

CITY OF BLOOMINGTON
COUNCIL MEETING AGENDA
109 E. OLIVE
MONDAY, JUNE 24, 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. Recognition/Appointments**
- 6. "Consent Agenda"**
 - A. Proceedings of June 10, 2013. (Recommend that the reading of the minutes of the previous Council Proceedings of June 10, 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. Purchase of Floor Coating and Wall Coverings for the US Cellular Coliseum. (Recommend that the purchase of floor coating and wall coverings for the US Cellular Coliseum from Garage Flooring Coating of Central Illinois of Leroy, IL in the amount of \$110,778 be approved, and the Purchasing Agent be authorized to issue a Purchase Order for same.)**
 - D. Analysis of Proposal and Approval of Contract for 2013 Pavement Preservation. (Recommend that the bid for 2013 Pavement Preservation be awarded to Corrective Asphalt Materials, LLC in the amount of \$200,000, and the Purchasing Agent be authorized to issue a Purchase Order for same.)**
 - E. Change Order to the Professional Services Agreement with A & R Mechanical, Inc. (Recommend that the Amendment to the contract with A & R Mechanical, Inc. for additional work related to the installation of the lime dust collection system project in the amount of \$13,414 be approved.)**
 - F. Change Order to the Professional Services Agreement with Johnston Contractors, Inc. (Recommend that the Amendment to the contract with**

Johnston Contractors, Inc. for additional work related to the installation of the direct injection carbon dioxide project in the amount of \$7,376.22 be approved.)

- G. Frontier Maintenance Renewal. (Recommend that the Agreement with Frontier for a maintenance renewal in the amount of \$39,756.49 be approved, and the Mayor and City Clerk be authorized to execute the necessary documents.)**
- H. Ratification of Contract with Local 49 Firefighters. (Recommend that the Contract be ratified.)**
- I. 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. (Recommend 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.) (*change of ownership*)**
- J. Transfer of a Pump Station, Force Main, and Force Main Easement and to the Bloomington Normal Water Reclamation District. (Recommend that the Council authorize the execution of all documents necessary to transfer the Kickapoo Creek Pump Station and the force main, along with the force main easement, to BNWRD.)**
- K. 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., east of Airport Road. (Recommend That the Final Plat be approved and the Ordinance passed.)**

7. “Regular Agenda”

- A. Text Amendment to Chapter 8. Animals and Fowls, Identification and Regulation of Vicious and Dangerous Dogs. (Recommend that the Ordinance be passed.) (*20 minutes*)**
- B. Analysis of Bids and Approval of Contract for 2013 General Resurfacing. (Recommend that the bid for the 2013 General Resurfacing be awarded to Rowe Construction Company in the amount of \$2.5 million, and the Purchasing Agent be authorized to issue a Purchase Order for same.) (*10 minutes*)**
- C. Analysis of Bids and Approval of Contract for 2013 Street and Alley Repair. (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 Purchasing Agent be authorized to issue a Purchase Order for same.) (*10 minutes*)**
- D. Amendment to the Bloomington City Code, Chapter 28, Relating to the Regulation of Noise in the City of Bloomington. (Recommend that the Ordinance be approved and the Mayor and City Clerk be authorized to execute the necessary documents.) (*15 minutes*)**

E. Approval of Hockey License between City of Bloomington, Central Illinois Arena Management, Inc. and Illinois Pro Sports, L.L.C. (Recommend that the Hockey License Agreement be approved and the Mayor be authorized to execute it on behalf of the City of Bloomington.) (15 minutes)

- 8. City Manager's Discussion**
- 9. Mayor's Discussion**
- 10. City Aldermen's Discussion**
- 11. Executive Session – cite section**
- 12. Adjournment**
- 13. Notes**



FOR COUNCIL: June 24, 2013

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

Attachments: Attachment 1. Draft Council Proceedings for June 10, 2013

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			

**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 10, 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, Mboka Mwilambwe, Kevin Lower, David Sage, Robert Fazzini, Jennifer McDade, Scott Black, Karen Schmidt, Jim Fruin and Mayor Tari Renner.

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

PUBLIC COMMENT: Mayor Renner opened the Public Comment section of the meeting. He added that there would not be a response from the City under the Public Comment portion of the meeting.

Alton Franklin, 508 Patterson Dr., addressed the Council. He planned to address two (2) things. He addressed the municipal aggregation notice. The results were not pleasant. He had reviewed his bill, done the computations and elected to opt out as there were no real savings.

He also addressed the Special Use for Ekstam Dr. which requested apartments in a B – 1, Highway Business District. He questioned the public notice. He believed that only five (5) people were in attendance. There were options. He suggested that the Zoning Board of Appeals change their meeting time. He acknowledged that there were also positive views towards this project. He noted the single egress and the number of apartments. The developer had offered a small playground.

He added that he had enjoyed the mayoral open houses. He had been a voice in the wilderness.

Peggy DeHaven, 7 Zavitz Ct., addressed the Council. She respectfully requested that the Council deny or lay over the Ekstam Dr. Special Use. She cited public safety and traffic concerns. She addressed EMS, (Emergency Medical Services), response times and the need to be reached in a timely manner. There was traffic control. Parking had been eliminated from the west side of Ekstam Dr. However, this change had not been enforced. There was a claim that speed humps would be installed. This statement was incorrect due to the traffic volume on Ekstam Dr. The Hafley intersection was congested at certain times

of day. There were concerns regarding crime, gangs, drug usage, etc. due to the number of apartments proposed. She cited Section 8 and the impact of same upon home values. In addition, there were public school concerns. Benjamin Elementary School was overcrowded. Unit 5 was not prepared for this request and did not have the funding.

Dean Gestner, 612 N. McLean #6, addressed the Council. He informed them that there were issues at the bus transfer stop on Front St. in front of the McLean County Law & Justice Center. Seniors and youth relied upon bus transportation. During the day, there were individuals hanging out, drinking, etc. Their behavior was problematic. He offered his ideas that certain blocks be designated with special penalties applied. The Council needed to review City ordinances and the Police Department's effectiveness. He believed that something needed to be done. This situation could not continue.

Bruce Meeks, 1402 Wright St., addressed the Council. He planned to address the Special Use on Ekstam Dr. and the Economic Development Incentive for 115 E. Monroe St. These represented legal obligations. He could not and did not believe that the citizens would support these two (2) items. He recommended that the Council change the Zoning Code as it applied to Special Uses. He encouraged the Council to rethink this item and vote no.

He addressed the Economic Development Incentive. He cited the application which had been provided to the Council. He read from same. The City would abate \$400,000. The City would provide assistance to the developers with cash flow over a five (5) year period.

The following was presented:

SUBJECT: Proclamation

RECOMMENDATION/MOTION: That the proclamation be made a matter of record.

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

STRATEGIC PLAN SIGNIFICANCE: Objective 1.c. Engaged residents that are well informed and involved in an open governance process.

BACKGROUND: The proclamation will be presented:

Declaring June 15, 2013 to be "Juneteenth" Celebration Day.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Not applicable.

Respectfully submitted for Council consideration.

Prepared by:

Tracey Covert, City Clerk

Recommended by:

Tari Renner
Mayor

Motion by Alderman Black, seconded by Alderman Fazzini that the proclamation be made a matter of record.

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

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

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Council Proceedings of May 13 and 28, 2013

RECOMMENDATION/MOTION: That the reading of the minutes of the previous Council Proceedings of May 13 and 28, 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 May 13 and May 28, 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 Black, seconded by Alderman Fazzini that the reading of the minutes of the previous Council Proceedings of May 13 and 28, 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, Mwilambwe, 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 6, 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 Black, seconded by Alderman Fazzini 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, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Bids for Aggregate and Associated Delivery of Material for the Public Works Department's Streets and Sewers Division

RECOMMENDATION/MOTION: That the bid for Aggregate Material be awarded to Rowe Construction Co., Bloomington, IL for the remainder of FY 2014, in an amount not to exceed \$66,305, 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.a. Better quality roads, and functional, well maintained sewer collection system.

BACKGROUND: On April 23, 2013 at 3:30 p.m. bids were opened and read. A total of three (3) bids were received. Rowe Construction was the only bidder to fill out the entire bid form, including materials and additional fees if usage exceeded the listed quantities. The bids are as follows:

	FA1 Sand (price per ton x250)	3/8 inch washed rock (price per ton x 3500)	CA 6 Rock (price per ton x 500)	3 inch minus Oversized Rock (price per ton x 250)	5/8 inch washed rock (price per 1000)
Rowe Construction Co.	\$2,600	\$44,800	\$8,025	\$4,175	No Bid
Stark Materials Company	\$2,800	\$49,350	\$7,725	\$5,025	\$18,150
McLean County Asphalt	\$2,457.50	\$63,770	\$8,025	\$4,357.50	\$23,410

Additional Fees if usage exceeds above listed quantities:

	FA 1 Sand (price per ton delivered)	3/8" Washed Rock (price per ton delivered)	CA 6 Rock (price per ton delivered)	3" Limestone Oversized Rock (per ton delivered)	5/8" washed Rock (per ton delivered)
Rowe Construction Co.	\$10.40	\$12.80	\$16.05	\$16.70	No Bid
Stark Materials Company (not delivered)	\$11.20	\$14.10	\$15.45	\$20.10	\$18.51
McLean County Asphalt	No Bid	No Bid	No Bid	No Bid	No Bid

The Streets and Sewers Division provides street repairs for the Water Department, contractors and their own division for excavations resulting from water main repairs, sewer repairs and pavement failures. Therefore requiring large amounts of aggregate to be purchased throughout the fiscal year.

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

FINANCIAL IMPACT: The FY 2014 General Fund Budget appropriated \$66,305 for the purchase of aggregate material in line item 10016120-71081. In accordance with this memorandum, staff will only purchase the aggregate material up to the appropriation amount of \$66,305. 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: 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 Black, seconded by Alderman Fazzini that the bid for Aggregate Material be awarded to Rowe Construction Co., Bloomington, IL for the remainder of FY 2014, in an amount not to exceed \$66,305, 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, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Bids for Asphalt and Associated Delivery of Material for the Public Works Department's Streets and Sewers Division

RECOMMENDATION/MOTION: That the bid for Asphalt and Material Delivery be awarded to McLean County Asphalt Co., Inc., Bloomington, IL for the remainder of FY 2014, in an amount not to exceed \$174,375.56, 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.a. Better quality roads, and functional, well maintained sewer collection system.

BACKGROUND: On April 23, 2013 at 2:30 p.m. bids were opened and read. A total of two (2) bids were received. The bid results are as follows:

	Asphalt Surface Mix (actual asphalt)	Asphalt Binder (before Asphalt is applied)	Asphalt UPM Coldmix (Potholes)
McLean County Asphalt	\$71.00	\$69.00	\$95.00
Stark Materials Co., Inc.	No Bid	No Bid	No Bid

These prices are the same price that McLean County Asphalt used for FY 2013.

The Streets and Sewers Division provides street repairs for the Water Department, contractors and their own division for excavations resulting from water main repairs, sewer repairs and pavement failures. Therefore requiring large amounts of asphalt to be purchased throughout the fiscal year.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public notice of the bid was published in the Pantagraph on April 5, 2013. A total of two (2) bids were received.

FINANCIAL IMPACT: The FY 2014 General Fund Budget appropriated \$185,000 for the purchase of asphalt material in line item 10016120-71082. The total cost to purchase the material is \$174,375.56, which is \$10,624.44 below the amount of the appropriation. 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: Barbara J. Adkins, Deputy City Manager

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

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion by Alderman Black, seconded by Alderman Fazzini that the bid for Asphalt and Material Delivery be awarded to McLean County Asphalt Co., Inc., Bloomington, IL for the remainder of FY 2014, in an amount not to exceed \$174,375.56, 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, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Bids for Concrete and Associated Delivery of Material for the Public Works Department's Streets and Sewers Division

RECOMMENDATION/MOTION: That the bid for Concrete and Material Delivery be awarded to Stark Materials, Co., Inc., Bloomington, IL for the remainder of FY 2014, in an amount not to exceed \$166,582.88, 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.a. Better quality roads, and functional, well maintained sewer collection system.

BACKGROUND: On April 23, 2013 at 2:30 p.m. bids were opened and read. A total of two (2) bids were received. The bid results are as follows:

	CONCRETE PV	CONCRETE SI	CONCRETE PP	CONCRETE PP4	CONCRETE CLSM	ADDITIVE CALSIUM CHLORIDE 2%	ADDI TIVE SUPE RPL AS- TIZE R
McLean County Asphalt	\$88.20	\$88.20	\$191.45	\$110.00	\$55.00	\$2.43	\$11.50
Stark Materials Co., Inc.	\$82.00	\$82.00	\$90.00	\$85.00	\$52.00	\$6.00	\$5.00

The Streets and Sewers Division provides street repairs for the Water Department, contractors and their own division for excavations resulting from water main repairs, sewer repairs and pavement failures. Therefore requiring large amounts of concrete to be purchased throughout the fiscal year.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public notice of the bid was published in the Pantagraph on April 5, 2013. A total of two (2) bids were received.

FINANCIAL IMPACT: The FY 2014 General Fund Budget appropriated \$173,644 for the purchase of concrete in line item 10016120-71081. The total cost to purchase the material is \$166,582.88, which is \$7,061.12 below the amount of the appropriation. 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: 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 Black, seconded by Alderman Fazzini that the bid for Concrete and Material Delivery be awarded to Stark Materials, Co., Inc., Bloomington, IL for the remainder of FY 2014, in an amount not to exceed \$166,582.88, 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, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Bids for White and Yellow High Durability Latex Traffic Line Paint and Glass Beads for Pavement Marking Material for the Public Works Department's Streets and Sewers Division

RECOMMENDATION/MOTION: That the bid for Latex Traffic Paint and Glass Beads for Pavement Marking be awarded to Sherwin Williams, Bloomington, IL, for the remainder of FY 2014 in an amount not to exceed \$51,555, 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.a. Better quality roads.

BACKGROUND: The 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 at the Council's March 26, 2012 meeting. 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

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*

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 priced 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.

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

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 from the traffic line paint is \$51,555. 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: 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 by Alderman Black, seconded by Alderman Fazzini that the bid for Latex Traffic Paint and Glass Beads for Pavement Marking be awarded to Sherwin Williams, Bloomington, IL for the remainder of FY 2014 in an amount not to exceed \$51,555, 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, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Advertisements for the Bloomington Center for the Performing Arts (BCPA) in *The Pantagraph*

RECOMMENDATION/MOTION: That the advertising contract be approved, in the amount of \$38,000, the formal bid process be waived, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 4. Grow the local economy, Goal 5. Great place – livable, sustainable City, and Goal 6. Prosperous Downtown Bloomington.

STRATEGIC PLAN SIGNIFICANCE: Objective 4.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: The Parks, Recreation & Cultural Arts (PRCA) Department requests permission to waive the formal bid process to allow for the purchasing of \$38,492.48 in advertisements to promote the programming of the BCPA in *The Pantagraph*, Bloomington, Illinois, from May 2013 - April 2014. A waiver from the formal bid process is requested as *The*

Pantagraph is the only major daily newspaper publishing for a general audience in Bloomington-Normal. As such, *The Pantagraph* provides the only practical solution to promoting BCPA and PRCA Department events and activities in the printed media to a broad audience.

As a result of the annual contract the ads will be billed at a rate of \$37.11 per column inch daily and \$42.27 for Sunday, which is reduced from the standard rate of \$60.54 daily/\$68.83 Sunday. This reduced rate will be extended to other PRCA Department events during the term of the contract. These rates are the same as rates for 2012 - 2013 and reflect a 38.7% discount from standard published rates.

As a media sponsor of the BCPA's 2013 - 2014 season, the BCPA will receive additional promotion of its events, including an additional forty-eight inches (48") of advertising for each of three (3) sponsored shows, plus promotion of BCPA programs through online contests sponsored by *The Pantagraph*.

Staff respectfully requests the formal bid process be waived to allow for these advertisements to be purchased. Funding for advertising will come from account 21101100-70610 of the BCPA budget.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: The BCPA Box Office requests information from patrons about where they heard about a show at each ticket transaction. Print media – primarily *The Pantagraph* – consistently ranks second on that list, only falling behind the BCPA's Season Brochure for effectiveness in reaching ticket buyers.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$285,405, including \$72,000 in direct advertising and \$213,505 in in-kind advertising for advertising BCPA sponsored events, in line item 10014125-70610-20000. The purpose of this \$38,492.48 contract is to assist the BCPA to attract audiences to its main stage and outdoor concert events throughout the year. Note this expenditure is only a portion of the total budget. The cost of this service will be offset by revenue generated from ticket sales and is further offset through in-kind trades and sponsorships. With the incorporation of the BCPA Fund into the General Fund in FY 2014, stakeholders may locate this purchase in the FY 2013 General Fund Budget document on page #409.

Respectfully submitted for Council consideration.

Prepared by: Joel Aalberts, Performing Arts Manager

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

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 Black, seconded by Alderman Fazzini that the Advertising Contract be approved, in the amount of \$38,492.48, the formal bid process be waived, 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, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

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

RECOMMENDATION: That the contract with Steven Barclay Agency, be approved, in the amount of \$35,000, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 4. Grow the local economy; Goal 5. Great place – livable, sustainable City; and Goal 6. Prosperous Downtown Bloomington.

STRATEGIC PLAN SIGNIFICANCE: Objective 4.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; and Objective 6.c. Downtown becoming a community and regional destination.

BACKGROUND: Staff respectfully requests approval of contract to engage persons and/or groups represented by: Steven Barclay Agency to perform entertainment services in the Bloomington Center for the Performing Arts, (BCPA). Contract expenses for the contract will be \$35,000. The contract price covers the artist fees for the performance coming to the BCPA in 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 this \$35,000 contract is to engage persons and/or groups represented by: Steven Barclay Agency to perform 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 2013 General Fund Budget document on page # XXX.

Respectfully submitted for Council consideration.

Prepared by: Joel Aalberts, Performing Arts Manager

Reviewed by: John R. 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 by Alderman Black, seconded by Alderman Fazzini that the contract with Steven Barclay Agency be approved, in the amount of \$35,000, 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, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Ratification of a Cable Television Franchise Agreement with iTV-3

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

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

STRATEGIC PLAN SIGNIFICANCE: Objective 5.d. Appropriate leisure and recreational opportunities responding to the needs of residents. The franchise agreement will add more alternatives to City residents who desire to watch television but do not want to subscribe to satellite services or use antennas.

BACKGROUND: iTV-3 Inc. which currently has cable television franchises with Pekin, Morton and East Peoria, has requested a cable television franchise with the City, which was presented to the Council for consideration. iTV-3 does not have a franchise agreement with the Town of Normal, but iTV-3 officials have informed the City that after an agreement with Bloomington is approved it planned approach Normal in the future regarding a franchise agreement.

Cable television companies enter into agreements with municipalities which permit the cable companies to use the city rights of way for their cables in return for payments to the city for that privilege. Although they are referred to as “franchise” agreements, the term is somewhat misleading because the cable company does not receive a promise from the city that they will be the only cable company permitted to operate in the city. Any company such as iTV3 which desires to “overbuild” (that is, to install their own equipment in the City right of way) would be entitled to operate in the City provided that it enters into a similar agreement. In this regard, a “cable franchise” agreement is more comparable to a rental agreement for the use of City right of way.

As the cable television industry has grown and consolidated over the last fifty (50) years, both the federal and state governments have placed restrictions on the ability of municipalities to regulate cable companies. The Telecommunications Act of 1996 (Title 47 United States Code Sections 521 *et seq.*) eliminated the ability of municipalities to regulate rates which may be charged for any tier of service above the “basic tier”. Even the rates charged for the *basic* tier of service may be regulated only if there is a lack of competition in the municipality, (meaning that the cable company controls at least 85% of the market), and if the cable company’s rates for basic tier service exceed the federal “benchmark” rate for that level of service, (since the passage of the 1996 law, the basic tier rate for the existing cable TV provider, Comcast, has not exceeded the federal benchmark). Finally, federal law does not permit a municipality to require a cable company to pay more than five percent (5%) of gross revenues received from customers in the municipality for the permission to use the City right of way. The agreement before you tonight requires iTV-3 to pay five percent (5%) of gross revenues in return for the franchise.

In 2007 and 2008, the Illinois General Assembly passed legislation which permits cable companies to bypass municipalities entirely and to obtain a franchise agreement from the Illinois Commerce Commission, (these laws are found in articles 21 and 22 of 220 ILCS 5, the Public Utilities Act, the Cable and Video Competition Law of 2007 and the Cable and Video Customer Protection Law). The purpose of the state legislation was to encourage competition by permitting cable companies to go to one place for franchise agreements rather than having to go to dozens or hundreds of municipalities.

iTV3 representatives have informed City staff that they desire to enter into a local franchise agreement with the City. This agreement is a virtual duplicate of the City's current franchise agreement with Comcast.

The agreement requires iTV3 to broadcast, without charge, programs made available to it by the City as well as educational institutions and City residents or organizations. It does not require iTV3 to produce such programs for free. When no programming has been offered by the City, an educational institution or a City resident or organization, iTV3 is permitted to broadcast other content on the channel.

The Agreement provides that iTV3 will provide complimentary basic cable service and a free standard installation at one (1) outlet to municipal buildings within 125' of iTV3's distribution cable; similar provisions apply to state accredited K - 12 public and private schools, excluding home schools. The Agreement also requires iTV3 to provide and maintain an "Emergency Alert System" consistent with state and federal standards.

The term of the agreement is for five (5) years. At the conclusion of that term, iTV-3 would either need to negotiate a new franchise agreement with the City or obtain a permit from the Illinois Commerce Commission.

iTV-3 will also be providing telecommunications services (i.e., telephone service) to consumers by use of the fiber optic lines it is installing in the City right of way. Pursuant to Section 35 of the Telecommunications Municipal Infrastructure Maintenance Fee Act (35 ILCS 635/1 *et seq.*), the City is prohibited from imposing franchise or other fees upon or require other compensation from telecommunications retailers for use of the public way. However, the City is permitted to tax telecommunications services purchased at retail from a retailer pursuant to its Telecommunications Tax, (2.5% of the gross charge for such service).

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: None.

FINANCIAL IMPACT: The amount received as compensation is consistent with previous cable TV franchise agreements and is the maximum permitted by federal law in the absence of specific findings of fact by the City showing the costs to the City of administering the franchise agreement justify a higher amount.

Respectfully submitted for Council consideration.

Prepared by:

J. Todd Greenburg, Corporation Counsel

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

Recommended by:

David A. Hales
City Manager

**CABLE TELEVISION FRANCHISE AGREEMENT
BY AND BETWEEN THE CITY OF BLOOMINGTON
AND iTV-3, INC.**

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the City of Bloomington, Illinois (hereinafter, the “City”) and iTV-3, Inc. (hereinafter, “Grantee”) this 10th day of June, 2013 (the “Effective Date”).

The City, having determined that the financial, legal, and technical abilities of the Grantee are reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

This agreement is entered into by and between the parties under the authority of and shall be governed by the Cable Act.

SECTION 1: Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, unless otherwise defined herein.

“Cable Act” or “Act” means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, 47 U.S.C. §§ 521 et seq., as the same may be amended from time to time.

“Cable Service” or “Service” means the one-way transmission to Subscribers of Video Programming or Other Programming Service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

“Cable System” or “System,” has the meaning set forth in 47 U.S.C. § 522 of the Cable Act, and means Grantee's facilities, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that

serves Subscribers without using any public right-of-way, (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand Services; (iv) an open video system that complies with section 653 of the Cable Act; or (v) any facilities of any electric utility used solely for operating its electric utility systems.

“Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as a television channel is defined by the Federal Communications Commission by regulation.

“Customer” means a Person who lawfully receives and pays for Cable Service with the Grantee’s express permission.

“FCC” means the Federal Communications Commission, or successor governmental entity thereto.

“Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

“Franchise Agreement” or “Agreement” shall mean this Agreement and any amendments or modifications hereto.

“Franchise Area” means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means as provided in this Agreement.

“Grantee” shall mean iTV-3, Inc.

“Gross Revenue” means the Cable Service revenue received by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly basic, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross revenues shall also include such other revenue sources directly related to Cable Service delivered over the Cable System as may hereafter develop, provided that such revenues, fees, receipts, or charges are deemed lawful and to be included in the gross revenue base for purposes of computing the Franchising Authority’s permissible franchise fee under the Cable Act, as amended from time to time. Gross Revenue shall not include refundable deposits, bad debt, investment income, programming launch support payments, advertising sales commissions and third party agency fees, nor any taxes, fees or assessments imposed or assessed by any governmental authority. Gross Revenues shall include

amounts collected from Subscribers for Franchise Fees pursuant to *City of Dallas, Texas v. F.C.C.*, 118 F.3d 393 (5th Cir. 1997), and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the “Pasadena Decision,” *City of Pasadena, California et. al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues*, CSR 5282-R, *Memorandum Opinion and Order*, 16 FCC Rcd. 18192 (2001), and *In re: Texas Coalition of Cities for Utility Issues v. F.C.C.*, 324 F.3d 802 (5th Cir. 2003).

“Initial Franchise Service Area” means that portion of the Franchise Area served by the Grantee’s Cable System as of the Effective Date of this Franchise Agreement.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

“Public, Educational and Governmental (PEG) Access Channel” shall mean a video Channel designated for non-commercial use by the public, educational institutions such as public or private schools, but not “home schools,” community colleges, and universities, as well as the City.

“Public, Educational and Government (PEG) Access Programming” shall mean non-commercial programming produced by any City residents or organizations, schools and government entities and the use of designated facilities, equipment and/or Channels of the Cable System in accordance with 47 U.S.C. 531 and this Agreement.

“Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Franchise Area, which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the City within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee’s Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

“City” means the City of Bloomington, Illinois or the lawful successor, transferee, designee, or assignee thereof.

SECTION 2: Grant of Authority

2.1. The City hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be five (5) years from the Effective Date, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/or applicable law.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

2.4. Police Powers. Nothing in this Franchise Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power.

2.5. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Public Ways.

2.6. Competitive Equity.

2.6.1. In the event the City grants an additional Franchise to use and occupy the public right of way for the purposes of operating a Cable System, the additional Franchise shall only be granted in accordance with the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11.

2.6.2. In the event an application for a new cable television franchise or other similar authorization is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall serve or require to be served a copy of such application upon any existing Company or incumbent cable operator by registered or certified mail or via nationally recognized overnight courier service.

2.6.3. Pursuant and in addition to Title/Chapter 38 of the City of Bloomington Municipal Code, during the term of this Franchise Agreement and any extension or renewal thereof, no application fee or Security Fund shall be required of the Grantee for any permit required by the City, provided that Grantee shall have timely made all payments to the City pursuant to Section 5.1 of this Franchise Agreement.

SECTION 3: Construction and Maintenance of the Cable System

3.1. Except as may be otherwise provided in this Franchise Agreement, Grantee shall comply with all generally applicable provisions of Title/Chapter 38, entitled “Streets, Sidewalks And Other Public Ways,” of the City of Bloomington Municipal Code, as may be amended from time to time.

3.2. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems’ transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee’s cable and other equipment without technical degradation of the Cable System’s signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.3. Improvements of Public Way. The Grantee agrees that it shall, upon reasonable notice by the City and at the Grantee’s own expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from such street or other public place any network, system, facilities, or equipment when required to do so by the City because of public health, safety and welfare improvements as deemed necessary by the City. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project in the event such funds are made available to other users of the Public Way.

3.4. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee’s relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way.

3.5. The Grantee shall not be required to relocate its facilities unless it has been afforded at least ninety (90) days notice of the necessity to relocate its facilities. Upon adequate notice the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities. In instances where a third party is seeking the relocation of the Grantee’s facilities or where the Grantee is entitled to reimbursement pursuant to the preceding Section, the Grantee shall not be required to perform the relocation work until it has received payment for the relocation work.

SECTION 4: Service Obligations

4.1. General Service Obligation. The Grantee shall make Cable Service available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where a minimum of 15 households have requested service within 1200 feet of the existing Cable System's technically feasible connection point. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the Grantee's distribution cable.

4.1.1. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.2. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R., Part 76, Subpart K, or technical equivalent as amended from time to time.

4.3. New/Planned Developments. The City shall provide the Grantee with written notice of the issuance of building permits within the Franchise Area for projects requiring undergrounding of cable facilities. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's rights-of-way. The City agrees to require the builder or developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least sixty (60) business days written notice of the date of availability of open trenches. The City shall also provide the Grantee with summaries of all planned developments in the City at the same time as provided to all utilities or other like occupants of the City's right-of-way. Said notice is to allow the Grantee sufficient foresight into the future demands on its design, engineering, construction, and capital resources. Should the City fail to provide advance notice of such developments the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise.

4.4. Annexations. The City shall notify the Grantee of all annexations by the City; and of any and all planned developments in areas expected to be annexed at the same time the City informs utilities or other like occupants of the City's rights-of-way. Said notice is to allow the Grantee sufficient foresight into the future demands on its design, engineering, construction, and capital resources. Should the City fail to provide advance notice of actual and planned annexations, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise. The parties agree that Grantee's Franchise and Franchise Fee obligations with respect to annexations are as set forth in the Counties Code – 55 ILCS 5/5-1095(a) – as amended from time to time; and that the period for which franchise fees shall continue to be paid to the county shall commence on the later of the date on which the Grantee was informed of the annexation or the actual date on which the annexation occurred. The City shall provide the Grantee with written notice of the issuance of building or development permits within the Franchise Area for projects requiring undergrounding of cable facilities. The City agrees to require the builder or developer, as a condition of issuing the permit, to give the

Grantee access to open trenches for deployment of cable facilities and at least sixty (60) business days written notice of the date of availability of open trenches.

4.5. Service to School Buildings and Governmental Facilities.

4.5.1. Service to School Buildings. The City and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to State accredited K-12 public and private schools not including “home schools,” located in the Franchise Area within one hundred twenty five feet (125) of the Grantee’s distribution cable.

4.5.2. Service to Governmental Facilities. The City and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to municipal buildings located in the Franchise Area within one hundred twenty five (125) feet of Grantee’s distribution cable. “Municipal buildings” are those buildings owned or leased by the City for government administrative purposes, and shall not include buildings owned by City but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

4.5.3. Long Drops. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

4.6. Emergency Alerts. At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an “Emergency Alert System” (“EAS”) consistent with applicable Federal law and regulation – including 47 C.F.R., Part 11 and the “State of Illinois Emergency Alert System State Plan” – as may be amended from time to time. The City agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the negligence of the City, its employees or agents in using such system.

SECTION 5: Oversight and Regulation by City

5.1. Franchise Fees. The Grantee shall pay to the City a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. If mailed, the Franchise Fee shall be considered paid on the date it is postmarked. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the franchise fees paid during that period. Any undisputed Franchise Fee payment which remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any delinquent Franchise Fee

payments, Grantee shall make such payments including interest at the prime lending rate as quoted by Chase Bank U.S.A or its successor, from the time of the discovery of the delinquent payment until the date paid. Any undisputed overpayments made by Grantee to the City shall be returned or credited upon discovery of such overpayment and shall be payable within thirty (30) days of the receipt of written notice from Grantee.

5.1.1. Change in Amount. The Parties acknowledge that, at present, the Cable Act limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. If, during the term of this Agreement, the Cable Act is modified so that the City would otherwise be authorized to collect a Franchise fee at a rate greater than five percent (5%) of Gross Revenues, the City may unilaterally amend this Agreement to increase the required percentage to be paid by the Grantee to the City up to the amount permitted by the Cable Act, provided that: (i) such amendment is competitively neutral; (ii) the City conducts a public hearing on the proposed amendment; (iii) the City approves the amendment by ordinance; and (iv) the City notifies Grantee at least ninety (90) days prior to the effective date of such an amendment. In the event a change in state or federal law reduces the maximum permissible franchise fee percentage that may be collected, the parties agree the Grantee shall reduce the percentage of franchise fees collected to the lower of: i) the maximum permissible franchise fee percentage; ii) the lowest franchise fee percentage paid by than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area or any other cable provider granted a cable franchise by the City pursuant to Title 47; or, iii) such franchise fee percentage as may be approved by the City, provided that: (a) such amendment is competitively neutral; (b) the amendment is in compliance with the change in state or federal law; (c) the City approves the amendment by ordinance; and (d) the City notifies Grantee at least ninety (90) days prior to the effective date of such an amendment.

5.1.2 Taxes Not Included. The Grantee acknowledges and agrees that the term “Franchise Fee” does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators on their services but not including a tax, fee, or assessment which is unduly discriminatory against Cable Operators or Cable Subscribers).

5.2. Franchise Fees Subject to Audit. The City and Grantee acknowledge that the audit standards are set forth in the Illinois Municipal Code at 65 ILCS 5/11-42-11.05 (Municipal Franchise Fee Review; Requests For Information). Any audit shall be conducted in accordance with generally applicable auditing standards. The City and/or its designee may be required to execute a non-disclosure agreement with the Grantee prior to inspection of the Grantee’s financial records. Enforcement of such requirements and standards and the penalties for non-compliance with such standards shall be consistent with 65 ILCS 5/11-42-11.05.

5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable

System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority's representative. In the event that the City has in its possession and receives a request under the State of Illinois Freedom of Information Act (5 ILCS 140/1 et seq.), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City's opposition to disclosure of any information Grantee designates as proprietary or confidential.

SECTION 6: Transfer of Cable System or Franchise or Control of Grantee

6.1. Grantee shall notify the City of any change in ownership of the Cable System within 30 days of any transfer of ownership totaling more than 51% of the Cable System. iTV-3, Inc..

SECTION 7: Insurance and Indemnity

7.1. Insurance. Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the City certificates of insurance designating the City as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of one million dollars (\$1,000,000.00) for bodily injury or death to any one person, and one million dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and one million dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee may meet the insurance minimum amounts through direct or umbrella coverage which meets or exceeds the total minimum insurance levels for all types of insurance. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.

7.2. Indemnification. The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, provided that the City shall give the Grantee written notice of its obligation to indemnify and defend the City within ten (10) business days of receipt of a claim or action pursuant to this Section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from the willful misconduct or negligence of the City, its officers, employees and agents.

SECTION 8: Public, Educational and Governmental (PEG) Access

8.1. PEG Capacity The Grantee shall provide capacity for the City's Public, Educational and Governmental ("PEG") Access Programming through Grantee's Cable System consistent with the requirements set forth herein. As of the Effective Date of this Agreement, the City utilizes two Channels which are time shared with the Town of Normal. Unless otherwise agreed to by the City and the Grantee to the extent required by applicable law, the Channel(s) may be carried on the Grantee's basic digital service tier. The City's PEG programming shall be provided consistent with Section 611 of the Cable Act, as amended from time to time.

8.2. The Grantee does not relinquish its ownership of or ultimate right of control over channel(s) by designating it for PEG use. However, the PEG channel(s) are, and shall be, operated by the City, and the City may at any time allocate or reallocate the usage of the PEG channel(s) among and between different non-commercial uses and Users. The City shall be responsible for the editorial control of the Video Programming on the PEG Channel(s) except to the extent permitted in 47 U.S.C. §531(e).

8.3. Origination Point. At such time that the City determines that it wants to establish capacity to allow its residents who subscribe to Grantee's Cable Service to receive PEG access programming originated from Schools and/or City facilities; or at such time that the City determines that it wants to change or upgrade a location from which PEG access programming is originated; the City will give the Grantee written notice detailing the point of origination and the capability sought by the City. The Grantee agrees to submit a cost estimate to implement the City's plan within a reasonable period of time. After an agreement to reimburse the Grantee for its expenditure, the Grantee will implement any necessary system changes within a reasonable period of time.

8.4. PEG Signal Quality. Provided PEG signal feeds are delivered by the City to the designated signal input point without material degradation, the PEG channel delivery system from the designated signal input point shall meet the same FCC technical standards as the remainder of the Cable System set forth in this Agreement.

8.5. Grantee Use of Unused Time. Because the City and Grantee agree that a blank or under utilized Access Channel is not in the public interest, in the event the City does not completely program a Channel, Grantee may utilize the Channel for its own purposes. Grantee may program unused time on the Channel subject to reclamation from the City upon no less than sixty (60) days notice. Except as otherwise provided herein, the programming of the Access Channel with text messaging or playback of previously aired programming shall not constitute unused time. Text messaging containing out of date or expired information for a period of thirty (30) days shall be considered unused time. A programming schedule that contains playback of previously aired programming that has not been updated for a period of ninety (90) days shall be considered unused time. Unused time shall be considered to be a period of time, in excess of six (6) hours, where no community produced programming of any kind can be viewed on an access Channel. Unused time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

SECTION 9: Enforcement of Franchise

9.1. Notice of Violation or Default. In the event the City believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

9.2. Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of the City's written notice: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that the cure will be completed.

9.3. Enforcement. Subject to applicable federal and state law, and pursuant to the provisions of 9.2 herein, in the event the City determines that the Grantee is in default of any material provision of the Franchise, the City may seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief.

9.4. Technical Violation. The City agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

a. in instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

b. where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

SECTION 10: Miscellaneous Provisions

10.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

10.2. Notice. Any notification that requires a response or action from a party to this franchise within a specific time-frame, or that would trigger a timeline that would affect one or both parties' rights under this franchise, shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:

City of Bloomington
109 E. Olive Street
Bloomington, IL. 61701

ATTN: Mayor Tari Renner

With a copy to:

To the Grantee:

iTV-3, Inc.
331 Fulton St, Suite 300
Peoria, Illinois 61602

ATTN: Levi Dinkla

Craig Hartner
2500 Lehigh Ave
Glenview, IL 60026

Recognizing the widespread usage and acceptance of electronic forms of communication, emails and faxes will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the person of record as specified above. Either party may change its address and addressee for notice by notice to the other party under this Section.

10.3. Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, ordinances, understandings, negotiations and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

10.3.1. The City may adopt a cable television/video service provider regulatory ordinance that complies with applicable law, provided the provisions of any such ordinance adopted subsequent to the Effective Date of this Franchise Agreement shall not apply to the Grantee during the term of this Franchise Agreement.

10.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

10.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

10.6. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and the Grantee, which amendment shall be authorized on behalf of the City through the adoption of an appropriate resolution or order by the City, as required by applicable law.

10.7. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Franchise Agreement.

10.8. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under Federal or state law unless such waiver is expressly stated herein.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

For the City of Bloomington:

For iTV-3, Inc:

By: Tari Renner

By: _____

Name: _____

Title: Mayor

Title: _____

Date: June 11, 2013

Date: _____

Motion by Alderman Black, seconded by Alderman Fazzini that the Franchise 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, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Variance from Chapter 38, Section 123(a) of City Code to Allow a Driveway Approach Twenty-three Feet (23') Wide at 203 Hampton Dr.

RECOMMENDATION/MOTION: That the variance be approved.

STRATEGIC PLAN LINK: Goal 3. Strong neighborhoods.

STRATEGIC PLAN SIGNIFICANCE: Objectives 3.c. Preservation of property/home valuation and 3.e. Strong partnership with residents and neighborhood associations.

BACKGROUND: Staff has received a written request from Robert Klock, owner, 203 Hampton Dr., to grant a variance to Chapter 38, Section 123(a) of City Code to allow a twenty-three feet (23') wide driveway approach at this address. This is an existing single family residence with a two (2) car garage on a corner lot that has 110' of frontage along Newport St. which is where the existing eighteen feet (18') wide driveway approach is located. The driveway is currently eighteen feet (18') wide and the owner is asking permission to add five feet (5') to the driveway. City Code allows residential double wide driveways to be up to twenty feet (20') wide at the property line. Driveway variances are recommended by the Public Works Department on a case by case basis after evaluation of criteria such as sight distance, width of adjacent roadway and amount of property frontage.

The following is the evaluation by staff on the different criteria:

- Sight distance – there are no identified issues with horizontal or vertical sight distance by allowing this variance.
- Width of adjacent roadway – the adjacent roadway is of sufficient width to allow the driveway widening without causing concern.
- Distance to intersection – the driveway is being expanded further away from the intersection so that is not a concern.
- Amount of property frontage – with 110' of frontage, this is enough to allow for expanding the existing driveway by five feet (5').

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Robert Klock, owner.

FINANCIAL IMPACT: None.

Respectfully submitted for Council consideration.

Prepared by: Jim Karch, Director of Public Works

Reviewed by: Barbara J. Adkins, Deputy City Manager

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

Recommended by:

David A. Hales
City Manager

Motion by Alderman Black, seconded by Alderman Fazzini that the variance be approved.

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

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

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Request for Proposal (RFP) for Street Sign Inventory and Work Order/Asset Management System

RECOMMENDATION/MOTION: That the RFP for Street Sign Inventory be awarded to Cloudpoint Geographics, Roanoke, IL, in the amount of \$100,000, and 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 purchasing these services, it allows the City's existing sign inventory to be updated in order to maintain compliance with the national Manual on Uniform Traffic Control Devices (MUTCD) and for the sign inventory to become a layer in the Geographic Information System (GIS).

BACKGROUND: The national MUTCD as published by the Federal Highway Administration (FHWA) requires agencies to maintain roadway signs to certain minimum standards including retro-reflectivity. As signs age in the field they fade and become less reflective making them difficult to see at night.

In the current MUTCD, there are requirements that agencies establish a method to identify deficient signs and replace them. The MUTCD states, "Implementation and continued use of an assessment or management method that is designed to maintain regulatory and warning traffic sign retro-reflectivity at or above the established minimum levels." One of the more popular established methods involves maintaining an accurate sign inventory and replacing deficient signs based on date installed. Another accepted method involves using a person sixty (60) years

of age or older to drive the streets at night to identify signs that need replacement. The most difficult and costly method involves using a retro-reflectometer to measure the retro-reflectivity at several locations on each and every sign in the field.

The City has an existing sign inventory that was started in 1988 and was used to obtain two (2) state grants to replace deficient signs in the 1990's and early 2000's. There is a need to update this inventory and establish a more efficient system to maintain the inventory in order to maintain compliance with the MUTCD.

There is also a need to collect the information in such a way that it can integrate into the MUNIS inventory and asset management system as well as MUNIS work order system. These MUNIS modules are scheduled for implementation in the future.

The City received seven (7) responses to this RFP which was due at 2:30 p.m. on March 21, 2013.

Company	Base Proposal
3M Company Roadway Maintenance Services, Traffic Safety & Security	\$132,741
Baxter Woodman Consulting Engineers	\$375,000
Cannon Group	\$299,840
Cloud Point Geographics	\$109,840
Data Transfer Solutions, LLC	\$92,956
Hanson Professional Services Inc.	\$294,750
Schnieder	\$256,400

After careful evaluation of the submittals, the selection team decided on Cloud Point Geographics, Roanoke, IL as the best fit for the City's needs. A significant factor behind this choice was the fact Cloud Point Geographics indicated that they will work with Tyler Technologies representatives to implement a workflow based on ESRI's ArcGIS and MUNIS Maplink/Work Order software system which is the City's Tyler MUNIS Enterprise Resource Planning System. Data Transfer Solutions; LLC, the lowest bidder, did not state this capability. The selection team included City staff from Public Works and Information Services Departments. RFPs were based on collecting data for 25,000 signs. The current sign inventory has 22,500 signs.

The City's policy has been to replace signs on a wear out basis. When a sign displays significant wear, a City crew will replace this sign with a MUTCD compliant signs. Furthermore, any sign which is knocked down will be replaced with MUTCD compliant sign. In FY 2013, the Streets & Sewer Division replaced approximately 1,500 signs. The FY 2013 budget appropriated approximately \$73,000 for various types of sign replacement, while the actual cost incurred was approximately \$90,000. In FY 2014, to address the heightened need for sign replacement the City has appropriated approximately \$170,000 which is a 132% increase from FY 2013. As the City progresses into future budgetary years, the City will continue to aggressively replace signs

in accordance to the budgetary allocation. Although staff does not anticipate significant future increases, staff does not expect the funds appropriated for sign replacement to decrease in the immediate future.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The FY 2013 Budget appropriated \$100,000 for this project in line item 10016210-70690. Due to the timing of the issuance of the RFP, staff was unable to complete the selection of a vendor before the end of FY 2013. Thus, these funds were not spent and/or encumbered in FY 2013. A budget amendment to re-appropriate these funds in FY 2014 is required. Staff has completed the RFP process and selected Cloud Point Geographic to provide a Street Sign Inventory and Work Order/Asset Management System. Although the total cost of the Cloud Point Geographic proposal exceeds the budget, staff will ensure the overall project expenses will not exceed \$100,000. Staff has incorporated a budget amendment into the memorandum to purchase this system in the FY 2014. Stakeholders may locate this line item in the Street Maintenance Budget in the FY 2014 General Fund Budget document on page #330.

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 Officer

Recommended by:

David A. Hales
City Manager

ORDINANCE NO. 2013 - 34

**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 10th day of June, 2013.

APPROVED the 11th day of June, 2013.

APPROVED:

Tari Renner
Mayor

ATTEST:

Tracey Covert
City Clerk

(EXHIBIT #1 ON FILE IN CLERK'S OFFICE)

Alderman Stearns noted the \$100,000 cost for a street sign inventory. She questioned what the City had done in the past. She believed that there were other methods

to meet this requirement. She questioned the least expensive method. She was concerned about this expenditure.

David Hales, City Manager, addressed the Council. He informed them that the City had 25,000 traffic signs. Currently, the City utilized a manual system. The current staff resources were insufficient to manage these signs. He cited the federal government mandate regarding retro-reflectivity. In cities across the nation, automation was the better method to manage and control traffic signs. Each year, City staff would know the life cycle of each sign for replacement and/or repair. The cost of the current system was unknown. City staff looked to other cities for a cost effective approach.

Alderman Stearns noted the prior to this item, the system was managed with in-house staff.

Mr. Hales stated that City staff would continue to manage the automated system.

Motion by Alderman Fazzini, seconded by Alderman Black that the RFP for Street Sign Inventory be awarded to Cloudpoint Geographics, Roanoke, IL, in the amount of \$100,000, the Purchasing Agent be authorized to issue a Purchase Order, and the Budget Amendment Ordinance passed.

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

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

Nays: Alderman Stearns.

Motion carried.

The following was presented:

SUBJECT: Petition submitted by Illinois Wesleyan University, requesting Vacation of Beecher St. right of way between Franklin St. and East St. and the alley right of way accessed by Beecher St. on the south and Horenberger Dr. on the east

RECOMMENDATION/MOTION: That the vacation of the street and alley be approved and the Ordinance passed.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services, Goal 3. Strong neighborhoods and Goal 5. Great place – livable, sustainable City.

STRATEGIC PLAN SIGNIFICANCE: Goal 3.d. Since the street and alley will not need to be maintained by the City there should be a cost savings realized over several years. The vacations will result in a safer more pedestrian friendly environment for the Wesleyan campus.

BACKGROUND: The petitioner is requesting to vacate two (2) sections of public right of way: one for Beecher St. and the other an alley off Beecher St. The Beecher St. portion is between East and Franklin St. The alley portion is just north of Beecher St. and west of Horenberger Dr. The adjacent properties are all owned by Illinois Wesleyan University (IWU). The intent for the street vacation is to create a safer pedestrian area without vehicle traffic for the many students who now must cross the street. The closure will not create a dead end. Traffic will be able circulate out to Emerson, Main or east towards Fell Ave. The alley appears to be merely a parking lot driveway that serves the Hansen Center. It is maintained by IWU.

The Planning Commission reviewed the petition and held a public hearing on May 22, 2013. Three (3) people representing IWU spoke in support of the petition emphasizing the need for pedestrian safety. No one else from the public spoke in opposition to or in support of the petition. One (1) person did ask where the alley was located and did not have any comment once she understood the alley was not adjacent to her property. The Planning Commission voted 8 - 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 approximately thirty-two (32) property owners within the area.

FINANCIAL IMPACT: The financial impact on the funding of City services should not be significantly impacted. However there should be long term savings since the city will no longer have to maintain Beecher St. or the alley.

Respectfully submitted for Council consideration.

Prepared by: Mark Woolard, City Planner

Reviewed by: Mark Huber, Director of PACE

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

**PETITION FOR VACATION OF
A PORTION OF BEECHER ST. AND A PORTION OF THE ALLEYS IN BLOCK 11 IN
THE RESURVEY OF PHOENIX ADDITION TO BLOOMINGTON**

STATE OF ILLINOIS)

) ss.

COUNTY OF MCLEAN)

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

Now comes Illinois Wesleyan University, hereinafter referred to as your Petitioner, respectfully representing and requesting as follows:

1. That your Petitioner is interested as adjacent land owner in the premises hereinafter described in Exhibit A attached hereto and made a part hereof by this reference;
2. That your Petitioner seeks approval of the vacation of a portion of Beecher Street and a portion of the alleys in Block 11 in the Resurvey of Phoenix Addition to Bloomington adjacent to said premise;
3. That said vacation of a portion of Beecher Street and a portion of the alleys in Block 11 in the Resurvey of Phoenix Addition to Bloomington is reasonable and proper because such street and alleys are not needed for public right-of-way by said City, its only use being the location of existing or proposed utilities.

WHEREFORE, your Petitioner prays that a portion of Beecher Street and a portion of the alleys in Block 11 in the Resurvey of Phoenix Addition to Bloomington be vacated with such reservation of utility easements as may seem proper.

Respectfully submitted,

By: Carl Teichman
Director of Government & Community Relations

ORDINANCE NO. 2013 - 35

**AN ORDINANCE PROVIDING FOR THE VACATION OF A PORTION OF
BEECHER ST. AND A PORTION OF THE ALLEYS IN BLOCK 11 IN THE
RESURVEY OF PHOENIX ADDITION TO BLOOMINGTON**

WHEREAS, there was heretofore filed with the City Clerk of the City of Bloomington, McLean County, Illinois, a petition requesting the vacation of a portion of Beecher Street and a portion of the alleys in Block 11 in the Resurvey of Phoenix Addition to Bloomington; 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 a portion of Beecher Street and a portion of the alleys in Block 11 in the Resurvey of Phoenix Addition to Bloomington requested in this case.

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

1. That a portion of Beecher Street and a portion of the alleys in Block 11 in the Resurvey of Phoenix Addition to Bloomington is hereby vacated, see Exhibit A.
2. The aforesaid vacation notwithstanding, the City reserves to itself and to all utilities an easement the full width of the vacated a portion of Beecher Street and a portion of the alleys in Block 11 in the Resurvey of Phoenix Addition to Bloomington 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 10th day of June, 2013.

APPROVED this 11th day of June, 2013.

Tari Renner
Mayor

ATTEST:

Tracey Cover
City Clerk

EXHIBIT A

Portion of Beecher Street to be vacated

A part of the Southeast Quarter and the Southwest Quarter of Section 33, Township 24 North, Range 2 East of the Third Principal Meridian, Bloomington, McLean County, Illinois, described as follows: That part of Beecher Street lying south of Block 10 Phoenix Addition to Bloomington according to the plat recorded in Plat Book 1, Page 27 and lying south of Block 3 in Ryburn and Nicholls Addition to Bloomington according to the plat recorded in Plat Book 1, Page 78, lying north of Lots 5 and 7 in the Southeast Quarter of Section 33 according to the plat recorded in Deed Record 37, Page 91, lying east of the East Right of Way of East Street and lying west of the West Right of Way Line of Franklin Street.

Portion of Block 11 Alley to be Vacated

A part of the Southeast Quarter of Section 33, Township 24 North, Range 2 East of the Third Principal Meridian, Bloomington, McLean County, Illinois, described as follows: The east-west alley and that part of the north-south alley in Block 11 lying south of the North Line of said east-west alley extended westerly in Block 11 in the Resurvey of Phoenix Addition to the City of Bloomington, McLean County, Illinois.

Alderman Schmidt cited her employment at Illinois Wesleyan University. She left the dais.

Mayor Renner introduced this item.

Motion by Alderman Black, seconded by Alderman Fazzini that the Vacations be approved and the Ordinance passed.

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

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

Nays: None.

Motion carried.

Alderman Schmidt returned to the dais.

The following was presented:

SUBJECT: Petition submitted by HL Bloomington LLC and Hundman Management LLC, requesting a Special Use Permit for multiple family dwellings for the property located at 1021, 1025, 1031, 1037 and 1041 Ekstam Dr.

RECOMMENDATION/MOTION: That the Special Use Permit be approved and the Ordinance passed.

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

STRATEGIC PLAN SIGNIFICANCE: Objective 4.a. The significance of the project, related to Goal 4 is that in growing or developing local businesses the local economy will grow as well. This goal would directly relate to growing local businesses for the apartment and construction businesses but also indirectly relate for retail businesses as they look to the number of households before investing in retail development.

BACKGROUND: The petitioners desire to develop the property on the east side of Ekstam Dr. consisting of five (5) two-story apartment buildings. The property is zoned B – 1, Highway Business District. This district allows many commercial uses as well as apartments with a special land use. The density will be close to that of the apartments which have already been developed on the west side of Ekstam. The development should be compatible with the other nearby apartments, condominiums and commercial uses. The development of the land to the east is limited because of restrictions for the airport flight path.

This case was before the Zoning Board of Appeals (ZBA) for a public hearing and review on May 15, 2013. The petitioner, his attorney and engineer spoke in favor of the petition. They believed there was ample acreage for commercial development within a mile of the site and this was an appropriate use given the surrounding uses. One other person from the public spoke generally in favor of the request stating the residential demarcation line will be farther south. Five (5) people spoke in opposition to the petition. The objections pertained to traffic, safety for many children, high density, insufficient parking, denial of the Pamela apartments, decreasing property values, businesses preferred, changing school enrollments, business security, and a lack of green space and parks. A petition was also submitted to the ZBA objecting to the special use.

Staff has evaluated the project and finds it to be an appropriate use for the site. The capacity of the street is adequate even for the increase in traffic generated by the new apartments. In response to earlier projects, changes have already been made to alleviate traffic congestion with street parking removed on the west side of Ekstam and installing speed humps. Certain issues such as Ekstam being blocked are only related to temporary construction activities.

The ZBA voted to recommend approval of the Special Use permit by a vote of 5 - 1.

During the public hearing process, there were several neighborhood issue raised that staff believed could be addressed outside the purview and standards considered by the ZBA. In an

additional attempt to clarify and alleviate some of these concerns, the City will take the following actions and suggest additional conditions related to this Special Use permit.

Staff is committed to have the Staff Traffic and Advisory Committee (STAC) evaluate additional parking restrictions (east) and appropriate traffic control on Ekstam Dr.

In conversations with the Police and Fire Chiefs, it was determined this development will not affect emergency response times as stated in the petition brought before the ZBA submitted to the Council.

City staff recommends that in the event the Council approves the Special Use Permit, a condition be added to require the owners to provide an area on the site during construction of apartment buildings for all contractors to use for off-street parking and staging and to include in their contracts with all contractors and sub-contractors that the contractors and sub-contractors are required to use those provided areas for off-street parking and staging. In addition, staff is recommending an additional condition requiring the petitioner to use all City mandated road closure criteria in the event Ekstam Dr. should need to be closed for any reason. These conditions have been included in the proposed ordinance.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public notice was published in the Pantagraph in accordance with City Code. In accordance with the Zoning Code, courtesy copies of the Public Notice were mailed to forty-seven (47) property owners within 500'. In addition, public notice/identification signs were posted on the property.

FINANCIAL IMPACT: This development is expected to generate additional property taxes, plus sales taxes from the dwellings inhabitants spending funds within the City.

Respectfully submitted for Council consideration.

Prepared by: Mark Woolard, City Planner

Reviewed by: Mark R. Huber, Director, PACE

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

Mayor Renner introduced this item.

David Hales, City Manager, presented a brief overview. This petition involved five (5) two story apartment buildings. The property was currently zoned B – 1, Highway Business District. A public hearing was held by the Zoning Board of Appeals, (ZBA). The ZBA recommended approval of the Special Use. City staff determined that the petition met the criteria for a Special Use and also recommended approval. The Ordinance had been amended and two (2) conditions had been added. One addressed off street parking for construction vehicles. The City’s STAC, (Staff Traffic Analysis Committee), would look into no parking on the east side of Ekstam Dr. This committee would also look at signage at the intersection of Ekstam and Cornelius. The developer had modified their plan. Four (4) apartment units had been removed and a playground would be installed. The Council had been provided with information regarding Special Use permits and the options available.

Mayor Renner noted that the Council take action on this item or return it to the ZBA.

Todd Greenburg, Corporation Counsel, addressed the Council. The Council had the authority to approve the petition as presented or amend same. If the Council believed that it had been provided with insufficient information, then this item could be returned to the ZBA. He cited Chapter 2 of the City Code. The Council cannot rehear this petition. The ZBA’s public hearing was the proper time and place to determine the Findings of Fact. There were six (6) standards established for the ZBA. If the evidence was insufficient, than the Council should remand the petition to the ZBA.

Mayor Renner noted that as a County board member, additional facts could not be considered by the County Board.

Mr. Greenburg cited the City’s home rule status which granted the City additional authority.

Mr. Hales clarified that if the Council approved this petition it had two (2) options: approve as submitted or amend then approve.

Mayor Renner cited a third option: return to the ZBA. He requested comments from the Council regarding an amendment to the petition.

Alderman Fazzini noted the changes made by the developer. He believed that these changes were advantageous to the neighbors. He questioned remanding this item to the ZBA.

Alderman Fruin recommended that the Council comment’s address minor modifications. He believed that the issues were understood. The City had not control over school redistricting. He noted that there were no concerns raised by the City’s Police and/or Fire Departments. The ZBA and City staff had recommended approval. He questioned additional information to be gained from a second hearing. If returned to the ZBA, he anticipated new and substantial information.

Alderman Sage noted that the ZBA had not held a public hearing on the revised plan.

Mr. Hales informed the Council that the City received the revised plan on Friday, June 7, 2013. This revision included the installation of the playground. A playground was discussed at the ZBA hearing held on May 15, 2013. There had been no public comment regarding the new plan. The plan was changed without public comments.

Alderman Mwilambwe echoed Alderman Sage's comments. He noted the time spent. This was a new development. He was not comfortable with same. The Council had been provided with additional information. He questioned if this information would have any impact. He cited the playground's size as an example. The issue of time had been raised. He questioned if the amount of time spent had been adequate/good enough. He believed that the Council should err on the side of caution.

Alderman Schmidt added that no assumptions should be made. She believed that other items should be on the table. She cited school redistricting. The City needed to involve Unit 5.

Motion by Alderman Mwilambwe, seconded by Alderman Stearns that this item be remanded to the Zoning Board of Appeals for their July 17, 2013 meeting.

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

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

Nays: Alderman Fazzini.

Motion carried.

The following was presented:

SUBJECT: Green Building, LLC Property Tax Abatement

RECOMMENDATION/MOTION: That the proposed property tax abatement be approved, the Agreement executed and the Resolution adopted.

STRATEGIC PLAN LINK: Goal 6: Prosperous Downtown Bloomington, and Goal 4: Grow the local economy.

STRATEGIC PLAN SIGNIFICANCE: Objectives 6.a: More beautiful, clean Downtown area; 6.b: Downtown vision and plan used to guide development, redevelopment and investments; 6.c: Downtown becoming a community and regional destination; 6.d: Healthy adjacent neighborhoods linked to Downtown; and 6.e: Preservation of historic buildings. Objectives 4.a:

Retention and growth of current local businesses; 4.b: Attraction of new targeted businesses that are the “right” fit for Bloomington; 4.c: Revitalization of older commercial homes; 4.d: Expanded retail businesses; and 4.e: Strong working relationship among the City, businesses & economic development organizations.

BACKGROUND: Green Building, LLC is a local development team which has decades of experience in the Bloomington-Normal community. The project in question would rehabilitate an existing structure located at 115 E. Monroe in the Downtown.

This project would serve two (2) primary functions. First, it would serve as a fifteen (15) unit residential apartment building for current and prospective residents of the Downtown community. A use that is currently in high demand as rental occupancy sits at 100% (Downtown Business Association) and businesses are increasing the number of short term employees working in the Downtown area. Secondly, the project site would serve to provide enhanced retail and restaurant space (2 units) for the commercial sector.

In all, this revitalization project would invest a minimum of \$1.6 million into taxable property in the City and would serve to revitalize an existing structure in the Downtown community, an area highlighted on the Economic Development Target Area Map. In addition to the rehabilitation of an existing structure in a focus area of our community, a few elements of particular interest in regards to this project include its compatible design and occupancy, a synergy with the concepts outlined in the forthcoming Downtown Plan, and a focus on environmentally sustainable outcomes.

In order to make the project financially feasible and thus complete the renovation, Green Building is requesting a freeze on real estate taxes owed on the site in question. The freeze, if approved by the taxing bodies, would allow Green Building to pay a portion of the new increment of property tax during each of the five (5) years while the company invests into the site. After the period of five (5) years is over, the company’s taxes will rise to take into account the full value of the new investment. At that point, all taxing bodies would begin to collect the full amount of post investment taxes.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: National Development Council, Economic Development Council for the Bloomington-Normal Area, Downtown Bloomington Association, Bloomington School District 87 Administration, McLean County Administration, Assessor for the Town of the City of Bloomington, and McLean County Chamber of Commerce; in addition to conducting informal meetings and communications with the aforementioned entities, the tax abatement agreement may be considered by the following committee and boards.

Proposed Schedule for Various Committees, Boards and Taxing Bodies

DATE	COMMITTEE/BOARD
JUNE 3	CITY OF BLOOMINGTON ADMINISTRATION & FINANCE COMMITTEE
JUNE 5	MCLEAN COUNTY FINANCE COMMITTEE

JUNE 10	CITY OF BLOOMINGTON CITY COUNCIL
JUNE 12	DISTRICT 87 SCHOOL BOARD
JUNE 13	BLOOMINGTON NORMAL AIRPORT AUTHORITY BOARD
JUNE 18	MCLEAN COUNTY BOARD
JUNE 18	HEARTLAND COMMUNITY COLLEGE BOARD
JUNE 19	BLOOMINGTON PUBLIC LIBRARY BOARD
JUNE 24	CITY OF BLOOMINGTON TOWNSHIP BOARD
TBD	BLOOMINGTON NORMAL WATER RECLAMATION DISTRICT BOARD

FINANCIAL IMPACT: According to the National Development Council, which conducted a full financial analysis of the developers and the project in question, (including a three year review of personal and business financial statements), this incentive is necessary in order to make the project financially viable. The company has leveraged existing financial resources and programs, including the Downtown Bloomington Enterprise Zone (a \$92,540 value) and the City's Harriet Fuller Rust Façade Grant Program (a \$25,000 value), but a financial gap still exists. As proposed, this arrangement serves to strengthen the project's financial position and fill the identified financial gap.

As structured, the proposed property tax abatement agreement protects the taxing bodies by guaranteeing that they will collect the existing pre-project level of property taxes *plus* an additional increment equal to 76.28592% of the pre-project amount. For example, the City collected \$553.30 in 2011; therefore, in the first year of the tax abatement, the City will collect the pre-project amount of \$553.30 *plus* an additional \$422.09 of the new increment for a total of \$975.39 to be collected by the City. This will occur during each of the five (5) years during the tax abatement agreement. Upon completion of the five (5) year agreement, each taxing body will collect the full amount of taxes under the new assessment. For example, the City will go from collecting \$553.30 in the current year, to \$975.39 during each of the five (5) years under the tax abatement agreement and \$4,556.07 each year following the abatement. (An illustration of the incentive structure is included in the Financial Impact section.) Again, this approach would allow Green Building to close its financial gap while also maintaining an adequate market return in the initial years of the project.

It is important to note that the amount of abated taxes will vary from taxing body to taxing body, based on the size of each taxing body's specific levy (an estimate of said breakdown is provided within the Financial Impact section). As each taxing body will have their own tax abatement agreement, if one or more taxing bodies choose not to participate, this will have no effect whatsoever on taxing bodies that do choose to participate.

The tables below demonstrate the potential value of the capital investment and related property tax abatement as proposed for each of the taxing bodies affecting the parcel. *Please note that the proposed incentive embraces the goals and objectives outlined in the City's Economic Development Incentive Guideline, as adopted by the City Council in 2012.*

Property Assessment Estimate for Work to be Completed

Table and information provided by the Assessor for the Town of the City of Bloomington.

115 E MONROE	2011 ASSESSMENT	NEW ASSESSMENT
	21-04-194-006	@ COMPLETION OF WORK
LAND	\$18,861	\$18,861
IMPROVEMENTS	\$33,359	\$411,139
TOTAL	\$52,220	\$430,000

Proposed Tax Abatement Agreement & Related Estimates

TAXING BODY	2011 TAX RATE	2011 TAXES COLLECTED	EST. TAXES COLLECTED DURING AGREEMENT (PER YEAR)	EST. ABATEMENT DURING AGREEMENT (PER YEAR)	EST. TAXES COLLECTED AFTER AGREEMENT (PER YEAR)
MCLEAN COUNTY	0.915710	\$478.19	\$842.98	\$3,094.62	\$3,937.55
CITY OF BLOOMINGTON TOWNSHIP	0.143280	\$74.82	\$131.90	\$484.20	\$616.10
CITY OF BLOOMINGTON	1.059550	\$553.30	\$975.39	\$3,580.69	\$4,556.07
B-N WATER RECLAMATION DIST	0.163900	\$85.59	\$150.88	\$553.90	\$704.77
BLM-NRM AIRPORT AUTH	0.154860	\$80.87	\$142.56	\$523.35	\$665.90
CUSD 87 BLOOMINGTON	4.657410	\$2,432.10	\$4,287.44	\$15,739.38	\$20,026.86
CITY OF BLOOMINGTON LIBRARY	0.250730	\$130.93	\$230.81	\$847.32	\$1,078.14
HEARTLAND COMM COLLEGE 540	0.475840	\$248.48	\$438.03	\$1,608.04	\$2,046.11
TOTALS	7.82128	\$4,084.28	\$7,200.00	\$26,431.50	\$33,631.50

VALUE OF ABATEMENT AFTER 5 YEARS: (ASSUMES ALL TAXING BODIES PARTICPATE)	% OF PROJECT COSTS (ASSUMES ALL TAXING BODIES PARTICPATE)
\$132,157.50	8.17%

Proposed Tax Abatement Illustration

TAXING BODY	2011 TAXES	YEAR 1 TAXES	YEAR 2 TAXES	YEAR 3 TAXES	YEAR 4 TAXES	YEAR 5 TAXES	YEAR 6 TAXES
MCLEAN COUNTY	\$478.19	\$842.98	\$842.98	\$842.98	\$842.98	\$842.98	\$3,937.55
CITY OF BLOOMINGTON TOWNSHIP	\$74.82	\$131.90	\$131.90	\$131.90	\$131.90	\$131.90	\$616.10
CITY OF BLOOMINGTON	\$553.30	\$975.39	\$975.39	\$975.39	\$975.39	\$975.39	\$4,556.07
B-N WATER	\$85.59	\$150.88	\$150.88	\$150.88	\$150.88	\$150.88	\$704.77

RECLAMATION DIST							
BLM-NRM AIRPORT AUTH	\$80.87	\$142.56	\$142.56	\$142.56	\$142.56	\$142.56	\$665.90
CUSD ⁸⁷ BLOOMINGTON	\$2,432.10	\$4,287.44	\$4,287.44	\$4,287.44	\$4,287.44	\$4,287.44	\$20,026.86
CITY ^{OF} BLOOMINGTON LIBRARY	\$130.93	\$230.81	\$230.81	\$230.81	\$230.81	\$230.81	\$1,078.14
HEARTLAND COMM COLLEGE 540	\$248.48	\$438.03	\$438.03	\$438.03	\$438.03	\$438.03	\$2,046.11
TOTAL	\$4,084.28	\$7,199.99	\$7,199.99	\$7,199.99	\$7,199.99	\$7,199.99	\$33,631.50

In addition to the 76.28592% increase in property taxes in each of the first five (5) years of the agreement, there are a number of other ways in which this project will be beneficial to the community outside of the capital investment figures. As these aspects are difficult to quantify, an overview of the potential positive effects of this project are outlined below. Ultimately, this project will:

- Increase the food and beverage and sales tax revenue generated by the commercial units.
- Use local workforce during construction and upon completion of the retail and restaurant sections.
- Increase the property value of the affected building and have a positive impact on the surrounding area.
- Allow for the expansion of targeted local retail and restaurant owners where leakage exists and by effect increase retail sales and retail sales tax receipts.
- Renovate a Downtown property that has been in our community for over 100 years; when complete, citizens and local businesses will benefit from enhanced Downtown aesthetics.
- Stimulate positive communication between developers, City staff and economic development organizations within our community and open the door for future development opportunities.
- Enhance the perception of the Downtown among City residents.
- Be a source of pride for those actively working to improve the Downtown.

Respectfully submitted for Council consideration.

Prepared by: Justine Robinson, Economic Development Coordinator

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

Legal review by: Rosalee Dodson, Asst. Corporation Counsel

Recommended by:

David A. Hales
City Manager

AGREEMENT/RESOLUTION????

Mayor Renner introduced this item.

Alderman Stearns expressed her belief that this was a good project for the Downtown. Property taxes would be abated. This was a what if project. A decaying historic building would be turned into an asset. The property value would be enhanced. She expressed her support for this item.

Motion by Alderman McDade, seconded by Alderman Stearns that the application be accepted, the Tax Abatement Agreement approved, the Mayor and City Clerk be authorized to execute the necessary documents, and the Resolution adopted.

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

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

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Bid for 2013 Contract for Sidewalk Reconstruction

RECOMMENDATION/MOTION: That the unit prices from George Gildner, Inc., Bloomington, IL be accepted, a contract for 2013 Sidewalk Replacement and Handicap Ramp Program be approved, in the amount of \$825,000, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities, and Goal 3. Strong neighborhoods.

STRATEGIC PLAN SIGNIFICANCE: Objective 2.a. This project upgrades sidewalks throughout the City, providing better pedestrian access. It also improves the infrastructure in neighborhoods, providing residents with a way to contribute to the quality of the sidewalks in their neighborhood.

BACKGROUND: This project includes four (4) budgeted projects; the 50/50 Residential Sidewalk Replacement Program, the Sidewalk Ramp Replacement Program, the Sidewalk Repair Program and the Community Development Block Grant (CDBG) sidewalk program:

50/50 Residential Sidewalk Replacement Program: Annual program that provides for replacement of public sidewalk up to \$50,000 with the participation of the property

owner up to \$50,000. Program is voluntary based on first come first served until available money runs out. Low income households may qualify for assistance through CDBG programs.

Sidewalk Ramp Replacement Program: This program also provides for replacement of public sidewalk ramps in order to comply with Federal ADA, (American with Disabilities Act), requirements. Most locations are within the City's annual resurfacing contract. Other locations are determined by citizen request and then by public benefit.

Sidewalk Repair Program: Annual program that provides for repair of public sidewalks not addressed by the 50/50 program to correct hazardous conditions. Locations are determined by citizen request and then by public benefit.

CDBG Sidewalk Program: Program that provides for repair of public sidewalks with funding from CDBG funds through a grant from the United States Housing and Urban Development.

A presentation was given at the March XX, 2013 Infrastructure Committee meeting. This presentation helped to explain the prioritization of sidewalk repair and the system used to rate the sidewalks.

The substantial completion date for this project is in the contract as November 14, 2013. If there is still money remaining in the 50/50 program, it is extended until money runs out or April 30th, whichever is earlier. This past year an insert was mailed with the water bill to promote the program. This caused a sizable response to the program, all of the funds were used. If a water bill insert is provided this year, it may allow the funds to be spent sooner than last year..

The unit prices for five (5) major items are listed in the table below:

DESCRIPTION	UNITS	2012 Unit Price	2013 Unit Price	Change 2012-2013 (\$)
4" sidewalk remove/replace	SF	\$6.10	\$6.40	\$0.30
6" sidewalk remove/replace	SF	\$6.50	\$6.75	\$0.25
saw cutting	SF	\$1.50	\$1.40	-\$0.10
curb replacement	LF	\$22.00	\$22.75	\$0.75
retaining wall	SF	\$40.00	\$40.00	\$0.00

Four (4) bids were received and opened at 2 p.m. on May 28, 2013 in the Council Chambers. 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 will be awarded.

Bids:			
George Gildner, Inc., Bloomington, IL	<i>Low Bid</i>	\$693,597.75	
J.G. Stewart, Inc., Bloomington, IL		\$706,225.75	

WAS CON Co., Hammond, IL	<i>As Corrected</i>	\$2,573,615.00	
	<i>As Read</i>	\$1,755,002.00	
Rowe Construction Co., Bloomington, IL		\$865,237.65	
Engineer's Estimate:		\$8,23,337.50	
Budget:			
Residential Sidewalk Program		\$50,000	CIF
Residential Sidewalk Program		\$50,000	PRI PROP
Sidewalk Repair Program		\$675,000	CIF
CDBG		\$50,000	CDBG
TOTAL:		\$825,000	

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$825,000 for four (4) City programs which fund the sidewalk repair and ramp replacement program. All three (3) programs are found within the Capital Improvement Fund. The first program, the sidewalk ramp replacement program, appropriated \$375,000 from line item 40100100-72560, while the second program, the sidewalk repair program, appropriated \$300,000 from line item 40100100-72560. The third program, the sidewalk replacement 50-50 program, appropriated \$150,000 of which \$50,000 is a contribution from CDGB funds account line item 22402440-72560-52000. Private property contributions will account for an additional \$50,000 and are managed through the Capital Improvement Fund. In comparison to the FY 2013 Budget which appropriated \$425,000 for the sidewalk repair and ramp replacement program, the FY 2014 sidewalk repair program increased over 100%. Stakeholders may locate this purchase in the FY 2014 Capital, Enterprise, and Other Fund Budget document on page #44 for the Community Development portion and page #106 for the Capital Improvement Fund portion.

Respectfully submitted for Council consideration.

Prepared by: Jim Karch, PE CFM, Director of Public Works

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Tim Ervin, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Mayor Renner introduced this item. He noted that value of this contract.

Motion by Alderman Schmidt, seconded by Alderman McDade that the unit prices from George Gildner, Inc., Bloomington, IL be accepted, a contract for 2013 Sidewalk Replacement and Handicap Ramp Program be approved, in the amount of \$825,000, 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, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Professional Engineering Services Contract with Clark Dietz, Inc. for Locust St. Combined Sewer Overflow (CSO) Elimination and Water Main Replacement Phase 2 Construction Plan Design

RECOMMENDATION/MOTION: That the Professional Engineering Services Contract with Clark Dietz, Inc., Champaign, IL, for Locust St. CSO Elimination and Water Main Replacement Phase 2 Construction Plan Design be approved, in the amount of \$285,355, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 2. Upgrade City Infrastructure and Facilities, and Goal 5. Great place - livable, sustainable City.

STRATEGIC PLAN SIGNIFICANCE: Objectives 2.b. and 5.b. The proposed contract provides good stewardship and improves quality of life by providing construction plans to build the next phase of sewer installation for eliminating the CSO at Locust St. and Colton Ave. Elimination of the CSO will improve water quality in our rivers and streams, and also help the City meet its commitment to eliminate CSO under directive from the Illinois Environmental Protection Agency (IEPA).

BACKGROUND: In compliance with IEPA policy for control of CSO, the City developed a Long Term Control Plan (LTCP) to identify CSO locations as a tool to work towards elimination of CSO within the City sewer system. Of the seven (7) CSO locations originally identified, the only remaining locations are at Locust St., Colton Ave., and Maizefield Ave. The Maizefield CSO location is currently under a Professional Services Contract to determine the most cost effective means of eliminating that CSO. This proposed Phase 2 Construction Plan Design for the Locust/Colton CSO Elimination will create a set of bid documents to hire a contractor to install new sanitary sewer main to separate storm and sanitary flow in the Locust/Colton sewer shed, and also to install new water main to upgrade the system within the construction limits.

Clark Dietz was originally selected using a modified Quality Based Selection (QBS) process for Phase 1 of the Locust CSO Project, in part because they were the consultant that successfully developed the CSO Elimination Study Plan which identified the series of projects needed to eliminate the CSO. Additionally, during Phase 1 Clark Dietz created design plans beyond the limits of what was actually built in Phase 1, this was done in case low bid prices would allow additional sewer to be installed. Those extra plans beyond the Phase 1 design limit will be incorporated into the proposed Phase 2 Plans. It is anticipated that the QBS process may be utilized for future phases of the project.

The City anticipates applying for, and utilizing, the State Revolving Loan Fund (SRLF) for water and wastewater projects from the IEPA as the revenue source for construction funds to build this project. The SRLF provides a low interest rate and a twenty (20) year repayment schedule. Council approval will be required prior to acceptance of an IEPA Loan.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public Meetings were held during the planning and design stage of Phase 1, additional Public Meetings will be scheduled to update residents impacted by this proposed Phase 2 construction.

FINANCIAL IMPACT: The FY 2014 Budget appropriated Sewer, Storm and Water Funds in the amounts of \$235,000 for Planning/Design, \$30,000 for Land Acquisition and \$1,430,000 for Construction expenditures. While it is not anticipated that construction will occur in FY 2014, staff expects the design and potential land purchases for Phase 2 could occur in FY 2014. The cost allocation of the design contract with Clark Dietz, Inc. will be allocated with \$109,255 from Water Fund, \$88,050 from the Sewer Fund and \$88,050 from the Storm Water Fund for a total of \$285,355. The design expenditures are paid from line item 70050 within each respective fund. Stakeholders may locate this purchase in the FY 2014 Capital, Enterprise, and Other Fund Budget document on pages #134, #161 and #171.

Respectfully submitted for Council consideration.

Prepared by: Jim Karch, P.E., CFM, Director of Engineering

Reviewed by: Barb Adkins, Deputy City Manager

Reviewed by: Craig Cummings, Director of Water

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

(CONTRACT ON FILE IN CLERK'S OFFICE)

Mayor Renner introduced this item.

Motion by Alderman Schmidt, seconded by Alderman Stearns that the Professional Engineering Services Contract with Clark Dietz, Inc., Champaign, IL, for Locust St. CSO Elimination and Water Main Replacement Phase 2 Construction Plan Design be approved, in the amount of \$285,355, 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, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

CITY MANAGER'S DISCUSSION: David Hales, City Manager, recognized Barb Adkins, Deputy City Manager, and other City staff for their efforts to respond to the Council's questions.

He addressed the economic development incentive for 115 E. Monroe. This item was the product of rigorous analysis. This was an improvement over the past. The City had collaborated with other local governmental units. The applicants made their case. This project would also make use of the Enterprise Zone. His goal was to reduce the time line going forward.

He also addressed the 2013 Sidewalk Reconstruction bid. He noted the funding increase for this item. He complimented City staff for the sidewalk rating system. In addition, he addressed the professional engineering contract for the Locust/Colton CSO (Combined Sewer Overflow) Elimination and Water Main Replacement, Phase 2 Construction Plan Design.

Mr. Hales cited the Special Use Petition on Ekstam Dr. The City's Comprehensive Land Use Plan, (CLUP), needed to be updated. This Special Use involved commercially zoned property next to residentially zoned property. Multi family dwellings were allowed in a commercial zoning district by Special Use. He wanted to assure that in the future only commercial developments would be allowed in commercial zoning districts. This needed to

be a part of the CLUP dialogue. He believed that large multi family developments needed open space to address quality of life issues. Currently, there was no requirement for same. These were topics that needed to be addressed. The City needed to take a serious look at same and learn from petitions filed.

MAYOR'S DISCUSSION: Mayor Renner informed the Council that the Ward 7 Town Hall Meeting would be held on Tuesday, June 11, 2013 at Crosswinds Church located at ADDRESS. This meeting was being hosted by the Northwest's Neighborhood Association. He added that Wards 4 and 5 would be scheduled next during the months of August and September 2013.

He also addressed the Mayoral Open Houses. He cited attendance at same. There had been open, respectful discussions on a number of issues.

He cited economic development discussions regarding the Downtown were moving forward. He stressed the need for a Downtown Plan.

Pension and infrastructure funding would be addressed by the Administration and Finance Committee.

Finally, he informed the Council that he had participated in a police ride along with Alderman Stearns to review nuisance properties. This issued needed to be addressed.

ALDERMEN'S DISCUSSION: Alderman Sage reminded those present that the Public Safety Committee would meet on Thursday, June 13, 2013 to address the proposed text amendment on dangerous and vicious dogs. He requested that the Council gather any questions. He hoped for an efficient and effective meeting. This issue would be returned to the Council at their June 24, 2013 meeting.

Alderman Sage recognized Barb Adkins', Deputy City Manager, thirty-four (34) years of service to the City.

Alderman Stearns addressed the proposed text amendment regarding dangerous and vicious dogs. She cited discussions between legal counsel for the Wish Bone Canine Animal Rescue and the City which was scheduled for Friday, June 14, 2013.

She also recognized the Parks, Recreation and Cultural Arts Department for the Trotter Foundation celebration in Withers Park on June 8, 2013. She cited the City's efforts to preserve and protect this fountain. She questioned the status of other monuments. She cited the Korean/Vietnam Wars memorial in Miller Park. She requested a status update.

David Hales, City Manager, addressed the Council. He would send the Council an email regarding same.

Alderman Schmidt noted that the Zoning Board of Appeals (ZBA) had cancelled their June 20, 2013 meeting.

Mr. Hales offered to inform the Council. Notice would also be provided.

She also addressed the Council's concern regarding the ZBA's 3:00 p.m. meeting time.

Finally, she questioned Mayor Renner regarding nuisance properties.

Mayor Renner expressed his opinion that these properties were in physically in bad condition. He described them as hazardous. The majority of the properties were on the City's east side. He believed that the Police Department would show these properties to the Council.

Alderman Fazzini wanted to address three (3) items. The McLean County History Museum would hold its gala on Thursday, June 13, 2013. He cited the honorees. Over 500 tickets had been sold.

He had viewed the Council's May 28, 2013 meeting. He encouraged the Council to use their microphones.

He also addressed nuisance properties. The City needed to start charging higher fees. There should be a vacant property fees.

Alderman Fruin addressed meeting start times for City boards and/or commissions. The City should review all 3:00 p.m., 4:00 p.m. and 5:00 p.m. start times.

He also addressed the Ekstam Dr. Special Use petition. There had been good discussion regarding this challenging issue. Lessons had been learned. He cited the lack of an east/west street. Cornelius had been stubbed on both ends. He noted the concern regarding the lack of green space. He cited McGraw Park. He suggested that a temporary path way be provided.

Alderman Lower addressed the economic development incentive for 115 E. Monroe. He believed that this issue needed a closer look. It involved public funds. There should be metrics for performance and goals with a time line.

He also addressed the professional engineering services contract for Locust/Colton CSO Elimination and Water Main Replacement, Phase 2 Construction Plan Design. The City needed to adopt a more aggressive funding stance. The City should not be reliant upon federal and/or state funds. The City needed to be a leader.

The City needed to work with the developer regarding the Ekstam Dr. Special Use petition. Construction vehicles should be kept off the street. A buffer/beam could be built to address congestion with the adjoining residential developments. City staff need to look

into parking. He recommended that a trail be built to connect this proposed development with McGraw Park.

Motion by Alderman Fazzini, seconded by Alderman Black, that the meeting be adjourned. Time: 8:12 p.m.

Motion carried.

**Tracey Covert
City Clerk**

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FOR COUNCIL: June 24, 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 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: _____ 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: June 24, 2013

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 of Leroy, IL in the amount of \$110,778 be approved, 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 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. CIAM staff noticed a reduction in man hours in maintaining these areas of 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 the attached 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 other capital projects (installation of additional storage room and the installation of additional security cameras) within the US Cellular Coliseum to offset the \$25,778 purchase of the floor and wall coverings. The two delayed capital projects will be added to the capital projects for the US Cellular Coliseum 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, M.S., Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. CIP Budget Book Page
Attachment 2. Garage Floor Coating Letter
Attachment 3. Press Release from Eco-Corflex

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
CAPITAL IMPROVEMENTS PROGRAM FY 2014 - FY 2018

<i>FUNDING SOURCE(S)</i>	<i>DEPARTMENT</i>	<i>CITY CONTACT PERSON</i>	<i>WARD</i>
Coliseum	U.S. Cellular Coliseum	Jim Appio	6
<i>PROJECT TITLE</i>		<i>ACCOUNT NUMBER(S)</i>	
Concourse Floors Dressing Room Hallway walls		57107110-79990	
<i>PROJECT DESCRIPTION/JUSTIFICATION</i>			
This project is to apply a non resistant flooring to the entire concourse. This will cover all concrete cracks and stains that have occurred of the last seven years. The process is to diamond cut the concrete and then applying two coats on an epoxy. The same process will completed to the wall in the dressing room hallway. By completing the walls, this will allow the coliseum the maintain them better. This project will be a sole source project.			
Projected start date:		Projected completion date:	
DESIGN BID: DESIGN: CONSTRUCTION BID: CONSTRUCTION: BUDGET BASIS :		DESIGN BID: DESIGN: CONSTRUCTION BID: CONSTRUCTION: INITIAL FISCAL YEAR :	
		2014	
		X	
		CONTINUATION REVISION NEW	
EXPENSES	FY 2014	FY 2015	TOTAL
PLANNING / DESIGN	\$0	\$0	\$0
LAND	\$0	\$0	\$0
CONSTRUCTION	\$85,000	\$0	\$85,000
EQUIPMENT / FURNISHINGS	\$0	\$0	\$0
TOTAL	\$85,000	\$0	\$85,000
REVENUES	FY 2014	FY 2015	TOTAL
GENERAL FUND	\$0	\$0	\$0
MOTOR FUEL TAX	\$0	\$0	\$0
CAPITAL IMPROVEMENT	\$0	\$0	\$0
WATER	\$0	\$0	\$0
SANITARY SEWER	\$0	\$0	\$0
STORM WATER	\$0	\$0	\$0
BONDS	\$0	\$0	\$0
GRANTS / OTHER	\$0	\$0	\$0
TOTAL REVENUES	\$0	\$0	\$0
OPERATING	FY 2014	FY 2015	TOTAL
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



March 20, 2013

To Whom It May Concern,

ECO CorFlex products are specifically designed and formulated exclusively for GarageFloorCoating.com Authorized Dealers and Franchisees nationwide and in Canada.

The entire line of ECO CorFlex products are all proprietary to our dealer and franchisee network and aren't available to the general public, contractors or retail locations.

Feel free to contact us with any questions regarding this matter.

Regards,

A handwritten signature in blue ink, appearing to read "Robert Hanson", with a long, sweeping horizontal line extending to the right.

Robert Hanson
President/CEO

Eco-CorFlex
3801 E Roeser Rd
Suite 1, Phoenix, AZ. 85040

Anti-Graffiti Hydro Poly Deters Vandals and Repels Chemical Attack



Phoenix, AZ. April 11, 2013, Eco-CorFlex announces the world's first graffiti cure, Hydro Poly.

Following over a decade of research and development, Eco-CorFlex announced today the release of the world's most advanced anti-graffiti coating to be used for government, architectural, commercial and residential applications. The product, called *Eco-CorFlex Hydro Poly*, creates a molecular bond with just about any surface and provides a protective barrier. Once applied, Hydro Poly literally prevents any other chemical from marring or adhering (e.g., acetone or paints), allowing clean-up to occur in seconds with our eco-friendly products. This frustrates vandals and deters future attacks. Eco-CorFlex is so confident in its product they are providing a 5 to 10-year warranty.

"Hydro Poly is truly the most advanced product on the market and the next generation of anti-graffiti coating", stated Robert Hanson, President of Eco-CorFlex and the developer of Hydro Poly. Hydro Poly is an extremely versatile product that is available in clear or a wide variety of stains to easily incorporate with existing color and design schemes enhancing the look of any surface. Hydro Poly can be applied to a multitude of surfaces including green concrete (as a curing agent), established concrete, stucco, asphalt, pavers, vinyl, wood, plastic, metal, brick and many other surfaces. When applied to protect walls, buildings, bridges, overpasses, partitions, and many more surfaces, it creates a molecularly impermeable bond" that "densifies", strengthens and waterproofs, acts as a moisture mitigation system (virtually eliminating efflorescence), and protects against harmful UV rays and extreme chemical attack.

On April 25, 2013, at I-17 and Camelback Rd in Phoenix, AZ, Eco-CorFlex will be hosting a demonstration of its Hydro Poly to City of Phoenix officials, including the City of Phoenix Manager and Council members. According to current statistics, the city pays approximately 6 million dollars a year in graffiti removal and graffiti is considered a "gateway crime" to other criminal activities. Since Hydro Poly is a one-time application process, preventing the need to continually re-paint graffitied surfaces, it could potentially reduce city expenditure by millions of dollars. The company is firm-certified by the EPA, is ISO 9001:2008 certified, and is certified and licensed by the state of Arizona in industrial coatings.

For more information on Eco-CorFlex or to get the Eco-CorFlex advantage for your establishment, please contact Dave Barker at (480) 369-6491, or toll free at 1-(866) 406-2628, or visit our website at www.eco-corflex.com.

FOR COUNCIL: June 24, 2013

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

RECOMMENDATION/MOTION: That the bid for 2013 Pavement Preservation be awarded to Corrective Asphalt Materials, LLC in the amount of \$200,000, 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: 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 very positive results. Kenyon Court had a CRF test application applied in 2007 that still looks very good and 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 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. Streets are treated with Reclamite the same year when they are resurfaced to get the maximum benefit from the Reclamite. The streets scheduled to be treated under this contract are shown on the attached map.

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 5% of the City's Pavement Program. Staff recommends the entire \$200,000 is 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, M.S., Budget Manager

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1.

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			



Asphalt Solutions and Industrial Dust Control
Airports • Roadways • Utilities • Parking Areas

6-4-13

Mr. Jeff Kohl
Engineering Technician
Engineering Department City of Bloomington, IL
115 E Washington St.
Bloomington, IL 61702-3157
Office 309-434-2225
Cell 309-275-1633
jkohl@cityblm.org

Mr. Kohl,

Corrective Asphalt Materials CAM, LLC (CAM) has an agreement with TRICOR Refinery, patent owner of Reclamite and CRF, to manufacture the final Reclamite Preservative Seal emulsion and CRF Restorative Seal emulsion and to apply and distribute in the states of Illinois, Missouri, Arkansas, Alabama, Iowa, and Mississippi.

Based on the aforementioned agreement, CAM, LLC is the sole distributor in Illinois of TRICOR Refinery's Reclamite & CRF, of which the Reclamite Preservative Seal emulsion CRF Restorative Seal emulsion is made.

And, according to Trico Refining's own website distributor information, this is the case.

I trust this satisfies all questions regarding the proprietary nature of Reclamite Preservative Seal and CRF Restorative Seal.

Thank You

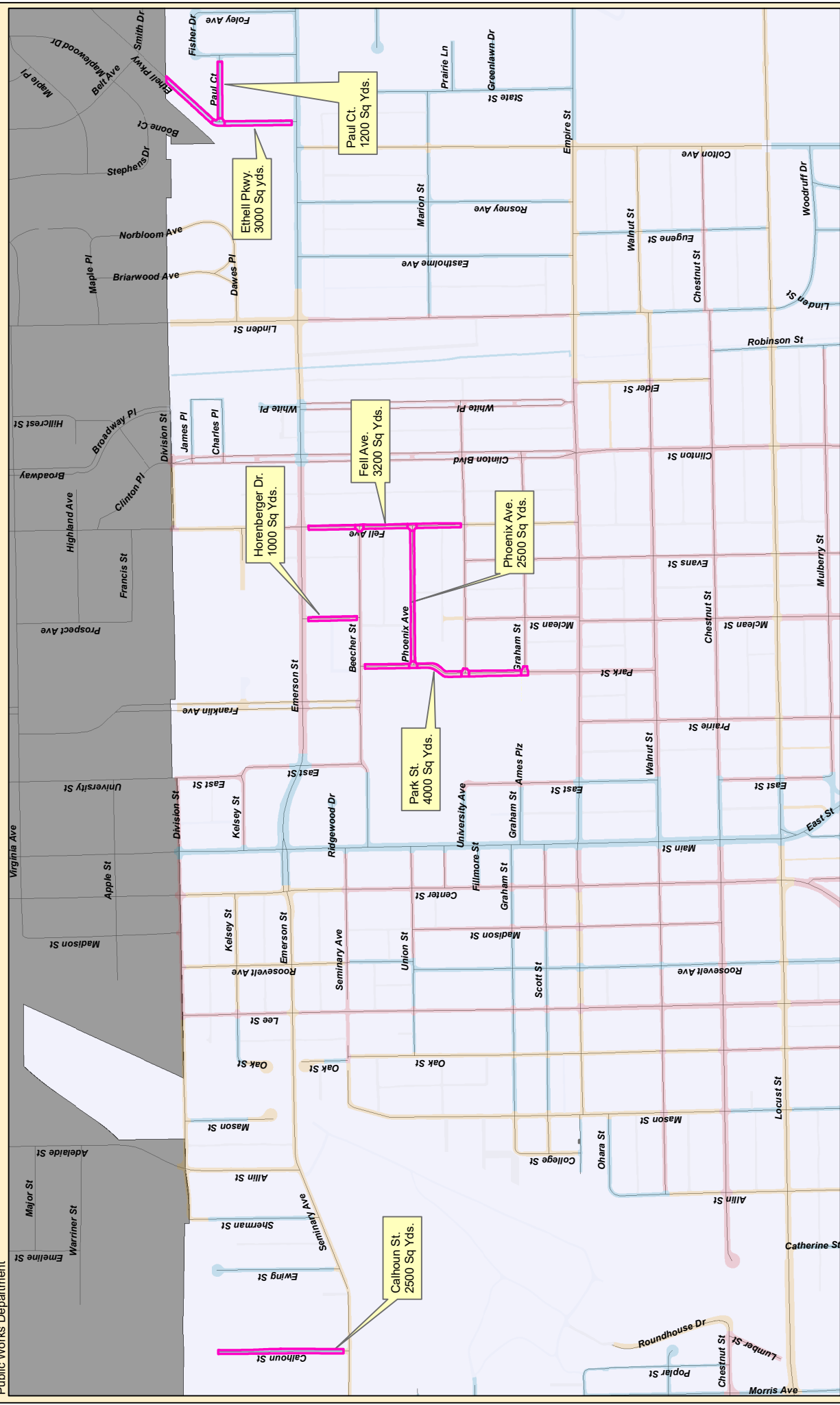
A handwritten signature in black ink, appearing to be 'AJW' or similar, written over a horizontal line.

Anthony J. Witte, PE (Tony)
CEO - Corrective Asphalt Material, CAM, LLC
off-618-254-3855
mob-618-407-1570
fax 618-254-2200
tony@cammidwest.com



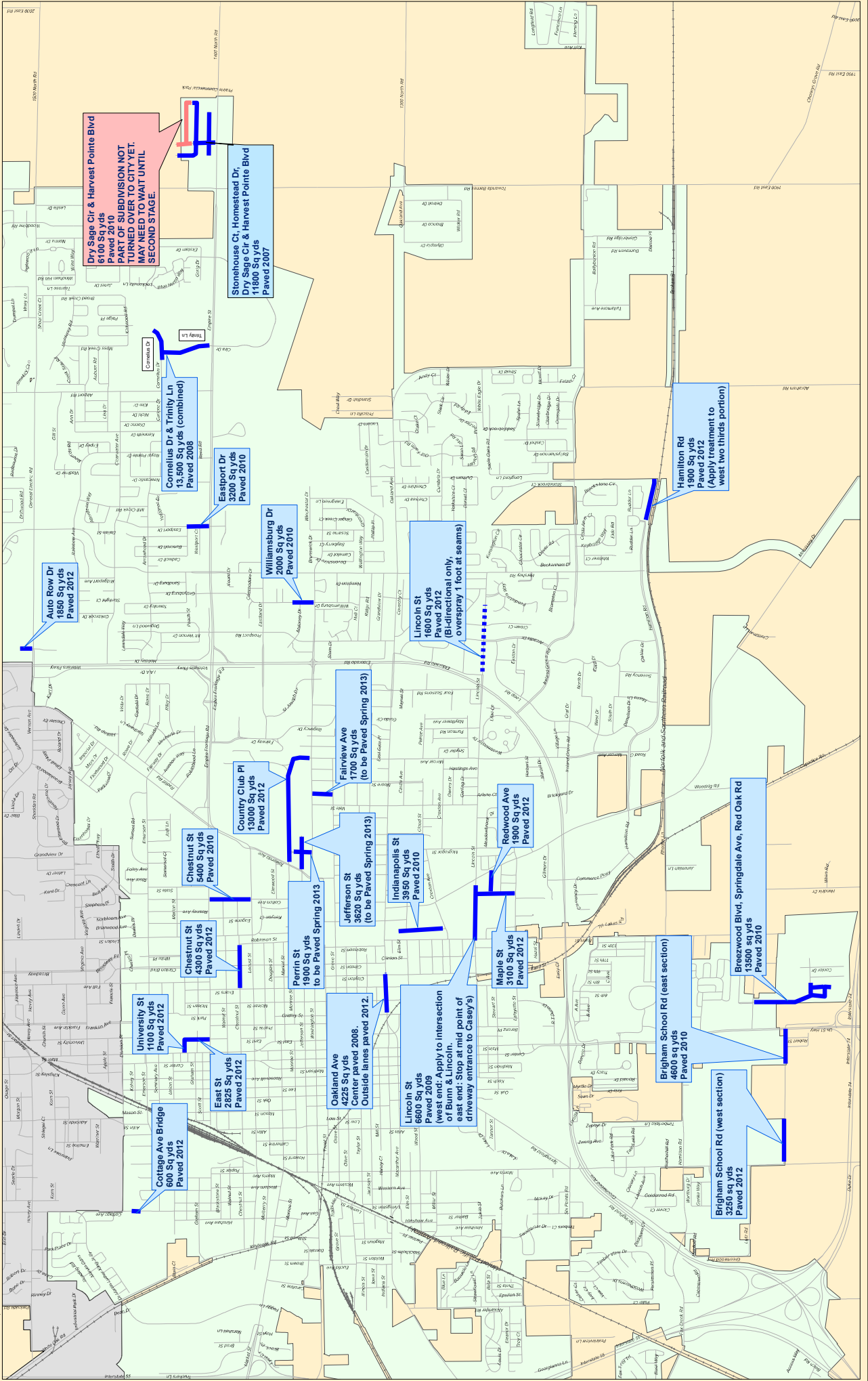
DATE: May 2013
Public Works Department

2013 Pavement Preservation, CRF. 17,400 Sq Yds.





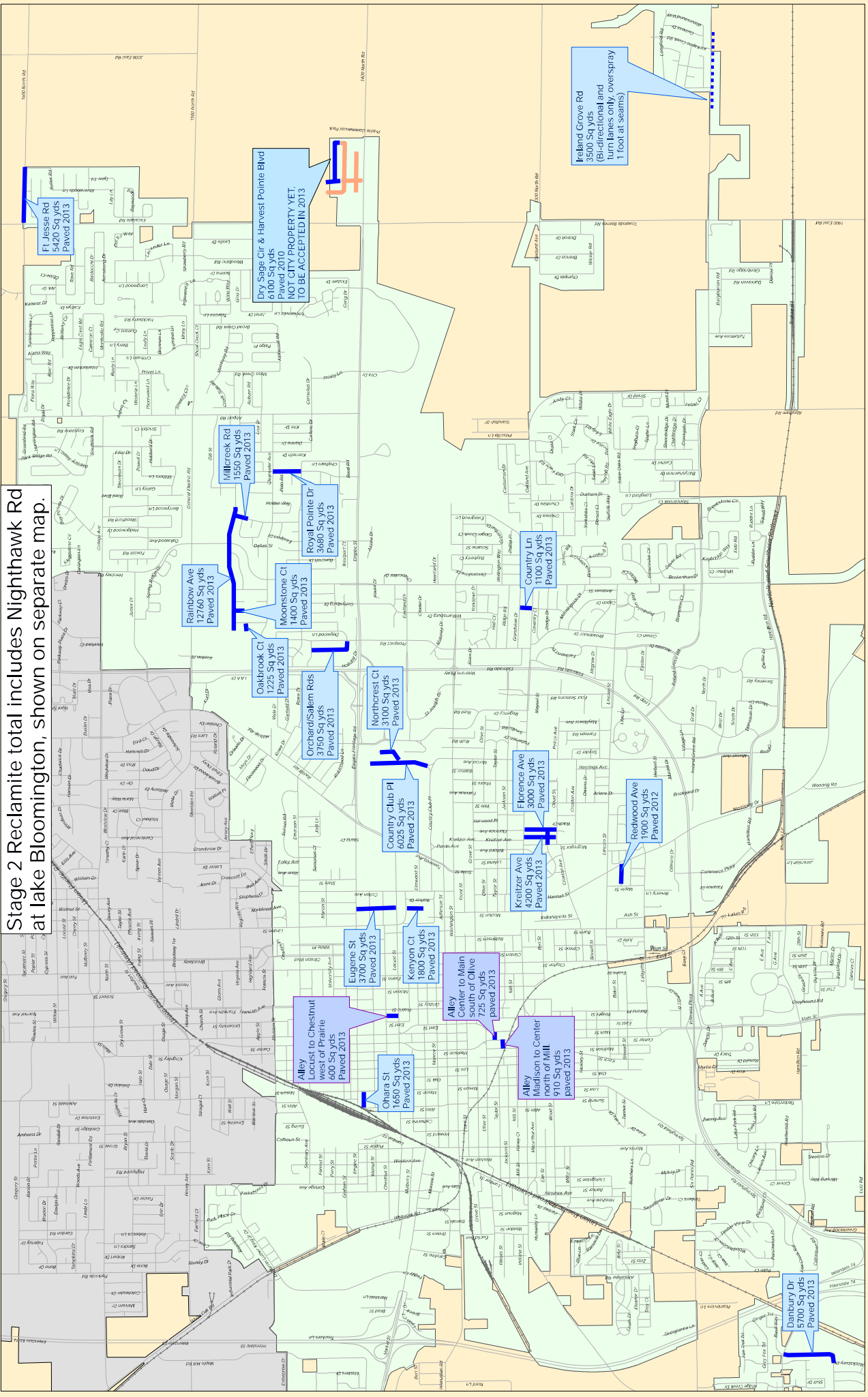
2013 Pavement Preservation Stage 1 - 111,420 Sq yds



2013 Pavement Preservation Stage 2 - 74,185 Sq yds



Stage 2 Reclamite total includes Nighthawk Rd at lake Bloomington, shown on separate map.



2013 Pavement Preservation Stage 2
(Lake Bloomington - Nighthawk Rd) - 2300 Sq yds



Pavement Preservation Picture – Yorkville, IL



Reclamite treated asphalt pavement more than 15 years old in Yorkville, IL

CRF Restorative Seal "CRF" is a product of Tricor Refining, LLC in Bakersfield, California (www.tricorrefining.com). The vendor and applicator of CRF for this area of the Midwest is Corrective Asphalt Materials, LLC, "CAM" (www.cammidwest.com). In 2007 CAM provided a demonstration of CRF on Kenyon Court. Kenyon Court is a Hot Mix Asphalt "HMA" pavement that was built in 1960, resurfaced in 1983 and was considered to be a poor candidate for this



Figure 1 - Kenyon Ct before CRF Treatment in 2007



Figure 2 - CRF applied by hand applicator then broom finish

treatment by the contractor. The PASER rating was a 3 at the time of the demonstration in 2007. The CRF material was applied full strength with a wand applicator by hand. The material was smoothed out with a broom. CRF is an asphalt emulsion containing Reclamite rejuvenating seal that goes down chocolate milk brown in color then breaks or sets to a black finish usually within 10-20 minutes. A coating of lime screenings is applied over the CRF to prevent tracking and help fill in voids in the worn and weathered asphalt surface.



Figure 3 - Kenyon Ct one year later



Figure 4 - Kenyon Ct five years later in 2012

In the years since the treatment the City's Engineering staff has kept careful watch of this test section on Kenyon Court. At the six year mark the test section still looks good and needs no patching where areas of the pavement adjacent to the test site have been pothole patched several times. Kenyon Court is currently rated a 2 and is scheduled for a mill and HMA overlay in 2013.

If the entire street had been treated with CRF in 2007, the mill and overlay would have been deferred at least 12 years since the CRF test section is in better condition now than the street was in 2007.



Figure 5 - Kenyon Ct six years later in 2013



Figure 6 - Moore Street prior to 70/30 CRF treatment

2012 CRF 70/30 Mix Test

As a result of the good performance on Kenyon Court, the City in 2012 paid CAM to apply CRF to several more streets using an applicator truck.

CRF is normally applied full strength when used for crack filling from a wand.

The standard practice when using an applicator truck for surface applying the CRF is to dilute the mix to 70% CRF to 30% water. City staff did not see the same results when using the 70/30 mix as with the 2007 test on Kenyon Court. The material did not fill surface cracks and defects as well as the thicker mix. Please see the attached map for the 2012 CRF street test sections.



Figure 7 - Moore Street during application - other side is done

2013 CRF Full Strength Test

City of Bloomington Engineering staff worked with CAM to develop a full strength application of CRF using the applicator truck. Staff identified streets with varying ages and pavement conditions for a test section utilizing different application rates.

The test sections included the 400 & 500 blocks of S. Oak St. and the 500 & 600 blocks of W. Jackson St. and W. Taylor St.

Parts of these blocks were left untreated as control sections to gauge the effectiveness of these CRF treatments.

Temporary no parking signs were installed 24 hours before treatment. The street was swept and cleaned of debris prior to treatment. Inlets and manholes in the spray zone were covered with disposable towels to keep CRF out of the sewers.

Application rates varied from 0.125 gallons per square yard up to 0.375 gallons per square yard in multiple passes.

Application rates over 0.18 gallons per square yard exhibited some bleed through in the days following the test. Those locations received an additional application of lime screenings.

Results following the application look very similar to Kenyon Court following treatment in 2007. Engineering Staff is pleased with the coverage since the surface cracks and defects have been filled to the surface with CRF material and lime screenings. Cost for a larger program should be around \$1.75 per square yard. This compares favorably with Reclamite which is just under \$1.00 per square yard. Cost for mill and overlays of roads are in the \$20 - \$25 per square yard range. Expansion of the CRF program is desired for the FY2015 budget.



Figure 8 - Jackson Street prior to CRF treatment



Figure 9 – CRF just applied to north side of Jackson Street. South side has cured to black color after 15 minutes. Lime screenings on Oak Street are visible on left side of picture.

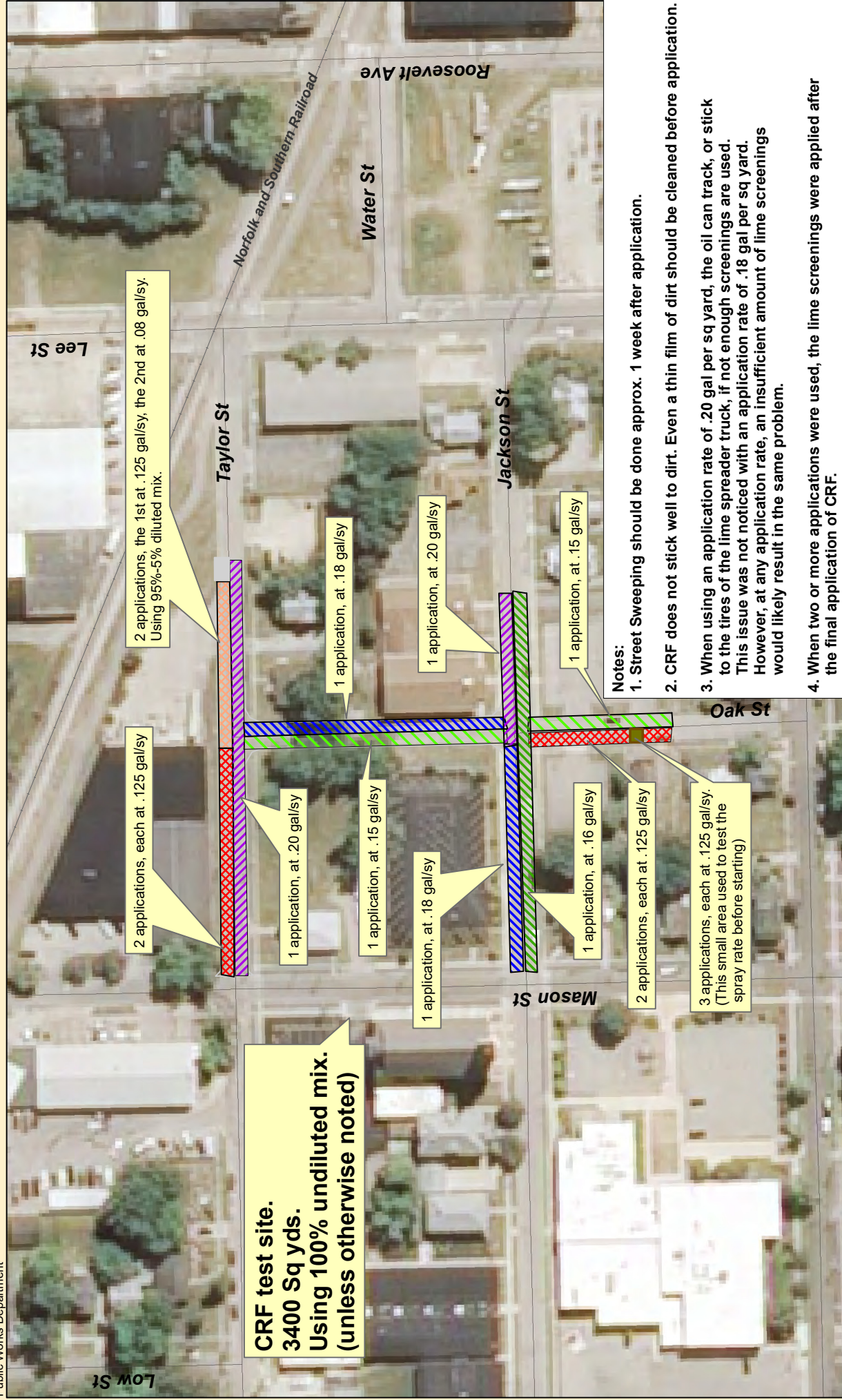


Figure 10- Jackson Street 9 days after CRF treatment

CRF Test Site. April 29th, 2013. Bloomington, IL.



0 55 110 220 Feet





FOR COUNCIL: June 24, 2013

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

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

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 of Bloomington 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 Johnston Contractors, Inc. on April 11, 2011 for \$107,000. This change order completely closes out this project.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: There were no Community Groups contacted for this petition 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 change order 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, Water Department Director

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & Budgetary review by: Timothy L. Ervin, CPFO, M.S., 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 Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			



FOR COUNCIL: June 24, 2013

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

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

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 of Bloomington 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 change order.

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

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: There were no Community Groups contacted for this petition 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 change order 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, Water Department Director

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & Budgetary review by: Timothy L. Ervin, CPFO, M.S., 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 Black				Alderman Mwilambwe			
Alderman Fazzini				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman McDade							
				Mayor Renner			



FOR COUNCIL: June 24, 2013

SUBJECT: Frontier Maintenance Renewal

RECOMMENDATION/MOTION: That the Agreement with Frontier for a maintenance renewal in the amount of \$39,756.49 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: 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 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, M.S., Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. 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			



112 West Elm Street
Sycamore, Illinois 60178

June 5, 2013

Darren R. Wolf, ENP
Communications Center Manager
City of Bloomington
109 E. Olive St
Bloomington, IL 61701

Dear Mr. Wolf;

Frontier Communications operates as the Incumbent Local Exchange Carrier (LEC) in the Bloomington/Normal area. Frontier is also the Bloomington/Normal Certificated 911 System Service Provider as authorized by the Illinois Commerce Commission. Frontier installed and has maintained the Cassidian Rescue Star 911 hardware and software at the City of Bloomington for many years.

Frontier is also the locally designated service dealer for Cassidian. Expert knowledge and complete understanding of the implementation make it such that the City of Bloomington can choose Frontier as the "sole source" to continue support of the Cassidian system.

Please let me know if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael F. Davis".

Michael F. Davis
Senior Account Manager
630-450-1363
Michael.f.davis@ftr.com

System Agreement

This System Agreement ("Agreement") is effective as of the date of final signature between the parties and is made by and between:

A. Frontier North Inc. ("Frontier")	B. City of Bloomington ("Customer")
Address: 109 E. Market Street	Address: 305 S. East St.
City: Bloomington State: IL Zip Code: 61701	City: Bloomington State: IL Zip Code: 61702
Contact Name and Phone Number: Michael F. Davis Senior Account Executive Frontier Communications 112 W Elm St Sycamore, IL 60178 Cell: 630-450-1363 eFAX: 585-262-9649	Customer Billing Address (if different): _____ _____ Customer BTN: _____ _____
Quote Number (if applicable) : C13-0543	Contact Name and Phone Number: _____

C. Select all applicable options: ☐ New System/Service Sale ☐ Adds/Upgrade to Existing System ☐ Installation Services ☒ Maintenance Renewal ☐ International Purchase and Sale (Drop Ship) FRONTIER MAINTENANCE SERVICES ☐ IP PBX Supplemental ☐ 8x5 Switch & Phones ☐ 8x5 Switch & Proprietary Phones ☐ 8x5 Switch Only ☐ 8x5 Ancillary/Auxiliary Equipment ☐ 8x5 Nortel Norstar ☐ 8x5 NEC Electra Elite ☐ 8x5 Business Communication Manager ☐ 8x5 Centrex CPE ☐ 24x7 Switch & Proprietary Phones ☐ 24x7 Switch Only ☐ 24x7 Ancillary/Auxiliary Equipment ☐ 24x7 Nortel Norstar ☐ 24x7 NEC Electra Elite ☐ 24x7 Business Communication Manager ☐ 24x7 Voice Service Plus ☐ 24x7 Centrex CPE	Frontier Maintenance Services Cont'd. ☐ Software Release Subscription (SRS) ☐ On-Site Technician ☐ Supplemental Warranty Coverage (extends the standard warranty to 24 hour coverage for major failures during the warranty period) ☒ Other: 7x24x365 Annual Maintenance Third Party Maintenance Services - Third party maintenance will be provided in accordance with (i) the service descriptions of the respective third party maintenance service providers (generally available on their respective websites) and (ii) the relevant terms and conditions of this Agreement, specifically excluding section 3.2 (termination for convenience). ☐ Nortel Extended Service ☐ Cisco SMARTnet ☒ Other: <u>Cassidian</u>
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D. Payment Options:

☒ **Cash Purchase (Prepaid Billing)**

☐ Lease/Financing

☐ Frontier Credit Inc.

☐ Third Party Lease/Financing _____ (must have prior written approval of Frontier)

☐ E-Rate/USF Funding Application No. _____

☐ Tax Exempt No. _____

System Agreement

1. Scope of Agreement. Subject to the terms and conditions of this Agreement, Frontier will provide Customer, either directly or in conjunction with such subcontractors as it may select, the equipment, software, installation services, maintenance (hereinafter collectively the "System") and/or professional services as described in this Agreement and as further described in a Statement of Work and any Exhibit attached hereto.

1.1 For Equipment Sale and Installation Services: Frontier will provide and, if applicable, install the equipment as set forth in the applicable quote and the Equipment and Installation Services Exhibit.

1.2 For Maintenance Services: Frontier will provide the maintenance services as set forth in the applicable quote and the Call Center Software, Support and Professional Services Exhibit, and/or the Maintenance Services Exhibit. The foregoing exhibits do not apply to maintenance services provided by a third party. Third party maintenance will be provided in accordance with (i) the service descriptions of the respective third party maintenance service providers (generally available on their respective websites) and (ii) the relevant terms and conditions of this Agreement, specifically excluding section 3.2 (termination for convenience).

1.3 For Professional Services: Frontier will provide the professional services as set forth in the applicable quote and the Professional Services Exhibit.

All applicable Statements of Work and Exhibits attached hereto are incorporated herein and made a part of this Agreement.

2. Fees and Payment.

2.1 Customer will pay all fees for the System as set forth on Pages 2 of this Agreement and the applicable quote or Statement of Work, subject to additions and deductions made by written Change Order(s). Unless otherwise set forth in the Quote, Unless otherwise set forth in a Quote, Customer is responsible for applicable taxes, shipping, handling, telecommunication surcharges and other charges applicable to the equipment and/or services provided under this Agreement. Customer agrees either to pay to Frontier the amount of all applicable taxes or to provide upon execution of this Agreement evidence of exemption acceptable to Frontier.

2.2 Payments are due within thirty (30) days of receipt of the invoice ("Due Date") and any payment not received by the Due Date shall be subject to a late payment charge of the lesser of one and one-half percent (1.5%) per month and the maximum amount allowed by law. Late payment charges will be assessed monthly against the amount due. Should Customer dispute an amount invoiced, Customer shall pay the undisputed portion of that invoice and promptly notify Frontier in writing of the amount and nature of the dispute and the parties shall cooperate to resolve the dispute pursuant to Section 15 of this Agreement. Frontier reserves the right to suspend or terminate any or all Services or terminate the provision, installation or repair of any or all equipment subject to this Agreement immediately if Customer is more than sixty (60) days overdue for payments that have not been disputed in good faith.

2.3 The down payment listed on Page 2 of this Agreement shall be paid at execution of this Agreement. The balance due shall be paid in accordance with the terms of this Section unless otherwise specified in a Statement of Work.

3. Term and Termination. This Agreement shall be effective as of the date first set forth above and shall continue in full force and effect until terminated in accordance with this Agreement.

3.1. Either party may, upon written notice, immediately suspend its performance of and/or terminate the affected service or equipment order to which the deficiency pertains in the event the other party (i) fails to perform material terms of this Agreement and (a) such failure is not cured within thirty (30) calendar days following receipt of a default notice in writing from the other party, or (b) if such failure cannot reasonably be cured during that time and the defaulting party fails to use commercially reasonable efforts to cure such breach as soon as practicable, but in any event within ninety (90) calendar days following written notice; (ii) engages in fraud, criminal conduct or willful misconduct in connection with the business relationship of the parties; or (iii) becomes insolvent, ceases doing business in the ordinary course, enters bankruptcy proceedings or effects an assignment for the benefit of creditors. In the event Frontier terminates this Agreement pursuant to this Section 3.1, Customer shall promptly pay Frontier for the System and any services provided up to the date of termination. In the event Customer defaults under this Agreement, Customer's down payment shall be non-refundable.

System Agreement

3.2. Either party may terminate this Agreement or a Statement of Work for convenience, in whole or in part, upon thirty (30) days prior written notice to the other party. If this Agreement or a Statement of Work is terminated by Customer pursuant to this Section, or if an order under this Agreement is cancelled by Customer, Frontier shall have no further responsibility under this Agreement, Statement of Work or such order, as applicable, and Customer shall promptly pay Frontier:

- 3.2.1. for all equipment and services provided up to the date of termination or cancellation, as applicable;
- 3.2.2. for all expenses incurred up to the date of termination or cancellation, as applicable, including but not limited to the costs of terminating purchase orders, return of equipment and/or software (if permitted by Frontier), removal of equipment and/or software and other contractual obligations made by Frontier to meet its obligations under this Agreement or Statement of Work, plus a restocking fee of twenty-five percent (25%) of the cost of any equipment cancelled or returned.

3.3. Where multiple Statements of Work are associated with this Agreement, the termination of one or fewer than all of the Statements of Work shall only affect the terminated Statement(s) of Work. The remaining Statement(s) of Work shall remain in effect.

3.4. Frontier reserves the right to suspend performance under this Agreement or a Statement of Work if required, in Frontier's sole discretion, by regulation, statute, judicial action or other applicable legal requirement.

3.5. Frontier reserves the right to amend the rates, terms and conditions of Service under this Agreement to be effective upon the commencement of any renewal term and without formal amendment of this Agreement by providing Customer written notice thereof prior to the expiration of the then-current term. If Customer is unwilling to accept such amended rates, terms and conditions, Customer shall provide Frontier written notice thereof prior to the expiration of the then-current term, in which event the Service shall terminate upon expiration of the then-current term.

3.6. Termination of this Agreement shall not relieve either party of its respective obligations to comply with all terms of this Agreement that expressly call for performance prior or subsequent to the termination date, including without limitation the parties' respective obligations to protect proprietary and confidential information.

4. Purchase Order. The parties acknowledge that a Customer purchase order or similar document is intended solely to evidence Customer's intention to purchase equipment, software and/or services set forth therein. Except with respect to a provision in a Customer purchase order or similar document evidencing an intent to be bound by the terms and conditions of an Agreement between Customer and Frontier, the terms and conditions of such Customer purchase order or similar document shall be disregarded and of no force or effect, it being agreed that the terms and conditions of the Agreement between Customer and Frontier shall govern.

5. Leasing Option. With Frontier's prior written consent Customer may finance the System or any portion thereof in a separate transaction through a third party leasing company ("Lessor") approved by Frontier, assign its rights and obligations with respect to payment under this Agreement to the Lessor, and/or cause the Lessor to issue a purchase order in a form acceptable to Frontier. Notwithstanding such transaction and/or assignment, Customer shall remain responsible for performance of all of its obligations under this Agreement, including payment in full.

6. Risk of Loss. If Frontier installs the System, risk of loss or damage to the System passes to Customer on delivery of the System (including portions thereof) to Customer's site. If Frontier does not install the System, risk of loss or damage to the System (or portions thereof) passes to Customer upon delivery to the carrier.

7. Title and Security Interest. Until full payment has been rendered, Customer grants Frontier a purchase money security interest in the System, and agrees to execute all documents necessary to perfect that interest. Upon final payment, title shall pass to Customer and Frontier will release its security interest. Customer will not grant or convey to any other person or entity a security interest in, or permit placement of a lien on, the System unless and until Customer has paid Frontier in full for such System.

8. Software. Software provided in conjunction with the System is licensed to Customer under the license provided by the software publisher or by the equipment manufacturer with which the software is provided. Customer shall, if required, execute a separate software license agreement in a form satisfactory to the software publisher or equipment manufacturer.

System Agreement

9. Customer Responsibilities. Customer will:

- 9.1. Allow Frontier access for installation, inspection, testing, maintenance and repair of the System and performance of any required activity.
- 9.2. Provide suitable building facilities for the System in accordance with local codes, including but not limited to ducting, conduit, structural borings, etc. for cable and conductors in floors, ceilings and walls; electrical service with suitable terminals and power surge protection devices; and metallic grounds with sufficient slack in the equipment room, installed in conformity with the National Electrical Code and local codes.
- 9.3. Provide necessary heating, cooling, humidity and dust control as required by manufacturer specifications.
- 9.4. Remove existing equipment or cable that interferes with System installation.
- 9.5. Identify and disclose to Frontier concealed equipment, wiring or conditions that might be affected by or might affect the installation of the System. Customer shall defend and hold Frontier harmless from any claim, damage or liability resulting from a failure to disclose this information.
- 9.6. Authorize Frontier, at Customer's expense, to make service requests upon third parties for System interconnection requirements, including obtaining telephone service for testing where necessary.
- 9.7. Designate trash deposit points on each floor on which the System is to be installed where Frontier will place waste for removal by Customer.
- 9.8. Cooperate with Frontier's requests for assistance in testing or installation.
- 9.9. Be responsible for providing adequate back-up of data and for restoring data to repaired equipment.
- 9.10. If the System is to be connected to the public network, be solely responsible for selection, implementation and maintenance of security features for defense against unauthorized long distance calling, and for payment of long distance, toll and other telecommunications charges incurred through use of the System.
- 9.11. Immediately notify Frontier of any anticipated delay in building availability or inability to meet any of the above listed requirements.
- 9.12. If ordering Cisco Products or services, acknowledge having read and understand the End User obligations and service descriptions for relevant Cisco products and services as found at www.cisco.com/go/servicedescriptions or other URL as may be provided by Cisco from time to time. Further, Customer agrees to the terms and conditions of Cisco's Software License Agreement.

10. Changes In/Additions to System.

10.1 Customer may order additional equipment, software, and/or services pursuant to a written Amendment, Customer purchase order or similar document, and such order shall be governed by this Agreement, including without limitation Section 4, and shall specifically reference this Agreement.

10.2 Customer shall also have the right, by written notice, to propose changes in the System under this Agreement and any Statement of Work ("Change Orders") and Frontier shall comply to the extent it deems feasible and reasonable. If Frontier determines that such changes cause an increase or decrease in the cost of or time required for performance, Frontier shall advise Customer and such adjustments shall be reflected in a written Change Order. Should Frontier encounter, in installing the System, any concealed or unknown condition not expressly set forth in the applicable Statement of Work, which condition affects the price or schedule for installation of the System, the price and/or the schedule shall be equitably adjusted by Change Order to cover all costs, including but not limited to labor, equipment, materials and tools necessary to carry out the change.

10.3 No Change Order shall become effective as a part of this Agreement and the applicable Statement of Work, and no changes in the System shall be initiated, until the Change Order is mutually agreed upon in writing. Frontier shall not be obligated to consider or accept any Change Order that results in a decrease of more than twenty percent (20%) in the total price of the System. Frontier may also propose changes in or additions to the System, and may proceed with such changes upon execution by Customer and Frontier of a written Change Order.

11. Warranty. Frontier warrants that it will perform the services provided under this Agreement in a good and workmanlike manner. Unless otherwise set forth in an Exhibit, all manufacturers'/publishers' warranties for equipment and/or software provided hereunder are passed through to Customer and warranty claims shall be presented by Customer directly to the manufacturer/publisher.

THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES FROM FRONTIER, UNLESS OTHERWISE STATED IN AN EXHIBIT. OTHERWISE FRONTIER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ANY

System Agreement

WARRANTY OF NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. FRONTIER SHALL NOT BE LIABLE FOR UNAUTHORIZED ACCESS TO FRONTIER'S OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISES EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD. FRONTIER MAKES NO WARRANTY FOR USE OF THE SYSTEM AS A COMPONENT IN LIFE SUPPORT SYSTEMS OR DEVICES, PUBLIC SAFETY SYSTEMS, OR WITH RESPECT TO THE PERFORMANCE OF ANY SOFTWARE OR FIRMWARE.

12. Limitation of Liability. EXCEPT FOR PAYMENTS OWED UNDER THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING A PARTY'S NEGLIGENCE) OR OTHERWISE, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM DELAY, LOSS OF GOODWILL, LOSS OF OR DAMAGE TO DATA, LOST PROFITS (ACTUAL OR ANTICIPATED), UNAVAILABILITY OF ALL OR PART OF THE SYSTEM, OR OTHER COMMERCIAL OR ECONOMIC LOSS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT WITH RESPECT TO THE INDEMNIFICATION OBLIGATIONS SET OUT IN SECTION 13, FRONTIER'S ENTIRE LIABILITY FOR ANY OTHER DAMAGE WHICH MAY ARISE HEREUNDER, FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FRONTIER'S NEGLIGENCE, OR OTHERWISE, SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE PURCHASE PRICE OF THE SPECIFIC EQUIPMENT, SOFTWARE OR SERVICES GIVING RISE TO THE CLAIM. FRONTIER SHALL BEAR NO LIABILITY FOR USE OF EQUIPMENT, SOFTWARE OR SERVICES PROVIDED UNDER THIS AGREEMENT IN CONNECTION WITH LIFE SUPPORT SYSTEMS OR DEVICES OR PUBLIC SAFETY SYSTEMS. EXCEPT AS EXPRESSLY STATED OTHERWISE HEREIN, FRONTIER SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR INTEROPERABILITY OR COMPATIBILITY OF THE SYSTEM WITH THIRD-PARTY PRODUCTS OR SYSTEMS THAT CUSTOMER MAY UTILIZE IN CONJUNCTION WITH THE SYSTEM OR TO WHICH CUSTOMER MAY CONNECT THE SYSTEM.

13. Indemnification and Defense.

13.1 Except as provided below, Frontier will defend Customer against any claim, suit, action or proceeding alleging that equipment supplied by Frontier to Customer under this Agreement ("Frontier supplied equipment") infringes a valid U.S. patent or copyright ("Claim"), and Frontier will indemnify and hold harmless Customer against any and all finally awarded costs and expenses, including attorneys' fees, in connection with any such Claim.

13.2 If the use of any Frontier supplied equipment is enjoined or subject to a Claim as described above, Frontier may, at its option and expense, either procure for Customer the right to continue to use the equipment, replace the equipment, or relevant component, with substantially equivalent, non-infringing equipment, or relevant component, or modify the equipment, or relevant component, so that it becomes non-infringing. In the event that none of the foregoing options is commercially reasonable to Frontier, Frontier will remove the infringing Frontier supplied equipment and refund to Customer the purchase price for the equipment less depreciation for its use. Depreciation shall be calculated on a straight-line basis, assuming a useful life of five (5) years.

13.3 Frontier shall have no obligation for (a) any costs, fees or expenses incurred by Customer without Frontier's prior written consent; (b) any allegation, assertion, or claims of intellectual property infringement, including contributory infringement or inducement to infringe, arising out of or related to any Claim involving: (i) automated call processing, automated voice service, automated customer service or combined live operator/automated systems processing used in processing or completing calls, (ii) automated bridging of more than two callers utilizing some form of "listen only" (unilateral) communication combined with some form of interactive communication, (iii) prepaid calling products or services, (iv) wireless telecommunications services or support therefor, or (v) "music on hold" service; or (c) any indirect, special, consequential or incidental damages arising out of any Claim.

System Agreement

13.4 Any obligation on the part of Frontier to defend and indemnify shall not apply to any Claim or portion thereof that arises from (i) any negligent or willful act or omission by or attributable to Customer; (ii) use or operation of the Frontier supplied equipment in combination with equipment or services provided by Customer or any third party; (iii) any addition to or modification of the Frontier supplied equipment by Customer, any third party or Frontier at Customer's request; (iv) use of other than the then current unaltered release of any software used in the Frontier supplied equipment; or (v) any equipment, system, product, process, method or service of Customer which otherwise infringed the U.S. patent or copyright asserted against Customer prior to the supply of the equipment to Customer by Frontier under the Agreement.

13.5 The foregoing states the entire obligation of Frontier to Customer and is Customer's sole and exclusive remedy with respect to any Claim of infringement of any intellectual property right of any kind, and Frontier disclaims all other warranties and obligations with respect to any such Claims.

13.6 Customer shall defend, indemnify and hold harmless Frontier, its employees, officers, directors, agents and affiliates for damages, costs and attorneys fees in connection with any claim arising out of (a) Customer's use of the equipment provided by Frontier other than as expressly indemnified by Frontier pursuant to Section 13.1 of this Agreement, (b) combination of the equipment provided by Frontier with other equipment, software, products or services not provided by Frontier under this Agreement, (c) modification of the equipment provided by Frontier, or (d) arising out of the content of communications transmitted by or on behalf of Customer in the use of the services or equipment provided by Frontier, including but not limited to libel, slander, and invasion of privacy.

13.7 Each party (the "indemnitor") shall defend, indemnify, and hold harmless the other party (the "indemnitee") against all claims and liabilities for direct damages imposed on the indemnitee for bodily injuries, including death, and for damages to real or tangible personal property to the extent caused by the negligent or otherwise tortious acts or omissions of the indemnitor, its agents or employees in the course of performance of this Agreement.

13.8 The defense and indemnification obligations set forth in this Section 13 are contingent upon (1) the indemnitee providing the indemnitor prompt, written, and reasonable notice of the claims, demands, and/or causes of action subject to indemnification, (2) the indemnitee granting the indemnitor the right to control the defense of the same, and (3) the indemnitee's full cooperation with the indemnitor in defense of the claim, including providing information and assistance in defending the claim. Nothing herein, however, shall restrict the indemnitee from participating, on a non-interfering basis, in the defense of the claim, demand, and/or cause of action at its own cost and expense with counsel of its own choosing. No settlement may be entered into by the indemnitor on behalf of the indemnitee that includes obligations to be performed by the indemnitee (other than payment of money that will be fully paid by the indemnitor under Sections 13.1- 13.7 above) without indemnitee's prior written approval.

14. Confidentiality. Except as required by law or regulation, each party (the "receiving party") shall keep confidential and not disclose, directly or indirectly, to any third party any Confidential Information, as defined below, received from the other party (the "disclosing party") without the prior written consent of a duly authorized officer of the disclosing party. The disclosing party shall conspicuously mark its tangible Confidential Information as Proprietary or Confidential at the time of disclosure to the receiving party. Confidential Information that is disclosed orally will be identified by the disclosing party as Confidential Information at the time of disclosure to the receiving party. Each party shall use, copy and disclose the Confidential Information of the disclosing party solely for purposes of performing this Agreement. All Confidential Information of a party shall be and shall remain the property of such party. A party shall deliver to the disclosing party, upon written request by the disclosing party, all Confidential Information of the disclosing party then in the receiving party's possession or control, directly or indirectly, in whatever form it may be (including, without limitation, magnetic media) or certify its destruction to the disclosing party. Each party shall take all necessary and reasonable action, by instruction, agreement or otherwise, with its employees, consultants, subcontractors, affiliates, and representatives to satisfy its obligations hereunder. The receiving party's obligations hereunder with respect to confidentiality, non-disclosure and limitation of use of Confidential Information shall be for the term of the Agreement plus one (1) year. For purposes of this provision, a third party shall not include an entity which has a need to know the Confidential Information and which owns, is owned by, or is under common ownership with a party to this Agreement.

14.1 Nothing in this Agreement shall prevent either party from using or disclosing any Confidential Information that: (i) has become generally available to the public, other than through any improper action of such party, (ii) is already in the possession of the receiving party and not subject to an existing agreement of confidence between the

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parties, (iii) is received from a third party without restriction and without breach of this Agreement, (iv) is independently developed by the receiving party as evidenced by its records, or (v) is disclosed pursuant to a valid law, rule, regulation, subpoena, demand, or order of a court or other governmental body or any political subdivision thereof of competent jurisdiction (collectively “demand”); provided, however, that the receiving party shall first have given notice thereof to the disclosing party (unless prohibited by the terms of such request or requirement, or such notice is otherwise prohibited by law) in order to permit the disclosing party to seek reasonable protective arrangements.

14.2 For purposes of this Agreement, the term “Confidential Information” shall include, without limitation, all trade secrets of a party and all other information and material that relates or refers to the plans, policies, finances, corporate developments, products, pricing, sales, services, procedures, intra-corporate transactions, suppliers, prospects and customers of a party, as well as financial information relating to such suppliers, prospects and customers, and any other similar confidentiality information and material which such party does not make generally available to the public. By way of illustration, but not limitation, Confidential Information includes all computer software (including object code and source code), computer software and data base technologies, systems, structures and architectures, and the processes, formulae, compositions, improvements, inventions, discoveries, concepts, ideas, designs, methods and information developed, acquired, owned, produced, or practiced at any time by a party, and all non-public information relating to the business of such party.

15. Alternate Dispute Resolution (ADR). Any controversy, claim, or dispute (“Disputed Claim”) arising out of or relating to this Agreement, except for claims relating to indemnity, infringement, or confidentiality obligations or matters relating to injunctions or other equitable relief (together “Equitable Claims”), shall be first subject to a thirty (30) day negotiation period between the parties in which each party shall disclose to the other party all such documents, facts, statements and any other information which are reasonably requested by the other party and are relevant to the dispute in question. Should such negotiations fail to resolve the dispute within thirty (30) calendar days, Disputed Claims shall be resolved by binding arbitration of a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be based upon this Agreement and applicable law. The decision of the arbitrator shall be reduced to writing, shall be final and binding except for fraud, misconduct, or errors of law, and judgment upon the decision rendered may be entered in any court having jurisdiction thereof. In all arbitrations, the arbitrator must give effect to applicable statutes of limitation subject to limitation of actions terms set forth in this Agreement, and shall not be afforded any authority to award relief in excess of what this Agreement provides or to order consolidation or class arbitrations. The arbitrator shall have no authority to award punitive damages in any Disputed Claim. The parties agree that any such claims arising under this Agreement must be pursued on an individual basis in accordance with the procedure noted above. Even if applicable law permits class actions or class arbitrations, the ADR procedure agreed to herein applies and the parties waive any rights to pursue any claim arising under this Agreement on a class basis. The arbitration shall be held in a mutually agreed to location, and shall be final and binding on both parties. Each party will bear its own costs of arbitration but shall split equally the fees of the arbitration and the arbitrator.

16. Hazardous Substances. Except as disclosed to and acknowledged in writing by Frontier, Customer certifies that it is not aware of the presence of any asbestos or other hazardous substance (as defined by any applicable state, federal or local hazardous waste or environmental law or regulation) at any location where Frontier is to perform services under this Agreement. If during such performance Frontier employees or agents encounter any such substance, Customer agrees to take all necessary steps, at its own expense, to remove or contain the asbestos or other hazardous substance and to test the premises to ensure that exposure does not exceed the lowest exposure limit for the protection of workers. Frontier may suspend performance under this Agreement until the removal or containment has been completed and approved by the appropriate governmental agency and Frontier. Performance obligations under this Agreement shall be extended for the period of delay caused by said cleanup or removal. Customer’s failure to remove or contain hazardous substances shall entitle Frontier to terminate this Agreement without further liability, in which event Customer shall permit Frontier to remove any equipment that has not been accepted, shall reimburse Frontier for expenses incurred in performing this Agreement until termination (including but not limited to expenses associated with such termination, such as removing equipment, terminating leases, demobilization, etc.), and shall complete payment for any portion of the System that has been accepted.

17. Force Majeure. Neither party shall be liable for any delay or failure in performance under this Agreement arising out of acts or events beyond its reasonable control, including but not limited to acts of God, war, terrorist acts, fire, flood, explosion, riot, embargo, acts of the Government in its sovereign capacity, labor disputes, unavailability of equipment, software or parts from vendors, or changes requested by Customer. The affected party

System Agreement

shall provide prompt notice to the other party and shall be excused from performance to the extent of such caused delays or failures, provided that the party so affected shall use reasonable efforts to remove such causes of such delays or failures and both parties shall proceed whenever such causes are removed or cease. If performance of either party is prevented or delayed by circumstances as described in this section for more than ninety (90) days, either party may terminate the affected Service or Statement of Work. Notwithstanding the foregoing, Customer shall not be relieved of its obligation to make any payments, including any late payment charges as provided in Section 2.2, above, that are due to Frontier hereunder.

18. Assignment. Neither party may, without the prior written consent of the other party, assign or transfer its rights or obligations under this Agreement; consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Frontier may, without prior notice, assign this Agreement, in whole or in part, to any Frontier affiliate or to any successor entity upon the merger, reorganization, consolidation or sale of all or substantially all of Frontier's assets associated with the equipment or Services provided pursuant to this Agreement. For purposes of this Section, "affiliate" shall mean a person or entity that directly or indirectly controls, is controlled by, or is under common control with Frontier. Any attempt to assign this Agreement in contravention of this Section shall be void and of no force and effect.

19. Governing Law. This Agreement shall be governed by the substantive laws of the State of Wisconsin.

20. Non-Waiver/Severability. Either party's failure to enforce any of the provisions of this Agreement or to exercise any right or option is not a waiver of any such provision, right, or option, and shall not affect the validity of this Agreement. Any waiver must be written and signed by the parties. If any provision of this Agreement or the provision of any Service or equipment under the terms hereof is held to be illegal, invalid, or otherwise prohibited under applicable law or regulation in any State or jurisdiction, then this Agreement shall be construed as if not containing such provision or not requiring the provision of such invalid, illegal, or prohibited Service or equipment in such State or jurisdiction.

21. Publicity. Except as required by law, the parties shall keep this Agreement confidential and shall not disclose this Agreement or any of its terms without the other party's written consent. Notwithstanding any contrary term in this Agreement and consistent with applicable law, Frontier may disclose the terms of this Agreement, in whole or in part, to: a) Frontier affiliates; b) Frontier or Frontier affiliate suppliers and/or subcontractors that offer (including new offer or renewal offers), provide, repair, maintain, bill, collect, or perform other functions in connection with Frontier or Frontier affiliate products or services under or in connection with this Agreement; c) successors in interest to Frontier or Frontier affiliates (by merger or otherwise); and/or d) persons to whom Frontier or Frontier affiliates may sell all or part of their respective businesses or assets. Neither party shall use any trademark, trade name, trade dress or any name, picture or logo which is commonly identified with the other party or its affiliates, or from which any association with such party or its affiliates may be inferred or implied, in any manner, including but not limited to advertising, sales promotions, press releases or otherwise, without the prior written permission of such party. Notwithstanding any contrary term in this Agreement, the parties may issue or permit issuance of a press release or other public statement concerning this Agreement, provided, however, that no such release or statement shall be published without the prior mutual consent of the parties.

22. Notice. Any written notice either Party may give the other concerning the subject matter of this Agreement shall be in writing and given or made by means of certified or registered mail, express mail or other overnight delivery service, or hand delivery, proper postage or other charges paid and addressed or directed to the respective parties as follows:

To Customer: At Customer's address shown on the first page of the Agreement
Attention: _____

To Frontier: Frontier North Inc.
Attention: General Manager
109 E. Market Street
Bloomington, IL 61701

Copy to: Frontier Communications Corporation
Attention: Associate General Counsel
3 High Ridge Park

System Agreement

Stamford, CT 06905

Such notice shall be deemed to have been given or made when actually received as specified above. Each Party hereto may change its address by a notice given to the other Party in the manner set forth above.

23. Limitation of Actions. A party may bring no action or demand for arbitration arising out of this Agreement more than two (2) years after the cause of action has accrued. The parties waive the right to invoke any different limitation on the bringing of actions under state law.

24. Compliance with Laws. Each party shall comply with the provisions of all applicable federal, state, and local laws, ordinances, regulations and codes in its performance under this Agreement or any Statement of Work, including without limitation the export laws of the United States or any country in which Customer receives equipment, software or services.

25. Independent Contractor Relationship; No Agency. Each party understands and agrees that it and its personnel are not agents or employees of the other party, and that each party is an independent contractor hereunder for all purposes and at all times. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever. Each party shall indemnify, hold harmless and defend the other against any liabilities, claims, losses and damages (including costs, expenses and reasonable attorneys' fees) arising out of its failure to comply with this provision and any laws, rules or regulations applicable thereto.

26. Interpretation. The Agreement shall not be construed or interpreted for or against any party hereto because that party drafted or caused that party's legal representative to draft any of its provisions.

27. Headings. The Section headings used herein are for reference and convenience only and shall not enter into the interpretation of this Agreement.

28. Modifications. This Agreement may only be amended, changed, waived or modified in a written document that is signed by both parties.

29. Entire Agreement. This Agreement, together with any Statement of Work hereunder and any Exhibit hereto, constitutes the entire agreement between the parties pertaining to the subject matter herein and supercedes all prior oral and written proposals, correspondence and memoranda with respect thereto, and no representations, warranties, agreements or covenants, express or implied, of any kind or character whatsoever with respect to such subject matter have been made by either party to the other, except as expressly set forth in this Agreement. In the event of conflicts among the terms of this Agreement, a Statement of Work and/or an Exhibit, the following order of precedence shall apply: the Exhibit, this Agreement, and the Statement of Work.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed. Each party warrants and represents that its respective representative whose signature appears below have been and are on the date of signature duly authorized to execute this Agreement and that each party has the authority to enter into this Agreement.

City of Bloomington (Customer)

Frontier North Inc. (Frontier)

By:

Print

Name:

Title:

Date:

By:

Print Name:

Title:

Date:

System Agreement

Quote UTACS C13-0543

Customer: City of Bloomington
Address: 305 S. East
Bloomington, IL 61702

Frontier Sales: Michael Davis

Qty	Part #	Description	Unit Price	Extended Price
Maintenance Detail*				
1	SEBLDMPART1	E911-CML, ECS 100	\$0.00	\$0.00
1	70-CB2AC-AA	ECS-1000 2 Shelf AC Power	\$1,248.62	\$1,248.62
11	61000-409603XP	WKST HP Z220 XP	\$202.46	\$2,227.06
1	71-23398-AB	HP LaserJet 4100N Printer	\$277.42	\$277.42
4	71-30212-AC	Data Interface Mod 5.X	\$345.60	\$1,382.40
2	71-30679-AB	AP Gen 3 Module 5.X	\$369.23	\$738.46
11	63002-192808	MNTR 19IN W/SPKRS BLK NEC	\$35.69	\$392.59
2	71-30262-AA	Mixer 1024 Module	\$409.36	\$818.72
2	71-30302-AA	MF/DTMF Module	\$143.39	\$286.78
2	71-30197-AA	TDD Module	\$197.91	\$395.82
5	70-30649-AA	L/T G2 Module (6 x 2)	\$512.00	\$2,560.00
3	71-30690-AA	Internal Fax/Modem	\$28.80	\$86.40
12	71-EMF01-AA	ENHANCED MF SIGNALING	\$25.60	\$307.20
7	71-30133-AA	Plantronics Headset	\$8.12	\$56.84
3	71-23088-AA	10 ft Para Pm Cb	\$1.35	\$4.05
1	71-30597-CB	HLIM W/CML I/O & MOD 5.X	\$194.46	\$194.46
1	76-23091-AA	pcAnywhere Host/Remote	\$24.86	\$24.86
2	71-23067-BA	Lexmrk 2480 Paral Printer	\$59.33	\$118.66
4	71-30596-AB	BIU Module - 5.X	\$127.02	\$508.08
7	71-30597-BB	HLIM w/ CML I/O	\$172.06	\$1,204.42
1	850830-03011	MODEM PKG 56K EXT	\$72.00	\$72.00
1	71-23204-AA	USRB Internal Fax/Modem	\$13.17	\$13.17
14	70-CON01-AA	Connector/Hood Bundle	\$1.85	\$25.90
2	048A061-001	General_Data DSU modem	\$76.08	\$152.16
1	04000-09383	NETCLOCK GPS MASTER 9383	\$571.82	\$571.82
1	04000-08225	GPS ANTENNA OUTDOOR	\$36.55	\$36.55
1	04000-08226	GPS ANTENNA SURG PROTECTR	\$29.78	\$29.78
1	04000-07200	CBL GPS ANTENNA 200FT	\$62.28	\$62.28
1	80-1YRFIRMECS-AA	SPT FIRMWARE 1 YR ECS	\$2,160.00	\$2,160.00
7	80-SEN51-AA	SENTINEL 5.X/6.X SPT 1YR	\$2,176.00	\$15,232.00
7	80-SIRR1-AA	SENTINEL IRR SPT 1 YR	\$536.00	\$3,752.00
7	80-SAT01-AA	AT 2.X SPT 1 YR	\$376.00	\$2,632.00
7	80-SSDC1-AA	STATS SPT DATAC 1YR	\$312.00	\$2,184.00
Frontier Maintenance Total:			13,796.49	
Third Party Software Support Total			\$25,960.00	
Total Investment:			\$39,756.49	

***This equipment was purchased under a separate agreement. Customer is purchasing twelve (12) consecutive months of Maintenance Services for this equipment, as described in the attached Statement of Work.**

Third party services will be provided in accordance with the service descriptions of the respective third party maintenance service providers (generally available on their respective websites) and (ii) the relevant terms and conditions of this Agreement, specifically excluding section 3.2 (termination for convenience).

Quote Validity Period: Customer must sign and date the Agreement and return it to Frontier on or before June 30, 2013 or the proposed Service arrangement and pricing will no longer be available.

System Agreement

Statement of Work Service Plan Description Frontier Voice E911 Customer Premise Equipment (“CPE”) Maintenance Services

Overview of Service:

Frontier’s Voice E911 CPE Maintenance Service (“VM Service”) covers the System described in the Agreement, begins on the In-Service date and remains in effect for **twelve (12)** consecutive months.

If Customer selected post-warranty Voice E911 CPE Maintenance Service, Frontier will provide VM Service on the E911 CPE identified in the Quote and /or the Statement of Work and its Appendix for the term identified in the Agreement and applicable Quote (the “Maintenance Service Period”). VM Service covers CPE failure caused by normal wear and tear. VM Service entitles Customer, at Frontier’s option, to supported E911 CPE repair or replacement without additional charge for parts or labor. Frontier will use new and like-new parts, and any old, worn or the like parts replaced become Frontier’s property and the installed replacement parts become the property of Customer. Customer agrees to provide Frontier with access needed to perform VM Service. Frontier will notify Customer’s on-duty supervisor upon arrival at Customer’s site.

VM Service does not cover CPE failure cause by other than normal wear and tear, including without limitation, failures caused by acts or omissions beyond Frontier’s reasonable control, including but not limited to acts of God or third parties, power outages or surges. VM Service does not cover supplementing, rearranging, relocating, modifying or removing E911 CPE. If activities by Customer or others cause safety hazards or equipment malfunctions, Frontier will respond to Customer’s request for service within the time frames mentioned herein, and Customer will be charged Frontier’s then current time and materials charges, which Customer agrees to pay.

Customer shall not be entitled to VM Service if, during the Maintenance Service Period, Customer or a third party (a) fails to follow applicable installation, operation, maintenance or environmental requirements; (b) alters, modifies, enhances, repairs or disassembles the CPE without Frontier’s prior written consent; (c) abuses, misuses or damages the CPE; or (d) relocates the CPE without Frontier’s prior written consent.

Either party may terminate the VM Service upon sixty (60) days prior written notice to the other party. At the end of the Maintenance Service Period, VM Service may be renewed upon mutual written agreement of the parties.

Service Deliverables:

Frontier will provide the following deliverables as part of the VM Service:

Customer may report a CPE failure twenty-four (24) hours a day, seven (7) days a week, by calling Frontier at 877-245-3511 or such other number that Frontier provides Customer in writing, in accordance with the Notices provision under the Agreement. Frontier will respond either remotely or on-site within four (4) hours from the time Frontier is notified of a major failure. For minor failure, Frontier normally dispatches between 8:00 AM and 5:00 PM on the next business day. However, Frontier will dispatch immediately if, in Frontier’s sole discretion, unusual or emergency circumstances exist. For the purposes of this section, “major failure” is defined as any or all of the following: (i) loss of 25% of the call carrying capacity of the system; (ii) loss of 25% of trunks; (iii) loss of 25% of system answering positions; or (iv) loss of ANI or ALI processing capability. All other failures are classified as “minor failures.” The remedies set forth under this Section are Customer’s sole remedies for failures in the CPE.

NOTE:

1. Remedial Software Maintenance. VM Service provides software patches that have been identified by Frontier as necessary during trouble resolution, and as provided from the manufacturer. This does not include software upgrades.
2. Frontier, as its expense, provides new of like-new parts to replace or repair the CPE equipment covered under VM Service.

Response Times:

1. Frontier’s response time for major system failures is four (4) hours.
2. Frontier’s response time for minor System failures will be next business day.
3. In all cases, response times will be measured from the time the Customer’s trouble report is received by Frontier to the time work is started to correct the problem.

System Agreement

4. Response is acknowledgement of a problem and work toward its resolution, involving one or more of the following:
 - a. Remote diagnostics, telephone consultation with respect to issue resolution, remote work to correct a problem with notification to Customer that on-site work is unnecessary.
 - b. Dispatch of technician to Customer's premises.

The type of repair response will depend on Customer's equipment and the available remote connections.

Customer Requirements:

1. Customer must provide access to equipment, in a timely manner, during on-site VM Services.
2. Dial-Up connectivity from the Frontier Services Centers, for diagnostic and MAC purposes, is a prerequisite for all equipment covered under VM Service. Customer must provide analog circuit access and Frontier approved connectivity equipment to the CPE or the response times set forth above will be invalid.
3. If additional equipment and / or services are required from the Customer, such equipment and / or services will be set forth in a separate Statement of Work.



FOR COUNCIL: June 24, 2013

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 can be located at www.cityblm.org under Human Resources in a folder titled Labor Contracts. 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 pay periods of the month.

Section 2.2 Fair Share of Collective Bargaining Administration.

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

Section 2.3 Fair Share of Living Expenses

- Fair Share of Living Expenses deducted on first two pay periods of the month

Article 4 Equipment and Allowance.

- Increase the shoe allowance from \$100 to \$150 annually.
- Two 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 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: City Council and Local 49

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

- Additional 24 hours of Union Leave
- Increase of 7% for one 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 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, Human Resources Director
Mike Kimmerling Fire Chief
James Baird, Clark Baird Smith, LLP

Financial & Budgetary review by: Tim Ervin, Budget Manager

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

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: June 24, 2013

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 request 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 License holder representative.

Commissioner Renner opened the liquor hearing and requested that the License holder representative address this request. Joseph Zappala, District Manager and License holder 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: _____ 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: June 24, 2013

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

RECOMMENDATION/MOTION: That the Council authorize the execution of all documents necessary to transfer the Kickapoo Creek Pump Station and the 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 the Bloomington-Normal Water Reclamation District entered into an intergovernmental agreement in which various parcels owed 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, but 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 the force main, along with the force main easement, to BNWRD. A copy of the proposed easement is attached.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: None.

FINANCIAL IMPACT: The 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 is required to compensate the City \$30,000 for the generator at the pump station. The \$30,000 will be deposited within the City's Sewer Fund.

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, M.S., Budget Officer

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. Easement
Attachment 2. July 28, 2009 Intergovernmental Agreement
Attachment 3. Maps

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			

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 #

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 _____ day of _____, 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 _____, A.D. 2013.

Notary Public

This instrument prepared by: Todd Greenburg, City of Bloomington, 109 E. Olive Street, Bloomington, IL 61701

Return to: City of Bloomington, City Clerk, 109 E. Olive Street, Bloomington, IL 61701

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF
BLOOMINGTON AND THE BLOOMINGTON NORMAL WATER
RECLAMATION DISTRICT**

Purpose

The City of Bloomington, (hereafter referred to as "City") and the Bloomington Normal Water Reclamation District (hereafter referred to as "BNWRD") entered into an Intergovernmental Agreement on March 23, 1992 for construction of the Ireland Grove Sanitary Sewer, a copy of which agreement is attached hereto as Exhibit A and incorporated herein by reference. City and BNWRD incurred additional obligations and made commitments with respect to transferring property and facilities to each other that were not part of the Ireland Grove Sewer Intergovernmental Agreement or any other agreement. Both City and BNWRD acknowledge having additional obligations and commitments and wish to enter into this agreement for the purpose of establishing the amount each party now owes to the other, the value of property and facilities to be transferred and providing for the manner and date of payment determined to be due.

Article I

Ireland Grove Sanitary Sewer Intergovernmental Agreement.

1. City's obligations. City completed construction of all sewer facilities as provided in the Agreement. City was obligated to transfer ownership of all facilities and assign all underlying easements and rights of way to BNWRD upon completion of the new sewerage treatment plant. City does hereby transfer ownership of all sewer mains to BNWRD and has executed an assignment of all easements, a copy of which is attached hereto as Exhibit B.

2. BNWRD's obligations. BNWRD is obligated to pay City for the cost of constructing the main and acquiring easements and right of way for the main less any tap on fees collected by City. The City costs for construction and easement/right of way acquisitions were as follows:

Construction:	\$1,259,927.30
Acquisition of Right of Way/ Easements:	\$6090.00
Total Construction: And acquisition of right of way/ easements	\$1,266,017.30
Less BNWRD payment	\$629,963.65

Less tap on fees paid to City	\$310,583.28
Balance due:	\$325,470.42

Article II Additional Obligations

1. BNWRD Connection Fees. BNWRD deferred payment of the \$1750 connection fee for individuals making sewer connections at the following locations, which connections were made necessary as a result of the City construction projects:

Szarek Subdivision (10 lots)	\$17,500
2104 Fox Creek Road (Dillen)	\$1,750
2011 Fox Creek Road (Williams and Swee)	\$1,750
2405 Springfield Road (Canine Classics)	\$1,750
2108 Cabintown Road (Guth)	\$1,750
611 W. Hamilton (Schiller)	\$1750
709 W. Hamilton (McWhorter)	\$1750
2102 Cabintown Rd. (Fry)	\$1750
2104 Cabintown Rd. (McWhorter)	\$1750.00
Total	\$31,500.00

2. Billing Errors. The City provides billing services for BNWRD. It collects monthly usage charges from BNWRD customers and remits that amount to BNWRD less a billing fee on the number of accounts billed. The City made two mistakes in billing that resulted in underpayments to BNWRD. The City erroneously included deleted accounts in calculating the billing charge beginning in 2000 and continuing until 2007 and, due to a change in billing software, the City collected but failed to remit penalties assessed on BNWRD accounts from 2002 until May 2008.

The City determined that it overcharged BNWRD \$190,628.78 for billing deleted accounts. BNWRD agrees that this is a correct statement of the amount due. The City does not have the data to determine the actual amount of the penalties collected between 2002 and May 2008. BNWRD agrees that the City may use the following method to derive a reasonable estimate of the amount of penalties that should have been paid and that it will accept that amount in settlement of the claim for penalties from 2002 through May 2008. The City will take the total annual revenue collected for BNWRD and apply a percentage to this total revenue for each month back to 2002. This percentage will be based upon the 2008 average for the City's fiscal year. When a full year of data is collected the City will be able to set the actual percentage. Using penalties collected from May 2008 to November 2008, the City calculated the percentage to be 1.75% and applying that to the revenues collected from 2002 to May 2008, the City determined the

rough estimate of the amount due to be \$256,000.69. The City will provide BNWRD with a final amount due at the end of the 2008 fiscal year and will share all of the numbers used to calculate that number

Article III

Property and Facilities to be Transferred

1. BNWRD property. BNWRD owns the property described on Exhibit C. City needs all or part of the land for the extension of Martin Luther King Drive and the Constitution Trail and has requested BNWRD transfer the property to City. For purposes of this agreement BNWRD and City agree that the property has the following values:

Parcel 1	\$347,357.64
Parcel 2	\$6,300.00
Total:	\$353,657.64

2. Kickapoo Creek pump station and Force Main. The City constructed a pump station and force main for use with the Ireland Grove Sewer before BNWRD's Randolph Township treatment facility came on line. City intended to decommission the pump station and convert the force main to gravity sewer when it was no longer needed. BNWRD wishes to keep the pump station and force main operational for back up in case of disruption in service at the Randolph Township and City has agreed to transfer those facilities to BNWRD. BNWRD shall owe the City \$30,000.00 for the generator at the pump station and City shall transfer possession of said generator, as well as any documentation connected therewith, to BNWRD.

Article IV

Agreement

1. City shall pay BNWRD \$476,316.74, which represents the balance due for the sewer tap on fees, water billing errors and property interests to be conveyed less the outstanding amount due from BNWRD under the Ireland Grove Sanitary Sewer Intergovernmental Agreement. This sum shall be paid on or before August 1, 2009.

2. City shall transfer the Kickapoo Creek pump station and force main with all appurtenant equipment and assign all related easements and rights of way to BNWRD and in exchange for which BNWRD shall design and construct a gravity sewer in a location and with sufficient capacity to serve the same area as the force main. In the event the City decides to design and construct the gravity sewer so that it covers and

includes an area larger than the area covered by the current force main, the City shall be responsible for the additional design, construction, easement and right-of-way acquisition expenses associated with the increased coverage. City shall approve the final alignment and review and approve all plans and specifications for the sewer. BNWRD shall be responsible for obtaining any easements or rights of way necessary to construct the sewer. Any costs associated with the acquisition of those property interests shall be considered part of the overall project cost and shall be paid for by BNWRD. The sewer shall be installed and be operational on or before November 1, 2010, BNWRD shall transfer the sewer facilities and assign all easements and rights of way to City upon completion of construction.

3. BNWRD shall convey the property described on Exhibit C to City on or before August 1, 2009.

4. In the event that the estimate of the unpaid water billing penalties is different than the penalties as calculated in Article II paragraph 2, BNWRD and the City agree to make the necessary adjustment between themselves.

5. In the event the City has collected any additional sewer connection fees, other than those listed in Article II paragraph 1, the City shall reimburse BNWRD, for such fees collected, on or before August 1, 2009. The City shall make a search of it's records and provide BNWRD with a list of all additional properties, on which connection fees were collected, within thirty days. Should there be any additional sewer connection fees collected by City in the future, they shall be promptly paid to BNWRD.

ARTICLE V

Amendments

This Intergovernmental Agreement shall be binding upon all parties unless and until amended by agreement of all parties.

ARTICLE VI

Severability

This Intergovernmental Agreement is severable, and the validity or unenforceability of any provision of the agreement, or any part hereof, shall not render the remainder of this agreement invalid or unenforceable.

ARTICLE VII

Effective Date

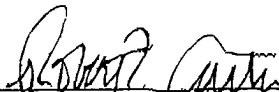
This Intergovernmental Agreement shall continue in full force and effect beginning the 25th day of July, 2009 until such time as it may be amended or revised by the same action that caused its adoption.

The parties hereto agree that the foregoing constitutes all of the agreement among all of the parties and in witness whereof, the parties have affixed their respective signatures on the date indicated below.

City of Bloomington

By: 
It's Mayor

Bloomington and Normal Water Reclamation District

By: 
It's Executive Director

WITH WATER BILLING	COB	BNWRD
LKPS & BUNN ST FORCE MAIN	\$112,589.12	
IRELAND GROVE SEWER		\$1,259,927.30
LESS TAP ON FEES		\$ 342,083.12
		\$ 917,844.18
LESS PREVIOUS PAYMENT		\$ 629,963.65
		\$ 287,880.53
PLUS LKPS GENERATOR		\$ 30,000.00
		\$ 317,880.53
PLUS EASEMENT FEES		\$ 6,090.00
		\$ 323,970.53
LESS PROPERTY TRANSFER		\$ 353,657.64
		\$ (29,687.11)
LESS BILLING OVERCHARGE		\$ 190,628.70
LESS PENALTY FEES DUE		\$ 256,000.69
DUE BNWRD		\$ 476,316.50

\$ 1,266,017.30
629963.65
\$ 636,053.65
310583.28
\$ 325,470.37
\$ 31,500.00
\$ 293,970.37
353657.64
\$ (59,687.27)
190628.78
\$ (250,316.05)
256000.69
\$ (506,316.74)
30000
\$ (476,316.74)

*BNWRD \$68,000 DESIGN EXPENDITURE NOT INCLUDED AS IT WAS REQUIRED BY 1992 INTERGOVERNMENTAL AGREEMENT

EXCLUDING WATER BILLING

	COB	BNWRD
LKPS & BUNN ST FORCE MAIN	\$112,589.12	
IRELAND GROVE SEWER		\$1,259,927.30
LESS TAP ON FEES		\$ 342,083.12
		\$ 917,844.18
LESS PREVIOUS PAYMENT		\$ 629,963.65
		\$ 287,880.53
PLUS LKPS GENERATOR		\$ 30,000.00
		\$ 317,880.53
PLUS EASEMENT FEES		\$ 6,090.00
		\$ 323,970.53
LESS PROPERTY TRANSFER		\$ 353,657.64
DUE BNWRD		\$ 29,687.11

*BNWRD \$68,000 DESIGN EXPENDITURE NOT INCLUDED AS IT WAS REQUIRED BY 1992 INTERGOVERNMENTAL AGREEMENT

**FARNSWORTH
LAW
FIRM**

106 East Washington Street
Peotinc, Illinois 61764

Summary of Quantities

Qty	Unit	Item	DIVISION A
7000	L.F.	Agriculture Surface Restoration	
1050	L.F.	Applicable Granular Backfill	
285	L.F.	Removal & Replacement of Bluntious Treated Surface-Flexible Base (A-3)	
20	L.F.	Gravel or Crushed Stone Driveways, Alleys and Shoulders	
990	L.F.	Fertilizing & Seeding	
75	L.F.	Pipe Encasement in Concrete	
1	Each	Manhole Type A 4' Diameter	
1	Each	Vacuum/Jar Release Manhole	
3	Each	Air Relief Manhole	
1	Lump Sum	Field Engineering	
1	Lump Sum	Railroad Protection Liability Insurance	
		DIVISION A ALTERNATE 1	
	Unit	Item	
90	L.F.	24" Ductile Iron Pipe AWWA C-150 in 36' Coating w/restrained joints	
10,000	L.F.	24" Prestressed Concrete Steel Cylinder Pipes AWWA C-330	
700	L.F.	24" Prestressed Concrete Steel Cylinder Pipes AWWA C-330 w/restrained joints	
53	L.F.	36" Ductile Iron Pipe AWWA C-150 in 36' Coating	

QTY	UNIT	DESCRIPTION
90	L.F.	24" Ductile Iron Pipe AWWA C-150 Bored in 36" Casing w/restrained joints
1,600	L.F.	24" Steel Water Pipe AWWA C-200
700	L.F.	24" Steel Water Pipe AWWA C-200 w/restrained joints
53	L.F.	24" Ductile Iron Pipe AWWA C-150 in 36" Casing w/restrained joints over cut

DIVISION A ALTERNATE 3	
Unit	Item
30	24" Ductile Iron Pipe AWWA C-150 bored casing w/retrained joints
10,000	L.F. 24" Ductile Iron Pipe AWWA C-150
700	L.F. 24" Ductile Iron Pipe AWWA C-150 w/retrained joints
53	L.F. 24" Ductile Iron Pipe AWWA C-150 in 36"

h2

Franklin M. Walters
#219#

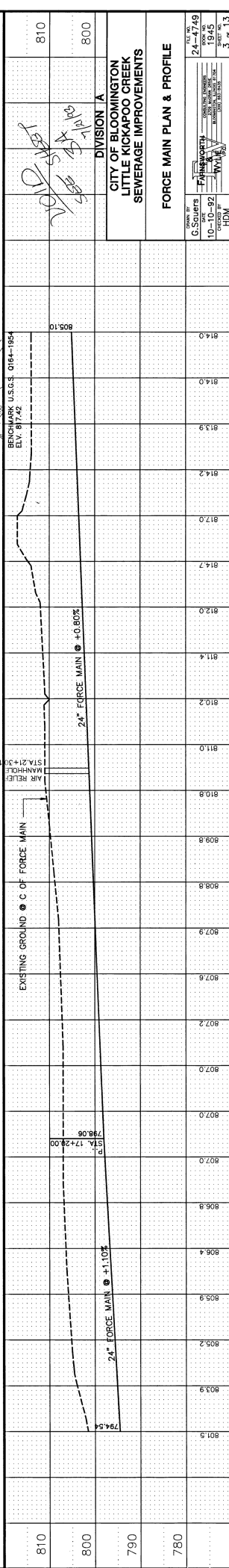
A circular professional engineer seal for the State of Illinois. The outer ring contains the text "H.D. MERRITT, JR." at the top and "ILLINOIS" at the bottom, separated by two stars. The inner circle contains the text "REGISTERED PROFESSIONAL ENGINEER OF" around the perimeter, with the number "25636" in the center.

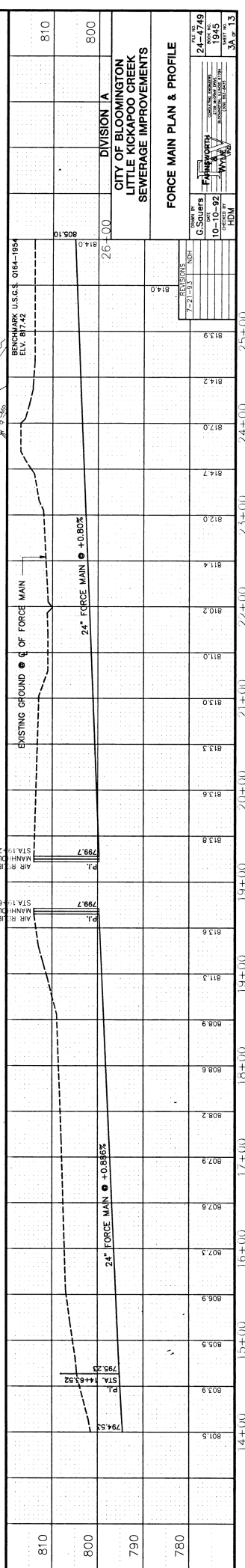
H. A. Merritt

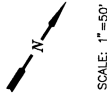
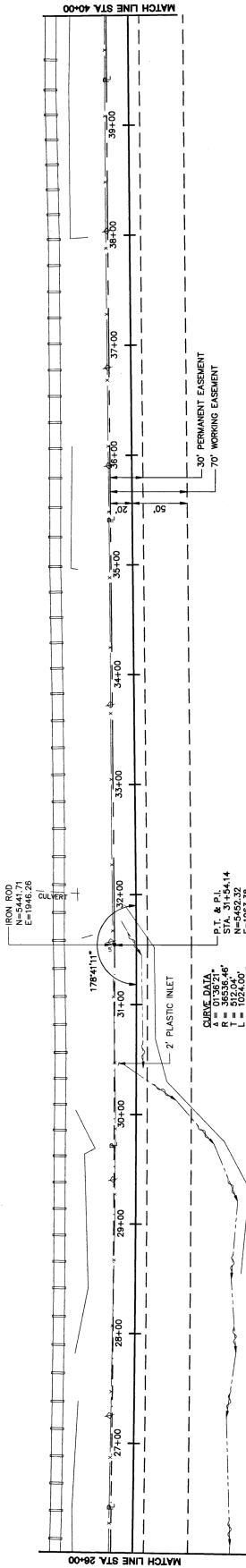
Franklin M. D.
1219

24-4749

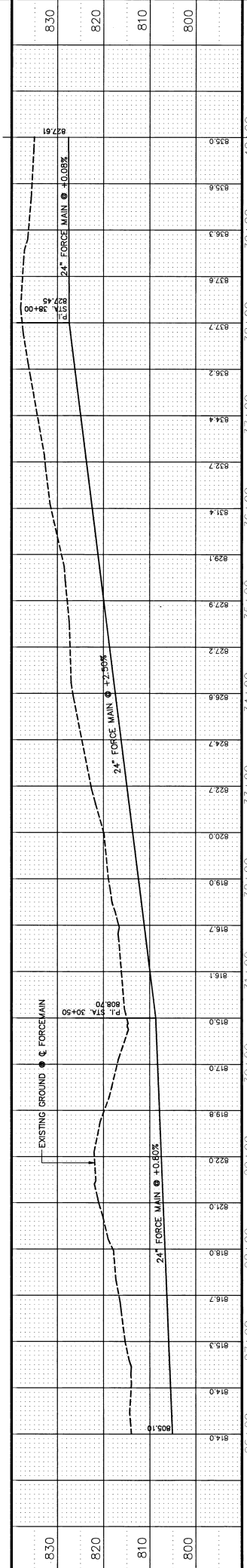
RACK SET 7







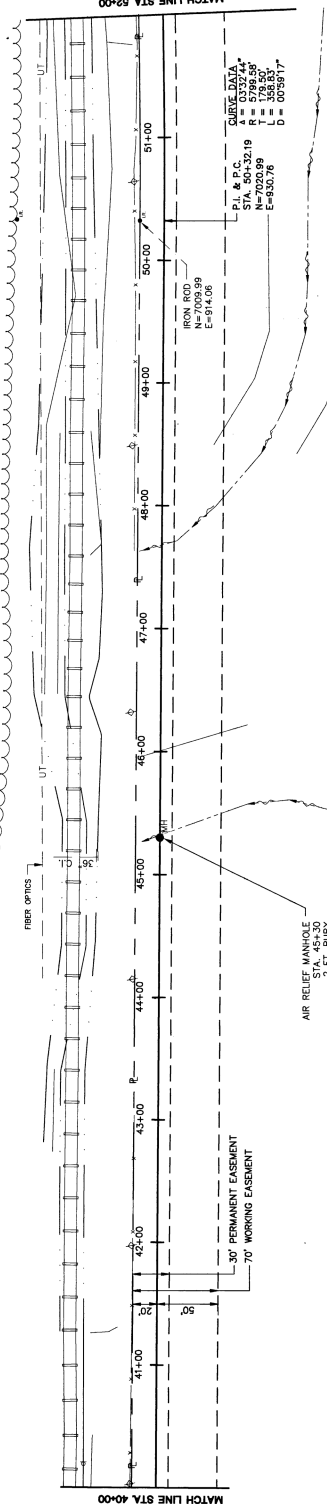
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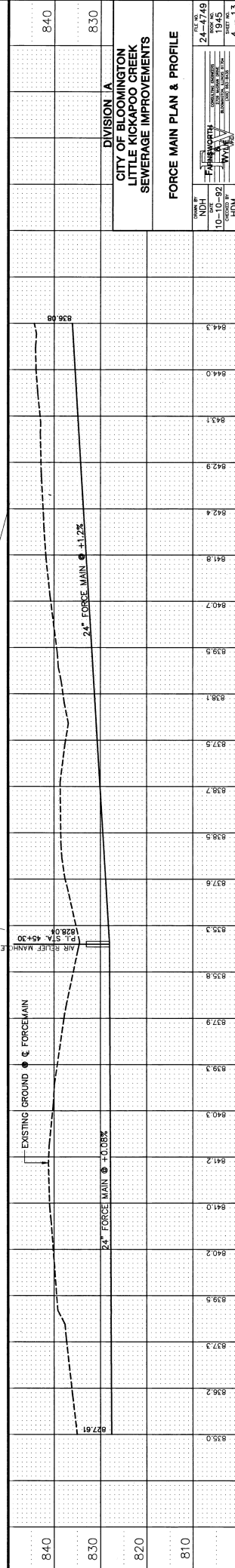
AGRICULTURAL SURFACE RESTORATION
STA. 26+00 - 40+00
STA. 40+00 - 52+00



SCALE: 1"=50'



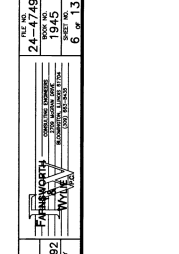
NOTE: RESTRAIN JOINTS PER LAYOUT SCHEDULE



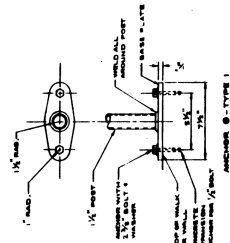
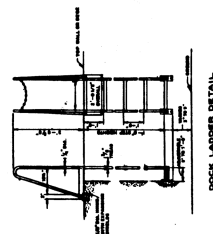
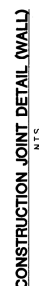
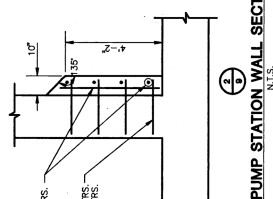
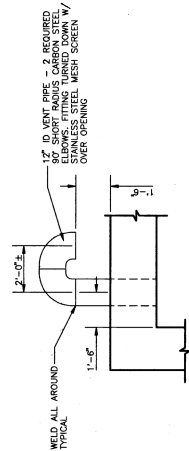
DIVISION 1A
CITY OF BLOOMINGTON
LITTLE KICKAPOO CREEK
SEWERAGE IMPROVEMENTS

FORCE MAIN PLAN & PROFILE

DATE	BY	CHKD BY	APP'D BY
24-4749	NDH	NDH	NDH
10-10-92	NDH	NDH	NDH
4 x 13			



REVISIONS		DRAWN BY NDH DATE 10-10-92 CHECKED BY HDM	FILE NO. 24-4749 BOOK NO. 1945 SHEET NO. 7 of 13
		PROJECT: FLORIDA SOUTH CONTRACT NO.: 501 DIVISION: WY DRAWING NO.: 10-10-92 DATE: 10-10-92 CHECKED BY: HDM	

[illegible]

PUMP STATION SECTIONS

DOWN BY	DATE	2
Sauers	- 10-92	
	RECEIVED BY	
	JULIA	



SECTION THROUGH GENERATOR FOUNDATION



④



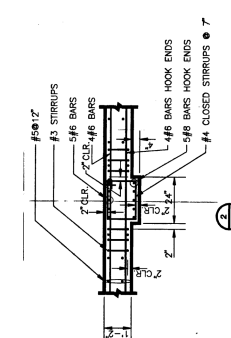
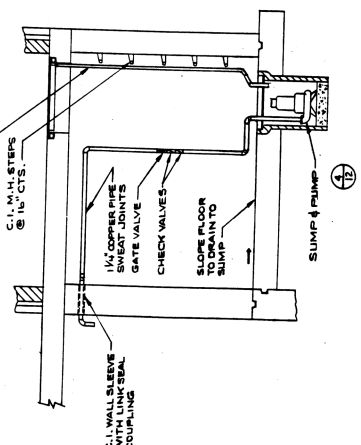
2

UNO=UNLESS OTHERWISE NOTED
OF=OUTSIDE FACE
IF=INSIDE FACE
E.F.=EACH FACE

 $\oplus$ [illegible]

**CITY OF BLOOMINGTON
LITTLE KICKAPOO CREEK
SEWERAGE IMPROVEMENTS**

PUMP STATION STRUCTURAL



ELEVATION
SCALE: 3/8" = 1'-0"

TYPICAL WALL REINFORCEMENT FOR SOUTH AND CENTER WALLS
NOTE: PLACE ADDITIONAL HORIZONTAL AND VERTICAL BARS ON
EITHER SIDE OF 1" D.I. M3-M4 WALL SLEEVE AND OTHER OPENINGS EQUAL TO THE
NUMBER OF BARS CUT BY OPENING. CENTER WALL ONLY

LEGEND

UNO=UNLESS OTHERWISE NOTED
OF=OUTSIDE FACE
IF=INSIDE FACE
E.F.=EACH FACE

CITY OF BLOOMINGTON LITTLE KICKAPOO CREEK SEWERAGE IMPROVEMENTS		PUMP STATION STRUCTURAL	
DRAWING NO. NDH DATE 10-10-92 DRAWN BY FWW/JUG CHECKED BY FWW/JUG		PROJECT NO. 92-04-01 SHEET NO. 17 OF 33 DATE 10-10-92 DRAWN BY FWW/JUG CHECKED BY FWW/JUG	

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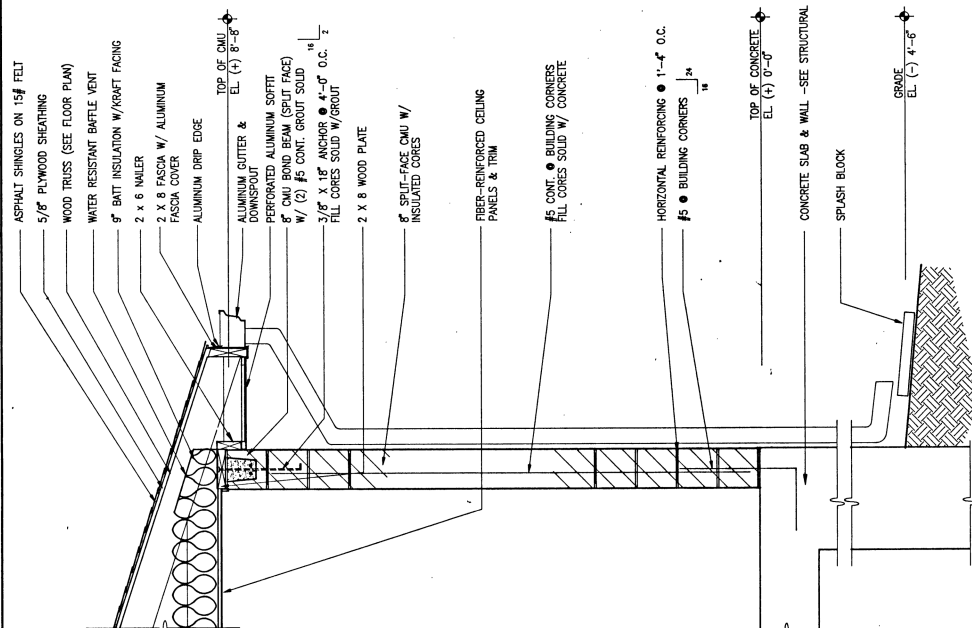
FLOOR PLAN,
ELEVATIONS, WALL
SECTION & DETAILS

SHEET NO.

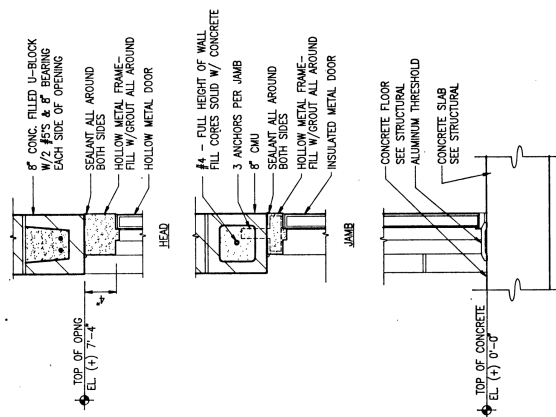
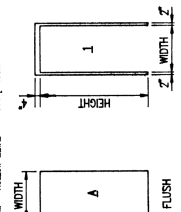
A1

1

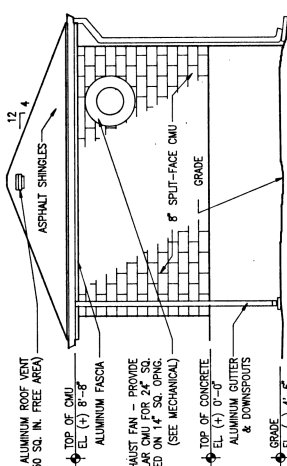
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CHECKED BY JRL	BOOK NO. ————
DATE OCTOBER 1997	FILE NO. 2A-4749



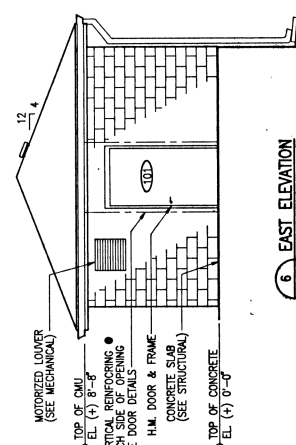
DOOR SCHEDULE											
DOOR											
NO	WIDTH	HEIGHT	THICK	DOOR FRAME				LABEL	HWMR SET	REMARKS	
				W/L	PNT	A	H/M				
101	3'-8"	7'-0"	3/4"	W/L	PNT	A	H/M	PNT	1	-	1



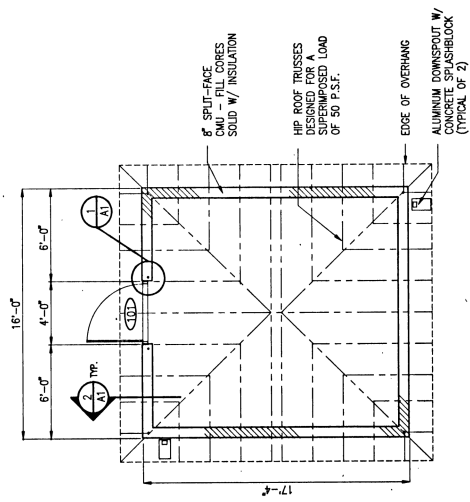
1 DOOR DETAILS
A1 SCALE: 1 1/2" = 1'-0"



4 NORTH ELEVATION
A1 SCALE: 1/4" = 1'-0"

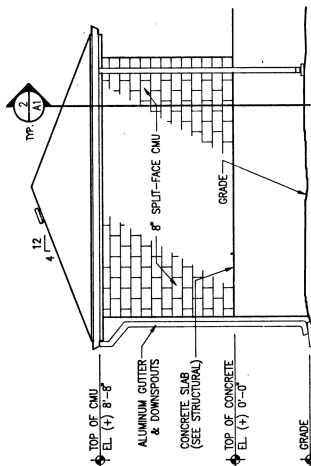


6 EAST ELEVATION
A1 SCALE: 1/4" = 1'-0"

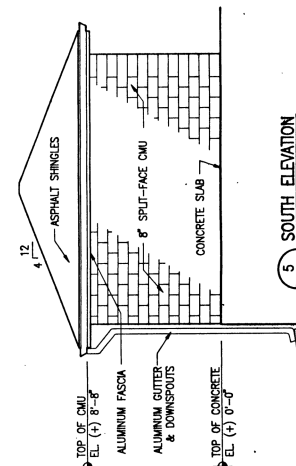


FLOOR PLAN
SCALE: 1/4" = 1'-0"

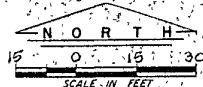
FINISH FLOOR ELEVATION: 806.0' = 0'-0"



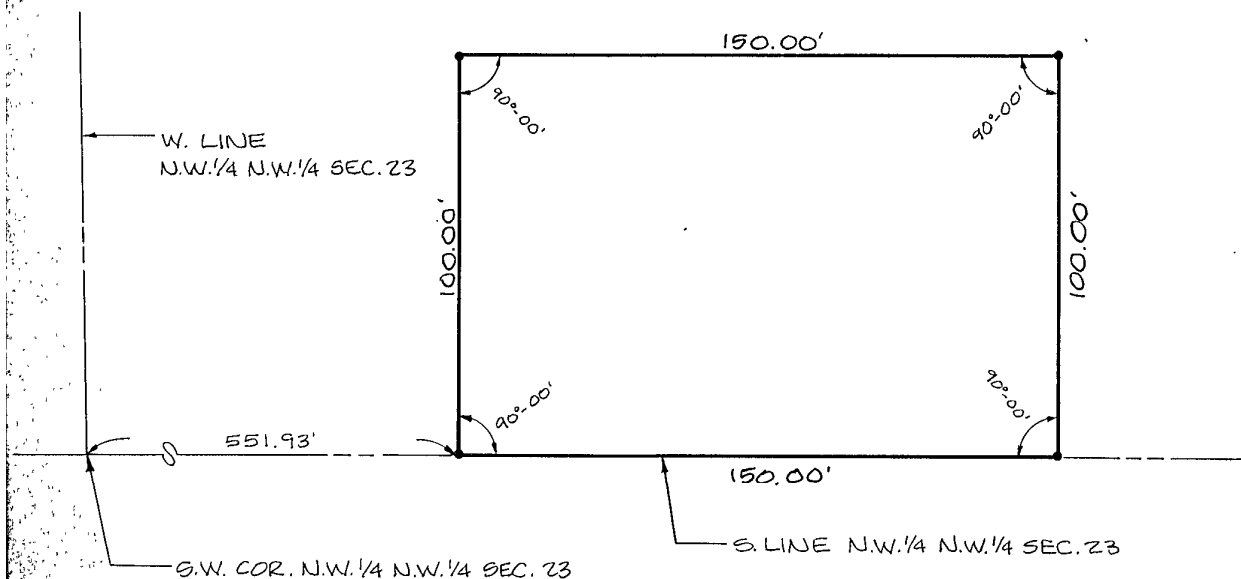
3 WEST ELEVATION
A1 SCALE: 1/4" = 1'-0"



5 SOUTH ELEVATION
A1 SCALE: 1/4" = 1'-0"



• IRON ROD



I hereby certify that this is a true plat of a survey made for the City of Bloomington in the Northwest Quarter of Section 23, Township 23 North, Range 2 East of the Third Principal Meridian, McLean County, Illinois, more particularly described as follows:

Beginning at a point on the South Line of the Northwest Quarter of the Northwest Quarter of said Section 23, said point being 551.93 feet east of the Southwest Corner thereof. From said Point of Beginning, thence east 150.00 feet along said South Line; thence north 100.00 feet along a line which forms an angle to the right of 90°-00' with the last described course; thence west 150.00 feet along a line which forms an angle to the right of 90°-00' with the last described course; thence south 100.00 feet along a line which forms an angle to the right of 90°-00' with the last described course to the Point of Beginning, containing 0.344 acre.

Note:

This survey was made in accordance with Chicago Title Insurance Company Commitment No. 54394 McLean, dated November 22, 1991. Therefore, if there are any easements or other agreements of record not shown in said Commitment we would be unaware of same and they would not be shown hereon.

FARNSWORTH & WYLIE, P.C.
2709 McGraw Drive
Bloomington, Illinois 61704

By:

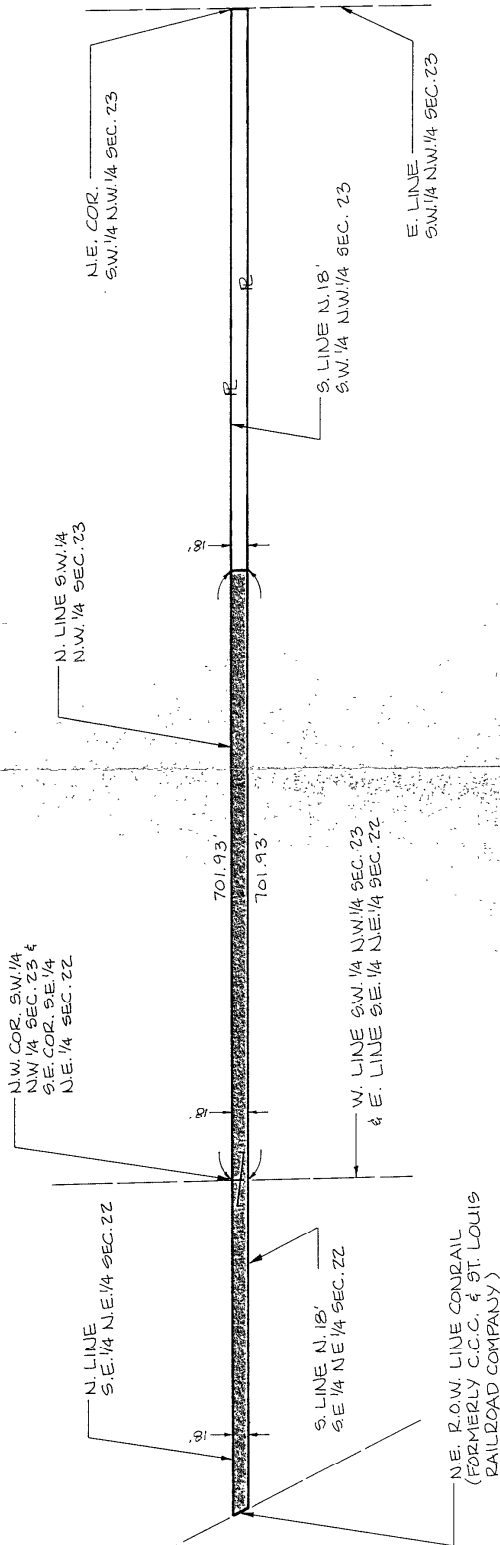
James E. Davis
James E. Davis
Professional Land Surveyor No. 2968



#9

CITY OF BLOOMINGTON MCLEAN COUNTY, ILLINOIS			
SOUTHEAST FORCE MAIN PUMP STATION PROPERTY SURVEY			
DRAWN BY DJB	FARNSWORTH & WYLIE, P.C.	FILE NO. 8-5-2240	
DATE 9-22-92	CONSULTING ENGINEERS 2709 MCGRAW DRIVE BLOOMINGTON, IL 61704 (309) 863-8432	BOOK NO. 1950-4	
CHECKED BY CEH		SHEET NO. 1 OF 1	

N.W. 1/4 SEC. 23, T.23 N., R.2E., 3PM.



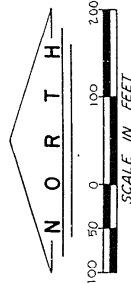
OWNERS: Stephen A. Capodice and John Capodice, as Tenants in Common to an undivided 1/6th interest: David W. Capodice as to the remainder

Description of Property:

A strip of land 18 feet in width off of the entire North End of the Southwest Quarter of the Northwest Quarter of Section 23, Township 23 North, Range 2 East of the Third Principal Meridian, McLean County, Illinois; and also a strip of land 18 feet in width off of the entire north end of the Southeast Quarter of the Northeast Quarter of Section 22, lying east of the Northeast Right-of-Way Line of Conrail (formerly C.C. & St. Louis Railroad Company), Township 23 North, Range 2 East of the Third Principal Meridian, McLean County, Illinois.

Description of Proposed Access & Utility Easement:

All of said property lying west of and adjacent to a line which is 701.93 feet east of the West Line of the Southwest Quarter of the Northwest Quarter of Section 23.



LIMITS OF PROPOSED ACCESS & UTILITY EASEMENT

**CITY OF BLOOMINGTON
MCLEAN COUNTY, ILLINOIS**

**SOUTHEAST FORCE MAIN #11
ACCESS & UTILITY EASEMENT**

DRAWN BY DJB	FILE NO. 18-963-23
CHECKED BY 10-1-92	CONSULTING ENGINEERS BOOK NO.
DATE 10-1-92	REGISTERED PROFESSIONAL BLOOMINGTON, ILLINOIS
SCALE AS SHOWN	SHEET NO. 1 OF 1

NE 1/4 SEC. 22 & NW 1/4 SEC. 23, T. 23 N., R. 2 E., 3 PM



FOR COUNCIL: June 24, 2013

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., east of Airport Road

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 Street (IL Route 9), and east of Airport Road. 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 Drive and Trinity Lane 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

Financial & Budgetary review by: Timothy L. Ervin, CPFO, M.S., Budget Manager

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. Map

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			

Empire Business Park 4th Addition - Final Plat



180 90 0 Feet





FOR COUNCIL: June 24, 2013

SUBJECT: Text Amendment to Chapter 8. Animals and Fowls, Identification and Regulation of Vicious and Dangerous Dogs

RECOMMENDATION/MOTION: That the Proposed 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 page 2 and 3 of this staff memo and in attachment 1. AN 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 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 Bloomington 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 (See Attachment 2. Dangerous Vicious Dog Report). The Public Safety Committee unanimously voted to present the issue to the City Council in a future meeting. The report and proposed ordinance amendments were the result of a number of meetings held between Assistant Corporate Counsel George Boyle, Assistant Police Chief Robert Wall, Officer James Hall, Animal Control Center Director Marshall Thomson, and Assistant to the City Manager Alex McElroy.

On **Monday, May 13, 2013**, City staff presented the proposed ordinance amendment to the full City Council for consideration. At that time, certain concerns were expressed by the Wish Bone Canine Rescue group regarding the proposed ordinance. The City Council voted to lay over the

issue to the next City Council meeting to allow City staff time to speak with Wish Bone, the Humane Society, and any other interested party to discuss any concerns related to the proposal.

On **Tuesday, May 21, 2013**, City staff members Assistant Corporate Counsel George Boyle and Assistant to the City Manager Alex McElroy joined Mayor Tari Renner, Alderman Kevin Lower, and Alderwoman Judy Stearns in a meeting with Wish Bone Canine Rescue members and the Interim Humane Society Director Dr. Tim Anderson of the Hawthorne Park Animal Care Center. Based on staff's discussion with the Wish Bone Canine Rescue group and the concerns presented, staff incorporated 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 of Bloomington. 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 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 Wish Bone Canine Rescue 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**, City Council Meeting, staff brought the proposed ordinance amendment back to Council for consideration as directed. The Wish Bone Canine Rescue organization attended the meeting with members interested in the ordinance being again laid over for further discussion. The Wish Bone Canine Rescue group provided Council with a seven 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 City's homepage website 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 (See Attachment 3. Website Comments Regarding Proposed Ordinance).

On **Friday, June 7, 2013**, the Bloomington Police Department issued a letter of support for staff's proposed ordinance amendment (See Attachment 4. Bloomington Police Department Letter of Support).

On **Tuesday, June 11, 2013**, the Humane Society of Central Illinois issued a correspondence to staff stating in their opinion the changes to the language was good and they support the passing of the ordinance (See Attachment 5. Humane Society Support).

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 organization was present for the meeting and had a representative speak on their behalf. No other members of the public present for the meeting decided to speak. While addressing the Committee, the Wishbone 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 Wishbone were addressed by Committee members and members of City staff as follows:

1. City staff reiterated that after speaking with the Wishbone Canine Rescue group on May 21, staff amended the proposed language to allow for 5 days after the denial of an appeal from the previous 2 days from the date of the hearing. **Current 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 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 Wishbone before the next City Council meeting, being June 24, 2013.
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 Wishbone the issue of a clear definition of ownership as cited above (bullet 3). In correspondences with Wishbone 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 of Bloomington. 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 concerns¹. 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 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 Washington². According to a study performed by the Insurance Information Institute (I.I.I.) and State Farm®, dog bites accounted for more than one-third of all homeowners’ insurance liability claims paid out in 2012, costing \$489 million³. 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 I.I.I. found that the average cost paid out for dog bite claims was \$29,752 in 2012.

Year	Value of Claims (\$ millions)	Number of Claims	Average Cost Per Claim
2003	\$ 324.2	16,919	\$ 19,162
2004	\$ 319.0	15,630	\$ 20,406
2005	\$ 321.1	14,295	\$ 22,464
2006	\$ 322.3	14,661	\$ 21,987
2007	\$ 356.2	14,531	\$ 24,511
2008	\$ 387.2	15,823	\$ 24,461
2009	\$ 412.0	16,586	\$ 24,840
2010	\$ 412.6	15,770	\$ 26,166
2011	\$ 490.8	16,695	\$ 29,396
2012	\$ 489.7	16,459	\$ 29,752
Percent Change, 2003 - 2012	51.4%	-1.6%	55.3%

Source: Insurance Information Institute, State Farm®

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 injury⁴. Homeowners and renters insurance policies typically cover dog bite liability. Most policies provide \$100,000 to \$300,000 in liability coverage⁵. 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 percent over a

¹ See: http://www.cbalaw.org/_files/publications/lawyers-quarterly/Vicious%20Dogs%20in%20Ohio.pdf

² See: <http://www.insurancequotes.com/home-insurance-blacklisted-breeds/>

³ See: http://www.iii.org/issues_updates/dog-bite-liability.html

⁴ See: <http://www.insureme.com/general-insurance/dangerous-dogs-pose-insurance-debate>

⁵ See: http://www.iii.org/issues_updates/dog-bite-liability.html

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 and adults 65 and older were more likely to be hospitalized after a bite. Nearly 50 percent of those hospitalized required treatment for skin and tissue infections and more than half received such procedures 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 (a suburb of Detroit, MI) requires \$1,000,000 in liability insurance for vicious and/or dangerous dogs⁶.

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.

⁶ See: <http://detroit.cbslocal.com/2013/05/15/royal-oak-ordinance-requires-dangerous-dog-insurance/>

- 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 Wish Bone Canine Rescue group.** But staff has found that not all foster groups or temporary situations operate as responsibly as has been the experience with Wish Bone Canine Rescue. 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 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 Wish Bone Canine Rescue.

FINANCIAL IMPACT: None.

Respectfully submitted for Public Safety Committee consideration.

Prepared by: Alex McElroy, Assistant to the City Manager

Legal review by: George D. Boyle, Assistant Corporation Counsel

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. Ordinance
Attachment 2 - Dangerous Vicious Dog Report
Attachment 3 - Website Comments Regarding Proposed Ordinance
Attachment 4 - Bloomington Police Department Letter of Support
Attachment 5 - Humane Society Support
Attachment 6 - April 11th Committee Meeting 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			

ORDINANCE NO. 2013-

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.

- 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.~~

~~(e) — 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 ____ day of ____, 2013.

APPROVED this _____ day of _____, 2013.

APPROVED:

TARI RENNER
Mayor

ATTEST:

TRACEY COVERT
City Clerk

POLICY RESEARCH: DANGEROUS DOGS

To: Mayor & City Council
cc: David A. Hales, City Manager
Barbara J. Adkins, Deputy City Manager
From: Alex McElroy, Assistant to the City Manager
Subject: Dangerous and Vicious Dog Ordinance
Date: June 11, 2013

The recent (October 25, 2012) and extremely unfortunate incident resulting in 2 citizens being hospitalized due to a pit bull attack has rekindled some questions pertaining to the City's current policies regarding animal control and their effectiveness to date. More specifically, certain individuals are calling for the adoption of Breed Specific Language (BSL) to hinder the occurrences of harmful and potentially fatal dog attacks.

The general procedure in Bloomington, Normal, and McLean County is to declare individual dogs either "dangerous" or "vicious", depending on the nature of their behavior. The definitions, procedures, and consequences of those designations are found in Chapter 8, Section 83 of the City Code.

Under current City Ordinances, a "dangerous" dog is:

"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." Bloomington City Code, Chapter 8, Section 83(a)(3).

Dangerous dogs must be securely enclosed inside a house or under physical control of a leash, chain, etc. which prevents it from being closer than 10 feet to the property line of the owner or to a public sidewalk or right of way.

Under current City Ordinances, a "vicious" dog is:

- 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.

If any vicious dog is found outside the enclosure for any reason other than veterinary care or to comply with a court order, it is impounded and destroyed by lethal injection. If it must be taken out of the enclosure, it must be kept muzzled and restrained by a chain not more than 3 feet long with a tensile strength of at least 300 pounds.

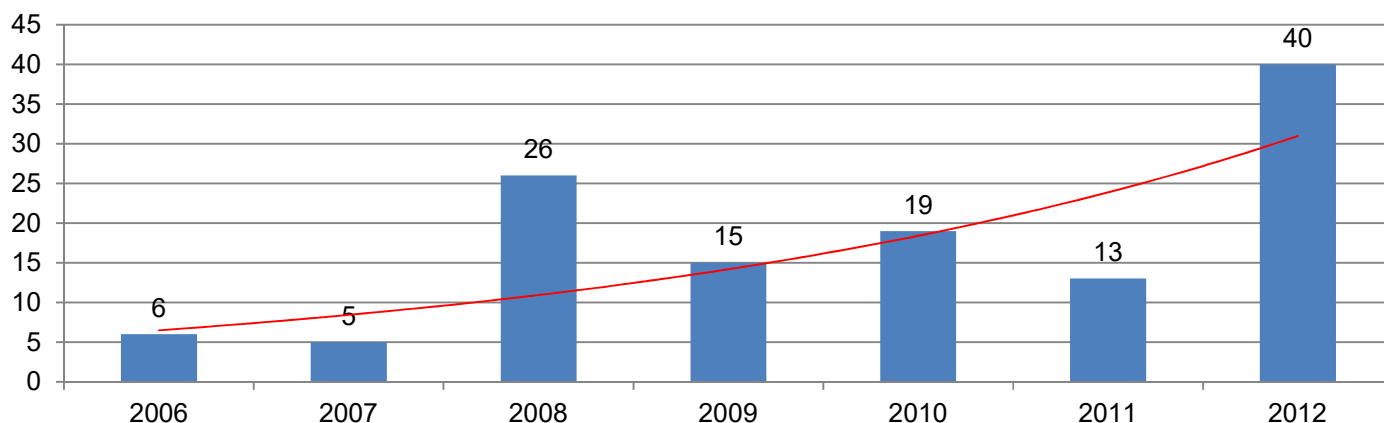
The call for Breed Specific Language is not a new issue for the City of Bloomington. In 2006, the staff was requested to research the issue of breed-specific dog ordinances. In Illinois, only home-rule units may enact breed-specific dog laws. Non-home rule units are prohibited from doing so (510 ILCS 5/15, 510 ILCS 5/24). The City of Denver, Colorado enacted a pit bull ban ordinance which was upheld in court. During staff's research, former Alderman Mike Matejka held several meetings with interested parties. Owners of pit bulls objected that the problem was not with the breed, but with irresponsible owners of pit bulls. Staff learned from Peggy Gibson, Former Director of McLean County Animal Control, that out of 18,242 dogs registered in McLean County in 2004, only 360 were listed as being pit bulls. The inference was that most pit bull owners were either not vaccinating their animals, or were vaccinated but the paperwork was not completed and sent in by the owner after vaccination to complete the proper registration.

POLICY RESEARCH: DANGEROUS DOGS

To address this concern, in April 2006, Council adopted a text amendment adding Section 85 to Chapter 8 of the Bloomington 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 pit bulls, but at irresponsible dog 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 dogs off the streets, out of the hands of irresponsible owners, and cut down on the amount of attacks.

Since 2006, 124 tickets have been issued to dog owners for failure to register their animals. Between 2007 and 2012 there have been 76 dogs identified as "dangerous" and 38 dogs identified as "vicious" by the City.

Total Tickets Issued for Failure to Register Dog



For calendar year 2012, the Bloomington Police Department provided the following statistics and activity for dog declarations:

12 Dangerous Dog Declarations	15 Vicious Dog Declarations
-2 Appealed and were rescinded	-4 Appealed and were rescinded
-1 Voluntary Euthanized	-8 Voluntary Euthanized
9 Remained Declared Dangerous	2 Remained Declared Vicious
Of the 12 Dogs Declared Dangerous	Of the 15 Dogs Declared Vicious
3 were Pit Bull Mix Type Dogs*	10 were Pit Bull Mix Type Dogs*

96 Dog Bite Reports Made in 2012

31 of the Reports involved Pit Bull Type Dogs

40 Ordinance Violations Issued for Failure to Vaccinate/Register Dog

57 Ordinance Violations Issued for Dogs Running At Large

97 Total Ordinance Violations Issued in 2012

**The Police Department went through 96 Dog Bite Reports by hand to obtain pit bull information. This type of specific information cannot currently be digitally generated.*

The City of Bloomington shares an intergovernmental agreement with McLean County Animal Control Center for animal control services. In 2011, 677 dogs and cats were accepted at the Animal Control Center originating from within the City of Bloomington; 76% of all the dogs from McLean County entering the Animal Control Center were not vaccinated for rabies or registered. In 2012, 673 dogs and cats were accepted at the Animal Control Center originating from Bloomington with 75% of the dogs from McLean County entering the Animal Control Center not vaccinated for rabies or registered. The following information represents the Animal Control Center activity for the City of Bloomington for 2011 and 2012.

POLICY RESEARCH: DANGEROUS DOGS

Bloomington Activity Measures by Month for 2011

Code Description	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2011 Totals
General On Call Activity	38	33	36	32	37	20	36	35	36	50	43	36	432
General Dog/Cat Complaint	29	40	83	48	93	67	115	148	116	86	87	45	957
Dead Animal Removal	5	11	26	22	24	14	35	28	29	26	11	6	237
Bite/Rabies Investigations Activity	34	40	53	69	70	41	207	61	48	26	27	43	719
Confirmed Bite/Rabies Investigations	16	16	12	24	21	26	22	38	20	14	17	14	240
General Phone Calls/Questions	293	341	540	689	443	437	446	559	483	359	370	378	5,338
Shelter Inquiries City Specific	43	47	170	65	81	96	75	85	108	81	93	78	1,022
Reclaim Activity Investigations	11	10	20	19	18	21	11	16	19	16	15	15	191
Bloomington Reclaims at the Center	9	11	18	12	14	14	12	14	19	17	18	4	162
Complaint Letters mailed	8	3	23	9	19	14	6	8	0	0	1	1	92
Animal Accepted from Bloomington at the Center	39	37	64	55	71	68	44	72	70	44	63	50	677
Total Activity Measures per Month	525	589	1,045	1,044	891	818	1,009	1,064	948	719	745	670	10,067

POLICY RESEARCH: DANGEROUS DOGS

Bloomington Activity Measures by Month for 2012

Code Description	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2012 Totals
General On Call Activity	41	41	34	32	31	31	32	29	45	38	39	29	414
General Dog/Cat Complaint	70	70	155	96	140	99	123	183	102	110	80	79	1,286
Dead Animal Removal	10	10	23	23	26	7	13	24	34	21	11	20	221
Bite/Rabies Investigations Activity	49	49	66	106	64	53	54	92	35	132	82	54	810
Confirmed Bite/Rabies Investigations	14	14	35	14	30	31	35	43	19	22	17	14	281
General Phone Calls/Questions	289	289	316	422	362	302	362	387	296	332	249	179	3,771
Shelter Inquiries City Specific	77	77	65	62	75	58	58	79	51	75	55	43	791
Reclaim Activity Investigations	6	6	15	17	20	16	12	21	15	29	9	16	186
Bloomington Reclaims at the Center	10	10	14	24	16	11	13	13	7	20	5	12	158
Complaint Letters mailed	6	6	10	13	21	0	2	6	3	4	10	4	82
Animal Accepted from Bloomington at the Center	56	56	65	50	62	48	42	66	61	82	55	47	673
Total Activity Measures per Month	628	628	798	859	847	656	746	943	668	855	612	497	8,673

POLICY RESEARCH: DANGEROUS DOGS

Proponents of Breed Specific Language (BSL) portray it as a proactive legislative approach to public safety as opposed to a reactionary policy of designating a dog dangerous or vicious after observing a certain behavior. BSL however, has received a healthy amount of criticism from opponents and does not come without some challenges in enforcement. The American Bar Association (ABA) warns municipalities about the weaknesses of BSL and the constitutional challenges that have resulted.

Specifically, the ABA cites two basic characteristics of breed discriminatory laws relevant to constitutional challenge and the subject to successful challenges to BSL: (1) definition of the breed; (2) procedures for identifying and challenging the designation¹.

The “*definition of the breed*” brings challenges to the vagueness of the law, as the nomenclature “pit bull” is not the identification of a breed but rather a generic term used to describe the American Pit Bull Terrier, American Staffordshire Terrier, and Staffordshire Bull Terrier and/or dogs displaying various genetic mixes and traits. It can become very difficult for the average person to correctly identify a breed of pit bull or distinguish non pit bull dogs having similar traits to that of a breed of pit bull.



American Pit Bull Terrier



American Staffordshire
Terrier



Staffordshire Bull Terrier

Below is a list of 25 unique breeds recognized by the American Kennel Club (AKC). Only one of these dogs is an American Pit Bull Terrier. All dogs pictured below hold the specific physical traits to their respective breeds, only one of which qualifies as a “pit bull”. With a large number of dog breeds having similar characteristic to that of the pit bull breeds, it makes the importance of a clear definition of pit bull critical when adopting breed specific language.

¹ “A Lawyers guide to Dangerous Dog Issues”, American Bar Association Publishing, Joan Schaffner, p. 26

POLICY RESEARCH: DANGEROUS DOGS



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Answer: 16

² <http://www.pitbullsontheweb.com/petbull/findpit.html>

POLICY RESEARCH: DANGEROUS DOGS

BSL defines the targeted breed in various ways from fairly specific to very general with many laws utilizing a combination of both. Many municipalities adopting BSL name the specific breed in their language, such as American Pit Bull Terrier, American Staffordshire Terrier, and Staffordshire Bull Terrier. Beyond this, many include one or more of the following categories: "any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the AKC or UKC for any of the stated breeds", "any dog displaying a majority of the physical traits of any one or more of the stated breeds", and/or "any dog which has the appearance and characteristics of any breed commonly known as pit bull". The more vague the definition, the higher the potential for successful legal challenges³.

"Procedures for identifying and challenging the designation". Clear procedures for identifying a specific breed must be put into place at the time of, or before the adoption of any breed specific language. The major issue of concern is affording owners the right to due process. Detailed and systematic language as to how a dog will be identified and responsibly categorized as a specific breed must be established as well as a means for a dog owner to challenge the classification. Using the example from Denver, Colorado, when the City of Denver finds a dog to be of a pit bull breed, identification either arising from animal control employees or the Denver Police Department, the dog owner may challenge this designation via written petition no later than 7 days of impoundment. A hearing will next be held which requires a 3 member evaluation team (employed by the City) to review the animal and agree upon its breed classification.

Targeting a specific breed of dog has not been the City's approach to animal control measures. City ordinances and policy focus on pet owners, specifically; irresponsible pet owners. The latest revision to the City's code pertaining to animal control policy came in 2006 where the City established penalties for failure to register dogs and authorized seizure of unregistered dogs. City staff has most recently begun to review current policies as they pertain to animal control ordinances and are making recommendations to update and further tighten the language to empower City police officers and animal control in their enforcement efforts. Some brief highlights of the proposed amendments include: (included please find staff's full ordinance amendment proposal)

- Expansion of the definition of "dangerous dog" to include any dog that has been declared dangerous by any other jurisdiction.
- Expansion of the definition of "vicious dog" to include any dog that has been declared vicious by any other jurisdiction.
- 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 \$200,000 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 would run into an issue with enforcement efforts when dogs were being fostered. Ownership of the fostered dogs was not clear as the animal was currently being held for the care of a potential new owner. This amendment will place clear ownership on any dogs currently being fostered.

³ "A Lawyers guide to Dangerous Dog Issues", American Bar Association Publishing, Joan Schaffner

Comments from the City's website regarding the Vicious and Dangerous Dogs Ordinance Amendments

Start date	End date	Comments
6/6/2013 23:20	6/6/2013 23:26	The step to include a dog deemed viscous in another jurisdiction to also be deemed a viscous dog in Bloomington is a step forward. However and while controversial, we should be more proactive and deem breeds bred for violent attack (pit bull) to be viscous as well regardless if their individual history. A quick internet search will show a long list of attacks by certain breeds. Thank you for the opportunity to provide feedback. Sent from iPhone.
6/5/2013 21:39	6/5/2013 21:43	Looks pretty fair---would like to have the owners name with a violation be kept for a certain time period---and make them register any new dog with the police or appropriate entity---because it may not be the dog's breed that's the problem---it could be the owners training.
6/5/2013 20:21	6/5/2013 20:24	ONE attack in 4 years requires a new rule? How about using tax payer dollars and resources and figure out a new GANG CONTROL ORDINANCE. The city lets thugs run wild but spend hours and hours determining how to deal with one idiot that should have never owned an animal in the first place. Typical Bloomington City at work.
6/5/2013 10:31	6/5/2013 10:33	This is over kill. You had ONE incident between 2008 and 2012 and you want to create a whole new rule. The current law is enough. Move on to something actually important.
6/5/2013 9:22	6/5/2013 9:23	i favor of this.
6/5/2013 0:11	6/5/2013 0:34	I do not need to reiterate what has been reported many times in the media about pit bulls. You can outlaw chickens but keep skirting the real danger of pit bulls? In my neighborhood while walking I witnessed a pit bull tied to a tree with a rope straining to attack me while I was across the street. Upon turning the corner I saw a bus stop with a dozen young children. It was a lucky day thanks to a clothes line that held up, I appreciate the effort that has gone into this but do you really want to continue playing politics with this dangerous situation.
6/4/2013 6:44	6/4/2013 6:54	I live @ 708 W. Division and have been in contact/my new councilman, Scott Black, about a problem with a pit bull that has bitten me once thru my leather coat and left large bruises on my left leg. I contacted the police at that time (Feb. 2012). When the gate is not strapped in several places, he is able to get out of the gate and comes into my yard. I have been working in my backyard on several occasions and he has tried to attack me. The first time, I was able to get away from him and contacted the police and they sent animal control. They were unable to catch him before the owners came home and put him back inside the fence. Last week, he again tried to attack me when I was bringing my recycle bin back from the curb. I was able to hide behind the bin and he finally left me alone. I tried to contact animal control at that time, but they did not respond; only an answering machine; left message but no return call. Last year, they had the father and the son (dog that bit me) fighting each other with muzzles on to see who was the most aggressive. At that time, the father had a tear in his neck from the son biting him. I was working in my craft trailer at the time and when they were finished fighting, I informed the son if I ever saw it again, I would call the police. I was informed they were just seeing who was the most aggressive!!!. Since that time, the father bit a neighbor, Brad Brakebill, and I have not seen him again. I feel very unsafe to go outside my home not knowing if the dog will be out or not. I have a basset that I put on her chain when is outside but, again, don't know how safe she will be in the future the way this dog acts. Any help with this new ordinance would be greatly appreciated. Thank you for your help

SUPPORT FOR RECOMMENDED CHANGES TO CHAPTER 8

SUBJECT: Text Amendment to Chapter 8. Explanation of rationale for recommended changes. Focus on vicious and dangerous dog ordinance changes to promote public safety, aid in the prevention of fatalities and/or injuries, and promote responsible dog ownership.

RECOMMENDATION/MOTION: That the Ordinance be moved back to City Council for vote and passed.

STRATEGIC PLAN:

Goal 1: Create a fair and balanced system that allows a thorough investigation and process that gives both the victim and dog owner equal due process, assuring each party involved understands expectations of responsibilities.

Goal 2: Enhance aggressive dog control/protecting citizens from encounters with potentially dangerous situations.

Goal 3: To monitor dogs that meet the definition of vicious or dangerous protecting the citizens of Bloomington.

Objective A: To provide a system for identifying vicious and dangerous situation involving dogs.

Objective B: Aid in reducing/preventing further injuries and/or fatalities from dog attacks.

Objective C: Provide sanctions for those dog owners who do not comply with city ordinance.

STRATEGIC PLAN SIGNIFICANCE: Proposed Ordinance changes encourage responsible pet ownership and enhance the Police Departments ability to properly identify potential problem dogs/owners, provide safe and equitable restrictions, and declare dogs on behavior not breed specific legislation. Holding owners and the behaviors of the individual dog accountable, not penalizing those owners who are responsible and tend to all the needs of their dog while ensuring public safety. Requirement of liability insurance for keeping a dog declared vicious helps the victims of a dog bite recover medical expense, lost income, loss of life or loss of function from a vicious dog incident. This will help fund any award or settlement that results from a dog declared vicious.

JUSTIFICATION FOR RECOMMENDED CHANGES: Please note State Law is used in this Justification

SEC. 50 DEFINITIONS.

(c) Dangerous Dog and (k) Vicious Dog:

This recommended language was modified to give the Department more flexibility when reviewing potential declarations resulting from a dog bite/attack. Establishing a balanced system that allows a thorough investigation and due process for both the victim and dog owner.

(f) Enclosure:

This recommended language was modified to give the dog declared vicious an option to the current city ordinance. Allowing an enclosure within a dwelling to accommodate all the needs of different breeds while enhancing public safety.

SEC. 83 DANGEROUS AND VICIOUS DOGS; SUBJECT TO EUTHANASIA:

(1.) THRU (3.)

This recommended language was modified to give the dog owner and the victim an outline used for making declarations by the Department, giving the dog owner and the victim details of what might be taken into consideration during an investigation and during an appeal hearing.

SEC. 83 B DISPOSITIONS OF APPEALS:

3 (b) This recommended language was modified to give the dog owner the appeal process when a declaration has been up-held or denied, to establish timelines and criteria for the dog owner.

3 (c) This recommended language was modified to give the dog owner requirements for keeping a dog declared Dangerous.

(1.) Establishes a time line for completion of requirements for the Department and dog owners.

(2.) Establishes exemptions for guide dogs, service dogs and Support dogs.

(3.) Illinois Animal Control Act (510 ILCS 5115.1) requires dogs declared dangerous to be spayed/neutered.

Illinois Public Health and Safety Animal Population Control Act (510 ILCS 92/1) uses this methodology to control dog population, aid in preventing dog attacks, reduces dog bites involving children and reduces the number of accidents caused by straying dogs. (See Document # 1).

(4.) Micro chipping clearly identifies individual dogs and reduces the chance of wrongly identifying a dog. The Illinois Animal Control Act mandates micro chipping of dogs declared Dangerous (510 ILCS 5115.1) or impounded (510 ILCS 5110).

(5.) A Dangerous dog tag clearly identifies a dog declared dangerous for the officers, firefighters, utility workers and citizens of Bloomington. This is already required by McLean County Ordinance and Normal Ordinance.

(6.) Reporting of biting incidents are required by the Illinois Animal Control Act for rabies observation. (510 ILCS 5/13). Bloomington Incident Reports are used to review cases for possible declarations. In 2011 there were 3 dogs declared dangerous. In 2012 there were 12 dogs declared dangerous, 2 that were rescinded after an appeal.

Approximately 4.5 million people are bitten by dogs each year with nearly 20 percent requiring medical attention that includes reconstructive surgery. State Farm calculates they had 4500 claims in 2012 accounting for 136 million in claims (State Farm Website).

In 2011, McLean County Animal Control responded to a total of 511 animal bites (dogs, cats, and wildlife) and rabies investigations within McLean County.

In 2012, McLean County Animal Control responded to a total of 559 animal bites (dogs, cats, and wildlife) and rabies investigations within McLean County.

In 2011, McLean County Animal Control responded to a total of 240 animal bites (dogs, cats, and wildlife) and rabies investigations within the city limits of Bloomington.

In 2012, McLean County Animal Control responded to 281 animal bites (dogs, cats, and wildlife) and rabies investigations within the city limits of Bloomington.

In 2011, The Bloomington Police Department documented 65 dog bite incident reports within the city limits of Bloomington.

In 2012, The Bloomington Police Department documented 96 dog bite incident reports within the city limits of Bloomington.

In 2013, we are only expecting the number of dog bite incidents to rise.

(7.) Alerting postal carriers of a dog declared dangerous on the property aids in protecting postal carriers from biting incidents. On May 15, 2013, the United States Postal Service reported Illinois ranked third in the nation with nearly 6000 postal workers "seriously bitten" each year.

(8.) Alerting landlords of a dog declared dangerous on the property aids in keeping the property owner apprised of a safety risk residing on the property. This would also aid in protecting the landlords and or its

maintenance workers when performing maintenance or emergency maintenance on the property, whether the home owner is home or not. (Water line break, gas leak etc.)

(9) Change of address notification keeps the Police Department notified of the location of the dangerous dog, protecting officers and firefighters when called for service.

3 (d) This recommended language was modified to give the dog owner requirements for keeping a dog declared Vicious.

(1.) Establishes a time line for completion of requirements for the Police Department and dog owners.

(2.) Establishes responsible parties and aids in preventing fatalities/injuries from a vicious dog by not being able to pass on a vicious dog to an unsuspecting new owner.

(3.) Sets a time line for the Police Department and the dog owner for the appeal process and what is expected.

(4.) Alerting postal carriers of a dog declared vicious on the property aids in protecting postal carriers from biting incidents. On May 15, 2013,

the United States Postal Service reported Illinois ranked third in the nation with nearly 6000 postal workers "seriously bitten" each year.

(5.) Alerting landlords of a dog declared vicious on the property aids in keeping the property owner apprised of a safety risk residing on the property. This would also aid in protecting the landlords and or its maintenance workers when performing maintenance or emergency maintenance on the property, whether the home owner is home or not. (Water line break, gas leak etc.)

(6.) Illinois Animal Control Act (510 ILCS 511.5.1) requires dogs declared vicious to be spayed/neutered.

Illinois Public Health and Safety Animal Population Control Act (510 ILCS 92/1) use this methodology to control dog population, aid in preventing dog attacks, reduces dog bites involving children and reduces the number of accidents caused by straying dogs. (See Document # 1).

(7.) Micro chipping clearly identifies individual dogs and reduces the opportunities for wrongly identifying individual dogs. The Illinois Animal Control Act mandates micro chipping of dogs declared Vicious (510 ILCS 511.5.1) or impounded (510 ILCS 511.0).

(8.) A Vicious dog tag clearly identifies a dog declared vicious for the officers, firefighters, utility workers and citizens of Bloomington. This requirement is already in McLean County Ordinance and Normal Ordinance.

(9.) Requirement of liability insurance for keeping a dog declared vicious helps the victims of a dog bite recover medical expense, lost income, loss of life or loss of function from a vicious dog incident. This will help fund any award or settlement that results from a dog declared vicious.

(10.) Reporting of biting incidents is required by the Illinois Animal Control Act for rabies observation. (510 ILCS 5/13). Bloomington Incident Reports are used to review cases for possible declarations. In 2011, there were 3 dogs declared vicious. In 2012, there were 15 dogs declared vicious and 4 that were appealed and rescinded.

Approximately 4.5 million people are bitten by dogs each year with nearly 20 percent requiring medical attention that includes reconstructive surgery. State Farm calculates they had 4500 claims in 2012 accounting for 136 million in claims.

In **2011**, McLean County Animal Control responded to a total of 511 animal bites (dogs, cats, and wildlife) and rabies investigations within McLean County.

In 2012, McLean County Animal Control responded to a total of 559 animal bites (dogs, cats, and wildlife) and rabies investigations within McLean County.

In **2011**, McLean County Animal Control responded to a total of 240 animal bites (dogs, cats, and wildlife) and rabies investigations within the city limits of Bloomington.

In 2012, McLean County Animal Control responded to 281 animal bites (dogs, cats, and wildlife) and rabies investigations within the city limits of Bloomington.

In 2011, The Bloomington Police Department documented **65** dog bite incident reports within the city limits of Bloomington.

In 2012, The Bloomington Police Department documented **96** dog bite incident reports within the city limits of Bloomington.

In 2013, we are only expecting the number of dog bite incidents to rise.

(11.) Change of address notification keeps the Department notified of the location of the vicious dog, protecting officers and firefighters when called for service. A new address would require a k9 inspection by the Police Department.

BACKGROUND:

At the City Council Meeting on May 28, 2013, the City Council voted to table the proposed Animal Ordinance for recommended ordinance changes amending chapter 8 and move the conversation back to the Bloomington Safety Committee for a public hearing. This was done to have some of the businesses in town review the proposed changes in the ordinance and for the city to amend some changes to the proposed Ordinance before moving forward to a vote at the next City Council meeting. The City Council and the Legal Department have heard rational for opposition to the proposed changes. Changes have been made to the original draft to restrict language that would appear to be breed specific in nature. Some City Council members and city employees have met with Wish Bone Canine Rescue (Bloomington Illinois) and the Humane Society of Central Illinois (Normal Illinois) to hear opposition of the proposed changes.

Language has been 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 of Bloomington. The added language exempts dogs that are found dangerous or vicious in other jurisdiction solely because of their breed.

Section 83 (e) has been changed so citizens have the information and the criteria in the event of an appeal and what to expect.

KNOWN COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED:

Wish Bone Canine Rescue, Bloomington Illinois

Central Illinois Humane Society, Normal Illinois

ACCOMPLISHMENT of the PURPOSED ORDINANCE:

Providing an equitable and balanced ordinance to protect the public from dog bites and aggressive dog encounters.

Protecting the public by restricting movement of dogs declared dangerous and vicious within the city limits of Bloomington.

Providing a better ordinance for investigating dog bites and giving more discretion when declaring dogs dangerous or vicious.

These ordinances will place more responsibility on the dog owner that has a dog declared dangerous or vicious. This will take some of the responsibility away from the city tracking down irresponsible dog owners not conforming to the city ordinance and fining them until they do.

Provide a better definition for enclosure when a dog is declared vicious, instead of the now current ordinance where the enclosure is one size fits all breeds.

By requiring liability insurance for a dog declared vicious (not all dogs) will help the victims of a dog bite recover medical expense, loss of income, loss of life or loss of function from a vicious dog incident. This will help fund any award or settlement that results from a dog declared vicious. The proposed ordinance will also bring us in line with both McLean County and the town Normal ordinances, as most of the proposed new language is already in their ordinances. This will aid citizens who move within the county to already know what is expected as a responsible dog owner or what will occur if they are not.

From: tim.anderson2@comcast.net
To: amcelroy@cityblm.org

Date: Tuesday, June 11, 2013 05:47PM
Subject: Humane Society Statement on Proposed Ordinance

History:  This message has been forwarded.

Alex,

Sherill forwarded me the info about the changes made to the ordinance. We have agreed that the language is good with the changes made and support the ordinance as currently worded.

Tim Anderson, DVM

PUBLIC SAFETY COMMITTEE
City Hall Council Chambers
April 11, 2013

Council present: Aldermen David Sage, Karen Schmidt and Judy Stearns.

Staff present: Barbara Adkins, Deputy City Manager, RT Finney, Interim Police Chief, Mike Kimmerling, Fire Chief, George Boyle, Asst. Corporation Counsel, Rosalee Dodson, Asst. Corporation Counsel, Alex McElroy, Asst. to the City Manager, Jim Hall Police Patrol Officer, and Tracey Covert, City Clerk.

Alderman Sage called the Public Safety Committee to order at 5:00 p.m.

Motion by Alderman Sage, seconded by Alderman Schmidt that Alderman Stearns be allowed to participate remotely via telephone.

Motion carried, (viva voce).

Alderman Stearns joined the meeting via remote participation, (telephone).

MINUTES

Motion to Alderman Schmidt, seconded by Alderman Stearns to approved the Minutes of the January 15 and February 14, 2013 meeting.

Motion carried, (viva voce).

VICIOUS & DANGEROUS DOGS

Barbara Adkins, Deputy City Manager, addressed the Committee. The report regarding Vicious & Dangerous Dogs would be presented by Alex McElroy, Asst. to the City Manager. She noted others who were in attendance and assisted with this item: Jim Hall, Police Patrol Officer/Animal Control Liaison, Marcelle Thompson, McLean County Health Department (MCHD) Animal Control, and George Boyle, Asst. Corporation Counsel.

Alex McElroy, Asst. to the City Manager, addressed the Committee. He noted the work involved. He addressed the last time this City ordinance had been updated. At that time, the emphasis was on the pet owner. He noted the number of tickets issued between 2006 – 2012. This ordinance amendment had been the subject of long staff discussions. The following items were reviewed: state law, Town of Normal policy and the IL Administrative Procedures Act. The goal of this text amendment was to provide a safe environment and penalize the pet owner.

Alderman Stearns addressed clarity. She questioned what most fines were for and the largest complaint.

George Boyle, Asst. Corporation Counsel, addressed the Committee. There were two (2) major categories of Ordinance Violations (OV): 1.) animals running at large and 2.) failure to register with the MCHD. The second item was tied to a failure to vaccinate.

Alderman Schmidt thanked City staff for an ordinance that was written beyond bred specific. She noted the liability insurance requirement. The City had not been able to stay ahead of the pet owners.

Mr. McElroy restated that the current policy focused on the pet owners. Animals would be tag if identified as vicious (red) and/or dangerous (yellow).

Marcelle Thompson, MCHD Animal Control, addressed the Committee. Animal Control was a telephone call away. Citizens should call MetCom when animals are out and running at large. Through a declaration process, the dog may be determined to be vicious and/or dangerous. The pet owner would be required to purchase a tag and display same.

Jim Hall, Police Patrol Officer, addressed the Committee. When the Police Department received a dog bite call an incident report is filed. The incident report is reviewed. The neighborhood is canvassed and a determination is made. A dangerous dog would involve a dog running at large, exhibiting aggressive behavior but no actual bite.

Mr. Boyle referred the Committee to the draft ordinance, Section 50. Definitions, (c) "Dangerous Dog". He added that four (4) criteria were listed.

Officer Hall noted that if a dog was protecting property the situation would be different. A recommendation is made to an Asst. Police Chief for final determination/decision. He added that each case was unique and a separate review is conducted.

Mr. Boyle directed the Committee to the draft ordinance, Section 50. Definitions, (c) 4. He read same. This criterion addressed private and public property. He added that there were nuances.

Alderman Schmidt questioned dogs that had been labeled dangerous and/or vicious by another community. Officer Hall stated that City staff would work with the MCHD Animal Control staff to verify veterinary records, if they existed.

Mr. Boyle cited the draft ordinance, Section 50. Definitions (c) 3 and (k) 4. The pet owner was required to notify the City if their animal has been declared dangerous and/or vicious by another community. The Town of Normal had similar language in its ordinance.

Alderman Sage questioned fines. Mr. Boyle stated the following: 1.) failure to register/vaccinate - \$250, subsequent offenses - \$500, \$1,000 and 2.) animals labeled

dangerous and/or vicious face a daily fine for noncompliance of \$100 - \$1,000. He added that the City and the courts would start at the low end. The goal was compliance and safety.

Alderman Sage stated his goal – an appropriate fine which would encourage the pet owner to do the right thing. The fine structure needed to provide a line of sight.

Alderman Stearns expressed her opinion that the liability insurance was a good provision. Mr. Boyle affirmed that this requirement was contained in the draft ordinance.

Alderman Schmidt questioned the process going forward. She cited citizen feedback and placement on a Council meeting agenda.

Ms. Adkins believed that this item would be the subject of a future Council Work Session. The next step would be a Council meeting. She estimated the time line at one to two (1 – 2) months.

Alderman Schmidt believed that the draft ordinance contained good information. She questioned if concerns could derail this draft ordinance.

Ms. Adkins complimented the team. City staff and the MCHD Animal Control staff had formed a good partnership.

Alderman Sage addressed best practices and questioned if anything was missing.

Mr. McElroy noted Mr. Boyle's efforts regarding policy research. He noted the state's regulatory role. The City's draft ordinance was written slightly tighter than the Town of Normal's ordinance.

Mr. Boyle noted that under state law an animal cannot be labeled dangerous until severe injury, (hospitalization and/or death). The City's approach was preventative. He added that there was a notification requirement, (see draft ordinance, Section 83. Dangerous and Vicious Dogs; Dogs Subject to Euthanasia, (c) Requirements for Keeping Dogs Declared Dangerous, 8 and (d) Requirements for Keeping Dogs Declared Vicious, 5).

Mr. McElroy addressed policing issues. He noted that the term "Enclosure" had been defined, (see draft ordinance, Section 50. Definitions, (f)). Staff had considered an animal's ability to escape.

Alderman Sage welcomed any thoughts going forward.

Motion by Alderman Stearns, seconded by Alderman Schmidt to place the draft ordinance on a future Council meeting agenda.

Motion carried, (viva voce).

Alderman Sage expressed his appreciation for the team effort.

NOISE ORDINANCE

Ms. Adkins introduced the draft Noise Ordinance. This was an important issue. Rosalee Dodson, Asst. Corporation Counsel, served as lead staff person. This draft ordinance was being presented to the Committee for direction.

Rosalee Dodson, Asst. Corporation Counsel, addressed the Committee. This draft ordinance had been discussed at the Council's August 13, 2012 Work Session. City staff has research and reviewed noise ordinances and enforcement of same in sixteen (16) municipalities within the state. The public's response to the first draft of this ordinance has been positive. She noted that there were new definitions. The decibel level had been increased.

She noted that there were a number of questions regarding noise. Some issues were addressed elsewhere in the City Code. She cited Chapter 8. Animals and Fowl, Chapter 29. Motor Vehicles, and Chapter 28. Misdemeanors, (Disorderly House). The Police Department needed ways to detect noise. This draft ordinance would introduce another category.

Alderman Schmidt believed that this draft ordinance addressed issues raised by the Downtown Entertainment Task Force. She cited the decibel level and the 6:00 a.m. start time. Ms. Dodson noted that City's collective bargaining agreements listed 6:00 a.m. as a start time for City crews.

Alderman Schmidt addressed vehicular noise. The most common complaint was motorcycles with straight pipes. RT Finney, Interim Police Chief, addressed the issue of motorcycles. Motorcycles are made louder by removing the baffles. He noted that there were state statutes and City ordinance to address same. City police officers would be encouraged to enforce when seen/heard. The Police Department would not wait for complaints. He would emphasize that this was a community concern.

Alderman Schmidt requested that the City's various ordinances addressing noise be cross referenced. Ms. Adkins offered to look into the possibility of linking the various ordinances. Alderman Schmidt also recommended that the various ordinances be listed under commonly asked questions.

Scott Sprouls, IT Director, addressed the Committee. He cited the "I want to . ." section of the City's web site. Noise issues could be added. At this time, searching the City Code on line was not an easy task.

Alderman Schmidt recommended that common code topics include noise and that the various ordinances be pulled together. Mr. Sprouls believed that it would be easy to modify same.

Alderman Sage welcomed City staff's thoughts going forward. Ms. Adkins noted City staff's due diligence. A Work Session had been held. She believed that this draft ordinance was ready to move forward to a Council meeting agenda.

Ms. Dodson noted that small changes were needed to address concerns raised by the Fire Department.

Mike Kimmerling, Fire Chief, addressed the Committee. He cited sirens, bells and whistles. In general, fires and emergency services were noisy. Ms. Adkins suggested that there might be an exemption for public safety.

Alderman Sage addressed the Committee regarding any concerns and/or questions.

Alderman Stearns questioned if vehicular noise would be brought into the draft ordinance or left as currently written. She added that this was the most common complaint, (i.e. motorcycles, car stereos, etc.). Her concern addressed enforcement. Ms. Dodson stated that it would be left as is. The current ordinance was being enforced and currently referenced on line.

Alderman Schmidt questioned sound reproducing devices, (i.e. radios, stereos, etc. from a residence). Interim Chief Finney restated that there currently was an ordinance to address same. Enforcement needed to be encouraged.

Alderman Sage questioned if the Police Department had what was needed to address noisy vehicles. Interim Chief Finney stated that the draft ordinance addressed other areas. He cited bar noise as an example. Alderman Sage questioned vehicular noise and moving enforcement forward. Interim Chief Finney noted that this was a quality of life issue for the Council. He would take the Council's concern forward. Alderman Sage anticipated questions from the Council. Interim Chief Finney stated that the Police Department's role was to facilitate the Council's direction.

Motion by Alderman Schmidt, seconded by Alderman Stearns to place the draft ordinance on a future Council meeting agenda.

Motion carried, (viva voce).

Alderman Stearns thanked Interim Chief Finney for additional police enforcement. It was spring. She encouraged the Police Department to focus on City parks. She specifically cited Miller Park. She requested a report in the next six to eight (6 – 8) weeks regarding the number of tickets issued.

Alderman Sage recommended that this information be included in the Council memorandum. He suggested that it be labeled enforcement metrics.

Ms. Adkins addressed potential future topics: Police Department Firing Range. Interim Chief Finney stated that the Police Department had an intern. He had not seen a report as of this date.

Motion by Alderman Stearns, seconded by Alderman Schmidt to adjourn. Time 5:47 p.m.

Motion carried, (viva voce).

Respectfully submitted,

Tracey Covert
City Clerk

FOR COUNCIL: June 24, 2013

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 Purchasing Agent be authorized to issue a Purchase Order for same.

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 bid was received and opened at 10:00 AM 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, M.S., Budget Officer

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. Maps

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			

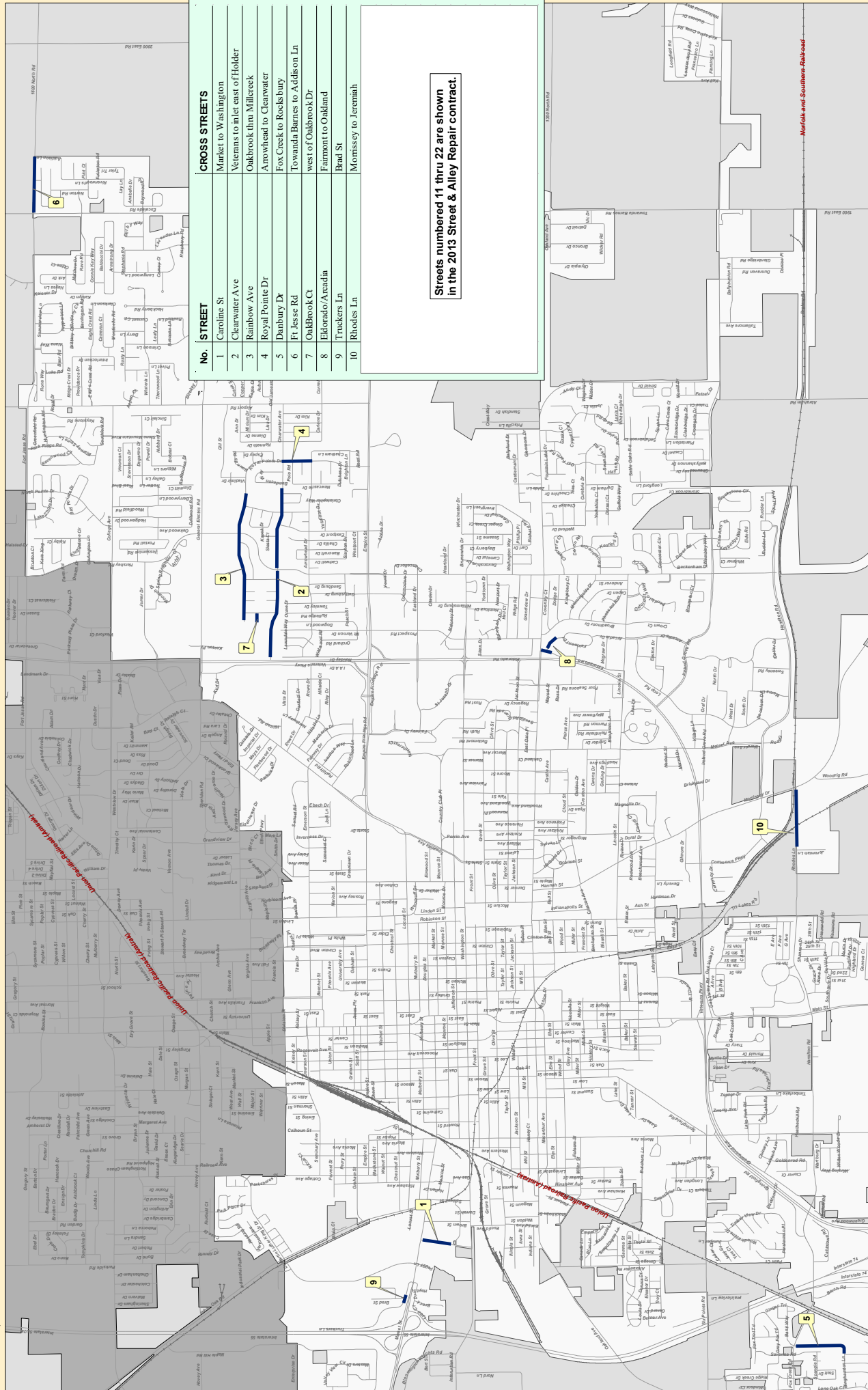


DATE: Apr 23, 2013

Public Works Department

2013 General Resurfacing

0 1700 3,400 6,800 Feet



CROSS STREETS

No.	STREET
1	Caroline St
2	Clearwater Ave
3	Rainbow Ave
4	Royal Pointe Dr
5	Danbury Dr
6	Ft Jesse Rd
7	Oakbrook Ct
8	Eldorado/Areadia
9	Truckers Ln
10	Rhodes Ln

Streets numbered 11 thru 22 are shown in the 2013 Street & Alley Repair contract.

FOR COUNCIL: June 24, 2013

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 Purchasing Agent be authorized to issue a Purchase Order for same.

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 bids were received and opened at 10:00 AM 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 (Low Bid)
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	\$ 150,000.00
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 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 Department 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 Budget included \$150,000 in line item 10015210-79990 to resurface the parking lots at three 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, M.S., Budget Officer

Recommended by:

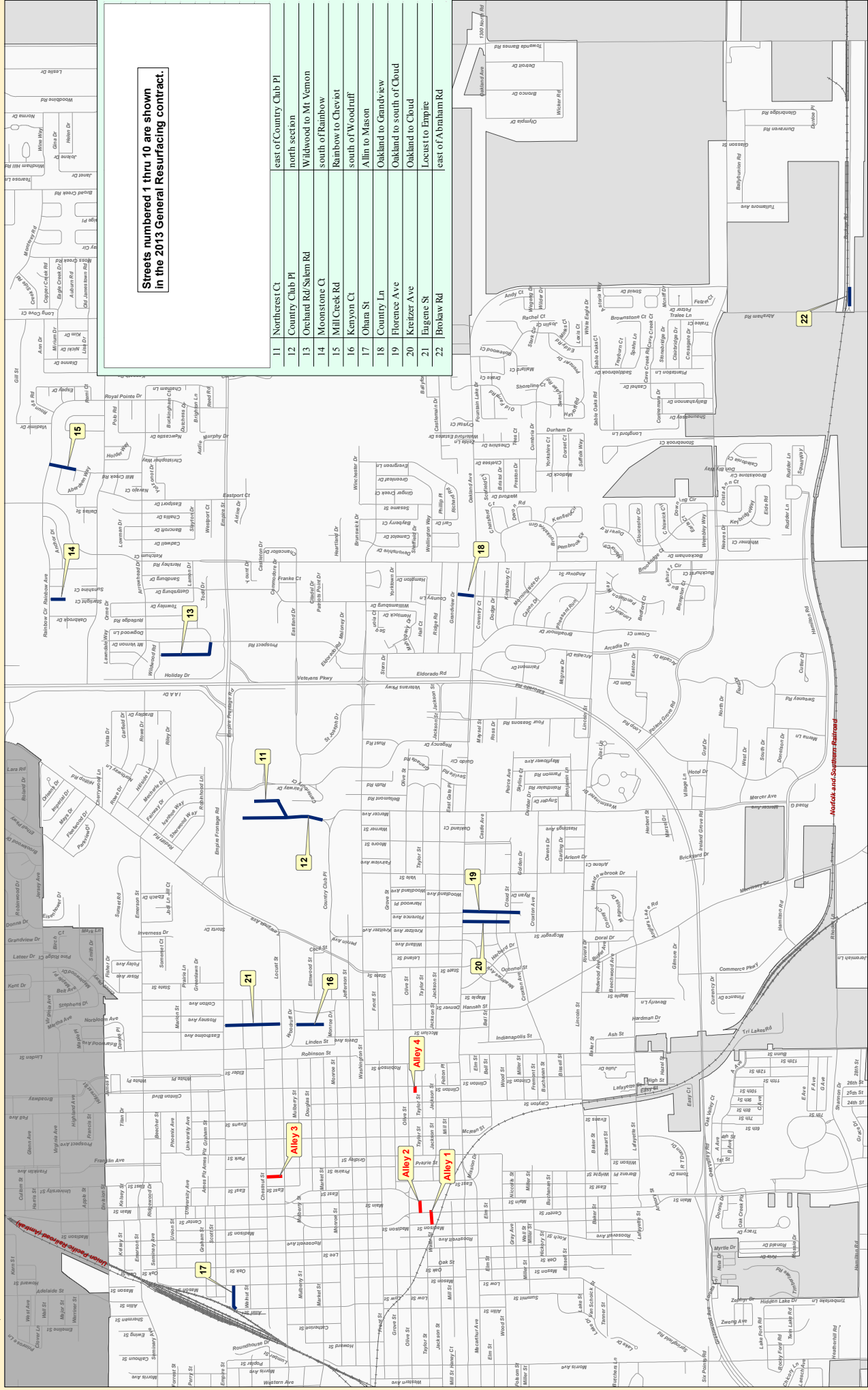
David A. Hales
City Manager

Attachments: Attachment 1. Maps

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			

2013 Street & Alley Repair

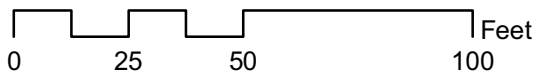
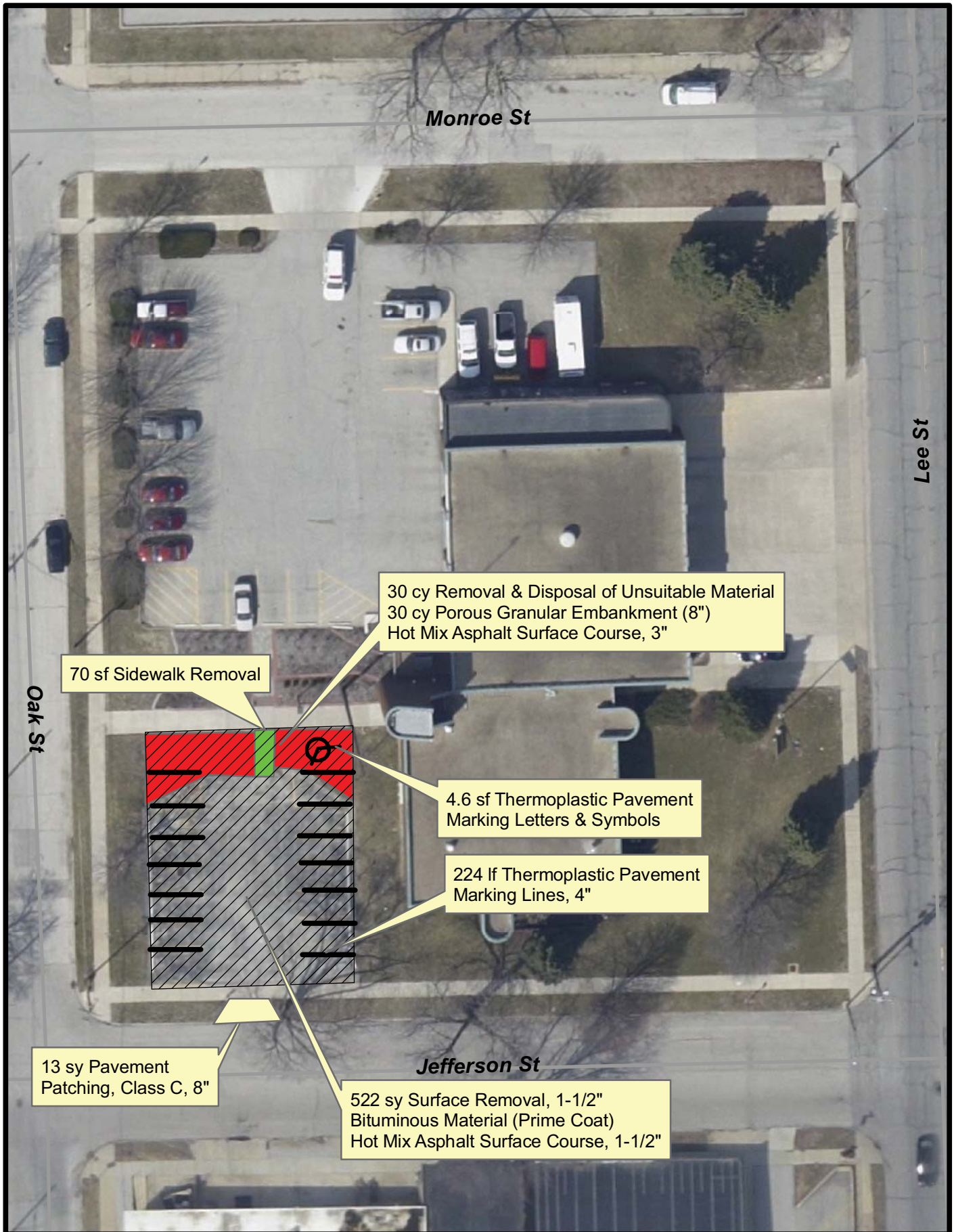


Streets numbered 1 thru 10 are shown
in the 2013 General Resurfacing contract.

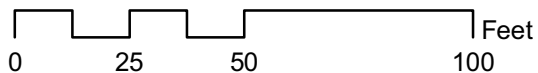
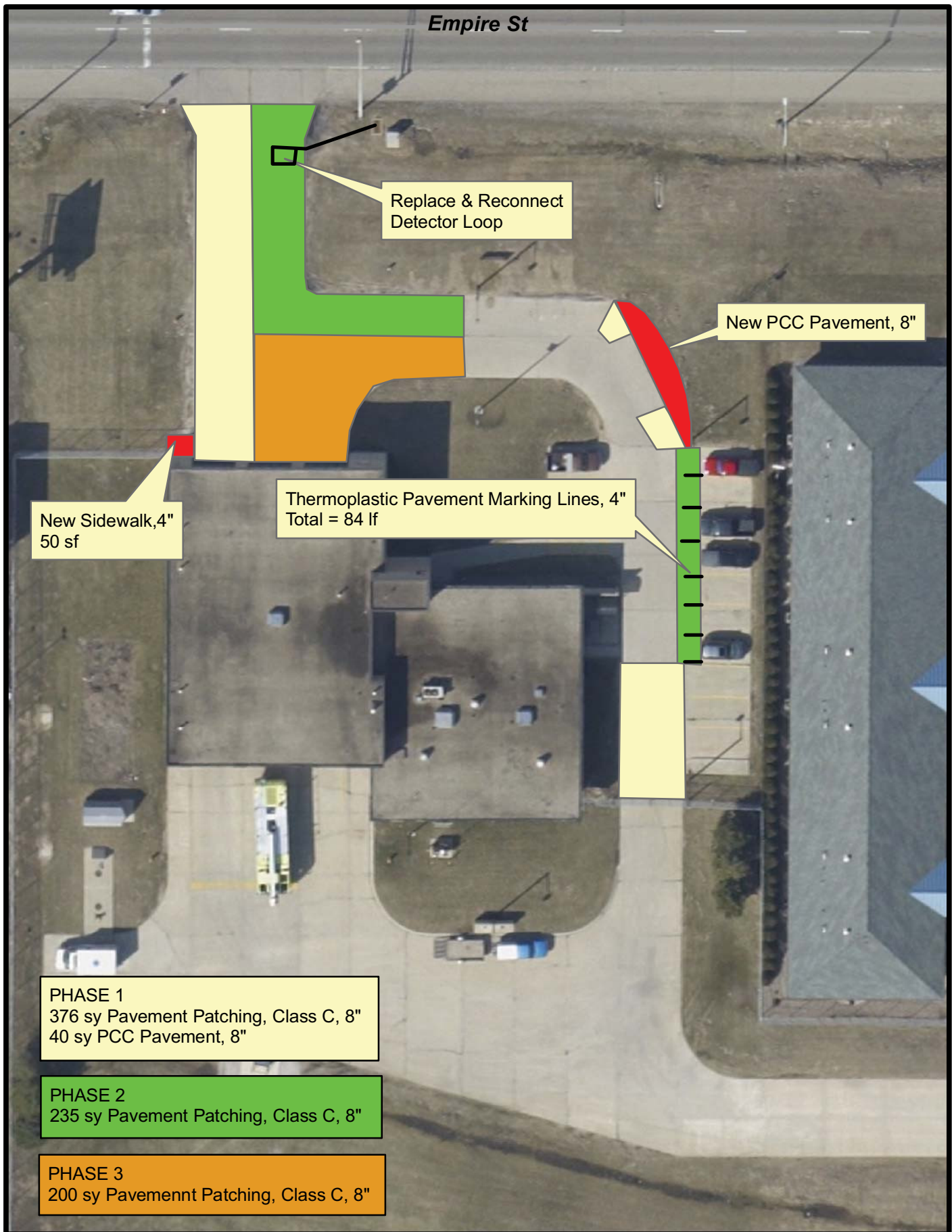
- 11 Northeast Ct
- 12 Country Club Pl
- 13 Orchard Rd/Salem Rd
- 14 Moonstone Ct
- 15 Mill Creek Rd
- 16 Kenyon Ct
- 17 Ohara St
- 18 Country Ln
- 19 Florence Ave
- 20 Kretzer Ave
- 21 Eugene St
- 22 Brookway Rd

North and Southern Railroad

FIRE STATION #1 - PAVEMENT REPAIR



FIRE STATION #3 - PAVEMENT REPAIR



FIRE STATION #4 - PAVEMENT REPAIR



Thermoplastic Pavement Marking Lines, 4"
Total = 120 lf

Pavement Patching, Class C, 8"
Total = 320 sy

75 sf SW R&R, 4"

Goose Creek Dr

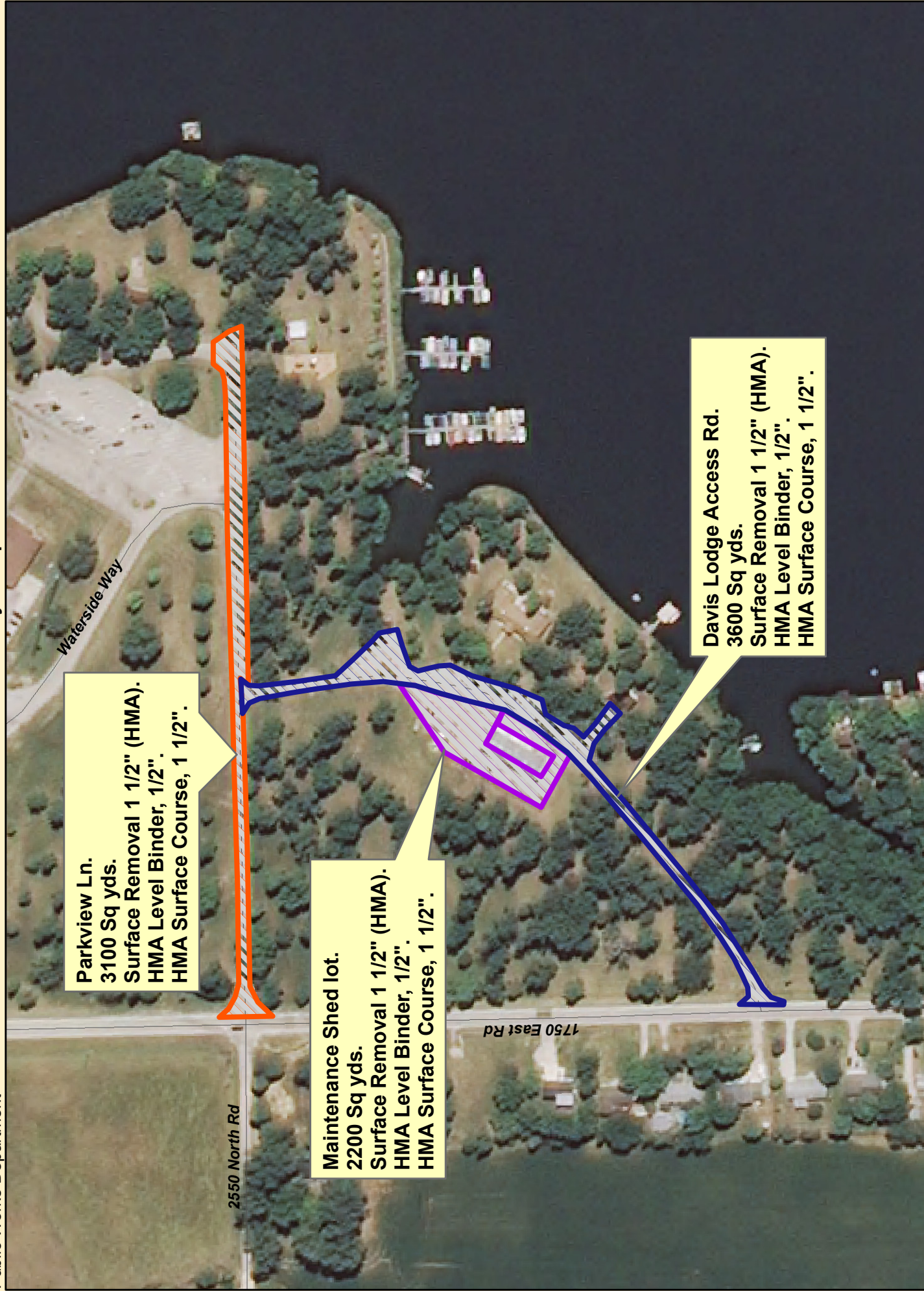
0 12.5 25 50 Feet

Prepared by Engineering
May 23, 2013

Davis Lodge Area, 2013 Street & Alley Repair



0 105 210 420 Feet





FOR COUNCIL: June 24, 2013

SUBJECT: Amendment to the Bloomington City Code, Chapter 28, Relating to the Regulation of Noise in the City of Bloomington

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

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 of Bloomington. 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 attached Ordinance establishes limits on noise pollution and provides penalties for violations.

Existing Regulations in the City Code

There is no comprehensive section in the Bloomington 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 Ordinance.

Proposed Regulations

Noise ordinances are divided into two types – those which are based on disturbing the listener (qualitative) and those based on exceeding decibel levels (quantitative). The attached Ordinance addresses both. The purpose 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 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 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 website to the first draft of the Ordinance in August/September 2012 immediately prior to and following an August 13, 2012 Council Work Session meeting. Staff reviewed a total of 118 comments – 94 in favor of the ordinance; 24 opposed.

FINANCIAL IMPACT: None.

Respectfully submitted for Council consideration.

Prepared by & Legal review by: Rosalee Dodson, Assistant Corporation Counsel

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

Recommended by:

David A. Hales
City Manager

Attachment: Attachment 1. Ordinance

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 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:

Terri Renner, Mayor

ATTEST:

Tracey Covert, City Clerk



FOR COUNCIL: June 24, 2013

SUBJECT: Approval of Hockey License between City of Bloomington, Central Illinois Arena Management, Inc. and Illinois Pro Sports, L.L.C.

RECOMMENDATION/MOTION: That the Hockey License Agreement be approved and the Mayor be authorized to execute it on behalf of the City of Bloomington.

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, L.L.C. That license was not renewed. The managers of Central Illinois Arena Management, Inc. (CIAM), who manage the U.S. Coliseum for the City, have found a new tenant for hockey games, Illinois Pro Sports, L.L.C. John Butler and Bart Rogers, who are associated with CIAM, have disclosed that they have an ownership interest in Illinois Pro Sports, L.L.C.

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 and there 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. L.L.C. The term is for the 2013/14 and 2014/15 hockey seasons with option for one 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 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 arena, to the benefit of the City and CIAM. For each additional 500 fans, the rental fee will be reduced by \$500.00, but the City and CIAM will net approximately \$900.00 more in revenue.

The team will pay a parking fee of fifty cents per ticket sold to each home game, excepting the first 500 tickets.

The team will pay a facility fee of fifty cents 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 14 full season tickets per suite) and \$831 for each half suite season ticket (total 7 half season tickets per suite).

The City and CIAM shall retain all Coliseum Club seat membership annual dues and a commission of 10% for each Coliseum Club season ticket sold by the licensor (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/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, M.S., Budget Officer

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. 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			

HOCKEY LICENSE AGREEMENT
-U.S. Cellular Coliseum

THIS HOCKEY LICENSE AGREEMENT (this "Agreement") is made and entered into this ___ day of June, 2013, by and among the City of Bloomington, Illinois (the "City"), Central Illinois Arena Management, Inc., an Illinois Corporation (the "Operator"), and Illinois Pro Sports, L.L.C., an Illinois Limited Liability Company (the "Licensee" or, where the reference may indicate, the "Licensee" as hereinafter further defined). City and Operator are sometimes hereinafter jointly referred to as the "Licensor."

WITNESSETH:

WHEREAS, the City has developed and is the owner of the U.S. Cellular Coliseum at 101 South Madison Street, Bloomington, McLean County, Illinois, (the "Coliseum" as hereinafter defined) for use for public purposes and gatherings, including, but not limited to, the exhibition of sports contests, such as indoor football, hockey and entertainment and educational events;

WHEREAS, the Operator operates the Coliseum on behalf of the City pursuant to a Development and Management Agreement with the City dated October 10, 2005 (the "Management Agreement").

WHEREAS, the Licensee is a member of a professional hockey league, or the "League," as hereinafter defined, which conducts hockey games, including Pre-Season Games, Regular Season Games, and Play-Off Games, together the "Games," as a league of member clubs/teams.

WHEREAS, Licensee desires to conduct Games as a member of a League in the Coliseum;

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants herein contained, the parties hereto, intending to be legally bound mutually agree as follows:

1. DEFINITIONS.

As used in this Agreement each of the terms defined in this section shall have the following meaning ascribed to it, unless the context otherwise requires:

- A. **"Change in Ownership of Licensee.** Change in Ownership of Licensee means any change, transfer, sale or assignment, direct or indirect, of any like, kind or nature of License Owners or Licensee equity interests of five (5%) percent or more over any consecutive period of twenty-four (24) months.
- B. **"Coliseum"** means the U.S. Cellular Coliseum located at 101 South Madison Street, Bloomington, McLean County, Illinois 61701.

- C. **"Coliseum Advertising"** means any advertising in or regarding the U.S. Cellular Coliseum or any event to be performed at or in the Coliseum, excluding On-Ice Advertising or Hockey Advertising, as hereinafter defined.
- D. **"Coliseum Premises"** means that part of the Coliseum necessary for the proper exhibition of professional hockey, including but not limited to, the seating and access thereto, the playing surface, locker rooms and ticket sales facilities.
- E. **"Concessions"** means the business of selling food and drinks (alcoholic and non-alcoholic), excluding catering, as are commonly sold at professional hockey Games.
- F. **"Future League Requirements"** means additional requirements, if any are developed in the future, regarding the maintenance and operation of a facility for the play of games in the League in addition to or replacing those currently set forth in the League Constitution, By-Laws, Regulations and League Policies, as amended (the "League Rules").
- G. **"Gross Concession Revenues"** means revenues from all food and beverage sales, less refunds, all applicable sales and other use taxes and less discounted or complimentary food and beverage items.
- H. **"Hockey Advertising"** means any advertising in or regarding the team, the Games, the League, or otherwise regarding professional hockey.
- I. **"Hockey Season"** means the period from the opening of the Pre-Season Games (as hereinafter defined) to and including the last Play-Off Game as set forth in each annual schedule established by the League during the Term of this Agreement.
- J. **"Home Game"** means any Pre-Season Game, Regular Season Game or Play-Off Game scheduled by the League and/or the Licensee to be played as a home game and/or played by the Licensee as a home game during each Hockey Season during the Term.
- K. **"League"** means any professional organization of at least six (6) professional member teams holding a minimum of fifty-six (56) Regular Season Games, including at least twenty-eight (28) Home Games for each member team; having in place a bona fide system of rules and procedures to ensure fair play and competition; and making reasonable measures to protect the safety of the players.
- L. **"Licensee Owners"** means any individual, human shareholders, members, economic interest owners, managers, or anyone with the right to share in the profits or losses of the Licensee, including the shareholders or members of any business entity owning an interest in Licensee.
- M. **"Membership"** means all of the rights, privileges and powers now or hereafter granted by the League, or any successor league in name or otherwise or any league that shall be approved in writing by Licensor, regarding the ownership and/or operation of the Licensee including, without limitation, the right to conduct professional hockey Games in

and about Bloomington, Illinois, in accordance with the League Rules now in effect or as changed during the Term, as hereinafter defined, of this Agreement.

- N. **"On-Ice Advertising"** means advertising associated with dasher boards, temporary banner signage, ice surface, electronic messages, players' uniforms and equipment, and players' benches during Home Games played at the Coliseum. On-Ice Advertising does not include any other Coliseum Advertising.
- O. **"Play-Off Game"** means any one of a series of Home Games scheduled by the League after the close of each Regular Season during the Term to determine the ultimate champion of the League for such season.
- P. **"Premium Seats/Suites"** means seating other than general admission seating, i.e. seats contained in the suites ("Suites") and seats designated as club seats ("Club Seats") in the Coliseum and on the Coliseum Premises.
- Q. **"Pre-Season Games"** means any Game (except intra-squad games) played by the Licensee prior to the first Regular Season Game during each Season during the Term.
- R. **"Regular Season"** means the period from the opening of the Regular Season Games (as hereinafter defined) to and including the last regularly scheduled Regular Season Game as set forth in each annual schedule established by the League during the Term of this Agreement, but exclusive of any Pre-Season Games and Play-Off Games.
- S. **"Regular Season Games"** means each Game played by Licensee as part of the Regular Season during the Term.
- T. **"Term"** means the Initial Term and any Renewal Terms, each as hereinafter defined, of this Agreement.
- U. **"Ticket Revenue"** means gross revenues from the sale of general admission tickets and Premium Seats/Suites tickets, but excluding any premium amounts for the use of Premium Seats/Suites.

2. GRANT OF LICENSE; PREMISES.

- A. Licensor hereby grants to Licensee the right to use and occupy, and Licensor shall make available to Licensee, the Coliseum Premises, all upon the terms and conditions set forth herein (the "License"). Licensee hereby agrees to, and shall, use the Coliseum to hold and present all Home Games as contemplated by this Agreement. Provided however, Licensee shall be allowed to hold one home game at an alternate location acceptable and approved by Operator.
- B. City represents and warrants that it owns and will own the Coliseum and has the right and power to grant the rights referred to herein.

- C. Licensor shall retain the right to cause the interruption of any Game, practice, or other performance in the interest of public safety and to likewise cause the termination of such Game, practice, or other performance when in the sole judgment of Licensor such act is necessary in the interest of public safety.
- D. Should it become necessary in the judgment of Licensor to evacuate the premises because of adverse weather, a bomb threat or for other reasons of public safety Licensee will peaceably vacate the premises in a timely and orderly manner. Once Licensor has declared that the facility is safe to re-enter, Licensee will be granted use of the facility for sufficient time following evacuation to complete presentation of activity without additional rental charge providing such time does not interfere with another building commitment. If in the sole judgment of the Licensor it is not possible to complete the presentation of the activity, Licensor charges shall be forfeited, prorated, or adjusted at the sole discretion of the Licensor based on the situation and the Licensee hereby waives any claim for damages or compensation from the Licensor.
- E. Licensee agrees not to interfere in any way with the ordinary use by others of any portion of the Coliseum not expressly covered by this Agreement. Licensee agrees that during the Term of this Agreement, other events will be scheduled and held in those parts of the Coliseum not herein licensed to Licensee, and Licensor shall have the right to use and occupy, or to grant to third parties the right to use and occupy, the Coliseum and any portion thereof, so long as such other events do not unreasonably interfere with the License herein granted to Licensee.

3. TERM AND OPTION TERM.

- A. Initial Term. The initial term of this Agreement shall be for a period equal to the completion of two (2) full Seasons being the 2013/2014 and the 2014/2015 Hockey Seasons (the "Initial Term").
- B. Licensee's Renewal Option Terms. Licensee shall have the right and option to extend the Term of the Agreement for an additional Hockey Season (the "Renewal Option"), by notifying Licensor in writing by no later than December 1, 2014 of its intent to exercise such Renewal Option (the "Renewal Notice"). In the event Licensee fails to give the Renewal Notice, this Agreement shall terminate at the end of the second season, unless the parties otherwise extend the Term by written agreement.
- C. Licensor and Licensee can mutually agree to a revised Agreement anytime during the term of this Agreement. All subsequent amendments and modifications shall be by written agreement signed by all parties hereto.

4. DUTIES OF LICENSEE. Licensee shall:

- A. Pay to the Operator the License Fee defined in Section 9 of this Agreement.
- B. Upon execution of this Agreement, provide Operator in writing the following:

1. A certificate of the Licensee's good standing from the State of Illinois and a copy of the Certification or Articles of Organization as an Illinois Limited Liability Company.
 2. Disclose the names and full addresses of Licensee Owners who hold five percent (5%) or more of an ownership or voting interest in the Licensee. The obligation to disclose shall be continuing and Licensee shall disclose to Licensors any and all changes in the Licensee Owners no later than thirty (30) days after the effective date of the change. All changes in Licensee Owners shall comply with Section 21F.
 3. Disclose whether Licensee is member or manager-managed, and identify the name and address of the manager or managing members.
 4. Provide a copy of the operating agreement of the Licensee's Limited Liability Company.
- C. Hold and maintain at all times a debt-free and legally valid membership in a League and conform at all times to League rules (whether or not the League enforces its rules). Licensors shall have a right to require Licensee to submit upon ten (10) days written notice written proof of its compliance with this provision. Licensee shall provide Licensors at least thirty (30) days written notice prior to withdrawing from or joining any League. If joining a League or upon any League modifications Licensee shall promptly deliver to Operator all of the following: a written copy of the League application, membership, owner rules, and by-laws. Licensors shall have a right to approve or deny all League changes; such approval shall not be unreasonably withheld.
- D. Play all League scheduled Home Games subject to the conditions provided in 2A above. It is understood by Licensors and Operator that the Licensee has no control over the number of games scheduled by the League in any given season and cannot guarantee the number of games the League schedules for each hockey season subject to the Term of this Agreement.
- E. Employ and maintain a team staff including, but not limited to, a professional general manager, a marketing/sales manager, coach, assistant coaches, trainers, medical staff, office staff, marketing staff, game staff (including, but not limited to, referees/officials, time keepers, score keepers, and announcers), and such other full time staff as would be reasonable and customary to maintain a professional hockey team in the League. Licensee shall provide to Licensors by August 1, of each year a staff organizational chart, and notify Licensors in writing of subsequent changes to the organizational chart. Operator's staff may from time to time attend and participate in Licensee's staff meetings.
- F. At Licensee's expense, provide the following:
1. Team equipment, supplies, uniforms, and other locker room items;
 2. Team operating expenses including but not limited to travel, food, beverage, and lodging;

3. Staff parking permits for non-game day parking (8:00 a.m. to 5:00 p.m., Monday through Friday);
- G. Reimburse Licensor for any reimbursable expenses under this Agreement;
 - H. Operate the team with sound business practices, including adequate capitalization, and maintaining current accounts payable in good standing with vendors. Licensee shall provide to Licensor an operating budget by August 1st of each year of the Term;
 - I. Market and promote at its expense the Home Games pursuant to the terms of Section 6 of this Agreement;
 - J. Provide pre-game, post-game and intermission entertainment activities;
 - K. As provided in Section 10 below, Licensee shall have the exclusive right to sell only Team Related Merchandise and hockey related novelties ("Team Related Merchandise") during any Home Game at the Coliseum and shall retain one hundred percent (100%) of the proceeds derived from such sales;
 - L. Provide twenty full season tickets to Operator with locations of seats to be mutually agreed upon;
 - M. Provide and comply with the insurance terms pursuant to Section 16 of this Agreement;
 - N. Secure in advance, prior to commencement of the Term and at its sole expense, (a) all licenses and permits that may be required or in connection with the use of the Coliseum for the Games and (b) all licenses required by any performing arts societies, such as ASCAP and/or BMI, for music or other works to be utilized or displayed in connection with the Games. Licensee shall do all other acts necessary to comply with all laws and requirements of all public authorities and all rules and regulations of Licensor in connection with the presentation of the Games.

5. DUTIES OF LICENSOR.

- A. Except and otherwise specifically provided herein, Licensor shall provide or cause to be provided the following, the costs of which shall be borne by Licensor:
 1. The Coliseum, including the general concourse area, public address systems and such other parts or areas of the Coliseum as may be necessary for Licensee to present and produce (if applicable) the Games, the costs of which shall be included within the License Fee;
 2. Electricity and other utilities for lighting, heating, air conditioning and other services used in conjunction with the Games, practices, and other use of the Coliseum by Licensee, and the set up and removal related thereto;

3. Cleaning and janitorial service during and after Games, practices, and other uses of the Coliseum by the Licensee. Provided however, Licensor shall monthly clean the home team locker room area but Licensee shall otherwise keep the home team locker room and area in a clean, neat and tidy condition on a day to day basis.
 4. All necessary support services including, but not limited to, all ancillary staff necessary to hold the Games and practices at the Coliseum, including game staff (one spotlight operator, ushers, doormen, ticket sellers and takers, one sound technician, one ribbon board operator, one scoreboard supervisor) security guards, change over and set up crew, heating and air conditioning superintendent, and one telephone operator for the day or evening of each Game;
- B. Licensor shall provide the following "Licensee Exclusive Use Areas": Licensee locker rooms, showers, toilets, coach's office, trainer's room, equipment room, visiting team locker rooms, showers and toilets. Licensee shall have the exclusive right to use and occupy the Licensee Exclusive Use Areas on any day in which Licensee is hosting a Home Game or practice.
- C. In addition to providing the Licensee's Executive Use Area Licensee shall be provided with an office for the head coach and administrative office space sufficient for six (6) employees. Subject to the Licensee's approval, Licensee shall be responsible for any costs associated with the Licensee's request for upgrades to the office space and all costs of decorating, furniture and equipment for the coach and administrative space. The space located at the Coliseum is being provided by the Licensor at no charge to the Licensee except for addition communication lines that may be requested by the Licensee.
- D. Licensor shall make available to Licensee during each Hockey Season on the day of each Home Game thirty (30) parking spaces in the Hermes Equipment Lot for the Licensee's players, on-field and off-field officials and related personnel.
- E. Licensor shall provide for each Home Game a Zamboni Machine and machine operator.
- F. Licensor shall provide goal nets, rink glass, dasher boards, benches, and netting.
- G. Licensor shall work in good faith to store team equipment throughout the Term of this Agreement, however, Operator will be allowed to use the ice surface at its discretion on a year-round basis for other Coliseum events and City parks and recreation programs.
- H. Upon request of Licensee, Licensor may provided from time to time as a reimbursable expense additional equipment including sound and video equipment, sound and video personnel, food and beverage catering, additional personnel and services, additional production crew, use of suites or club seat or concession area, off schedule ice changeovers and other services. All shall be at the standard rental/labor/staff rates to be determined in Licensor's sole discretion and paid by Licensee as a reimbursable expense.

6. MARKETING AND PROMOTION.

A. Licensee at its expense shall provide all necessary personnel and shall use its best efforts supported by an adequate staff to market, promote, and sell individual game, season and group tickets for the Home Games, but excluding club seats and suites. Licensee shall provide to Licensor by August 1st of each year of the Term a written marketing plan for the upcoming season.

B. Advertising

1. All advertisements for the Games shall be developed by Licensee (including, but not limited to, all Hockey and On-Ice Advertising, publicity material, promotions material, press releases, posters, flyers and handbills) and shall be produced at the sole cost and expense of Licensee.
2. Without the prior written approval of Licensor, which approval may be withheld in Licensor's sole discretion, Licensee shall not permit any commercial banner, signage, advertisement or promotional announcement to be posted or made within the Coliseum or adjacent grounds. Licensee shall not permit or contract for any advertising with or on behalf of any competitor of the United States Cellular Corporation, Pepsi or Coliseum exclusive partners.
3. Licensee shall make mention of the name "U.S. Cellular Coliseum" as the site of the Games in connection with all advertising or promotion thereof. All promotional materials shall contain the standard "U.S. Cellular Coliseum" logo positioned full width across the bottom. However, Licensee must submit to Licensor for review and approval all such uses of the U.S. Cellular Coliseum name prior to dissemination of any promotional materials, which approval shall not be unreasonably withheld or delayed.
4. All advertisements promoting the Licensee, the team, or the Games presented pursuant to the provisions of this Agreement (including but not limited to, all Hockey and On-Ice Advertising, publicity material, promotions material, press releases, posters, flyers, handbills and radio and television commercials) shall be submitted by Licensee to Licensor for prior approval before use.

7. BROADCASTING. Licensee shall have the right to broadcast Home Games, whether by radio, television, internet or other media, subject to League rules, all costs of which (including broadcast equipment costs) shall be borne by Licensee.

8. ADVERTISING AND SPONSORSHIPS.

- A. Without the prior written approval of Licensor, which approval may be withheld in Licensor's sole discretion, Licensee shall not permit any commercial banner (interior or exterior), signage, advertisement or promotional announcement to be posted or made within the Coliseum or adjacent grounds. Licensee shall not permit or contract for and sponsorship with or on behalf of any competitor or United States Cellular Corporation, Pepsi, or Coliseum exclusive partners.

- B. Subject to the other provisions of this Section 8, Licensee shall have the right to sell Hockey and On-Ice Advertising for the Games. All revenues generated from the sale by Licensee of such Hockey and On-Ice Advertising shall be retained by Licensee, provided that all such sales shall be subject to the prior written approval of Licensor, with the exception of the U.S. Cellular Coliseum logo to be presented on the ice and on the video board. Licensor hereby retains the right to sell Hockey and On-Ice Advertising for the Home Games, for which Licensor shall receive a commission of ten percent (10%) on gross sales revenues from such sales. All remaining revenues shall be paid to Licensee at the time of settlement in accordance with Section 11 herein.
- C. Licensee shall not sell or receive any sales proceeds from the sale of Coliseum Advertising.
- D. Licensee understands that United States Cellular Corporation ("U.S. Cellular") is the "Official Wireless Provider" of the Coliseum, and hereby agrees that Licensee shall not sell and Licensor expressly prohibits the sale of any advertising or sponsorship or co-sponsorship to any manufacturer, seller, distributor, or dealer of telecommunications services or telecommunications equipment, other than U.S. Cellular.
- E. Licensee understands that Pepsi-Cola General Bottlers, Inc., d/b/a Pepsi Americas ("Pepsi") is the "Official Soft Drink" provider of the Coliseum, and hereby agrees that Licensee shall not sell and Licensor expressly prohibits the sale of any advertising or sponsorship or co-sponsorship to any manufacturer, seller, distributor, or dealer of any non-alcoholic beverages, other than Pepsi.
- F. All sponsorships of the Games presented pursuant to the provisions of this Agreement (including but not limited to, all advertising, publicity material, promotions material, press releases, posters, flyers, handbills and radio and television commercials) shall be submitted by Licensee to Licensor for its prior approval before use, which approval shall not be unreasonably withheld.

9. LICENSE FEE; SUITE AND CLUB SUITE TICKETS. In consideration of the License granted herein and Licensor's agreement to perform its duties as established herein Licensee shall pay Licensor the following (collectively the "License Fee"):

- A. Rental fee of \$6,000 per game, subject to (unless withdrawn by Licensor or Operator on a year to year basis) the "Attendance Incentive Credit" defined in Subparagraph B below (the "Base License Fee");
- B. Subject to an annual review at the end of each Hockey Season by Licensee and Operator and Operator's right at the end of the second Hockey Season in the Initial Term to withdraw the Attendance Incentive Credit, Licensor shall reduce or allow as credit against the Base License Fee, as follows:

Number of Fans in Attendance*	Attendance Incentive Credit	Base per Game License Fee
0 – 1,499	\$0	\$6,000.00

1,500 – 1,999	\$500	\$5,500.00
2,000 – 2,499	\$750	\$5,250.00
2,500 – 2,999	\$1,000	\$5,000.00
3,000 – 3,499	\$1,500	\$4,500.00
3,500 – 3,999	\$2,000	\$4,000.00
4,000-4,499	\$3,000	\$3,000.00
4,500-4,999	\$4,000	\$2,000.00
5,000 or over	\$5,500	\$500.00

* As determined by actual turnstile attendance figures but including a maximum of five hundred complimentary tickets per Home Game to be maintained by Licensor for each Home Game. A complimentary ticket is one for which Licensee received no value or payment.

C. A parking fee of fifty cents (\$0.50) per ticket sold to each Home Game, except that no Parking Fee shall be due for the first five hundred (500) tickets per Home Game.

D. A facility fee of fifty cents (\$0.50) per ticket sold to each Home Game, except that no Facility Fee shall be due for the first five hundred (500) full, partial and club seat tickets per Home Game;

E. All suite revenue (suite fee and suite ticket) shall go to Licensor, provided however, Licensor shall pay Licensee the sum of one thousand six hundred sixty-two dollars (\$1,662.00) for each full suite season ticket (total 14 full season tickets per suite) sold and the sum of eight hundred thirty-one dollars (\$831.00) for each half suite season ticket (total 7 half season tickets per suite) sold. Said sum shall be paid pro rata after each game as provided in paragraph 11C herein.

F. Licensor shall retain all Coliseum Club seat membership annual dues and a commission of ten percent (10%) for each Coliseum Club season ticket sold by Licensor (ninety percent (90%) to Licensee).

G. Operator and Licensee may from time to time negotiate and based upon mutual agreement designate up to six (6) Home Games as “special events” with whole or partial waiver of facility fee and/or parking fee.

H. At each Home Game Licensee shall have the use of two or four Party Suites, that being either two suites with fifty (50) seats or four suites with (25) seats. Licensee shall receive all revenue from the Party Suites. Said sums shall be paid after each game as provided in paragraph 11C herein.

I. At each Home Game Licensee shall have the use of the Ice Box Area at the West end of the Coliseum, with maximum capacity of eighteen (18). Licensee shall receive all revenue from the Ice Box Area. Said sums shall be paid after each game as provided in paragraph 11C herein.

- J. Licensor may make available from time to time, in its sole discretion non-leased suites at selected Home Games for Licensee's use. Such shall be available only if the Party Suites, Ice Box and group areas are sold out. With respect to such non-leased suites Licensor shall receive a minimum of five dollars (\$5.00) per ticket for each suite ticket sold. All such requests shall be made through and coordinated with the Coliseum Director of Premium Seating.

10. MERCHANDISING AND CONCESSIONS.

- A. Concessions. Licensor specifically and exclusively reserves to itself and its concessionaires the right to sell, and all proceeds from the sale of food, refreshments and beverages, parking privileges and all other concessions at the Games and practices (except as otherwise provided for merchandising in Subsection 10B herein). Licensee shall not sell or distribute, whether or not on a complimentary basis, any food, beverage or other non-Team merchandise concessions and shall have no right to operate a food or beverage concession during the Games, practices, or other Team events. The Gross Concession Revenue from the sales of concessions and catering sales, at each Home Game shall be divided as follows: 90% to Licensor and 10% to Licensee.
- B. Merchandising. With respect to team merchandise concessions, Licensee shall sell such team merchandise, and retain all proceeds from the sale thereof after deduction of applicable taxes and city licenses and inspections charges. Licensee shall provide all labor and staff required by it for all team merchandise concessions. Licensee shall insure against and bear the risk of damage, theft or other losses of such merchandise, whether or not such merchandise is in the possession or control of Licensor at the time of such loss, and shall be responsible for all freight and transportation of such merchandise to and from the Coliseum.
- C. Parking. Licensor shall retain 100% of parking fee revenue.

11. FEE/REIMBURSEMENT SETTLEMENTS.

- A. Licensor shall keep such records as will accurately reflect ticket, concession, and suite revenue for each Game along with records of all reimbursable expenses.
- B. Between September 1 and September 15 preceding each Hockey Season Licensee and Operator shall preliminarily review and account to one another for the reimbursable expenses, club and suite ticket revenue, list and split of shared sponsorships, and commissions for the upcoming Hockey Season (the "Initial Preliminary Settlement").
- C. Within five (5) business days after each Home Game Licensee and Operator shall conduct a preliminary settlement/account for fees, reimbursables, expenses, and commissions due to each party for the Home Game ("Game Settlement"). The Base License Fee (subject to the Attendance Incentive Credit, if applicable), the Parking Fee, the Facility Fee and the Video Production Fee shall be payable to Licensor at the Game Settlement. The pro rata share of Licensee's suite and club seat proceeds shall be paid to

Licensee, provided however such sums may be offset by any sums due Licensor by Licensee.

- D. Within 30 days after the last Home Game or the close of the Hockey Season, whichever occurs last, Licensee and Operator shall submit to the other written and itemized final settlements/accounting of fees, reimbursables, expenses, commissions, and any other sums which remain due to the other (the "Final Settlement"). All sums due Licensor shall be paid Licensor within ten (10) days after the Final Settlement.
- E. Licensee shall have no right of set off.
- F. To secure payment of the License Fee, reimbursable expenses, liquidated damages, commissions, and sums due Licensor from Licensee, Licensee hereby grants to Licensor a security interest in all Licensee's property, including without limitation, all equipment, supplies, furniture, fixtures, sales proceeds, accounts, general intangibles, instruments, deposit account, commercial tort claims, investment property, inventory, chattel paper, cash proceeds, deposits, letters of credit rights, and contracts of the Licensee.

12. COLISEUM USE/OCCUPANCY.

- A. Licensor reserves the right and Licensee accepts the right of Licensor to adjust and reschedule the time and date of up to three (3) scheduled Home Games per season. Licensor will exercise its right to reschedule only when, in its sole discretion, the date is needed for a large show or concert. Licensor shall give Licensee at least sixty (60) days notice of any Game date adjustments and substitute best available time and date.
- B. The Operator shall provide practice time to Licensee free of charge with a maximum time of three (3) hours per day and an average of four (4) days per week. Such practice time shall be subject to Coliseum event schedule and availability of the Coliseum ice.

13. TICKET SALES AND BOX OFFICE SERVICES.

- A. During the Term hereof, all admittance into the Coliseum shall be by ticket only. Tickets to the Home Games shall be issued on a reserved seating basis unless otherwise specified in writing by Licensor.
- B. Operator shall control and be the primary box office for all ticket sales, except group sales. Operator shall approve in advance Licensee's use of any outside ticket service or outlet for its group ticket sales. Operator shall not permit tickets or passes in excess of the seating capacity of the Coliseum to be sold or distributed.
- C. Licensee shall control group sales. If Licensee seeks the assistance of Operator with respect to group sales for the Games, Licensee shall pay Operator a ten percent (10%) commission for all group sales tickets sold by Operator's Group Sales Department, plus approved expenses. Said commission shall be calculated upon the gross ticket price less applicable sales or amusement fees, if any.

- D. Operator shall have the right to offer tickets at its ticket office and all of its regular outlets or special outlets. Operator shall cause Ticketmaster to furnish ticketing services for the Home Games, and Operator shall act as the custodian of all revenue from the sale of tickets sold. Such revenues shall not be released to Licensee until settlement, in accordance with Section 11 herein. Payment of all "inside charges" or similar charges imposed by Ticketmaster upon the event promoter or venue shall be the sole responsibility of Operator. Licensee may request that ticket sales privileges be extended to additional outlets, and if approved in writing by Operator, Licensee shall assume all responsibility for collection of funds from such outlets and shall be liable to Operator for all fees of tickets cosigned or sold through such outlets.
- E. All general admission and full/partial season tickets shall be sold at the prices established by Licensee. Licensee shall notify Operator in writing by August 1st of each year the general admission and season ticket prices to be charged for the upcoming season. Operator shall establish prices for facility fees, club seat and suite tickets and licenses.
- F. Licensee shall have the right to review the seat allocation for all reporters, critics, reviewers and other working press personnel which have been made by Operator.

14. OTHER AGREEMENTS.

- A. Licensee may cancel this Agreement or relocate its Home Games to another facility by paying the following in liquidated damages to Licensor:
 - 1. If written notice before January 1st for season that begins in the current calendar year - \$100,000.00
 - 2. If written notice between January 1st and March 31st for season that begins in the current calendar year - \$150,000.00
 - 3. Any cancellation after March 31st for the season that begins in the current calendar year - \$228,000.00
 - 4. Provided however, Licensee shall not be responsible for the liquidated damages described in this Section 14 if the Southern Professional Hockey League fails, dissolves, ceases to exist, temporarily halts a Hockey Season or no longer has at least six (6) professional member teams.
- B. Licensee shall provide Licensor, from a bank acceptable to Licensor, an irrevocable Letter of Credit, guaranteeing Licensee's performance and payment of all sums due Licensor under this Agreement. The Letter of Credit shall be in the amount of One Hundred Thousand Dollars (\$100,000.00) with the Licensor as beneficiary; and shall be irrevocable and non-modifiable during the term of this Agreement, including any extensions thereof. The terms of the Letter of Credit shall allow the Licensor to draw on the Letter of Credit for the payment of any sums due Licensor under this Agreement and which remain due after notice of default as described in Sections 18 and 19 herein.

15. COMPLIANCE WITH LAWS.

- A. Licensee shall abide by, conform to and comply with, and shall cause every person under its direction or control who is connected with the performance of any aspect of this Agreement to fully abide by, conform to and comply with all applicable laws, rules, regulations and ordinances of the United States of America, the State of Illinois, the City of Bloomington (including their income, sales, payroll and withholding tax laws), and their respective agencies, as well as all rules and regulations of Licensor for the use, occupancy and operation of the Coliseum, as they may be amended from time to time by Licensor for the safe, orderly, proper and efficient operation of the Coliseum. If Licensee is controlling any sale or distribution of tickets, Licensee will comply with all federal, state and municipal laws, statutes, ordinances or regulations relating to the payment of taxes or charges on tickets, admissions or reservations, and make returns and pay all such taxes or charges immediately when due, provide evidence of its compliance to Licensor upon request, and indemnify Licensor against all liability, claim, loss or payment of any kind by reason of Licensee's failure or omission to comply with any such law or regulation and/or to pay all or any such taxes or charges. Licensee shall advise all exhibitors offering goods for sale that applicable sales tax must be filed designating that such sales were made in the Coliseum.
- B. Licensee shall not use or attempt to use any part of the Coliseum for any use or proposed use which would be contrary to law, common decency or good morals or otherwise improper or detrimental to the reputation of Licensor. Licensor shall have the right, acting in its sole and exclusive reasonable discretion, to determine a breach of this provision by Licensee and to exercise its remedies pursuant to this Agreement, including voiding the Agreement.
- C. Licensee agrees not to discriminate against any employee or any applicant for employment for any reasons prohibited by law, and further agrees not to discriminate against any person relative to admission, services or privileges offered to or enjoyed by the general public for any reason prohibited by law.
- D. Licensee acknowledges that, in the event Licensor believes and requests in writing, in its sole discretion, that any of the athletes or other team staff members that are subject of the Home Games may be "non-resident aliens" (as defined in Section 7701 (b)(1)(B) of the United States Internal Revenue Code ("IRC")), then Licensor shall have the right, notwithstanding any provision of this Agreement to the contrary, to withhold up to thirty percent (30%) of any amounts owed by Licensor to Licensee hereunder, for purposes of remitting such amounts to the United States Treasury in compliance with IRC Section 1441; provided, however, Licensor shall not withhold any amounts in the event either (i) Licensee provides to Licensor prior to the Home Games a written certification, in a form acceptable to Licensor in its sole discretion, that there are no "non-resident aliens" (as defined under the IRC) performing at the Home Games, and Licensor has no reasonable basis to believe otherwise, or (ii) such athletes or other team staff members have, prior to the Home Games, entered into a Central Withholding Agreement ("CWA") with the IRS and withholding agent, and Licensor has been provided with a copy of the CWA prior to the Home Games.

- E. In the event that any minor or foreign national is scheduled to appear in a Game which is the subject of this Agreement, Licensee shall, in advance of such Game, obtain all necessary employment certificates and other permits and authorizations as may be required by any governmental authority.
- F. Licensee recognizes that the Home Games are subject to the provisions of Title III of the Americans with Disabilities Act, 42 U.S.C. 12181 – 12189, (the “ADA”). Licensee represents that it has viewed or otherwise apprised itself of the access into the Coliseum, together with the common areas inside, and accepts such access, common areas, and other conditions of the Coliseum as adequate for Licensee’s responsibilities under the ADA. Licensee shall be responsible for ensuring that the Coliseum complies and continues to comply in all respects with the ADA, including accessibility, usability, and configuration, insofar as Licensee modifies, rearranges or sets up in the Coliseum in order to accommodate Licensee’s usage. Licensee shall be responsible for any violations of the ADA that arise from Licensee’s reconfiguration of the seating areas or modification of other portions of the Coliseum in order to accommodate Licensee’s usage. Licensee shall be responsible for providing auxiliary aids and services that are ancillary to its usage and for ensuring that the policies, practices, and procedures it applies in connection with a Home Game are in compliance with the ADA.
- G. Licensee shall not breach any agreements with third parties including its vendors.
- H. Licensee will not violate any League rules, bylaws, regulations, or membership agreements, whether or not the League enforces such violations.

16. INSURANCE.

- A. Licensee shall obtain, at its own cost and expense, Commercial General Liability Insurance in the name of Licensee which shall insure all operations of Licensee contemplated by this Agreement and the contractual assumption of liability reflected by this Agreement, including but not limited to the following: premises operations, products/completed operations, personal and advertising injury, contractual liability, independent contractors, broad form property damage, and personal injury. Such insurance shall be written with a limit of at least \$1,000,000 per occurrence/\$1,000,000 aggregate and an Excess Umbrella Policy with limits of \$5,000,000 that follows form with the primary coverage, for bodily injury and property damage liability, personal injury liability and coverage for all acts and/or omissions of any employees, agents, players, performers, contractors or sub-contractors retained by Licensee. Such insurance shall be endorsed to be primary to and not contributory with any coverage of Operator or the City of Bloomington, which may be applicable to the claim. Licensee shall also cause the required policy of insurance to be endorsed to include Operator, the City, and their officers, directors, agents and employees as additional insureds with respect to the operations and obligations contemplated by this Agreement.
- B. Licensee shall also maintain, at its own cost and expense, Workers’ Compensation Insurance pursuant to the requirements of Illinois law, covering its players, performers, other employees, and any contractors or subcontractors of Licensee who do not provide

certificates of insurance evidencing workers' compensation coverage of their employees, whose services are contemplated by this Agreement.

- D. Licensee shall also maintain, at its own cost and expense, Automobile Liability Insurance with a combined single limit of \$1,000,000 if utilizing automobiles, vans, trucks, or other motor vehicles in or around the Coliseum.
- E. All insurance policies maintained by Licensee pursuant to this Agreement shall be written with companies licensed to conduct business in the State of Illinois and having at least an A rating in the most recent A.M. Best's Manual.
- F. CERTIFICATES OR BINDERS EVIDENCING INSURANCE REQUIRED PURSUANT TO THIS PARAGRAPH SHALL BE PROVIDED TO LICENSOR NOT LESS THAN THREE (3) DAYS PRIOR TO LICENSEE COMMENCING ANY OPERATIONS OR ACTIVITIES PURSUANT TO THIS AGREEMENT. The policies shall also provide, and the certificates shall so note, that the coverages may not be canceled or that a major change in coverage may not be implemented without at least thirty (30) days' prior written notice given to Licensor. If the Licensor initially provides binders, it shall provide certificates evidencing the required coverage within thirty (30) days thereafter.
- G. LICENSOR SHALL HAVE THE ABSOLUTE RIGHT TO TERMINATE THIS AGREEMENT UPON WRITTEN NOTICE TO LICENSEE IF LICENSEE DOES NOT DELIVER TO LICENSOR THE CERTIFICATE OR CERTIFICATES OF INSURANCE REQUIRED HEREUNDER. IN THE EVENT OF SUCH TERMINATION BY LICENSOR, THERE SHALL BE NO FURTHER LIABILITY OF ANY KIND OR NATURE WHATSOEVER BY LICENSOR TO LICENSEE, AND LICENSOR SHALL RETAIN THE RIGHT TO PROCEED WITH A LEGAL ACTION AGAINST LICENSEE TO RECOVER ANY AND ALL DAMAGES AND/OR LOSS OF PROFITS SUSTAINED BY LICENSOR BY REASON OF LICENSEE'S DEFAULT HEREUNDER INCLUDING THE LIQUIDATED DAMAGES PROVIDED FOR IN ARTICLE 13.
- H. In the event that Licensee fails to procure and present the aforesaid insurance, Licensor shall have the right, but not the obligation, to do so on Licensee's behalf and at Licensee's expense and shall be entitled to reimbursement for the costs thereof as part of the License Fee due and payable hereunder.

17. INDEMNITY.

- A. Licensee hereby agrees to indemnify, defend, save and hold harmless Operator, the City of Bloomington, and their aldermen, trustees, directors, officers, employees, representatives, and agents, and any of Operator's successors or assigns, from and against any and all claims, suits, actions, losses, injuries, damages, liabilities, costs and expenses, including, without limitation, reasonable attorney's fees and expenses and costs of investigation (whether or not litigation occurs) incurred in connection therewith, occasioned with, arising or alleged to arise from, wholly or in part, (i) any breach of this

Agreement by Licensee, or (ii) the exercise by Licensee of the privileges herein granted or the provision by Operator of materials, equipment or services in connection therewith or (iii) the negligent acts or omissions, or violation of any applicable law, rule, regulation or order, of or by Licensee or any of its agents, owners, officers, directors, members, managers, representatives, contractors, exhibitors, employees, servants, players, guests, or invitees, participants or athletes appearing in the Games (including support personnel in connection with the presentation of the Games), persons assisting Licensee (whether on a paid or voluntary basis) or any person admitted to the Coliseum by Licensee, during the Term or any other time while the Coliseum (or any part thereof) is used by or are under the control of Licensee, excepting that Licensee's obligation to indemnify, defend, save and hold harmless Operator shall not extend to any claims for damages or expenses which arise from Operator's gross negligence or willful misconduct. The provisions of this paragraph shall survive any expiration or termination of this Agreement.

- B. Licensors, Operator and the City of Bloomington hereby agrees to indemnify, defend, save and hold harmless Licensee and any of Licensee's successors or assigns, from and against any and all claims, suits, actions, losses, injuries, damages, liability, costs and expenses, including, without limitation, reasonable attorney's fees and expenses and cost of investigation (whether or not litigation occurs) incurred in connection therewith, occasioned with, arising or alleged to arise from, wholly or in part, (i) any breach of this Agreement by Licensors, Operator, or the City of Bloomington or (ii) the negligent acts or omissions, or violation of any applicable law, rule, regulation or order, of or by Licensors, Operator or City of Bloomington or any of its agents, owners, officers, directors, members, manages, representatives, contractors, exhibitors, employees, servants, guests, or invitees, or any personnel provided in connection with the presentation of the games, persons assisting Licensors, Operator or City of Bloomington (whether on a paid or voluntary basis) or any person admitted to the Coliseum by Licensors, Operator or City of Bloomington during the Term or any other time while the Coliseum (or any part thereof) is uses by or are under the control of Licensors or Operator, excepting that the Licensors' or Operator's obligation to indemnify, defend, save and hold harmless Licensee shall not extend to any claims for damages or expenses which arise from Licensee's gross negligence or willful misconduct. The provisions of this paragraph survive any expiration or termination of this Agreement.

18. DEFAULT. A party shall be in default under this Agreement if:

- A. Such party shall default in the performance or fulfillment of any covenant, term, requirement or condition contained herein on its part to be performed or fulfilled and such party shall fail to cure such default within twenty (20) days for any monetary default or thirty (30) days for any non-monetary default, after such party has been served with written notice of such default or thereafter without the written consent of the Operator, fails to diligently prosecute such cure of a non-monetary default within a reasonable time;
- B. Failure to pay the License Fee, reimbursable expenses or liquidated damages or any part thereof when due shall be a monetary default;
- C. Such party makes a general assignment for the benefit of creditors, takes the benefit of any insolvency act or files a voluntary petition in bankruptcy;

- D. An involuntary petition in bankruptcy is filed against such party or a receiver or trustee is appointed for such party's property and such filing or appointment is not dismissed within ten (10) days;
- E. Licensee fails to maintain its Membership during the Term.
- F. Licensee fails to perform any term, condition or obligation of it under this Agreement.
- G. Licensors or Operator fails to perform any term, condition or obligation of it under this Agreement.

19. REMEDIES ON DEFAULT.

- A. In the event of a default under this Agreement, the non-defaulting party shall notify the defaulting party in writing of such default and the defaulting party shall be liable for all reasonable losses and damages incurred as a result of the default including incidental and consequential damages and lost profits, or the liquidated damages specified in Section 14 herein, if applicable. If the defaulting party shall not cure said default within twenty (20) days of written notice for a monetary breach and thirty (30) days of written notice for a non-monetary breach, the non-defaulting party, at its option, shall have the non-exclusive right to (i) cancel this Agreement without further notice thereof to Licensee, (ii) sue Licensee for legal or equitable relief, and/or (iii) pursue any other remedy allowed hereunder or under applicable law; provided, however, in the event the Licensors may suffer irreparable harm as a result of the Licensee's breach, then Licensors shall not be required to give written notice to Licensee, or to wait any period of time before pursuing any remedies hereunder or under applicable law.
- B. In addition to the remedies provided elsewhere herein, in the event of a default or breach by Licensee, Licensors shall recover from Licensee its costs of collection and litigation, including reasonable attorney's fees and expenses and costs of investigation (whether or not litigation occurs). Similarly, in addition to the remedies provided elsewhere herein, in the event of a default or breach by Licensors, Licensee shall recover from Licensors its costs of collection and litigation, including reasonable attorney's fees and expenses and costs of investigation (whether or not litigation occurs).
- C. Any default or breach by Licensee under this Agreement consisting of a failure to make payment when due shall incur interest at the rate of one percent (1%) per month from the date payment was due and until paid, compounded monthly.

20. LOSS OF USE OF COLISEUM AND FORCE MAJEURE.

- A. In the event any Coliseum building structure or improvement is damaged by fire, earthquake, acts of God, the elements or other casualty covered by the insurance maintained by Licensors, and if such damage is covered by such insurance and the insurance proceeds are adequate to repair, replace and restore such damage, and such insurance proceeds are made available to Licensors for such repair, replacement or

restoration, Licensor shall be obligated to repair, replace and restore the damage in a good and workmanlike manner in accordance with all applicable laws, rules and regulations if such restoration would be practical considering the then remaining balance of the Term. In the event Licensor shall fail to restore the damage so that the Coliseum shall be suitable for playing Hockey Games within nine (9) months after commencement of such restoration work, other than by reason of Force Majeure, Licensee may terminate this License by giving written notice to that effect to Licensor before such restoration is completed within thirty (30) days after said nine (9) month period. In the event Licensee terminates this Agreement under the aforesaid provisions, Licensee shall be relieved of all obligations arising or required to be performed by Licensee on and after the date of the damage. All sums to be credited to Licensee shall be paid and the Term shall be deemed to have ended as of the date of the damage. If this Agreement is not terminated, all the rents and other sums otherwise payable for the period of non-use by Licensor or Licensee to the other shall abate during the period of non-use by Licensee, and Licensee shall have the right during such period of non-use to play its games elsewhere either within or outside of the City of Bloomington, Illinois.

- B. In the event any Coliseum building, structure or improvement is damaged by the casualties referred to in above, and the proceeds of insurance maintained by the Licensor are inadequate to pay the restoration costs, Licensor shall deliver to Licensee written notice, within eight (8) months after such damage, indicating whether Licensor proposes to make the required repairs, replacements and restorations, at Licensor's expense. If the notice delivered by Licensor to Licensee indicates that Licensor does not propose to make the repair, replacement or restoration, or if the Licensor fails to deliver to Licensee any notice of intent hereunder, or if Licensor shall fail to restore the damage so that the Coliseum shall be suitable for playing Hockey Games within nine (9) months after commencement of such restoration work, other than by reason of Force Majeure, Licensee may terminate this Agreement by giving written notice to Licensor to that effect prior to completion of such restoration within thirty (30) days after either receiving notice of Licensor's intent no to restore, or the expiration of said eight (8) month period without having received any notice from Licensor, or after such nine (9) month period as the case may be. In the event of such termination, Licensee shall be relieved of all obligations arising or required to be performed by Licensee after the date of the occurrence of the damage and this Agreement shall be deemed to have ended as of the date of such damage; provided, however, that Licensor and Licensee, as the case may be, shall pay forthwith to the other any amounts outstanding which arose before the date or occurrence of the damage under this Agreement.
- C. If any event occurs whereby Licensor's performance hereunder is materially hampered, whether before or during the Term, as a result (wholly or in part) of any cause not entirely within Licensor's control and which it could not by reasonable diligence have avoided, such as destruction or damage to the Coliseum or unfitness of the Coliseum for occupancy as a result of fire or other Act of God, riot, labor strike, work stoppage, refusal to work, lock-out, slow-down, picketing, boycott, or any other concerted activities, whether engaged in by employees or non-employees of Licensor, national or local emergency, terrorist act, calamity or other cause not entirely within Licensor's control (each a "Licensor Force Majeure"), Licensor's performance under this Agreement shall

be suspended for the period of the Licensor Force Majeure, and Licensor shall return to Licensee any advance payment made by Licensor for the affected period without any further liability or obligation on the part of Licensor which arises out of such suspension.

- D. If any event occurs whereby Licensee's performance hereunder is materially hampered, whether before or during the Term, as a result (wholly or in part) of any cause not entirely within Licensee's control and which it could not by reasonable diligence have avoided (each a "Licensee Force Majeure"), then, without limiting Licensor's rights as a result of the occurrence of the Licensee Force Majeure, Licensor shall have the option, without liability, to suspend the engagement for the Home Game for the duration of such Licensee Force Majeure, by giving Licensee written notice thereof.
- E. Upon removal or cessation of the Licensor Force Majeure or Licensee Force Majeure, as applicable, the parties' respective rights and obligations hereunder shall be reinstated for any and all subsequent sessions of the Home Game remaining in the Term.

21. MISCELLANEOUS.

- A. This Agreement shall be subordinate to the Management Agreement.
- B. The parties recognize the City of Bloomington as a party or a third-party beneficiary of this Agreement.
- C. The Licensor reserves and shall always have the right at all times to enter the Coliseum Premises (including, without limitation thereto, any Licensee Exclusive Use Areas) at reasonable times and upon reasonable prior notice to Licensee (except that no notice shall be required in the event of emergency condition) for the purpose of viewing and ascertaining the condition of the same, or to protect its interest in the Coliseum and the Coliseum Premises or to inspect the operations conducted thereon. In the event that such entry or inspection by the Licensor discloses that the Coliseum Premises are not in a safe or satisfactory condition and, if the maintenance of such area is Licensee's responsibility under this Agreement, the Licensor shall have the right to cause Licensee to correct (at Licensee's cost) any unsafe or unsatisfactory condition created by the Licensee or by the Licensee's occupancy of the Coliseum Premises or by any other team playing in any Home Game with the Licensee in the Coliseum. Licensee shall have the right to inspect the Coliseum Premises at reasonable times and from time to time (and on an emergency basis, where appropriate) and to cause Licensor to correct any unsafe condition if such unsafe condition is such unsafe condition is the responsibility of Licensor to correct.
- D. This Agreement reflects the entire agreement between the parties respecting the subject matter hereof and supersedes any and all prior agreements, Letters of Intent, understandings or commitments, written or oral, between the parties hereto. This Agreement may only be modified or amended by a subsequent written agreement signed by both parties hereto. No changes, alterations, additions or deletions to the printed contents of this Agreement shall be effective without the signature or initials of each party to the Agreement at the location of each change, alteration, addition, or deletion.

- E. Notices by Licensors and Licensee to each other shall be deemed duly given if (i) delivered personally with a signed receipt evidencing such delivery, (ii) transmitted by telecopier with confirmation of transmission, (iii) mailed by certified mail, return receipt requested, postage prepaid, or (iv) delivered by duly recognized air courier service to the following addresses:

Licensee: Illinois Pro Sports, L.L.C.
Attn: Bart Rogers
101 South Madison Street
Bloomington, Illinois 61701

City: City of Bloomington
Attn: City Manager
109 East Olive Street
Bloomington, Illinois 61701

Operator: Central Illinois Arena Management, Inc.
Attn: John Butler
101 South Madison Street
Bloomington, Illinois 61701

With a Copy to: Mr. William A. Mueller, Jr.
Mueller, Reece & Hinch, LLC
202 N. Center Street
Bloomington, Illinois 61701

Any notice or notices given by (i) hand delivery shall be delivered upon receipt, (ii) overnight express mail service shall be deemed delivered one business day after being sent, and (iii) U.S. Mail shall be deemed delivered three (3) days after mailing.

- F. Licensee shall not transfer or assign any of its rights or obligation under this Agreement nor shall there be any Change in Ownership of Licensee without the advance written consent of City and Operator.
- G. This Agreement is entered into in the State of Illinois, County of McLean, and, in the event of any controversy or litigation whatsoever, shall be subject to the sole venue and jurisdiction in the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois and governed by and construed in accordance with the laws of the State of Illinois, without regard to its principles of conflicts of laws.
- H. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument.
- I. Licensors shall have the right to eject from the Coliseum, without any liability therefore to Licensee, persons engaging in objectionable behavior, even if they are paying ticket holders or other invitees of Licensee and/or Licensors.

- J. Licensee shall look solely to Licensor for performance and for payment and satisfaction of any obligation or claim arising out of or in connection with this Agreement, and Licensee hereby covenants that it shall not assert any claim against or look to the United States Cellular Corporation or Pepsi or any of their officers, directors, employees, or representatives for satisfaction of any such obligation or claim.
- K. The relationship between Licensor and Licensee is that of independent contractors and not agents or employees. Under no circumstances shall this license be considered a contract of partnership or joint venture. Neither party shall be liable for any of the debts, accounts, obligations or other liabilities of the other party, its agents or employees, and neither party shall have any authority to obligate or bind the other party in any manner except as may be expressly provided herein.
- L. Licensor shall not be liable in any way for any acts and/or omissions of any third party, including, without limitation, any ticket agency used by Licensor in connection with the sale of tickets for any Home Game.
- M. No waiver shall be effective unless in writing and executed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver in respect of any subsequent breach or default, whether similar or dissimilar in nature, unless expressly so stated in writing.
- N. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- O. No provision of this Agreement shall be construed against or interpreted to the disadvantage of a party by any court, arbitrator, mediator or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provision. If any words or phrases in the Agreement shall have been stricken or otherwise eliminated, whether or not any words or phrases have been added, this Agreement shall be construed as if the words so stricken or eliminated were never included in the Agreement and no implication or reference shall be drawn from the fact that said words or phrases were so stricken or eliminated. No term or condition of this Agreement shall amend, alter or modify any term or condition of the Development and Management Agreement dated October 5, 2005.
- P. Notwithstanding anything to the contrary in this Agreement or otherwise, any improvement, maintenance, repair, replacement, equipment or other thing resulting from or by reason of any Future League Requirements shall be at the sole cost and expense of Licensee, even though Licensor might otherwise be obligated therefore under the provisions of this Agreement. Such cost shall be advanced by Licensee to Licensor prior to Licensor performing any such maintenance, repair or, replacement or providing any such equipment.
- Q. The undersigned manager/member of Licensee represents and warrants to Licensor that it has the full right, power and authority to execute and enter into and perform this

Agreement and that all formalities and consents required under its Operating Agreement have been performed and received.

IN WITNESS WHEREOF, intended to be legally bound, this Agreement is executed as a sealed instrument by Licensor, Operator and Licensee, and the parties have caused this Agreement to be executed as of the day and year first above written.

ILLINOIS PRO SPORTS, L.L.C.

CITY OF BLOOMINGTON

By: _____

Its _____

Print Name _____

Print Title _____

By: _____

Its _____

Print Name _____

Print Title _____

CENTRAL ILLINOIS ARENA
MANAGEMENT, INC.

By: _____

Its _____

Print Name _____

Print Title _____



ADDENDUM I

BLOOMINGTON CITY COUNCIL AGENDA

JUNE 24, 2013

ADDITION TO CONSENT AGENDA

- Item 6B. 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.*



FOR COUNCIL: June 24, 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 \$4,035,744.82, (Payroll total \$2,294,216.30, and Accounts Payable total \$1,566,762).

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 June 24, 2013

PAYROLL

Date	Gross Pay	Employer Contribution	Totals
6/13/2013	\$ 1,309,595.12	\$ 299,100.53	\$ 1,608,695.65
6/14/2013	\$ 259,083.44	\$ 79,706.16	\$ 338,789.60
6/21/2013	\$ 265,953.56	\$ 80,228.76	\$ 346,182.32
6/10/2013-6/14/2013	\$ 522.38	\$ 26.35	\$ 863.33
Off Cycle Adjustments			
		PAYROLL GRAND TOTAL	\$ 2,294,216.30

ACCOUNTS PAYABLE

Date	Bank	Total	PCARD
6/24/2013	AP General	\$ 1,457,657.24	5/01/2013 - 6/02/2013 \$ 174,766.52
6/24/2013	AP BCPA	\$ 193.27	PCARD GRAND TOTAL \$ 174,766.52
6/24/2013	AP Comm Devel	\$ 29,475.28	
	AP IHDA		
6/24/2013	AP Library	\$ 66,410.78	WIRES
6/24/2013	AP MFT	\$ 10,707.90	Date
6/20/2013	Off Cycle Check Runs	\$ 2,317.53	Total \$ -
	AP GRAND TOTAL	\$ 1,566,762.00	WIRE GRAND TOTAL \$ -

TOTAL DISBURSEMENTS TO BE APPROVED: \$ 4,035,744.82

Respectfully,

Patti-Lynn Silva
Director of Finance