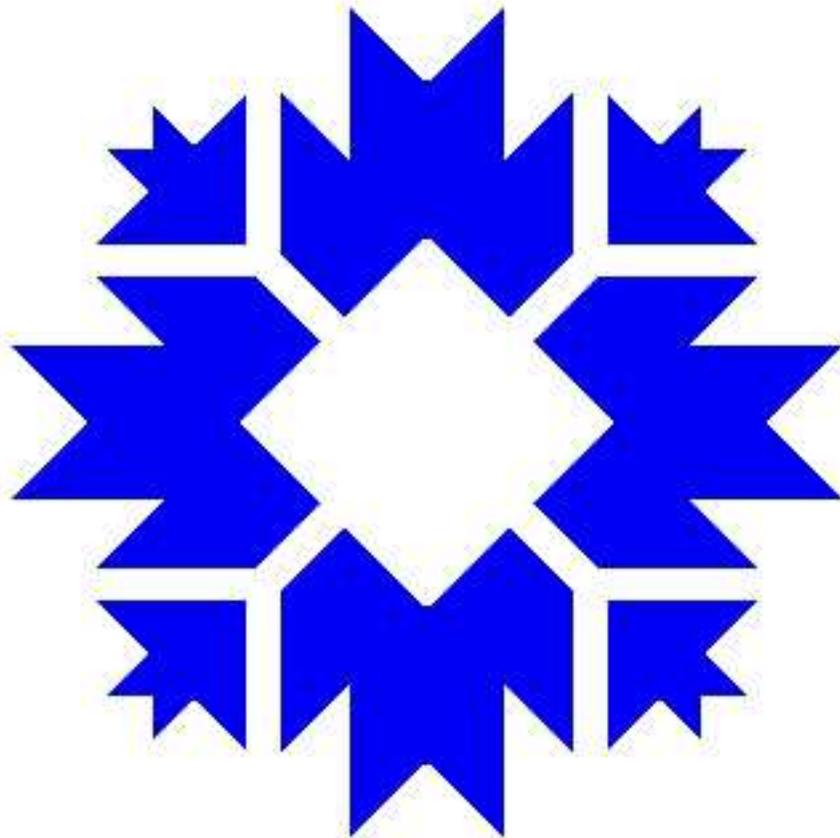


Board of Public Works Meeting

November 5, 2013



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

A Regular Meeting of the Board of Public Work to be Held Tuesday, November 5, 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 – October 22, 2013

III. PETITIONS & REMONSTRANCES

IV. TITLE VI ENFORCEMENT

V. HEARINGS FOR NOISE APPEAL

VI. OLD BUSINESS

1. **Permission to Extend Time to Remove Unsafe Structure at 333 N. Clark Street**

VII. NEW BUSINESS

1. **Permission to Abate Property for Title 6 Violation at 2611 E. Roundhill Lane**
2. **Resolution 2013-97: Notice by Publication to Remove Unsafe Structure at 207 S. Meadowbrook Lane**
3. **Resolution 2013-100: Request to Encroach into Public Right of Way with Deck, Fence and Outdoor Seating at 402 E. 4th Street**
4. **Resolution 2013-101: Request to Encroach into Public Right of Way with Water Meter Vault at 420 S. Washington Street**
5. **Resolution 2013-102: Use of Public Streets and Sidewalks for the Turkey Trot 5K Run/Walk (Thursday, 11/28)**
6. **Approval of Good Earth Contract for Vacuumed Leaf Acceptance**
7. **Approval of Adopt-A-Roundabout Agreement with Mother Nature Landscaping**
8. **Approval of PEI Maintenance and Contracting Agreement for the Installation of Fuel Monitoring Software and Equipment**

VIII. STAFF REPORTS & OTHER BUSINESS

IX. APPROVAL OF CLAIMS

X. ADJOURNMENT

The Board of Public Works meeting was held on Tuesday, October 22, 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.

**REGULAR MEETING
OF THE BOARD OF
PUBLIC WORKS**

Present: Charlotte Zietlow
James McNamara
Frank Hrisomalos

ROLL CALL

City Staff: Susie Johnson – Director of Public Works
Rick Alexander – Engineering
Jason Carnes - ESD
Miah Michaelsen – ESD
Jackie Moore - City Legal
Chris Smith - Public Works
Laurel Waters – Public Works

**MESSAGES FROM
BOARD MEMBERS**

McNamara made a motion to approve the minutes from October 8, 2013. Hrisomalos seconded the motion. The motion passed. Minutes from October 8, 2013 approved as submitted.

**APPROVAL OF
MINUTES**

None

**PETITIONS &
REMONSTRANCES**

None

**TITLE VI
ENFORCEMENT**

None

**HEARINGS FOR NOISE
APPEALS**

OLD BUSINESS

NEW BUSINESS

Miah Michaelsen, ESD, introduced herself. She explained the Canopy of Lights is an annual event sponsored by Downtown Bloomington Inc. which is free and open to the public. They requested that Kirkwood Avenue between College and Walnut Street be closed to vehicular traffic on Friday, November 29, 2013 from 3:00 p.m. until 9:00 p.m. The City of Bloomington Parks &

**Resolution 2013-98: Use
of Public Street for
Canopy of Lights
(Friday, 11/29)**

Recreation Department will be providing the stage for the event and four spaces in front of Fountain Square Mall are being request for stage set up. The Parks Department will remove the stage by 9:00 a.m. on Saturday morning. The Resolution includes a noise waiver for amplified music and remarks. Staff recommended approval. Miah added Talisha Coppock, Executive Director of DBI, is celebrating her husband's 60th birthday and could not be here tonight.

McNamara made a motion to approve Resolution 2013-98: Use of Public Street for Canopy of Lights on Friday, November 29, 2013. Hrisomalos seconded the motion. The motion passed. Resolution 2013-98 approved.

Miah explained The Park on Morton, located at 11th & Morton Street, requested a Noise Permit for a Halloween Party they are hosting for residents. The party will be held in their courtyard on Saturday, October 26, from 6:00 to 9:00 p.m. They will be playing amplified music. Miah reminded the Board that several Noise Permits were issued to them earlier in the Fall.

**Request for Noise Permit
for The Park on Morton
Halloween Party
(Saturday, 10/26)**

McNamara made a motion to approve Request for Noise Permit for The Park on Morton Halloween Party on Saturday, October 26, 2013. Hrisomalos seconded the motion. The motion passed. Noise Permit approved.

Jason Carnes with ESD introduced himself. Jason stated James and Chris have applied for an Itinerant Merchant license. Before receiving the license to operate in the right of way, they must first receive permission from the Board of Public Works. They have turned in their application and all necessary paperwork is in order. The ESD recommended approval of the request. They will be operating from a food truck selling French style crepes. They requested a one year permit.

**Resolution 2013-99:
Allow Itinerant Merchant
to Operate in the Public
Right of Way (Crimson
Crepes)**

Christopher Tiwari and James Audretsch introduced themselves. They stated they are two college freshman at I.U. They got the idea over the summer to start a food stand that sells French style crepes. They went to the Monroe County Health Department and pursued the application.

Zietlow asked if they are made on the cart. They explained they have a griddle on the cart run off of propane.

Zietlow asked where are they going to be. They plan to be on Kirkwood and the Square, and some events. They will be at the Pumpkin Launch at the Fairgrounds in November.

McNamara asked if they would be doing the weekend late night crowd. They thought they might look into that. They will be selling mostly in the evening after classes.

Hrisomalos asked if they had seen this somewhere else. They stated it is a pretty original idea. They were in Europe over the summer and saw it there, but have not seen any in the United States.

McNamara asked what the crepes are filled with. They stated they will have different cheeses, meats, vegetables, whipped cream, different fruits, etc.; all yummy ingredients.

McNamara made a motion to approve Resolution 2013-99 to allow Itinerant Merchant to operate in the Public Right of way for Crimson Crepes. Hrisomalos seconded the motion. The motion passed. Resolution 2013-99 approved.

Rick Alexander explained the new transit facility is being constructed at the corner of 3rd and Walnut. Gibraltar is the contractor and Barry Collins, the City's Facilities Management Coordinator has been working closely with them. Soon it will be time to start installing the limestone on the side of the building. In order to accomplish this the contractor will need to use a crane on 3rd Street. The cranes outriggers would stick out into the southern most eastbound lane of 3rd Street. Staff asked the Board for permission to close that lane during construction. The contractor has asked to use the lane from November 4th to November 22, 2013 during the day only. In the evening the crane can retract the outriggers and be out of the travel lanes. Alexander added this is really the only way to get the limestone up high on the building. Staff recommended approval.

Request to Close a Portion of E. 3rd Street for the Construction of the New Transit Facility

Alexander stated the dates listed are only tentative dates, depending on the weather.

McNamara asked for clarification that it was only one lane going east. Alexander stated yes, and traffic will begin to taper at Walnut so everyone can get over and not be caught in the middle of Walnut.

Zietlow stated it looks like just a skeleton now, and wondered if they will put on another layer before the limestone. Alexander stated yes, they would.

McNamara wondered about Barry Collins involvement. Susie Johnson stated when BPD became involved in the project, staff worked out a deal with Transit so that Barry is the project manager

for both Transit and BPD. He is there everyday taking care of business.

McNamara commented this would also be the headquarter for the new headquarters for Emergency Dispatch and felt this was fantastic.

McNamara made a motion to approve the request to close a portion of East Third Street during construction of the new Transit facility. Hrisomalos seconded the motion. The motion passed. Partial 3rd Street lane closure approved.

Rick Alexander wanted to extend a happy belated birthday to Madam President, Charlotte Zietlow, whose birthday was yesterday.

**STAFF REPORTS &
OTHER BUSINESS**

Zietlow asked if the project on 3rd Street that is now requiring buses to stop on the street is a City project. Alexander stated it is a City project and is the new bike lane from the Greenways Plan and includes pedestrian islands. Alexander added there are no more bus pull offs. Zietlow asked about the reasoning for this.

Johnson explained the buses were already stopping in the travel lane anyway, and not using the passing blister all the time because it was difficult for them to get back into the line of traffic. This will allow bicyclists to stay to the right of the bus so they are not crossing in front of the bus. Zietlow thought it was very interesting.

Johnson added this is the first year the City is doing the Greenways implementation improvements. It is an iterative process and will improve things as it is moved forward. Zietlow asked if everything will be painted Green. Johnson stated, no, as it was a very expensive endeavor. Johnson explained the bicycle lane on Smith Avenue between Walnut and Washington is green because it is the City's first contra flow bike lane, where the bike traffic moves against vehicular traffic, and staff really wanted to call attention to the fact those were opposing movements.

Zietlow wondered why Law Lane is now closed. Alexander stated Law Lane should be open and he will check on that in the morning. Alexander did add that was not a City street, but rather a University Street. Johnson interjected that part of the agreement for the closure of Fee Lane was that Law Lane would be available for a bus detour.

Christina Smith stated for the record that the Board will be asked to sign an Outdoor Seating and Merchandising Permit issued to El Norteno at 206 N. Walnut Street, Permit #13-038.

McNamara moved to approve claims Hrisomalos seconded the motion. The motion passed. Claims approved.

APPROVAL OF CLAIMS

McNamara made motion to adjourn. Motion was seconded. Meeting adjourned at 5:48 p.m.

ADJOURNMENT

Accepted by:

Charlotte Zietlow, President

James McNamara, Vice President

Dr. Frank N. Hrisomalos, Secretary

Date:

Attest to:



City of Bloomington
H.A.N.D.

Board of Public Works

Meeting Date: 22 October 2013

Petition Type: Request permission to accept bid

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
02 July 2013	BPW upheld Order to remove
31 July 2013	Legal letter to Owner
23 August 2013	Legal deadline for removal
24 September 2013	Granted permission to abate property
08 October 2013	Bids due for review
22 October 2013	Tabled
05 November 2013	Uphold the new deadline for removal

- 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.
- The Board upheld those Orders on 02 July 2013 with a deadline of 18 July 2013.
- Legal sent a letter to the owner with a deadline for removal of 23 August 2013
- Board approved request to abate property at 24 September 2013 meeting
- HAND is asking for approval of the contract to abate the property.
- Tabled 10/22/2013 to allow for owner to provide contract of timeline for removal with a deadline of 01/01/2014

Attachments: Orders, Pictures

OCT. 29, 2013

I ~~Tony Wyatt~~ ^{10/30/13} have agreed to

1. Remove shrubs and trees surrounding house by November 20, 2013
2. Level completely the current structure, by December 10, 2013
3. Remove and haul all of the structure to the land fill by December 15, 2013
4. Bring in fill dirt to level, unless a rebuilding permit is in force by December 20, 2013
5. Sidewalks and foundation may or not be removed.
6. My charge is \$4000 for the labor.
7. Owner will pay for dumpsters and land fill fees.

Randall Hammond ^{10/30/13}
owner

Tony Wyatt 10/30/13
CONTRACTOR

Contract & timeline from owner

bid for H.A.N.D



City of Bloomington
Housing and Neighborhood Development

BID SUBMISSION

Property Address: 333 N. Clark St.
(Green House only – garage to stay)

Date: 10/18/13

General Requirements

The contractor shall apply and pay for all necessary permits from the Monroe County Building Department and forward copies of the permits to the Program Manager at H.A.N.D. Permits may include but are not limited to Plumbing, Electric, HVAC, and Demolition. **Contractor must comply with all laws and regulations regarding the removal and abatement of lead and asbestos.**

Cost: \$ 250⁰⁰

Site Work

Grading: **A grading permit from the City Engineering Department may be required.** Regrade the property to a smooth grade. Provide clean fill dirt as needed. Apply grass seed and straw.
Trees: trimming or removal of trees only as necessary to complete work.

Cost: \$ 2,500⁰⁰

Demolition and Disposal

Remove the unsafe structure, including block walls and footings. Dispose of debris from property to code legal dump or transfer station. Back fill using clean fill material. **Provide a receipt of disposal to the H.A.N.D. Program Manager.**

Cost: \$ 3,750⁰⁰

Utility Removal

Properly disconnect all buried utility laterals and terminate the lines. Contact utility companies as necessary for proper termination.

Cost: \$ 1,250⁰⁰

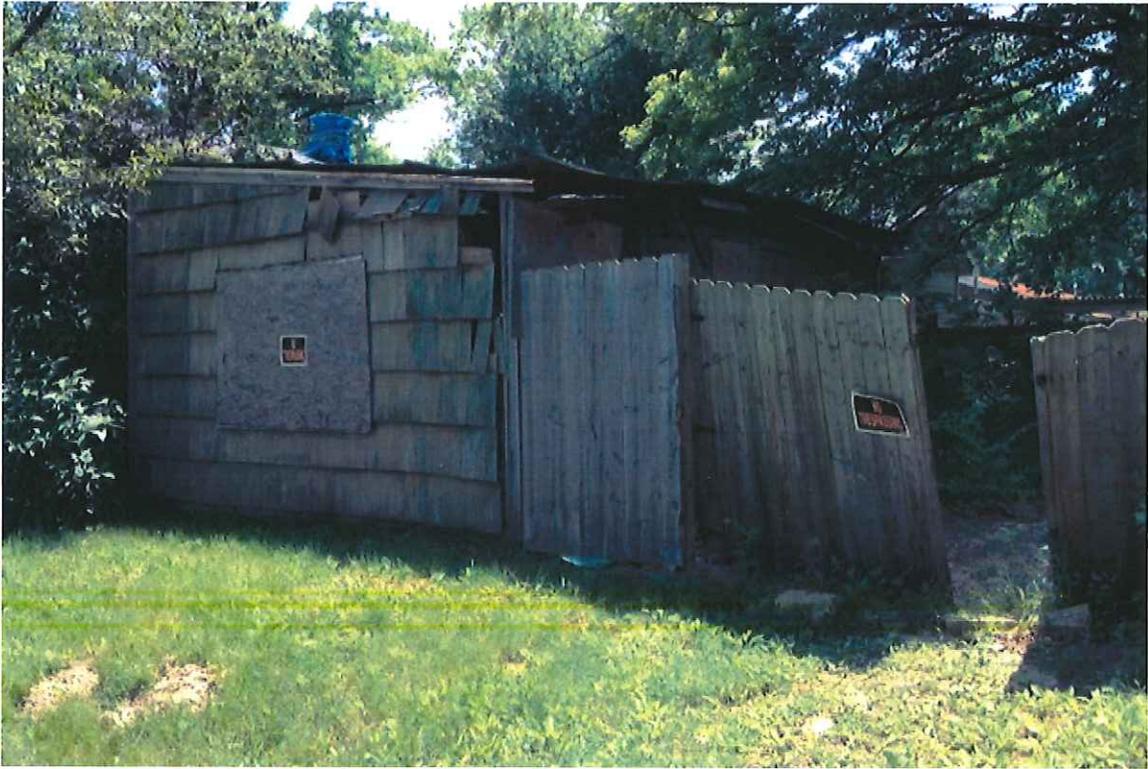
Insurance Minimums:

Contractor shall provide proof of coverage equal to a minimum of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

*Reed + Sons Construction, Inc.
299 Moorman Road*

Bidder: Bloomington, IN 47403

Bid: \$ 7,750⁰⁰





Staff Report

To: Board of Public Works
From: Patty Mulvihill, Assistant City Attorney
Date: October 25, 2013
Re: Abatement of 2611 E. Roundhill Lane (Notice of Violation # 31545)

Attachments:

1. Notice of Violation # 31545—Exhibit A
2. Photographs taken on July 11, 2013—Exhibit B
3. Chapter 6.06 of the Bloomington Municipal Code—Exhibit C
4. Court Order—Exhibit D
5. Photographs taken on October 25, 2013—Exhibit E
6. Notice of Abatement—Exhibit F

Facts:

1. On October 3, 2012, the City of Bloomington Common Council passed Ordinance 12-23, which repealed and replaced Chapter 6.06, entitled Garbage and Weeds. This Ordinance was signed by Mayor Mark Kruzan on October 4, 2012. A copy of Ordinance 12-23 (the portion of which pertains to Chapter 6.06) is attached as Exhibit C.
2. Chapter 6.06 (specifically Section 6.06.050) makes it unlawful for a property owner to allow his grass to exceed the height of eight (8) inches.
3. On July 11, 2013, Neighborhood Compliance Officer Mike Arnold issued Notice of Violation (“NOV”) # 31545 to Alexander Gul (“Gul”) because his property located at 2611 East Roundhill Lane contained grass which exceeded the height of 8 inches. A copy of the NOV is attached as Exhibit A. Photographs of the property taken on the date of the NOV are attached as Exhibit B.
4. On July 17, 2013, Gul, via his attorney James Alexander Tanford (“Tanford”), filed an Administrative Appeal challenging the validity of NOV # 31545.
5. On July 30, 2013, the City of Bloomington Board of Public Works (“BPW”) conducted an administrative appeal on NOV # 31545. The BPW issued an Order holding that a violation of Section 6.06.050 of the Bloomington Municipal Code occurred on Gul’s property located at 2611 East Roundhill Lane on July 11, 2013, and that NOV # 31545 was properly issued. The BPW denied Gul’s appeal.

6. On August 7, 2013, Gul, via his attorney Tanford, appealed the BPW's decision and NOV # 31545 to Monroe County Circuit Court VIII.
7. On August 29, 2013, Gul, via his attorney Tanford, filed a request for a preliminary injunction with Monroe County Circuit VIII, asking that the City be prohibited from abating Gul's property during the pendency of the legal action.
8. On October 22, 2013, Judge Haughton, judge for Monroe County Circuit Court VIII, issued an Order, denying Gul's request for an injunction, and allowing the City to abate Gul's property, provided certain conditions are met. A copy of the Court Order is attached as Exhibit D.
9. On October 25, 2013, as a result of Judge Haughton's Order, the City issued Gul an Abatement Notice. Said Notice was directed to Gul via his attorney, Tanford. A copy of the Abatement Notice is attached as Exhibit F.

Status of the Property and Reason for Abatement:

The property at 2611 East Roundhill Lane remains in the same state it was in when the BPW considered Gul's appeal at its July 30, 2013, meeting. To that end, the aforementioned property contains grass which exceeds the height of eight (8) inches. Please see the attached Exhibit E for current photographs of the property in question.

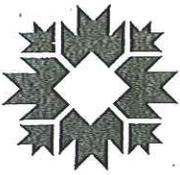
Judge Haughton's Order dated October 22, 2013, allows the City to abate Gul's property if it contains grass which exceeds the height of eight (8) inches provided certain conditions are met. The conditions are as follows:

- The City may not assess any costs incurred by it in abating Gul's property against Gul unless and until the litigation is fully resolved in favor of the City;
- The City may not place a lien on Gul's property to recover any costs incurred by it in abating said property unless and until the litigation is fully resolved in favor of the City;
- The City may not engage in landscaping Gul's property, but rather shall only take those abatement actions necessary to bring said property into compliance with Section 6.06.050 of the Bloomington Municipal Code; and
- The City shall utilize its Environmental Planner, Linda Thompson, during any abatement process of Gul's property in order to ensure that whenever it is reasonably possible no permitted vegetation is removed or cut on said property.

As the property continues to contain grass which exceeds the height of eight (8) inches, and as the City has permission from Judge Haughton to abate the property, provided the already mentioned conditions are met, the City believes it is appropriate to abate 2611 East Roundhill Lane.

Staff Recommendation:

Staff recommends that Gul's property at 2611 East Roundhill Lane, Bloomington, Indiana be abated as soon as reasonably possible as the property contains grass which exceeds the height of eight (8) inches in violation of the City of Bloomington Municipal Code.



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 7/11/13 Time 3:45 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# _____

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# 31545

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: Grass beyond the height of 8"

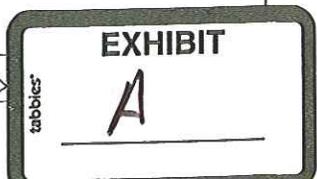
1. Fine must be paid within 2 weeks from date of issuance of the Notice of Violation (NOV) to avoid this matter being forwarded to the City's Legal Department for further enforcement action. This NOV must be returned with payment. You may pay in person or mail payment to the address listed above. Please 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 Alexander Gul
 Address 2611 Roundhill Ln
 City B State IN
 Zip Code 47401

Agent Name _____
 Address _____
 City _____ State _____
 Zip Code _____

BPW:

Mail Copies To: Resident: _____ Owner:



2611 E. Roundhill Ln.
11 July 2013



EXHIBIT
tabbles®
B

11 JULY 2513



11 JULY 2013



*Added 8-0
Saulsbury absent*

ORDINANCE 12-23

TO AMEND TITLE 6 (HEALTH AND SANITATION), TITLE 15 (VEHICLES AND TRAFFIC), AND TITLE 17 (CONSTRUCTION REGULATIONS) OF THE BLOOMINGTON MUNICIPAL CODE

- Re: Adjusting Fees and Fines Found in Chapter 6.06 (Refuse and Weeds), Chapter 15.48 (Removal and Impoundment of Vehicles), Section 15.60.080 (Services and Fees), and Section 17.08.050 (Fees) and Making Other Related Changes to those Provisions

- WHEREAS, Chapter 6.06 of the Bloomington Municipal Code sets forth provisions regarding the regulation of refuse and weeds in the City's jurisdictional limits; and
- WHEREAS, the City of Bloomington is concerned with properties which regularly and consistently fail to comply with the requirements of Chapter 6.06, which negatively impacts the Bloomington community's livability, and the City therefore feels modification to the current Chapter's penalty section is in order; and
- WHEREAS, Indiana Code Chapter 36-8-10.1 requires a municipality, when substantially altering an existing ordinance which regulates the removal of weeds and rank vegetation, to comply with certain notice requirements not presently found within Chapter 6.06; and
- WHEREAS, Bloomington Municipal Code Chapter 15.48 regulates the removal and impoundment of vehicles, and the City of Bloomington Police Department wishes to offset the cost of enforcing and administering said Chapter through imposition of an administrative fee; and
- WHEREAS, to the extent practical, the City of Bloomington wishes to offset the cost of the Police Department providing accident reports under Bloomington Municipal Code Section 15.60.080(a)(1) by increasing an administrative fee; and
- WHEREAS, to the extent practical, the City of Bloomington wishes to offset the cost of the Police Department providing fingerprinting services under Bloomington Municipal Code Section 15.60.080(a)(5) by increasing an administrative fee; and
- WHEREAS, Bloomington Municipal Code Sections 15.60.080(a)(1), (6), (7), (10), (12) and (14) reference Indiana Code provisions which have been modified or repealed, which therefore requires the aforementioned municipal code sections to also be modified or repealed; and
- WHEREAS, Bloomington Municipal Code Section 17.08.050(e) sets a fee of fifty-five dollars to obtain a permit for either a temporary or a permanent sign, which does not cover the considerable amount of time and resources taken in processing and issuing these sign permits and should be raised; and
- WHEREAS, Bloomington Municipal Code Section 17.08.050(e) also references provisions in Bloomington Municipal Code Title 20 which have since been amended and are no longer applicable and should be amended to accurately reflect these prior changes and to ensure consistency in the overall municipal code;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. Chapter 6.06 of the Bloomington Municipal Code entitled "Refuse and Weeds" shall be deleted and replaced with Chapter 6.06 "Garbage and Weeds." The codifier shall insert the title in the Table of Contents for Title 6 "Health and Sanitation." Chapter 6.06 shall read as follows:

CHAPTER 6.06

GARBAGE AND WEEDS

Sections:

- 6.06.010 Definitions.
- 6.06.020 Deposit of garbage.
- 6.06.030 Use of city garbage containers.
- 6.06.040 Use of private garbage containers.
- 6.06.050 Excessive growth.
- 6.06.060 Inspections.
- 6.06.070 Enforcement procedures.



6.06.080	Failure to remedy.
6.06.090	Cost of removal by city.
6.06.100	Vehicles hauling garbage.
6.06.110	Violations.

6.06.010 Definitions.

As used in this chapter, the following terms have the following meanings unless otherwise designated:

“Board” means the City of Bloomington Board of Public Works.

“Garbage” means putrescible animal and vegetable wastes, resulting from handling, preparation, cooking and consumption of food; refuse; and rubbish.

“HAND” means the City of Bloomington’s Housing and Neighborhood Development Department.

“Owner” means a person holding legal title to real property within the City of Bloomington.

“Person” means an individual, partnership, corporation, trust, or any commercial association or venture, however defined.

“Putrescible” means substances which are subject to organic decomposition.

“Recyclable materials” means those materials designated by the Board or its designee as those which may be collected for recycling purposes. Such materials may include, but may not be limited to, aluminum products, clean glass containers, bimetal containers, newspapers, magazines and periodicals, and plastic containers. What constitutes “recyclable materials” may change depending on what the Board or its designee is able to dispose of through their recycling efforts.

“Refuse” means all putrescible and nonputrescible solid wastes, including animal wastes, garbage, rubbish, ashes, street cleanings, and solid market and industrial wastes.

“Rubbish” means nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, wood, glass, bedding, crockery, construction debris, and similar materials.

“Weed” means any plant or vegetation classified as a detrimental plant, invasive plant or noxious weed by either the State of Indiana under authority of I.C. 15, entitled “Agriculture and Animals” or the United States government in accordance with 7 USC 7701. The term shall also include the vegetation listed in Section 20.05.059 of the Bloomington Municipal Code

“Yard waste” means grass, weeds, leaves, brush, tree trimmings, hedge clippings, and other yard and garden materials.

6.06.020 Deposit of garbage.

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 later remove, cover, or burn it. This provision shall not restrict the filling of low lands within the city with brick, stone, sand, gravel, cold ashes, or dirt after the appropriate permit has been obtained from the City Engineering Department.

6.06.030 Use of city garbage containers.

It is unlawful for any person to deposit any household or commercial garbage, recyclable materials or yard waste in any receptacle maintained on a sidewalk or at any other public location by the city for disposal of refuse by pedestrians.

6.06.040 Use of private garbage containers.

It is unlawful for any person to deposit garbage, recyclable materials or yard waste in a receptacle or dumpster unless said person has permission from the owner of the receptacle or dumpster to use it for garbage, recyclable materials or yard waste disposal.

6.06.050 Excessive growth.

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 eight inches or to such extent that the growth is detrimental to the public health and constitutes a nuisance.

6.06.060 Inspections.

It shall be the duty of the police department or HAND to make a careful inspection of any lots, grounds and tracts of land situated within the corporate limits of the city for the purpose of determining whether there is a violation of this chapter.

6.06.070 Enforcement procedures.

(a) If the director of HAND, the assistant director, any neighborhood compliance officer, or any other designee of the director (collectively referred to as "staff") determines that there is a violation of this chapter, that person shall issue a notice of violation (NOV) to the responsible party. For purposes of issuing a NOV, the following persons shall be considered responsible parties, with liability for fines and responsibility for remedy of the violation: persons with any possessory interest in the property; property owner(s); and/or any persons who have caused the violation.

Liability for fines shall not attach to nonpossessory property owner(s) for a period of seven days following issuance of the NOV, provided that the nonpossessory property owner(s) presents to HAND, within seven days after issuance of the NOV, a true and exact copy of any and all leases in effect during the time period covered by the NOV.

(b) The NOV shall be in writing and shall be served on one or more of the responsible parties in one or more of the following manners: delivery in person; by first class mail; and/or by placement in a conspicuous place on the property where a violation occurs. The notice shall state:

- (1) The location of the violation;
- (2) The nature of the violation;
- (3) The period of correction (if any);
- (4) The fine assessed for the violation;
- (5) Additional remedies the city may seek for violation (including abatement of the violation by HAND or by a private contractor hired by HAND);
- (6) That the fine is to be paid at HAND;
- (7) That the fine may be contested in the Monroe County Circuit Courts;
- (8) That the NOV may be appealed to the Board, provided the appeal is in writing and filed with the Board no later than seven (7) days from the date of the NOV.

(c) Schedule of Fines. The initial penalty or fine for all violations of this chapter shall be fifty dollars. A second violation of this chapter in any twelve-month period shall be subject to a penalty or fine of one hundred dollars. A third and all subsequent violations of this chapter in any twelve month period shall be subject to a penalty or fine of one hundred and fifty dollars. The twelve-month period described above shall begin on August 1 of each year and end on July 31 of the following year.

(d) If the responsible party fails to pay any accumulated fines, the city's legal department may collect said fines in any manner authorized by law.

6.06.080 Failure to remedy.

(a) HAND may file a request with the Board for the abatement of any property still in violation of a NOV after the correction period in the NOV has expired.

(b) The property owner who is the subject of an abatement request by HAND shall be notified of the request; said notice shall state the following:

- (1) The location of the violation;
- (2) The nature of the violation;
- (3) A statement that abatement of the violation is being sought;
- (4) A statement that the abatement may be provided by the city or by a private third-party contractor hired by the city to perform the abatement;
- (5) A statement that the property owner will be liable for any and all costs associated with the city, and/or the city's contractor, abating the property;
- (6) A statement that if the property owner fails to reimburse the city for any and all costs associated with an abatement of his property, said costs shall be filed with the county auditor and placed on the tax duplicate for the property at issue; said costs being collected as taxes are collected;
- (7) The date, time and location of the Board's hearing; and
- (8) A statement indicating that the property owner is entitled to appear at said hearing and is entitled to present arguments and evidence in his defense at said hearing.

The abatement notice described in the above subsection (b) shall be in writing and shall be served on the property owner via certified mail, return receipt requested. If the abatement notice is returned as undeliverable the notice shall be given by personally delivering a copy of the abatement notice to the property owner; leaving a copy of the abatement notice at the usual place of abode of

the property owner; sending by first class mail a copy of the abatement notice to the last known address of the property owner; or by serving the agent of the property owner.

(c) At the abatement hearing the Board shall hear evidence from all parties and render its decision in writing.

(d) All appeals from the Board's decision on an abatement request shall be made to courts of competent jurisdiction within ten days.

(e) If an initial notice of abatement was provided in accordance with this Section, and Section 6.06.070 was first followed, a continuous abatement notice may be posted at the property at the time of abatement instead of by certified mail. A continuous abatement notice serves as notice to the property owner that each subsequent violation of this chapter during the same twelve-month period for which the initial NOV was provided may be abated by the City or its private third-party contractors.

6.06.090 Cost of removal by city.

If the landowner fails to remedy a violation under this chapter, the controller shall make a certified statement of the actual cost incurred by the city for any abatement conducted by the city or its private third-party contractor. The statement shall be served on the property owner by certified mail, return receipt requested. The property owner shall pay the amount in the statement to the city legal department within ten days after receiving it. If the landowner should fail to pay within the ten-day period, a certified copy of the statement of costs shall be filed in the office of the county auditor. The auditor shall place the amount claimed on the tax duplicate against the property affected by the work. The amount shall be collected and disbursed to the general fund of the city.

6.06.100 Vehicles hauling garbage.

(a) It is unlawful to transport garbage, recyclable material, yard waste, stone or other materials that are likely to fall from a vehicle unless such materials are covered and secured so as to prevent their deposit on public and private property.

(b) Any materials falling from a vehicle shall be promptly removed by the person responsible for their deposit. If such person neglects or refuses to remove the materials, the city shall cause such materials to be removed at the expense of the person responsible, who shall be liable to pay the city the cost of the removal.

6.06.110 Violations.

Violations of the provisions of this chapter are declared a public nuisance. Each day that a violation continues shall constitute a separate violation.

~~SECTION 2. A new Section 15.48.070 entitled "Administrative Fee" shall be created and shall read as follows:~~

~~(a) If a vehicle is removed and impounded pursuant to Section 15.48.020, then in addition to any towing and storage charges assessed under Section 15.48.030, an administrative fee of twenty-five dollars (\$25.00) shall be levied when the vehicle owner or last operator obtains a copy of the Abandoned/Impounded Vehicle Report from the Police Department.~~

~~(b) This administrative fee shall be for the purpose of offsetting, to the extent practicable, the cost to the City of implementing, enforcing and administering the provisions of this Chapter.~~

~~(c) The administrative fee shall be deposited into the City's General Fund.~~

SECTION 3. Section 15.60.080(a)(1) shall be deleted and replaced with the following:

(1) Accident Reports. The police department is authorized to charge a fee of eight dollars for copies of accident reports in accordance with the Indiana Code. The fee shall be deposited into the local law enforcement continuing education fund established by Indiana Code 5-2-8.

SECTION 4. Section 15.60.080(a)(5) shall be amended to read as follows:

(5) Fingerprinting for Noncriminal Purpose. The police department shall charge a fee of fifteen dollars per card to fingerprint any City resident who requires the prints for reasons other than official business of the City. The police department shall charge a fee of twenty-five dollars per card to fingerprint any non-City resident who requires the prints for reasons other than official business of the City; additional cards for non-City residents shall be

STATE OF INDIANA)
)SS:
COUNTY OF MONROE)

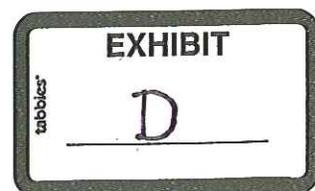
IN THE MONROE COUNTY CIRCUIT COURT
CAUSE NUMBER: 53C08 1308 MI 1428

ALEXANDER GUL,)
)
Plaintiff)
)
vs.)
)
CITY OF BLOOMINGTON,)
)
Defendant.)

ORDER

Comes now the Plaintiff having filed a Motion for Preliminary Injunction on August 28, 2013, and the Defendant having filed an Objection to said Motion on September 18, 2013. The Court having reviewed both pleadings and having heard oral arguments on the respective pleadings on October 17, 2013, now Orders the following:

1. The Defendant is enjoined from issuing any further Notices of Violation and fines to the Plaintiff for alleged violations of Section 6.06.050 of the Bloomington Municipal Code (“BMC”) on the property located at 2611 East Roundhill Lane, Bloomington, Indiana (“the Property”);
2. The Defendant may abate the Property if it is in violation of Section 6.06.050 of the BMC, provided the following conditions are met:
 - a) The Defendant shall not assess any costs incurred by the Defendant in abating the Property against the Plaintiff unless and until this litigation is fully resolved in favor of the Defendant;



- b) The Defendant shall not place a lien on the Property to recover any costs incurred by the Defendant in abating the Property unless and until this litigation is fully resolved in favor of the Defendant;
- c) The Defendant shall not engage in landscaping the Property, but rather shall only take those abatement actions necessary to bring the Property into compliance with Section 6.06.050 of the BMC; and
- d) The Defendant shall utilize its Environmental Planner during any abatement process of the Property in order to ensure that whenever it is reasonably possible no permitted vegetation is removed or cut on the Property.

3. This Order shall remain in effect until this Court renders a final ruling on the merits.

SO ORDERED THIS 21st DAY OF OCTOBER, 2013.



Honorable Valeri Haughton
Monroe County Circuit Court VIII

Distribution:

Alex Tanford, Attorney for Plaintiff
Patricia Mulvihill, Attorney for Defendant



tabbles®
EXHIBIT
E





NOTICE

ABATEMENT BEING REQUESTED

Date: October 28, 2013

Address: 2611 East Roundhill Lane, Bloomington, Indiana

Owner: Alexander Gul

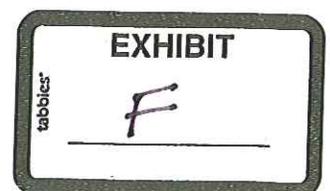
Violation: Bloomington Municipal Code Section 6.06.050 is being violated at the above-referenced property, as said property contains grass which exceeds the height of eight (8) inches.

Abatement: The City of Bloomington is requesting the Board of Public Works to grant the City permission to abate the above-referenced property, in that, the City seeks permission to bring the grass located on the property to a height below eight (8) inches so that said property is no longer in violation of the City's municipal code.

The abatement will be provided by a private third-party contractor hired by the City to perform the work.

In light of Judge Haughton's Order, dated October 22, 2013, the following conditions will be met if an abatement order is granted by the Board of Public Works and if an abatement of the property in question occurs:

- The City will not assess any costs incurred by it in abating the property against Mr. Gul unless and until the litigation is fully resolved in favor of the City;
- The City will not place a lien on Mr. Gul's property to recover any costs incurred by it in abating said property unless and until the litigation is fully resolved in favor of the City;
- The City will not engage in landscaping Mr. Gul's property, but rather shall only take those abatement actions necessary to bring said property into compliance with Section 6.06.050 of the Bloomington Municipal Code; and



- The City will utilize its Environmental Planner, Linda Thompson, during any abatement process of Mr. Gul's property in order to ensure that whenever it is reasonably possible no permitted vegetation is removed or cut on said property.

Note, in light of the Order issued by Judge Haughton the following statements provided immediately following herein do not apply at this time to this specific abatement request, but are required by Section 6.06.080 of the Bloomington Municipal Code to be included in any Notice of Abatement:

- *Property owners whose properties are abated are liable for any and all costs associated with the City's contractor abating the property;*
- *Property owners who fail to reimburse the City for any and all costs associated with abatement will result in said costs being filed with the Monroe County Auditor and placed on the tax duplicate for the property, with said costs being collected as taxes are collected.*

The Board of Public Works will hear the City's request for abatement of 2611 East Roundhill Lane on November 5, 2013, at 5:30 p.m. in the Council Chambers of City Hall, located at 401 North Morton Street, Bloomington, Indiana.

Any owner of the property noted above is entitled to appear at the November 5th hearing, either in person or via his legal representative, to present arguments against the abatement and evidence in his/her defense.

Pursuant to Section 6.06.080(e) of the Bloomington Municipal Code, if the Board of Public Works grants the City's request for abatement of 2611 East Roundhill Lane at its November 5th, meeting, a continuous abatement notice will be issued allowing the City to abate further violations of Section 6.06.050 of the Bloomington Municipal Code without providing additional hearings before the Board of Public Works. Continuous orders are posted at the property.



City of Bloomington
H.A.N.D.

Board of Public Works

Meeting Date: 05 November 2013

Petition Type: Resolution for Notice by Publication

Address: 013-28210-00 Park Ridge Lot 41, commonly known as 207 S. Meadowbrook Dr.

Petitioner: Housing and Neighborhood Development

Inspector: Michael Arnold

Staff Report: 30 July 2013 Issued Order to Repair and Remove
27 August 2013 Order to Repair and remove upheld
10 October 2013 Partial change in ownership
05 November 2013 Request for Notice by Publication

While sealing the main structure at this location, it was noted that there was a deteriorated accessory structure in the backyard and a wood fence that is in need of repair. In order to remove the structure and repair or remove the fence an approval to bush hog/clear lot as needed to access the shed and the fence is also required. There has been a change to the ownership of the structure. Arvind Parkhe has been removed from documentation at the Recorder's Office. Judith Parkhe is now the only owner of record. No current address has been found. All mail has been returned from all addresses known for Judith Parkhe.

Attachments: Resolution Pictures

Notice by Publication

Order to Repair and Seal the Unsafe Structure at 207 S. Meadowbrook Dr. & Notification of Bid Letting to Repair and Seal Unsafe Structure at 207 S. Meadowbrook Dr.

The individuals listed at the bottom of this Notice are hereby notified that the City of Bloomington HAND Department has issued an Order Remove and Repair, pursuant to Ind. Code 36-7-9-5, the structure located at 207 S. Meadowbrook Dr., whose legal description is 013-28210-00 Park Ridge Lot 41, Parcel Number 53-05-35-406-073.000-005. The shed shall be removed and the fence repaired by 4:00pm on 05 November 2013. A hearing will be held by the Board of Public Works on 05 November 2013 at 5:30 p.m. in the Council Chambers of City Hall, located at 401 North Morton Street, Bloomington, Indiana; any of the listed individuals, or their counsel, are permitted to attend this hearing where they may present evidence, cross-examine opposing witnesses and present arguments. If the shed is not removed and the fence is not repaired by 4:00pm on 05 November 2013, HAND will hire a private contractor to effectuate the terms of this Order to Remove and Repair via letting bids. HAND may be contacted at 812-349-3401 or 401 North Morton Street, P.O. Box 100, Bloomington, Indiana 47402.

Judith A Parkhe

**BOARD OF PUBLIC WORKS
RESOLUTION 2013-97
Service by Publication Appropriate for
Unsafe Structure at 207 S Meadowbrook Dr**

WHEREAS, the City of Bloomington Housing and Neighborhood Development (HAND) has issued an Order to Repair and Remove structures located at 207 S Meadowbrook Dr. (the Property) because said structures are unsafe as defined by both Indiana Code 36-7-9 and Title 17 of the Bloomington Municipal Code; and

WHEREAS, HAND has issued a Notice to the owner of record for the Property, and those individuals or corporations who are believed to have a substantial interest in the Property, that if the Order to Repair and Seal is not complied with then HAND will seek bids from private contractors to repair the structures itself and that any costs associated therewith may be assessed as a lien against the Property; and

WHEREAS, HAND has attempted to notify the owner of record of the Property, and those individuals or corporations who are believed to have a substantial interest in the Property, of both the Order to Repair and Remove and the Notice of Bid Letting in accordance with the notice requirements of Indiana Code 36-7-9-25, but said attempts have been unsuccessful despite all reasonable efforts made by HAND; and

WHEREAS, the Board of Public Works specifically concludes that HAND made a reasonable effort to obtain service of the Order to Repair and Remove and the Notice of Bid Letting in accordance with the notice requirements of Indiana Code 36-7-9-25(a), but that said efforts were unsuccessful.

WHEREAS, the Board of Public Works feels that as the service required by Indiana Code 36-7-9-25(a) has been unsuccessful, despite all reasonable attempts to perfect service, that it is appropriate for HAND to obtain legal service in accordance with Indiana Code 36-7-9-25(b) (i.e. via publication in the Herald Times Newspaper);

NOW, THEREFORE, BE IT RESOLVED:

That HAND shall provide service of its Order to Repair and Seal and Notice of Bid Letting via publication in the Herald Times Newspaper in accordance with the requirements of Indiana Code 36-7-9-25(b).

**CITY OF BLOOMINGTON
BOARD OF PUBLIC WORKS**

By: _____
Charlotte Zietlow, President

By: _____
Dr. Frank N. Hrisomalos

By: _____
James McNamara, Vice President

STATE OF INDIANA)
)SS:
COUNTY OF MONROE)

Before me, a Notary Public in and for said County and State, personally appeared Charlotte Zietlow, James McNamara, and Dr. Frank N. Hrisomalos, of the City of Bloomington Board of Public Works, who acknowledged the execution of the foregoing Resolution as their voluntary act and deed.

WITNESS, my hand notarial seal this _____ day of _____, 2013.

My Commission Expires: _____

Notary Public Signature

Resident of _____ County

Printed Name of Notary





Board of Public Works Staff Report

Project/Event: Request to place fence and deck in right of way at 402 E. 4th St.

Staff Representative: Rick Alexander

Petitioner/Representative: Bruce Storm

Date: November 5th, 2013

Report: This property is located at the southeast corner of Grant and 4th. There has been a restaurant at this location for many years. They currently have outdoor seating in this same general location as well. They are in the process of upgrading the area and are requesting that the improvements be approved. The deck will be enclosed by a fence and will include the handicap ramp entry to the indoor seating.

Recommendation and Supporting Justification: The right of way on East 4th is unusually wide at 80' and these improvements appear to be in their yard area but are actually in the right of way. The property already has an outdoor seating area in the right of way but it has never been officially approved. It is time to make improvements to their facilities and also time to make the formal request of the Board of Public Works to allow the encroachments. Mr Storm has several properties in the area and has always attempted to keep them in good condition. With an encroachment agreement and a hold harmless agreement approved, he can move forward with the intended enhancements. Staff recommends approval of the request.

Recommend **Approval** **Denial** by _____

**BOARD OF PUBLIC WORKS
RESOLUTION 2013- 100
Encroachment with Deck and Fence**

WHEREAS, the Bruce R. and Shannon K. Storm Revocable Living Trust (hereinafter "Owner") owns the real property at 402 East Fourth Street in Bloomington (Herein "property"); and

WHEREAS, a deck area already exists at this location and is utilized as an outdoor dining area; and

WHEREAS, the Owner seeks to improve the condition of the deck area and add a fenced enclosure; and

WHEREAS, the fencing does not interfere with pedestrian traffic or the vehicular line of sight along the roadway; and

WHEREAS, the City of Bloomington Board of Public Works has authority pursuant to IC 36-9-2-5 to establish, vacate, maintain, and operate public ways, including air ways over sidewalks; and

WHEREAS, the Owner agrees to release and forever discharge and hold harmless and indemnify the City of Bloomington, its departments, officers, agents, employees, its successors and assigns ("City") for any and all causes of action including attorney's fees, loss or injury of whatsoever character that occur as a result of Owner's request to utilize right of way.

NOW, THEREFORE, BE IT RESOLVED, that the City of Bloomington Board of Public Works agrees not to initiate any legal action against the Owner, for the installation as described below:

1. A Fifty-seven foot (57') by twenty-one foot (21') raised deck along the northwest corner of the building enclosed by a four foot (4') wooden fence as depicted in Exhibit A.
2. Owner agrees to maintain described encroachments and to keep them safe and attractive.
3. The terms of this agreement shall be in effect upon execution of this document by Owner and acknowledgment by Owner that the Board may alter the terms and conditions to address unanticipated problems or may revoke permission if Board determines the encroachment is undesirable in terms of the general welfare of the City.
4. Owner understands and agrees that if City or public utility needs to work in said

area for any reason, and the encroachments need to be removed to facilitate City or utility, it will be at the expense of Owner and that the City will not be responsible for any damage which may occur to the encroachments by City's workers or contractors, or by those of a public utility.

5. In the event the Owner sells the property during the term of this authorization, this authorization will continue under the original conditions and be binding on their successor. However, if current owner or the new Owner changes encroachments in any way, they must return to the Board of Public Works for permission to do so.

Signed this _____ day of _____, 2013.

BOARD OF PUBLIC WORKS

OWNER

Charlotte Zietlow

Bruce R. Storm

James McNamara

Date: _____

Dr. Frank N. Hrisomalos

**RELEASE, HOLD HARMLESS
AND
INDEMNIFICATION AGREEMENT**

WHEREAS, the Bruce R. and Shannon K. Storm Revocable Trust owns the real property at 402 East Fourth Street, in Bloomington, IN, (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 airway above and in the sidewalk adjacent to the building at 402 East Fourth Street, which is operated, supervised and maintained by the RELEASEE'S Board of Public Works, to install a raised deck and fencing over and in RELEASEE'S property; and

WHEREAS, the RELEASEE wishes to cooperate in said endeavor by allowing such encroachments to be placed 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.

Bruce R. Storm, represents and certifies that he 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"

Bruce R. Storm

City of Bloomington





Board of Public Works Staff Report

Project/Event: Request to install meter pit vault and bike racks in right of way at 420 S. Washington

Staff Representative: Rick Alexander

Petitioner/Representative: Justin Fox/Smith Neubecker and Assoc.

Date: November 5th, 2013

Report: This property is located on the west side of Washington between 2nd and 3rd Streets. They have applied for both a grading permit and a building permit to construct a new apartment building at this location. North of this property the right of way is 40' wide. Just before this lot the right of way increases to 56' in width. All of the additional right of way is on the west side rather than being centered. If it weren't for this peculiarity in the off street right of way, this would not be an issue.

Recommendation and Supporting Justification: The fire department prefers that the vault be at the front of the building due to access issues. There could be room to the north of the building but it is encumbered by a sanitary sewer main that does not leave enough room. CBU does not want the pit in an area that could be driven over either. The 16' wide swath of right of way is set back from buildings to the north and it is unlikely that we would ever need to use this to widen the road. The bike racks are required by the Planning Department as a condition of approval. They would be approved at the staff level if it were not for the vault encroachment. An encroachment agreement and a hold harmless agreement have been prepared to allow the vault and bike racks. Staff members have reviewed the locations and support the request.

Recommend **Approval** **Denial by** _____

RESOLUTION 2013-101
ENCROACHMENT AT 420 South Washington Street

WHEREAS, Fox Property and Development LLC, (hereinafter referred to as “Owner”), own a commercial lot at 420 South Washington Street in Bloomington; and

WHEREAS, the City of Bloomington (“City) has authority pursuant to IC 36-9-2-5 to establish, vacate, maintain, and operate public ways, including air ways over sidewalks; and

WHEREAS, the erection of a new commercial building requires the installation of a one foot by seven feet (1’ x 7’) water meter/valve vault for water service, (hereinafter referred to as “vault”); and

WHEREAS, in determining the placement of the vault after consultation with City of Bloomington Departments, all agree that the location of this vault will best serve the Bloomington Fire and Utilities Departments by being placed adjacent to the right of way of South Walnut Street; and

WHEREAS, due to site plan requirements there is not adequate space available on the lot for the installation of the required vault; and

WHEREAS, due to site plan requirements of the Planning Department, five bicycles racks are to be installed in the right of way; and

WHEREAS, Owner is requesting permission from the Board of Public Works for an encroachment into the public right-of-way for the installation of a water meter/valve vault as shown on the attached drawing as exhibit A which will be a part of this recorded document; and

WHEREAS, the right-of-way at this location is very wide and the new structure should not create any problems for the City, but the City may, from time to time, need to enter into the right-of-way for various maintenance, health and safety purposes and does not desire to vacate the right-of-way;

NOW, THEREFORE, BE IT RESOLVED, that the City of Bloomington, by and through its Board of Public Works (“hereinafter “City”), agrees that the City will not initiate any legal action against the Owner regarding the maintenance of the vault or bicycle racks in the described area of the City right-of-way, under the following conditions:

1. The Owner shall be allowed to install the meter vault in the right-of-way immediately adjacent to their property at 420 South Washington Street with the agreement that the bicycle racks, the vault materials and the exact locations will be approved by the City Engineering staff.

2. The Owner shall be responsible for the timely performance of all maintenance of the bicycle racks and vault and shall bear all expense regarding such maintenance.
3. All materials and labor necessary for the improvement and maintenance of the encroachments are the sole responsibility of the Owner.
4. Owner agrees that the only encroachments that may be installed in the right-of-way are those described herein. In the event Owner wishes to install further encroachment they must obtain additional approval from the Board of Public Works.
5. The City retains the right for the City, all public utilities, or any entity which has obtained a permit to work in the right-of-way, to enter into this right-of-way when, in the City's opinion, such entry is necessitated in order to maintain said right-of-way.
6. The terms of this agreement shall be in effect upon execution of this document by Owner and acknowledgment by Owner that the Board of Public Works may alter the terms and conditions to address unanticipated problems or may revoke permission if Board determines the encroachment is undesirable in terms of the general welfare of the City.
7. If at any time it is determined that the City right-of-way should be improved to better serve the public or other public improvements need to be made in the right-of way, and the encroaching improvements interfere with the planned public improvements, then the Owner hereby agrees, on their own behalf and on behalf of their successors in interest, to cease use of the right-of-way and remove the encroachments upon notice by the City.
8. Owner agrees for themselves and their successors in interest to release and forever discharge, indemnify and hold harmless the City of Bloomington, its departments, officers, agents, employees, successors and assigns for an and all actions, including attorney's fees, losses or injuries that occur as a result of its use of the right-of-way. In case any claim or action in court is brought against the City of Bloomington, or an office or agent of it, for the failure, omission or neglect of the Owners to perform any of the covenants, acts, matters or things by this agreement undertaken or for injury or damage caused by alleged negligence of the Owner or its agents, employees or subcontractor, the Owner shall indemnify and save harmless the City of Bloomington and its officers and agents, from all losses, damages, costs, expenses, judgments or decrees arising out of such action, including attorney's fees.
9. This resolution shall run with the land and shall bind the Owner and its successors in interest. It shall be effective from the date of passage by the

Board of Public Works and written acceptance by the Owner. This written acceptance shall be accompanied by a copy of this recorded document, which must include the Recorder's identification number.

10. Justin Fox, member of Fox Property and Development LLC, agrees by signing that he has full power by proper action to enter into this agreement and has the authority to do so.

BOARD OF PUBLIC WORKS

Charlotte Zietlow, President

By: _____
Justin Fox, member
Fox Property and Development, LLC

James McNamara

Dr. Frank N. Hrisomalos

STATE IF INDIANA)
)SS:
COUNTY OF MONROE)

Before me, the undersigned, a Notary Public in and for said county and state, personally appeared Charlotte Zeitlow, James McNamara and Dr. Frank N. Hrisomalos, members of the City of Bloomington Board of Public Works, and acknowledge the execution of the forgoing instrument this ____ day of _____, 2013.

Witness my hand and official seal.

Notary Public Signature

My Commission expires: _____

Printed Name

County of Residence: _____

STATE IF INDIANA)
)SS:
COUNTY OF MONROE)

Before me, the undersigned, a Notary Public in and for said county and state, personally appeared Justin Fox a member of Fox Property and Development LLC and acknowledged the execution of the forgoing instrument this ____ day of _____, 2013.

Witness my hand and official seal.

Notary Public Signature

My Commission expires: _____

Printed Name

County of Residence: _____

**RELEASE, HOLD HARMLESS
AND
INDEMNIFICATION AGREEMENT**

WHEREAS, Fox Property and Development LLC, in Bloomington, IN, (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 use of the public-right-of-way west of South Walnut Street and adjacent to the property at 420 South Washington Street; and

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

NOW, THEREFORE, in consideration for the use of the property of RELEASEE for said purposes, the RELEASOR, for 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 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"

Justin Fox

City of Bloomington

I affirm under the penalties for perjury that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Jacquelyn F. Moore

This document prepared by Jacquelyn F. Moore, Attorney at Law, City of Bloomington Legal Department, P. O. Box 100, Bloomington, Indiana, 47402



Stephen L. Smith, P.E., L.S.
Steven A. Brehob, BS.CnT.

October 29, 2013

Rick Alexander
City of Bloomington
Engineering Department
401 N. Morton Street
Bloomington, IN. 47404

RE: Fox Building
420 S. Washington Street
Encroachment Agreement

Dear Rick,

On behalf of our client, Justin Fox, we respectfully request to be placed on the Board of Public Works agenda for consideration of an encroachment agreement for the proposed building located at 420 S. Washington Street. The attached exhibit shows the locations of the encroachments and details of the items to be installed within the public R/W.

The project received Plan Commission approval in June and the necessary encroachments were noted on the plans and in the staff report. The need for these encroachments arises from several site peculiarities. The driving factor in the need for the encroachments is the excessive amount of R/W along Washington Street at this location.

The R/W of Washington Street immediately north of the Ellis Floral building is 40'. The roadway is centered within the R/W. At the north property line of the Ellis site, the road R/W widens to 56'. This widening is not centered on the roadway, but is shifted to the west. This situation results in an additional 16' of R/W off of the frontage of the 420 S. Washington site. Were it not for this peculiarity in R/W, there would be no need for the encroachment.

An additional peculiarity of the property is the fact that the existing Ellis Floral building to the north encroaches into the existing public ally by 3'. A sidewalk along the south building wall line encroaches an additional 6'. The remaining platted alley area is only 3'. The Fox Building was set an additional 10' off of the alley property line and the sidewalk along the Ellis Floral building will be



Stephen L. Smith, P.E., L.S.
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reduced in width by 2' to create a usable alley area of 15'. The majority of which is located on the Fox Building property.

Furthermore, there is an existing 27" sanitary sewer line that is not located within the public alley. Additional area on the Fox site had to be provided to accommodate the existing City sewer main. Neither the bicycle rack nor the water meter pit can be located on the Fox property within the newly created alley drive area.

Bicycle racks are common encroachment requests. It is not unusual for a water meter pit to encroach into the R/W either. The only above grade encroachments associated with the water meter pit are the post indicator valve and fire department connection. These two items are located approximately 4' away from the building (4' into the public R/W) and are located within a lawn area in front of the building. There are no encroachments that would block or limit pedestrian access and use of the public R/W.

Given the site constraints of this property, we respectfully request approval of the 2 encroachments described above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve A. Brehob', with a long horizontal flourish extending to the right.

Smith Neubecker & Associates, Inc.

J:\4937\approval processing\Encroachment Letter_10-29-13







Board of Public Works Staff Report

Project/Event: Turkey Trot, Thursday, November 28, 2013

Petitioner/Representative: Bloomington Bagel Company

Staff Representative: Miah

Meeting Date: 11/28/2013

Bloomington Bagel has sponsored this 5K run/walk for several years. The route includes sidewalks only on Dunn, 3rd, 6th, 7th, 10th, and Union Streets as well as Woodlawn Avenue and Indiana Avenue. The run begins at 7:30 a.m. and is over by 8:30 a.m. Approximately 250 runners/walkers participate.

Bloomington Police Department has issued a Parade Permit for this event pending BPW approval.

Staff recommends approval of the request.

Recommend **Approval** **Denial by** Miah Michaelsen

RESOLUTION 2013-102
Turkey Trot

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

WHEREAS, Bloomington Bagel Company has requested use of public streets and sidewalks for the Turkey Trot; and

WHEREAS, Bloomington Bagel Company has agreed to provide all traffic control as deemed necessary and as instructed by Bloomington Engineering Department and/or Bloomington Police Department and to incur the complete cost; and

WHEREAS, Bloomington Bagel Company, herein after "Sponsor", has agreed to execute the "Release, Hold Harmless and Indemnification Agreement" regarding the use of the City of Bloomington's property as described on Attachment A and has agreed to provide the City with a Certificate of Insurance which names the City of Bloomington as an additional insured.

NOW, THEREFORE, BE IT RESOLVED:

1. That the City of Bloomington Board of Public Works agrees that public streets and sidewalks may be utilized to conduct the Turkey Trot between 7:30 a.m. and 8:30 a.m. on Thursday, November 28, 2013.
2. The City of Bloomington Board of Public Works agrees that vehicular traffic may be restricted for short periods of time as runners and walkers use the following streets: Dunn Street, 6th Street, Indiana Avenue, 7th Street, Woodlawn Avenue, 10th Street, Union Street, and 3rd Street during the event.
3. The Sponsor shall be responsible for obtaining any and all required permits as well as being responsible for all legal and financial expenditures, and to obtain permission from the appropriate entity to use Indiana University property.
4. The Sponsor shall be responsible for all clean-up that may be necessary as a result of the event to be completed by 8:30 a.m., Thursday, November 28, 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 event.
6. The Sponsor shall be responsible for notifying the general public in advance by notice to the press, Bloomington and IU Transits, local cab companies and all emergency services 48 hours prior to the event and the fact that vehicular traffic may be temporarily delayed at times.

RESOLUTION 2013-102

7. _____, 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.
8. 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:

BLOOMINGTON BAGEL COMPANY

Charlotte Zietlow, President

Signature

James McNamara

Printed Name

Dr. Frank N. Hrisomalos

Position

**RELEASE, HOLD HARMLESS
AND
INDEMNIFICATION AGREEMENT**

WHEREAS, Bloomington Bagel Company, (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 sections of Dunn Street, 6th Street, Indiana Avenue, 7th Street, Woodlawn Avenue, 10th Street, Union Street, and 3rd Street which is operated, supervised and maintained by the RELEASEE'S Board of Public Works, for the purpose of sponsoring the Turkey Trot, on RELEASEE's property from 7:30 a.m. – 8:30 a.m. on Thursday, November 28, 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

Bloomington Bagel Company

Board of Public Works Officer

Date

Date

RESOLUTION 2013-102

City of Bloomington
PARADE PERMIT APPLICATION

The purpose of this application is to promote and protect the safety of both the general public and parade participants.

Organization name and mailing address: Bloomington Bagel Company

Contact person and phone number: Sue Aquila 812-322-8209

Information regarding proposed parade:

Date: Thursday, November 28, 2013

Time of commencement: 7:30 am

Expected duration: 1 hour

Proposed route of Parade - commencement point, route, ending point:

It will proceed north on Dunn, take a right onto 6th street and proceed east to take a left onto Indiana, then north on Indiana to take a right and head east on 7th street, take a left onto the loop road around by the School of Public Health taking a right onto Woodlawn heading north to take a right onto 10th street, east down 10th to take a right onto Union Street, proceeding south on Union Street to take a right onto 3rd, west on 3rd to Indiana, Left onto Kirkwood and a right onto Dunn to finish back in front of the BBC.

Expected number of participants: 250

Please describe general make-up of the parade, including such information as Vehicles used, floats, bands, animals, etc.

Individual runners, joggers and walkers.

Traffic control shall be supplied by Volunteers

At the following points on the parade route: Volunteers are stationed at intersections to alert participants of vehicle traffic and to stay on the sidewalks. This has worked in past years to keep people safe and traffic moving.

NEXT PAGE

The organization requesting the permit is responsible for traffic control.
Law Enforcement Agency providing traffic control:

Confirmation received from Law Enforcement agency providing parade route traffic control:
_____ (date).

Signature of Person requesting Permit

Permit Granted _____ **Permit Denied** _____

Chief of Police, Bloomington, Indiana Date

Action taken by Police Department:

The permit is granted _____, with the following conditions:

1- Approval is pending Board of Public Works approval

2- Participants must stay on sidewalks and comply w/ state + local laws that govern pedestrian traffic

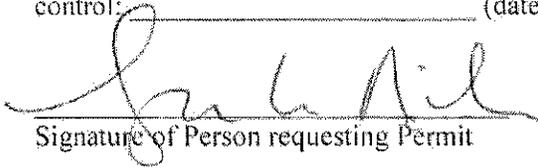
The permit is denied _____

For the following reasons:

The organization requesting the permit is responsible for traffic control.

Law Enforcement Agency providing traffic control:

Confirmation received from Law Enforcement agency providing parade route traffic control: _____ (date).



Signature of Person requesting Permit

Permit Granted _____ **Permit Denied** _____

Chief of Police, Bloomington, Indiana Date

Action taken by Police Department:

The permit is granted _____, with the following conditions:

The permit is denied _____
For the following reasons:



(http://mvp.mapmyrun.com)

Christina (/my_home/)

MY HOME (/) DISCOVER (/US/) IMPROVE

(/IMPROVE/)

Choose map location

SEARCH

COPY (/ROUTES/COPY/1254615/) CLOSE

Import (/workout/import/dashboard/)

TURKEY TROTS 5K

Begins in: Bloomington, IN

Creator: saquila (/profile/59175/)

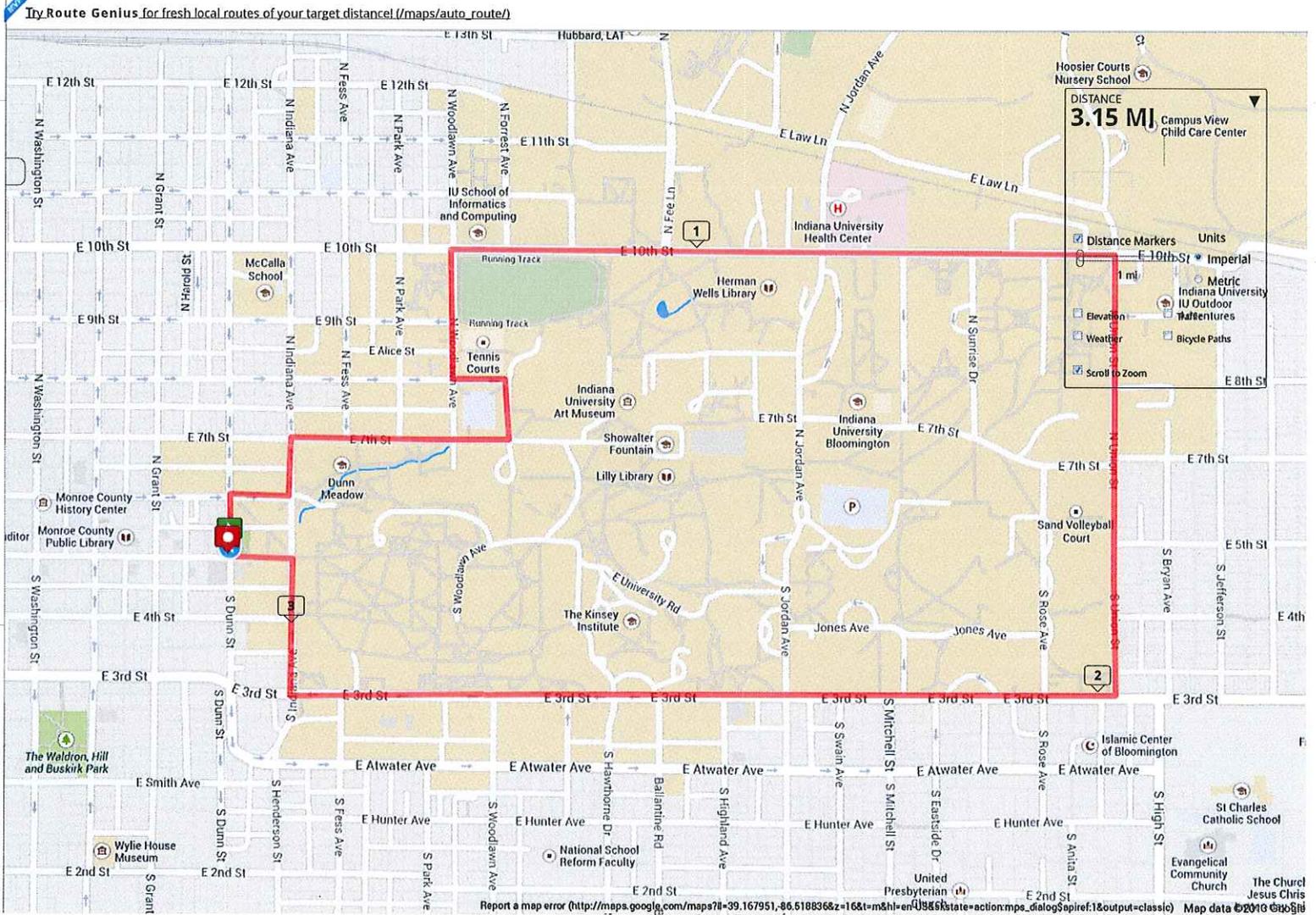
Annual Turkey Trots Race route departing from Bloomington Bagel Co.

Directions / Notes

(/routes/print/1254615/)



Go MVP (http://mvp.mapmyrun.com) - No Advertisements





Board of Public Works Staff Report

Project/Event: Agreement with Good Earth Compost and Mulch

Petitioner/Representative: Public Works/Street Department

Staff Representative: Joe Van Deventer

Meeting Date: November 5, 2013

Good Earth Compost and Mulch has agreed to accept the vacuumed leaves from the City of Bloomington Street Department for \$20.00 per trailer load. The term of this agreement shall be from October 2013 through May 2014.

Good Earth is a locally owned and operated compost and mulch manufacturing facility which has been in business for thirty (30) years. Their compost is made from natural vegetation material such as grass clippings and leaves.

Staff recommends approval of this agreement.

Recommend **Approval by Joe Van Deventer**

CITY OF BLOOMINGTON, INDIANA
BOARD OF PUBLIC WORKS
AND
GOOD EARTH

AGREEMENT FOR
VACUUMED LEAF ACCEPTANCE

THIS AGREEMENT is made and entered into this ___ day of _____, 2013, by and between the City of Bloomington, Indiana, Board of Public Works (“City”) and Good Earth.

WHEREAS, the City of Bloomington will be vacuuming dead leaves for its citizens; and

WHEREAS, Good Earth is engaged in the business of composting natural vegetation material; and

WHEREAS, Good Earth has presented the City of Bloomington with an acceptable plan for receipt of the vacuumed leaves;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL TERMS, COVENANTS, AND CONDITIONS SET FORTH HEREIN, THE CITY AND GOOD EARTH HEREBY AGREE AS FOLLOWS:

1. Good Earth shall accept from the City of Bloomington Street Department all vacuumed fall leaves collected by the City.
2. The term of this Agreement shall be from October 2013 through May 2014.
3. This Agreement may be terminated by either party with sixty (60) days written notice to the other party. Or, in the event of a party’s substantial failure to perform in accordance with the terms of this Agreement, the other party shall have the right to terminate the Agreement upon written notice. The nonperforming party shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.
4. In the event the City of Bloomington delivers material that is unacceptable due to contamination with non-biodegradable material, or otherwise unacceptable material, Good Earth shall notify the City that such delivery is unacceptable, and the City shall, within no more than fourteen (14) calendar days after such notification, return to Good Earth and either retrieve the unacceptable or contaminated material for disposal elsewhere, or remedy the contamination problem for disposal elsewhere, or remedy the contamination problem in a manner acceptable to Good Earth.
5. Good Earth shall continue its current practice of providing the City with a dedicated area where City deliveries will be dropped off, and where deliveries from no other source will be accepted.

6. The City of Bloomington shall pay Good Earth Twenty Dollars (\$20.00) per trailer load for acceptance of the vacuumed leaves.
7. Good Earth shall defend, indemnify and hold harmless the City of Bloomington, and the officers, agents and employees of the City from any and all claims, demands, damages, costs, expenses or other liability arising out of this Agreement or occasioned by the reckless or negligent performance or attempted performance of any provision thereof, including, but not limited to, any reckless or negligent act or omission to act or any willful misconduct on the part of the Good Earth, or its agents or employees or independent contractors directly responsible to it, except that the above shall not apply to the sole negligence or willful misconduct of the City or the City's agents, servants or independent contractors who are directly responsible for the City. This indemnification provision shall apply even if there is concurrent or joint negligence of the Good Earth and the City, and even if there is active or passive negligence by either or both parties.
8. No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party or any term of the Agreement shall be considered to be a waiver of any other term or breach thereof.
9. The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement to be determined void.

City of Bloomington

Good Earth

By: _____

Charlotte Zietlow, President
Board of Public Works

By: _____

Iamur J. Wright, President

Date: _____

Date: _____

By: _____

Mark Kruzan, Mayor

Date: _____



Board of Public Works Staff Report

Project/Event: Adopt-A-Roundabout Agreement with Mother Nature Landscaping

Petitioner/Representative: Department of Parks and Recreation and Public Works

Staff Representative: Mick/Susie

Meeting Date: November 5, 2013

Staff has been seeking opportunities to lower the cost of maintaining while increasing the aesthetics of some of the 80 public medians and roundabouts for which we are responsible. An interested local landscaping company, Mother Nature Landscaping, expressed interest in partnering with the City in this pilot venture at the Winslow, High and Rogers Streets roundabout. Mother Nature Landscaping and Bloomington Valley Nursery are owned by Shawn Eurtan.

Public Works owns the roundabout and Parks currently maintains it. The Parks Board approved the agreement at their regularly scheduled meeting on October 22nd. Mother Nature would like to start their work on the roundabout immediately upon approval from the Board of Public Works.

Per this proposed agreement, Mother Nature Landscaping will plant approximately \$20,000 of landscape material in the roundabout at their cost; perform monthly maintenance to the site for 5 years; periodically change landscape material in the roundabout to enhance/change the aesthetics all at no cost to the City. In exchange, the City will allow 3 small signs, approximately 18" x 24" indicating that Mother Nature Landscaping has adopted the roundabout. The engineering department has provided Mother Nature with restrictions for the site and Parks/Public Works Boards will review/approve the planting materials and signage for city ordinance and other compliance issues.

Staff is supportive of the request.

Recommend **Approval** **Denial by** Mick Renneisen and Susie Johnson



CITY OF BLOOMINGTON

**City of Bloomington
Department of Public Works
Department of Parks and Recreation**

Adopt-A-Roundabout Partnership Agreement

This agreement between the City of Bloomington, Department of Parks and Recreation (hereafter "City") and **Mother Nature Landscaping**, (hereinafter "Adopter") is to provide a means of improving, beautifying, and maintaining the roundabout located on **Winslow, High and Rogers Street**. The roundabout described is approximately 100 feet in diameter.

All materials and labor necessary for the improvement and maintenance of the roundabout are the sole responsibility of the Adopter. The Adopter agrees to check the adopted location(s) on an as needed basis (minimum monthly basis), or upon request from the City, for landscape maintenance needs, and for removal of weeds, trash and litter, and other debris from the roundabout.

The Adopter agrees to provide to the City a schematic landscape plan noting species, sizes and planting locations, and Adopter shall obtain written approval from the City of Bloomington Department of Public Works, Planning and Parks and Recreation prior to the planting of any trees, shrubs, plants, flowers, or other vegetation. The City shall review all proposed planting locations for such factors as the presence of publicly and privately owned buried utilities, and potential vehicular traffic conflicts or obstructions, and compliance with local planning and zoning ordinance requirements, prior to permitting and work to proceed on the roundabout. In addition, Adopter shall be subject to the provisions of state law regarding locating underground utilities prior to excavating the site.

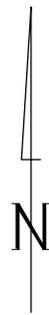
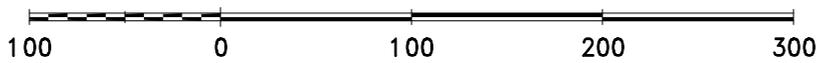
The City reserves the right to approve the design, size, material and placement of no more than three (3) signs in locations in the roundabout visible from the streets indicating that the median has been "adopted" by the Adopter. The costs associated with the manufacture, maintenance, and placement of the sign(s) shall be borne by the Adopter.

The roundabout described above shall remain the property of the City of Bloomington, and if, in the sole judgment of the City it is found that the Adopter is not meeting the terms and conditions of the agreement, the City may terminate this agreement and remove all signs. This agreement shall be in effect when signed by both parties and shall continue for a period of **five (5) years** from the date of signature; however either party may terminate the agreement earlier upon seven days written notice to the other party. At the end of the five (5) year term, Adopter shall have the right to renew this Agreement for another **five (5) year** period, provided the City, in its sole discretion, determines that the roundabout will be adopted for another five (5) year period. All materials provided by Adopter under this Agreement will remain property of the Adopter and Adopter may remove the materials, or negotiate to sell them to the City, when the Agreement concludes or is terminated by either party.

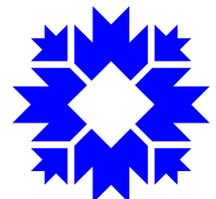


Winslow, High and Rogers Roundabout

By: smithc
24 Oct 13



City of Bloomington
Public Works



Scale: 1" = 100'

For reference only; map information NOT warranted.



Character Images



Concept Elevation

4/4/2013
1998 2013



0 4 8 16
Scale: 1/8" = 1'-0"



- (A)** **Agricultural Era**
Landscape mimics the historical culture of Bloomington during the turn of the century early 1900's. Open Prairie and wildflowers carpet the groundplain. Species include, small ornamental grasses and native perennials. A random exotic specimen in each area represents the earliest transition towards today's eclectic Bloomington culture.
- (B)** The landscape transitions into the culturally diverse, creative Bloomington of today. Specimen and colorful plantings, incorporated with berming, low voltage lighting and weathered limestone boulders represent the innovative and outside the box creativity found amongst today's Bloomington community
- (C)** The local creeks and greenways are avenues that provide a great link between the undeveloped landscape and today's developed city. This area of the landscape will represent these linkages with mass plantings of Elijah Blue Fescue to give the appearance of a meandering stream.

1998

Imagery Date: 4/4/2013 39°08'10.70" N 86°30'29.35" W elev 705 ft eye a



Board of Public Works Staff Report

Project/Event: Agreement with PEI for Fuel Monitoring Hardware and Software

Petitioner/Representative: Public Works / Fleet Maintenance

Staff Representative: Michael Young, Manager Fleet Maintenance

Meeting Date: November 5, 2013

This agreement is for the purchase and installation of fuel monitoring hardware and software. Our current Gasboy hardware and software are obsolete and unreliable. The current system has been in place for more than 25 years.

Fleet Staff requested quotes from several companies and after review; we feel that the Fuel Master Software will best suit the City's needs for tracking fuel consumption. This system was not the lowest in cost, but has features that will allow for better tracking of fuel usage.

This system will utilize our City ID tags to identify the person fueling the vehicle and has an automated component that will transfer data from the vehicle computer to the system including odometer reading and vehicle diagnostic codes.

The total cost: \$44,625.39

Recommend **Approval** **Denial by**

PROJECT NAME: Purchase of Equipment and Installation Services for Fuel Monitoring Software

AGREEMENT FOR INSTALLATION SERVICES

This Agreement, entered into on this _____ day of _____, 2013, by and between the City of Bloomington Department of Public Works through its Board of Public Works (hereinafter referred to as "Board"), and PEI Maintenance & Contracting (hereinafter referred to as "Consultant"),

WITNESSETH:

WHEREAS, the Board wishes to retain Consultant's services **for installation of fuel monitoring software and equipment for its Fleet Maintenance Department; and,**

WHEREAS, the Board requires the services of a professional consultant in order to provide such services; and

WHEREAS, Consultant is willing and able to provide such services to the Board;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Article 1. Scope of Services: Consultant shall provide required Services for the Board as set forth in Exhibit A, Scope of Services. Exhibit A is attached hereto and incorporated herein by reference as though fully set forth.

Consultant shall diligently pursue its work under this Agreement and shall complete the Services as described in Exhibit A in a timely manner. Consultant shall perform all Services as expeditiously as is consistent with professional skill and care and the orderly progress of the work.

In the performance of Consultant's work, Consultant agrees to maintain such coordination with the Board as may be requested and desirable, including primary coordination with the Public Works Department officials designated by the Board as project coordinator(s).

Consultant agrees that any information or documents, including digital GIS information, supplied by the Board pursuant to Article 3, below, shall be used by Consultant for this project only, and shall not be reused or reassigned for any purpose.

Article 2. Standard of Care: Consultant shall be responsible for completion of the Services in a manner to meet high professional standards consistent with the Consultant's profession in the location and at the time of the rendering of the services. Spence Taylor, Technology Support Manager of the City's Information and Technology Services Department, shall be the sole judge of the adequacy of Consultant's work in meeting such standards. However, Taylor shall not unreasonably withhold his approval as to the adequacy of such performance.

Article 3. Responsibilities of the Board: The Board shall have the following responsibilities under this Agreement and shall meet these responsibilities in a timely manner so as not to delay the orderly progress of the Services, and Consultant shall be entitled to rely upon the accuracy and completeness of information supplied by the Board:

A. Information/Reports

Provide Consultant with reports, studies, site characterizations, regulatory decisions and similar information relating to the Services that Consultant may rely upon without independent verification unless specifically identified as requiring such verification.

B. Representative

The Board hereby designates Spence Taylor, Technology Support Manager of the City's Information and Technology Services Department, ("Taylor") to serve as the Board's representative for the project. Taylor shall have the authority to transmit instructions, receive information, interpret and define the Board's requirements and make decisions with respect to the Services.

C. Decisions

Provide all criteria and full information as to Board's requirements for the Services and make timely decisions on matters relating to the Services.

Article 4. Compensation: The Board shall pay Consultant a fee based on the payment schedule set forth in Exhibit B, Schedule of Compensation. Exhibit B is attached hereto and incorporated herein by reference as though fully set forth. The total compensation paid including fees and expenses shall not exceed the amount of **Forty-Four Thousand Six Hundred Twenty-Five Dollars and Thirty-Nine Cents (\$44,625.39)**.

These amounts include salaries, payroll taxes and insurance, employee fringe benefits, general overhead costs, profit, and project related expenses. Payments will be made according to Consultant's monthly progress statements for each phase and shall be invoiced for the work completed only.

Additional assignments or additional services not set forth in Exhibit A, changes in work, or incurred expenses in excess of the rates set forth in Exhibit B must be authorized in writing by the Board or the Board's designated representative prior to such work being performed, or expenses incurred. The Board shall not make payment for any unauthorized work or expenses. Claims for additional work or expenses must be submitted within thirty (30) days of the completion of the work or expenditure, and must be accompanied by a statement of itemized costs.

1. Timing and Format for Billing:

Invoices shall be submitted monthly for Services completed at the time of billing and are due upon receipt. Invoices shall be considered past due if not paid within

thirty (30) calendar days of the due date. Such invoices shall be prepared in a form supported by documentation as the Board may reasonably require.

Tasks shall be invoiced separately, either as separate lines on a single invoice, or on separate invoices at the Board's direction.

2. Billing Records:

Consultant shall maintain accounting records of its costs in accordance with generally accepted accounting practices. Access to such records will be provided during normal business hours with reasonable notice during the term of this Agreement and for 3 years after completion.

Article 5. Appropriation of Funds: Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the Board are at any time not forthcoming or are insufficient, through failure of any entity, including the Board itself, to appropriate funds or otherwise, then the Board shall have the right to terminate this Agreement without penalty as set forth in Article 7 herein.

Article 6. Schedule: Consultant shall perform the Services according to the schedule set forth in Exhibit C, Schedule. Exhibit C is attached hereto and incorporated herein by reference as though fully set forth. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

Article 7. Termination: In the event of a party's substantial failure to perform in accordance with the terms of this Agreement, the other party shall have the right to terminate the Agreement upon written notice. The nonperforming party shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

The Board may terminate or suspend performance of this Agreement at the Board's prerogative at any time upon written notice to the Consultant. The Consultant shall terminate or suspend performance of the Services on a schedule acceptable to the Board, and the Board shall pay the Consultant for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to the Consultant's compensation and the schedule of services.

Upon termination or suspension of this Agreement, all finished or unfinished reports, drawings, collections of data and other documents generated by Consultant in connection with this Agreement shall become the property of the Board, as set forth in Article 11 herein.

Article 8. Identity of Consultant: Consultant acknowledges that one of the primary reasons for its selection by the Board to perform the duties described in this Agreement is the qualification and experience of the principal personnel whom Consultant has represented will be responsible there for. Consultant thus agrees that the work to be done pursuant to this Agreement shall be performed by the principal personnel described in Exhibit D, Principal Personnel, and such other personnel in the employ under contract or under the supervision of Consultant. Exhibit D is

attached hereto and incorporated herein by reference as though fully set forth. The Board reserves the right to reject any of the Consultant's personnel or proposed outside professional subconsultants, and the Board reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 9. Cost Estimates: Cost of equipment and services shall be as provided by Consultant in its Price Quote dated May 21, 2013, and contained in Exhibit B.

Article 10. Reuse of Documents: All documents, including but not limited to, drawings, specifications and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to this project. They are not intended or represented to be suitable for reuse by the Board or others on modifications or extensions of this project or on any other project. The Board may elect to reuse such documents; however any reuse without prior written verification or adaptation by Consultant for the specific purpose intended will be at the Board's sole risk and without liability or legal exposure to the Consultant. The Board shall indemnify and hold harmless the Consultant against all Judgments, losses, damages, injuries and expenses arising out of or resulting from such reuse. Any verification or adaptation of documents by the Consultant will entitle the Consultant to additional compensation at rates to be agreed upon by the Board and the Consultant.

Article 11. Ownership of Documents and Intellectual Property: All documents, drawings and specifications, including digital format files, prepared by Consultant and furnished to the Board as part of the Services shall become the property of the Board. Consultant shall retain its ownership rights in its design, drawing details, specifications, data bases, computer software and other proprietary property. Intellectual property developed, utilized or modified in the performance of the Services shall remain the property of the Consultant.

Article 12. Independent Contractor Status: During the entire term of this Agreement, Consultant shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the Board.

Article 13. Indemnification: To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the City of Bloomington, the Board, and the officers, agents and employees of the City and the Board from any and all claims, demands, damages, costs, expenses or other liability arising out of bodily injury or property damage (collectively "Claims") but only to the extent that such Claims are found on a comparative basis of fault to be caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, employees, or subconsultants in the performance of services under this Agreement.

Article 14. Insurance: During the performance of any and all Services under this Agreement, Consultant shall maintain the following insurance in full force and effect:

- a. Automobile Liability Insurance, with a minimum combined single limit of \$250,000 for each person and \$500,000 for each accident.
- b. Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum combined single limit of \$500,000 for each occurrence, and \$500,000 in the aggregate.

c. Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code.

All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Board, and the officers, employees and agents of each shall be named as additional insured under both the General Liability Insurance and Automobile Liability Insurance policies, and the policies shall stipulate that the insurance will operate as primary insurance and that no other insurance effected by the City will be called upon to contribute to a loss hereunder.

Consultant shall provide evidence of each insurance policy to the Board prior to the commencement of work under the Agreement. Approval of the insurance by the Board shall not relieve or decrease the extent to which Consultant may be held responsible for payment of damages resulting from service or operations performed pursuant to this Agreement. If Consultant fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the Board required proof that the insurance has been procured and is in force and paid for, Board shall have the right at Board's election to forthwith terminate the Agreement.

Article 15. Conflict of Interest: Consultant declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services required under this Agreement. The Consultant agrees that no person having any such interest shall be employed in the performance of this Agreement.

Article 16. Waiver: No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.

Article 17. Severability: The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Article 18. Assignment: Neither the Board nor the Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party; provided, however, Consultant may assign its rights to payment without the Board's consent. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

Article 19. Third Party Rights: Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Board and the Consultant.

Article 20. Governing Law and Venue: This Agreement shall be governed by the laws of the State of Indiana. Venue of any disputes arising under this Agreement shall be in the Monroe County Circuit Court, Monroe County, Indiana.

Article 21. Non-Discrimination: Consultant shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in employment.

Article 22. Compliance with Laws: In performing the Services under this Agreement, Consultant shall comply with any and all applicable federal, state and local statutes, ordinances, plans, and regulations, including any and all regulations for protection of the environment. When appropriate, Consultant shall advise Board of any and all applicable regulations and approvals required by the Federal Environmental Management Agency (FEMA). Where such statutes, ordinances, plans or regulations of any public authority having any jurisdiction on the project are in conflict, Consultant shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the Board in a timely manner of the conflict, attempts of resolution, and planned course of action.

Article 23. Notices: Any notice required by this Agreement shall be made in writing to the addresses specified below:

Board:

City of Bloomington
Department of Public Works
Attn: Andrea Roberts
City Hall at Showers
401 N. Morton Street
Bloomington, IN 47401

Consultant:

Rod Armes
PEI Maintenance & Contracting
7630 N. Fox Hollow Road
Bloomington, IN 47408

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Board and the Consultant.

Article 24. Intent to be Bound: The Board and the Consultant each bind itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

Article 25. Integration and Modification: This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Board and the Consultant. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement.

Article 26. Verification of New Employee' Employment Status: Consultant 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.) Consultant

shall sign an affidavit, attached as Exhibit E, affirming that Consultant 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.

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

Consultant shall require any subcontractors performing work under this Agreement to verify to the Consultant 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. Consultant shall maintain on file all subcontractors' certifications throughout the term of this Agreement with the Commission.

Exhibit E is attached hereto and incorporated herein by reference as though fully set forth.

Article 27. No Investment in Iran: Consultant 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.

Consultant shall sign an affidavit, attached as Exhibit F, affirming that the Consultant is not engaged in said investment activities. Exhibit F is attached hereto and incorporated herein by reference as though fully set forth.

Article 28. Warranty: Consultant warrants all workmanship for a period of twelve (12) months following completion. A copy of Consultant's Warranty Information is attached hereto as Exhibit G and incorporated herein by reference as though fully set forth. Warranty information is also provided for the FuelMaster equipment to be installed by Consultant. A copy of the FuelMaster Warranty and Maintenance Options, containing the Standard Maintenance Agreement option selected by the Board, is attached hereto as Exhibit H and incorporated herein by reference as though fully set forth.

This Agreement may be modified only by a written amendment signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above.

Owner

Consultant

City of Bloomington
Board of Public Works

PEI Maintenance & Contracting

By: _____
Charlotte Zietlow
President

Rod Armes, Fuel System Specialist

By: _____
Mark Kruzan,
Mayor

EXHIBIT A

SCOPE OF SERVICES

Consultant shall:

- Remove the current Gasboy terminals and related equipment, which shall be retained by the Board
- Install one (1) new FuelMaster terminal at each of the fuel island sites along with any peripherals
- Install and configure new FuelMaster client-side software
- Install and configure new FuelMaster server-side software
- Train City personnel. Training includes, but is not limited to: (1) training on Aims units installation and operation; (2) programming PROKEES; (3) reporting features; and (4) setting fuel and mileage limits
- Provide and install new cable/wiring to the FuelMaster terminal to perform a direct connection via Ethernet at each location. This installation should include Category 5e/6 solid state building entrance protector with single line surge protection and LAN circuit protection. The device should include auto-resetting surge protection for data network. Unit should be approved by Spence Taylor or Rick Routon with Information and technology Services prior to installation.
- Provide and install a connection to City's existing Veeder-Root Tank Monitors at each site

EXHIBIT B COMPENSATION

This project is to be conducted with an agreed Not to Exceed Cost of Forty-Four Thousand Six Hundred Twenty-Five Dollars and Thirty-Nine Cents (\$44,625.39).

The not to exceed amount paid to Consultant is Forty-Two Thousand Seven Hundred Eighty-Five Dollars and Fifty Cents (\$42,785.50).

The section labeled IT AND RTA EXPENSES contains expenses that are NOT payable to Consultant.

The cost breakdown is contained on the following page.

BASE BID			
FMU -2500PLUSUSG PROKEE MASTER UNIT	2	\$5,769.00	\$11,538.00
FUEL MASTER WINDOWS SOFTWARE SEQUEL SERVER	1	\$1,949.00	\$1,949.00
HID PROXIMITY CARD READER	2	\$795.00	\$1,590.00
NETWORK CARD FOR ETHERNET	2	\$749.00	\$1,498.00
HOSE CONTROL BOARDS (3 PER SITE)	2	\$585.00	\$1,170.00
TANK MONITOR INTERFACE BOARDS	2	\$660.00	\$1,320.00
PROKEE ENCODER	1	\$550.00	\$550.00
PROKEES, BLACK	500	\$4.20	\$2,100.00
SHIPPING	2	\$100.00	\$200.00
INSTALLATION	1	\$8,900.00	\$8,900.00
			\$30,815.00
OPTIONS			
EXTENDED WARRANTY	2	\$1,149.75	\$2,299.50
AUTOMATION AIM2	2	\$2,227.00	\$4,454.00
VEHICLE KITS	10	\$250.00	\$2,500.00
TRAINING	1	\$1,000.00	\$1,000.00
COLOR KEYS	50	\$4.44	\$222.00
CUSTOM DATA EXPORT SERVICE	1	\$1,495.00	\$1,495.00
			\$11,970.50
IT AND RTA EXPENSES			
SERVER	1	\$889.89	\$889.89
MODULE MODIFICATION - RTA	1	\$950.00	\$950.00
			\$1,839.89
			\$44,625.39
Account Lines			
54310 IMPROVEMENTS OTHER THAN BUILDING			\$35,000.00
52520 OTHER SUPPLIES			\$5,372.00
53650 OTHER REPAIRS			\$3,253.39
53160 INSTRUCTION			\$1,000.00
			\$44,625.39

EXHIBIT C

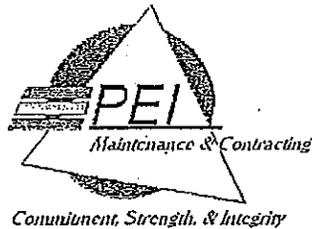
SCHEDULE

Work to be completed within sixty (60) days following Consultant's receipt of Notice to Proceed.

EXHIBIT D
KEY PERSONNEL

Rod Armes, Fuel System Specialist

EXHIBIT G
CONSULTANT'S WARRANTY INFORMATION



(a division of Peacetree, Inc.)

7630 N. Fox Hollow Road, Bloomington, IN 47408 Phone: 812-331-2318 Fax: 812-331-2495 E-Mail: rodarmes@aol.com

Warranty Information

Revised 7/1/05

To facilitate continuing customer satisfaction, PEI Maintenance & Contracting (hereafter know as PEI) has adopted the following policies concerning warranty for all work done.

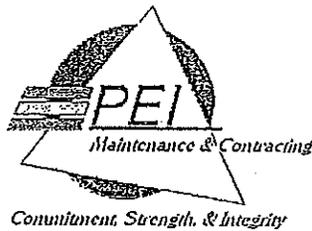
1. PEI will itself warrant for a period of one (1) year, workmanship only provided on installations for projects where PEI acts as the Prime, General, or Sub-contractor for you, our customer.
2. No warranties for repairs to existing customer equipment and/or on normal service calls.
3. PEI will secure warranty information for new equipment installed and will, when advised of a problem, contact the equipment manufacturer to resolve the problem. Manufacturer's warranties vary and may include payment to contractors for labor and parts. However, this does not mean that all labor and parts for repairs of equipment purchased through PEI is a covered expense. Detailed information should be asked for specifically, for each piece of equipment purchased so as to limit misunderstanding.
4. PEI often sells used equipment at a substantial savings to our customers. Most generally, this equipment is sold "as-is" and does not carry any warranty either directly or implied. Therefore, this equipment will be serviced on a time-and-material basis even during the one year warranty period. In the case where used equipment is sold with a partial or limited warranty, PEI will work with the supplier to resolve any deficiency.
5. Products used as a part of construction and commodities (*see addendum lists) may or may not carry a manufacturer's warranty and as such are not warranted by PEI. These items are out of the normal control of PEI's responsibility once they have been used and/or installed and would be considered disposable or unreparable if damaged during the normal course of your site's operations.
6. PEI strives to benefit our customer's relationships with their community and their customers by using local sub-contractors and/or vendors whenever possible. When this is impractical, PEI will use its own quality sub-contractors and/or vendors. In either event, as long as PEI is functioning as the General Contractor for you the customer, then PEI will monitor and police the sub-contractors used in conjunction with your project and PEI will work with the sub-contractor(s) to process any and all warranty claims that arise due to their workmanship.
7. PEI continues to look for the best value in products we use and sell. This means that a balance between cost and quality is maintained. In most cases, the best possible products are used to insure quality and longevity in our installations for our customers.
8. PEI is and will continue to practice job site safety and environmental safety to reduce overall exposure to our customers during and after installation. We will continue to improve our overall usage of OSHA and EPA guidelines on all of our jobsites.
9. PEI uses and abides by BBP (Best Building Practices) and Federal, State, and Local building codes when installing equipment and/or structures. We will in all cases follow the codes and regulations found in the NEC, NFPA, and other nationally accepted handbooks.

Fuel System Specialist

Gas Stations, C-Stores, Garages, Service Centers, Commercial & Retail Fleet Fueling Systems,
Airports, Marinas, Bulk Plants, Bulk Propane Storage

Complete Consulting, Design, Contracting, Maintenance Services, and Equipment Sales

Divisions: Petroleum Equipment of Indiana, PEI Lift & Lube, PEI Maintenance & Construction



(a division of Peacetree, Inc.)

7630 N. Fox Hollow Road, Bloomington, IN 47408 Phone: 812-331-2318 Fax: 812-331-2495 E-Mail: rodarmes@aol.com

10. PEI will, in any instance, try to resolve issues regarding problems with workmanship and materials to our customer's complete satisfaction. However, PEI reserves the right to reject any claim by our customer, which in the estimate of our investigator proves to be invalid, out of the SOW (scope of work), damaged caused by others, due to circumstances beyond our reasonable control, or acts of God. If a resolution cannot be reached, PEI respectfully requests that a third party mediator be secured.

*Addendums:

Materials List (Construction):

1. Electrical components, conduit, fittings, wire, etc.
2. Plumbing components, pipe, fittings, clamps, etc.
3. Metal forms, Island forms, etc.
4. Manholes, Spill buckets
5. Bumper Guards
6. Concrete
7. Asphalt
8. Backfill materials
9. Other items not mentioned here.

Wear & Tear Items (Commodities):

1. Hoses
2. Lamps and Light Bulbs
3. Nozzles
4. Swivels
5. Breakaways
6. Decals & Graphics
7. Intercom Speakers and call buttons
8. Filters
9. Pump Screens
10. Air hose and Gauges, air chucks
11. Other items not mentioned in this list.

Fuel System Specialist

Gas Stations, C-Stores, Garages, Service Centers, Commercial & Retail Fleet Fueling Systems,
Airports, Marinas, Bulk Plants, Bulk Propane Storage

Complete Consulting, Design, Contracting, Maintenance Services, and Equipment Sales

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EXHIBIT H

FUELMASTER'S WARRANTY AND MAINTENANCE OPTIONS

SYN-TECH SYSTEMS, INC.

FUELMASTER® Warranty and Maintenance Options

Basic 1 Year Warranty:

No Cost

The basic FuelMaster® Warranty for each Fuel Management Unit (FMU) provides coverage for parts and telephonic labor for a period of one year from date of start-up or fifteen months from date of shipment, whichever occurs first.

Under terms of this agreement, FuelMaster® technicians will telephonically diagnose problems, with the assistance of the customer, to determine warrantable conditions, and possible problem solutions. Please note that the FuelMaster® was designed in modular manner to provide easy and rapid exchange of parts, even by non-technical personnel. **THIS WARRANTY DOES NOT COVER SITE VISITS BY FuelMaster® TECHNICIANS FOR REPAIR. SUPPORT HOURS ARE MONDAY THROUGH FRIDAY, 8 AM TO 8 PM, EASTERN STANDARD TIME, EXCLUDING NEW YEAR'S DAY, MEMORIAL DAY, 4TH OF JULY, LABOR DAY, VETERAN'S DAY, THANKSGIVING DAY, THE DAY AFTER THANKSGIVING, CHRISTMAS EVE, AND CHRISTMAS DAY. A FLAT \$50 FEE WILL BE CHARGED FOR AFTER HOUR OR WEEKEND CALLS.**

PLEASE NOTE THAT DAMAGE RESULTING FROM ACTS OF GOD, USER ABUSE, ACCIDENTS, FAULTY INSTALLATION OR OPERATION IS NOT COVERED UNDER THE WARRANTY.

Super Warranty – First Year Basic Warranty Upgrade

\$ 1,386

The Super FuelMaster® Fuel Management Systems Warranty provides coverage for all parts, telephonic support for all FuelMaster® components, both software and hardware (does not include equipment on vehicles [AIM units]), and provides free upgrades to software /firmware, as required. This option is **ONLY** available in conjunction with the first year FuelMaster® Basic Warranty of one year.

Syn-Tech Systems, Inc will provide at no additional charge Certificates of Insurance naming your company as a Certificate Holder.

Organizations under a super warranty will have access to FuelMaster® technicians to assist in FuelMaster® operations and diagnostics 24 hours a day, 7 days a week. Service will include a Help Desk that allows the customer the ability to access FuelMaster® technicians at all times. **THIS WARRANTY DOES COVER SITE VISITS BY FUELMASTER® TECHNICIANS FOR REPAIR.** Please note that damage resulting from acts of God (Including equipment failures due to electrical surges and lightning damage) **are covered** under this warranty.

Limited Maintenance Agreement - \$495 for the first unit, \$173.25 for each additional unit

Our **Limited Maintenance Agreement** which provides a means of extending the normal one-year warranty that all FUELMASTER customers receive on software and hardware, and provides free updates software/firmware, upon request. (The exception to this is for those systems operators with customized software. Each customized program will have to be quoted on an individual basis.) The customer can make the decision as to whether he prefers to maintain his current system or update to the new software/firmware. FUELMASTER® hardware parts will be available at a 10% discount. It provides for unlimited telephonic/ electronic diagnostics and support, **Monday through Friday, 8 AM to 8 PM your local time, excluding New Year's Day, Memorial Day, 4th of July, Labor Day, Veteran's Day, Thanksgiving Day, and the day after Thanksgiving, Christmas Eve, and Christmas Day.** If you call after hours or on the weekend there will be a \$50 charge at each level except the Super Maintenance level. At this level we do not cover acts of God, such as lightning strike. If you choose this option it will cost you \$495 for your first unit and \$173.25 for each additional unit per year.

Standard Maintenance Agreement - Unit cost per year is \$918.75 for a FMU 2500 and FMU 2550 and up is \$1,149.75. AIM kits are \$5.99 per AIM kit per YR

The FuelMaster® Extended Maintenance Agreement provides a means of extending the normal one-year warranty that all FuelMaster® customers receive. It covers parts and telephone support labor for all FuelMaster® components, both software and hardware, and provides free updates software/firmware, upon request. The customer will be sent replacement parts and a pre-paid shipping label to return the defective parts. **THIS WARRANTY DOES NOT COVER SITE VISITS BY FUELMASTER® TECHNICIANS FOR**

REPAIR. Support hours are 8:00 AM – 8:00 PM Eastern, Monday through Friday, excluding New Year's Day, Memorial Day, 4th of July, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve, and Christmas Day.

Syn-Tech Systems, Inc will provide at no additional charge Certificates of Insurance naming your company as a Certificate Holder.

Please note that damage resulting from acts of God, user abuse, accidents, faulty installation or operation **is not covered** under this agreement. This agreement specifically excludes any indirect, special, or consequential damages to include, but not limited to, loss of product, profit, or litigation fees.

Super Maintenance Agreement – \$2,304.75 per unit (Any FMU/Satellite), per year and \$5.99 per AIM kit per YR

The FuelMaster® Super Maintenance Agreement provides a means of extending the normal one-year warranty that all FuelMaster® customers receive. It covers parts and telephone support labor for all FuelMaster® components, both software and hardware, and provides free updates software/firmware, upon request. The customer will be sent replacement parts and a pre-paid shipping label to return the defective parts. Damages resulting from Acts of God, such as lightning, are covered at this level. **THIS WARRANTY DOES COVER SITE VISITS BY FUELMASTER® TECHNICIANS FOR REPAIR** if necessary.

Organizations under a super warranty will have access to FuelMaster® technicians to assist in FuelMaster® operations and diagnostics 24 hours a day, 7 days a week. Service will include a Help Desk that allows the customer the ability to access FuelMaster® technicians at all times. Syn-Tech Systems, Inc will provide at no additional charge Certificates of Insurance naming your company as a Certificate Holder.

For sites / locations where STS or a STS trained distributor installed pulsers or valves, replacement parts will be provided upon failure and a site request.

After expiration of any warranty / previous maintenance period, STS will use a three-tier maintenance support system.

Level One: Customer must report problem by telephone to STS. Syn-Tech's Product Support Team will then analyze the problem within 62 minutes of the call. The Product Support Team will diagnose software and hardware remotely with telephonic diagnostic tools. Product Support will assist the customer to diagnose and/or give corrective actions. Seventy-five percent of the problems received by Product Support are resolved at this level. If level One is ineffective in resolving the problem, Syn-Tech Systems, Inc. will move to Level Two service.

Level Two: Syn-Tech Systems, Inc. will send replacement parts to customer by the most expeditious means in support of Level One Maintenance. The customer will install the replacement parts, with telephonic assistance and direction from STS, provided that the customer may install them without special tools and within an estimated 30 minutes. The customer will be provided a prepaid shipping container for return of the defective part(s). The defective parts(s) must be returned within seven business days.

Level Three: If Levels One and Two are ineffective in resolving the problem, Syn-Tech Systems, Inc. will dispatch a FUELMASTER® technician and spare parts to the customer's site to effect repairs as required. The customer's system must be required within three (3) working days in the customer's United States after seven (7) days outside the continental United States after notification that a site visit is required. Notification begins 8:00am on the first normal business day after the call is made. If notification occurs on a normal business weekend or a federal holiday, the time starts on the next business weekend or a federal holiday; the time starts the next normal business day. If any types of clearances are necessary, the notification time will not begin until the appropriate clearances have been obtained.