immediately report any biting incidents involving the dog and a person or animal to the Bloomington Police Department or to McLean County Animal Control.
7. The owner of a dog declared dangerous shall notify the United States Postal Service local office and all utility providers in writing of the dangerous dog declaration within 14 days of receiving the declaration. The dog owner shall provide proof of said notification to the Bloomington Police Department.
8. If the owner of a dog declared dangerous resides at rental property, said owner shall notify the landlord or property management of the dangerous dog declaration within 14 days of receiving said declaration. The dog owner shall provide proof of said notification to the Bloomington Police Department.
9. The owner of any dog declared dangerous shall immediately notify the Bloomington Police Department of any change of address or location of the dangerous dog. If the dog is removed from the City of Bloomington, said notification shall also be provided in writing to authorities of the jurisdiction where the dog is located.

(d) Requirements for Keeping Dogs Declared Vicious.

1. Any person owning or keeping a dog declared vicious must be in compliance with the requirements of this Section within 14 days of receipt of notification of the declaration or within 14 days of the receipt of a decision of an appeal upholding the vicious dog declaration. Any failure to comply with the requirements of this Section pertaining to the keeping of a dog declared vicious shall result in the impoundment of the dog and the dog being subject to euthanasia. Failure to comply with this Section may also result in fines, fees and court costs being assessed against the owner. Each failure to comply with a provision of this Section shall

constitute a separate offense. Each day an owner fails to comply with a provision of this Section shall constitute a separate offense.

2. It shall be illegal for an owner or keeper of a vicious dog to sell, foster or give away the dog. In the event the dog declared vicious is being kept at a foster home operating pursuant to a permit provided by an animal shelter or foster agency licensed by the Department of Agriculture of the State of Illinois, the dog may be returned to the animal shelter or foster agency issuing the permit. The animal shelter or foster agency receiving the dog back from the foster home shall be bound by and comply with the provisions of this sub-section, (d), pertaining to the requirements for keeping dogs declared vicious, and shall not sell, foster or give away the dog.

3. The owner of a dog declared vicious shall contact the Bloomington Police Department within 14 days of receipt of the declaration, or within 14 days of the receipt of a decision of an appeal upholding the vicious dog declaration, and arrange for an inspection of the premises where the dog subject to said declaration is kept. It shall be illegal for any person to keep or maintain any dog which has been found to be a vicious dog unless such dog is at all times kept in an enclosure, as defined in Section 50 of this Chapter approved by the Bloomington Police Department. The only times that a vicious dog may be allowed out of the enclosure are:

(i) if it is necessary for the owner or keeper to obtain veterinary care for the vicious dog; or

(ii) to comply with the order of a court of competent jurisdiction.

When taken out of the enclosure, said vicious dog must be securely muzzled and restrained with a chain having a tensile strength of at least 300 pounds and not exceeding three (3) feet in length, and shall be under the direct control and supervision of the owner or keeper of the vicious dog.

Any dog which has been found to be a vicious dog and which is not confined in an enclosure shall be impounded and shall be subject to euthanasia.

4. The owner of a vicious dog shall notify the United States Post Office and utility providers in writing of the vicious dog declaration or the disposition of any appeal of said declaration. The owner shall provide proof of the notification to the Bloomington Police Department.

5. If the owner of a dog declared vicious resides at rental property, said owner shall notify the landlord or property management of the vicious dog

declaration within 14 days of receiving said declaration. The dog owner shall provide proof of said notification to the Bloomington Police Department.

6. The owner of a vicious dog shall have said dog spayed or neutered.
7. The owner of any dog declared vicious shall have said dog micro-chipped and registered with the micro-chip company in the owner's name and listing an address where the dog is currently located.
8. The owner of a dog declared vicious shall purchase a "Vicious Dog Tag" from McLean County Animal Control. Said tag shall be affixed to the dog's collar and visible at all times. Registration for the vicious dog tag must be renewed annually at McLean County Animal Control.
9. The owner of a dog that has been declared vicious shall be required to purchase general liability insurance covering property and bodily injury with a combined single limit of at least \$250,000 per occurrence and shall show proof of obtaining said insurance to the Bloomington Police Department. The owner shall notify the Bloomington Police Department not more than 14 days after the cancellation of said insurance policy.
10. The owner of any dog declared vicious shall immediately report to the Bloomington Police Department any incident involving the vicious dog and any bite, attack or threat to a person or animal.
11. The owner of any dog declared vicious shall immediately notify the Bloomington Police Department of any change of address or location of the vicious dog. If the dog is removed from the City of Bloomington, said notification shall also be provided in writing to authorities of the jurisdiction where the dog is located.

(e) Dogs Subject to Euthanasia. It shall be the duty of the owner of any dog declared Subject to Euthanasia by the Police Chief or his designee to immediately take the dog to an impound facility or veterinarian who shall euthanize said dog or, in the event of an appeal, shall hold such animal pending a hearing of an appeal before the Police Chief or his designee. If the appeal is denied and the declaration upheld, the animal shall be euthanized in a humane manner no sooner than 5 days after the decision denying the appeal, unless the owner consents to an earlier time. It shall be unlawful for the owner of a dog declared subject to euthanasia to sell, foster, give away or remove said dog from the jurisdiction. In the event that an owner does not deliver a dog subject to euthanasia to an impound facility or veterinarian, the City may seek a warrant from the Circuit Court of McLean County for the immediate seizure and euthanasia of the dog. The owner or keeper of a dog subject to euthanasia must provide to the Bloomington Police Department a letter or other proof signed by a licensed veterinarian that the dog has been euthanized within seven days of the declaration that the dog is subject to euthanasia. Each day

upon which the owner or keeper of a dog subject to euthanasia fails to provide the notice of euthanasia shall be considered a separate violation of this Ordinance.

(f) Duty to Report Dangerous or Vicious Dogs Brought into the City. Any person keeping a dog which has been declared dangerous or vicious in another jurisdiction shall report that fact to the Bloomington Police Department within 3 days of bringing the dog into the City of Bloomington. All dogs declared dangerous or vicious in another jurisdiction shall be kept in a manner as if declared dangerous or vicious in the City of Bloomington. The Bloomington Police Department shall keep records of all such dogs. The status of a dog declared dangerous or vicious in another jurisdiction shall not be subject to appeal. It shall be unlawful to fail to report a dangerous or vicious dog within three days of bringing the dog into the City of Bloomington.

~~(b) It shall be illegal for any person to keep or maintain any dog which has been found to be a vicious dog unless such dog is at all times kept in an enclosure. The only times that a vicious dog may be allowed out of the enclosure are:~~

~~(1) if it is necessary for the owner or keeper to obtain veterinary care for the vicious dog; or~~

~~(2) to comply with the order of a court of competent jurisdiction.~~

~~When taken out of the enclosure, said vicious dog must be securely muzzled and restrained with a chain having a tensile strength of at least 300 pounds and not exceeding three (3) feet in length, and shall be under the direct control and supervision of the owner or keeper of the vicious dog.~~

~~Any dog which has been found to be a vicious dog and which is not confined in an enclosure shall be impounded by the law enforcement authority having jurisdiction in such area and shall be turned over to a licensed veterinarian for destruction by lethal injection.~~

~~It shall be illegal for any owner or keeper of a vicious dog to sell or give away any vicious dog.~~

~~(c) It is illegal for any person to create a public nuisance by permitting any dangerous dog to be kept on the owner's property in violation of Section 81(a). Guide dogs for the blind or hearing impaired, support dogs for the physically handicapped, and professional guard or police-owned dogs are exempt from this Section, provided an attack or injury to a person occurs while the dog is performing duties as expected.~~

~~(g) (d)~~ The owner of all professional guard dogs shall register their animals with the Chief of Police. It shall be the duty of the owner of each such dog to notify the Chief of Police of changes of address and the owner shall keep the Chief of Police advised of the location where such dog will be stationed. The Chief of Police shall provide the Police and Fire Departments with a list of such exempted dogs and shall promptly notify such departments of any changes reported to him.

~~(h) (e)~~ The State's Attorney, Police or any citizen may file a complaint to enjoin any person from maintaining, permitting or having a dangerous or vicious dog or nuisance dog or

animal and/or to abate the same, and/or to enjoin the owner of such dog or other animal from permitting the same to leave his premises when not under control by leash or other legal control method. Upon the filing of a complaint in the Circuit Court, the Court, if satisfied that evidence for an injunction may exist, shall grant a preliminary injunction with bond in such amount as the Court may determine to be appropriate, enjoining the defendant from maintaining, permitting or having such nuisance. If the existence of evidence in support of an injunction is established, the Court shall enter an appropriate order and may assess a fine and/or may order that such dog or other animal be humanely destroyed by lethal injection.

~~(f) When a dog has been declared to be dangerous or vicious dog by the Police Department, the owner has the right to an appeal process. These appeals shall first be heard by the Chief of Police or his authorized representative and then by the Courts pursuant to the Administrative Review Act of the State of Illinois.~~

(i) ~~(g)~~ Any person who violates this Ordinance shall be fined not less than \$100.00 nor more than \$1,000.00 for each offense. Each day that an offense continues shall be considered a separate violation.

(j) Owners of dogs declared dangerous or vicious prior to the enactment of this Ordinance shall have 90 days from its enactment to comply with its provisions.

SECTION 2. Except as provided herein, the Bloomington City Code, as amended, shall remain in full force and effect.

SECTION 3. The City Clerk shall be, and she is hereby directed and authorized to publish this Ordinance in pamphlet form as provided by law.

SECTION 4. This Ordinance is enacted pursuant to the authority granted to the City as a home rule unit by Article VII, Section 6 of the 1970 Illinois Constitution.

SECTION 5. This Ordinance shall take effect 10 days from the date of passage.

PASSED this 24th day of June, 2013.

APPROVED this 25th day of June, 2013.

APPROVED:

Tari Renner, Mayor

ATTEST:

Tracey Covert, City Clerk

Mayor Renner introduced this item. The proposed ordinance went beyond one (1) incident. There were ninety-six (96) incidents last year.

David Hales, City Manager, addressed the Council. Questions had been raised if the proposed ordinance was breed specific. A breed specific ordinance would not be a reasonable policy. The goal was to amend the City Code to be of assistance to the Police Department. He hoped that the number of incidents would be mitigated by this proposed text amendment.

Alex McElroy, Asst. to the City Manager, addressed the Council. He noted City staff's attention/due diligence which had been given to this issue by the Council. He noted Wish Bone Canine Animal Rescue's, (WBCAR), concerns. Their efforts were commendable. He reviewed the statistics for dog bites. In 2012, there had been eight (8) dogs per month. This year, there had been fourteen (14) dog bites. City staff had reviewed current ordinance and focused on public safety. The proposed ordinance represented seven (7) months of work. Research on this issue would continue into the future. He noted the collaboration with animal rights advocates. He restated staff's focus was on public safety.

Mr. Hales cited staff's recommendation that this ordinance be passed.

Mayor Renner added that this item had appeared before the Council on three (3) occasions. It had also appeared before the Public Safety Committee twice. There had also been meetings with WBCAR.

Alderman Sage acknowledged City staff's efforts. He reviewed the time line. He echoed Mr. McElroy's comments. He noted that there would be ongoing conversations going forward. He recommended that City staff report back to Council at their September 23, 2013 meeting. The City would see the experience with the new ordinance. He also recognized Barb Adkins', Deputy City Manager, efforts. He cited the Public Safety Committee's October 10, 2013 meeting. WBCAR attended same. The Council had been provided with information regarding input, updates and concerns regarding this ordinance. The Council had also requested feedback.

Mr. Hales cited the Public Safety Committee's September 12, 2013 meeting. The Council had received information. WBCAR was invited to provide feedback for the Public Safety Committee's October 10, 2013 meeting.

Alderman Stearns believed that the conversation should be continued. The proposed ordinance would result in change and the development of another process. She noted Alderman Schmidt's comments on this issue. The City's home rule authority would result in an ordinance be adopted which would be in conflict with state law. The City could adopt the proposed ordinance. She questioned if the City should adopt same.

She noted that WBCAR and the Humane Society of Central Illinois (HSCI) did not support this ordinance. She questioned the appeal process for dogs labeled as dangerous

and/or vicious. The City needed to look to state law and adopt a minimum standard. The proposed ordinance could result in arbitrary decisions by the City's Police Chief. The state law was correct. This law established a board which would make the decision.

Alderman Schmidt thanked George Boyle, Asst. Corporation Counsel and Mr. McElroy for their efforts. She was not concerned about the regular process. She cited WBCAR's continued involvement to enhance this ordinance. She believed that WBCAR should be invited to the Council's September 23, 2013 meeting to provide input regarding any amendments to same. She added her interest in developing the best possible ordinance. WBCAR had raised serious concerns.

Mr. Hales recommended that the City be open to suggestions for any improvements to the proposed ordinance from any interested party.

Mayor Renner addressed the appeal process.

Todd Greenburg, Corporation Counsel, addressed the Council. He cited the state's administrative review law. An individual would file with the Circuit Court for an administrative appeal. He noted the course of events. He added that dangerous dogs were not subject to euthanasia.

Mr. Hales restated the goal of the proposed ordinance was improved/enhanced public safety. Justice could not be served if the City was unable to prosecute. The insurance requirements addressed medical costs. Insurance addressed the gaps faced by the victims. Currently, the City had limited tools available to address this issue.

Alderman Black had enjoyed the process. He noted constituent comments regarding this issue. The City's current ordinance was lacking. He added his support for Alderman Sage's comments. The Council had heard a number of what if scenarios. City ordinances were amendable. He noted an email from Tim Anderson, DVM, HSCI, which expressed support for the proposed ordinance.

Alderman Stearns acknowledged that the City Code was amendable. She added that Dr. Anderson had rescinded his previous email.

Alderman Schmidt added that the language needed to be changed. She specifically cited definitions.

Motion by Alderman Sage, seconded by Alderman Fazzini that the Text Amendment be approved and the Ordinance be passed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: Alderman Stearns.

Motion carried.

The following was presented:

SUBJECT: Analysis of Bids and Approval of Contract for 2013 General Resurfacing

RECOMMENDATION/MOTION: That the bid for the 2013 General Resurfacing be awarded to Rowe Construction Company, in the amount of \$2.5 million, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Goal 2. Upgrade City infrastructure and facilities; Goal 3. Strong neighborhoods; and Goal 5. Great place – livable and sustainable City by maintaining the street infrastructure within the City.

BACKGROUND: At the January 28, 2013 meeting, Council directed the Public Works Department to seek competitive bids for the 2013 General Resurfacing. One (1) bid was received and opened at 10:00 a.m. on June 12, 2013 at City Hall. Since the low bid is under budget and the project bid documents allow the addition of resurfacing locations, a contract for the entire budget amount should be awarded.

Rowe Construction Company	\$2,383,883.12
Engineer's Estimate	\$2,791,263.90
Budget	\$2,500,000.00

The contract documents require all work to be completed by October 30, 2013 unless a time extension is granted. Time extensions may be granted for a number of reasons, but the most common are because of additional work the City would like to have done or sustained bad weather conditions.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$4,000,000 for the overall City Pavement Program of which \$2,500,000 is allocated for General Resurfacing in line item 40100100-72530. Funds within the City's Pavement Program are allocated as follows: General Resurfacing \$2,500,000, Street & Alley Repair \$1,000,000, Pavement Preservation \$200,000, Street and Alley Maintenance \$200,000 and Street micro-resurface \$100,000. This memo addresses the General Resurface portion which compiles 62.5% of the City's Pavement Program. Staff recommends the entire \$2,500,000 be expended on General Resurfacing, which will correspond with the appropriation within the City Budget. Stakeholders may locate this line item in the FY 2014 Other Funds and Capital Improvement Program Budget document on page #106.

Prepared by: Jim Karch, P.E., Director of Public Works

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Recommended by:

David A. Hales
City Manager

Mayor Renner introduced this item.

David Hales, City Manager, addressed the Council. The FY 2014 budget included \$4 million for street resurfacing and street & alley repair. This budget documented the Council's support for pavement projects. He noted the increase to the dollars directed toward same. He stated that citizens would be impacted by this project.

Jim Karch, Public Works Director, addressed the Council. He cited the City's Pavement Management Program. This program would address the problem. Objective criteria had been used. He cited street ratings and the repair costs. This criteria would be used to justify the expenditure. A variety of approaches would be used. He specifically cited street ratings and GIS (Geographical Information System). City staff was interested in proactive preventative maintenance. He noted permanent pothole repair. In house staff and crews had been diligent and hard working. He also addressed street treatments such as Reclamite and CRF treatment. He recommended expanded use of these products which extended pavement life. There was a return on investment. CRF use could be expanded and used at full strength. This would extend pavement life. He recapped the potential savings and provided statistics, (costs: resurfacing at \$30 per sq. yd.; Reclamite at .83 per sq. yd.; and CFR at \$2.46 per sq. yd.) He believed that preventive maintenance measures should be emphasized as these practices would extend pavement life.

There were two (2) major street programs: General Resurfacing and Street & Alley Repair. This first program addressed the larger street projects. In addition, the Council had already approved the pavement preservation contract. He respectfully requested Council approval of the General Resurfacing and Street & Alley Repair contracts.

Alderman Black recommended that the before and after photographs be posted on the City's web site. He also questioned the environmental impact of Reclamite.

Mr. Karch noted that whenever possible photographs were used. He cited the use of water bill inserts, the City's web site, the City Manager's Monthly Report, etc. He noted that the proper application of Reclamite was critical. Education regarding this product was key. City staff had not seen and/or heard of any environmental issues.

Motion by Alderman Black, seconded by Alderman Schmidt that the bid for the 2013 General Resurfacing be awarded to Rowe Construction Company, in the amount of

\$2.5 million, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Bids and Approval of Contract for 2013 Street and Alley Repair

RECOMMENDATION/MOTION: That the bid for the 2013 Street and Alley Repair be awarded to Rowe Construction Company, in the amount of \$1.3 million, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Goal 2. Upgrade City infrastructure and facilities; Goal 3. Strong neighborhoods; and Goal 5. Great place – livable and sustainable City by maintaining the street infrastructure within the City.

BACKGROUND: At the January 28, 2013 meeting, Council directed the Public Works Department to seek competitive bids for the 2013 Street and Alley Repair. Two (2) bids were received and opened at 10:00 a.m. on June 12, 2013 at City Hall. Since the low bid is under budget and the project bid documents allow the addition of repair locations, a contract for the entire budget amount should be awarded.

Rowe Construction Company	\$1,264,006.53 (<i>Low Bid</i>)
H.J. Eppel & Company, Inc.	\$1,421,735.95
Engineer's Estimate	\$1,518,132.50
Pavement Program Budget	\$1,000,000.00
Water Budget for Lake Bloomington Streets	\$ 150,000.00
Fire Budget for Repairs at Fire Station Lots	<u>\$ 150,000.00</u>
Total Budget	\$1,300,000.00

The contract documents require all work to be completed by October 30, 2013 unless a time extension is granted. Time extensions may be granted for a number of reasons, but the most common are because of additional work the City would like to have done or sustained bad weather conditions.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$4,000,000 for the overall City Pavement Program of which \$1,000,000 is allocated for Street and Alley Repair in line item 40100100-72530. Funds within the City's Pavement Program are allocated as follows: General Resurfacing \$2,500,000, Street & Alley Repair \$1,000,000, Pavement Preservation \$200,000, Street and Alley Maintenance \$200,000 and Street micro-resurface \$100,000. This memo addresses the Street and Alley Repair which compiles twenty percent (25%) of the City's Pavement Program. Additionally, to benefit from an '*economies of scale*' approach, staff incorporated a street and parking lot repair for the Water and Fire Departments into the street and alley repair bid. The Water Department included a bid to resurface roads at Lake Bloomington. The funds for this project are appropriated within the Water Fund line item 50100140-72530. The Fire Department's Budget included \$150,000 in line item 10015210-79990 to resurface the parking lots at three (3) Fire Stations. Staff recommends the entire \$1,300,000 be expended on Street and Alley Repair, which will match the budget appropriations within the Capital, Water and General Fund. Stakeholders may locate this line item in the FY 2014 Other Funds and Capital Improvement Program Budget document on page #106 and for the Water Fund on page #150.

Prepared by: Jim Karch, P.E., Director of Public Works

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Recommended by:

David A. Hales
City Manager

Mayor Renner introduced this item.

David Hales, City Manager, recommended Council approval of this item.

Motion by Alderman Fazzini, seconded by Alderman Fruin that the bid for the 2013 Street and Alley Repair be awarded to Rowe Construction Company, in the amount of \$1.3 million, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Amendment to the Bloomington City Code, Chapter 28, Relating to the Regulation of Noise in the City of Bloomington

RECOMMENDATION/MOTION: That the Text Amendment be approved and the Ordinance passed.

STRATEGIC PLAN LINK: Goal 3. – Strong neighborhoods.

STRATEGIC PLAN SIGNIFICANCE: Goal 3.a. Residents feeling safe in their homes and neighborhoods. The goal of the Ordinance is to protect, preserve, and promote the health, safety, welfare, peace and quiet of the residents of the City through the reduction, control and prevention of loud and raucous sounds.

BACKGROUND: Barking dogs, construction equipment, amplified musical instruments, garbage trucks, and loud parties are all examples of noise that can be heard within the City. Understandably, certain noise levels must be tolerated by all citizens in order for normal functions of urban life to continue. However, excessive, unnecessary, and/or annoying noise should be subject to regulation. The proposed Text Amendment establishes limits on noise pollution and provides penalties for violations.

Existing Regulations in the City Code

There is no comprehensive section in the City Code regarding offensive noises. *However, it is important to note that there are several sections in the Code dealing with specific noises that are currently being enforced:*

- Chapter 8, Section 8: Noisy Animals – No person shall keep harbor any animal which howls, barks, or emits audible sounds that are unreasonably loud or disturbing and which are of such character, intensity and duration as to disturb the peace and quiet of the neighborhood or such resident or business neighbors as may be in close proximity to such dog. A violation of this Section may result in a fine in the amount of \$100.00.
- Chapter 29, Section 83: Loud and Unnecessary Vehicle Noise/Loud Amplification System – (a) It shall be unlawful to operate a vehicle which makes unusually loud or unnecessary noise. No motor vehicle shall be operated on any street unless such vehicle is provided with a muffler in efficient actual working condition, and the use of a cutout is prohibited. (b) No driver of any motor vehicle within this State shall operate or permit operation of any sound amplification system which can be heard outside the vehicle from 75 or more feet when the vehicle is being operated upon a highway, unless such system is being operated to request assistance or warn of a hazardous situation.
- Chapter 28, Section 65: Disorderly (Boisterous) House – No person owning or in possession, charge or control of any building or premises shall use the same or permit the use of the same or rent the same to be used for any business or employment or for any purpose of pleasure or recreation if such use shall, from its boisterous nature, disturb or

destroy the peace of the neighborhood in which such building or premises are situated, or be dangerous or detrimental to health.

Since these provisions are already addressed in the City Code, they are not included in the proposed Text Amendment.

Proposed Regulations

Noise ordinances are divided into two (2) types – those which are based on disturbing the listener (qualitative) and those based on exceeding decibel levels (quantitative). The proposed Text Amendment addresses both. The purpose is to protect, preserve and promote the health, safety, welfare, peace, and quiet of the residents of the City through the reduction, control, and prevention of unreasonably loud and raucous sounds, or any noise that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity.

Although not an exclusive list, specific prohibited noises are provided in subsection (d) of the Ordinance. However, all noises are to be judged by the above-referenced standard.

Constitutionality

This Ordinance should not be construed as preventing the lawful exercise of the right to free speech protected by the Constitutions of the United States and the State of Illinois. Noise ordinances may be challenged for running afoul of the Constitution in three (3) areas – First Amendment free speech (prior restraint); Due Process (both vagueness and overbreadth); and due process (unfettered discretion in an administrative officer). Generally, a content-neutral time, place and manner regulation of noise that is narrowly tailored to serve a significant government interest will be valid. The government may regulate expressive conduct through time, place and manner restrictions so long as the restrictions are: 1.) reasonable; 2.) content-neutral; 3.) narrowly tailored to serve a significant government interest; and 4.) leave open alternate channels of communication. This Ordinance is a reasonable content-neutral regulation serving a purpose unrelated to the content of the message being conveyed. That purpose is to reduce noise and protect the public from unwanted noise. Moreover, it leaves open alternative channels of communication.

Finally, with regard to any potential vagueness and overbreadth challenges with the phrase “loud and raucous”, there is already established caselaw supporting qualitative, subjective (“loud and raucous”) ordinances. In *Kovacs v. Cooper*, 336 U.S. 77 (1949), a noise ordinance prohibiting “loud and raucous noises” was challenged as being violative of due process on the grounds that it was so obscure, vague, and indefinite as to be impossible of reasonably accurate interpretation. The United States Supreme Court rejected this challenge, stating that while the words “loud and raucous” were abstract, they had, through daily use, acquired a content that conveyed to any interested person a sufficiently accurate concept of what was forbidden. In *Normal v. Stelzel*, 109 Ill.App.3d 836 (4th Dist. 1982), the Illinois Appellate Court for the Fourth District, also found that the “loud and raucous” standard for noise violations withstands constitutional due process.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: The public was allowed to submit comments on the City's web site to the first draft of the Ordinance in August/September 2012 immediately prior to and following an August 13, 2012 Council Work Session. Staff reviewed a total of 118 comments – ninety-four (94) in favor of and twenty-four (24) opposed to.

FINANCIAL IMPACT: None.

Respectfully submitted for Council consideration.

Prepared by & legal review by: Rosalee Dodson, Asst. Corporation Counsel

Reviewed by: R.T. Finney, Interim Chief of Police

Recommended by:

David A. Hales
City Manager

ORDINANCE 2013 - _____

AN ORDINANCE AMENDING CHAPTER 28 OF THE BLOOMINGTON CITY CODE
ADDING SECTION 107 RELATING TO THE REGULATION OF NOISE

BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF BLOOMINGTON, ILLINOIS:

SECTION 1. That the Bloomington City Code, 1960, as amended, be further amended by adding the following Section 107 to Chapter 28:

Chapter 28: Section 107: Noise.

(a) **Purpose.** This Section is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the residents of the City through the reduction, control, and prevention of loud and raucous sounds, or any noise that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity. Nothing in this Section shall be construed as preventing the lawful exercise of the right to free speech protected by the Constitutions of the United States and the State of Illinois.

(b) **Definitions.**

“Loud and Raucous Noise” shall mean any sound which because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the City. The term includes,

but is not limited to, the kinds of loud and raucous noise generated by the activities enumerated in subsection (d), but not including activities enumerated in subsection (f) of this Section.

(c) **General Prohibition.** It shall be unlawful for any person to make, continue, or cause to be made or continued or to allow to be made on premises under the person's ownership or control any loud and raucous noise. Prohibited acts may be established both or either by the testimony of persons who have heard the noises and by recorded decibel levels.

(d) **Specific Acts Prohibited.** The following acts, as illustrations, among others, are declared to be loud and raucous in violation of this Section. This enumeration shall not be deemed to be exclusive. Specific acts include:

- (1) **Sound Reproducing Devices, Loudspeakers, Amplifiers.** The using, operating or permitting to be played, used or operated any musical instrument, machine or electronic device, radio receiving set, phonograph, loudspeaker, sound amplifier or other objects for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or any time with louder volume than is necessary for the convenient hearing of the person or persons who are in the room, chamber, vehicle or outdoor area in which such machine or device is operated and who are voluntary listeners thereto.
- (2) **Loading, Unloading, Opening Boxes.** The creation of loud and raucous noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers.
- (3) **Construction or Repairing of Buildings and Public Improvement.** The creation (including excavation), demolition, alteration or repair of any structure or public improvement other than between the hours of 6:00 a.m. and 10:00 p.m., Monday through Saturday, except in cases of necessity in the interest of public health and/or safety, and then only with a permit from the Public Works Director or his or her designee, which permit shall be granted for a period not to exceed three (3) days or less while the necessity continues and which permit may be renewed for periods of three (3) days or less while the necessity continues.
- (4) **Schools, Courts, Churches and Hospitals.** The creation of any loud and raucous noise on any street adjacent to or across a real property boundary of any school, institution of learning, church, court or hospital while the same is in use, which unreasonably interferes with the workings of such institution, provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital, court or church.
- (5) **Blowers.** The operation of any noise-creating blower, power fan, or any internal combustion engine, between the hours of 7:00 p.m. and 9:00 a.m., the operation of which causes noise due to the explosion of operating gases, fuels, or fluids, provided that the noise is loud and raucous and can be heard across the property line of the property from which it emanates. This subparagraph shall not apply to snow blowers

and other snow removal machinery nor to landscaping operations conducted on golf courses.

- (6) **Yelling, Shouting.** Yelling, shouting, hooting, whistling, or singing, so as to create loud and raucous noise, which as a result annoys or disturbs the peace, quiet, comfort or repose of persons in the surrounding area.

(e) **Decibel Levels.** No person shall make, continue, or cause to be made or continued or to allow to be made on premises under the person's ownership or control any continuous, predictable or recurring source of sound in such a manner as to create a sound pressure level, measured on a sound level meter using the A-weighting network, at or within the property limits of the receiving property which exceeds seventy (70) dB(A). Any person providing testimony on electronic measurements shall use procedures for the measurement of sound that conform to the standards and recommended practices established by the American National Standards Institute.

- (f) **Exemptions.** Sounds caused by the following are exempt from the prohibitions set forth in this Section:

- (1) Repairs of utility structures, which are damaged, in disrepair, or out of service and such condition pose a clear and immediate danger to life, health, or significant loss of property.
- (2) Sirens, whistles, or bells lawfully used by emergency vehicles, or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger, and all sounds associated with City responses to emergency events.
- (3) Reasonable activities conducted on public playgrounds and public or private school/university grounds, which are conducted in accordance with the manner in which such spaces are generally used, including, but not limited to, school/university athletic and school/university entertainment events.
- (4) Outdoor gatherings, public dances, shows, parades, festivals, and other similar outdoor events, provided that a permit has been obtained from the appropriate permitting authority.
- (5) Any event that is sponsored by and directly controlled by the City or its designee.
- (6) Chiming of bells or other similar sounds produced by a religious institution, school, or clock or bell tower.
- (7) Sounds measured within any manufacturing district; excluding sounds generated within any manufacturing district that are measured outside the boundary of the manufacturing district.

(g) **Penalty.** Any person found guilty of violating any of the provisions of this Section shall be fined not less than One Hundred Dollars (\$100.00) for the first offense and not less than Two Hundred Fifty Dollars (\$250.00) for any subsequent offense. A separate and distinct offense is deemed committed each day such violation continues.

SECTION 2. Except as provided herein, the Bloomington City Code, 1960, as amended shall remain in full force and effect.

SECTION 3. The City Clerk is hereby authorized to publish this ordinance in pamphlet form as provided by law.

SECTION 4. This ordinance shall be effective ten (10) days after the date of its publication.

SECTION 5. This ordinance is passed and approved pursuant to the home rule authority granted Article VII, Section 6 of the 1970 Illinois Constitution.

PASSED this _____ day of June, 2013.

APPROVED this _____ day of June, 2013.

APPROVED:

Tari Renner, Mayor

ATTEST:

Tracey Covert, City Clerk

ORDINANCE 2013 - 39

AN ORDINANCE AMENDING CHAPTER 28 OF THE BLOOMINGTON CITY CODE ADDING SECTION 107 RELATING TO THE REGULATION OF NOISE

BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF BLOOMINGTON, ILLINOIS:

SECTION 1. That the Bloomington City Code, 1960, as amended, be further amended by adding the following Section 107 to Chapter 28:

Chapter 28: Section 107: Noise.

(a) **Purpose.** This Section is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the residents of the City through the reduction, control, and prevention of loud and raucous sounds, or any noise that unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity. Nothing in this Section shall be construed as preventing the lawful exercise of the right to free speech protected by the Constitutions of the United States and the State of Illinois.

(b) **Definitions.**

“Loud and Raucous Noise” shall mean any sound which because of its volume level, duration and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the City. The term includes, but is not limited to, the kinds of loud and raucous noise generated by the activities enumerated in subsection (d), but not including activities enumerated in subsection (f) of this Section.

(c) **General Prohibition.** It shall be unlawful for any person to make, continue, or cause to be made or continued or to allow to be made on premises under the person’s ownership or control any loud and raucous noise. Prohibited acts may be established both or either by the testimony of persons who have heard the noises and by recorded decibel levels.

(d) **Specific Acts Prohibited.** The following acts, as illustrations, among others, are declared to be loud and raucous in violation of this Section. This enumeration shall not be deemed to be exclusive. Specific acts include:

- (7) **Sound Reproducing Devices, Loudspeakers, Amplifiers.** The using, operating or permitting to be played, used or operated any musical instrument, machine or electronic device, radio receiving set, phonograph, loudspeaker, sound amplifier or other objects for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or any time with louder volume than is necessary for the convenient hearing of the person or persons who are in the room, chamber, vehicle or outdoor area in which such machine or device is operated and who are voluntary listeners thereto.

- (8) **Loading, Unloading, Opening Boxes.** The creation of loud and raucous noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers.
- (9) **Construction or Repairing of Buildings and Public Improvement.** The creation (including excavation), demolition, alteration or repair of any structure or public improvement other than between the hours of 7:00 a.m. until dark, Monday through Sunday, except in cases of necessity in the interest of public health and/or safety, and then only with a permit from the Public Works Director or his or her designee, which permit shall be granted for a period not to exceed three (3) days or less while the necessity continues and which permit may be renewed for periods of three (3) days or less while the necessity continues.
- (10) **Schools, Courts, Churches and Hospitals.** The creation of any loud and raucous noise on any street adjacent to or across a real property boundary of any school, institution of learning, church, court or hospital while the same is in use, which unreasonably interferes with the workings of such institution, provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital, court or church.
- (11) **Blowers.** The operation of any noise-creating blower, power fan, or any internal combustion engine, other than between the hours of 7:00 a.m. until dark, the operation of which causes noise due to the explosion of operating gases, fuels, or fluids, provided that the noise is loud and raucous and can be heard across the property line of the property from which it emanates. This subparagraph shall not apply to snow blowers and other snow removal machinery nor to landscaping operations conducted on golf courses.
- (12) **Yelling, Shouting.** Yelling, shouting, hooting, whistling, or singing, so as to create loud and raucous noise, which as a result annoys or disturbs the peace, quiet, comfort or repose of persons in the surrounding area.

(e) **Decibel Levels.** No person shall make, continue, or cause to be made or continued or to allow to be made on premises under the person's ownership or control any continuous, predictable or recurring source of sound in such a manner as to create a sound pressure level, measured on a sound level meter using the A-weighting network, at or within the property limits of the receiving property which exceeds seventy (70) dB(A). Any person providing testimony on electronic measurements shall use procedures for the measurement of sound that conform to the standards and recommended practices established by the American National Standards Institute.

(f) **Exemptions.** Sounds caused by the following are exempt from the prohibitions set forth in this Section:

- (8) Repairs of utility structures, which are damaged, in disrepair, or out of service and such condition pose a clear and immediate danger to life, health, or significant loss of property.
- (9) Sirens, whistles, or bells lawfully used by emergency vehicles, or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger, and all sounds associated with City responses to emergency events.
- (10) Reasonable activities conducted on public playgrounds and public or private school/university grounds, which are conducted in accordance with the manner in which such spaces are generally used, including, but not limited to, school/university athletic and school/university entertainment events.
- (11) Outdoor gatherings, public dances, shows, parades, festivals, and other similar outdoor events, provided that a permit has been obtained from the appropriate permitting authority.
- (12) Any event that is sponsored by and directly controlled by the City or its designee.
- (13) Chiming of bells or other similar sounds produced by a religious institution, school, or clock or bell tower.
- (14) Sounds measured within any manufacturing district; excluding sounds generated within any manufacturing district that are measured outside the boundary of the manufacturing district.

(g) **Penalty.** Any person found guilty of violating any of the provisions of this Section shall be fined not less than One Hundred Dollars (\$100.00) for the first offense and not less than Two Hundred Fifty Dollars (\$250.00) for any subsequent offense. A separate and distinct offense is deemed committed each day such violation continues.

SECTION 2. Except as provided herein, the Bloomington City Code, 1960, as amended shall remain in full force and effect.

SECTION 3. The City Clerk is hereby authorized to publish this ordinance in pamphlet form as provided by law.

SECTION 4. This ordinance shall be effective ten (10) days after the date of its publication.

SECTION 5. This ordinance is passed and approved pursuant to the home rule authority granted Article VII, Section 6 of the 1970 Illinois Constitution.

PASSED this 24th day of June, 2013.

APPROVED this 25th day of June, 2013.

APPROVED:

Tari Renner
Mayor

ATTEST:

Tracey Covert
City Clerk

Mayor Renner introduced this item.

Alderman Fazzini cited three (3) areas of improvement. He addressed Section 107 (d) Specific Act Prohibited, (3) Construction or Repairing of Buildings and Public Improvement and (5) Blowers. He saw these two (2) items as similar. The hours for both should be 7:00 a.m. until dusk. He also cited snow removal which he believed should be an exemption. Snow removal would fall under public safety.

Alderman McDade echoed Alderman Fazzini's comments. He noted the lengthy discussions held by the Council regarding this issue. She supported a 7:00 a.m. start time. She had received complaints from citizens. Setting the same time for items (3) and (5) would result in consistent City policy.

Alderman Stearns restated the proposed 7:00 a.m. start time and finish time of dusk. She cited concerns raised regarding the heat of the day. Concerns had been raised by landscaping businesses regarding mowing services.

Alderman Lower expressed his opinion that there were holes in the proposed ordinance. He cited the economic impact that it would have on a variety of businesses. He specifically cited construction and landscaping/mowing as examples. He also noted the impact upon weekend work projects. He also noted that Section 107 (d) (3) would exempt Sundays. He questioned other limitations. He cited aviation. This ordinance would impact its sustainability. The airport needed to operate and by its nature was noisy. Small aircraft was used for flight instruction.

Alderman Fruin believed that the proposed ordinance could be edited by the Council. He would support a dawn to dusk time frame. He recommended that the Council revisit this ordinance in a few months. The City would be able to gauge the economic impact by obtaining feedback from contractors and other local businesses.

Rosalee Dodson, Asst. Corporation Counsel, addressed the Council. The 6:00 a.m. start time for construction addressed the City's union contracts, (summer start time is 6:00 a.m.) City staff had attempted to be fair to all. Airports and airplanes were not included in the proposed ordinance. Federal law pre-empted this industry.

Alderman McDade noted that the 6:00 a.m. start time had been clarified by City staff. She restated that the work hours for construction and landscaping/mowing should be the same.

Alderman Fazzini expressed his concern regarding citizens. He acknowledged that the City's union contracts listed 6:00 a.m. He encouraged the Council to listen to the citizens and adopt a start time of 7:00 a.m. In his opinion, 6:00 a.m. was too early. The start time for Section 107 (b) (3) and (5) should be 7:00 a.m.

Alderman Schmidt appreciated Alderman Lower comments regarding Sundays. Ms. Dodson noted that Sundays were excluded. Alderman Schmidt expressed her opinion that Sundays should not be excluded.

Alderman Black stated that his residence was on Main St. He cited car engines and motorcycles.

R.T. Finney, Interim Police Chief, addressed the Council. The proposed ordinance would have no impact upon motor vehicles. There was a separate state statute for same. This was a difficult issue to address. If the majority of the Council wanted more active enforcement of noisy vehicles, then the Police Department would accommodate same. He added that calls for service would be prioritized. Call regarding noisy lawn mowers would not be a top priority.

Alderman Black questioned enforcement and the use of decibel enforcement.

Interim Police Chief Finney restated that the proposed ordinance would not address motor vehicles traveling on City streets. Decibel meters were meant to address long term continuous noise. There were a number of factors which impacted noise. Vehicle noise can be heard at a distance. Decibel meters were used by OSHA, (Occupational Safety & Health Administration), to address industrial noise.

Alderman Fazzini recommended that Section 107 Noise (d) Specific Acts, (3) Construction and (5) Blowers be amended to 7:00 a.m. until dark, seven (7) days a week. He also requested that snow removal be added under (f) Exemptions.

Todd Greenburg, Corporation Counsel, addressed the Council. He informed them that snow removal was listed as exempt under Section 107. (d) (5).

Motion by Alderman Fruin, seconded by Alderman Fazzini that the amended Text Amendment be approved and the Ordinance be passed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Fazzini, Sage, Fruin and Black.

Nays: Alderman Lower.

Motion carried.

The following was presented:

SUBJECT: Approval of Hockey License between City of Bloomington, Central Illinois Arena Management, Inc. and Illinois Pro Sports, LLC

RECOMMENDATION/MOTION: That the Hockey License Agreement be approved and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 5. Great place- livable, sustainable City.

STRATEGIC PLAN SIGNIFICANCE: Objective 5.d. Appropriate leisure and recreational opportunities responding to the needs of residents. The proposed hockey license will provide opportunities for persons who enjoy hockey and will create a sports rivalry between Peoria and Bloomington. The new team will be a member of the Southern Professional Hockey League.

BACKGROUND: On May 23, 2011, the City approved a hockey license with Hockey Sensation, LLC. That license was not renewed. The managers of Central Illinois Arena Management, Inc., (CIAM), who manage the US Cellular Coliseum, (USCC), for the City, have found a new tenant for hockey games, Illinois Pro Sports, LLC. John Butler and Bart Rogers, who are associated with CIAM, have disclosed that they have an ownership interest in Illinois Pro Sports, LLC.

In the opinion of the City staff, there is not an irreconcilable conflict of interest in the joint involvement of Mr. Butler and Mr. Rogers in both business enterprises. There also are sufficient safeguards in the manner in which ticket sales are conducted that revenue from ticket sales will be deposited into the Coliseum Fund as required by the Management Agreement between the City and CIAM.

The terms of the agreement are virtually identical to the previous Hockey License with Hockey Sensations. LLC. The term is for the 2013/14 and 2014/15 hockey seasons with option for one (1) additional season.

The lease requires Illinois Pro Sports to inform the City and CIAM of the identity of every owner of the LLC with an ownership or voting interest of five percent (5%) or more.

All payments from Illinois Pro Sports go into the Coliseum Fund, from which all payments to CIAM and the City are made. The rental fee to be paid to the Fund is \$6,000 per home game. However, the amount paid per game may be reduced pursuant to an “attendance incentive credit” which is set forth in Section 9 of the lease. The attendance credit is based on actual turnstile numbers rather than tickets sold. The premise of the incentive is that by using proprietary information of CIAM to calculate the parking fee, facility fee and the average for food and beverage spent by each fan per game, a reduction in the \$6,000 per game amount to be paid by the hockey team for each additional 500 fans will actually generate more revenue for the USCC,

to the benefit of the City and CIAM. For each additional 500 fans, the rental fee will be reduced by \$500, but the City and CIAM will net approximately \$900 more in revenue.

The team will pay a parking fee of fifty cents (.50) per ticket sold to each home game, excepting the first 500 tickets.

The team will pay a facility fee of fifty cents (.50) per ticket sold to each home game, excepting the first 500 tickets.

All suite revenue shall go to the City and CIAM, except that the City and CIAM will pay to the team \$1,662 for each full suite season ticket (total fourteen/14 full season tickets per suite) and \$831 for each half suite season ticket (total seven/7 half season tickets per suite).

The City and CIAM shall retain all Coliseum Club seat membership annual dues and a commission of ten percent (10%) for each Coliseum Club season ticket sold by the licensor, (ninety percent/90% to the team).

In the event of a cancellation of all or part of a season by the licensee, there is a liquidated damages section specifying the amount of damages to be paid to the City and CIAM, (\$100,000 if the licensee cancels prior to January 1st for the season to be held in that calendar year; \$150,000 if the cancellation is after January 1st but prior to March 31st; and \$228,000 for any cancellation after March 31st).

The licensee's commitments under the lease are secured by a \$100,000 irrevocable letter of credit with the City and CIAM as beneficiaries.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: City staff and CIAM.

FINANCIAL IMPACT: Revenue neutral, although increased revenues to the City and CIAM are possible by reason of the attendance incentive credit as well as an inter-city rivalry between Bloomington and Peoria.

Respectfully submitted for Council consideration.

Prepared by and legal review by: J. Todd Greenburg, Corporation Counsel

Reviewed by: John Butler, President of CIAM

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Recommended by:

David A. Hales
City Manager

Mayor Renner introduced this item.

David Hales, City Manager, addressed the Council. He understood the challenges regarding minor league hockey team ownership. The owners needed to grow spectatorship. He believed with proper effort, the hockey team could be successful and profitable. The hockey league would be joining a new league. The US Cellular Coliseum (USCC) offered minor league hockey, basketball and indoor football.

John Butler, Central Illinois Arena Management's (CIAM) President, addressed the Council. The hockey team would be joining the Southern Professional Hockey League. This league had been in existence for nine (9) years. There were ten (10) member teams. He described the minor league as high class A. It was a player development league. The economic profile was small/mid size markets. This was a unique opportunity. He was excited about same. Illinois Pro Sports LLC would be the new owner. There were five (5) members with fifty (50) years of hockey experience. All of the members were from Central Illinois. He cited Bruce Saur as an example. Mr. Saur owned the Velde Auto Group. He also was the former owner of the Peoria Rivermen. Mr. Saur wanted to save hockey in Central Illinois. Both the City and Peoria were looking for hockey teams. David Holt would be Director – Hockey Operations. Bart Rogers, CIAM'S General Manager, had twenty (20) years of front office hockey experience with the Peoria Rivermen.

Alderman Fazzini noted that there would be five (5) owners. Two (2) of these individuals also served as lead personnel for CIAM. This could be used as a plus or a minus.

Mr. Butler reminded the Council of this past hockey team ownership in 2006/2007. Mr. Holt would focus his time on the hockey team. Mr. Rogers and himself would serve in an advisory role. He noted each person's hockey team/league experience.

Alderman Stearns stated that hockey was important to the USCC. She cited the attendance incentive credit. Mr. Butler would act as landlord and tenant.

Mr. Butler stated that minor league hockey had changed. The goal was to place more fans in seats which would have a positive impact upon concession sales, parking and advertising dollars. Increased attendance at the hockey games would increase the USCC's revenue opportunities. The USCC utilized Ticket Master's system. The attendance incentive credit would be based upon actual attendance.

Motion by Alderman Schmidt, seconded by Alderman McDade that the Hockey License Agreement be approved and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

CITY MANAGER'S DISCUSSION: David Hales, City Manager, addressed the Council. The City would participate in the ICMA's, (International City/County Management Association), Center for Performance Management (CPM). This program was ten (10) years old. The purpose of the program was to 1.) develop commons measures; 2.) encourage comparisons; 3.) identify effective management practices; and 4.) learn from high performers. As a participant the City would submit performance data. CPM would clean the data and provide a full dataset to the program's participants. The City would use the data to identify successes and areas of improvement. In addition, the City would learn from other municipalities. The CPM would assist to the City to determine its performance, examine service costs, assist resource targeting, address customer wants, and assist with data management. Evidence based management led to ethical management. Performance Management was 1.) outcome oriented; 2.) provided a method to highlight successes; and 3.) provided a method to identify areas for improvement/learning. Through program participation the City would 1.) recognize varying information needs; 2.) focus on citizens' perspectives; 3.) align program mission; 4.) aim for continuous improvement; and 5.) assist decision making. Reports would be received in late 2013/early 2014. The City had participated in the ICMA's pilot program. He described this effort as a milestone.

MAYOR'S DISCUSSION: Mayor Renner expressed his appreciation to Aldermen Black and Schmidt for facilitating the Mayoral Open House on Friday, June 21, 2013.

He and Alderman Sage attended a Town Hall Meeting at Luther Oaks located at 601 Lutz Rd. There would be a follow up meeting in the fall 2013.

He had attended the US Conference of Mayors 81st Annual Meeting in Las Vegas, NV, (June 21 – 24, 2013). He found the Conference interesting and enjoyed networking with other mayors.

ALDERMEN'S DISCUSSION: Alderman Fruin cited the 4th of July. He expressed his appreciation to the Park, Recreation & Cultural Arts Department's employees. He encouraged those present to participate in the day's activities. This was an opportunity to enjoy the City's quality of life.

He also noted that the two (2) text amendments, (Dangerous/Vicious Dogs and Noise), which had been passed this evening had been discussed by the Council for a long time. He questioned how to let citizens know in advance regarding text amendments.

He also cited the meetings regarding the eastside corridor study as another example. There was a value to citizens to participate in the early stages.

Alderman Fazzini informed the Council that the state of McLean County meeting would be held at the Illinois Wesleyan University Hanson Center on Tuesday, June 25, 2013 at 7:00 a.m.

Alderman Stearns also addressed the 4th of July and the City's tradition of hosting activities at Miller Park.

She requested an update regarding the Korean/Vietnam memorial. The flame and the names listed needed to be restored. The City planned a restoration project. She believed that private dollars could be leverage. There was support in the community.

Motion by Alderman McDade, seconded by Alderman Stearns, that the meeting be adjourned. Time: 8:15 p.m.

Motion carried.

**Tracey Covert
City Clerk**

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FOR COUNCIL: July 8, 2013

SUBJECT: Bills and Payroll

RECOMMENDATION/MOTION: That the bills and payroll be allowed and orders drawn on the Treasurer for the various amounts as funds are available.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Objective 1.d. City services delivered in the most cost-effective, efficient manner.

FINANCIAL IMPACT: Total disbursements to be approved \$6,238,428.90, (Payroll total \$2,279,840.98, and Accounts Payable total \$3,958,587.92).

Respectfully submitted for Council consideration.

Prepared by: Patti-Lynn Silva, Director of Finance

Recommended by:

David A. Hales
City Manager

(ON FILE IN CLERK'S OFFICE)

Attachment: Attachment 1. Bills and Payroll on file in the Clerk's office. Also available at www.cityblm.org.
Attachment 2. Summary Sheet Bills and Payroll Report

Motion: That the bills and payroll be allowed and orders drawn on the Treasurer for the various amounts as funds are available.

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			

CITY OF BLOOMINGTON FINANCE REPORT

Council of July 08, 2013

PAYROLL

Date	Gross Pay	Employer Contribution	Totals
6/27/2013	\$ 1,213,303.34	\$ 306,582.83	\$ 1,519,886.17
6/28/2013	\$ 266,651.42	\$ 79,374.81	\$ 346,026.23
7/5/2013	\$ 271,040.97	\$ 80,654.33	\$ 351,695.30
6/21/2013	\$ 50,546.85	\$ 11,686.43	\$ 62,233.28
Off Cycle Adjustments			
		PAYROLL GRAND TOTAL	\$ 2,279,840.98

ACCOUNTS PAYABLE

Date	Bank	Total	PCARD
7/8/2013	AP General	\$ 3,880,229.46	\$
	AP BCPA		\$
7/8/2013	AP Comm Devel	\$ 22,019.73	
7/8/2013	AP IHDA	\$ 275.00	
7/8/2013	AP Library	\$ 21,963.39	
	AP MFT		
6/26/13 - 6/27/13	Off Cycle Check Runs	\$ 34,100.34	Total
			\$
	AP GRAND TOTAL	\$ 3,958,587.92	WIRE GRAND TOTAL
			\$
			PCARD GRAND TOTAL
			\$
			WIRE GRAND TOTAL
			\$

TOTAL DISBURSEMENTS TO BE APPROVED: \$ 6,238,428.90

Respectfully,

Patti-Lynn Silva
Director of Finance



FOR COUNCIL: July 8, 2013

SUBJECT: Petition filed by FOB Development, Inc., Requesting Approval of the Preliminary Plan for a Portion of Empire Business Park, Third Revision, for Property Commonly Located north of IL Rt. 9 and east of Trinity Ln. (Recommend that the item be remanded to the Planning Commission's July 24, 2013 meeting.)

RECOMMENDATION/MOTION: That the item be remanded to the Planning Commission's July 24, 2013 meeting.

STRATEGIC PLAN LINK: Goal 3. Grow the local economy.

STRATEGIC PLAN SIGNIFICANCE: Objective 3e. Strong working relationship among the City, businesses, economic development organizations.

BACKGROUND: Public hearings regarding this Petition were held before the Planning Commission on May 8 and 22, 2013. City staff identified the need for east/west sidewalks along IL Rt. 9. In addition, Magory Dr. is shown as a private street. Discussions have been held to change this street from private to public. The Petitioner's attorney has requested that this item be remanded to Planning Commission.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public notice was published in the Pantagraph on April 22, 2013. In addition, a sign was posted on the property and courtesy notices were mailed as required by statute.

FINANCIAL IMPACT: None at this time.

Respectfully submitted for Council consideration.

Prepared by: Mark Huber, Director - PACE

Reviewed by: Barbara J. Adkins, Deputy City Manager

Legal review by: Rosalee Dodson, Asst. Corporation Counsel

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. Planning Commission staff report
Attachment 2. Planning Commission May 22, 2013 Minutes

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			

To: Bloomington Planning Commission
From: Staff

Subject: **PS-03-13.** Public hearing and review on the petition submitted by FOB Development, Inc. requesting the approval of a Preliminary Plan for a Portion of Empire Business Park, Third Addition, for the property located north of Illinois Route 9 and east of Trinity Lane, consisting of approximately 14.2 acres.

BACKGROUND INFORMATION:

Adjacent Zoning

North: B-1, Highway Business District
South: S-5, Airport District
East: B-1, Highway Business District
West: B-1, Highway Business District

Adjacent Land Uses

North: Vacant
South: Airport
East: Vacant, Hotel
West: Restaurant, Vacant

The Comprehensive Plan calls for Regional/Highway Commercial for the site.

The plan area is located east of Trinity Lane and north Illinois Route 9 and west of the Holiday Inn. Trinity Lane is a north-south improved Street which connects to Illinois Route 9. The larger business park is mostly vacant however there is a recently developed medical center and restaurant. Staff has identified the need for east-west sidewalks along Illinois Route 9 and Magory Lane connecting to existing developments to the east. The developer and staff are working to provide a solution. Engineering staff has identified other minor issues that are being addressed by the developer.

STAFF RECOMMENDATION:

Staff recommends the Planning Commission pass a motion recommending that the City Council approve the Preliminary Plan for a Portion of Empire Business Park, Third Addition, for the property located north of Illinois Route 9 and east of Trinity Lane, in Case PS-03-13.

Respectfully submitted,

Mark Woolard
City Planner

**MINUTES
BLOOMINGTON PLANNING COMMISSION
REGULAR MEETING,
WEDNESDAY, MAY 22, 2013, 4:00 P.M.
COUNCIL CHAMBERS, CITY HALL
109 E. OLIVE ST., BLOOMINGTON, ILLINOIS**

MEMBERS PRESENT: Mr. J Balmer, Chairperson Stan Cain, Mr. Rex Diamond, Mr. Jim Pearson, Mr. Bill Schulz, Mr. Ryan Scritchlow, Mr. David Stanczak, Mr. Robert Wills

MEMBERS ABSENT: Mrs. Julie Morton, Mr. Charles Stuckey

OTHERS PRESENT: Mr. Kevin Kothe, City Engineer
Mr. Mike Kimmerling, Fire Chief
Mr. Mark Woolard, City Planner

CALL TO ORDER: Chairperson Cain called the meeting to order at 4:01 P.M.

ROLL CALL: Mr. Woolard called the roll. A quorum was present.

PUBLIC COMMENT: None

MINUTES: The Commission did not receive the May 8, 2013 minutes in sufficient time to review before the meeting. Chairperson Cain moved to hold the minutes to the next meeting. Mr. Balmer seconded the motion which passed by a vote of 8 to 0 with the following votes being cast on roll call:

Mr. Cain--yes; Mr. Stuckey--absent; Mr. Wills--yes; Mrs. Morton--absent; Mr. Pearson--yes; Mr. Balmer--yes; Mr. Schulz--yes; Mr. Scritchlow--yes; Mr. Stanczak--yes; Mr. Diamond--yes.

REGULAR AGENDA:

PS-03-13. Public hearing and review on the petition submitted by FOB Development, Inc. requesting the approval of a Preliminary Plan for a Portion of Empire Business Park, Third Addition, for the property located north of Illinois Route 9 and east of Trinity Lane, consisting of approximately 14.2 acres.

Chairperson Cain introduced the petition and stated the case was laid over from the last meeting. Mr. Woolard explained this was mainly for the sidewalk issue which has been resolved. Staff recommends approval with the sidewalk being on the north sides of Empire and Magory.

Chairperson Cain opened the public hearing. Mr. William C. Wetzel, 115 W. Jefferson Street Suite 400, stated he has reached accord with the staff and they walked the site. A memo from Kevin Kothe dated May 17, 2013 has language addressing the sidewalk issue. He stated IDOT wants connections at both ends and FOB Development is committing to building the sidewalk when they can. The sidewalk language will be on the amended preliminary plan.

Mr. Neil Finlen, 2709 McGraw Drive with Farnsworth Group stated all items have been addressed on the preliminary plan and will match the email sent out on Friday. Note number 15 reflects the clarifications and discussions from IDOT. The Advocate Bromenn name, outlot 49 and the date will all be corrected before it goes to City Council.

There was discussion on the sewer. All lots will be served by sewer.

Mr. Kothe explained IDOT wants sidewalks connected from one intersection to another. Mr. Finlen stated we do not know when the Deneen and Route 9 intersection will be built. It depends on sales but there is a huge amount of activity on this property.

Chairperson Cain asked if there were any members of the audience who wished to speak in favor, opposition or who had questions regarding this case and no one spoke. Chairperson Cain closed the public hearing.

Mr. Pearson moved that the Planning Commission recommend to City Council to approve the Preliminary Plan revision three for a Portion of Empire Business Park, Third Addition to City Council for approval, case PS-03-13. Mr. Schulz seconded the motion which passed by a vote of 8 to 0 with the following votes being cast on roll call:

Mr. Cain--yes; Mr. Stuckey--absent; Mr. Wills--yes; Mrs. Morton--absent; Mr. Pearson--yes; Mr. Balmer--yes; Mr. Schulz--yes; Mr. Scritchlow--yes; Mr. Stanczak--yes; Mr. Diamond--yes.

V-01-13. Public hearing on the Petition filed by Illinois Wesleyan University, requesting approval of the vacation of the Beecher Street right of way between Franklin and East Streets and the alley right of way bounded by Beecher Street on the south and Horenberger Drive on the east.

Chairperson Cain opened the public hearing and introduced the petition. Mr. Woolard stated there are two right-of-ways being requested for vacation. One of these is just for an alley north of Beecher Street and adjacent to a parking lot. The other one is for a portion of Beecher Street which will not create a dead end. The existing Beecher Street closure is only temporary.

Todd Bugg with Dunn Law Firm at 101 N. Main, stated he represents Illinois Wesleyan and the alley vacation is fairly simple and the city has wanted the vacation for years. Beecher Street has been closed over a year for classroom construction. They want to create a safer zone for students to cross from the residences to the classrooms and for other activities. There are approximately 500 students who live to the north. They are working with the fire department so personnel and equipment can get in for fire suppression and rescue. The utility easements will remain intact.

Carl Teichman with Illinois Wesleyan at PO Box 2900, Bloomington, stated the alley has been used to serve the parking lot and the university maintains such. There will be minimal impact with this change. No one will see any difference with the change. As the building construction adjacent to Beecher Street advanced the permanent closure was discussed primarily for the significant number of students moving across Beecher and for an improved appearance. The one adjacent property owner along Beecher Street did not have concerns. They also contacted property owners within 500 feet of either end of Beecher Street and did not have complaints. The improvements would be completed in 2014.

Karla Carney-Hall with Illinois Wesleyan at 1312 Park Street 103 Holmes Hall, stated there are stories of near misses and the purpose is for the safety of the students.

Chairperson Cain asked if there were any members of the audience who wished to speak in favor or opposition and no one spoke. Then Chairperson Cain asked if there was anyone who had questions regarding this case. Jessie Hinshaw of 1410 Fell asked where the alley was located. Chairperson Cain asked if there were any other members of the audience with questions pro or con and no one spoke. Chairperson Cain closed the public hearing.

Mr. Balmer moved that we recommend to the City Council that they approve case V-01-13 for the vacation of rights-of-ways for Beecher Street and the alley way as stipulated on the plat. Mr. Stanczak seconded the motion which passed by a vote of 8 to 0 with the following votes being cast on roll call:

Mr. Cain--yes; Mr. Stuckey--absent; Mr. Wills--yes; Mrs. Morton--absent; Mr. Pearson--yes; Mr. Balmer--yes; Mr. Schulz--yes; Mr. Scritchlow--yes; Mr. Stanczak--yes; Mr. Diamond--yes.

Case Z-02-13 Public hearing and review petition submitted by Thomas Nielsen and Kathryn Bohn requesting the approval of a Rezoning from R-2, Mixed Residence District with an S-4 Historic Preservation District overlay to R-2, Mixed Residence District for the property located at 605 E. Front Street with the George Hanna House, Queen Anne style.

Chairperson Cain introduced the petition. Mr. Woolard stated that staff did not receive any information regarding the petition besides what was in the public hearing notice and the case should be laid over to give the applicant time to prepare documents and research as to why the S-4 zoning should be removed. He explained how there are S-4 zoned properties adjacent to the site to the south. The code stipulates that if just one of the standards is met the S-4 zoning is justified and must remain. The Historic Preservation Commission has reviewed the petition and is recommending denial. A statement from Greg Koos was provided to the Historic Preservation Commission which identified historic and architectural features on the building which still remain today. Emails from residents were provided to the Planning Commission.

Chairperson Cain opened the public hearing. Ms. Tracy Haas Riley a realtor with Prudential Real Estate resides at 205 Willard Ave. She stated she represents the buyer who is attempting to purchase the home. The petitioner has signed a document authorizing her and the buyer to speak in this case. Her client has a lot of emotional attachment to the property, and also owns other rental properties that he has rehabbed. His intention is to bring the property back. She said they are not disputing the historical significance of the house. They put in the purchase offer for the house subject to repairing the roof. She said they had to go to three historic preservation meetings because they did not have a roofer who got it. It has been more challenging than they thought. Last week they were successful in getting the roof approved but the train had started moving with the S-4 rezoning before that approval. So they did not want to stop that train. There were some materials that the contractor wanted to use that do not follow the guidelines. They are trying to figure this out as we go along. As long as they got the roof they are good. The Historic Preservation Commission talked about grants and help so there is some positive promise. The petitioner's official position is to request a layover.

Discussion ensued about the house and petition. Ms. Riley stated the sale of the house is not contingent upon the S-4 removal. She does not want her client to get into a situation where he gets foreclosed on. She said her client can do a lot of stuff but they want to see that it is doable. The Historic Preservation Commission is allowing regular asphalt shingles to be used for the roof. She stated the estimate for just the roof is around \$30,000 and that is the most expensive

roof she has ever heard of for residential. A roof estimate will be about \$60,000 with the S-4 overlay. She said it is very vague but a bid was for up to \$95,000 and this include other work. She did not have a bid with like materials. She said she is optimistic but she guesses the value with the S-4 overlay would be around \$200,000. The property generates approximately \$40,000 in revenue a year without expenses. In five years this would be \$200,000 minus expenses.

Chairperson Cain asked if there were any members of the audience who wished to speak in favor of the petition and no one spoke.

Chairperson Cain asked if there were any members of the audience who wished to speak in opposition to the petition. Mr. Carson Durham resides at 304 S. Mercer and stated he is the Chairman of the Bloomington Historic Preservation Commission which is appointed by the mayor, has rules and regulations, and they are not just some society or group. He stated 30 years ago this property was given this designation and was presented by an owner at that time. It was approved by the Historic Preservation and Planning Commissions, and the City Council like we all have currently. The property has been in decline based on the ownership and not the historical or architectural merit. The elements that made it special 30 years ago still remain. The Historic Preservation requests that you deny this petition and if all commissioners be could be here they would unanimously say it should be completely denied. The discussion based on the petitioner has been very confusing to say the least. The criticism of the Historic Preservation Commission has been that the S-4 overlay is causing a financial hardship based on the financial pieces of the puzzle. The Historic Preservation Commission continued to ask what is the difference between the costs of repairing the property under the S-4 verses not under the S-4. He said the hardship under the S-4 has not been presented to us. The items they are responsible for approving are exterior items and they are not responsible for the structural integrity that's been removed based on water infiltration, the porch falling down because the ground had settled and the wall falling down because of water damage. The Historic Preservation Commission has nothing to do with those things and cannot be saddled with that as a criticism in causing this project in terms of its financial capabilities to move forward. The information requested to be submitted from the petitioner came in different all three times and there has not been any consistency. We request that you deny this not only because the property is deserving of the S-4 but also because it is part of the City's plan for Historic Preservation that was developed over 25 years ago. That plan identified districts, individual buildings and residences that are worthy of maintaining with a historic perspective and this was approved by the Planning Commission and the City Council. Thus to arbitrarily remove one of those elements of that plan based on a very short window of circumstances would be in the Historic Preservation Commission's mind short sighted and arbitrary. The minutes will reflect the recommendation of denial.

Chairperson Cain stated that generally they look to the Historic Preservation Commission for their recommendation on these types of cases. Mr. Durham explained they would be willing to look at like for like. For instance the box gutters are not simple to replace but they are not astronomically expensive to replace and they would give council as how to fix such. The fascia of this building has some detailing that are an integral part of what makes the building special and the rules would not allow some sort of fake replacement bracket but we would be open solutions that would be a win-win for both parties. The biggest thing is that we were given a roofing number based on asphalt shingles and then we were given a number that said if we follow your guidelines it is going to cost \$90,000 and when asked what do you mean by that \$90,000, they could not tell us. So there was an information gap. We want the property to be

saved as much as anyone but we do not see it as a fire sell. Mr. Durham explained they are commissioned to look at the exterior of the building such as walls, roof, fascia, or porches and make sure the repairs whether a replacement or a simple repair is in keeping with the architectural history so you are not taking off an architectural element and throwing in the dumpster and replacing it with something else. If they want to paint the house we do not care about the color but just about the technique so they do not destroy the wood or material finish. We are not the historic police. Mr. Wills asked why it took the petitioner three times to go through the Historic Preservation Commission for a roof? Mr. Durham explained the information provided was not enough to make a thumbs up or a thumbs down vote. In fact at the last meeting they had to strike a bunch of things to get it voted on and rewrite it to make it approvable. Grants can be given for a project and the intent is to offset the extra cost if any. There also grants through the state and federal government.

Bob Russano, of 706 E. Grove stated he has been an vice president of a mortgage banking firm and an appraiser of commercial property and in his experience in addition to location two things dictate the sale price of a property which is income and condition. He explained \$40,000 is great income and he wished his buildings had that and he owns three properties on Grove St. His last bid for a roof was \$35,000 and there are two other roof bids in there that were a lot more. Thus based on what Ms. Riley said the price is incorrect and needs to come down. He has lived for 38 years on E. Grove which is a block away and over. When he moved there Dimmitt's Grove was dicey including a motorcycle gang. He is one of the people who helped change that neighborhood and he has never given up. He owns 706, 710 and 704 E Grove. The previous owner of 710 saved the neighborhood. She wouldn't allow buildings tore downs and to have the zoning changed for commercial because it would ruin the neighborhood. The changed law changed the attitude and in this case changing the zoning will change the attitude and it is what he is afraid of. In Dimmitt's Grove they fought for and against changes. The neighborhood has changed beyond what the 605 E Front building represents in its current state and the number of apartments in it. People have lowered the number of apartments in buildings because the area is no longer for low end housing. He said we have increased the value of the properties and when done properly that will handsomely reward their landlords when they go to sell them, especially with grants. The owner of the beautiful brick building at 701 E. Grove put a lot of money in it and a lot of money came from the state and she had to make three trips to the commission to get it right. There was a proposal for a computer store and outlet and an upstairs office at 712 E. Front and we showed up and the answer was no. 501 E. Front was proposed to be torn down and we went to the landlord and we were going to come to the Commission but the landlord decided he did not want that fight and now it is a viable piece of residential property. At another site they stopped a strip mall from going in and now there is a historic national award winning house residence. A realtor proposed a realtor's office for 407 E. Grove who claimed interest in maintaining the historic perspective but she evaporated when the zoning was not changed. 702 E. Grove has the S-4 overlay and was in a lot worse shape than 605 E. Front. It had the sky visible from the basement and had a fire and yet was purchased and the owner has provided a great place for his tenants to live. Directly in back 605 E. Front was a house that was literally falling into itself and the current owner restored it. It is on the historic register and is beautiful. The neighborhood has changed and it needs to keep this historic property historic. Work in the bounds of the codes as we all have done and it will pay off in the end.

Bradley Shelton of 609 E. Front stated he lives right adjacent to the property in question. He said as much as he would love to think we can trust anything somebody tells us about what they

plan to do with a property, he is concerned it could very well be aluminum siding if we remove the S-4 overlay. Ms. Riley's client may be dedicated to historic properties but the next person may not be and with the S-4 we are protected and will not have lost another fine home. He does not have the S-4 for his house which was once a part of the George Hanna property. He would love to see the Hanna house restored.

Gary Justice of 612 E. Grove stated the S-4 designation of individual houses and buildings is critical to the historic preservation of our neighborhoods. The vitality and attractiveness of these areas assert themselves in a positive manner within the collective commerce and life affirming activities of a city. The processes is encouraged by preservation projects within urban areas has proven to be good business through direct commercial activities connected with preservation, by the environmentally sound practice of re-purposing materials and also by an immeasurable collective optimism. There is quality in preservation practices. A sustained eminence of superb materials and craftsmanship was soundly practiced and revered a century ago. This fact flies in the face of inferior materials and the low-craft of many projects built by today's construction standards. Historic houses inspire high levels of commitment in owners, tenants and the valued craftsmen and artisans who are likely stewards of these treasures. These relationships form the basis for this "collective optimism" which in turn conveys positive forces affecting entire communities. This inspires interest on the part of the public and organizations whose members live outside these areas. They visit often. They examine the architecture, wondering at the beauty and quality of styles and modes of construction. The visitors become immersed in the enchanted manners of a style of living that is significant, historic, and in its brilliance, celebrates the importance of beauty. These preserved masterpieces enhance our understanding of how we have progressed as a society. In historically preserved neighborhoods, the visitor finds an affable populace who are pleased to share information pertaining to the importance of an area's heritage. This is good business, and it encourages a sustained desire to re-visit and to explore other residential areas and business districts. As a proud owner of an S-4 designated property that sits adjacent to the house in question, I urge the commission to sustain the S-4 overlay. To remove the designation opens the way for removal or alteration of much of the standing masterpieces' historic features and amenities, thus removing its magic, and its sorely needed presence in our vital, historic district. He said he lives at the property and he has two rental units there. He did a historic approved roof renovation, replaced the front doors and back french doors. It is a very important process to go through with the Historic Preservation Commission. He was absolutely still able to make a profit as a landlord while doing the restoration work.

Dawn Peters of 402 E. Grove stated she sought the S-4 designation and has gone to the Historic Preservation Commission several times and it is important to have the designation. She has spent lots of money and time so that in the future somebody cannot just come by and undo the work she has done. She agrees very much with what Mr. Durham said about protecting the property.

Terri Clemens of 606 E. Grove stated she lives directly behind this property and has the S-4. She stated she spent seven years as a realtor and ten years on the Historic Preservation Commission so she understands the process pretty well with buying and selling and coming to the Commission. In all the years on the Commission she felt like the people they served, who had a quality in their architecture like this petitioner's house, had a benefit of receiving free, valuable advice from an architect, a lawyer, two builders and historians in addition to the grants.

William Grady of 709 E Grove stated he owns a property about a block away with two flats. He said the reason he bought into the neighborhood was because of the historic S-4 overlays. He did that as an assurance of the way the neighborhood was going and to remove an S-4 sends a message that everything is in jeopardy.

Ken Kashian of 510 E Grove stated he lives at the Rueben Benjamin house which was built in 1853 and he wanted to make clear Dawn's house was the one that was moved. His house also has the S-4 and he has appreciated the help, direction and funding from the Historic Preservation Commission. He is very concerned with the direction that this petition could push the property in not just from what the owner wants right now but future owners as well. As new owners come along it could slip more and more away from what it was originally intended to be. He is very much concerned about the property and the neighborhood. The residents of Dimmitt's Grove are very interested in and dedicated to the area as evidenced by the upcoming tours and activities.

Ms. Riley stated in regards to the property income there is also a mortgage and expenses. She also said she is not complaining about going to the Historic Preservation Commission three times and we have got a lot of advice. The only reason the bid worked the last time was because she brought the contractor and she is not the owner and she would really like a layover. The timing was not in her favor and they have not had time to prepare. The owner or buyer should be here.

Chairperson Cain closed the public hearing.

Mr. Diamond moved to lay this over to the next scheduled Planning Commission hearing due to the fact that we do not have the reports and minutes from the Historic Preservation Commission and for the petitioner's request so they can supply more information and materials. Mr. Scritchlow seconded the motion which passed by a vote of 5 to 2 with the following votes being cast on roll call:

Mr. Cain--yes; Mr. Stuckey--absent; Mr. Wills--no; Mrs. Morton--absent; Mr. Pearson--yes; Mr. Balmer--no; Mr. Schulz--yes; Mr. Scritchlow--yes; Mr. Stanczak—present; Mr. Diamond--yes.

OLD BUSINESS: None

NEW BUSINESS: Mr. Wills said we should some time have a discussion on how we approach the historic zoning. He thinks it should be looked at more by section. This should also be looked at with the comprehensive plan update. There may be a need for a joint meeting.

ADJOURNMENT

There being no further business to come to the Bloomington Planning Commission's attention, Mr. Balmer moved to adjourn and the motion was approved unanimously. The meeting was adjourned at 6:15 p.m.

Respectfully submitted,

Mark Woolard
City Planner

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