BOARD OF PUBLIC WORKS

MEETING PACKET

December 18, 2012

REVISED AGENDA
BOARD OF PUBLIC WORKS
Tuesday, December 18, 2012 @ 5:30 p.m.
(This Meeting May be Televised)

A Regular Meeting of the Board of Public Works to be Held Tuesday, December 18, 2012 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 – December 4, 2012

III. PETITIONS & REMONSTRANCES

IV. TITLE VI ENFORCEMENT

V. HEARINGS FOR NOISE APPEAL

VI. OLD BUSINESS

VII. NEW BUSINESS

1. **Resolution 2012-96: Request to Encroach within Right of Way with Rain Garden at 1714 S. Wilton Drive**
2. **Resolution 2012-97: Use of Public Alley for Buskirk-Chumley Theater (BCT) PRIDE Event (Saturday, 2/2/13)**
3. **Resolution 2012-98: Allow Itinerant Merchant to Operate within Right of Way (Taco Rocket)**
4. **Authorization to Utilize Showers Commons, 8th Street and Madison Street for 2013 Community Farmer's Market Season**
5. **Action Regarding Request for Vacation of S. Tech Park Boulevard**
6. **Memorandum of Understanding Between Public Works and Transit for the Signalization Improvement Project at E. Smith Avenue and S. Walnut Street**
7. **Approval of Midwestern Electric Contract for Installation Services for the Signalization Improvement Project at E. Smith Avenue and S. Walnut Street**
8. **Approval of Patterson Drive Retaining Wall Design to Earth Exploration**
9. **Agreements with MCPL for CATS**

VIII. STAFF REPORTS & OTHER BUSINESS

IX. APPROVAL OF CLAIM

X. ADJOURNMENT

NEXT REGULAR MEETING: Tuesday, January 15, 2013 at 5:30 p.m. in the City Council Chambers in City Hall at Showers, 401 N. Morton, Bloomington, Indiana

REGULAR MEETING OF THE BOARD OF PUBLIC WORKS

The Board of Public Works meeting was held on Tuesday, December 4, 2012 at 5:30 p.m. in the Council Chambers of City Hall at Showers, 401 N. Morton Street, Bloomington, Indiana with Charlotte Zietlow presiding.

ROLL CALL

Present: Charlotte Zietlow
James McNamara

City Staff: Adrian Reid – City Engineer
Rick Alexander – City Engineering
Jackie Moore – City Legal
Lisa Abbott - HAND
Mike Arnold - HAND
Chris Smith – Public Works
Laurel Archer – Public Works

MESSAGES FROM BOARD MEMBERS

Zietlow stated after driving around in circles and slaloming the streets for several months, all the improvements to the streets are wonderful. It is nice to go down the streets and know where the lanes are, and have many lanes. For all those who thought there would be problems with the Bypass, what could they have been, it is a wonderful safe way to drive around. There are sidewalks on both sides, very nice. Good for those people who build roads and finish them. Thank you.

APPROVAL OF MINUTES

McNamara moved to approve the minutes from November 20, 2012. Zietlow seconded the motion. The minutes from November 20, 2012 were accepted.

PETITIONS & REMONSTRANCES

None

TITLE VI ENFORCEMENT

None

HEARINGS FOR NOISE APPEALS

None

OLD BUSINESS

Request to Uphold Order to Remove Unsafe Structure at 1003 W. 9th Street

Mike Arnold, HAND, introduced himself. This is an unsafe structure at 1003 W. 9th Street. There was confusion at the last meeting about jurisdiction and authority because the house is listed historically so the item was tabled. Because the City Engineer inspected and deemed the structure unsafe it is not required to go through demolition delay per the UDO.

Lisa Abbott, Director of Housing and Neighborhood Development, stated that HAND administers Title 17, which is the unsafe building ordinance. In Title 20, which is the Unified Development Ordinance, there was a conflict. Rather than tying the unsafe building part in the Demolition Delay Ordinance back to HAND, as the administrator of Title 17, it falls to the City Engineer. Abbot explained, Mike Arnold, who administers Title 17 for HAND, and Adrian Reid, City Engineer, both went out and investigated the Unsafe Structure complaint. They found the building is truly unsafe and needs to be torn down. Because the house is on the Survey, and HAND also administered Title 8, which is the Historic Preservation Program, even though it was not required under the UDO that the Historic Preservation Commission be notified, they were notified anyway. The Historic Preservation Commission were fine with this course of action. There are no complaints from the Historic Preservation Commission on this particular action, all bases have been covered under all Titles necessary to remove this unsafe structure. The neighborhood is very happy about this action.

There was more discussion about Titles and how they relate to each other when a historic building is in question. Abbott stated public safety is job one.

McNamara asked what would have happened had the HPC objected. Abbot stated if there was an issue and HAND felt strongly that it was a safety issue then HAND does have authority to take the structure down, and that action probably would have been pursued.

McNamara stated this structure is listed as being in the inventory. Abbot stated this is the "Survey." McNamara asked if the Survey is distinct from the list of historic properties in Title 8 of the Bloomington Municipal Code. Abbott stated this property was not a designated property, it was just eligible for designation or designation as a group because it is in a Surveyed area. This structure is a contributing and can only be designated under certain circumstances, and usually within a group. This property is not outstanding or notable.

McNamara stated he appreciated all the consultation that has gone into bringing this forward.

McNamara made a motion to uphold the Request to Remove the Unsafe Structure at 1003 W. 9th Street. Zietlow seconded the motion. The motion passed. Order to Remove upheld.

NEW BUSINESS **N**

Request for Extension of Time to Remove Unsafe Structure at 1500 W. 8th Street

Arnold, HAND, explained this is a property the Board recently gave permission for HAND to demolish by November 15, 2012. The contractor had a delay with asbestos and with getting the gas lines cut off. The contractor did notify HAND of the delay. The Request is being brought back to the Board to approve a time extension.

McNamara made a motion to approve the extension of time to Remove Unsafe Structure at 1500 W. 8th Street. Zietlow seconded the motion. The motion passed. Request for extension of time at 1500 W. 8th Street approved.

Approval of Change Order to Repair Unsafe Structure at 2526 S. Spicewood Lane

Arnold, HAND, stated the Board gave permission to HAND to do repair work to the roof. The contractor pulled off the shingles and found completely rotten trusses that need to be repaired before the work could be finished. This did cause an overrun on the contract of $117. Staff asked Board to approve the Change Order of $117 to repair trusses.

McNamara made a motion to approve Change Order to Repair Unsafe Structure at 2526 S. Spicewood Lane. Zietlow seconded the motion. The motion passed. Change order approved.

UPDATE: Arnold stated 1614 West 7th Street where Orders to Remove were issued is now gone and has been backfilled.

Allow Use of Right of Way at 710 N. College Avenue

Alexander stated Tyler Curry has been given permission by the Planning Commission to build a new apartment building at 710 North College. Currently there is a small parking lot at the location. Just north of the lot is a 6 unit apartment complex which is also his. To accommodate the construction of the building he has asked to use the public right of way. This is a fairly tight site and staff did consider the possibility of using the alley in the back, however, there are low hanging utilities there, and a heavily used alley. With the help of Jeff Fanyo and his firm a plan has been worked out to use the eastern most lane of College during construction. There will be cones out as the site is approached and then concrete barriers along the front of the site. It will then cut back to the curb line, just south of the development to allow for the turn lane that turns back east on West 11th Street. Staff feels this is the best solution to allow the developer to have working space. A pedestrian walk around was discussed, but would have required closing another lane and there would have been conflict points at the entrance and exit of the worksite. Staff felt the best solution is to divert the pedestrians to the westside of the road. This is also where the designated bike lane is. Bikes and pedestrians can safely travel south on college. This will still allow for two lanes on College.

Alexander further stated there is a Memo of Understanding (MOU) prepared that will be signed by the Mayor and the Director of Public Works.

Jeff Fanyo, Bynum Fanyo and Associates, representing Tyler Curry, introduced himself. He explained the explanation Mr. Alexander gave, is the best plan for allowing for work space. The traffic cones and barrier were designed in accordance with the IMUTCD so there is adequate protection of the worksite. All parties agreed mixing the pedestrians with the construction equipment was not a good idea and felt the other side of the road is best.

Alexander stated there will be sidewalk closed signs for pedestrians on both side of the construction at the appropriate places. Mr. Curry would like to have this project finished by next August.

Zietlow was surprised by all the apartments in Bloomington, and inquired if there would be parking underneath. Fanyo stated there will be units above the parking entrance portal and parking will be in the back of the building.

There was discussion about the exact location and the number of lanes there on College.

McNamara asked City Legal a general question about a statement in the MOU that states *"any lanes closed without proper prior notification may result in a fine of $500 for each violation."* McNamara was curious as to whether that is standard code for anyone, regardless of whether they've entered into an MOU such as this or if any party, should they close a lane without proper notification, are subject to this violation provision of the code. Jackie Moore, City Attorney, stated she will look into it, but at this time the only time she has seen it is in MOU's of this type.

McNamara moved approval of the MOU to allow use of right of way at 710 North College Avenue. Zietlow seconded the motion. The motion passed. Memo of Understanding with 7Ten LLC/Tyler Curry approved.

Resolution 2012-94: Allow Itinerant Merchant to Operate within Right of Way (Nelia Hostetter) Attachment A

Christina Smith, Public Works, introduced herself and stated she will be standing in for Miah Michaelsen on the request for the Itinerant Merchant.

Smith explained Nelia Hostetter has applied for an Itinerant Merchant Permit. It has been determined that when the applicant wants to operate in the right of way that before the permit is issued, permission must be obtained from the Board of Public Works. The Department of

Economic & Sustainable Development has reviewed the application and the Board of Public Works' approval to operate in the public right of way is one of the items on the check list that is required before a permit can be issued. ESD will confirm that all rules and regulations have been met prior to a permit being issued. This business will operate from a food truck and is for one year. Staff is very supportive of this request. The petitioner was present.

Nelia Hostetter introduced herself. She explained she owns a bakery in town on 3rd Street and also sells at the Farmers' Market. She felt this would be a nice fit for her business. Everything will be prepared in her bakery and sold from a food truck. There will be a food warmer to keep the food safe.

Zietlow asked if there would also be tea and coffee. Hostetter stated there will be coffee and tea in pots, but not brewed inside the truck. Hostetter also stated she does not expect to do this everyday, probably Friday and Saturday, with the days changing in the spring and summer.

McNamara asked where she plans to take her truck. She stated probably on the square, and is aware she cannot be too close to other restaurants. She also is checking with Bloomingfoods.

McNamara stated most of these requests are to cater to the “bar crowd” and if this was Ms. Hostetter’s intent. She stated she was not there yet, possibly on Friday and Saturday night. Hostetter talked a bit about her business. She added her Kolache bread has become popular and is easy to eat.

McNamara made a motion to approve Resolution 2012-94: To Allow Itinerant Merchant to Operate with Right of Way (Nelia Hostetter) Zietlow seconded the motion. The motion passed. Resolution 2012-94 approved.

Resolution 2012-95: Action Regarding IACT Medical Trust Attachment B

Jackie Moore, City Legal, introduced herself. She stated Resolution 2012-95 is for the Board to delegate their authority as the Chief Administrative body of the City to submit the ballot to either the Mayor or Daniel Grundmann, Director of Human Resources. The IACT Medical Trust has invited the City as a participant employer to submit a ballot. There will be the election of four new trustees for a three year term which will run from 2013 through 2016. The Board is requested to authorize either the Mayor or the Director of Human Resources to complete and submit this ballot before December 21st and also grant continuing authority as there will be numerous elections for trustees from year to year.

Zietlow stated since the Board does not know the delegates then she suggested someone else should do it. Moore stated Mr. Grundmann is on the IACT Board so would be familiar with the candidates and could make an informed choice.

Zietlow asked about the IACT Trust. Moore explained the IACT Medical Trust is the provider of the healthcare for City employees. This is the second year the City has been in the Trust. Zietlow asked what the goal of the IACT Trust is. Moore stated the goal is to provide healthcare at a reasonable rate for City employees. Zietlow asked if being in this larger pool gives the City better buying power. She also wondered if this would be affected by the Affordable Care Act.

McNamara stated this Trust is a big deal. This Trust is driving so much of the City budget. This is a very important aspect of governance. The City of Bloomington is fortunate to have someone of Mr. Grundmann's knowledge, skills, and ability heading up this effort. His participation on the IACT Medical Trust Board is fortunate so the City has that type of direct participation and the Medical Trust Board is fortunate to have him.

Zietlow asked if the City of Bloomington was instrumental in getting the Trust organized. Moore stated the Trust was in place and the City of Bloomington joined. McNamara stated the size of the City of Bloomington was important to the Trust.

McNamara made a motion to approve Resolution 2012-95: Election of IACT Medical Trust Board of Trustees. Zietlow seconded the motion. The motion carried. Resolution 2012-95 approved.

Approval of Consent Agenda

Jackie Moore explained a Consent Agenda is a practice by which non-controversial, routine matters that come before the Board can be considered at one time with one vote, basically items that do not require individual or specific discussion, there are no questions or issues that need to be debated or discussed. Moore further explained it would be up to the Board to decide what the Board would be comfortable having in the Consent Agenda. The Consent Agenda is usually one of the first items to appear on the Agenda. Moore stated this is up to the Board, and if the Board chooses to do this then an amendment would need to be made to the agenda format to place it higher on the agenda. Moore's suggestion would be to put it under Messages from Board Members, but it would be up to the Board to decide. Approval of Minutes and Approval of Claims are usually two items in the Consent Agenda. If an item is on the Consent Agenda it can always be pulled off by the Board to be acted on separately.

Zietlow asked if the City Council operates with a Consent Agenda. McNamara stated the City Council does not but the Parks Board use one. Moore stated the BHQA and Planning also uses a Consent Agenda.

McNamara wanted to known that the Consent Calendar was brought forward on his request. He added he felt the Board was not ready to act on this item this evening. McNamara did ask if there was a time limit on when this should be passed, if it is passed. Moore stated there is no time limit, it can be done anytime.

McNamara stated going forward it should be assumed that anything in the Consent Agenda is in the Board packet. The turn around time for claims is so quick, that is sometimes it is a hit and miss proposition as to whether the claims will be ready for the packet.

Moore suggested the Board and staff should discuss what should be included, if the Board gives approval. No action was taken on this item.

Approval of Bloomington Bikeways Implementation Plan Design Services Contract

Adrian Reid, City Engineer, stated this is an extension of the Greenways Plan that was done last year with Burgess and Niple, as well at Alta. In 2012 eight (8) bicycle facilities will be built and additional design services are needed to bring some of those concepts into a plan. There are five designs included in this contract which are 7th Street Neighborhood Greenway, Clifton Union Neighborhood Greenway, East 3rd Street Bike Lanes, Highland Avenue Neighborhood Greenway, and Landmark/Adams/3rd Bike Lanes. The contract amount is $98,920. Staff recommended approval.

Zietlow asked if the actual work to be done is the design. Reid said yes.

Zietlow asked how the bike lane on E 3rd Street is working and if there has been any feedback. Reid stated there has been a lot of feedback, mostly positive. But he has also heard cars are driving in the lane. Reid felt some people may not know that is a bike lane and more markings or signage may need to be installed.

The Board had specific questions about the routes and a discussion ensued about what could be done to some intersections.

Zietlow asked about the parking change at Mitchell. Reid stated when the bike lane was put in on 3rd Street the island at 3rd & Mitchell had to be shifted to the south. There were issues with buses having a difficult time turning because people were trying to pass them. The road is now a one lane road and the parking is being used to confine it

to the one lane. Reid stated it seems to be working.

McNamara made a motion to approve the Bloomington Bikeways Implementation Plan Design Services Contract. Zietlow seconded the motion. The motion passed. Bikeways Implementation Plan Design Services Contract approved.

STAFF REPORTS & OTHER BUSINESS

Chris Smith explained the Board has a regular scheduled meeting on January 1, 2013 which is a City Holiday. During the moth of January there are two other scheduled meetings. Chris stated she felt comfortable recommending the Board cancel the January1st meeting. In the event that something happens that requires the Board's immediate attention a special session can be scheduled. McNamara moved to accept staff's recommendation and cancel the meeting scheduled for January 1, 2013. Zietlow seconded the motion. The motion passed. January 1, 2013 meeting cancelled.

Chris Smith explained at the last Board meeting a member had a question about the non-profit organizations that benefit from the Hoosier Half Marathon. Staff has received information from Bill Bartley who had the following comment. "*The 2013 race will benefit Stone Belt ARC, IU Health's G.O.A.L. program (Get Onboard Active Living), and the third is planned to be the Teachers Warehouse (confirmation is pending but expected this week). A portion of each race entry is budgeted to go to the organization chosen by the registrant as their "TEAM" as is a portion of all sponsorship and revenue in excess of operating expenses."*

Zietlow thanked Christina for following up on that question.

Request Action on January 1, 2012 Meeting Date

APPROVAL OF CLAIMS

McNamara moved to approve the claims. Zietlow seconded the motion. Claims were approved.

ADJOURNMENT

McNamara moved to adjourn the meeting. Zietlow seconded the motion. Meeting adjourned at 6:34 p.m.

Accepted by:

_____

Charlotte Zietlow, President

_____

James McNamara, Vice President

_____

Dr. Frank N. Hrisomalos, Secretary

Date: Attest to:

Board of Public Works
Staff Report

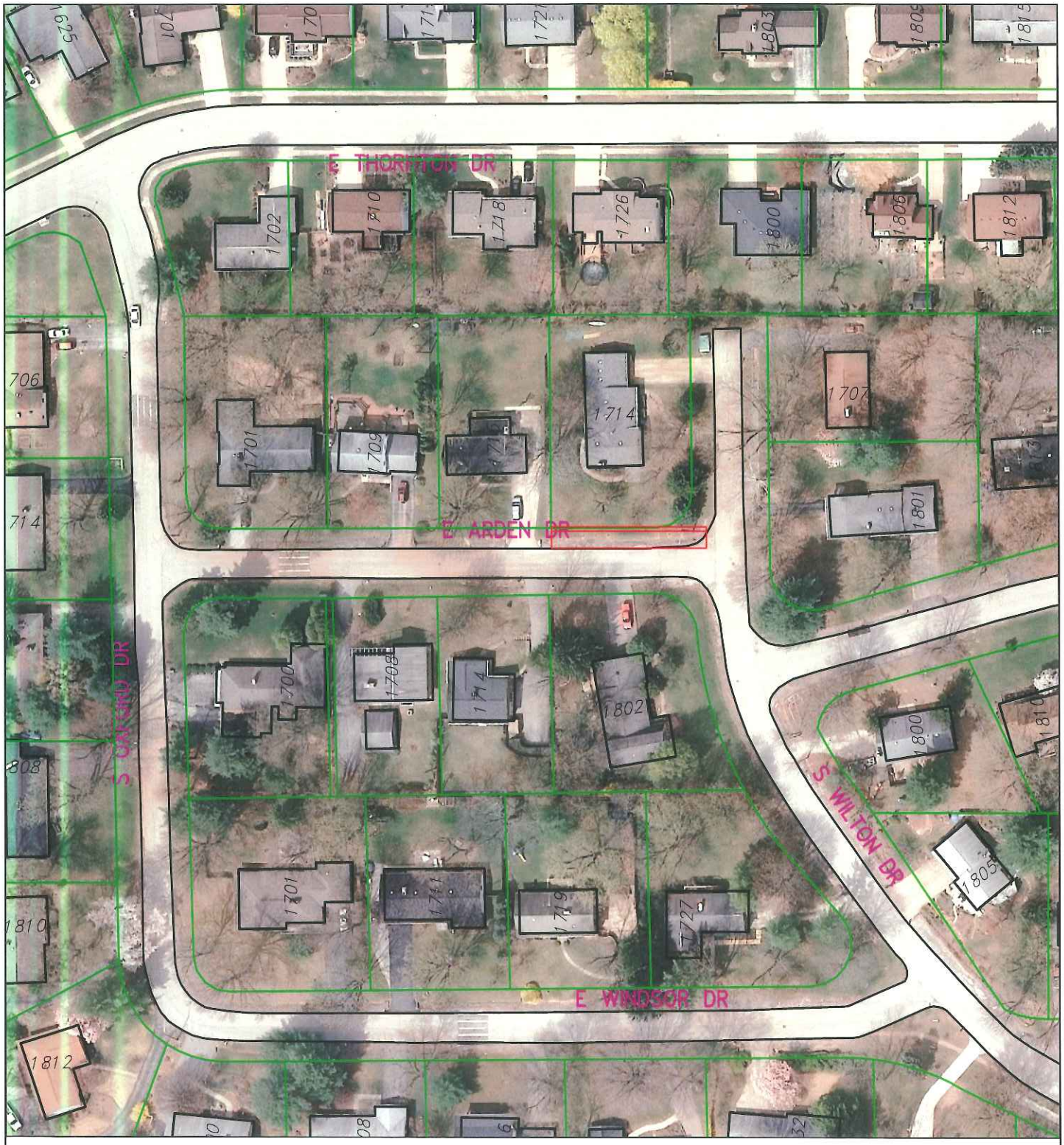
Project/Event:	Resolution 2012-96: Request to Encroach within Right of Way with Rain Garden at 1714 S. Wilton Drive
Petitioner/Representative:	Allen and Ann Edmonds
Staff Representative:	Roy Aten
Date:	12/12/2012

Report:

The property owner at 1714 S Wilton Drive is requesting permission to construct a rain garden in the existing drainage ditch between the roadway and his property line. They would like to remove the existing asphalt ditch and have a professionally designed rain garden installed. Due to the high cost of the proposed landscaping project, Staff has recommended that the property owner enter into an encroachment agreement with the City.

Recommendation and Supporting Justification: Staff recommends approval of the resolution. The addition of the professionally designed landscaping along South Wilton Drive and East Arden Drive will increase the aesthetic appeal of the neighborhood.

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



1714 S Wilton Drive

Rain Garden

By: atenro

12 Dec 12

100 0 100 200 300

N

City of Bloomington Engineering

Scale: 1" = 100'

For reference only; map information NOT warranted.

East Arden Drive / Wilton Drive, Bloomington, Indiana, United States
Address is approximate

RESOLUTION 2012-96
ENCROACHMENT AT 1714 SOUTH WILTON DRIVE

WHEREAS, Allen L. and Ann C. Edmonds, (hereinafter referred to as "Owners"), own a residential lot at 1714 South Wilton Drive in Bloomington, more fully described as Arden Place, Lot 15, in Monroe County, Indiana as described in deed record 97763, Book 260, Page 37, recorded 05/16/1978 in the Office of the Recorder of Monroe County, Indiana; 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 construction of a rain garden at the property line was started on 11/30/2012 that extends approximately 15 feet beyond their own property; and

WHEREAS, Owners are requesting permission from the Board of Public Works for an encroachment into the public right-of-way for the installation of a rain garden as shown on the attached drawing which will be a part of this recorded document; and

Proposed Encroachments:

A rain garden running approximately 120 feet parallel to the southern and eastern property lines, that will encroach approximately 15 feet into the Rights-of-Way of East Arden Drive and South Wilton Drive.

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 it Board of Public Works (hereinafter called "City"), agrees that the City will not initiate any legal action against the Owners regarding the maintenance of landscape materials in the described area of the City right of way, under the following conditions:

1. The Owners shall be allowed to install landscape materials in the right of way immediately adjacent to their property at 1714 South Wilton Drive with the agreement that both plant materials and the exact locations will be approved by the City Engineering staff.

2. The Owners shall be responsible for the timely performance of all maintenance of the rain garden and shall bear all expense regarding such maintenance.

3. All materials and labor necessary for the improvement and maintenance of the rain garden

are the sole responsibility of the Owners.

4. Owners agree that the only encroachment that may be installed in the right of way is that described herein. In the event Owners wish 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 or to perform other duties or functions for which entry on said right of way is, in the opinion of the City, needed.

6. The terms of this agreement shall be in effect upon execution of this document by Owners and acknowledgment by Owners 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 Owners shall remove said encroachments upon notification by City, at the Owners' expense and without compensation by City. The Owners hereby agree, 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. Owners agree 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 any 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 any 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 Owners or their agents, employees or subcontractor, the Owners 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 Owners and their successors in interest. It shall be effective from the date of passage by the Board of Public Works and written acceptance by the Owners. This written acceptance shall be accompanied by a copy of this recorded document, which must include the Recorder's identification number.

BOARD OF PUBLIC WORKS:

_____
Charlotte Zeitlow, President

By:_____
Allan L. Edmonds

_____
Dr. Frank N. Hrisomalos

By:_____
Ann C. Edmonds

_____
James McNamara

State of Indiana)
)SS:
County of Monroe)

Before me, the undersigned, a Notary Public in and for said state, personally appeared Charlotte Zeitlow, James McNamara and Dr. Frank N. Hrisomalos, members of the City of Bloomington Board of Public Works, and acknowledged the execution of the foregoing instrument this ____ day of _____, 2012.

Witness my hand and official seal.

_____
Notary Public Signature

My Commission expires:_____
County of Residence: _____

_____
Printed Name

State of Indiana)
)SS:
County of Monroe)

Before me, the undersigned, a Notary Public in and for said state, personally appeared Allan L. Edmonds, and acknowledged the execution of the foregoing instrument this _____ day of _____, 2012.

Witness my hand and official seal.

_____
Notary Public Signature

My Commission expires:_____
County of Residence: _____

_____
Printed Name

State of Indiana)
)SS:
County of Monroe)

Before me, the undersigned, a Notary Public in and for said state, personally appeared Ann C. Edmonds, and acknowledged the execution of the foregoing instrument this _____ day of _____, 2012.

Witness my hand and official seal.

_____
Notary Public Signature

My Commission expires:_____
County of Residence: _____

_____
Printed Name

RELEASE, HOLD HARMLESS
AND
INDEMNIFICATION AGREEMENT

WHEREAS, Allen L. and Ann C. Edmonds, 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 north of East Arden Drive and west of South Wilton Drive and adjacent to the property at 1714 South Wilton Drive: 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 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"	"RELEASOR"	"RELEASEE"
_____	_____	_____
Allen L. Edmonds	Ann C. Edmonds	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

Board of Public Works
Staff Report

Project/Event: BCT's PRIDE Festival Dance Party

Petitioner/Representative: Danielle McClelland

Staff Representative: Miah

Meeting Date: December 18, 2012

Event Date: February 2, 2013

The BCT is holding its 10th annual PRIDE Film Festival Thursday, January 31st through February 3rd, 2013. This event is a major one in the BCT annual calendar of events.

In past years the BCT has requested and received permission for a street closure of Kirkwood between Walnut Street and Washington Street for a street dance. As this year's request falls during an Indiana University basketball game, BPD has requested that the street not be closed. Instead, BCT is requesting the closure of the east west alley immediately behind the BCT be closed between Washington and Walnut from 10 p.m. to midnight on Saturday, February 2 for dance activities. They are also requesting a noise permit for the event.

Staff feels this is an appropriate compromise for all under the circumstances.

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

RESOLUTION 2012-97

BUSKIRK-CHUMLEY THEATER MANAGEMENT, INC. PRIDE DANCE PARTY

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

WHEREAS, the City has committed itself to promoting Bloomington community celebrations; and

WHEREAS, the Buskirk-Chumley Theater Management, Inc. ("BCT") is desirous to encroach on the alley in the 100 block of South Washington to host a PRIDE Dance Party; and

WHEREAS, BCT has requested that the Board close the alley in the 100 block of South Washington running to the 100 block of South Walnut in downtown Bloomington to traffic and parking from 10:00 pm to midnight on Saturday the 2nd of February so that BCT can have control over the alley for the purposes of providing a PRIDE Dance Party for the benefit of the community; and

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

NOW, THEREFORE, BE IT RESOLVED:

1. That the City of Bloomington Board of Public Works declares that the alley located in the 100 block of South Washington running west to the 100 block of South Walnut in downtown Bloomington will be temporarily closed to traffic and parking from 10:00 pm to midnight on Saturday the 2nd of February 2013.

2. That the alley closure outlined above is for the purposes of allowing BCT to provide a PRIDE Dance Party that is beneficial to the community on Saturday, February 2.

3. That City noise ordinance is waived for this event.

4. That vendors who have not received explicit authorization from the BCT, or their representatives or agents, to participate in the PRIDE Dance Party will not be permitted to utilize the closed off portions of the alley outlined above for the purposes of performing, displaying, producing or selling items or goods.

5. That by approval of this Resolution, the city noise ordinance is waived for performers and artists who have received explicit authority from the BCT to participate in the PRIDE Dance Party.

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

7. That in addition to agreeing to the above restrictions, BCT agrees to the following, as evidenced by the signature of their representative below:

A. BCT agrees to clean up the alley both before and after the event. The clean-up shall include, but not be limited to, removal of temporary "no parking" signs, picking up litter, sweeping any broken glass and the placing, emptying and removal of trash cans and removal of drink, food and grease residue from alley and sidewalk surfaces. Clean-up after the event shall be completed by midnight Saturday, the 2nd day of February, 2013.

B. BCT must provide barricades in order to indicate that the alley is closed and shall be responsible for placement and removal of these barricades. BCT is responsible for contacting the City of Bloomington Engineering Department for instructions on the type of and placement of said barricades.

C. BCT shall be responsible for notifying the Press and affected businesses in advance of the street closing, along with posting “no parking” signs as required by City Ordinance.

D. BCT agrees to submit a layout plan for any booths to the Fire Chief and City Engineer for approval, in advance of the festival.

ADOPTED THIS _____ DAY OF _____, 2012.

CITY OF BLOOMINGTON
BOARD OF PUBLIC WORKS

_____
Charlotte Zietlow, President

_____
James McNamara

_____
Dr. Frank N. Hrisomalos

ALL TERMS AND CONDITIONS CONTAINED IN RESOLUTION 2012-97 ARE AGREED TO AND ARE ACCEPTABLE:

_____
Buskirk-Chumley Theater Management, Inc.

RELEASE, HOLD HARMLESS
AND
INDEMNIFICATION AGREEMENT

WHEREAS, Buskirk-Chumley Theater Management, Inc., (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 alley located in the 100 block of South Washington running west to the 100 block of South Walnut in downtown Bloomington and said facilities or public property is owned and is operated, supervised and maintained by the RELEASEE'S Board of Public Works, for the purpose of sponsoring the PRIDE Dance Party, on RELEASEE'S property with set up beginning at 10:00 pm on Saturday, February 2, 2013, and with tear down and clean up ending by midnight, and

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

WHEREAS, RELEASOR hereby agrees to accept the legal responsibility and to acquire related and professionally determined insurance coverage as to the described use of the facilities and public property and therefore hold RELEASEE defended, harmless, and indemnified regarding the RELEASOR'S and the public's use of the facilities and premises and any claims arising from and regarding RELEASOR'S alleged acts or omissions creating a legal liability for damages as to RELEASOR or as to RELEASEE.

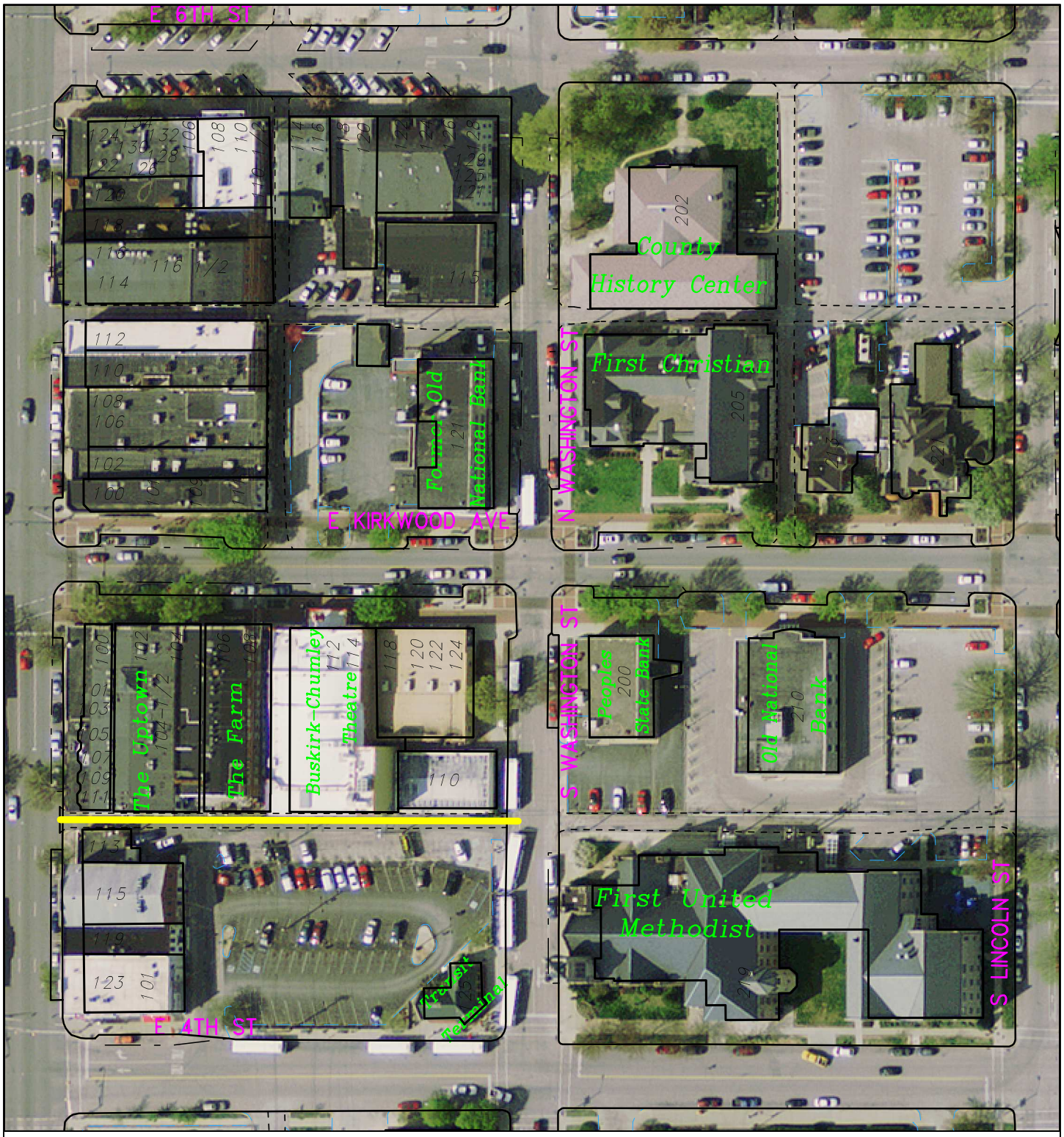
THEREFORE, in consideration for the permission hereby granted use of the property of RELEASEE for said PRIDE Dance Party, and the above recitals incorporated as terms of this agreement, the RELEASOR by its undersigned agent, for RELEASOR and its officers, directors, agents, employees, members, successors and assigns, does hereby acknowledge and agree to assume responsibility for bodily and personal injuries and expenses, 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 direct result of RELEASOR'S negligent act or acts or failure to act or that of RELEASOR'S employees or agents is using RELEASEE'S property as described above, 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 direct result of the RELEASOR'S negligence in using RELEASEE'S property for the PRIDE Dance Festival, including, but not limited to, any claim or claims brought by third parties, whether or not sounding in tort or contract.

This agreement shall be liberally applied and construed to fulfill its purposes herein expressed to thereby include and provide insurance coverage for any tort claim liability of RELEASEE allegedly caused by the acts of omission of RELEASOR in sponsoring said concert.

THE PARTIES, INTENDING TO BE BOUND HEREBY, have executed this RELEASE, HOLD HARMLESS AND INDEMNIFICATION AGREEMENT on the dates

indicated below.

“RELEASOR”	**“RELEASEE”**
_____	_____
Buskirk-Chumley Theater Management, Inc.	City of Bloomington
_____	_____
Date	Date



BCT PRIDE Event

By: smithc
13 Dec 12

100 0 100 200 300

N

City of Bloomington
Public Works

Scale: 1" = 100'

For reference only; map information NOT warranted.

Board of Public Works
Staff Report

Project/Event: Itinerant Merchant in right of way

Petitioner/Representative: Keith Booe – The Taco Rocket Operating Group Inc.

Staff Representative: Miah

Meeting Date: December 14, 2012

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

The business will operate from a food truck.

This application is for one year.

Staff is supportive of the request.

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

RESOLUTION 2012-98
Itinerant Merchant Food Vendor in Public Right of Way
Keith Booe, DBA Taco Rocket Operating Group

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

WHEREAS, Keith Booe ("Vendor") is desirous of using public on-street parking and sidewalks within the City of Bloomington for the purpose of selling food via a mobile kitchen and food cart; and

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

NOW, THEREFORE, BE IT RESOLVED that the City of Bloomington Board of Public Works declares that Vendor has permission to use on-street public parking and sidewalks for the purposes of selling food via a mobile kitchen for one year beginning on the day that License is issued by the City. _____, 2012 thru _____ 2013.

The following conditions attach to this approval:

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

10. Vendor shall not locate his business within a one block radius of the following special events during the hours of their operation unless prior written consent has been provided by the coordinator or director of the special event:
    a) City of Bloomington Farmers' Market;
    b) City of Bloomington Holiday Market;
    c) The Taste of Bloomington;
    d) Lotus World Music and Arts Festival;
    e) The Fourth Street Festival;
    f) Arts Fair on the Square;

g) Strawberry Festival;
h) Canopy of Lights;
i) Fourth of July Parade; and
j) Any other special events approved by the City Controller.

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

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

ADOPTED THIS_____DAY OF _____, 2012.

BOARD OF PUBLIC WORKS:

_____
Charlotte Zietlow, President

_____
James McNamara

_____
Dr. Frank N. Hrisomalos

ALL TERMS AND CONDITIONS CONTAINED IN THIS RESOLUTION 2012-93 ARE ACCEPTABLE AND AGREED TO FOR VENDOR:

_____
Keith Booe, Taco Rocket Operating Group

Date: _____

CITY OF BLOOMINGTON
economic & sustainable development

Itinerant Merchant, Solicitor and Peddler License Application Checklist

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

Applicant Information

Name:	Keith Booe		
Title:	President	Date of Birth:	6/17/72
Physical Address:	234 S. Cave Creek Drive		
City, State, Zip:	Bloomington, IN 47403		
E-Mail Address:	jandkbooe@Comcast.net		
Phone Number:	(812) 287-8563	Mobile Phone:	(773) 805-2852

Corporate Contact Information

Name of Employer:	Taco Rocket Operating Group Inc.				
Physical Address of Employer:	306 N. Walnut				
City, State, Zip:	Bloomington, IN 47404				
Phone Number of Employer:	(812) 333-8226				
Employer is a: Please Choose:	☐ Firm	☐ Limited Liability Corporation	☑ Corporation	☐ Partnership	☐ Sole Proprietor

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

Hot dogs, Beef sandwiches, Tacos, and Burritos. Hot Dog Cart will be used.

Length of Permit: Please Choose:	☐ 24 hours	☐ 72 hours	☐ 1 Calendar Week	☐ 30 Days	☐ 6 Months	☑ 1 Year
Price:	$15	$40	$75	$125	$175	$240

You Must Obtain the Following:

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

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

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

RELEASE, HOLD-HARMLESS AND INDEMNIFICATION AGREEMENT

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

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

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

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

Name (printed):	Keith Boor President of Taco Rocket
Signature:	[illegible]
Date Release Signed:	11/20/12

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 11/20/2012

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

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

PRODUCER
InsureChampaign
1704 South Neil Street, Suite C
Champaign IL 61820

CONTACT NAME: Denise Breen
PHONE (A/C, No, Ext): (217) 356-3111 FAX (A/C, No): (217) 356-3112
E-MAIL ADDRESS: denise@insurechampaign.net

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : General Casualty	
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Taco Rocket
8130 Rosebury Dr
Frankfort IL 60423

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC			CFB1022991	01/30/2012	01/30/2013	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS X HIRED AUTOS SCHEDULED AUTOS X NON-OWNED AUTOS			CFB1022991	01/30/2012	01/30/2013	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $			CCU1022991	01/30/2012	01/30/2013	EACH OCCURRENCE	$ 1,000,000
							AGGREGATE	$ 1,000,000
								$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N Y If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		CWC1022986	01/30/2012	01/30/2013	X WC STATU-TORY LIMITS OTH-ER	
							E.L. EACH ACCIDENT	$ 500,000
							E.L. DISEASE - EA EMPLOYEE	$ 500,000
							E.L. DISEASE - POLICY LIMIT	$ 500,000

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

Certicate holder is recognized as Additional Insured as their interests may appear with respects to leased/insured locations situated at:
306 N Walnut St, Bloomington, IN 47404

CERTIFICATE HOLDER

City of Bloomington, Indiana
401 N Morton St
PO Box 100
Bloomington, IN 47402

CANCELLATION

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

AUTHORIZED REPRESENTATIVE <DB>

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Monroe County Health Department

Monroe County, Indiana

Health Department	Futures Family Planning Clinic	Public Health Clinic
119 W. 7th Street	338 S. Walnut Street	333 E. Miller Drive
(812) 349-2543	(812) 349-7343	(812) 353-3244

2012 MOBILE/PUSHCART
RETAIL FOOD ESTABLISHMENT
LICENSE APPLICATION

Name of Mobile Unit Taco Rocket License Plate Number _____

Name of Owner Keith Bare Address: 234 S. Cave Court Drive

City Bloomington State IN Zip 47403 Phone (773)805-2852

Commissary where unit is serviced (if applicable) or where is unit stored when not in use?

Place Taco Rocket Address 306 N. WALNUT

City Bloomington State IN Zip 47404

Monroe County Ordinance stipulates that it shall be unlawful for any person to operate a mobile retail food establishment in Monroe County who does not possess a valid license from the Monroe County Health Department. * ***The license and most recent inspection sheet shall be posted in the mobile unit.*** The license for a mobile retail food establishment shall be valid until JANUARY 31, 2013.
The license shall be obtained annually.

FEE SCHEDULE

Mobile or Pushcart Unit (Motorized or Non-Motorized)	$ 100.00	X
Non-Motorized Prepackaged Ice Cream or other Prepackaged Non-potentially hazardous foods	$ 25.00	_____

**** ATTENTION: A separate Intinerant Merchant's license is also required by the City of Bloomington, Office of the Controller (349-3412) if selling food within city limits!***

To be completed by MCHD Food Protection Staff

Approved by: SG

Date: 11/28/12

CART INSPECTION

Prepared by: _____

Date Issued: _____

Receipt Number: _____

PLEASE COMPLETE the reverse side of this application!!!

RETAIL FOOD ESTABLISHMENT INSPECTION REPORT

State Form 48669 (R2/2-05)
SDH Form 51-0001

MONROE COUNTY HEALTH DEPARTMENT
119 West Seventh St.
Bloomington, Indiana 47404-3989

Based on an inspection this day, the item(*s*) noted below identify violations of 410 IAC 7-24, Indiana Retail Food Establishment Sanitation Requirements. The time limit for correction of each violation is specified in the narrative portion of this report.

Establishment Name TACO ROCKET MOBILE	**Telephone Number** ( ) Establishment ( ) Owner	**Date of Inspection** (*mm/dd/yr*) 11/26/10	**ID #**
Establishment Address (*number and street, city, state, ZIP code*) 306 N. Walnut			
Owner Keith Boos	**Purpose:** 1. Routine	**Follow-up**	**Release Date**
Owner's Address	2. Follow-up	**Summary of Violations:**	
Person in Charge	3. Complaint 4. Pre-Operational	C____ NC____ R____	
Responsible Person's E-mail	5. Temporary 6. HACCP	**Menu Type** *(See back of page)*	
Certified Food Handler	7. Other (*list*) _____	1 2 3 4 5	

- CRITICAL ITEMS ARE IDENTIFIED IN THE CHECKLIST AND NARRATIVE COLUMNS MARKED "C"
- VIOLATION(S) REPEATED FROM PREVIOUS INSPECTIONS ARE DENOTED IN THE "SUMMARY OF VIOLATIONS" AND IN THE NARRATIVE BELOW AS "R"

Section#	C/NC	R	Narrative	To Be Corrected By
			OK to open.	
			Approved.	
			OBtain City Itinerant Merchant	
			permit.	

Received by (*name and title printed*):	Inspected by (*name and title printed*):
Received by (*signature*):	Inspected by (*signature*): Sylvia Garrison

cc:	cc:	cc:

HOT DOG
UNIVERSITY
CERTIFIED

Board of Public Works
Staff Report

Project/Event: Use of Streets & Showers Commons/Plaza for 2013 Farmers' Market

Petitioner/Representative: Bloomington Parks & Recreation

Staff Representative: Miah

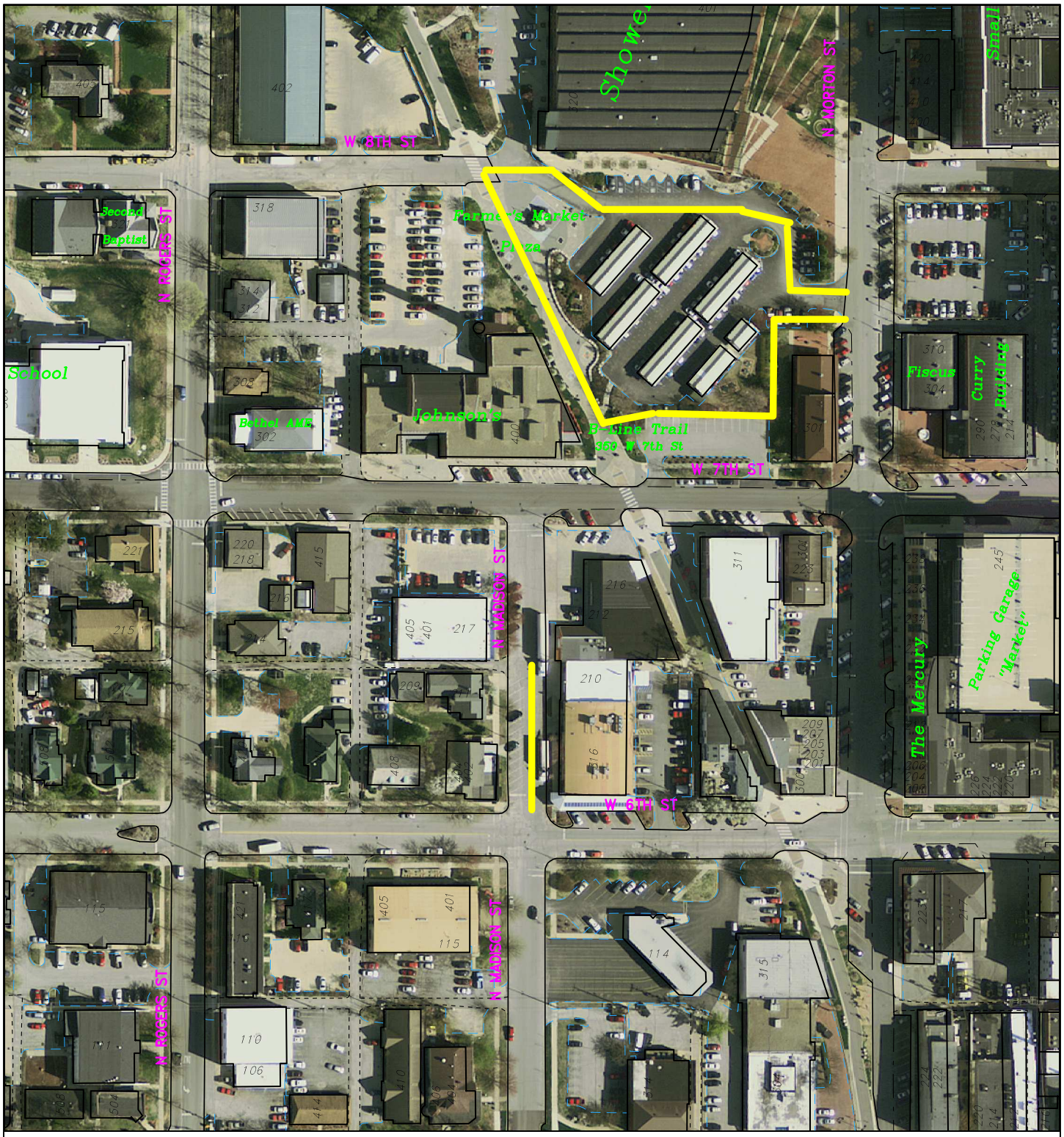
Meeting Date: December 18, 2012

Market Organizers are asking for use of Showers Parking Area and Showers Plaza for the 2013 Saturday Market which begins April 6 and ends on November 30. This includes closing the section of 8th Street between the B-Line Trail and Morton Street. Closure will be from 4:00 a.m. to 2:00 p.m. each Saturday.

They also request permission to use a section of Madison Street adjacent to Bloomingfoods for the Tuesday Market. The Tuesday Market begins June 4 and ends September 24. Closure will be from 2:00 p.m. until 7:30 p.m. Businesses on the north end of the block have full access during this time.

In 2012 customer attendance at Market exceeded 200,000.

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



2013 Farmer's Market

By: smithc
13 Dec 12

150 0 150 300 450

N

City of Bloomington
Public Works

Scale: 1" = 150'

For reference only; map information NOT warranted.

Board of Public Works
Staff Report

Project/Event: Right of way vacation of South Tech Park Blvd. north of Schmaltz Blvd.

Staff Representative: Rick Alexander

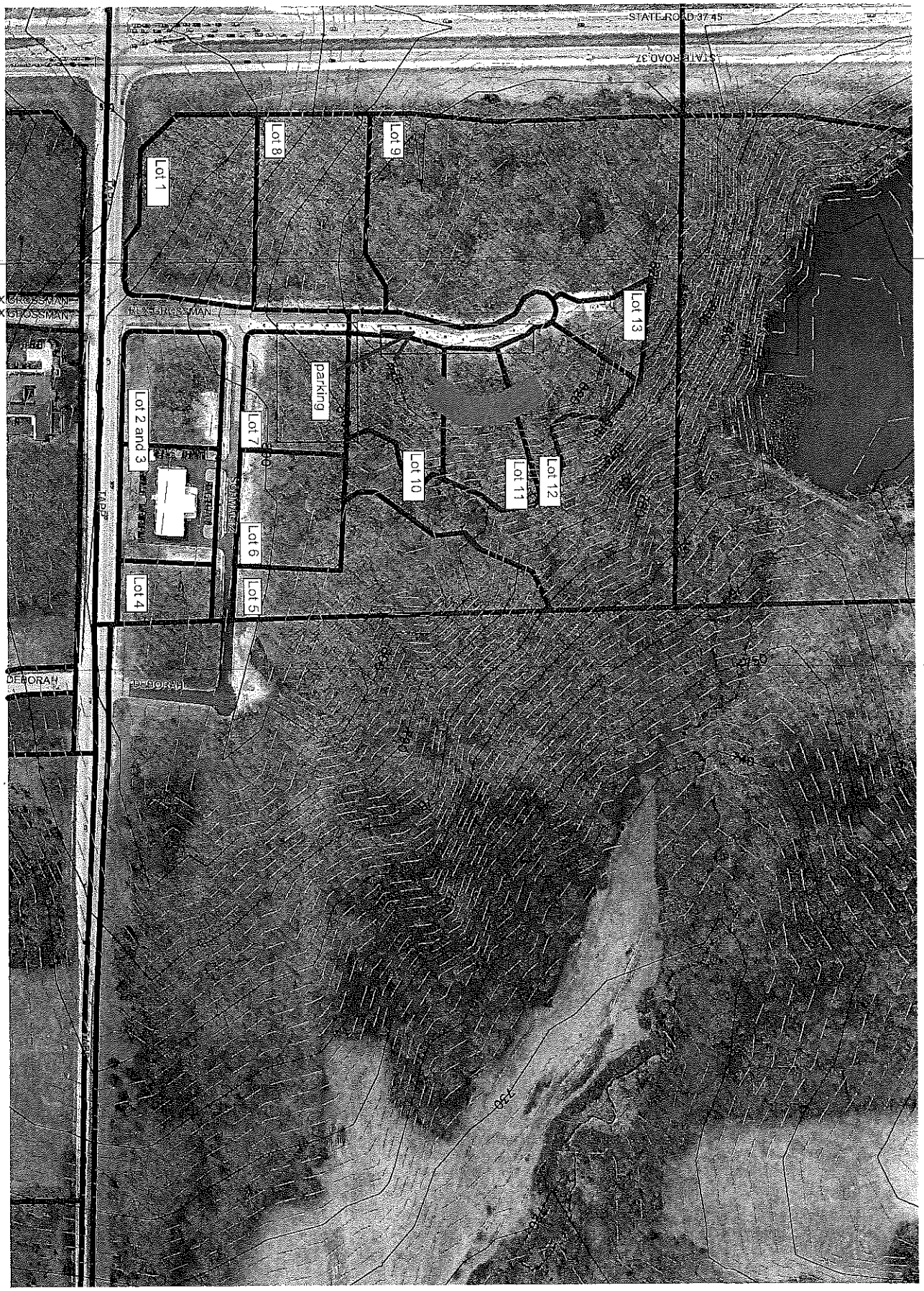
Petitioner/Representative: Public Investment Corporation

Date: December 18, 2012

Report: Public Investment Corporation is requesting that the city vacate a 50' wide strip of South Tech Park Blvd. starting at Schmaltz Blvd. and going north for approximately 768' ending at the terminus of the cul-de-sac. This vacation would allow the owner to develop the vacant land surrounding the right-of-way with a professional office complex.

Recommendation and Supporting Justification: Planning staff sent notices to area utilities and other city entities. Most utilities have lines in the right-of-way and need easements to maintain services. Action is needed by the Board of Public Works is to send a recommendation to the city council to either retain the right of way or vacate it.

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



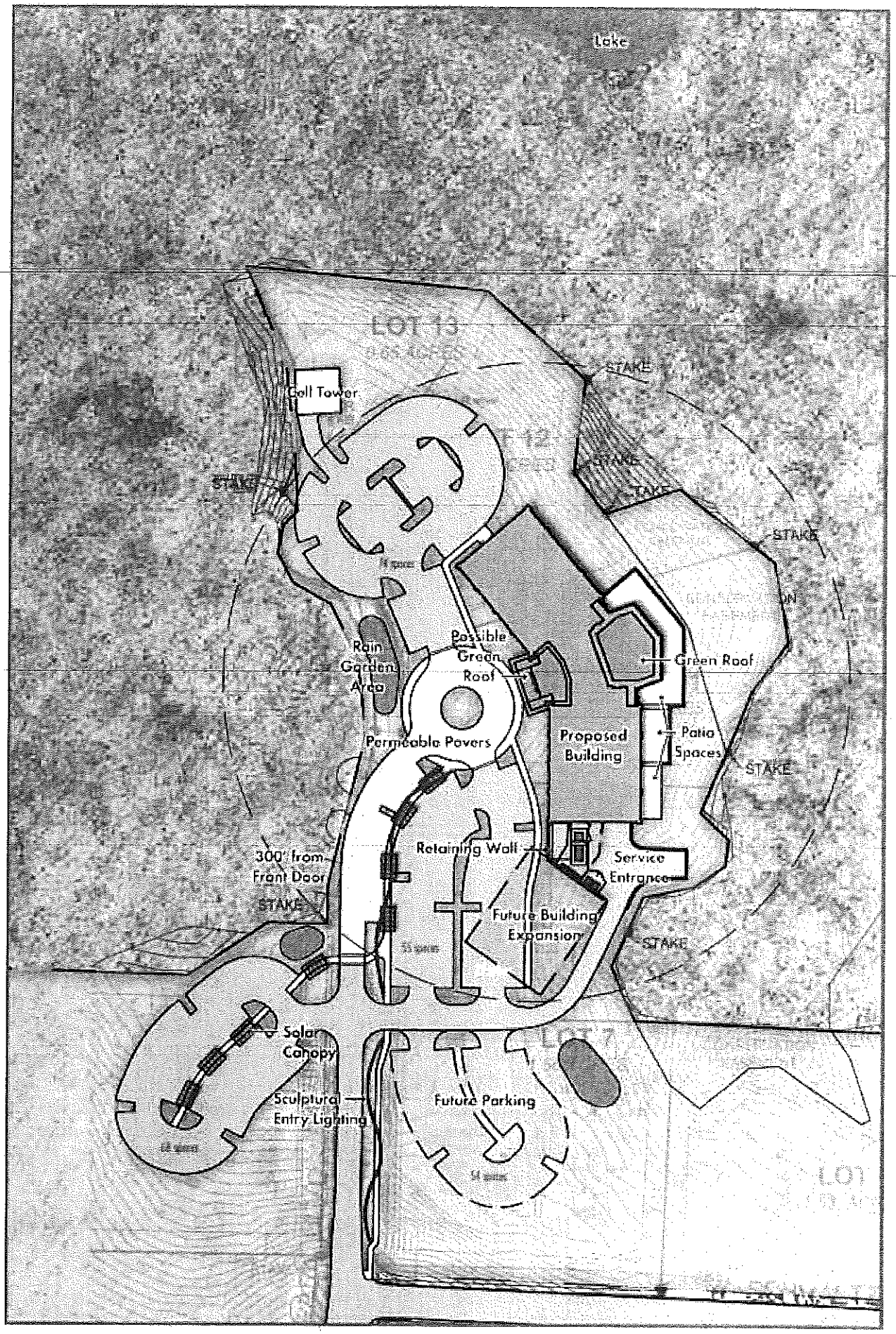
100 50 0 100

SCALE 1" = 100'

HOOSIER ENERGY

BLOOMINGTON, IN

N



Conceptual Plan

SITE PLAN

City of Bloomington
Planning Department

2nd Notice
Please Respond

DEVELOPMENT REVIEW TRANSMITTAL

Date: November 8, 2012

Type of Request: right-of-way vacation

Project Name: 2790 S. Tech Park Blvd.(50 foot wide street right-of-way)

Owner: Public Investment Corporation

Location: The subject parcel is a 50 foot wide strip of street right-of-way running north/south directly north of Schmaltz Blvd. The subject parcel ends in a cul-de-sac. The subject right-of-way measures 50 feet by approximately 768 feet (containing 0.88 acres). Please see the attached site plan.

Proposed Use: The purpose of this vacation request is to allow for the construction of a business park.

Required Approval: Common Council approval

TENTATIVE SCHEDULE

We need your comments by: **November 27, 2012**

First Common Council hearing: as scheduled

Second Common Council hearing: as scheduled

Final Common Council hearing: as scheduled

SIGNIFICANT ISSUES AND QUESTIONS

The petitioner is seeking right-of-way vacation of an alley right-of-way in order to construct a business park.

Refer to the enclosed site plans, and the petitioner's letter.

Please respond in writing concerning the effect this vacation would have upon your provision of service to this area.

Please reply in writing to: ***darlandl@bloomington.in.gov***

Lynne Darland, AICP
Planning Department
City of Bloomington
P.O. Box 100
Bloomington, IN 47402

812-349-3529

PETITION FOR VACATION OF PUBLIC RIGHT-OF-WAY

CITY OF BLOOMINGTON
COMMON COUNCIL

FILE# _____
1ST READING _____
COMMITTEE _____
FINAL HEARING _____

Office of the Common Council
P.O. Box 100, Showers City Hall
Bloomington, IN 47402
(812) 349-3409

Applicant's Name Ted Ferguson , Public Investment Corporation

Address 4101 W. Sierra Drive, 47403 Phone 812- 825-7690

Counsel or Consultant: Dan Neubecker, Bledsoe Riggert & Guerrettaz, Inc.

Address 1351 W. Tapp Road, Bloomington, IN 47403 Phone 812-336-8277

_____ This application must be accompanied by all required submittals as stated in the information packet for Vacation of public right-of-way. Staff reserves the right to schedule hearing dates for petitions subject to complete submittals. Notices to adjacent property owners should not be mailed until hearing dates have been confirmed.

_____ I (we) agree that the applicant will notify all adjacent property owners by certified mail at the applicant's expense.

I (we) further agree that the applicant will cause a legal notice of this application to be published in a paper having general circulation in Bloomington at the applicant's expense.

I (we) certify that all foregoing information is correct and that I (we) are the owners (legal agents for owners) of property adjacent to the proposed vacation of public right-of-way, which is the subject of this application.

Signature: _____
Dan Neubecker

Bledsoe Riggert Guerrettaz
LAND SURVEYING · CIVIL ENGINEERING

November 7, 2012

Lynne Darland
City of Bloomington Planning Department
Showers Center City Hall
401 North Morton Street
Bloomington, Indiana 47402

RE: Request for Public Right-Of-Way Vacation
2790 S Tech Park Blvd for Public Investment Corporation

Dear Lynne,

On behalf of the Public Investment Corporation we are requesting the vacation of the public right-of-way for Tech Park Boulevard (TPB), north of its intersection with Schmalz Boulevard in the Mill Creek development. Attached, for your review, is the Petition for Vacation of Public Right-Of-Way and the Proposed Right-of-Way Vacation Exhibit.

Public Investment Corporation (PIC) currently owns all the lots surrounding this section of TPB, with the exception of Lot 9, which is owned by the Bloomington Community Park and Recreation Foundation, Inc. PIC is in considering the sale of this property to a single tenant who will aggregate all the lots with frontage along this section of TPB into one zoning lot for development of a single use, single tenant office building. Access to the existing cell tower at the north end of TPB, and easement for any utilities that serve it, will be provided across the site to allow that use to continue in its current location and form.

In order to develop the site in a manner that meets the project goals with respect to circulation, parking, service areas, tree preservation, building orientation and views, etc., more site flexibility is necessary than would be possible with the public street in place. Portions of the existing Tech Park Boulevard may be used as part of this new LEED certified development, but a substantial portion of it is expected be removed in favor of pedestrian circulation, parking lot and/or building. Existing utilities will be relocated and new easements granted, as needed, to best serve the proposed facility.

We ask that this request be approved with the condition that the land sale takes place by July 31, 2013. If the land sale is not completed by that date, the TPB right-of-way will revert back to its original condition and the vacation will voided.

Please contact me if you have any questions regarding this request.

Sincerely,

Dan Neubecker

Enclosures

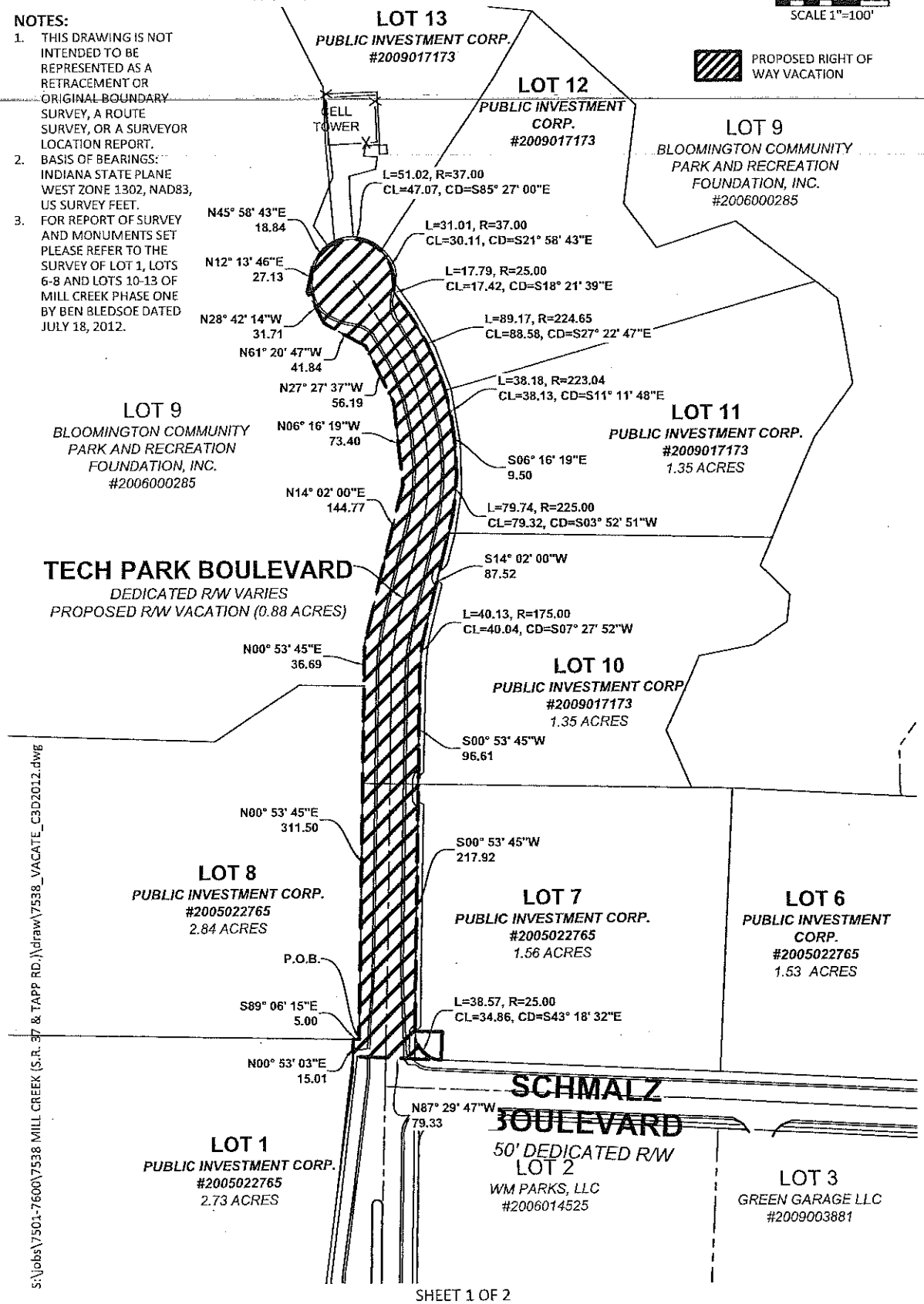
xc via e-mail: Ted Ferguson, PIC
xc: File – Project No. 7662

7662 – cob-ld-001.ltr

Bledsoe Riggert Guerrettaz
LAND SURVEYING · CIVIL ENGINEERING

PROPOSED RIGHT OF WAY VACATION
TECH PARK BOULEVARD
A PART OF MILL CREEK, PHASE 1 (PLAT CABINET D, ENV. 21 AND 93)
MONROE CO., INDIANA
JOB No. 7662 (7538)
Client Name: PUBLIC INVESTMENT CORPORATION

NOTES:
1. THIS DRAWING IS NOT INTENDED TO BE REPRESENTED AS A RETRACEMENT OR ORIGINAL BOUNDARY SURVEY, A ROUTE SURVEY, OR A SURVEYOR LOCATION REPORT.
2. BASIS OF BEARINGS: INDIANA STATE PLANE WEST ZONE 1302, NAD83, US SURVEY FEET.
3. FOR REPORT OF SURVEY AND MONUMENTS SET PLEASE REFER TO THE SURVEY OF LOT 1, LOTS 6-8 AND LOTS 10-13 OF MILL CREEK PHASE ONE BY BEN BLEDSOE DATED JULY 18, 2012.



S:\jobs\7501-7600\7538 MILL CREEK (S.R. 37 & TAPP RD.)\draw\7538_VACATE_C3D2012.dwg

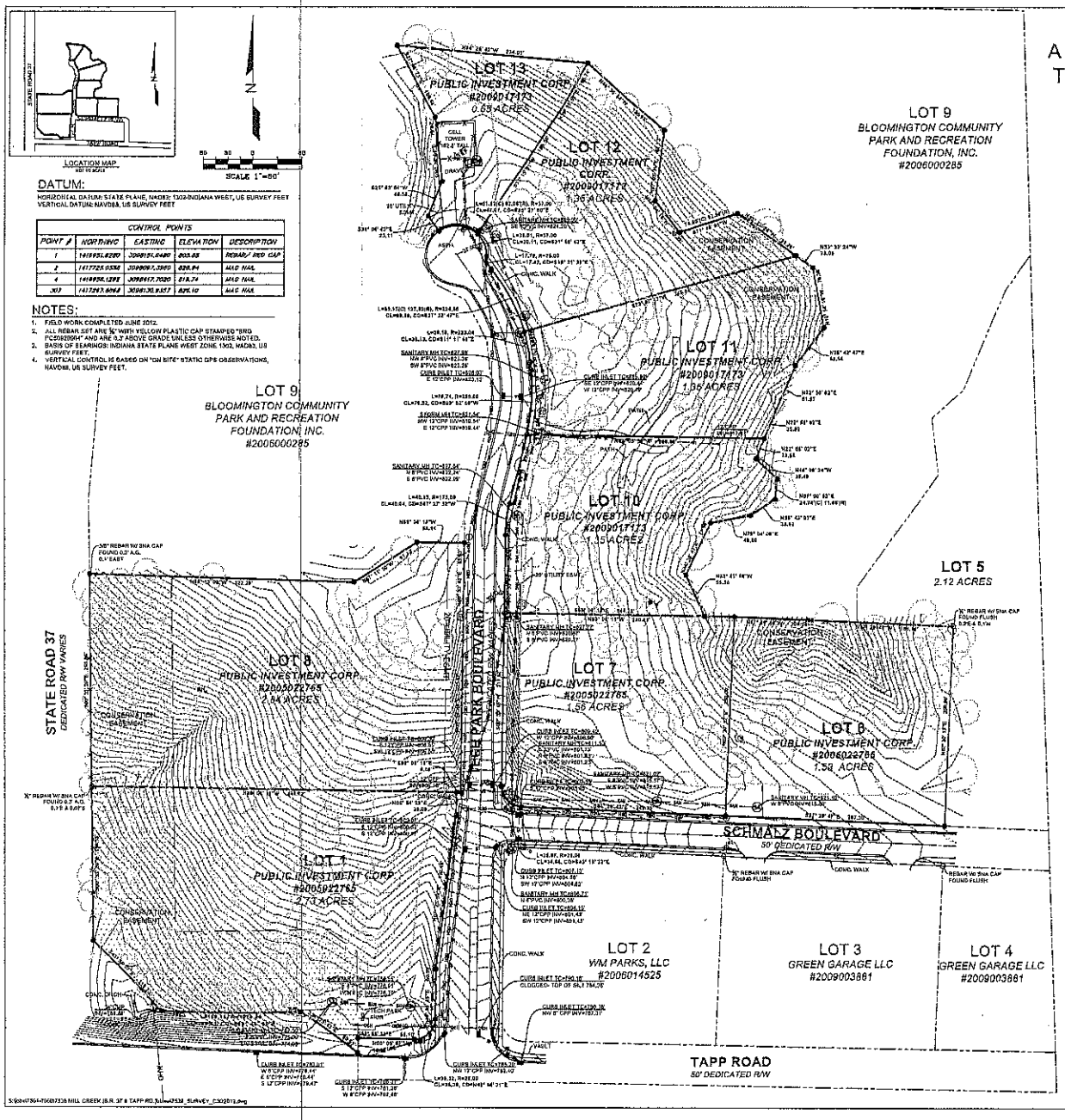
SHEET 1 OF 2

Bloomington · Bedford · Paoli
1351 West Tapp Road · Bloomington, Indiana 47403 · p: 812-336-6277 · f: 812-336-0817 www.brgcivil.com

BOUNDARY AND TOPOGRAPHIC SURVEY

A PART OF MILL CREEK PHASE I, BEING A PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 8 NORTH, RANGE 1 WEST

MONROE COUNTY, INDIANA



DATUM:

HORIZONTAL DATUM: STATE PLANE, NAD83: 1302-INDIANA WEST, US SURVEY FEET
VERTICAL DATUM: NAVD88, US SURVEY FEET

CONTROL POINTS				
POINT #	NORTHING	EASTING	ELEVATION	DESCRIPTION
1	1419951.8220	3098151.0480	803.68	REBAR/ RED CAP
2	1417725.0550	3099097.3960	828.94	MAG NAIL
4	1419956.1298	3099417.7020	818.74	MAG NAIL
303	1417297.8048	3098130.9357	826.10	MAG NAIL

NOTES:

1. FIELD WORK COMPLETED JUNE 2012.
2. ALL REBAR SET ARE ⅝" WITH YELLOW PLASTIC CAP STAMPED "BRG PLS#20900" AND ARE 0.3' ABOVE GRADE UNLESS OTHERWISE NOTED.
3. BASIS OF BEARINGS: INDIANA STATE PLANE WEST ZONE 1302, NAD83, US SURVEY FEET.
4. VERTICAL CONTROL IS BASED ON "ON SITE" STATIC GPS OBSERVATIONS, NAVD88, US SURVEY FEET.

REPORT OF SURVEY:

In accordance with Title 865, 1-12-1 through 1-12-26 of the Indiana Administrative Code, the following observations and opinions are submitted regarding the various uncertainties in the locations of the lines and corners established on this survey as a result of:

a. Relative discrepancies of record
b. Title discrepancies of record
c. Evidence of active lines of occupation
d. Relative Positional Accuracy "RPA"

The Relative Positional Accuracy "RPA" (due to random errors in measurement) of this survey is within that allowable for an urban survey (0.07 feet plus 50 ppm) as defined IAC, Title 865 ("Relative Positional Accuracy" means the value expressed in feet or meters that represents the uncertainty due to random errors in measurements in the location of any point on a survey relative to any other point on the same survey at the 95 percent confidence level.")

In regard to "ACTIVE LINES OF OCCUPATION", point (c) above: ACTIVE refers to lines which are marked by visible, obvious, well defined and maintained, man-made or planted objects, such as, but not limited to, fences, hedges and retaining walls. The uncertainty cited for a line of occupation is general in nature and is NOT intended to be specific for every point along the line. Therefore portions of the occupation line may vary from the surveyed line by a distance greater or less than uncertainty cited in this report.

This survey is a Retracement Boundary Survey.

This survey was performed at the request of Public Investment Corporation.

The property is currently in the name of Public Investment Corporation per the plats recorded as Instrument # 2009017173 and # 2005022765 in the Office of the Recorder of Monroe County, Indiana. The following Lots were surveyed: Lot 1 and Lots 5-8 of Mill Creek, Phase 1 Final Plat as recorded in Plat Cabinet D, Envelope 21 as Instrument # 2005022765 and Lots 10-13 of Mill Creek, Phase 1, Replat of Lot 10, Final Plat as recorded in Plat Book D, Envelope 93 as Instrument # 2009017173.

The field work was completed on June 25, 2012.

MONUMENTS FOUND:

1. Northeast corner of Lot 3: 5/8" rebar w/ SHA cap found flush; original subdivision corner.
2. Northwest corner of Lot 3: 5/8" rebar w/ SHA cap found flush; original subdivision corner.
3. Northwest corner of Lot 6: 5/8" rebar w/ SHA cap found 0.3' above grade; original subdivision corner.
4. Northwest corner of Lot 9: 5/8" rebar w/ SHA cap found 0.2' above grade; original subdivision corner.
5. Northeast corner of Lot 9: 5/8" rebar w/ SHA cap found flush; original subdivision corner.

PRIOR SURVEYS:

A. Mill Creek, Phase 1 Final Plat as recorded in Plat Cabinet D, Envelope 21 as Instrument # 2005022765 by James D. Smalls of Smith Neubecker and Associates, dated November 1, 2005.
B. Mill Creek, Phase 1, Replat of Lot 10, Final Plat as recorded in Plat Book D, Envelope 93 as Instrument # 2009017173 by Stephen L. Smith of Smith Neubecker and Associates dated August 11, 2009.

DEED ANALYSIS:

There were significant mathematical errors found on the replat of Lot 10 ("Prior Surveys"- Plat B). Smith Neubecker and Associates was contacted and they provided coordinates for many of the corners so that the correct bearings and distances could be calculated. Very few of the corners within the subdivision were found.

ESTABLISHMENT OF LINES AND CORNERS:

Monuments 1 and 2 above in "Monuments Found" were held and used to reestablish the rest of the corners of the subdivision of record bearings and distances except where noted below. All monuments noted in the "Monuments Found" section were held as good.

There is a small triangle of land dedicated to conservation easement near the southeast corner of Lot 8 of Plat A (above in "Prior Surveys") that is dimensioned in an ambiguous way. It is not clear if this land is intended to be a part of Lot 1 or Lot 8 or supposed to be included in the land dedicated to Tapp Road. The platted acreage equals the calculated acreage if it is included in Lot 1 and it seems unlikely that the City of Bloomington would accept dedicated right-of-way that is also a dedicated conservation easement. For Plat B we assume the triangular portion of land was included in Lot 1 for the purposes of this survey.

The acreage of Lot 6 is platted as 3.14 acres. The calculated acreage is 2.84 acres. The reason for the discrepancy could not be determined.

The south line of Lot 10 on Plat B does not agree with the same line as shown on Plat A. The dimension of 260.81 should read 244.29 because it would not include the 16.52 feet that we are includes a part of Lot 9 (Plat A). The dimension of 244.29 was held for this survey. The east line of Lot 10 on Plat B that is platted as 11.56 feet is also in error. The distance of the line on the plat scales at ~26 feet. When the coordinate sheet from Smith Neubecker was consulted the distance was shown to be 24.76 feet. A similar problem was found with the east line of Lot 13 that is platted as 93.56 feet but is shown to be 74.80 feet per the coordinate sheet. All of these errors were corrected with this survey in order for the lots to close mathematically.

There were several discrepancies with the curve data table found on Plat B and the provided coordinate sheet. Two of the curves in the data table appear to have been annotated across multiple lots, resulting in distances that are drastically different from the calculated distances. Curve 5 from Plat B has a record curve length of 127.52 feet and a calculated curve length of 63.17 feet. Curve 7 from Plat B has a record curve length of 62.06 feet and a calculated curve length of 51.03 feet. Several other curves were adjusted in order to fit the north-south line of the lot to the easternmost line of the lots. Coordinates provided for the intersection of the eastmost line with the east right-of-way of the road were used for the beginning and ends of the curves.

As a result of the above observations, it is my opinion that the uncertainties in the location of the lines and corners established on this survey are as follows:

Due to *Availability and condition of reference monuments*: 0.2 feet.

Due to *Occupation or possession lines*: none noted.

Due to *Clarity or ambiguity of the record description used and of adjoiners' descriptions and the relationship of the lines of the subject tract with adjoiners' lines*: as much as 26' due to plat inaccuracy.

RECORD LEGAL DESCRIPTION:

Lot 1 and Lots 5-8 of Mill Creek, Phase 1 Final Plat as recorded in Plat Cabinet D, Envelope 21 as Instrument # 2005022765 and Lots 10-13 of Mill Creek, Phase 1, Replat of Lot 10, Final Plat as recorded in Plat Book D, Envelope 93 as Instrument # 2009017173.

Subject to any easements of record.

This survey was executed according to survey requirements contained in Sections 1 through 12 of 865 IAC 1-12.

This certification does not take into consideration additional facts that an accurate and correct title search and/or examination might disclose.

Evidence of easements have not been located in the field and are not shown on this survey drawing.

Subject to the above reservation, I hereby certify that the survey work performed on the project shown hereon was performed either by me or under my direct supervision and control and that all information shown is true and correct to the best of my knowledge and belief.

Certified this 18th day of July, 2012

Ben E. Sledge
Registered Land Surveyor No. 50059
State of Indiana
ben@bgsdv.com

No. 50059 STATE OF INDIANA LAND SURVEYOR BEN E. SLEDGE

LEGEND:

YARD LIGHT	FENCE	FD AXEL			
LIGHT POLE	GUARDRAIL	FD BRASS DISK			
SIGNAL POLE	OVERHEAD WIRES	FD CUT CIN SPOUT			
UTILITY POLE	UNDER G.E.D.	FD CHISELED X			
GUY WIRE	GAS LINE	SET CHISELED X			
CATCH BASIN	SAN SEWER LINE	SET DRILL HOLE			
CURB INLET	STORM SEWER LINE	FD MARBOM MON.			
ELECTRIC MH	UNDER TELEPHONE	SET MARBOM MON.			
MANHOLE	EXISTING WATER LINE	SET HUB/TACK			
PHONE MH	CHILLED WATER LINE	FD REBAR			
SANITARY MH	SIGN	SET REBAR			
SIGNAL MH	R.O.W. MON.	FD MAG NAIL			
STEAM MH	MONITORING WELL	SET MAG NAIL			
STORM MH	BOLLARD	FD NAIL			
WATER MH	BORE HOLE	SET NAIL			
ELEC. MERCK	DOWNSPOUT	FD PIPE			
CLEANOUT	GATE POST	FD JR SPIKE			
GAS METER	POLE	SET JR SPIKE			
GAS VALVE	PARKING METER	FD STONE			
WATER VALVE	SPIGOT	RECORDED BAD			
FIRE HYDRANT	T-POST	MEASURED BAD			
SPR. HOOKUP	WOOD POST	CALCULATED BAD			
SPRINKLER	PARKING SPACES	PROPORTIONAL DIST.			
	TRANSFORMER	ABOVE GROUND			
	ELEC. VAULT	BELOW GROUND			
	PHONE VAULT	CONIF. TREE			
	STEAM VAULT	DECID. TREE			
	VALVE VAULT	SHRUB			
	AC UNIT	PHONE RISER-BOX			
	PHONE BOOTH	TV RISER-BOX			
	BIRD FEEDER	ELEC. RISER-BOX			
	MAILBOX	GAS RISER-BOX			
	PROP. TANK				
	PARKING BLOCK				

Revision	By	Date
REVISED CONTOURS ON LOT 13 BASED ON ADDITIONAL SURVEY INFO	BLOSSER	10/16/12
REVISED OWNERSHIP INFORMATION	BLOSSER	11/08/12

Bledsoe Riggert Guerrettaz
CIVIL ENGINEERING
1351 West Tapp Road
Bloomington, Indiana 47403
P: 812-336-6577
F: 812-336-8617
E: ben@brgpllc.com

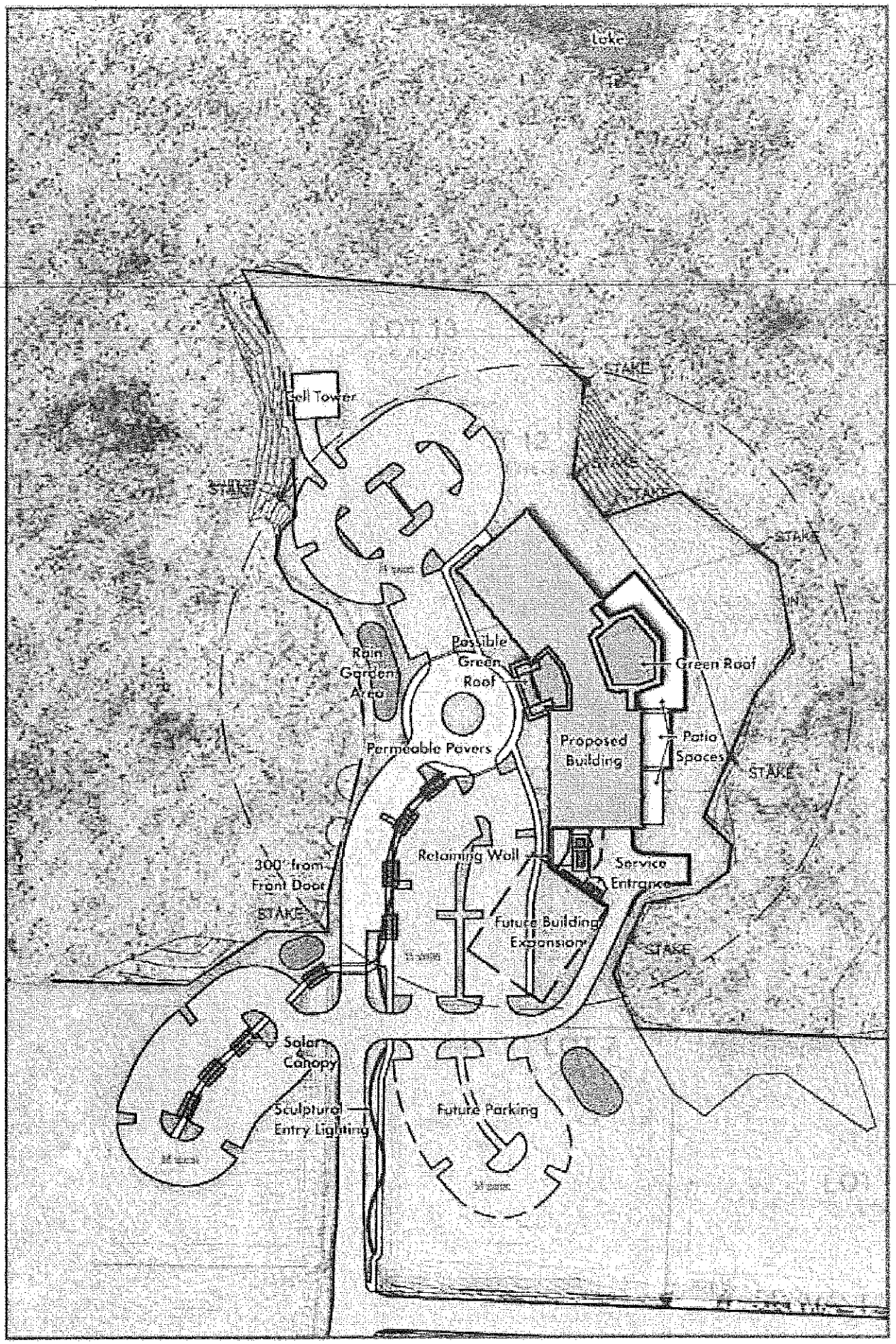
MILL CREEK PHASE 1
TAPP ROAD
FOR
PUBLIC INVESTMENT CORPORATION

SURVEYED BY: A.ALEDOSO
DRAWN BY: R. DIER
CHECKED BY: B. BLEDSOE
DATE: JULY 2012

BOUNDARY & TOPOGRAPHIC SURVEY

SHEET 1 OF 1

PROJECT NO. 7538



Conceptual Plan

SITE PLAN

SCHMIDT ASSOCIATES

Bledsoe Riggert Guerrettaz
LAND SURVEYING · CIVIL ENGINEERING

Proposed Right of Way Vacation
Tech Park Boulevard
Legal Description
Job # 7662 (7538)

All that portion of Tech Park Boulevard that is adjacent to Lots 10 through 13 in Mill Creek Phase 1, Replat of Lot 10 as recorded in Plat Cabinet D, Envelope 93, Instrument Number 2009017173 and all that portion of Tech Park Boulevard that is adjacent to Lots 7 and 8 and a part of Tech Park Boulevard that is adjacent to Lot 1 in Mill Creek Phase 1 as recorded in Plat Cabinet D, Envelope 21, Instrument Number 2005022765 being more particularly described as follows:

BEGINNING at The Southeast corner of said Lot 8; thence NORTH 00 degrees 53 minutes 45 seconds EAST along the east line of Lot 8 a distance of 311.50 feet to the Southeast corner of Lot 9; thence along the east line of Lot 9 the next eight (8) courses:

1. NORTH 00 degrees 53 minutes 45 seconds EAST 36.69 feet; thence
2. NORTH 14 degrees 02 minutes 00 seconds EAST 144.77 feet; thence
3. NORTH 06 degrees 16 minutes 19 seconds WEST 73.40 feet; thence
4. NORTH 27 degrees 27 minutes 37 seconds WEST 56.19 feet; thence
5. NORTH 61 degrees 20 minutes 47 seconds WEST 41.84 feet; thence
6. NORTH 28 degrees 42 minutes 14 seconds WEST 31.71 feet; thence
7. NORTH 12 degrees 13 minutes 46 seconds EAST 27.13 feet; thence
8. NORTH 45 degrees 58 minutes 43 seconds EAST 18.84 feet to the Southwest corner of Lot 13 and the beginning of a non-tangent curve concave to the south having a radius of 37.00 feet and a chord which bears SOUTH 85 degrees 27 minutes 00 seconds EAST 47.07 feet; thence SOUTHEASTERLY along the south line of Lot 13 and along said curve an arc distance of 51.02 feet to the Northwest corner of Lot 12 and the beginning of a compound curve concave to the southwest having a radius of 37.00 feet and a chord which bears SOUTH 21 degrees 58 minutes 43 seconds EAST 30.11 feet; thence along the west line of Lot 12 the next three (3) courses:
   1. SOUTHERLY along said curve an arc distance of 31.01 feet to the beginning of a reverse curve concave to the northeast having a radius of 25.00 feet and a chord which bears SOUTH 18 degrees 21 minutes 39 seconds EAST 17.42 feet; thence
   2. SOUTHERLY along said curve an arc distance of 17.79 feet to the beginning of a reverse curve concave to the southwest having a radius of 224.65 feet and a chord which bears SOUTH 27 degrees 22 minutes 47 seconds EAST 88.58 feet; thence
   3. SOUTHERLY along said curve an arc distance of 89.17 feet to the Northwest corner of Lot 11 and the beginning of a non-tangent curve concave to the west having a radius of 223.04 feet and a chord which bears SOUTH 11 degrees 11 minutes 48 seconds EAST 38.13 feet; thence along the west line of Lot 11 the next three (3) courses:
      1. SOUTHERLY along said curve an arc distance of 38.18 feet; thence
      2. SOUTH 06 degrees 16 minutes 19 seconds EAST 9.50 feet to the beginning of a tangent curve concave to the west having a radius of 225.00 feet and a chord which bears SOUTH 03 degrees 52 minutes 51 seconds WEST 79.32 feet; thence
      3. SOUTHERLY along said curve an arc distance of 79.74 feet to the Northwest corner of Lot 10; thence along the west line of Lot 10 the next three (3) courses:
         1. SOUTH 14 degrees 02 minutes 00 seconds WEST 87.52 feet to the beginning of a tangent curve concave to the east having a radius of 175.00 feet and a chord which bears SOUTH 07 degrees 27 minutes 52 seconds WEST 40.04 feet; thence
         2. SOUTHERLY along said curve an arc distance of 40.13 feet; thence
         3. SOUTH 00 degrees 53 minutes 45 seconds WEST 96.61 feet to the Northwest corner of Lot 7; thence SOUTH 00 degrees 53 minutes 45 seconds WEST along the west line of Lot 7 a distance of 217.92 feet to the beginning of a tangent curve concave to the northeast having a radius of 25.00 feet and a chord which bears SOUTH 43 degrees 18 minutes 32 seconds EAST 34.86 feet; thence SOUTHEASTERLY along said curve an arc distance of 38.57 feet to the north line of Schmalz Boulevard; thence NORTH 87 degrees 29 minutes 47 seconds WEST along the westerly extension of said north line a distance of 79.33 feet to the east line of Lot 1; thence NORTH 00 degrees 53 minutes 03 seconds EAST along said east line a distance of 15.01 feet to the south line of Lot 8; thence SOUTH 89 degrees 06 minutes 15 seconds EAST along said south line a distance of 5.00 feet to the POINT OF BEGINNING, containing 0.88 acres, more or less.

This certification does not take into consideration additional facts that an accurate and correct title search and/or examination might disclose.

Evidence of easements have not been located in the field and are not shown on this survey drawing.

Subject to the above reservation, I hereby certify that the survey work performed on the project shown hereon was performed either by me or under my direct supervision and control and that all information shown is true and correct to the best of my knowledge and belief.

Certified this 6th day of November, 2012

Ben E. Bledsoe
Registered Land Surveyor No. 0559
State of Indiana

BEN E. BLEDSOE
REGISTERED
No.
S0559
State of
INDIANA
LAND SURVEYOR

Bloomington · Bedford · Paoli
1351 West Tapp Road · Bloomington, Indiana 47403 · p: 812-336-8277 · f: 812-336-0817 www.brgcivil.com

By: darlandl
30 Nov 12

300 0 300 600 900

N

City of Bloomington
Planning

Scale: 1" = 300'

For reference only; map information NOT warranted.

BLOOMINGTON

Lynne Darland <darlandl@bloomington.in.gov>

Vacation of right-of-way

1 message

Roger Kerr <kerrr@bloomington.in.gov> Tue, Nov 13, 2012 at 7:44 AM
To: Lynne Darland <darlandl@bloomington.in.gov>

Lynne
The Bloomington Fire Department is OK with the vacation of right-of-way for 2790 s tech park blvd.
Thanks Chief Kerr

BLOOMINGTON

Lynne Darland <darlandl@bloomington.in.gov>

Right-of-Way Vacation (2790 S. Tech Park Blvd)

1 message

Rick Routon <routonr@bloomington.in.gov> Mon, Nov 26, 2012 at 12:14 PM
To: Lynne Darland <darlandl@bloomington.in.gov>
Cc: Rick Routon <routonr@bloomington.in.gov>

Mrs. Darland.

As a representative of the Bloomington Digital Underground and the Assistant Director of Information & Technology Services I will be responding to your letter Dated November 08, 2012 for the request of right-of-way vacation of 2790 S. Tech Park Blvd. (50 foot wide street right-of-way)

In reviewing the document that you sent from the City of Bloomington Planning Department and the Petitioner requesting the right-of-way vacation. The Bloomington Digital Underground and the City of Bloomington Information & Technology Services has no reservations with this request.

Best Regards,
Rick Routon

--
Rick Routon
Assistant Director of Information & Technology Services
P.O. Box 100 Suite 150
401 N. Morton St.
Bloomington, IN 47402
p:812.349.3856 f: 812.349.3487 c: 812.360.2913

--Please consider the environment: Do not print this e-mail unless necessary.

11-26-12

Lynne Darland
Planning Department
P.O. Box 100
Bloomington, In 47402

Lynne Darland,

I have reviewed the request to vacate right-of-way for S. Tech Park Blvd.

CBU currently has a 12" water line running north-south within said 50' R/W along the west side of Tech Park Blvd. In addition there is a platted 20' utility easement parallel to and abutting the east side of said 50' R/W, as recorded as Mill Creek Phase I, Replat of Lot 10, Final Plat, in Plat Cabinet D, Envelope 93, as Instrument No. 2009017173.

There is also an existing Permanent Blanket Sanitary Sewer, Water, and Public Storm Drainage Easement, recorded as Instrument No. 2008010047, which encompasses all of Lot 10.

Given these facts CBU would not object to the vacation of said S. Tech Park Blvd. Right-of-Way, provided that:

An additional Blanket Easement be granted to CBU over Lots 7 and 8, (as the portion of road to be vacated includes frontage on these Lots), and that the existing Blanket Easement and the new Blanket Easement remain in effect until such time as:

A.) New easements are recorded for any utility that is currently within the right-of-way, and any utility that must be relocated to accommodate the new site development.

B.) A new plat amendment is recorded.

C.) The property is reverted back to the originally recorded Mill Creek Phase I Replat of Lot 10, Final Plat if the land sale is not completed by July 31, 2013 (which is a condition of approval from petitioner).

If you have any questions, or if I can provide additional information, please feel free to contact me.

Respectfully,

Michael Carter

City of Bloomington Utilities Dept.

Project Coordinator

Easements/Acquisitions

349-3628

at&t

11/26/2012
Lynne Darland
Planning Department
City of Bloomington
P.O. Box 100
Bloomington, IN 47402

Lynne This letter is in regard to the vacation of a 50 foot strip of street right-of-way running north/south directly north Of Schmaltz Blvd. The subject right-of-way measures 50 feet by 768 feet.

ATT Midwest Indiana has no objections to the vacation of the right-of-way as long as the petitioning party provides ATT Midwest
With a utility easement and an access/egress easement to maintain service to the existing cell tower on the north End of the proposed right-of-way vacation. In addition the petitioning party will agree in writing to reimburse ATT Midwest for expenses incurred in relocating the existing facilities, if required.

If you have any questions or comments please call me on 812-334-4521

Brent

Brent McCabe
ATT Midwest
OSP Engineer
4517 E Indiana Bell Ct
Bloomington, Indiana 47408

USA Proud Sponsor of the U.S. Olympic Team

Duke Energy
1100 W 2nd St
Bloomington, IN 47403

NOV 20 2012

November 20, 2012

Lynne Darland
Planning Dept.
City of Bloomington
P.O. Box 100
Bloomington, IN 47402

Re: Tech Park Boulevard

Lynne Darland,

Although we do not oppose the right-of-way vacation, Duke Energy does want to retain easement rights on the electrical facilities serving the cell tower. These facilities will also be used to serve the proposed buildings.

If you have any questions, please contact me at 812-337-3035 or at Kerry.Ducker@duke-energy.com.

Sincerely

Kerry B. Ducker
Senior Distribution Engineering Specialist

Cc: na

BLOOMINGTON

Lynne Darland <darlandl@bloomington.in.gov>

right of way vacation

1 message

Michael Diekhoff <diekhofm@bloomington.in.gov> Thu, Nov 29, 2012 at 11:13 AM
To: Lynne Darland <darlandl@bloomington.in.gov>

I have no problem with the right of way vacation at 2790 Tech Park Blvd.

Michael Diekhoff
Chief of Police
Bloomington Police Department
220 E. 3rd Street
Bloomington, Indiana 47401
812-339-4477

"The mission of the Bloomington Police Department is to safeguard life and property while respecting diversity, encouraging civility, solving problems, and maintaining a high standard of individual integrity and professionalism."

BLOOMINGTON

Lynne Darland <darlandl@bloomington.in.gov>

2790 S. Tech Park Blvd.

2 messages

Lynne Darland <darlandl@bloomington.in.gov> Fri, Nov 30, 2012 at 10:45 AM
To: "Anderson, Doug" <danderson@vectren.com>

Hi Doug-

Please let me know Vectren's response to this street ROW vacation petition.

Location: The subject parcel is a 50 foot wide strip of street right-of-way running north/south directly north of Schmaltz Blvd. The subject parcel ends in a cul-de-sac. The subject right-of-way measures 50 feet by approximately 768 feet (containing 0.88 acres).

Thanks!
Lynne
--
J. Lynne Darland, AICP
Zoning & Enforcement Manager

City of Bloomington Planning Department
401 N. Morton St., Suite 160
P.O. Box 100
Bloomington, IN 47402

p. 812-349-3423/ f. 812-349-3535
e. darlandl@bloomington.in.gov

Anderson, Doug <danderson@vectren.com> Fri, Nov 30, 2012 at 10:57 AM
To: Lynne Darland <darlandl@bloomington.in.gov>

Lynne,

Vectren has an existing 2" plastic gas main running east to west along the south side and north to south along the east side of Schmaltz, we have no problem north of this area in the vacation petition.

Doug Anderson

Gas Distribution Engineering Technician -Southeast Division

VECTREN ENERGY DELIVERY of INDIANA, INC.

205 South Madison Street, Bloomington, Indiana 47403

Office: 812-330-4009

Comcast Cable Communications, Inc.
1600 west Vernal Pike
Bloomington, IN 47401
(812) 822-3267

Utility. Easement encroachment. (Bloomington) IND

To Whom It May Concern.

The proposed improvements to the mentioned address. 2790 South Tech Park Blvd has been approved.

If there are any questions or more information that is needed, please feel free to call me.

Know what's below. Call before you dig two working days it's the Law.

Steve Mcartor
Construction Coordinator
(812) 360 3090 cell office phone (812) 822-3267
Comcast Cable 1600 west vernal pike
Bloomington, Indian 11/30/2012

Board of Public Works
Staff Report

Project/Event: MOU between Board and Transit re: Purchase of Traffic Signal

Petitioner/Representative: Public Works/Legal Department

Staff Representative: Jackie Moore

Meeting Date: December 18, 2012

Bloomington Public Transportation Corporation received federal grant funds to construct its new transfer facility at Third and Walnut Streets. A new Dispatch Center for the City and County will occupy the second floor of the transfer facility.

BPTC needs a traffic signal installed at the intersection of Smith Avenue and South Walnut Street to enable its buses to exit onto Walnut Street and to maneuver to the western lane of Walnut Street to complete the turn onto West Third Street.

BPTC needs to encumber the money before the end of the calendar year. By this MOU, the Board agrees to purchase the traffic signal for BPTC and be fully reimbursed by BPTC for the cost.

Approval of this MOU is recommended.

Recommend ☑ **Approval by Jackie Moore**

MEMORANDUM OF UNDERSTANDING
BETWEEN
BOARD OF PUBLIC WORKS
AND
BLOOMINGTON PUBLIC TRANSPORTATION CORPORATION

WHEREAS, the parties to this agreement, the City of Bloomington's Department of Public Works, by and through its Board of Public Works, (hereinafter "BPW") and the Bloomington Public Transportation Corporation, by and through its Board of Directors, (hereinafter "BPTC") wish to cooperate in the purchase of a traffic signal needed by BPTC at the intersection of Smith Avenue and South Walnut Street in Bloomington, Indiana.

WHEREAS, BPTC has received federal grant funds to construct a new transfer facility at Third and Walnut Streets.

WHEREAS, this two-story construction project is a multi-jurisdictional project, with the BPTC facility occupying the ground floor and a new Dispatch Center for the City and County occupying the second floor.

WHEREAS, BPTC needs the addition of a traffic signal at the intersection of Smith Avenue and South Walnut Street to allow for sufficient vehicular gaps on Walnut Street for egress of BPTC buses to exit onto Walnut Street and then maneuver to the western lane of Walnut Street to complete the turn onto West Third Street.

WHEREAS, BPTC understands that the sole purpose of this traffic signal is to meet its own needs and that the BPW has no independent need for this type of signal at this location.

WHEREAS, BPTC agrees to assume financial responsibility for replacement, capital costs, and maintenance of this traffic signal.

WHEREAS, BPTC has funds appropriated for the purchase of the traffic signal.

WHEREAS, the BPW and BPTC wish to cooperate in the purchase of the traffic signal.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The BPTC and BPW agree that BPW shall procure and contract for the traffic signal and shall include all Federal contract clauses supplied by BPTC in the procurement document. Following payment by BPW of a valid invoice associated with this project, BPTC shall promptly reimburse BPW in full. Such reimbursement(s) shall occur following payment by

BPW for materials and/or equipment delivered or for installation services provided.

2. The parties agree that the cost of the traffic signal shall be $126,778.

3. BPTC shall be financially responsible, from the date of execution of this MOU forward, for replacement, capital costs, maintenance costs and related costs of this traffic signal and shall work with BPW and City staff to reimburse the City for expenses or to directly pay expenses for all above-mentioned costs.

4. BPW and BPTC agree to comply with all Federal contract clauses attached hereto and incorporated herein as "Attachment A".

This Agreement shall be in full force and effect upon approval and signature of the parties herein identified.

CITY OF BLOOMINGTON
BOARD OF PUBLIC WORKS

By:

Charlotte, Zietlow, President

James McNamara, Vice-President

Dr. Frank N. Hrisomalos, Secretary

Date

Mark Kruzan, Mayor

Date

BLOOMINGTON PUBLIC
TRANSPORTATION CORPORATION
BOARD OF DIRECTORS

By:

Raymond L. McConn, Chair

Date

CITY OF BLOOMINGTON
Legal Department
Reviewed By: Jackie Moore
DATE: 12-14-12

ATTACHMENT A

Required Contract Clauses

With submission of a bid, bidders agree to all of the requirements summarized in the following clauses:

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Recycled Products - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Access to Records and Reports - (1)The Contractor agrees to permit any of the following parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed: BPTC, FTA, the Comptroller General of the United States or any of their authorized representatives, the Secretary of Transportation of the United States or any of their authorized representatives, and the Indiana State Board of Accounts.

(2) - The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly

authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (6) dated October, 1999) between Purchaser and FTA , as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

No Obligation by the Federal Government. -(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts - (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the

clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination for Convenience -The BPTC may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the BPTC to be paid the Contractor. If the Contractor has any property in its possession belonging to the BPTC, the Contractor will account for the same, and dispose of it in the manner the BPTC directs.

Termination for Default - If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the BPTC may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the BPTC that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the BPTC, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the BPTC may terminate this contract for default. The BPTC shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the BPTC.

Opportunity to Cure - The BPTC in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the BPTC's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by

Contractor or written notice from the BPTC setting forth the nature of said breach or default, the BPTC shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the BPTC from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach - In the event that the BPTC elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the BPTC shall not limit BPTC's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

Termination for Convenience - The BPTC, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the BPTC shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of

compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the General Manager of the BPTC. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the BPTC General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the BPTC General Manager shall be binding upon the Contractor and the Contractor shall abide be the decision.

Unless otherwise directed by the BPTC, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the BPTC and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the BPTC is located.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the BPTC or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act

constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Fly America Requirements – The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Bloomington Public Transportation Corporation requests which would cause Bloomington Public Transportation Corporation to be in violation of the FTA terms and conditions.

Disadvantaged Business Enterprise - The contractor agrees to the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the project:

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.* The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 0.27%.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as BPTC deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the BPTC. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

e. The contractor must promptly notify BPTC, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of BPTC.

Americans with Disabilities Act - The contractor agrees to comply with the requirements of 49 U.S.C. 5301(d) which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilties Act of 1990 (ADA), as amended, 42 U.S.C. 1201 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto. In addition, the contractor agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA), "49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance", 49 C.F.R. Part 27;

(3) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services", 28 C.F.R. Part 35;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodation and in Commercial Facilities", 41 C.F.R. Subpart 101-19;

Davis-Bacon Act. (1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The BPTC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the BPTC may, after written notice to the contractor,

sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the BPTC for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been

made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates

(expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction

Instructions for Certification

1. **By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.**

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, BPTC may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to BPTC if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction,":"participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact BPTC for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by BPTC.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, BPTC may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq., apply* to this certification and disclosure, if any.

_____Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

Lobbying Certification

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
[
Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure,

if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq., apply* to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

Buy America Certification

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Board of Public Works
Staff Report

Project/Event:	Contract Approval for Smith Avenue and Walnut Street Signalization
Petitioner/Representative:	City of Bloomington Department of Public Works
Staff Representative:	Justin Wykoff
Date:	December 13, 2012

Report:

The City of Bloomington Engineering Department sought quotes from three traffic signal installation companies and received the following;

Midwestern Electric Contractors **$126,778.00**
Attn: Ryan Lepper
3385 North Arlington Avenue
Indianapolis, IN 46226

TC Electric **No Quote**
Attn: Christian Gustin
2817 West 100 South
Franklin, IN 46131

Drew Signal Corporation **$128,680.00**
Attn: Jon Richards
8701 Zionsville Road
Indianapolis, IN 46268

Recommendation and Supporting Justification: Staff recommends approval and award of contract to Midwestern Electric Contractors in the amount of **$126,778.00** for the installation of a traffic signal at the intersection of Smith Avenue and South Walnut Street. This signal will include vehicular, bicycle and pedestrian accommodations.

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

AGREEMENT

BETWEEN
DEPARTMENT OF PUBLIC WORKS
AND

Midwestern Electric Inc.

FOR

Smith Avenue and South Walnut Street Signalization PROJECT NO. PW2012-31

THIS AGREEMENT, executed by and between the City of Bloomington, Indiana, Department of Public Works (hereinafter CITY), and Midwestern Electric, Inc., (hereinafter CONTRACTOR);

WITNESSETH THAT:

WHEREAS, CITY desires to retain CONTRACTOR'S services for Smith Avenue and South Walnut Street Signalization, Project No. PW 2012-31 (more particularly described in Attachment A, "Scope of Work"; and

WHEREAS, CONTRACTOR is capable of performing traffic signal installation as per his/her bid on the Bid Summary sheet; and

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

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

ARTICLE 1. TERM

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

ARTICLE 2. SERVICES

2.01 CONTRACTOR shall complete all work required under this Agreement within thirty (30) calendar days from the written Notice to Proceed. Substantial Completion shall mean completion of all work.

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

2.03 CONTRACTOR agrees that no charges or claims for damages shall be made by him for any delays or hindrances, from any cause whatsoever during the progress of any portion of the services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for a reasonable period as may be mutually agreed upon between the parties, it being understood, however,

that permitting CONTRACTOR to proceed to complete any service, or any part of the services / project, after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of CITY of any of its rights herein.

ARTICLE 3. COMPENSATION

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

3.02 Upon the submittal of approved claims, CITY shall compensate CONTRACTOR in lump sum of One Hundred Twenty-Six Thousand Seven Hundred Seventy-Eight Dollars ($126,778.00). CITY may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following:

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

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

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

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

ARTICLE 4. GENERAL PROVISIONS

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

4.02 Abandonment, Default and Termination

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

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

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

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

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

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

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

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

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

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

4.03 Successors and Assigns

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

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

4.04 Extent of Agreement: Integration

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

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

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

4.05 Insurance

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

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

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

1. Premises and operations;

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

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

4. Broad form property damage - including completed operations;

5. Fellow employee claims under Personal Injury; and

6. Independent Contractors.

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

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

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

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

4.08 **Non-Discrimination**

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

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

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

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

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

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

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

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

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

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

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

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

4.09 Workmanship and Quality of Materials

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

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

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

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

4.11 Amendments/Changes

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

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

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

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

4.12 Performance Bond and Payment Bond

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

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

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

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

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

TO CITY:		TO CONTRACTOR:
City of Bloomington		Midwestern Electric, Inc.
Attn: Justin Wykoff, Senior Project Manager		Attn: Allen Brodbeck, President
P.O. Box 100 Suite 130		3385 North Arlington Avenue
Bloomington, Indiana 47402		Indianapolis, Indiana 46218

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

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

4.17 **Steel or Foundry Products**

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

4.17.02 Domestic Steel products are defined as follows:

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

4.17.03 Domestic Foundry products are defined as follows:

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

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

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

4.18 **Verification of Employees' Immigration Status**

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

Contractor and any of its subcontractors may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that the Contractor or any of its subcontractors

learns is an unauthorized alien. If the City obtains information that the Contractor or any of its subcontractors employs or retains an employee who is an unauthorized alien, the City shall notify the Contractor or its subcontractors of the Agreement violation and require that the violation be remedied within thirty (30) calendar days of the date of notice. If the Contractor or any 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 Contractor or its subcontractor did not knowingly employ an unauthorized alien. If the Contractor or its subcontractor fails to remedy the violation within the thirty (30) calendar day period, the City shall terminate the Agreement, unless the City determines that terminating the Agreement would be detrimental to the public interest or public property, in which case the City may allow the Agreement to remain in effect until the City procures a new contractor. If the City terminates the Agreement, the Contractor or its subcontractor is liable to the City for actual damages.

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

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

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

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

DATE: _____

City of Bloomington
Bloomington Public Transportation Corporation

Midwestern Electric, Inc.
3385 North Arlington Avenue
Indianapolis, Indiana 46218

BY:

_____
Raymond L. McConn, Chair BPTC

_____
Alex Cartwright, Treasurer BPTC

_____
Mark Kruzan, Mayor of Bloomington

BY:

_____
Contractor Representative

_____
Printed Name

_____
Title of Contractor Representative

ATTACHMENT 'A'

"SCOPE OF WORK"

Smith Avenue and South Walnut Street Signalization

The Contractor shall provide all necessary material and labor to install a traffic signal per the plans and specifications including but not limited to the traffic signal poles, cabinet, wiring, service connection, pavement markings, signage, necessary to complete the work.

ATTACHMENT B

AFFIDAVIT

STATE OF INDIANA)
)SS:
COUNTY OF _____)

AFFIDAVIT

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

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

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

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

_____
Signature

_____
Printed Name

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this _____ day of _____, 2012.

_____
Notary Public's Signature

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

Attachment C
Project Schedule

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

Attachment D

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

AFFIDAVIT

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

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

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

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

_____
Signature

_____
Printed name

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this _____ day of _____, 2012.

_____
Notary Public

_____
Printed name

My Commission Expires:_____
County of Residence:_____

Attachment E
Required Contract Clauses

With submission of a bid, bidders agree to all of the requirements summarized in the following clauses:

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Recycled Products - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Access to Records and Reports - (1)The Contractor agrees to permit any of the following parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed: BPTC, FTA, the Comptroller General of the United States or any of their authorized representatives, the Secretary of Transportation of the United States or any of their authorized representatives, and the Indiana State Board of Accounts.

(2) - The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (6) dated October, 1999) between Purchaser and FTA , as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

No Obligation by the Federal Government. -(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or

award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts - (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination for Convenience -The BPTC may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the BPTC to be paid the Contractor. If the Contractor has any property in its possession belonging to the BPTC, the Contractor will account for the same, and dispose of it in the manner the BPTC directs.

Termination for Default - If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the BPTC may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the BPTC that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the BPTC, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract,

the BPTC may terminate this contract for default. The BPTC shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the BPTC.

Opportunity to Cure - The BPTC in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the BPTC's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from the BPTC setting forth the nature of said breach or default, the BPTC shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the BPTC from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach - In the event that the BPTC elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the BPTC shall not limit BPTC's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

Termination for Convenience - The BPTC, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the BPTC shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard

to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the General Manager of the BPTC. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the BPTC General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the BPTC General Manager shall be binding upon the Contractor and the Contractor shall abide be the decision.

Unless otherwise directed by the BPTC, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the BPTC and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the BPTC is located.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the BPTC or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Fly America Requirements – The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of

necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Bloomington Public Transportation Corporation requests which would cause Bloomington Public Transportation Corporation to be in violation of the FTA terms and conditions.

Disadvantaged Business Enterprise - The contractor agrees to the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the project:

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.* The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 0.27%**.**

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as BPTC deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the BPTC. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

e. The contractor must promptly notify BPTC, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of BPTC.

Americans with Disabilities Act - The contractor agrees to comply with the requirements of 49 U.S.C. 5301(d) which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilties Act of 1990 (ADA), as amended, 42 U.S.C. 1201 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent

amendments thereto. In addition, the contractor agrees to comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA), "49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance", 49 C.F.R. Part 27;

(3) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services", 28 C.F.R. Part 35;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodation and in Commercial Facilities", 41 C.F.R. Subpart 101-19;

Davis-Bacon Act. (1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The BPTC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the BPTC may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the BPTC for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or

otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction

Instructions for Certification

1. **By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below**.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, BPTC may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to BPTC if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction,":"participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage

sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact BPTC for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by BPTC.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, BPTC may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq., apply* to this certification and disclosure, if any.

_____Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

Lobbying Certification

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq*.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
[
Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq., apply* to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

Buy America Certification

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Board of Public Works
Staff Report

Project/Event: Design Contract Approval for Patterson Drive Retaining Wall

Petitioner/Representative: City of Bloomington Department of Public Works

Staff Representative: Justin Wykoff

Date: December 13, 2012

Report:

The City of Bloomington Engineering Department would like to enlist the design services of Earth Exploration in the design of a retaining wall along the west side of Patterson Drive (just north of Allen Street). Over the last year, large rain events have caused the erosion of the area adjacent to the sidewalk, creating a potential hazard which is beginning to undermine the sidewalk.

Earth Exploration has proposed to design a retaining wall, and draft plans for the correction of this problem within the public right of way. Public Works has also worked with City of Bloomington Utilities who will provide the labor to make the repairs once the design has been completed with Public Works providing the materials.

Recommendation and Supporting Justification: Staff recommends approval and award of design contract to Earth Exploration in the amount of **$11,994.00.**

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

12/13/2012 16:43

PROJECT NAME: Patterson Drive Retaining Wall Design, North of Allen Street

AGREEMENT FOR CONSULTING SERVICES

This Agreement, entered into on this _____ day of _____, 2012, by and between the City of Bloomington Department of Public Works through its Board of Public Works (hereinafter referred to as "Board"), and Earth Exploration, INC (hereinafter referred to as "Consultant"),

WITNESSETH:

WHEREAS, the Board wishes to enhance the services it provides by engaging in efforts to **design a retaining wall along the west side of Patterson Drive north of Allen Street;**

WHEREAS, the Board requires the services of a professional engineering consultant in order to **perform tasks including coordination, design, geotechnical investigations,** which shall be hereinafter referred to as "the Services", and;

WHEREAS, it is in the public interest that such Services be undertaken and performed; 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. The City Engineer shall be the sole judge of the adequacy of Consultant's work in meeting such standards. However, the City Engineer shall not unreasonably withhold its approval as to the adequacy of such performance.

Article 3. <u>Responsibilities of the Board</u>: 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 Justin Wykoff, Senior Project Manager, Department of Public Works ("Wykoff") to serve as the Board's representative for the project. Wykoff 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. <u>Compensation</u>: 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: Eleven Thousand and Nine Hundred and Ninety-Four Dollars ($ 11,994).

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: All estimates of construction cost to be provided by Consultant shall represent the best judgment of Consultant based upon the information currently available and upon Consultant's background and experience with respect to projects of this nature. It is recognized, however, that neither Consultant nor the Board has control over the cost of labor, materials or equipment, over contractors' method of determining costs for services, or over competitive bidding, market or negotiating conditions. Accordingly, Consultant cannot and does not warrant or represent that the proposals or construction bids received will not vary from the cost estimates provided pursuant to this Agreement.

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. General Liability Insurance, with a minimum combined single limit of $1,000,000 for each occurrence and $2,000,000 in the aggregate.

b. Automobile Liability Insurance, with a minimum combined single limit of $1,000,000 for each person and $1,000,000 for each accident.

c. Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum combined single limit of $1,000,000 for each occurrence, and $2,000,000 in the aggregate.

d. 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
City Hall at Showers
401 N. Morton Street
Bloomington, IN 47401

Consultant:

Earth Exploration, Inc
7770 West New York Street
Indianapolis, IN 46214

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 8U.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 actual damages.

Consultant shall require any subcontractors performing work under this Agreement to certify 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. (This is not required if federal law ceases to authorize the adoption and enforcement of this statute.) Consultant shall sign an affidavit, attached as Exhibit F, affirming that Consultant is not engaged in said investment activities.

Exhibit F is attached hereto 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	Earth Exploration, INC
By: _____ Charlotte Zietlow President	_____ Michael S. Wigger, P.E. Geotechnical Engineering Manager
By: _____ Mark Kruzan, Mayor	

CITY OF BLOOMINGTON
Legal Department
Reviewed By: Jackie Moore
DATE: 12-14-12

EXHIBIT "A"

SERVICES TO BE FURNISHED BY CONSULTANT:

In fulfillment of this Contract, the CONSULTANT shall comply with the requirements of all applicable codes and regulations necessary to complete the design of this project.

GENERAL

The following scope of services describes the tasks and assumptions that apply to the work of CONSULTANT to complete the design of a retaining wall along Patterson Drive.

Tasks to be performed by Earth Exploration, Inc are identified by bullets (♦), the responsibilities of CITY are designated by statements beginning with "CITY".

SCOPE OF SERVICES

The work elements are grouped into the following phases:

- Preliminary Engineering Tasks
- Design Tasks
- Design Support Tasks
- Construction Support

PRELIMINARY ENGINEERING TASKS

Use of City-Provided Plans or GIS Mapping, and City-Provided Grade Shots

CITY Provide Consultant digital files of any current plans and also GIS mapping of the project area. Provide GIS mapping that includes edges of pavement, contours with elevations, property, parcel and right-of-way lines, property owners, city-owned utilities, sidewalks, addresses, facility names, building outlines, and aerial photography.

CITY Provide vicinity mapping from the GIS mapping, generally described as a two-block radius of the proposed work limits.

It is assumed that any plans will be prepared on this City-provided mapping and that the Consultant will conduct a field visit to collect ground shots and other needed data to support development of a retaining wall design for the construction plans.

Geotechnical Evaluation

♦ Provide coordination and permitting activities as necessary to gain City approval to perform a geotechnical evaluation in City right-of-way. Provide traffic control as needed. Coordinate with utility locator services prior to operations. Determine the locations for borings based on utility markings and a review of site conditions.

♦ Perform geotechnical investigations to identify general physical characteristics of the soils through hand auguring and DCP Testing of Subgrade.

Site Reconnaissance

- Perform a site walkthrough of the project. Review the mapping provided by the CITY.
- Collect ground shots using traditional level and stadia rod.

DESIGN TASKS

Plans

- Prepare Construction Plans - Typical plan set to include:

o Title Sheet – Owner, Project Title, Location Maps	1 sheet
o General Notes and Legend, Sheet Index, Utility Contacts	1 sheet
o Typical Cross Sections and Construction Details	1 Sheet
o Plan Sheet with Project Limits	1 sheet
Estimated Total Sheets	**4 Sheets**

- Prepare plans on 24"x36" sheets using INDOT-standard plan borders.

Milestone Submittals

- Submit (95%) Plans to CITY for review.
- Submit Final Tracings (100 to CITY for review and processing.

Typical Cross Sections & Retaining Wall Design

- Prepare typical cross sections and retaining wall design. Anticipated cross sections include the usage of precast block (already purchased by City) on a concrete footer and both stone and flowable fill backfill behind wall and under existing sidewalk (undermined area).
- Prepare Typical Cross Section details to describe the wall section.

Miscellaneous Summary of Quantities

DESIGN SUPPORT TASKS

Project Meetings, Field Check, and Public Meeting

- Meet with the City of Bloomington Engineering Department representatives once during the project design.

BIDDING SUPPORT TASKS

- Respond to questions from bidders/contractor.

ASSUMPTIONS:

Environmental Hazards
Per previous visits, no known environmental hazard or sensitive areas are expected to exist on the project sites. If field investigations reveal or develop a suspicion of such a condition, then the appropriate step is to perform an environmental Phase I or Phase II survey. This work, if required, has not been included.

Right of Way Engineering
It is assumed the City will conduct its own right-of-way acquisition activities, including right of way management, and acquisition related services.

Construction Inspection
This scope does not include construction observation services.

EXHIBIT "B"

COMPENSATION TO CONSULTANT:

This project is to be conducted on a LumpSum basis with an agreed Maximum Cost of **$11,994.00** distributed to following sub tasks:

Preliminary Engineering Tasks:	$3,532.00
Design Tasks:	$5,900.00
Design Support and Permitting Tasks:	$714.00
Bidding and Construction Support Tasks:	$1,848.00

For the purposes of the fee estimate or potential supplement calculation, the following rates shall apply:

Senior Engineer	$105.00/hour
Staff Engineer	$80.00/hour
CADD Technician	$55/hour
Sub-consultants	Cost+5%
Re-imbursable	At Cost
Mileage Reimbursement	Current IRS Rate

EXHIBIT "C"

SCHEDULE:

No work under this Contract shall be performed by the CONSULTANT until the CONSULTANT receives a written notice to proceed from the CITY.

All work by the CONSULTANT under this Contract shall be completed and delivered to the CITY for review and approval within the approximate time periods shown in the following submission schedule:

MILESTONE (from Notice-to-Proceed)	ESTIMATED # of DAYS	COMMENTS
Completion of Preliminary Engineering	30	
Design Tasks	45	95% plan set
Meeting with City	1	100% plan set

EXHIBIT "D"

KEY PERSONNEL:

Consultant commits the following personnel to this project, which will not be changed without the consent of the CITY:

Project Manager: Michael S. Wigger, P.E.

EXHIBIT E

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

AFFIDAVIT

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

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

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

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

_____
Signature

_____
Printed name

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this _____ day of _____, 2012.

_____
Notary Public

_____
Printed name

My Commission Expires:_____
County of Residence:_____

EXHIBIT F

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

AFFIDAVIT

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

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

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

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

_____
Signature

_____
Printed name

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this _____ day of _____, 2012.

_____
Notary Public

_____
Printed name

My Commission Expires:_____
County of Residence:_____

Board of Public Works
Staff Report

Project/Event: Agreements with MCPL for CATS

Petitioner/Representative: N/A

Staff Representative: Rick Dietz

Meeting Date: December 18, 2012

This document codifies the annual funding agreement between the City of Bloomington and the Monroe County Public Library for the funding of CATS Community Access Television Services. Funding for 2013 has been budgeted at $397,568, a 3% increase from 2012. With your assent the City and CATS will continue its partnership in providing community access programming and City meeting broadcasts to our local community and beyond.

Staff is supportive of the request.

Recommend ☑ Approval ☐ Denial by Rick Dietz

CITY OF BLOOMINGTON
Legal Department
Reviewed By:
DATE: 11/27/12

CITY OF BLOOMINGTON
and
MONROE COUNTY PUBLIC LIBRARY
CATS FUNDING AGREEMENT for 2013

This Agreement is entered into on the _____ day of _____, 2012, at Bloomington, Indiana, by and between the Board of Public Works of the City of Bloomington, hereinafter referred to as the "City," the Monroe County Public Library, hereinafter referred to as "Library," and Community Access Television Services, hereinafter referred to as "CATS." CATS and the Library agree to provide services as set forth below and comply with all provisions of this Agreement, and the City agrees to provide funding as set forth below.

Article I. Services to be provided by Library.

CATS and the Library agree as follows:

(a) To cablecast live coverage of City of Bloomington Common Council, Plan Commission, Board of Public Works, Board of Zoning Appeals, Board of Parks Commissioners and Utilities Service Board meetings, if given at least one week's notice by the City of the meeting times. These meetings will also be replayed at least twice during the week they occur, and will be webcast as feasible by CATS. Upon request by the Office of the Mayor or City ITS Department, the Library will provide the City with free copies in the specified format of any of the above cablecast meetings or other meetings and events described elsewhere in this agreement.

(b) To produce weekly editions of "Pets without Partners" and provide cablecasts of other meetings and events, and to produce programs on community services and issues as requested by the City. The content of all City public meetings broadcast by CATS shall be placed in the public domain, meaning that the work may be freely reproduced, distributed, transmitted, used, modified, built upon, or otherwise exploited by anyone for any purpose, commercial or non-commercial, and in any way, including by methods that have not yet been invented or conceived. CATS may not assert any copyright claim and no right shall attach to City public meeting broadcasts.

(c) To provide live internet streaming and online digital storage of meetings that CATS cablecasts through a browseable and searchable website.

(d) To provide quarterly financial reports to the City delineating the utilization of funds which Library has received for the support of CATS from the City of Bloomington, the Town of Ellettsville, Monroe County and any other source as well as funding received directly from Library.

The financial reports may be submitted in the format compatible with Library's normal budgeting information as is readily available through its existing accounting software. Budget lines shall include comparison of actual expenditures with budgeted amounts. Reports shall include a listing of all revenues designated for CATS by all entities

contributing, including in-kind contributions from Library and other gifts, grants, etc., CATS receives.

Reports shall be submitted to the Information & Technology Services Department, the Office of the City Controller and the Office of the Mayor no later than 30 days after the following dates: March 31; June 30; September 30 and December 31. In addition, the Library shall provide on a timely basis such financial reports as requested by the City in addition to quarterly reports in the format as referenced above.

(e) To oversee its allocation of the cable channels available to the City through the City's franchise, for the purposes of public access, educational and governmental cablecasting.

(f) To use all grants and monies received by the Library from the City of Bloomington for the support of and usage by CATS only on costs directly related to the operations of CATS.

Article II. Designated use of Agreement Funds and Equipment.

The Library agrees to use Agreement funds and equipment as follows:

(a) To pay for services rendered in accordance with this Agreement.

(b) To utilize to the maximum extent feasible funds received from all sources of revenue.

(c) To refund to the City of Bloomington funds received under this Agreement which may later be determined to have been received or expended in noncompliance with the Agreement as a result of audit by the State Board of Accounts or Library, pursuant to the terms of this Agreement.

(d) To return all equipment made available through this Agreement within one week if requested by the City or upon termination of this Agreement.

(e) To utilize equipment made available through this Agreement solely in the provision of services as outlined herein.

Article III. Data on Affirmative Action.

The Library agrees to implement an affirmative action plan which complies with the City's regulations for contractors. The Library will submit its affirmative action plan to the City's Contract Compliance Officer for review within ten days of signing this Funding Agreement, and shall make all necessary and reasonable changes to its plan to bring it into compliance within twenty days of notice from the Officer of any deficiencies.

Article IV. Funding Procedure.

To outline the system by which funds are to be transferred by the City to the Library, and to assure adequate documentation of disbursements by the City:

(a) The Library will submit a signed claim voucher or invoice to the Information and Technology Services Department of the City of Bloomington, ITS, which will be processed in accordance with the City's normal practice for payments and reimbursements. Invoices may be submitted at the beginning of each quarter – January, April, July, and October.

(b) The City will provide funding at the rate of **$99,392.00** quarterly for the calendar year beginning January 1, 2013, with the total not to exceed **$397,568.00**.

Article V. Accounting Procedures.

The Library agrees to maintain accounting procedures that shall provide for:

(a) All grants and monies received by the Library from the City of Bloomington, the Town of Ellettsville, Monroe County and any other source are solely intended for the support of and usage by CATS and shall not on any account be made available for use as Library general operating funds. If at the end of any fiscal year such grants or monies have not been expended on costs directly related to the operations of CATS, said grants or monies shall remain for future usage for support of the operations of CATS and shall not revert or be otherwise transferred to any fund for general usage by, or support of, Library.

(b) Accurate, current, and complete disclosure of the financial results of its service program.

(c) Records which identify adequately the source and application of funds for program supported activities.

(d) Effective control over and accountability for all funds, property and other assets. The Library will adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

Article VI. Program Monitoring and Library Reporting Requirements.

In addition to the financial reports described in Article I (d), the Library agrees to submit to the Information & Technology Services Department and the Board of Public Works at least quarterly a report which shall cover each month of the previous quarter's programming and usage of the cable channels, proposed or planned special programming for the future and an analysis of services provided to City residents.

Article VII. Access to Records.

The Library agrees that it will give the City of Bloomington, through an authorized representative, access to, and the right to examine all records, books, papers or documents related to the funding provided by this Agreement, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

Article VIII. Retention of Records.

The Library agrees that it will retain for a period of three years financial records, supporting documents, statistical records, and all other records pertinent to the funding provided by this Agreement, with the following exceptions:

(a) These records shall be retained beyond the three-year period if audit findings have not been resolved, in which case such records shall be retained until any audit findings are resolved.

(b) At the request of the City any records pertinent to the program funded by this Agreement are to be transferred to the City if the City determines that the records possess long-term retention value, in which case the Library shall be exempt from the three-year retention period above.

The three-year period mentioned herein is to be determined from the date of the Library's biennial audit.

Article IX. Termination of Agreement.

The Library agrees that this Agreement is subject to the availability of funds and that if funds become unavailable for the performance of this Agreement, the City may terminate the Agreement. If funds become unavailable, the City shall promptly notify the Library in writing of the termination and the effective date which must be at least 30 days from notification.

It is further agreed that the City or the Library may terminate funding in whole or in part when both parties agree that the continuation of the program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date, and, in the case of partial terminations, the portion to be terminated. The Library shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The City shall allow full credit to the Library for the allocable portion of noncancellable obligations, properly incurred by the Library prior to termination.

Article X. Forfeiture of Funds for Noncompliance.

It is agreed that the City may terminate any funding, in whole or in part, at any time before the date of completion of the program, whenever it is determined that the Library has failed to comply with the conditions of this Agreement, or with other conditions imposed by the laws, rules and regulations to which this Agreement refers. The City shall promptly notify the Library in writing of the determination and the reasons for the determination, together with the effective date. Payments made to the Library or recoveries by the City under funding terminated for cause shall be in accord with the legal rights and liabilities of the parties.

Article XI. Verification of Work Status.

The Library certifies that it is enrolled in the E-Verify program and has verified the work eligibility status of all newly hired employees through the E-Verify program, unless the E-Verify program no longer exists, and that signing this contract serves as an affidavit affirming that the Library does not knowingly employ an unauthorized alien.

Article XII. Investment Activities in Iran

The Library affirms by its signature that it is in compliance with Indiana Code 5-22-16.5 et. seq., and does not knowingly engage in investment activities in Iran by providing goods or services worth $20,000,000 or more in value to the energy sector of Iran.

In Witness whereof, the parties hereto have caused this Agreement to be executed on the dates following their signatures. The latest of the dates shall constitute the starting date of this Agreement.

CITY OF BLOOMINGTON

By: _____
Charlotte Zietlow, President
Board of Public Works

Date: _____

By: _____
Mark Kruzan, Mayor

Date: 11.27.12

MONROE COUNTY PUBLIC LIBRARY:

By: _____
Sara Laughlin, Director

Date: _____

COMMUNITY ACCESS TELEVISION SERVICES:

By: _____
Michael White, General Manager

Date: _____

CITY OF BLOOMINGTON
Legal Department
Reviewed By:
DATE: 11/27/12

CITY OF BLOOMINGTON
and
MONROE COUNTY PUBLIC LIBRARY
PUBLIC, EDUCATION AND GOVERNMENT CHANNEL
PROGRAMMING AGREEMENT for 2013

WHEREAS, pursuant to the provisions of Indiana Code § 8-1-34-16, the Indiana Utility Regulatory Commission has the sole authority to grant a certificate of franchise authority to a video service provider ("VSP"); and,

WHEREAS, pursuant to the provisions of Indiana Code §§ 8-1-34 et seq., a VSP is required to make available on its video service system channels which contain public, educational, and governmental programming ("PEG channels"); and,

WHEREAS, pursuant to Sections 531 and 541 of the Communications Act, local franchising authorities may require cable operators to set aside channels for public, educational, or governmental ("PEG") use; and,

WHEREAS, PEG Channels are broadly defined as follows:
Public access channels are available for use by the general public. They are usually administered either by the cable operator or by a third party designated by the franchising authority; *Educational* access channels are used by educational institutions for educational programming. Time on these channels is typically allocated by either the franchising authority or the cable operator among local schools, colleges and universities; *Governmental* access channels are used for programming by organs of local government. In most jurisdictions, the franchising authority directly controls these channels; and,

WHEREAS, pursuant to the provisions of Indiana Code § 8-1-34-27, the operation of a PEG channel is the responsibility of the unit that receives the benefit of the channel, that being the City of Bloomington ("City"), and the VSP is responsible for the transmission of the channel; and,

WHEREAS, the City of Bloomington ("City") controls six PEG Channels; and,

WHEREAS, pursuant to the provisions of Indiana Code § 8-1-34-27, the operation of a PEG channel is the responsibility of the unit that receives the benefit of the channel, that being the City and the VSP is responsible for the transmission of the channel; and,

WHEREAS, the City, through its Information and Technology Services Department ("ITS"), provides PEG channel program content from its PEGCP (Public Education Government Channel Programming), (currently CATS and WTIU) at a common distribution point at the Bloomington Telecom Hotel facility in downtown Bloomington; and,

WHEREAS, the Monroe County Public Library through CATS wishes to provide five (5) channels of PEG programming to the City for the purpose of broadcast by Bloomington VSPs; and

WHEREAS, with multiple outputs from each program channel available at the Telecom Hotel, connectivity is enabled to many VSPs from a single accessible location, and PEGCP must deliver content to the Telecom Hotel; and,

WHEREAS, the PEGCP wishes to reach an understanding with the City as to the terms and conditions of providing PEG channel programming from the common distribution point at the Telecom Hotel;

NOW, THEREFORE, the City and the PEGCP agree as follows:

Section 1. Location. The PEGCP shall provide PEG channel programming to the City access to all City PEG channels from the City Cage in the Telecom Hotel. The Bloomington Telecom Hotel facility is located in downtown Bloomington at 7th and Walnut Streets (302 N. Walnut Street). The VSP shall be responsible for connecting at this location, securing space in the facility as needed, and cross connecting to the City's PEG Hub equipment in the City Rack. The City reserves the right to change the location of the PEG Access System if the Telecom Hotel closes or for any other reason. City will provide advance notice of relocation. In the event relocation occurs, The City and the VSP will negotiate mutually agreeable terms for covering the costs of connecting at the new PEG Hub location.

Section 2. Technical Specifications. The PEGCP shall provide video signal for PEG channels in SDI format. The City shall permit PEGCP to patch into the City Cage to provide PEG programming under the terms of this agreement. By connecting into the City's equipment, the PEGCP will be providing a Serial Digital Interface (SDI) video signal with embedded AES (digital audio). The connection type the PEGCP will be connecting to will be a Bayonet Neill Concelman (BNC) connector.

Section 3. Conditions. Consistent with the requirements of State and Federal law, the PEGCP shall:

a. Program five City of Bloomington PEG channels. One channel must be dedicated solely to City of Bloomington meetings, events and business.
b. Provide the City of Bloomington PEG content at no less than full-screen broadcast resolution.
c. Provide PEG suitable programming in keeping with the definition of PEG.
d. Provide programming that is not otherwise available on other VSP channels.

Section 4. Connecting. The PEGCP shall be responsible for connecting at the PEG Hub location, securing space in the facility as needed and cross connecting to the City's PEG Hub equipment in the City Rack.

Section 5. Term. This Agreement shall be in full force and effect beginning on the date of execution of this Agreement and ending December 31, 2013. This agreement may be rescinded at the City's discretion with a 30-day written notice.

Section 6. Waiver of Warranties. The City and the PEGCP each expressly disclaim all express and implied warranties, including but not limited to the implied warranties or merchantability and fitness for a particular purpose. Except as otherwise provided in this agreement, no information, oral or written, provided or disseminated by the City or the PEGCP shall create any express or implied warranties, guaranty of performance, or contractual obligations.

Section 7. Assignment of Rights. The rights granted to the PEGCP shall not be assigned in whole or in part without the City's prior written consent. In the event said consent is granted, the provisions of this Agreement shall be binding upon and inure to the benefit of any successors and assigns.

Section 8. Indemnification. The VSP and the City (the "Indemnifying Party") shall each defend, indemnify, and hold harmless the other (the "Indemnified Party") from and against all liabilities, judgments, claims, damages, settlements, expenses and costs, including reasonable attorneys' costs and litigation expenses, arising out of or relating to the Indemnified Party's execution and undertaking of this Agreement, insofar as such liabilities, judgments, claims, damages, settlements, expenses and costs arise out of or are based upon the breach of this Agreement by the Indemnifying Party or the programming provided pursuant to the terms hereof. The VSP and the City shall each promptly notify the other of any third party claim or legal action arising out of or related to this Agreement. The PEGCP is responsible for securing any necessary copyrights for its content.

Section 9. Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the PEGCP.

Section 10. 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 Monroe County, Indiana.

Section 11. Costs and Expense of Enforcement. If either the PEGCP or the City shall default in the performance of any of its obligations under this Agreement, it shall be responsible for the reimbursement of any attorneys' costs and expenses which the other may incur in enforcing any obligations herein.

Section 12. Waiver. No waiver by either party of any default or breach of the other party's performance of any term, condition or covenant of this Agreement shall be deemed to be a waiver or any subsequent default or breach of the same or any other term, condition or covenant contained in this Agreement.

Section 13. Notices. All notices required to be given by either party hereunder shall be in writing and delivered by hand, courier, overnight delivery service or registered or certified mail return receipt requested. Any notice or other communication under this Agreement shall be deemed given when received or refused and shall be directed to the following address:

CITY
Information and Technology Services Dept.
City of Bloomington
401 N. Morton Street, Suite 150
Bloomington, IN 47404
Attn: Director

The PEGCP
MCPL and CATS
303 E. Kirkwood Avenue
Bloomington, IN 47408
Attn: Director

Section 14. Severability and Future Legal Developments. Should any part of the Agreement be found in violation of any federal, state, or local law or ordinance, all unaffected parts shall remain in effect and enforceable provided that the intent of the Agreement is still served. In the event that action is taken by the Federal Communications Commission, Congress or the State of Indiana which addresses and impacts the responsibilities of the parties hereto regarding the provision of PEG channel programming, this agreement shall terminate, and the parties shall negotiate a new agreement consistent with that mandate.

In Witness whereof, the parties hereto have caused this Agreement to be executed on the dates following their signatures. The latest of the dates shall constitute the starting date of this Agreement.

CITY OF BLOOMINGTON

By: _____
Charlotte Zietlow, President
Board of Public Works

_____
Date

By: _____
Mark Kruzan, Mayor

11.27.12
_____
Date

MONROE COUNTY PUBLIC LIBRARY:

By: _____
Sara Laughlin, Director

_____
Date

COMMUNITY ACCESS TELEVISION SERVICES:

By: _____
Michael White, Station Manager

_____
Date