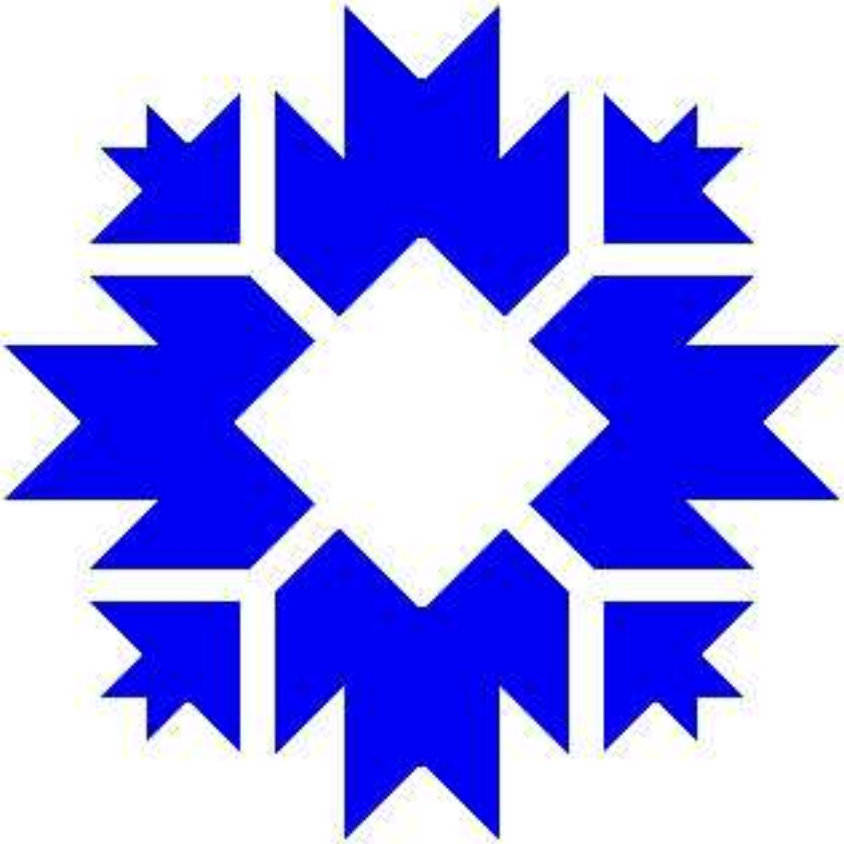
Board of Public Works Meeting

July 2, 2013



AGENDA
BOARD OF PUBLIC WORKS
(This Meeting May be Televised)

A Regular Meeting of the Board of Public Work to be Held Tuesday, July 2, 2013 at 5:30 p.m., in the City Council Chambers of City Hall at Showers, 401 N. Morton Street, Bloomington, Indiana.

I. MESSAGES FROM BOARD MEMBERS

II. APPROVAL OF MINUTES – June 18, 2013

III. PETITIONS & REMONSTRANCES

IV. TITLE VI ENFORCEMENT

V. HEARINGS FOR NOISE APPEAL

VI. OLD BUSINESS

VII. NEW BUSINESS

1. **Request to Uphold Order to Remove Unsafe Structure at 333 North Clark Street**
2. **Resolution 2013-60: Use of Public Street for the Baptist Church Fun Day Activity Day (Saturday, 8/24)**
3. **Resolution 2013-61: Use of Public Street for Grant Street Jazz Festival (Saturday, 8/24)**
4. **Resolution 2013-62: Use of Public Street for Bryan Park Neighborhood Block Party (Friday, 8/23)**
5. **Resolution 2013-63: Allow Itinerant Merchant to Operate in Public Right of Way (Smithville Communications)**
6. **Request to Approve Changer Order #1 for South Walnut Street and East Smith Avenue Signalization Project**
7. **Request to Approve Changer Order #8 for South Walnut Street Streetscape and Stormwater Improvements Project**
8. **Award Contract for the Maxwell Lane Sidewalk Project**
9. **Action Regarding Notice of Violation Appeal for Excessive Growth at 2611 East Roundhill Lane**

VIII. STAFF REPORTS & OTHER BUSINESS

IX. APPROVAL OF CLAIMS

X. ADJOURNMENT

REGULAR MEETING OF THE BOARD OF PUBLIC WORKS

The Board of Public Works meeting was held on Tuesday, June 18, 2013 at 5:30 p.m. in the Council Chambers of City Hall at Showers, 401 N. Morton Street, Bloomington, Indiana with Charlotte Zietlow presiding.

ROLL CALL

Present: Charlotte Zietlow
James McNamara

City Staff: Susie Johnson – Public Works
Adrian Reid - Engineering
Justin Wykoff – Engineering
Mike Arnold – HAND
Jackie Moore – City Legal
Jason Carnes – ESD
Miah Michaelsen - ESD
Chris Smith – Public Works
Laurel Archer – Public Works

MESSAGES FROM BOARD MEMBERS

No messages

APPROVAL OF MINUTES

McNamara moved to approve the minutes from June 4, 2013. Zietlow seconded the motion. The motion passed. Minutes from June 4, 2013 approved.

PETITIONS & REMONSTRANCES

None

TITLE VI ENFORCEMENT

Mike Arnold, HAND, introduced himself. He stated this property is located at 2320 W. Vernal Pike. This property has not been mowed all season and has been cited for excessive growth on May 9, 16, 30 and June 6, 2013 with no results. Staff is asking for permission to abate the grass at this location.

McNamara made a motion that staff be authorized to abate Title VI violation at 2320 West Vernal Pike. Zietlow seconded the motion. The motion passed. Staff authorized to abate.

HEARINGS FOR NOISE APPEALS

None

OLD BUSINESS

None.

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NEW BUSINESS

Resolution 2013-53: Use of Public Streets for Monroe County Humane Association Run for Animals & Barktoberfest (Saturday, 10/26)

Miah with ESD stated Run for the Animals has been taking place in the community for 15 years. The event is to celebrate all animals and to raise funds for the Monroe County Humane Association. The event will occur in Dunn Meadow and on City streets on Saturday, October 26, 2013. There will be a 5K run/walk which is primarily on campus, but will also include some streets that are maintained by the City. The streets are sections of 7th, Union, and Jordan. The streets will not be closed but traffic may be stopped on 10th Street as runners cross. The run will take place at 10:00 and should be completed by 11:30. The run will be followed by Barktoberfest which will run until 3:00 p.m. in Dunn Meadow. This event is a major fundraiser for the Humane Association.

Zietlow asked if these are animals and humans running at the same time. Miah stated yes any animal on a leash is permitted.

McNamara made a motion to approve Resolution 2013-53, Use of Public Streets for Monroe County Humane Association Run for the Animals & Barktoberfest on Saturday, October, 26, 2013. Zietlow seconded the motion. The motion passed. Resolution 2013-53 approved.

Resolution 2013-54: Use of Public Streets for I Fell Street Events (Friday, 7/5 & 8/2)

Miah explained I Fell LLC is requesting to close a portion of West 4th Street between Rogers and the west side of the midblock alley in the 400 block of West 4th Street, adjacent to the I Fell Building on Friday, July 5th and Friday, August 2nd for two events; The First Fridays at Fell. The I Fell building is home to the Clay Studio as well as other artists' spaces, and Rainbow Bakery. These events will help draw people to this redeveloping and emerging area. First Friday at Fell will consist of live music, food, temporary art exhibits, and other festival type entertainment. The event hours are from 5:00 to 11:00 p.m. I Fell requested to close the street from 4:00 p.m. for set up and commit to having the street open by midnight. As part of the event they are also requesting a noise permit until 10:00 p.m. for those two evenings. The organizers have notified businesses and residents on the block and have had no objections. Staff supported the request.

Zietlow didn't think this was the first time they've had an event. Miah explained the last time they only asked for parking spaces, now they are asking for closure of the street.

Miah added there are some other partners on 4th Street, WonderLab, as well as the Ivy Tech John Waldron Arts Center who are supportive of this event. They will be working together on some events to help

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tie both ends of 4th Street together.

Zietlow asked for an explanation of festival streets. Miah explained that festival streets were designated in 2006 and are streets within the Bloomington Entertainment and Arts District (BEAD) in which festival events are encouraged. This is the area targeted as being conducive to those types of events. Fourth Street is obvious because of the 4th Street Festival. There has been some infrastructure provided to West Kirkwood which is another festival street. Miah stated some festival streets are Kirkwood (east and west), 4th Street, Madison and parts of Morton.

McNamara moved to approve Resolution 2013-54, Use of Public Streets for I Fell Street Events on Fridays, July 5 and August 2nd. Zietlow seconded the motion. The motion passed. Resolution 2013-54 approved.

Resolution 2013-55: Allow Itinerant Merchant to Operate in Public Right of Way (Rush Hour Station)

Jason Carnes, ESD, explained Roby Mai owner of Rush Hour Station has applied for an Itinerant Merchant Permit. It has been determined when an applicant wants to operate in the right of way that before the permit is issued permission must be obtained from the Board of Public Works. ESD has reviewed the application and the Board of Public Works' approval is required before a permit can be issued. ESD will confirm that all rules and regulations have been met prior to a permit being issued, and they have met them all. The business will operate from a food truck selling sandwiches and dumplings. The application is for one year. Staff supported the request.

Robyn Mai, Rush Hour Station, introduced herself. She will be selling sandwiches and dumplings out of the food truck.

Zietlow asked what hours she will operate. Robyn stated it would only be at night because they do have a restaurant already they must run, so only Friday and Saturday from 10:00 to 4:00 a.m. If she caters events that will be done from the truck as well.

McNamara asked about the location of the restaurant. Robyn stated it is at 3rd & Dunn at Colstone Square. The dumplings are filled with pork and chicken with vegetables. There will also be a vegetarian selection. This will be fast food for college students or residents. It is easy to eat, not messy, and very simple food.

McNamara moved to approve Resolution 2013-55 to allow Itinerant Merchant to Operate in Public Right of Way for Rush Hour Station. Zietlow seconded the motion. The motion passed. Resolution 2013-55 approved.

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Resolution 2013-56: Allow Itinerant Merchant to Operate in Public Right of Way (The SnoMobile)

Jordan Eickelberger with SnoMobile, introduced himself. He explained the concept is pretty simple, 33 flavors of Hawaiian Shaved Ice, similar to tropical snow. Jordan stated he is from Orleans, Indiana, and started his business last year and it took off like a rocket. Jordan is looking to expand to Bloomington, where the money and people are. It is a simple and a non hazardous food.

Zietlow asked where he will be. He doesn't have a specific spot, just wants to see what works and what doesn't. Kirkwood would be somewhere he would want to be. The hours will vary. The advantage of being in Bloomington is there is more foot traffic. In Orleans he doesn't start until later in the evening, so could begin earlier in Bloomington.

McNamara made a motion to approve Resolution 2013-56, Allow Itinerant Merchant to Operate in Public Right of Way for the SnoMobile. Zietlow seconded the motion. The motion passed. Resolution 2013-56 approved.

Resolution 2013-57: Use of Public Street for Northwood Estates Neighborhood Association Block Party (Saturday, 6/29)

Christina Smith explained the Northwood Estates Neighborhood Association would like to hold a Block Party on Saturday, June 29, 2013. The event will take place on North Ironwood court between West Rosewood Drive and the dead end. This will be a family orientated event that will include activities, food and music. The Association also requested a noise permit during the hours of 5:30 p.m. to 8:30 p.m. so that live music can be played during the festivities. The group has had block parties in the past with no complaints. Staff supported the request.

McNamara moved to approve Resolution 2013-57: Use of Public Street for Northwood Estates Neighborhood Association Block Party, Saturday, June 29, 2013. Zietlow seconded the motion. The motion passed. Resolution 2013-57 approved.

Resolution 2013-58: To Declare Outdated Controller Cabinet Mural Surplus Property and Donate to Local Artist, Sparky Taylor

Miah explained this is an existing controller cabinet which is commonly known, in layman's term, as a traffic box. It was previously located at 2nd & College. It was painted with a mural and was recently decommissioned when the signal was upgraded and replaced with a newer, larger unit. This particular traffic box was part of a series of painted traffic boxes that BEAD did in partnership with the Arts Council, called Stop and Start. There are probably a dozen or so of these boxes around the community. The program was designed to deter graffiti on traffic boxes by commissioning artists to paint murals on them. There are several murals on traffic boxes in downtown. There are six more boxes in progress at the moment.

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This is a popular program. Artists contact the City as well as neighborhoods about partnering to have signal box painted. This particular traffic box was designed and painted by local artist, Sparky Taylor. When she noticed it was no longer installed, and found out it still existed, she inquired about obtaining it. The electrical components of the box have been removed by the Street Department staff. The box is no longer needed or used by the Department and is considered as surplus and worthless equipment. As it does have art on the exterior it has some worth to the artist that created it. This resolution declares the traffic box to be surplus property and allows the City to donate it the artist who would be excited to have it. Staff supported the request. As a side note, Miah stated the artist is in the process of doing a mural in the same location on the new box.

McNamara made a motion to approve Resolution 2013-58, To declare Outdated Controller Cabinet Mural as Surplus Property and donate to the local artist, Sparky Taylor. Zietlow seconded the motion. The motion passed. Resolution 2013-58 approved, and surplus property donated to Sparky Taylor.

Resolution 2013-59: Action Regarding Right of Way Encroachments Required by City of Bloomington Unified Development Ordinance

Chris Smith explained under UDO certain public improvements are required of developers, such as pedestrian level street lights, trees and tree grates, and bike hoops. These improvements are intended to be in the right of way for the benefit of the public. These items are dealt with as encroachments and are brought to the Board of Public Works as encroachments, giving the developers permission to do what is already required of them. This Resolution is a blanket resolution for the year and allows placement of these required improvements to be placed in the right of way without coming to the Board for each individual item. This Resolution, if approved, will be effective January 31, 2014. This blanket approval does not include encroachments not required by planning, such as canopies and signs, which are encroachments developers want to do on their own. Those types of encroachments will still come before the Board of Public Works. This is the 3rd year the Board of Public Works has been asked to approve this Resolution. It has worked very well and staff supported the request.

McNamara thought it worked very well too, and thanked City Legal for prepping the Resolution.

McNamara made a motion to approve Resolution 2013-59, Action regarding Right of Way Encroachments required by City of Bloomington Unified Development Ordinance. Zietlow seconded the motion. The motion passed. Resolution 2013-59 approved.

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Zietlow asked if the City was going to review the Unified Development Ordinance (UDO) because she believes the UDO has gone amuck, and is changing the nature of the downtown in ways that many people are not happy with.

Susie Johnson, Director, Public Works, stated the City is absolutely going to look at the UDO. The City is now in the process of updating the Growth Policies Plan (GPP) which is the guiding document from which the UDO flows. Once the GPP completes its update, then the natural course of events would be that the UDO would be updated based on the information and community participation that comes during the GPP process.

Zietlow asked if there would be community participation. Johnson stated yes, and there has already been with the GPP process. Johnson added within the last week she had received an e-mail about public outreach meetings for the GPP. Johnson stated she would forward that on to the Board. Zietlow stated she feels there is some real concern amount citizens about what is happening in the downtown.

Johnson stated she understands and that is one of the reasons why when IU had the 12 acres for sale north of City Hall for sale that Mayor Kruzan took action immediately and made sure the City was in a position to acquire the land. This way the City controls the area and will have some specific guidance on how the area is to be developed.

Johnson added the flip side of this issue is that the previous zoning ordinance all the community that helped influence that development wanted to ensure that the downtown became a live and work environment, and it has been successful, possibly some might argue too successful.

Zietlow added it was probably not foreseen that it would be such a singular demographic. Johnson agreed and felt it was not the intent.

Approval of the Rockport Road Design Services Contract

Wykoff explained Public Works sought and received a Community Development Block Grant funding the design, right of way acquisition, and construction of improvements along Rockport Road between Graham to Countryside Lane. This contract will also allow for the survey and geotechnical investigation on Rockport Road between Graham Drive and Ralston. Engineering staff sought "Requests for Qualification" from multiple engineering firms. Clark Deitz was chosen and staff asked for approval of the Rockport Road Design Services Contract in the amount not to exceed $250,500. Wykoff noted the price had changed from $236,750 because of

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additional cost for appraisal analysis and buying services being finalized. This contract will include design, appraisal property analysis, buying services through Todd Taylor's firm. The design should be completed by September. Right of way acquisition should begin early fall and end by March of 2014 followed by construction of new curbing, sidewalks (west side), and storm water improvements, as well as some grade changes to improve sight line/safety along this section of roadway.

Zietlow asked for clarification of where this will be. Wykoff stated the project limits are the north end of Rockport, starting at Countryside Lane and down to Graham Drive.

Zietlow asked who would be in charge of this project. Wykoff stated Engineering will be coordinating the project. Primary funding source for the project is Housing and Neighborhood Development (HAND). Staff will be working with them to make sure all federal qualifications are met for the project.

Wykoff stated staff has met with the neighborhood and they are very excited about the project.

McNamara asked if the addendum is part of this contract. Wykoff stated what the Board is being asked to approve and sign is the revised contract.

McNamara made a motion to approve the contract for Rockport Road Design Services and to award the contract to Clark Dietz, Inc for the amount not to exceed $250,500. Zietlow seconded the motion. The motion carried. Design service contract awarded to Clark Dietz.

Doug Valmore from Clark Dietz thanked the Board for choosing them. He felt the reason they were selected is because they are available to begin work immediately. Valmore stated they know it is accelerated and plan to start this week and finished in September. Valmore added this job is good fit, and they have done similar jobs in the past.

Zietlow asked where Clark Dietz is located. Valmore stated in Indianapolis, but most of the subcontractors are in Bloomington.

Wykoff stated Clark Dietz has worked on other City projects in the past.

Permission to Seek Quotes for the

Wykoff stated Burgess and Niple completed several different designs for the Greenways Implementation Plan. These projects include the

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Allen Street/Covenanter Drive Bicycle Boulevard, 7th Street Bicycle Boulevard, and the Highland Avenue Bicycle Boulevard. Staff would like permission to seek quotes/bids for these projects. The bid results with recommendation will be brought back to the Board in late July.

Greenways Implementation Plan

McNamara moved that staff be authorized to seek quotes for the Greenways Implementation Plan. Zietlow seconded the motion. The motion passed. Permission given to seek quotes.

Wykoff stated it is time to seek bids for 2013 Pavement Markings. Engineering will work with Joe Vandeventer in Streets to coordinate. This will be for pavement thermal plastic epoxy paint markings to be put on streets, bike lanes, and various others parts and pieces around town. Wykoff added the bids and recommendation will be brought back to the Board for approval.

Permission to Seek Bids for the 2013 Pavement Markings Contract

Zietlow asked if the markings from last year have lasted. Wykoff stated paint typically lasts one to two years, but the thermal lasts much longer. Staff tries to anticipate what is on the schedule for street paving two or three years out so the more expensive product is not put down on something that will be paved over. It is the goal to maximize the life of what is there.

McNamara made a motion that staff be authorized to seek bids for 2013 pavement markings contract. Zietlow seconded. The motion passed. Permission given to solicit bids for 2013 pavement markings.

Christina read into the record an Outdoor Seating Permit that the Board will be asked to sign.

STAFF REPORTS & OTHER BUSINESS

Max's Place, 108 West 6th Street, Permit #13-22

McNamara moved to approve claims. Zietlow seconded the motion. The motion carried.

APPROVAL OF CLAIMS

McNamara made motion to adjourn. Zietlow seconded the motion. Meeting adjourned at 6:11 p.m.

ADJOURNMENT

Accepted by:

_____

Charlotte Zietlow, President

_____

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James McNamara, Vice President

_____

Dr. Frank N. Hrisomalos, Secretary

Date: Attest to:

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City of Bloomington
H.A.N.D.

Board of Public Works

Meeting Date:	02 July 2013	
Petition Type:	Uphold Order to Remove Structure	
Address:	013-10390-00 Highland Homes Blk V Lot 33 @ Lot 34; commonly known as 333 N. Clark St.	
Petitioner:	Housing and Neighborhood Development	
Inspector:	Michael Arnold	
Staff Report:	03 June 2013	Received an unsafe structure complaint
	04 June 2013	Drive by, complaint valid
	06 June 2013	Sent Order to Remove

On 03 June 2013, Housing and Neighborhood Development received a complaint regarding an unsafe structure at 333 N. Clark St. During a drive by of the property it was noted that the roof on the northwest section of the structure has collapsed. Orders to Remove the deteriorated structure were issued to the owner of the structure. Title 17 of the Bloomington Municipal Code requires a hearing before Board of Public Works for Orders to Remove a structure.

Attachments: Orders, Pictures

City of Bloomington
Housing and Neighborhood Development

14 June 2013

Randall D. Hammond
2501 E. 8th St.
Bloomington IN 47408

Re: 013-10390-00 Highland Homes Blk V Lot 33 & Lot 34; commonly known as 333 N. Clark St.

Dear Randall Hammond,

Due to a processing error, the Order to Remove for this structure will not be heard at the 18 June 2013 Board of Public Works (BPW) meeting. It has been re-scheduled for the 02 July 2013 BPW meeting.

Please call if you have any questions 349-3504.

Thank you.

Michael Arnold
Neighborhood Compliance Officer
City of Bloomington

401 N. Morton Street
Bloomington, IN 47404
Fax: (812) 349-3582

City Hall

www.bloomington.in.gov

Rental Inspections: (812) 349-3420
Neighborhood Division: (812) 349-3421
Housing Division: (812) 349-3401

City of Bloomington
Housing and Neighborhood Development

ORDER TO REMOVE

05 June 2013

Randall D. Hammond
2501 E. 8th St.
Bloomington IN 47408

Re: 013-10390-00 Highland Homes Blk V Lot 33 & Lot 34; commonly known as 333 N. Clark St.

Dear Randall Hammond,

The City of Bloomington's Housing and Neighborhood Development Department ("HAND"), under Indiana Code section 36-7-9-5, issues this Order to Remove. When it issues such an order, the City is required to give all substantial property interest holders in the above-referenced property notice of this Order to Remove.

You have until 18 July 2013 to remove the structure on the property commonly known as 333 N. Clark St., Bloomington, Indiana.

A hearing will be held on this matter on 18 June 2013 at 5:30 pm in the Council Chambers of City Hall, located in the Showers Building at 401 North Morton Street, Bloomington, Indiana. You have the right to appear at this hearing and represent yourself, or you can appear with an attorney on your behalf. It is your right to present evidence, cross-examine opposing witnesses and present your own arguments and witnesses at this hearing.

If you fail to remove what is required in accordance with this Order, the following may occur:

1. The City may have to hire a contractor to fulfill the obligations of the Order to Remove.
2. The City may fulfill the obligations of the Order to Remove itself.
3. If the City has to hire a contractor to fulfill the obligations of the Order to Remove, or must fulfill the obligations of the Order to Remove itself, each person holding a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises from the date of this Order to Remove to the time that the work is completed, is jointly and severally responsible for certain costs; including the actual cost of the work performed and reasonable processing expenses.
4. If any assessed costs remain unpaid, the City shall seek a judgment in the Monroe Circuit Court against any and all of the aforementioned parties. The judgment is then a debt and lien on all real and personal property of each named individual.

After you have been issued and received notice of this Order and you have not complied, you are required under Indiana Code § 36-7-9-27, to supply full information regarding this Order to a person who takes or agrees to take a substantial property interest in the unsafe property before transferring or agreeing to transfer that interest. Within five (5) days after transferring or agreeing to transfer a substantial property interest in the unsafe property, you are required to provide to the City written copies of the full name, address, and telephone number of the person taking a substantial property interest in the property, and written copies of the legal instrument under which the transfer or agreement to transfer the substantial property interest is accomplished.

If you have any questions concerning this Order to Remove, please, do not hesitate to contact me at (812) 349-3420.

I hereby affirm, to the best of my knowledge, under the penalties of perjury, that the foregoing representation is true.

Lisa Abbott

Lisa Abbott
Director
Housing and Neighborhood Development
401 North Morton Street/P.O. Box 100
Bloomington, Indiana 47402
(812) 349-3401

State of Indiana)
)SS:
County of Monroe)

Subscribed and sworn to before me a Notary Public this 6th day of June 2013.

Christina Finley

Name of Notary Public

Christina Finley

Signature of Notary Public

Monroe

Notary Public's County of Residence

4-9-15

Notary's Commission Expires

CITY OF BLOOMINGTON
NOTICE OF ORDINANCE VIOLATION

Date NOV issued:	**05 June 2013**
Person(s) NOV issued to:	**Randall Hammond**
Date violation discovered:	**04 June 2013**
Location/address of violation:	**013-10390-00 Highland Homes Blk V Lot 33 & Lot 34; commonly known as 333 N. Clark St.**
Nature of violation/code provision violated:	**Bloomington Municipal Code (BMC) § 17.16**

Inspector's Report

During a drive by inspection of the property, it was noted that the roof structure on the northwest section of the structure has collapsed. The following shall occur to be in compliance with the Order to Remove:

1. The Monroe County Building Department and the City Planning Department shall be contacted to determine if any permits are required for the work necessary to bring this property and structure into compliance with this Order;
2. The structure shall be removed as well as all debris associated with this structure, including the main framing of the structure;
3. Properly backfill the crawl space/basement;
4. HAND shall be notified when work is completed at this location.

Relevant Code Citations

BMC § 17.16.020 adopts Indiana Code §§ 36-7-9-1—36-7-9-28 by reference. Indiana Code § 36-7-9-4, Unsafe building and unsafe premises described, states in section (a) "For purposes of this chapter, a building or structure, or any part of a building or structure, that is:

(1) In an impaired structural condition that makes it unsafe to a person or property;
(2) A fire hazard;
(3) A hazard to the public health;
(4) A public nuisance;
(5) Dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance; or
(6) Vacant and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance;

is considered an unsafe building.

BMC § 17.16.040 (f) states, in part, "Unsafe building or structure means any building or structure or part of building or structure that is … in any of the conditions or possesses any of the defects described below, provided that such conditions or defects exist to the extent that life, health, property, or safety of the public or its occupants are endangered:

(ll) Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such building or structure, provided by the building regulations of this city, or of any law or ordinance of this state or city relating to the condition, location, or structure of buildings;

(nn) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangements, inadequate light, air or sanitation facilities, or otherwise, is determined by the enforcement authority to be unsanitary, unfit for human habitation, or in such condition that it is likely to cause sickness or disease.

Board of Public Works
Staff Report

Project/Event: Church Fun Day Activity Day

Petitioner/Representative: Second Baptist Church

Staff Representative: Miah Michaelsen

Meeting Date: July 2, 2013

Second Baptist Church is requesting closure of W. 8th Street between Rogers and Jackson Streets beginning at 10:30 a.m. and ending at 4:00 p.m. on Saturday, August 24 for the purposes of hosting an activity day and carnival event for church members and the general public.

Recommendation: Staff recommends approval.

RESOLUTION 2013-60
SECOND BAPTIST CHURCH
CHURCH FUN DAY

WHEREAS, the Board of Public Works is empowered by I.C. 36-9-6-2 to supervise city streets; and

WHEREAS, the City has committed itself to promoting community-building activity; and

WHEREAS, Second Baptist Church is desirous of using W. 8th Street between Rogers and Jackson Streets beginning at 10:30 a.m. and ending at 4:00 p.m. on Saturday, August 24, 2013 for the purposes of hosting an activity day and carnival event for church members and the general public; and,

WHEREAS, Second Baptist Church, has agreed to execute a "Release, Hold Harmless and Indemnification Agreement" holding the City of Bloomington Board of Public Works, and their agents or employees harmless for any actions, losses or claims arising as a direct result of the Association's negligent act(s) or failure to act or those of its agents in using the City of Bloomington's property, as described above, for said event a copy of which is attached hereto and made a part hereof and to provide the City with a Certificate of Insurance naming the City of Bloomington as additionally insured.

NOW, THEREFORE, BE IT RESOLVED:

1. That the City of Bloomington Board of Public Works declares that W. 8th Street between Rogers and Jackson Streets shall be temporarily closed to traffic and parking, beginning at 10:30 a.m. and ending at 4:00 p.m. on Saturday, August 24, 2013 for the purposes of hosting an activity day and carnival event for church members and the general public.

2. That Second Baptist Church shall be responsible for posting "no parking" signs at least 24 hours in advance of the closing of the streets. Temporary "no parking" signs may be obtained from the City of Bloomington Department of Public Works.

3. That Second Baptist Church shall be responsible for placement and removal of barricades. Second Baptist Church is responsible for contacting the City of Bloomington Engineering Department for instructions on the type of and placement of said barricades. Second Baptist Church agrees to obtain at its own expense and place barricades to close the street, not before 10:30 a.m. and to remove barricades by 4:00 p.m. on Saturday, August 24, 2013.

4. The sponsors will be responsible for removing all trash that is a result of the event, to pick up litter including cigarette butts from the street and sidewalks within this block and to clean any grease or other food products from the pavement and sidewalks after the event. Cleanup shall be completed by 4:30 p.m. on Saturday, August 24, 2013.

5. That by granting permission to utilize City property to facilitate this activity, the Board of Works also waives the City Noise Ordinance in accordance with Section 14.09.070 of the Bloomington Municipal Code, and therefore amplified music may be played during the hours of 10:30 a.m. and 4:00 p.m. on Saturday, August 24, 2013.

6. The sponsors shall be responsible for obtaining any and all required permits as well as being responsible for all legal and financial expenditures.

7. The sponsors shall be responsible for notifying the general public, public transit and public safety agencies of the street closing in advance by notice (at least 48 hours in advance).

8. That _____, by signing this agreement, represents that he/she has been fully empowered by proper action of the entity to enter into the agreement and has authority to do so.

9. That by approval of this Resolution, an officer of the Board of Public Works is authorized to sign the attached Release, Hold Harmless and Indemnification Agreement.

ADOPTED THIS_____DAY OF_____, 2013.

BOARD OF PUBLIC WORKS:	SECOND BAPTIST CHURCH:
_____	_____
Charlotte Zietlow, President	Signature
_____	_____
James McNamara	Printed Name, Title
_____	_____
Dr. Frank N. Hrisomalos	Date
_____	
Date	

RELEASE, HOLD HARMLESS
AND
INDEMNIFICATION AGREEMENT

WHEREAS, SECOND BAPTIST CHURCH, (hereinafter referred to as "RELEASOR") desires to use the facilities or public property of the CITY OF BLOOMINGTON (hereinafter referred to as "RELEASEE"), and specifically W. 8th Street between Rogers and Jackson Streets beginning at 10:30 a.m. and ending at 4:00 p.m. on Saturday, August 24, which is operated, supervised and maintained by the RELEASEE'S Board of Public Works, for the purpose of sponsoring an activity day and carnival event for church members and the general public, on RELEASEE's property with set up beginning at 10:30 a.m., teardown ending by Saturday, August 24, 2013; and

WHEREAS, the RELEASEE wishes to cooperate in said endeavor by allowing such activities to be conducted upon its property;

NOW, THEREFORE, in consideration for the use of the property of RELEASEE for said purposes, the RELEASOR and its officers, directors, agents, employees, members, successors and assigns, does hereby acknowledge and agree to assume full and complete responsibility for all bodily and personal injuries, including injuries resulting in death, and property damage, claims, actions, damages, liabilities and expenses, including reasonable attorneys' fees and court costs, which may occur as a result of the use of said property, and for the same consideration hereby agrees to indemnify, defend, hold harmless, release, waive and forever discharge the RELEASEE, its officers, directors, agents, employees, successors and assigns, and all other persons and entities associated with the RELEASEE, for all bodily and personal injuries, including injuries resulting in death, and property damage, claims, actions, damages, liabilities and expenses, including reasonable attorneys' fees and court costs, which may occur as a result of
the use of said property, including, but not limited to, any claim or claims brought by third parties, whether or not sounding in tort or contract.

RELEASOR expressly agrees that the foregoing RELEASE, HOLD HARMLESS AND INDEMNIFICATION AGREEMENT is intended to be as broad as permitted by law and if any portion thereof is not found to be enforceable, it is agreed that the balance shall, notwithstanding, continue in full force and effect.

THE PARTIES, INTENDING TO BE BOUND, have executed this RELEASE, HOLD HARMLESS AND INDEMNIFICATION AGREEMENT.

RELEASOR	**RELEASEE**
_____	_____
Second Baptist Church	Board of Public Works Officer
_____	_____
Date	Date

RESOLUTION 2013-60

CITY OF BLOOMINGTON

NOISE PERMIT

City of Bloomington
401 N. Morton St., Suite 120
Bloomington, Indiana 47404
812-349-3418

Application and Permit Information

This is an application for a permit for relief from Chapter 14.09 (Noise Control) of the Bloomington Municipal Code. Any permit granted by the City of Bloomington must contain all conditions upon which said permit shall be effective. The City may prescribe any reasonable conditions or requirements it deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

Once a completed application is submitted to the City, it will be reviewed by the Board of Public Works. If the permit is approved, the holder must still abide all other city, state, and federal laws.

Contact Miah Michaelsen with any questions: (812) 349-3418 or michaelm@bloomington.in.gov

Event and Noise Information

Name of Event:	Church Fun DAY Activity		
Location of Event:	8th street (between Rogers St + Jackson St)		
Date of Event:	August 24, 2013	Time of Event:	Start: 10:30 Am
Calendar Day of Week:	Saturday		End: 4:00 pm
Description of Event:	Church Friends + Family Fun Day We will have outdoor games + Activities, (basic carnival atmosphere) For Adults + Children		
Source of Noise:	☐ Live Band ☐ Instrument ☐ Loudspeaker		Will Noise be Amplified? ☐ Yes ☒ No
Is this a Charity Event?	☐ Yes ☒ No	If Yes, to Benefit:	

Applicant Information

Name:	Hattie L. Johnson		
Organization:	Second Baptist Church	Title:	Program Chair
Physical Address:	321 S. Rogers St.		
Email Address:	AKALoyC@ComCast.Net	Phone Number:	812-929-9810
Signature:	Hattie L. Johnson	Date:	June 18, 2013

FOR CITY OF BLOOMINGTON USE ONLY

In accordance with Section 14.09.070 of the Bloomington Municipal Code, We, the Board of Public Works, the designee of the Mayor of the City of Bloomington, hereby waives the City Noise Ordinance for the above mentioned event.

BOARD OF PUBLIC WORKS

Charlotte T. Zietlow, President	James McNamara
Date	Dr. Frank N. Hrisomalos

City of Bloomington
Department of Public Works
401 North Morton Street, Suite 130
Phone (812) 349 3411 Fax (812) 349-3520

Mailing Address:
P.O. Box 100
Bloomington, IN 47402

Street or Traffic Lane Closure Application

Street(s) : 8th Street

Starting at : Rogers Street
(Address or block where closure or restriction begins)

Ending at : Jackson Street
(Address or block where closure or restriction ends)

Type of Closure (check all that apply) : ☒ Complete street closure ☐ One traffic lane ☐ Alley
☐ 2 or more traffic lanes ☐ Parking lane ☐ Sidewalk ☐ Bike lane

Reason for Closure : ☐ Utility Work ☐ Work in Street ☐ Loading or Unloading
☐ Work on Sidewalk ☐ Special Event ☐ Work on Private Property
☒ Other : Church "Fun day" Activity

Date(s) of Closure : From 08-24-13 **to** 08-24-13 **Start time :** 10:30 (a.m.) p.m.

Overnight Closure Required : ☐ Yes ☒ No **End time :** 4:00 a.m. / (p.m.)

Responsible Party Information

Name or Organization : Second Baptist Church

Contact Person : Hattie Johnson **Contact Phone No. :** 812-929-9810

Contact Email : AKALOU@Comcast.Net

Signature : Hattie L. Johnson ***Date :*** June 18, 2013

Printed Name : Hattie L. Johnson

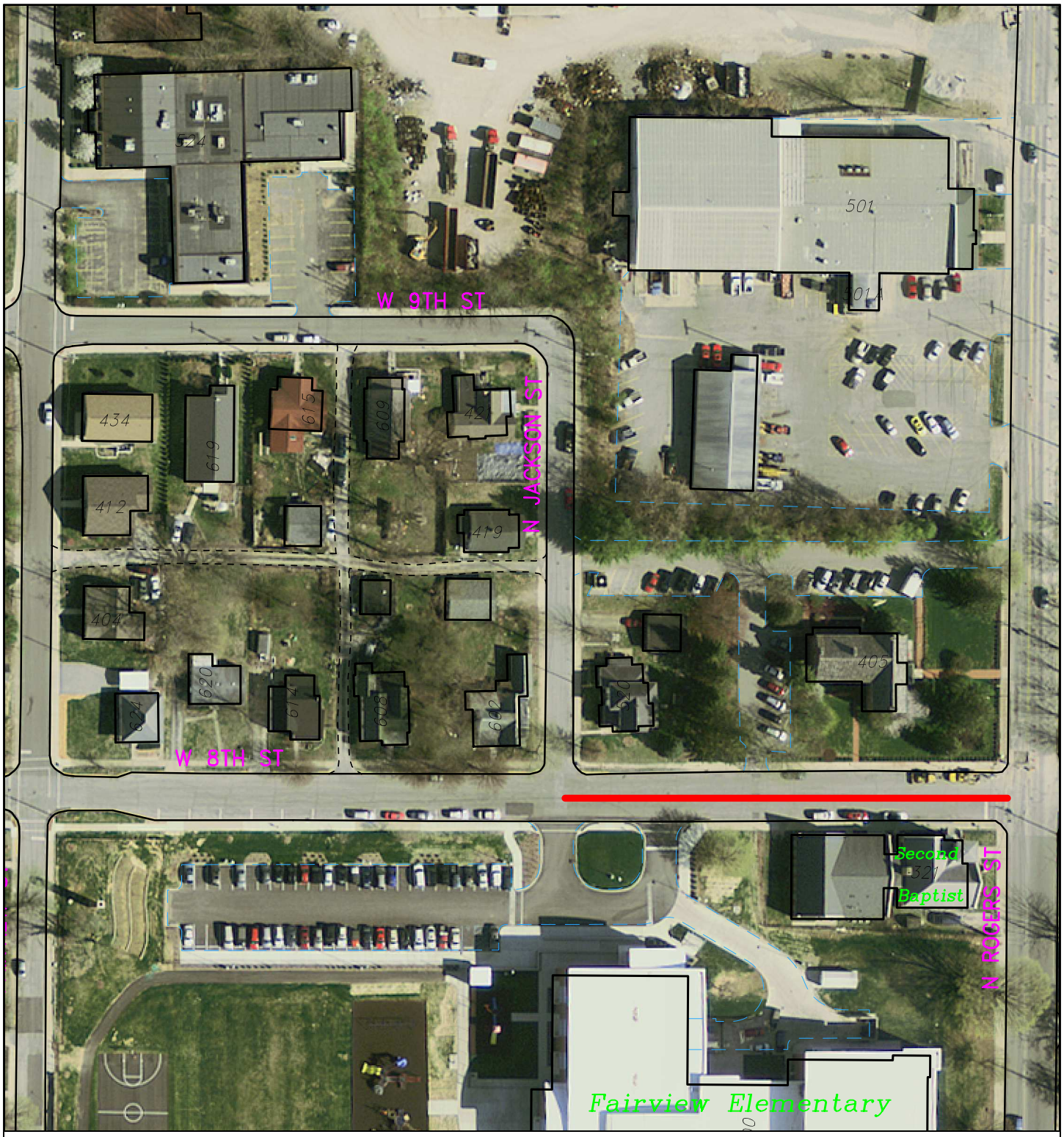
For Office Use

Approved By : _____ **Dept. :** _____ **Date :** _____

Approved By : _____ **Dept. :** _____ **Date :** _____

Approved By : _____ **Dept. :** _____ **Date :** _____

Approved By : _____ **Dept. :** _____ **Date :** _____



By: smithc
27 Jun 13

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City of Bloomington
Public Works

Scale: 1" = 100'

For reference only; map information NOT warranted.

Board of Public Works
Staff Report

Project/Event: Grant Street Jazz Festival

Petitioner/Representative: Jazz from Bloomington

Staff Representative: Miah Michaelsen

Meeting Date: July 2, 2013

.
Jazz from Bloomington is a local jazz advocacy group which promotes jazz and music education across southern Indiana. Their primary mission is to promote and preserve jazz as America's unique art form, and their programming includes affordably priced jazz events and free public educational activities including lectures, concerts, sponsorships of student artists, and programming for public school students. One of their current projects is to expand their outreach and start to serve the larger Bloomington community beyond its public schools.

As part of that expansion they would like to host the second annual Grant Street Jazz Festival on August 24, 2013 on Grant Street between Kirkwood and 6th Street. The goal of the festival is to showcase the amazing jazz talent in Bloomington and will feature musicians from all of the different jazz communities in town: high school musicians, college students and young professional musicians from IU, and local professional musicians who may not fall into any of the former categories.

They are requesting to block off Grant St. between 6th Street and Kirkwood Ave. from 9:30 am to midnight on Saturday, August 24th with the actual event taking place from 11:30 am to 11:00 pm. Because the event will be utilizing a P.A. system and amplifiers, they are also requesting a noise permit. They have support from the owner of Pygmalion's, the Monroe County Public Library and adjacent residents.

Bloomington has a strong jazz music heritage, and a festival celebrating that heritage and encouraging jazz fans to celebrate at a downtown event is a welcome addition to BEAD's current festival lineup. ESD staff is supportive of this request.

Recommend ☑**Approval** ☐ **Denial by** Miah Michaelsen

RESOLUTION 2013-61

JAZZ FROM BLOOMINGTON - GRANT STREET JAZZ FESTIVAL

WHEREAS, the Board of Public Works is empowered by I.C. 36-9-6-2 to supervise City Streets; and

WHEREAS, the City has committed itself to promoting Bloomington arts and cultural organizations and events; and

WHEREAS, Jazz from Bloomington is desirous of using the portion of Grant Street between Kirkwood Avenue and 6th Street to host an event the Grant Street Jazz Festival; and

WHEREAS, Jazz from Bloomington has requested that the Board close certain streets in downtown Bloomington to traffic and parking from 9:30 am to midnight on Saturday the 24th of August, 2103, so that Jazz from Bloomington can have control over the streets for the purposes of providing a jazz festival of high quality that is mutually beneficial to the arts and the community; and

WHEREAS, Jazz from Bloomington has agreed to indemnify and to hold harmless the City of Bloomington, City of Bloomington Board of Public Works or any of their agents or employees for any and all actions, losses or claims arising from said event, a copy of which is attached hereto and made a part hereof, and has agreed to provide the City with a Certificate of Insurance.

NOW, THEREFORE, BE IT RESOLVED:

1. That the City of Bloomington Board of Public Works declares that Grant Street between Kirkwood Avenue and 6th Street shall be temporarily closed to traffic and parking, beginning at 9:30 a.m. to midnight on Saturday, August 24, 2013 for the purpose of hosting art and festival-type events, operating food and drink booths and to providing entertainment including live music for the general public.

2. That Jazz from Bloomington shall be responsible for posting "no parking" signs at least 24 hours in advance of the closing of the streets. Temporary “no parking” signs may be obtained from the City of Bloomington Department of Public Works.

3. That Jazz from Bloomington shall be responsible for placement and removal of barricades. Jazz from Bloomington is responsible for contacting the City of Bloomington Engineering Department for instructions on the type of and placement of said barricades. Jazz from Bloomington agrees to obtain at its own expense and place barricades to close the street, not before 9:30 a.m. and to remove barricades by midnight on Saturday, August 24, 2013.

4. The sponsors will be responsible for removing all trash that is a result of the event, to pick up

litter including cigarette butts from the street and sidewalks within this block and to clean any grease or other food products from the pavement and sidewalks after the event. Cleanup shall be completed by midnight on Saturday, August 24, 2013.

5. That by granting permission to utilize City property to facilitate this activity, the Board of Works also waives the City Noise Ordinance in accordance with Section 14.09.070 of the Bloomington Municipal Code, and therefore amplified music may be played during the hours of 11:30 a.m. and 11:00 p.m. on Saturday, August 24, 2013.

6. The sponsors shall be responsible for obtaining any and all required permits as well as being responsible for all legal and financial expenditures.

7. The sponsors shall be responsible for notifying the general public, public transit and public safety agencies of the street closing in advance by notice (at least 48 hours in advance).

8. That _____, by signing this agreement, represents that he/she has been fully empowered by proper action of the entity to enter into the agreement and has authority to do so.

9. That by approval of this Resolution, an officer of the Board of Public Works is authorized to sign the attached Release, Hold Harmless and Indemnification Agreement.

ADOPTED THIS _____ DAY OF _____, 2013.

CITY OF BLOOMINGTON BOARD OF PUBLIC WORKS	**JAZZ FROM BLOOMINGTON**
_____	_____
Charlotte Zietlow, President	Signature
_____	_____
James McNamara	Printed Name, Title
_____	_____
Dr. Frank N. Hrisomalos	Date

RELEASE, HOLD HARMLESS
AND
INDEMNIFICATION AGREEMENT

WHEREAS, JAZZ FROM BLOOMINGTON, (hereinafter referred to as "RELEASOR") desires to use the facilities or public property of the CITY OF BLOOMINGTON (hereinafter referred to as "RELEASEE"), and specifically the portion of Grant Street between Kirkwood Avenue and 6th Street, which is operated, supervised and maintained by the RELEASEE'S Board of Public Works, for the purpose of sponsoring the Grant Street Jazz Festival, on RELEASEE's property with set up beginning at 9:30 a.m., teardown ending by midnight on Saturday, August 24th 2013; and

WHEREAS, the RELEASEE wishes to cooperate in said endeavor by allowing such activities to be conducted upon its property;

NOW, THEREFORE, in consideration for the use of the property of RELEASEE for said purposes, the RELEASOR and its officers, directors, agents, employees, members, successors and assigns, does hereby acknowledge and agree to assume full and complete responsibility for all bodily and personal injuries, including injuries resulting in death, and property damage, claims, actions, damages, liabilities and expenses, including reasonable attorneys' fees and court costs, which may occur as a result of the use of said property, and for the same consideration hereby agrees to indemnify, defend, hold harmless, release, waive and forever discharge the RELEASEE, its officers, directors, agents, employees, successors and assigns, and all other persons and entities associated with the RELEASEE, for all bodily and personal injuries, including injuries resulting in death, and property damage, claims, actions, damages, liabilities and expenses, including reasonable attorneys' fees and court costs, which may occur as a result of
the use of said property, including, but not limited to, any claim or claims brought by third parties, whether or not sounding in tort or contract.

RELEASOR expressly agrees that the foregoing RELEASE, HOLD HARMLESS AND INDEMNIFICATION AGREEMENT is intended to be as broad as permitted by law and if any portion thereof is not found to be enforceable, it is agreed that the balance shall, notwithstanding, continue in full force and effect.

THE PARTIES, INTENDING TO BE BOUND, have executed this RELEASE, HOLD HARMLESS AND INDEMNIFICATION AGREEMENT.

RELEASOR	**RELEASEE**
_____	_____
Jazz from Bloomington	Board of Public Works Officer
_____	_____
Date	Date

Second Annual Grant Street Jazz Festival
Bloomington, Indiana

Date: 8/24/2013

Time of event: 11:30 am-11 pm

Setup: 9:30-11:30 am (road must be closed by 9:30 am)

Teardown: 11 pm-

Requested area: All of Grant Street between 5th and 6th Streets

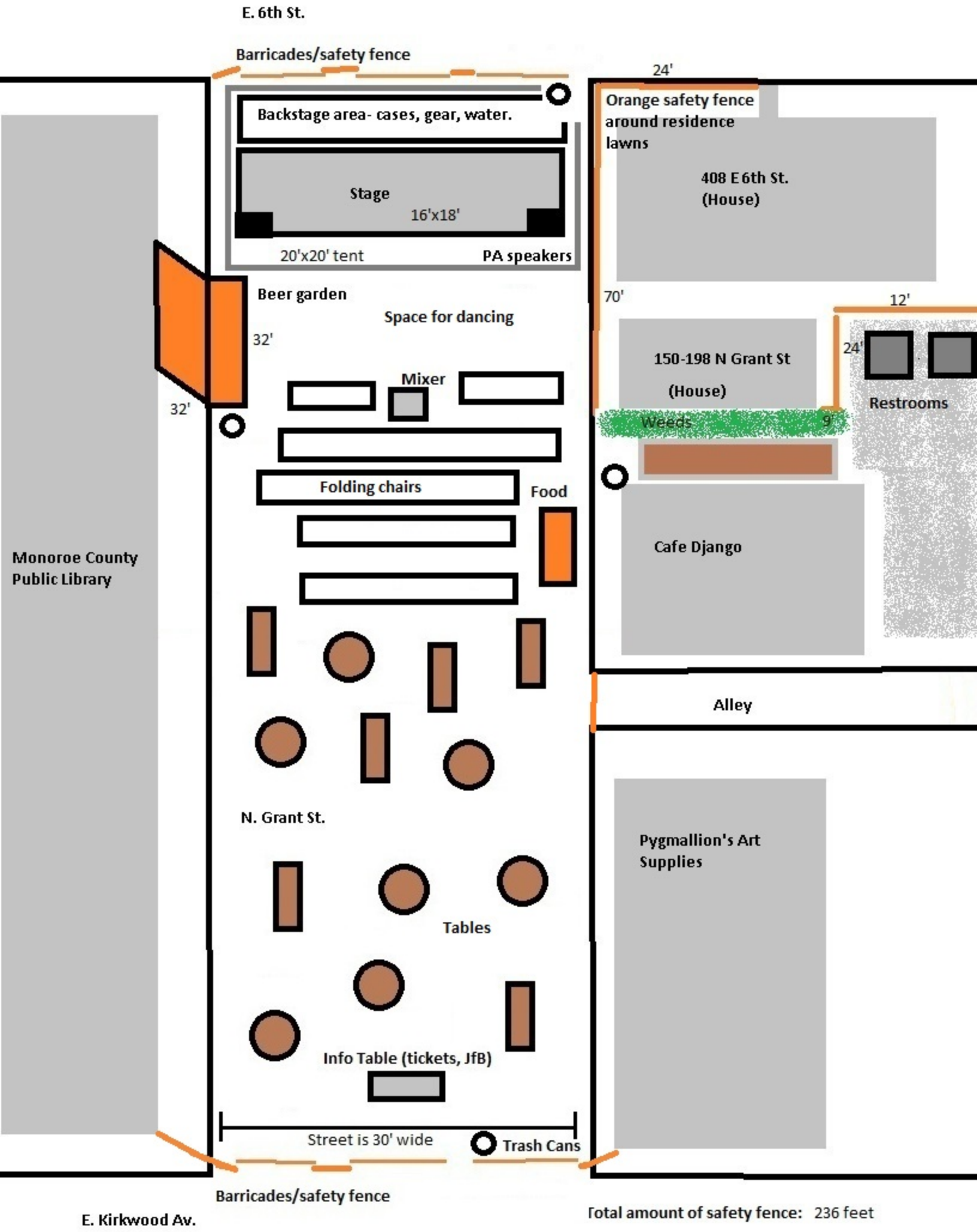
Street setup (detailed map): See attached.

Number of bands: 11

Amplification and lighting:16 Channel Mixer, two high/mids, two subs, two tripods with colored lights.

Community benefit (from Neil's 2012 proposal): The community will benefit culturally and educationally from the festival. It will feature some of the top musicians from the three different jazz communities in Bloomington: High school musicians, college students and young professional musicians from IU, and local professional musicians who may not fall into either of the former categories.

The festival will also benefit the community financially. Last year's festival provided the following local businesses with the opportunity to sell their products during the event: John's Vending, Café Django, Big Woods, and Oliver Winery. Collectively, vendors made a profit of $4450.00 at last year's festival.


E. 6th St.
Barricades/safety fence
24'
Orange safety fence around residence lawns
Backstage area- cases, gear, water.
408 E 6th St. (House)
Stage
16'x18'
20'x20' tent
PA speakers
Beer garden
Space for dancing
70'
12'
32'
150-198 N Grant St
(House)
24'
Restrooms
Mixer
32'
Weeds
9'
Folding chairs
Food
Cafe Django
Monoroe County Public Library
Alley
N. Grant St.
Pygmallion's Art Supplies
Tables
Info Table (tickets, JfB)
Street is 30' wide
Trash Cans
Barricades/safety fence
E. Kirkwood Av.
Total amount of safety fence: 236 feet

Board of Public Works
Staff Report

Project/Event: Bryan Park Neighborhood Block Party

Petitioner/Representative: Neighborhood Association

Staff Representative: Christina Smith

Event Date: August 23, 2013

Meeting Date: July 2, 2013

Report: The Bryan Park Neighborhood Association wants to hold a block party on Friday August 23, 2013. This event will be the 6th consecutive year that a neighborhood gathering will take place on South Palmer Avenue between East Driscoll Drive and East Grimes Lane.

They have requested a noise permit during the hours of 6:00 p.m. to 9:00 p.m. so that music may be played during the event.

Recommendation: This is a great opportunity for neighbors to get to know each other and staff is supportive of request.

Recommend ☑ Approval by: Christina Smith

RESOLUTION 2013-62
Bryan Park Block Party

WHEREAS, the Board of Public Works is empowered by I.C. 36-9-6-2 to supervise city streets; and

WHEREAS, Bryan Park Neighborhood Association ("Association") is desirous of using the South Palmer Avenue for a neighborhood block party; and

WHEREAS, the City of Bloomington encourages and values activities for residents to get to know their neighbors; and

WHEREAS, The Association has agreed to execute the "Release, Hold Harmless and Indemnification Agreement" regarding the use of the City of Bloomington's property which is attached hereto and made a part hereof.

NOW, THEREFORE, BE IT RESOLVED:

1) That the City of Bloomington Board of Public Works declares that the 1200 block of South Palmer Avenue between East Driscoll Drive and East Grimes Lane shall be temporarily closed to motor vehicle traffic and parking from 6:00 to 9:00 p.m. on Friday, August 23, 2013 for the purpose of staging a neighborhood party.

2) That by granting approval for this event, the Board of Public Works waives the City Noise Ordinance until 9:00 p.m. so music may be enjoyed during the event.

3) The neighbors, in conjunction with this event, agree to the following:

   A. The Association agrees to be responsible for posting "no parking" signs at least 24 hours in advance of the street closing. Temporary "no parking" signs may be obtained from the City of Bloomington Department of Public Works.

   B. The Association shall be responsible for placement and removal of barricades. The Association is responsible for contacting the City of Bloomington Engineering Department for instructions on the type of and placement of said barricades. The Association agrees to place barricades to close the street, not before 6:00 p.m., and to remove barricades by 9:00 p.m., Friday, August 23, 2013.

   C. The neighbors agree to be responsible for obtaining any required permits or licenses.

   D. The neighbors agree to notify the Police and Press well in advance of the street closing (at least 48 hours in advance).

   E. The neighbors agree to clean up the street both before and after the event. The clean-up shall include but not be limited to removal of any food or drink residue, picking up litter, sweeping any broken glass, and the placing, emptying and removal of trash cans. Clean-up after the event shall be completed by 9:00 p.m. on the day of the event.

4) That by approval of this Resolution, an officer of the Board of Public Works is authorized to sign the attached Release, Hold Harmless and Indemnification Agreement.

ADOPTED THIS _____ DAY OF _____, 2013.

BOARD OF PUBLIC WORKS

_____
Charlotte Zietlow, President

_____
James McNamara

_____
Dr. Frank N. Hrisomalos

ALL TERMS AND CONDITIONS CONTAINED IN THIS RESOLUTION AND AGREED TO:

_____
Signature

_____
Printed Name
For Bryan Park Neighborhood Association

_____
Date:

RELEASE, HOLD HARMLESS
AND
INDEMNIFICATION AGREEMENT

WHEREAS, the Bryan Park Neighborhood Association (hereinafter referred to as "RELEASOR") desires to use the facilities or public property of the CITY OF BLOOMINGTON (hereinafter referred to as "RELEASEE"), and specifically the 1200 block of South Palmer Avenue between East Driscoll Drive and East Grimes Lane, which is operated, supervised and maintained by the RELEASEE'S Board of Public Works, for the purpose of sponsoring a block party on RELEASEE'S property with set up beginning at 6:00 p.m. and teardown ending by 9:00 p.m. on Friday, August 23, 2013; and

WHEREAS, the RELEASEE wishes to cooperate in said endeavor by allowing such activities to be conducted upon its property;

NOW, THEREFORE, in consideration for the use of the property of RELEASEE for said purposes, the RELEASOR, for RELEASOR and its officers, directors, agents, employees, members, successors and assigns, does hereby acknowledge and agree to assume full and complete responsibility for all bodily and personal injuries, including injuries resulting in death, and property damage, claims, actions, damages, liabilities and expenses, including reasonable attorneys' fees and court costs, which may occur as a result of the use of said property, and for the same consideration hereby agrees to indemnify, defend, hold harmless, release, waive and forever discharge the RELEASEE, its officers, directors, agents, employees, successors and assigns, and all other persons and entities associated with the RELEASEE, for all bodily and personal injuries, including injuries resulting in death, and property damage, claims, actions, damages, liabilities and expenses, including reasonable attorneys' fees and court costs, which may occur as a result of the use of said property, including, but not limited to, any claim or claims brought by third parties, whether or not sounding in tort or contract.

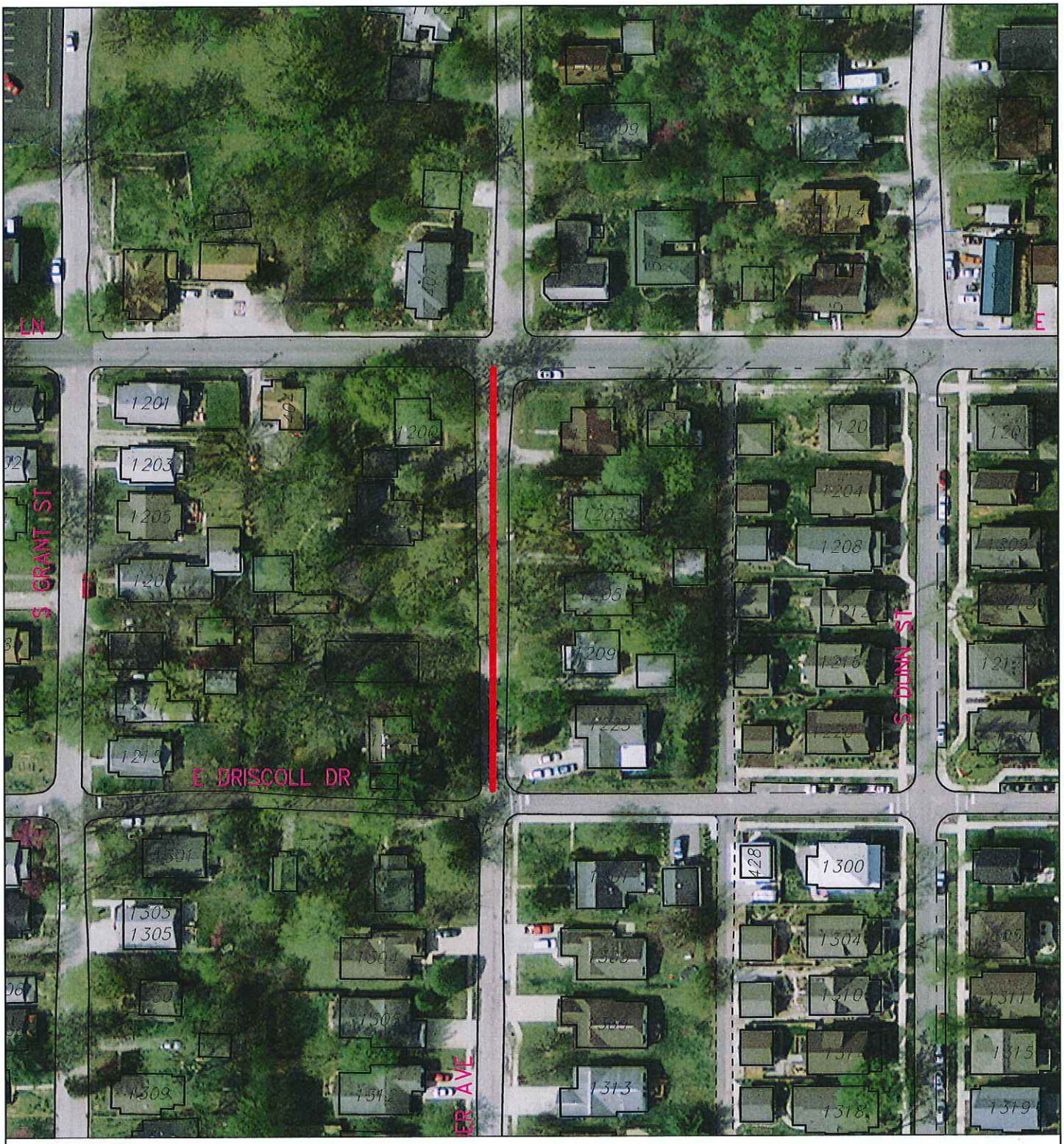
RELEASOR expressly agrees that the foregoing RELEASE, HOLD HARMLESS AND INDEMNIFICATION AGREEMENT is intended to be as broad as permitted by law and if any portion thereof is not found to be enforceable, it is agreed that the balance shall, notwithstanding, continue in full force and effect.

_____, as _____ of the Bryan Park Neighborhood Association, represents and certifies that he/she has been fully empowered to execute this RELEASE, HOLD HARMLESS AND INDEMNIFICATION AGREEMENT on behalf of RELEASOR.

THE PARTIES, INTENDING TO BE BOUND, have executed this RELEASE, HOLD HARMLESS AND INDEMNIFICATION AGREEMENT.

"RELEASOR"	"RELEASEE"
_____	_____
Signature	City of Bloomington
_____	
Printed Name For Bryan Park Neighborhood Association	

Resolution 2013-62



By: smithc
27 Jun 13

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City of Bloomington
Public Works

Scale: 1" = 100'

For reference only; map information NOT warranted.

Board of Public Works
Staff Report

Project/Event: Itinerant Merchant in right of way

Petitioner/Representative: Ryan Lentz – Smithville Communications

Staff Representative: Jason

Meeting Date: July 2, 2013

Ryan Lentz, of Smithville Communication has applied for an Itinerant Merchant Permit. It has been determined that when the applicant wants to operate in the right of way that before the permit is issued, permission must be obtained from the Board of Public Works. The Department of Economic & Sustainable Development has reviewed the application and the Board of Public Works' approval to operate in the public right of way is one of the items on the check list that is required before a permit can be issued. ESD will confirm that all rules and regulations have been met prior to a permit being issued.

The business will operate from a box truck and tents selling electronics and accessories

This application is for 1 year.

Staff is supportive of the request.

Recommend ☑ **Approval** ☐ **Denial by** Jason Carnes

RESOLUTION 2013-63
Itinerant Merchant Vendor in Public Right of Way
Ryan Lentz – Smithville Communications

WHEREAS, the Board of Public Works is empowered by I.C. 36-9-6-2 to supervise City streets, alleys, sewers, public grounds, and other City property; and

WHEREAS, Smithville Communications ("Vendor") is desirous of using public on-street parking and sidewalks within the City of Bloomington for the purpose of selling electronics and accessories from a truck; and

WHEREAS, Vendor has agreed to hold the City of Bloomington, City of Bloomington Board of Public Works, or any of their agents or employees harmless for any and all actions, losses or claims arising from said event, a copy of which is attached hereto and made a part hereof;

NOW, THEREFORE, BE IT RESOLVED that the City of Bloomington Board of Public Works declares that Vendor has permission to use on-street public parking and sidewalks for the purposes of selling electronics and accessories via a truck for one year beginning on the day that License is issued by the City _____, 2013 thru _____ 2014.

The following conditions attach to this approval:

1. Vendor agrees to maintain a clear five-foot path for pedestrians at all times.
2. Vendor will comply with all other laws, ordinances, rules and regulations in effect at the time it conducts their business.
3. Vendor will have obtained a valid Itinerant Merchant license issued by the City of Bloomington Controller's Office prior to operation on City property.
4. Vendor shall not conduct business on the same side of the street and within fifty (50) feet of a primary entry way into a ground level retail establishment which offers the same types of goods, wares, services, foods, or products.
5. Vendor shall honor parking restrictions as posted for any parking spot that they may utilize, but may not park in a street median strip or an alleyway.
6. Vendor shall locate his business a reasonable distance from any posted bus stop, taxi stand, crosswalk, driveway, alleyway, building entrance or walk-up window.
7. Vendor shall locate his business a reasonable distance from another mobile kitchen, food cart or food stand.
8. Vendor shall not locate his business in front of the primary entrance to a retail business, office building or church.
9. Vendor shall not locate his business on the following portions of the B-Line Trail:
   a) From the north side of Country Club Road to the south side of Dodds Street;
   b) From the north side of 2nd Street to the south side of 3rd Street; and
   c) From the north side of 4th Street to the south side of 6th Street.

10. Vendor shall not locate his business within a one block radius of the following special events during the hours of their operation unless prior written consent has been provided by the coordinator or director of the special event:
    a) City of Bloomington Farmers' Market;
    b) City of Bloomington Holiday Market;
    c) The Taste of Bloomington;

d) Lotus World Music and Arts Festival;
e) The Fourth Street Festival;
f) Arts Fair on the Square;
g) Strawberry Festival;
h) Canopy of Lights;
i) Fourth of July Parade; and
j) Any other special events approved by the City Controller.

11. Vendor may locate his business in a public parking space according to parking restrictions for that space including Bloomington Municipal Code section 15.32 which is attached as Exhibit A of this document.
12. Vendor shall not locate his business in a manner which would significantly impede or prevent the use of any City of Bloomington property, or which would endanger the safety or property of the public.
13. Vendor shall conduct their business in accordance with the Standards of Conduct noted in Bloomington Municipal Code section 4.16.100.

This approval may be renewed by the Director of Public Works no more than once a year provided Vendor has complied with all conditions of this approval; complied with all applicable laws, ordinances, rules and regulations; and the City has received no valid complaints regarding Vendor's activities associated with this approval.

ADOPTED THIS_____DAY OF _____, 2013.

BOARD OF PUBLIC WORKS:

_____
Charlotte Zietlow, President

_____
James McNamara

_____
Dr. Frank N. Hrisomalos

ALL TERMS AND CONDITIONS CONTAINED IN THIS RESOLUTION 2013-63 ARE ACCEPTABLE AND AGREED TO BY VENDOR:

_____
Ryan Lentz

Date: _____

CITY OF BLOOMINGTON
economic & sustainable development

Itinerant Merchant, Solicitor and Peddler License Application Checklist

City of Bloomington
Department of Economic and Sustainable Development
401 N. Morton St.
Bloomington, Indiana 47404
812-349-3418

License Length and Fee Information

Valid License:	○	○	○	○	○	◉
Length of License:	24 hours	72 hours	1 Calendar Week	30 Days	6 Months	1 Year
License Fee:	$15	$40	$75	$125	$175	$240

Applicant Information

Name:	Ryan Lentz		
Title:	Retail Product Specialist	Date of Birth:	04/13/1987
Physical Address:	1600 W. Temperance Street		
City, State, Zip:	Ellettsville, IN 47429		
E-Mail Address:	ryan.lentz@smithville.net		
Phone Number:	812-935-2272	Mobile Phone:	812-322-8634

Corporate Contact Information

Name of Employer:	Smithville Communications
Physical Address of Employer:	1600 W. Temperance Street
City, State, Zip:	Ellettsville, IN 47429
Phone Number of Employer:	812-876-2211

Employer is a: ○ Firm ○ Limited Liability Corporation ◉ Corporation ○ Partnership ○ Sole Proprietor

Description of product or service to be sold and any equipment to be used (You may attach additional information as needed):

Sale of electronics and accessories from our Smithville Store. Offering a local alternative to big box stores with local employees. Hope to take the truck to IU events and move-in week allowing students to pick up what they need without fighting traffic. We have a wide selection of routers, cell phones, tvs, consumer electronics, and accessories. Using 2 tents and stand-up store fixtures.

If applicable, a description of Motor Vehicle or Mobile Trailer to be used:
2006 GMC Box Truck

License Plate Number: TK579LIM Vehicle Identification Number (VIN): 1GDJG312661140196

Please attach two (2) pictures of the vehicle and trailer.

You Must Obtain the Following:

- [x] Proof of insurance in accordance with the limits described in Section 4.16.070 of the Bloomington Municipal Code:
  - Personal Injury: $100,000.00 per occurrence and $300,000 in the aggregate
  - Property Damage: $25,000.00 per occurrence and $50,000.00 in the aggregate
- [x] Release of liability wherein the Applicant agrees to indemnify and hold harmless the City of Bloomington for losses or expenses arising out of the operation of his/her business.

You May Need To Obtain and Provide the Following (Staff will advise):

- [ ] If you will be using, handling, selling or distributing food, you must submit a copy of the Monroe County Health Department permit and a Certified Food Handler Certificate.
- [ ] If you will conduct business in the City of Bloomington public right-of-way, you need to obtain a letter of approval from the Board of Public Works.
- [ ] If you will conduct business in or on property owned and/or managed by the City of Bloomington Parks and Recreation Department, you need to obtain a letter of approval from the Parks Department.
- [ ] If your product or service will produce any type of spark, flame or fire in the course of your business, you need to submit a copy of a Permit for Open Burning issued by the City of Bloomington Fire Department.

RELEASE, HOLD-HARMLESS AND INDEMNIFICATION AGREEMENT

The undersigned, in consideration for the issuance of a license by the City of Bloomington Controller, agrees to the following:

1. The undersigned, in exchange for the issuance of a license by the City of Bloomington Controller, agrees to release, hold harmless, and forever indemnify the City of Bloomington and any and all City employees, officers, and agents from any claim or claims which may arise out of any incident connected with or in any way related to his/her issuance of a license by the City of Bloomington or his/her operation of a business which was licensed by the City of Bloomington. This includes claims for personal injury, death, property damage, and/or any other type of harm or injury.

2. The undersigned shall, and hereby does, indemnify, defend, and hold harmless the City of Bloomington and any and all City employees, officers, and agents from and against any and all actions, costs, claims, suits, losses, expenses or damages, including but not limited to attorneys' fees and court costs, arising out of the undersigned's operation of a business which has been licensed by the City of Bloomington.

3. The undersigned understands this release binds him/herself, his/her spouse, and all heirs, executors and administrators of those individuals. The undersigned acknowledges that he/she has read this release and understands all of its terms. The undersigned signs this release voluntarily and with full knowledge of its significance.

Name (printed):	Ryan Lentz
Signature:	Ryan Lentz
Date Release Signed:	6/24/2013

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 6/20/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Telcom Insurance Services Corp.
6301 Ivy Lane, Suite 506
Greenbelt, MD 20770

www.TelcominsGrp.com

CONTACT NAME:
PHONE (A/C, No, Ext): 800.222.4664 FAX (A/C, No): 301.474.6196
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Great Amercian Insurance Company	
INSURER B: Continental Casualty Company	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
Smithville Holding Company, Inc.
Smithville Communications, Inc.
Smithville Telephone Company
1600 West Temperance Street
Ellettsville IN 47426

COVERAGES CERTIFICATE NUMBER: 16708510 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			PAC 0-30-72-36	6/30/2012	6/30/2013	EACH OCCURRENCE	$ 1,000,000
	✓ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
	CLAIMS-MADE ✓ OCCUR						MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$ 1,000,000
	✓ POLICY PRO-JECT ✓ LOC							$
A	AUTOMOBILE LIABILITY			CAP 0-30-72-37	6/30/2012	6/30/2013	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	✓ ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	✓ HIRED AUTOS / ✓ NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
								$
B	UMBRELLA LIAB ✓ OCCUR			5085189971	6/30/2012	6/30/2013	EACH OCCURRENCE	$ 10,000,000
	✓ EXCESS LIAB CLAIMS-MADE						AGGREGATE	$ 10,000,000
	DED RETENTION $							$
								$
								$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WC 0-30-72-38	6/30/2012	6/30/2013	✓ WC STATU-TORY LIMITS / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH)	N/A					E.L. EACH ACCIDENT	$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 500,000
							E.L. DISEASE - POLICY LIMIT	$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

City of Bloomington
410 North Morton Street
Bloomington IN 47404

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Peter J. Elliott

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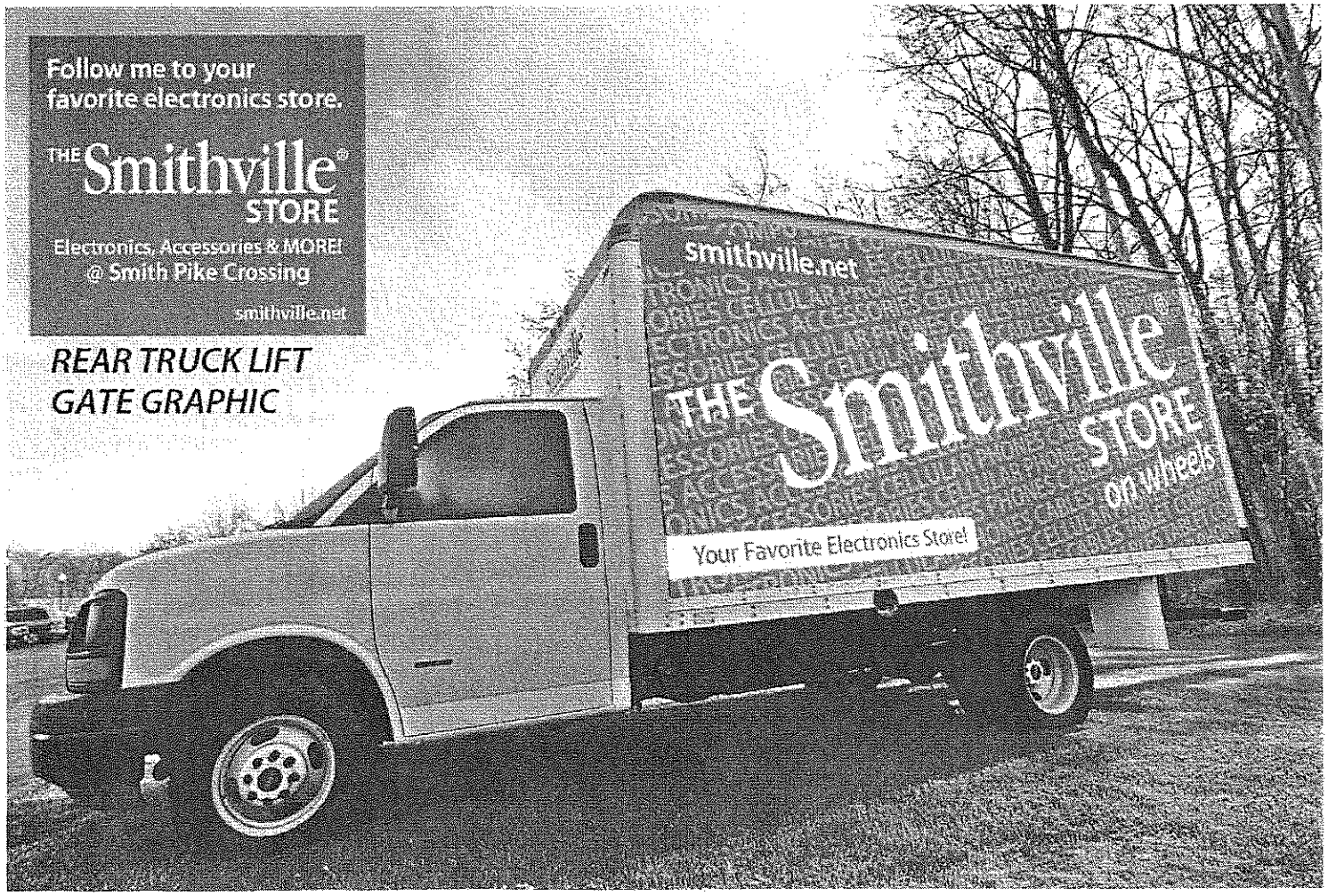
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smithville.net
REAR TRUCK LIFT
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Your Favorite Electronics Store!

Board of Public Works
Staff Report

Project/Event: Walnut Street and Smith Avenue Signalization Project

Petitioner/Representative: Midwestern Electric, Inc.

Staff Representative: Justin Wykoff

Meeting Date: July 2, 2013

Change Order 1 is for various additional work items that were not included with the original bid, but deemed necessary in the field for the completion of the project.

The total amount of Change Order 1 is $5,169.50.

Recommend ☒ **Approval** ☐ **Denial by**

CHANGE ORDER

			Requested By:	
Project Name:	Change Order Number:	1	Owner	x
			Engineer	
Walnut St. & Smith Ave. Signalization Project	Date of Change Order:	Monday, June 17, 2013	Contractor	
			Field	
Contractor:	Engineer's Project #:	PW 2012-31	Other	
Midwestren Electric, Inc.	NTP Date:	Monday, April 01, 2013		
	Allowable Calendar Days	30 (includes holiday's)		
	Original Completion Date	Wednesday, May 01, 2013		

The Contract is changed as follows:

(Include, where applicable, and undisputed amount attributable to previously executed Construction Change Directives)

Item #	DESCRIPTION	Quantity	Unit Price		Item Total
1	Change Green Bike Lane Markings to Paint	1	$1,490.50	/	1,490.50
2	Additional Pavement Markings	1	$3,344.00	/	3,344.00
3	Paint Ped Pole	1	$335.00	/	335.00
4				/	
5				/	
6				/	
7				/	
8				/	
9				/	

The original Contract Sum:	$126,778.00
The net change by previously authorized Change Orders:	$0.00
The Contract Sum prior to this Change Order was:	$126,778.00
The Contract Sum will be changed by this Change Order in the amount of:	$5,169.50
The new Contract Sum including this Change Order will be:	$131,947.50
The Contract Time will be changed by:	0
The date of Substantial Completion as of the date of this Change Order therefore is:	Wednesday, May 01, 2013

(Note: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Contstruction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.)

NOT VALID UNTIL SIGNED BY THE ENGINEER, CONTRACTOR AND OWNER

City Engineering	Midwestern Electric, Inc.	Public Works
ENGINEER	CONTRACTOR	OWNER
401 North Morton Street	3385 North Arlington Avenue	401 North Morton Street
ADDRESS	Indianapolis, Indiana 46218	ADDRESS
	ADDRESS	
Justin D. Wykoff		Susie Johnson
TYPED / PRINTED NAME	TYPED / PRINTED NAME	TYPED / PRINTED NAME
SIGNATURE	SIGNATURE	SIGNATURE

FORM 10-1001

Board of Public Works
Staff Report

Project/Event: South Walnut Street Streetscape and Stormwater Improvements Change Order 8

Petitioner/Representative: Dave O'Mara Contractors Inc.

Staff Representative: Justin Wykoff

Meeting Date: July 2, 2013

Change Order 8 is for various additional work items that were not included with the original bid, but deemed necessary in the field for the completion of the project.

The total amount of Change Order 8 is $18,166.88.

Recommend ☒ **Approval** ☐ **Denial by**

CHANGE ORDER

			Requested By:
Project Name:	Change Order Number:	8	Owner
			Engineer
S. Walnut St. Streetscape/Stormwater Improve.	Date of Change Order:	Thursday, June 27, 2013	Contractor
			Field
Contractor:	Engineer's Project #:	PW 2012-10	Other
Dave O'Mara Contractors	NTP Date:	Wednesday, March 07, 2012	
2520 West Industrial Park Drive	Allowable Calendar Days	395 (includes holiday's)	
Bloomington, Indiana 47402	Previous Completion Date	Saturday, April 06, 2013	

The Contract is changed as follows:

(Include, where applicable, and undisputed amount attributable to previously executed Construction Change Directives)

Item #	DESCRIPTION	Quantity	Unit Price		Item Total
1	Conduit and Handholes for Lighting	1	$3,300.00	/	3,300.00
2	Relocate Service Point 2nd Street Traffic Signal	1	$1,785.00	/	1,785.00
3	12" Pipe Inlet East of Stahl Building	1	$3,500.00	/	3,500.00
4	Class X Excavation 2nd Street Signal	8.36	$210.00	/	1,755.60
5	Additional Bollards	5	$400.00	/	2,000.00
6	Concrete Pad at Marco's Property	56.2	$54.00	/	3,035.88
7	Parking Spaces at Marco's Property	1	$2,790.40	/	2,790.40
8		0	$0.00	/	0.00
9		0	$0.00	/	0.00

The original Contract Sum:	$5,487,000.00
The net change by previously authorized Change Orders:	$55,793.84
The Contract Sum prior to this Change Order was:	$5,542,793.84
The Contract Sum will be changed by this Change Order in the amount of:	$18,166.88
The new Contract Sum including this Change Order will be:	$5,560,960.72
The Contract Time will be changed by:	0 Calendar Day(s)
The date of Substantial Completion as of the date of this Change Order therefore is:	Saturday, April 06, 2013

(Note: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Contstruction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.)

NOT VALID UNTIL SIGNED BY THE ENGINEER, CONTRACTOR AND OWNER

ENGINEER	CONTRACTOR	OWNER
City Engineering	Dave O'Mara Contractors	Public Works
401 North Morton Street	2520 West Industrial Park Drive Bloomington, Indiana 47402	401 North Morton Street
ADDRESS	ADDRESS	ADDRESS
Justin D. Wykoff		Susie Johnson
TYPED / PRINTED NAME	TYPED / PRINTED NAME	TYPED / PRINTED NAME
SIGNATURE	SIGNATURE	SIGNATURE

FORM 10-1001

Board of Public Works
Staff Report

Project/Event: Award Contract for Construction of Maxwell Lane Sidewalk

Petitioner/Representative: N/A

Staff Representative: Justin Wykoff

Meeting Date: July 2, 2013

In early 2013, the City of Bloomington City Council Sidewalk Committee recommended the construction of one block (Highland Avenue to Jordan Avenue) of sidewalk along the North side of Maxwell Lane.

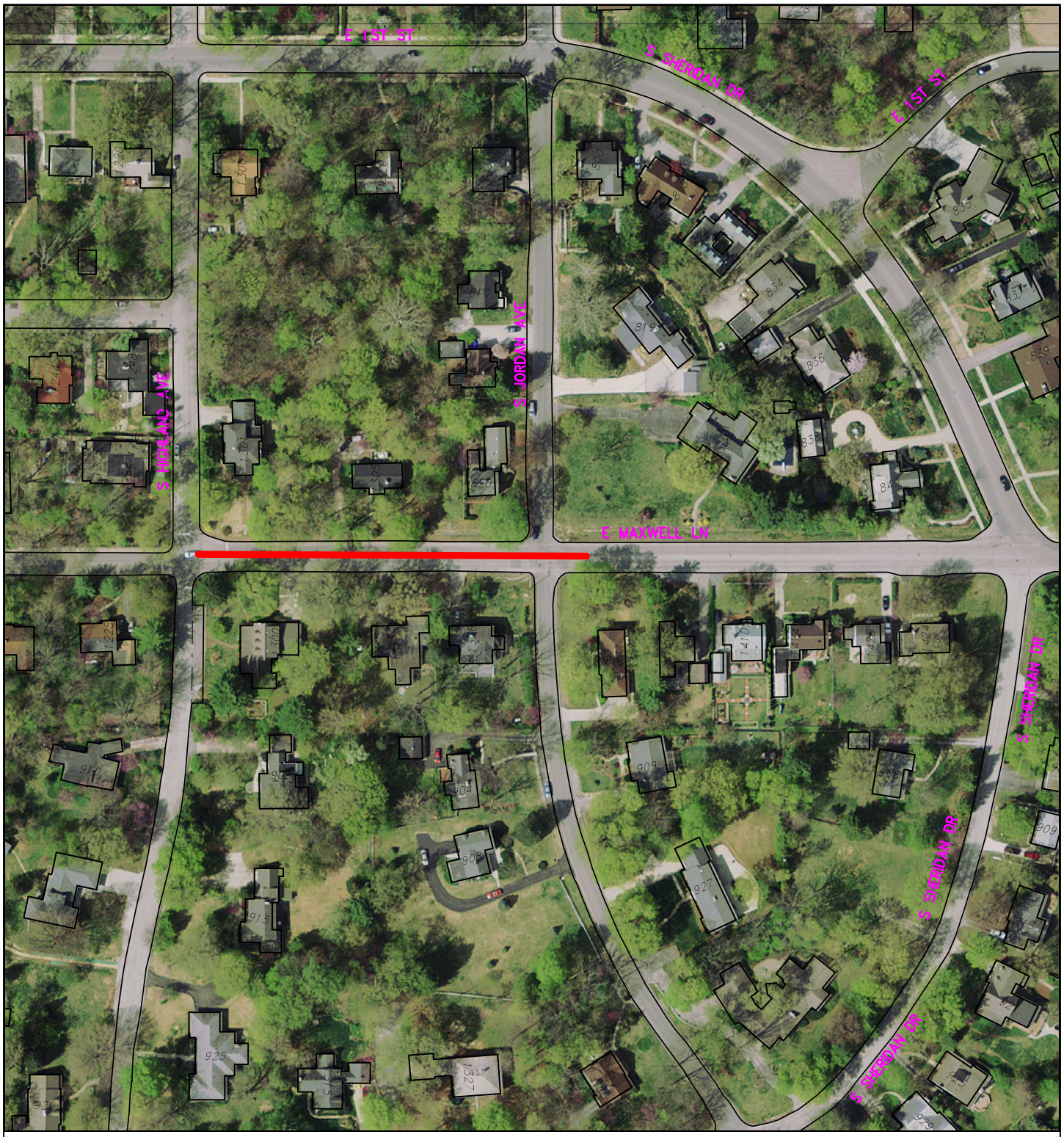
The Engineering Department received permission from the Board of Public Works to solicit quotes for the above mentioned project and those are listed below;

Weddle Brothers - $175,100.00
Groomer Construction - $73,897.12
Dave O'Mara - $157,964.00
Fox Construction - $193,753.00
Crider and Crider - $166,747.00
Milestone Construction - $146,600.00

The plan set as designed in 2006 from a previous recommendation from the City Council Sidewalk Committee included two blocks (Highland Avenue to Sheridan Drive), however funding was known not to be sufficient to construct both blocks and the lower section (Highland Avenue to Jordan Avenue) was decided to be constructed first to provide necessary storm-water infrastructure. The construction of only one block was clearly mentioned in the quote documents (special conditions, sample contract), and discussed in the pre-quote meeting with area contractors. Only one quote realized one block was to be constructed (not two), while the others quoted the entire two block section.

After Engineering review, we believe this quote is the lowest, responsive, and responsible quote and therefore should be awarded to Groomer Construction, Inc.

Recommend ☑ Approval ☐ Denial by



Maxwell Lane Sidewalk Project Limits

By: wykoffj
30 May 13

150 0 150 300 450

N

City of Bloomington
Engineering

Scale: 1" = 150'

For reference only; map information NOT warranted.

AGREEMENT

BETWEEN
DEPARTMENT OF PUBLIC WORKS
AND

Groomer Construction Inc.

FOR

Maxwell Lane Sidewalk Project – PW2013-12

THIS AGREEMENT, executed by and between the City of Bloomington, Indiana, Department of Public Works (hereinafter CITY), and Groomer Construction , (hereinafter CONTRACTOR);

WITNESSETH THAT:

WHEREAS, CITY desires to retain CONTRACTOR'S services for Maxwell Lane Sidewalk Project from Highland Avenue to Station 24+30, Project No. PW 2013-12 (more particularly described in Attachment A, "Scope of Work"; and

WHEREAS, CONTRACTOR is capable of performing landscaping as per his/her quote on the Quote Summary sheet; and

WHEREAS, CONTRACTOR was determined to be the lowest responsible and responsive Quoter for said project.

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree as follows:

ARTICLE 1. TERM

1.01 This Agreement shall be in effect upon execution of this Agreement by all parties.

ARTICLE 2. SERVICES

2.01 CONTRACTOR shall complete all work required under this Agreement within forty-five (45) calendar days from the written Notice to Proceed. Substantial Completion shall mean completion of all work.

2.02 It is hereby understood by both parties that time is of the essence in this Agreement. Failure of CONTRACTOR to complete all work as herein provided will result in monetary damages to CITY. It is hereby agreed that CITY will be damaged for every day the work has not been performed in the manner herein provided and that the measure of those damages shall be determined by reference to the then current INDOT Schedule of Liquidated Damages for Each Day of Overrun in Contract Time. CONTRACTOR agrees to pay CITY said damages or, in the alternative, CITY, at its sole discretion, may withhold monies otherwise due CONTRACTOR. It is expressly understood by the parties hereto that these damages relate to the time of performance and do not limit CITY's other remedies under this Agreement, or as provided by applicable law, for other damages.

2.03 CONTRACTOR agrees that no charges or claims for damages shall be made by him for any delays or hindrances, from any cause whatsoever during the progress of any portion of the services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for a

reasonable period as may be mutually agreed upon between the parties, it being understood, however, that permitting CONTRACTOR to proceed to complete any service, or any part of the services / project, after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of CITY of any of its rights herein.

ARTICLE 3. COMPENSATION

3.01 CONTRACTOR shall provide services as specified in Attachment A, "Scope of Work", attached hereto and incorporated into this Agreement.

3.02 Upon the submittal of approved claims, CITY shall compensate CONTRACTOR in a lump sum not to exceed Seventy-Three Thousand Eight Hundred and Ninety-Seven Dollars and twelve cents ($73,897.12). CITY may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following:

Defective work.
Evidence indicating the probable filing of claims by other parties against CONTRACTOR which may adversely affect CITY.
Failure of CONTRACTOR to make payments due to subcontractors, material suppliers or employees.
Damage to CITY or a third party.

3.03 The submission of any request for payment shall be deemed a waiver and release by CONTRACTOR of all liens and claims with respect to the work and period to which such payment request pertains except as specifically reserved and noted on such request.

3.04 CONTRACTOR shall maintain proper account records for the scope of all services of this Agreement and provide an accounting for all charges and expenditures as may be necessary for audit purposes. All such records shall be subject to inspection and examination by CITY's representatives at reasonable business hours.

3.05 CONTRACTOR shall submit time sheets (WH-347) for his own and all subcontracted employees, to City Engineer or his representative for approval and review, including review for compliance with Prevailing Wage requirements.

ARTICLE 4. GENERAL PROVISIONS

4.01 CONTRACTOR agrees to indemnify and hold harmless CITY and its officers, agents, officials and employees for any and all claims, actions, causes of action, judgments and liens arising out of any negligent act or omission by CONTRACTOR or any of its officers, agents, officials, employees, or subcontractors or any defect in materials or workmanship of any supply, materials, mechanism or other product or service which it or any of its officers, agents, officials, employees, or subcontractors has supplied to CITY or has used in connection with this Agreement and regardless of whether or not it is caused in part by a party indemnified herein under. Such indemnity shall include attorney's fees and all costs and other expenses arising there from or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein.

4.02 Abandonment, Default and Termination

4.02.01 CITY shall have the right to abandon the work contracted for in this Agreement without penalty. If CITY abandons the work described herein, CONTRACTOR shall deliver to CITY all surveys, notes, drawings, specifications and estimates completed or partially completed and these shall become the property of CITY. The earned value of the work performed shall be based upon an estimate

of the proportion between the work performed by CONTRACTOR under this Agreement and the work which CONTRACTOR was obligated to perform under this Agreement. This proportion shall be mutually agreed upon by CITY and CONTRACTOR. The payment as made to CONTRACTOR shall be paid as a final payment in full settlement of his services hereunder.

4.02.02 If CONTRACTOR defaults or fails to fulfill in a timely and proper manner the obligations pursuant to this Agreement, CITY may, after seven (7) days' written notice has been delivered to CONTRACTOR, and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to CONTRACTOR. In the alternative, CITY, at its option, may terminate this Agreement and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by CONTRACTOR, and may finish the project by whatever method it may deem expedient, and if the such action exceeds the unpaid balance of the sum amount, CONTRACTOR or his surety, shall pay the difference to CITY.

4.02.03 Default: If CONTRACTOR breaches this Agreement or fails to perform the work in an acceptable manner, he shall be considered in default. Any one or more of the following will be considered a default:

1. Failure to begin the work under this Agreement within the time specified.
2. Failure to perform the work with sufficient supervision, workmen, equipment and materials to insure prompt completion of said work within the time limits allowed.
3. Unsuitable performance of the work as determined by CITY ENGINEER or his representative.
4. Neglecting or refusing to remove defective materials or failure to perform anew such work as shall have been rejected.
5. Discontinuing the prosecution of the work or any part of it.
6. Inability to finance the work adequately.
7. If, for any other reason, CONTRACTOR breaches this Agreement or fails to carry on the work in an acceptable manner.

4.02.04 CITY shall send CONTRACTOR a written notice of default. If CONTRACTOR, or his Surety, within a period of ten (10) days after such notice, fails to remedy the default, then CITY shall have full power and authority, without violation of the Contract, to take the prosecution of the work out of the hands of said CONTRACTOR, to appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable, and may, at its option, turn the work over to the Surety, or enter into an agreement with another Contractor for the completion of the Agreement according to the terms and provisions thereof, or CITY may use such other methods as, in its opinion, shall be required for the completion of said Contract in an acceptable manner.

4.02.05 All cost of completing the work under the Contract shall be deducted from the monies due or which may become due to said CONTRACTOR. In case the expenses so incurred by CITY shall be less than the sum which would have been payable under the Contract if it had been completed by said CONTRACTOR, CONTRACTOR shall be entitled to receive the difference. However, in case such expense shall exceed the sum which would have been payable under the Contract, CONTRACTOR and his Surety will be liable and shall pay to CITY the amount of said excess. By taking over the prosecution of the work, CITY does not forfeit the right to recover damages from CONTRACTOR or his Surety for his failure to complete the work in the time specified.

4.02.06 Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of the Agreement by CITY are at any time not forthcoming or are insufficient, through failure of any entity to appropriate the funds or otherwise, then CITY shall have the right to terminate this Agreement without penalty by giving prior written notice documenting the lack of funding in

which instance, unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void.

4.02.07 CITY agrees that it will make its best effort to obtain sufficient funds, including but not limited to, including in its budget for each fiscal period during the term hereof a request for sufficient funds to meet its obligations hereunder in full.

4.03 Successors and Assigns

4.03.01 Both parties agree that for the purpose of this Agreement, CONTRACTOR shall be an Independent Contractor and not an employee of CITY.

4.03.02 No portion of this Agreement shall be sublet, assigned, transferred or otherwise disposed of by CONTRACTOR except with the written consent of CITY being first obtained. Consent to sublet, assign, transfer, or otherwise dispose of any portion of this Agreement shall not be construed to relieve CONTRACTOR of any responsibility of the fulfillment of this Agreement.

4.04 Extent of Agreement: Integration

4.04.01 This Agreement consists of the following parts, each of which is as fully a part of this Agreement as if set out herein:

1. This Agreement.
2. Technical Specification (Attachment A, "Scope of Work").
3. E-Verify Affidavit (Attachment B).
4. Project Schedule (Attachment C).
5. No Investment In Iran (Attachment D)
6. Upfront Specifications (Definitions and Bidder's Responsibilities).
7. Instructions to Bidders.
8. Advertisement.
9. CONTRACTOR'S submittals.
10. The current Indiana Department of Transportation Standard Specifications and the latest addenda.
11. All plans as provided for the work that is to be completed.

4.04.02 In resolving conflicts, errors, discrepancies and disputes concerning the Scope of Work to be performed by CONTRACTOR, and other rights and obligations of CITY and CONTRACTOR, the document expressing the greater quantity, quality or other scope of work in question, or imposing the greater obligation upon CONTRACTOR and affording the greater right or remedy to CITY shall govern; otherwise the documents shall be given precedence in the order as enumerated above.

4.05 Insurance

CONTRACTOR shall, as a prerequisite to this Agreement, purchase and thereafter maintain such insurance as will protect him from the claims set forth below which may arise out of or result from CONTRACTOR'S operations under this Agreement, whether such operations be by CONTRACTOR or by any SUBCONTRACTORS or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

Coverage		Limits
A.	Worker's Compensation & Disability	Statutory Requirements
B.	Employer's Liability Bodily Injury by Accident Bodily Injury by Disease Bodily Injury by Disease	$100,000 each accident $500,000 policy limit $100,000 each employee
C.	Commercial General Liability (Occurrence Basis) Bodily Injury, personal injury, property damage, contractual liability, products-completed operations, General Aggregate Limit (other than Products/Completed Operations)	$1,000,000 per occurrence and $2,000,000 in the aggregate
	Products/Completed Operation	$1,000,000
	Personal & Advertising Injury Limit	$1,000,000
	Each Occurrence Limit	$1,000,000
	Fire Damage (any one fire)	$50,000
D.	Comprehensive Auto Liability (single limit, owned, hired and non-owned)	$1,000,000 each accident
	Bodily injury and property damage	
E.	Umbrella Excess Liability	$5,000,000 each occurrence and aggregate
	The Deductible on the Umbrella Liability shall not be more than	$10,000

4.05.02 CONTRACTOR'S comprehensive general liability insurance shall also provide coverage for the following:

1. Premises and operations;

2. Contractual liability insurance as applicable to any hold-harmless agreements;

3. Completed operations and products; which also must be maintained for a minimum period of two (2) years after final payment and CONTRACTOR shall continue to provide evidence of such coverage to CITY on an annual basis during the aforementioned period;

4. Broad form property damage - including completed operations;

5. Fellow employee claims under Personal Injury; and

6. Independent Contractors.

4.05.03 With the prior written approval of CITY, CONTRACTOR may substitute different types or amounts of coverage for those specified as long as the total amount of required protection is not reduced.

4.05.04 Certificates of Insurance showing such coverage then in force (but not less than the amount shown above) shall be on file with CITY prior to commencement of work. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled or non renewed until at least sixty (60) days' prior written notice has been received by CITY. The CITY shall be named as an additional insured on the Commercial General Liability, Automobile Liability, and Umbrella Excess Liability policies. The CONTRACTOR shall agree to a waiver of subrogation on its Worker's Compensation policy.

4.06 **Necessary Documentation** CONTRACTOR certifies that it will furnish CITY any and all documentation, certification, authorization, license, permit or registration required by the laws or rules and regulations of the City of Bloomington, the State of Indiana and the United States. CONTRACTOR further certifies that it is now and will maintain in good standing with such governmental agencies and that it will keep its license, permit registration, authorization or certification in force during the term of this Agreement.

4.07 **Applicable Laws** CONTRACTOR agrees to comply with all federal, state, and local laws, rules and regulations applicable to CONTRACTOR in performing work pursuant to this Agreement, including, but not limited to, discrimination in employment, prevailing wage laws, conflicts of interest, public notice, accounting records and requirements. This Agreement shall be governed by the laws of the United States, and the State of Indiana, and by all Municipal Ordinances and Codes of the City of Bloomington. Venue of any disputes arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.

4.08 **Non-Discrimination**

4.08.01 CONTRACTOR and subcontractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, training, conditions or privileges of employment, because of race, sex, color, religion, national origin, ancestry, age, handicap, or disabled veteran status. Breach of this covenant may be regarded as a material breach of the Agreement.

4.08.02 CONTRACTOR certifies for itself and all its subcontractors compliance with existing laws of the State of Indiana and the United States regarding:

1. Prohibition of discrimination in employment practices on the basis of race, sex, color, religion, national origin, ancestry, age, handicap, or any other legally protected classification;

2. The utilization of Minority and Women Business Enterprises. CONTRACTOR further certifies that it:

   a. Has formulated its own Affirmation Action plan for the recruitment, training and employment of minorities and women, including goals and timetable; which has been approved by the City's Contract Compliance Officer.

   b. Encourages the use of small business, minority-owned business and women-owned business in its operations.

4.08.03 FURTHER, PURSUANT TO INDIANA CODE 5-16-6-1, CONTRACTOR AGREES:

A) That in the hiring of employees for the performance of work under this Agreement or any sub agreement hereunder, no contractor, or subcontractor, nor any person acting

on behalf of such CONTRACTOR or subcontractor, shall by reason of race, sex, color, religion, national origin, ancestry, or any other legally protected classification, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates.

B) That no contractor, subcontractor, or any person on their behalf, shall, in any manner, discriminate against or intimidate any employee hired for performance of work under this Agreement on account of race, religion, color, sex, national origin, ancestry, handicap, or any other legally protected classification.

C) That there may be deducted from the amount payable to CONTRACTOR, by CITY, under this Agreement, penalty of Five Dollars ($5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement. Any such person discriminated against retains the right to file a discrimination complaint with the appropriate civil rights agency or court.

D) That this Agreement may be canceled or terminated by CITY and all money due or to become hereunder may be forfeited, for a second or any subsequent violations of the terms or conditions under this section of the Agreement.

4.09 Workmanship and Quality of Materials

4.09.01 CONTRACTOR shall guarantee the work for a period of one (1) year from the date of substantial completion. Failure of any portion of the work within one (1) year due to improper construction, materials of construction, or design may result in a refund to CITY of the purchase price of that portion which failed or may result in the forfeiture of CONTRACTOR's Performance Bond.

4.09.02 OR EQUAL: Wherever in any of the Agreement Documents an article, material or equipment is defined by describing a proprietary product, or by using the name of a manufacturer or vender, the term "Or Equal" or the term "The Equivalent" if not inserted, shall be implied, and it is done for the express purpose of establishing a basis of durability and efficiency and not for the purpose of limiting completion. Whenever material or equipment is submitted for approval as being equal to that specified, the submittal shall include sufficient information and data to demonstrate that the material or equipment conforms to the Contract requirements. The decision as to whether or not such material or equipment is equal to that specified shall be made by the ENGINEER. The approval by the ENGINEER of alternate material or equipment as being equivalent to that specified, shall not in any way relieve CONTRACTOR of responsibility for failure of the material or equipment due to faulty design, material, or workmanship, to perform the function required by the Contract Documents. Specifications as determined by other entities within the City of Bloomington such as City Utilities shall only be substituted or changed by their approval which shall be submitted in writing to the ENGINEER.

4.09.03 CITY shall be the sole judge of the sufficiency of workmanship and quality of materials. Disputes shall be resolved by the Director of Public Works and are not subject to arbitration.

4.10 Safety. CONTRACTOR shall be responsible for the safety of employees at all times and shall provide all equipment necessary to insure their safety. CONTRACTOR shall ensure the enforcement of all applicable safety rules, regulations, ordinances and laws, whether federal, state or local. Contractor's Superintendent of Safety shall make daily inspections upon the arrival and leaving of the site at the close of each workday.

4.11 Amendments/Changes

4.11.01 Except as provided in Paragraph 4.11.02, this Agreement may be amended only by written instrument signed by both CITY and CONTRACTOR.

4.11.02 Without invalidating the Agreement and without notice to any surety, CITY may, at any time or from time to time, order, in writing, additions, deletions, or revisions in the work. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the work involved, which will be performed under the applicable conditions of the Agreement Documents.

4.11.03 If CONTRACTOR believes that any direction of CITY under paragraph 4.11.02, or any other event or condition, will result in an increase in the Contract time or price, he shall file written notice with CITY no later than twenty (20) calendar days after the occurrence of the event giving rise to the claim and stating the general nature of the claim with supporting data. No claim for any adjustment of the Contract time or price will be valid if not submitted in accordance with this Paragraph.

4.11.04 CONTRACTOR shall carry on the work and adhere to the progress schedule during all disputes or disagreements with CITY. No work shall be delayed or postponed pending resolution of any dispute or disagreement except as CONTRACTOR and CITY may otherwise agree in writing.

4.12 Performance Bond and Payment Bond

4.12.01 CONTRACTOR shall provide CITY with a Performance Bond and Payment Bond in the amount of one hundred percent (100%) of the contract amount.

4.12.02 Failure by CONTRACTOR to perform the work in a timely or satisfactory fashion may result in forfeiture of CONTRACTOR'S Performance Bond.

4.12.03 If the surety on any bond furnished by CONTRACTOR becomes a party to supervision, liquidation, or rehabilitation action pursuant Indiana Code 27-9 et seq. or its right to do business in the State of Indiana is terminated, CONTRACTOR shall, within thirty (30) calendar days thereafter, substitute another bond and surety, both of which must be acceptable to CITY.

4.13 Payment of Subcontractors CONTRACTOR shall pay all subcontractors, laborers, material suppliers and those performing services to CONTRACTOR on the project under this Agreement. CITY may, as a condition precedent to any payment hereunder, require CONTRACTOR to submit satisfactory evidence of payments of any and all claims of subcontractors, laborers, material suppliers, and those furnishing services to CONTRACTOR. Upon receipt of a lawful claim, CITY shall withhold money due to CONTRACTOR in a sufficient amount to pay the subcontractors, laborers, material suppliers, and those furnishing services to CONTRACTOR.

4.14 Written Notice Written notice shall be considered as served when delivered in person or sent by mail to the individual, firm, or corporation, or to the last business address of such known to CONTRACTOR who serves the Notice. Notice shall be sent as follows:

TO CITY:		TO CONTRACTOR:
City of Bloomington		Groomer Construction, Inc.
Attn: Jeff Heerdink, Project Manager		Richard Groomer, President
P.O. Box 100 Suite 130		6535 West Ison Road
Bloomington, Indiana 47402		Bloomington, Indiana 47403

4.15 **Severability and Waiver** In the event that any clause or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any other provision of this Agreement. Failure of either party to insist on strict compliance with any provision of this Agreement shall not constitute waiver of that party's right to demand later compliance with the same or other provisions of this Agreement.

4.16 **Notice to Proceed** CONTRACTOR shall not begin the work pursuant to the "Scope of Work" of this Agreement until it receives an official written Notice to Proceed from the City Engineer. Contractor shall start active and continuous work on the Agreement within fifteen (15) calendar days after the date of the Notice to Proceed. In no case shall work begin prior to the date of the Notice to Proceed. If a delayed starting date is indicated in the proposal, the fifteen (15) calendar day limitation will be waived. Work day charges will then begin on a date mutually agreed upon, but not later than the delayed starting date specified. In the event that any Agreement is canceled after an award has been made but prior to the issuing of the Notice to Proceed, no reimbursement will be made for any expenses accrued relative to this contract during that period.

4.17 **Steel or Foundry Products**

4.17.01 To comply with Indiana Code 5-16-8, affecting all contracts for the construction, reconstruction, alteration, repair, improvement or maintenance of public works, the following provision shall be added: If steel or foundry products are to be utilized or supplied in the performance of any contract or subcontract, only domestic steel or foundry products shall be used. Should CITY feel that the cost of domestic steel or foundry products is unreasonable; CITY will notify CONTRACTOR in writing of this fact.

4.17.02 Domestic Steel products are defined as follows:

> "Products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two (2) or more of such operations, from steel made in the United States by open hearth, basic oxygen, electric furnace, Bessemer or other steel making process."

4.17.03 Domestic Foundry products are defined as follows:

> "Products cast from ferrous and nonferrous metals by foundries in the United States."

4.17.04 The United States is defined to include all territory subject to the jurisdiction of the United States.

4.17.05 CITY may not authorize or make any payment to CONTRACTOR unless CITY is satisfied that CONTRACTOR has fully complied with this provision.

4.18 **Verification of Employees' Immigration Status**

Contractor is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists). Contractor shall sign an affidavit, attached as Exhibit B, affirming that Contractor does not knowingly employ an unauthorized alien. "Unauthorized alien" is defined at 8 U.S. Code 1324a(h)(3) as a person who is not a U.S. citizen or U.S. national and is not lawfully admitted for permanent residence or authorized to work in the U.S. under 8 U.S. Code Chapter 12 or by the U.S. Attorney General.

Contractor and any subcontractor may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that the Contractor or any subcontractor learns is an unauthorized alien. If the City obtains information that the Contractor or any subcontractor employs or retains an employee who is an unauthorized alien, the City shall notify the Contractor or subcontractor of the Agreement violation and require that the violation be remedied within thirty (30) calendar days of the date of notice. If the Contractor or any subcontractor verifies the work eligibility status of the employee in question through the E-Verify program, there is a rebuttable presumption that the Contractor or subcontractor did not knowingly employ an unauthorized alien. If the Contractor or subcontractor fails to remedy the violation within the thirty (30) calendar day period, the City shall terminate the Agreement, unless the City determines that terminating the Agreement would be detrimental to the public interest or public property, in which case the City may allow the Agreement to remain in effect until the City procures a new contractor. If the City terminates the Agreement, the Contractor or subcontractor is liable to the City for actual damages.

Contractor shall require any subcontractors performing work under this Agreement to certify to the Contractor that, at the time of certification, the subcontractor does not knowingly employ or contract with an unauthorized alien and the subcontractor has enrolled in and is participating in the E-Verify program. Contractor shall maintain on file all subcontractors' certifications throughout the term of this Agreement with the City.

4.19 **No Investment in Iran**: Contractor is required to certify that it does not engage in investment activities in Iran as more particularly described in Indiana Code 5-22-16.5. (This is not required if federal law ceases to authorize the adoption and enforcement of this statute.) Contractor shall sign an affidavit, attached as Attachment D, affirming that Contractor is not engaged in said investment activities.

Attachment D is attached hereto and incorporated herein by reference as though fully set forth.

IN WITNESS WHEREOF, the parties of this Agreement have hereunto set their hands.

DATE: _____

City of Bloomington
Bloomington Board of Public Works

Groomer Construction, Inc.
6535 West Ison Road
Bloomington, Indiana 47403

BY:

_____
Charlotte Zietlow, President, Board of Public Works

_____
James McNamara, Member, Board of Public Works

_____
Frank Hrisomalos, M.D., Member, Board of Public Works

_____
Mark Kruzan, Mayor of Bloomington

BY:

_____
Contractor Representative

_____
Printed Name

_____
Title of Contractor Representative

ATTACHMENT 'A'

"SCOPE OF WORK"

Maxwell Lane Sidewalk Project Project
Maxwell Lane –Highland Avenue to Station 24+30

This project shall include, but is not limited to installation of storm water infrastructure and construction of a five foot sidewalk and ADA ramps with detectable plates and the placement of curb and gutter with topsoil and sod throughout the project.

ATTACHMENT B

"AFFIDAVIT"

STATE OF INDIANA)
)SS:
COUNTY OF _____)

AFFIDAVIT

The undersigned, being duly sworn, hereby affirms and says that:

1. The undersigned is the _____ of _____.
(job title) (company name)

2. The company named herein that employs the undersigned:
   - has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
   - is a subcontractor on a contract to provide services to the City of Bloomington.

3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).

4. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein is enrolled in a participates in the E-verify program.

_____
Signature

_____
Printed Name

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this _____ day of _____, 20____.

_____
Notary Public's Signature

_____
Printed Name of Notary Public
My Commission Expires: _____
County of Residence: _____

Attachment C

"PROJECT SCHEDULE"

A project schedule is to be completed for the work and included with the contract as Attachment 'C'. Schedule shall include all controlling operations, and any planned access or entrance closures anticipated during the project. All businesses shall be accommodated as needed to remain open during construction if any ingress/egress areas are affected.

Attachment D

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

AFFIDAVIT

The undersigned, being duly sworn, hereby affirms and says that:

1. The undersigned is the _____ of _____.
(job title) (company name)

2. The company named herein that employs the undersigned:

- has contracted with or is seeking to contract with the City of Bloomington to provide services; OR
- is a subcontractor on a contract to provide services to the City of Bloomington.

3. As required by Indiana Code 5-22-16.5-13, the undersigned hereby certifies under penalties of perjury that the company named herein is not engaged in investment activities in Iran.

_____
Signature

_____
Printed name

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this _____ day of _____, 20____.

_____
Notary Public

_____
Printed name

My Commission Expires:_____
County of Residence:_____

31437

Notice of Violation

Housing & Neighborhood Development Department (HAND)
P.O. Box 100
401 N. Morton Street
Bloomington, IN 47402
www.bloomington.in.gov/hand/

Date 6/13/13 Time 1:55 Address/location 2610 E Roundhill Ln 47401

Issued by: 220

☐ BMC 6.04.070 Containers, bags and other articles to be picked up shall not be placed upon the street or sidewalk ***so as to be visible*** from the street more than 24 hours prior to pick up and must be removed on the same day as the scheduled collection.

☐ **Fine Due: $15.00** ☐ **Warning (No fine due at this time)** **Ticket#**_____

NOTE: ***Immediate compliance required*** in order to avoid additional violations/fines assessed at **$15.00/day** per BMC 6.04.060(c).

☐ BMC 6.06.020 It is unlawful for any person to throw, place, or scatter any garbage, recyclable materials or yard waste over or upon any premises, street, alley, either public or private, or to suffer or permit any garbage, recyclable materials or yard waste to be placed or deposited on the premises owned, occupied or controlled by such person either with or without the intent to remove, cover or burn it.

☐ **Fine Due:** ☐**$50** ☐**$100** ☐**$150** ☐ **Warning (No fine due at this time)** **Ticket#**_____

NOTE: ***Immediate compliance required*** in order to avoid additional violations/fines assessed at **$50.00, $100, or $150/day** per BMC 6.06.070(c).

☒ BMC 6.06.050 It is unlawful for the owner of any lot or tract of ground within the city to allow it to become overgrown with weeds, grass, or noxious plants beyond the height of 8 inches.

☐ **Fine Due:** ☒**$50** ☐**$100** ☐**$150** ☐ **Warning (No fine due at this time)** **Ticket#** 31437

NOTE: ***Immediate compliance required*** in order to avoid additional violations/fines assessed at **$50.00, $100, or $150/day** per BMC 6.06.070(c).

Comments: _____

1. Fine must be paid within 2 weeks from date of issuance of the Notice of Violation (NOV) to avoid this matter being forwarded to the City's Legal Department for further enforcement action. This NOV must be returned with payment. **You may pay in person or mail payment to the address listed above. Please make check/money order payable to "HAND". All fines listed above may be contested in the Monroe County Circuit Courts.**
2. Fines shall not attach to non-possessory residential rental property owner(s) for a period of seven (7) days provided HAND is presented with a true and exact copy of any and all leases in effect during the time period covered by the NOV (per occurrence), at which time said tenant(s) shall be held responsible for fines due. A non-possessory residential rental property owner is the owner of record, but one that is not a resident of said property. Property owner(s) shall otherwise be held responsible for fines if a lease is not presented in the time period indicated.
3. The City may seek action by its Board of Public Works or the Monroe County Circuit Courts in assessing fines, ordering remediation of the property (the City has the authority to bring the property into compliance itself or the City may hire a private third-party contractor to bring the property into compliance) and/or assessing costs associated with clean-up of the property, and pursuing any other remedies available by law, including but not limited to injunctive relief. If the City or their designee, with permission from the City of Bloomington Board of Public Works, enters the property and abates the violation the owner shall be responsible for reimbursing the City for the abatement and all associated cost.
4. This NOV may be appealed to the City's Board of Public Works, provided a written appeal is filed with the Board, via the City's Public Works Department, within seven days of the date of issuance of this NOV.

Owner Name Alexandrea Gill	**Agent Name**
Address 2611 E Roundhill Ln	Address
City B State IN	City State
Zip Code 47401	Zip Code

BPW: _____

Mail Copies To: Resident:____ Owner: X Agent:____

Notice of Violation

Housing & Neighborhood Development Department (HAND)
P.O. Box 100
401 N. Morton Street
Bloomington, IN 47402
www.bloomington.in.gov/hand/

Date 5/30/13 Time 3:37 Address/location 2611 Roundhill Ln 47401

Issued by: 220

☐ BMC 6.04.070 Containers, bags and other articles to be picked up shall not be placed upon the street or sidewalk ***so as to be visible*** from the street more than 24 hours prior to pick up and must be removed on the same day as the scheduled collection.

☐ **Fine Due: $15.00** ☐ **Warning (No fine due at this time)** **Ticket#**_____

NOTE: ***Immediate compliance required*** in order to avoid additional violations/fines assessed at **$15.00/day** per BMC 6.04.060(c).

☒ BMC 6.06.020 It is unlawful for any person to throw, place, or scatter any garbage, recyclable materials or yard waste over or upon any premises, street, alley, either public or private, or to suffer or permit any garbage, recyclable materials or yard waste to be placed or deposited on the premises owned, occupied or controlled by such person either with or without the intent to remove, cover or burn it.

☐ **Fine Due:** ☐**$50** ☐**$100** ☐**$150** ☒ **Warning (No fine due at this time)** **Ticket#** 31335

NOTE: ***Immediate compliance required*** in order to avoid additional violations/fines assessed at **$50.00, $100, or $150/day** per BMC 6.06.070(c).

☒ BMC 6.06.050 It is unlawful for the owner of any lot or tract of ground within the city to allow it to become overgrown with weeds, grass, or noxious plants beyond the height of 8 inches.

☐ **Fine Due:** ☐**$50** ☐**$100** ☐**$150** ☒ **Warning (No fine due at this time)** **Ticket#** 31336

NOTE: ***Immediate compliance required*** in order to avoid additional violations/fines assessed at **$50.00, $100, or $150/day** per BMC 6.06.070(c).

Comments: EXCESSIVE GROWTH ; BRUSH

1. Fine must be paid within 2 weeks from date of issuance of the Notice of Violation (NOV) to avoid this matter being forwarded to the City's Legal Department for further enforcement action. This NOV must be returned with payment. **You may pay in person or mail payment to the address listed above. Please make check/money order payable to "HAND". All fines listed above may be contested in the Monroe County Circuit Courts.**
2. Fines shall not attach to non-possessory residential rental property owner(s) for a period of seven (7) days provided HAND is presented with a true and exact copy of any and all leases in effect during the time period covered by the NOV (per occurrence), at which time said tenant(s) shall be held responsible for fines due. A non-possessory residential rental property owner is the owner of record, but one that is not a resident of said property. Property owner(s) shall otherwise be held responsible for fines if a lease is not presented in the time period indicated.
3. The City may seek action by its Board of Public Works or the Monroe County Circuit Courts in assessing fines, ordering remediation of the property (the City has the authority to bring the property into compliance itself or the City may hire a private third-party contractor to bring the property into compliance) and/or assessing costs associated with clean-up of the property, and pursuing any other remedies available by law, including but not limited to injunctive relief. If the City or their designee, with permission from the City of Bloomington Board of Public Works, enters the property and abates the violation the owner shall be responsible for reimbursing the City for the abatement and all associated cost.
4. This NOV may be appealed to the City's Board of Public Works, provided a written appeal is filed with the Board, via the City's Public Works Department, within seven days of the date of issuance of this NOV.

Owner Name Alexandria Gub	**Agent Name**
Address 2611 Roundhill Ln	Address
City Bo State IN	City State
Zip Code 47401	Zip Code

BPW: _____

Mail Copies To: Resident:____ Owner: X Agent:____

NOTICE OF APPEAL
City of Bloomington v. Alex Gul.

On June 13, 2013, a Notice of Violation was issued for property located at 2611 E. Roundhill Lane alleging a violation of BMC 6.06.050 for allowing the property to become overgrown with weeds, grass or noxious plants beyond the height of 8 inches, and assessing a fine of $50.

The property is owned and occupied by Alex Gul, who appeals the NOV on the following grounds:

1. The NOV is unlawful because it does not comply with the requirements of BMC 6.06.070(b)(2) because it fails to specify the nature of the violation. The underlying ordinance, BMC 6.06.050 covers three types of prohibited growth: weeds, grass or noxious plants. The NOV does not say which of the three problems are supposed to exist on the property, and without this information, the property owner does not know what to remedy.

2. The NOV is unlawful under the Due Process clauses of the United States and Indiana constitutions because it is too vague to inform a property owner of what violation is alleged, and therefore deprives the owner of his property rights. Because the NOV does not specify whether the alleged violation is caused by tall grass, by weeds, or by noxious plants, and if by weeds or noxious plants, which particular plants in the yard are being referred to. Without this information, the property owner does not know what plants to remove, and his only choice would be to cut all plants in his yard to under 8 inches, including plants that may legally grow over 8 inches such as bushes, shrubs, trees, flowers, and ornamental grasses.

3. The NOV is unlawful because it alleges a violation of an ordinance that is unconstitutional under the Due Process clauses of the United States and Indiana constitutions because it is too vague to inform a property owner of what violation is alleged, and therefore deprives the owner of his property rights. Because BMC 6.06.050 does not define the word "grass," does not distinguish between native grasses, lawn grasses and ornamental grasses, and does not distinguish lawns from gardens, woods or naturalized areas, it is so vague that it allows arbitrary and capricious enforcement by city officials.

4. The NOV is unlawful as applied to Mr. Gul and his property at 2611 Roundhill Lane, because to enforce against him would violate his freedom of conscience and speech guaranteed by the First Amendment to the United States Constitution and Article 1, sections 3 and 9, of the Indiana Constitution. Mr. Gul allows his yard to grow wild and natural as a matter of personal conscience and as a symbolic statement about the environmental harm of traditional suburban lawn maintenance, and his views are well known to city officials.

5. The NOV is unlawful because the underlying ordinance is void under Indiana Code section 36-7-10.1-3. That section authorizes a municipality to enact an ordinance requiring property owners to cut and remove excessive weeds and rank vegetation on their property only if those terms are defined. The City municipal code contains no definition of rank vegetation or when excessive grass constitutes rank vegetation, and therefore violates state law.

June 17, 2013.

s/ Alex Gul
Alex Gul
2611 Roundhill Lane
Bloomington IN 47401

s/ James Alexander Tanford
James Alexander Tanford
Attorney for Mr. Gul
Indiana University School of Law
211 S. Indiana Av
Bloomington IN 47405

CERTIFICATE OF SERVICE

I certify that on June 17, 2013, after conferring with Christina Smith in the Bloomington Department of Public Works, I filed this notice of appeal by electronic mail to smithc@ bloomington.in.gov, and served a copy of this notice by electronic mail to Patricia Mulvihill, Assistant City Attorney, at mulvihip@bloomington.in.gov.

s/ James Alexander Tanford
James Alexander Tanford