

Board of Public Works Meeting

January 03, 2023



The City will offer virtual options, including CATS public access television (live and tape-delayed) and

Public comments and questions will be encouraged via Zoom or bloomington.in.gov rather than in person

AGENDA
BOARD OF PUBLIC WORKS
January 03, 2023

A Regular Meeting of the Board of Public Work will be held Tuesday, January 03, 2023 at 5:30 p.m. in the Council Chambers (Rm #115) of City Hall at the Showers Building, 401 N. Morton Street, Bloomington, Indiana and via Zoom by using the following link:

<https://bloomington.zoom.us/j/88323969854?pwd=aXUxajdMakM3VzhFN2tZbkV1djRXdz09>

Meeting ID: 883 2396 9854 Passcode: 230042

The City offers virtual options, including CATS public access television (live and tape- delayed). Comments and questions will be encouraged via Zoom or bloomington.in.gov rather than in person.

Auxiliary aids for people with disabilities are available upon request with adequate notice. Please call 812-349-3411 or email public.works@bloomington.in.gov.

I. ELECTION OF OFFICERS

II. MESSAGES FROM BOARD MEMBERS

III. PETITIONS AND REMONSTANCES

1. **Appeal Noise Violation #39904**

IV. CONSENT AGENDA

1. **Approval of Minutes December 20, 2022**
2. **2023 Cooperative Centerstone Agreement**
3. **2023 Contract Renewal with PEI Maintenance for Fuel Tank Inspections**
4. **Outdoor Lighting Service Agreement with Duke Energy for the West Allen Street Greenway Project**
5. **Approval of Payroll**

V. NEW BUSINESS

1. **Change Order #1 for the Smith Road Resurfacing Project**

VI. STAFF REPORTS & OTHER BUSINESS

VII. ADJOURNMENT

STAFF REPORT
NOV APPEAL (noise)

Appellant Information:

Name: Brandon Sermersheim
Address: 1319 N. Washington Street
Bloomington, IN
Date Appealed: 12/28/2022

NOV Information:

Date Issued: 8/20/2022
By: Officer Luke Grover
Where: 1319 N. Washington Street
For: unreasonable noise

Attachments:

1. Notice of Violation
2. Dispatch Records
3. Noise Appeal
4. Proposed Order

Controlling Ordinances and Language:

BMC § 14.09.030(c)(4). It shall be a violation of this chapter to play, use, operate or allow to be played, used, or operated any radio, television, digital media player, loudspeaker, sound amplifier, musical instrument, or any other machine or device for producing or reproducing sound in such a manner that the sound produced persists continuously or intermittently for a period of at least fifteen minutes and can be heard outside the immediate premises from the location of the emitter by a person with normal hearing. *Sound that is clearly audible to a person with normal hearing from any place other than the premises from which the source of the sound is located, when the sound occurs between the hours of nine p.m. and seven a.m., is prima facie evidence of a violation of this section.* (emphasis added)

BMC § 14.09.030(b). Except as otherwise provided in this chapter, it shall be unlawful for any person to cause or make any unreasonable noise or to allow any unreasonable noise to be caused or made in or on any real or personal property occupied or controlled by that person.

BMC § 14.09.070(b). *Any person violating any of the provisions of this chapter, shall, upon a written finding of violation signed by the enforcement officer, be subject to an initial penalty of fifty dollars.* Each day such violation is committed or permitted to continue shall constitute a separate offense. A second violation in any twelve-month period is subject to a fine or penalty of one hundred dollars and subsequent violations within a twelve month period are subject to a fine or penalty of five hundred dollars. (emphasis added)

Discussion:

1. At approximately 11:30 p.m. on 8/20/2022, Bloomington Police Department received a complaint regarding unreasonable noise at the property located at 1319 N. Washington Street (the "Property"). Officer Thomas Kreuzman of the Bloomington Police Department, along with four other officers responded to the noise complaint at approximately 11:40 p.m. 8/20/2022
2. Officer Kruezman approached the Property on foot from several houses away. While approaching the Property, but before entering the Property, Officer Kreuzman was able to clearly hear music and other loud noises such as fireworks being set off and was able to identify that the sound was coming from the Property.
3. While approaching the Property, Officer Kreuzman made contact with a witness who confirmed that the Property was the source of the loud music and noise and that the noise had been ongoing continuously since at least the time of the complaint was made to Bloomington Police Department.
4. At 12:10 a.m. on 4/22/2022, Officer Kreuzman made contact with Brandon Sermersheim who is the occupant and tenant of the Property. Brandon Shermersheim was issued a ticket for unreasonable noise, and assessed a fine of \$50.00.
5. Brandon Shermersheim appealed the NOV.
6. The facts establish that the noise was unreasonable because it was audible from off premises between 9pm and 7am by a person with ordinary hearing to wit: Officer Kreuzman.
7. Brandon Shermersheim occupies and has control of this property and is, therefore, a person who can and should be held responsible for this violation.
8. A fine of \$50.00 is appropriate because this is the first noise violation issued to Brandon Shermersheim and at this Property in a 12-month period

Staff Recommendation:

1. The appeal should be denied.

COUNTY OF MONROE
CITY OF BLOOMINGTON
ORDINANCE VIOLATION

NO. 39904

B22-32782

C14538

The undersigned having probable cause to believe and being duly sworn upon his/her oath says that on:

| | | | | |
|---|-------------------------|----------------------------------|-------------------|-----------------|
| Day of Week Sun | Day 21 st | Month Aug | Year 2022 | Time 0014hrs |
| Last Name Sermersheim | | First Brandon | MI M | |
| Street Address 1319 N Washington St | | | D.O.B. 03/06 | |
| City Bloomington | | State IN | Zip Code 47409 | |
| Sex M | Race W | SSN/OLN | | |
| DID COMMIT THE FOLLOWING OFFENSE: | | | | |
| _____ | | | | |
| _____ | | | | |
| (\$50) OR | | | | |
| Excessive Loud Noise | | | | |
| <input checked="" type="checkbox"/> Residence | | <input type="checkbox"/> Vehicle | | |
| Contrary to the BMC § 14.09.030 | | | | |
| at 1319 N. Washington St, Bloomington, IN. | | | | |
| Officer's Signature M. J. [Signature] | | | I.D. No. 1611 | |
| City of Bloomington, Indiana | | | | |
| Date 8/21/2022 | | | | |
| Signature [Signature] | | | | |
| Your signature is not an admission of guilt. | | | | |
| SEE OTHER SIDE FOR ADDITIONAL INFORMATION | | | | |



12/07/22
10:19

BLOOMINGTON POLICE DEPARTMENT
CALL DETAIL REPORT

Page: 337
1

Call Number: 220820322

Nature: NOISE
Reported: 23:32:23 08/20/22
Rcvd By: LANTZ E How Rcvd: T
Occ Btw: 23:32:23 08/20/22 and 23:33:00 08/20/22
Type: 1
Priority: 4

Address: 1410 N WALNUT ST; HOME 2 SUITES
City: BLOOMINGTON

Alarm:

COMPLAINANT/CONTACT

Complainant: , Name#:
Race: Sex: DOB: **/**/**
Address: ,
Home Phone: Work Phone:

Contact: TOM
Address:
Phone: [REDACTED]

RADIO LOG

| Dispatcher | Time/Date | Unit | Code | Zone | Agnc | Description |
|------------|-------------------|------|------|------|------|---|
| HUNTER JA | 23:40:41 08/20/22 | 1713 | ER | LB2 | BPD | (MDC) Enroute to a call incid#=B22-32782 call=3241 |
| YATES N | 23:40:51 08/20/22 | 1392 | DISP | LB2 | BPD | incid#=B22-32782 DISPATCHED TO A CALL call=3241 |
| HUNTER JA | 23:46:12 08/20/22 | 1713 | AR | LB2 | BPD | (MDC) Arrived on scene incid#=B22-32782 call=3241 |
| KREUZMAN T | 23:47:03 08/20/22 | 1611 | ENRT | LB2 | BPD | (MDC) Assisting unit 1713 incid#=B22-32782 call=3241 |
| LANTZ E | 23:47:06 08/20/22 | 1611 | ER | LB2 | BPD | incid#=B22-32782 ENROUTE TO A CALL call=3241 |
| HARRIS I | 23:53:15 08/20/22 | 1597 | ENRT | LB2 | BPD | (MDC) Assisting unit 1713 incid#=B22-32782 call=3241 |
| MITCHELL G | 23:53:29 08/20/22 | 1640 | ENRT | LB2 | BPD | (MDC) Assisting unit 1713 incid#=B22-32782 call=3241 |
| JURGETO T | 23:53:31 08/20/22 | 1674 | ENRT | LB2 | BPD | (MDC) Assisting unit 1713 incid#=B22-32782 call=3241 |
| BATCHO J | 23:53:41 08/20/22 | 1357 | ENRT | LB2 | BPD | (MDC) Assisting unit 1392 incid#=B22-32782 call=3241 |
| KREUZMAN T | 23:54:59 08/20/22 | 1611 | AR | LB2 | BPD | (MDC) Arrived on scene incid#=B22-32782 call=3241 |
| YATES N | 23:57:24 08/20/22 | IUPD | ER | LB2 | IUPD | ENROUTE TO A CALL call=3241 |
| JURGETO T | 00:00:04 08/21/22 | 1674 | AR | LB2 | BPD | (MDC) Arrived on scene incid#=B22-32782 call=3241 |
| YATES N | 00:04:14 08/21/22 | 1357 | AR | LB2 | BPD | call=3241 |
| HARRIS I | 00:15:22 08/21/22 | 1597 | AR | LB2 | BPD | (MDC) Arrived on scene incid#=B22-32782 call=3241 |
| YATES N | 00:17:48 08/21/22 | 1640 | AR | LB2 | BPD | call=3241 |

12/07/22
10:19

BLOOMINGTON POLICE DEPARTMENT
CALL DETAIL REPORT

337
Page: 2

| | | | | | | | |
|------------|----------|----------|------|----|-----|------|--|
| YATES N | 00:18:12 | 08/21/22 | 1607 | AR | LB2 | BPD | incid#=B22-32782 ARRIVED ON SCENE call=3241 |
| YATES N | 00:18:27 | 08/21/22 | 1392 | AR | LB2 | BPD | call=3241 |
| KINCAID S | 00:24:17 | 08/21/22 | 1607 | CE | LB2 | BPD | (MDC) Completed call incid#=B22-32782 call=3241 |
| MITCHELL G | 00:24:44 | 08/21/22 | 1640 | CE | LB2 | BPD | (MDC) Completed call incid#=B22-32782 call=3241 |
| JURGETO T | 00:24:53 | 08/21/22 | 1674 | CE | LB2 | BPD | (MDC) Completed call incid#=B22-32782 call=3241 |
| MCCOY J | 00:25:25 | 08/21/22 | 1392 | CE | LB2 | BPD | (MDC) Completed call incid#=B22-32782 call=3241 |
| HUNTER JA | 00:25:31 | 08/21/22 | 1713 | CE | LB2 | BPD | (MDC) Completed call incid#=B22-32782 call=3241 |
| HARRIS I | 00:25:37 | 08/21/22 | 1597 | CE | LB2 | BPD | (MDC) Completed call incid#=B22-32782 call=3241 |
| KREUZMAN T | 00:25:41 | 08/21/22 | 1611 | CE | LB2 | BPD | (MDC) Completed call incid#=B22-32782 call=3241 |
| YATES N | 00:26:21 | 08/21/22 | IUPD | CE | LB2 | IUPD | |
| BATCHO J | 00:26:40 | 08/21/22 | 1357 | CE | LB2 | BPD | (MDC) Completed call incid#=B22-32782 call=3241 |

COMMENTS

23:32:56 08/20/2022 - LANTZ E
4TH CALL REF LOUD PARTY BEHIND BUSN.
23:54:01 08/20/2022 - YATES N - From: HUNTER JA
THROWING FIRE WORKS AND STUFF, START MORE UNITS TO GET THEM CLEARED OUT
23:54:17 08/20/2022 - YATES N - From: BATCHO J
SEE IF IU HAS ANYONE TAHT CAN START THIS WAY
23:54:55 08/20/2022 - YATES N - From: HUNTER JA
WILL BE THE DEAD END ON WASHINGTON OFF OF 19TH
23:55:31 08/20/2022 - LANTZ E
IUPD GOING TO TRY AND SEND SOME UNITS
23:55:34 08/20/2022 - YATES N - From: HUNTER JA
WILL BE OUT AT 1320 N WASHINGTON FOR NOW
23:56:34 08/20/2022 - YATES N - From: HUNTER JA
WHOEVER IS NEXT BRING YOUR CAR UP HERE, THEY ARE LETTING FIREWORKS OFF RIGHT
NEXT TO ME, LETS GET THEM CLEARED OUT
00:07:52 08/21/2022 - YATES N - From: JURGETO T
HEADED TO 16TH & LINCOLN, SOMONE HAS RIPPED OTU A STOP SIGN AND IT IS 10-50 CITY
DOWN THERE
00:10:26 08/21/2022 - YATES N - From: JURGETO T
WILL BE AT 17TH & LINCOLN, IT IS RIPPED COMPLETELY OUT OF THE GROUND
00:11:13 08/21/2022 - LANTZ E
CITY UTILITIES ADV
00:25:27 08/21/2022 - HUNTER JA
cite at 1320 n washington and 1319 n washington

UNIT HISTORY

Unit Time/Date Code

1357 23:53:41 08/20/22 ENRT
1357 00:04:14 08/21/22 AR
1357 00:26:40 08/21/22 CE
1392 23:40:51 08/20/22 DISP

12/07/22
10:19

BLOOMINGTON POLICE DEPARTMENT
CALL DETAIL REPORT

Page: 337
3

| | | | |
|------|----------|----------|------|
| 1392 | 00:18:27 | 08/21/22 | AR |
| 1392 | 00:25:25 | 08/21/22 | CE |
| 1597 | 23:53:15 | 08/20/22 | ENRT |
| 1597 | 00:15:22 | 08/21/22 | AR |
| 1597 | 00:25:37 | 08/21/22 | CE |
| 1607 | 00:18:12 | 08/21/22 | AR |
| 1607 | 00:24:17 | 08/21/22 | CE |
| 1611 | 23:47:03 | 08/20/22 | ENRT |
| 1611 | 23:47:06 | 08/20/22 | ER |
| 1611 | 23:54:59 | 08/20/22 | AR |
| 1611 | 00:25:41 | 08/21/22 | CE |
| 1640 | 23:53:29 | 08/20/22 | ENRT |
| 1640 | 00:17:48 | 08/21/22 | AR |
| 1640 | 00:24:44 | 08/21/22 | CE |
| 1674 | 23:53:31 | 08/20/22 | ENRT |
| 1674 | 00:00:04 | 08/21/22 | AR |
| 1674 | 00:24:53 | 08/21/22 | CE |
| 1713 | 23:40:41 | 08/20/22 | ER |
| 1713 | 23:46:12 | 08/20/22 | AR |
| 1713 | 00:25:31 | 08/21/22 | CE |
| IUPD | 23:57:24 | 08/20/22 | ER |
| IUPD | 00:26:21 | 08/21/22 | CE |

RESPONDING OFFICERS

| Unit | Officer |
|------|-------------|
| 1357 | BATCHO J |
| 1392 | MCCOY J |
| 1597 | HARRIS I |
| 1607 | KINCAID S |
| 1611 | KREUZMAN T |
| 1640 | MITCHELL G |
| 1674 | JURGETO T |
| 1713 | HUNTER JA |
| IUPD | IU POL DEPT |

INVOLVEMENTS

| Type | Record# | Date | Description | Relationship |
|------|-----------|----------|------------------------------|-----------------|
| LW | B22-32782 | 08/20/22 | NOISE B22-32782 1320 N WASHI | Initiating Call |



Appeal of Noise Citation to the Board of Public Works

City of Bloomington
Department of Public Works
401 North Morton Street, Suite 120
Phone (812)349-3410
Email: Public.Works@Bloomington.IN.gov

Please complete this form in its entirety. Use black or blue ink only and Print legibly. A copy of the Noise citation you were issued **MUST** be attached to this form. You are encouraged to attach all documents that you believe support your appeal. **All of these documents must be submitted within seven (7) days** after the Noise citation was issued. The Board of Public Works will primarily consider the written materials submitted, including: this appeal form, documents you provide, a statement from the police officer including any complaints made, and staff recommendations. In addition, on the date given below, you will have the opportunity to speak to the Board for two minutes. You will be notified of the Board's decision by first class mail. If your appeal is denied, you may file an appeal with the Monroe County Circuit within seven (7) days from the date of the Board's decision.

Name: Brandon Sermersheim Phone Number 8128279040

Citation Number: 39904 Date on Noise Citation: 8/21/22

(Located in the top right hand corner of the citation)

Local Address:
1319 N Washington St

Permanent Address:
4481 W Ladino Ln

Today's Date: 12/28/22

Reason for Appeal: Our house received a noise violation warning on August 21, 2022. There was no talk of any sort of citation that needed to be payed by any of the five officers that were present. Then, we'll past 3 months later, I received a letter in the mail stating that I had to pay a fifty dollar fine. Therefore, I am confused why I received the fine in the first place, and why it came so late.

(You may continue on another page if necessary)

On this day, I submitted my completed appeal of Noise citation and received the date of 1/3/23
When the Board of Public Works will consider my appeal.

[Signature]
Signature

12/28/22
Date

For use by Public Works:

Date Appeal Received: _____ Received By: _____

Date Appeal Forwarded to Legal Department: _____

COUNTY OF MONROE
CITY OF BLOOMINGTON
ORDINANCE VIOLATION

NO.

The undersigned having probable cause to believe and being duly sworn upon his/her oath says that on:

| | | | | |
|--------------------------------------|-----------|---------------------|-------------------|--------------|
| Day of Week Sun | Day 21 | Month April | Year 2022 | Time 0041 |
| Last Name Germashenko | | First Mikhail | MI M | |
| Street Address 1319 N. Washington | | | D.O.B. 03/20 | |
| City Bloomington | | State IN | Zip Code 47408 | |
| Sex M | Race W | SSN/OLN 20-17641 | | |

DID COMMIT THE FOLLOWING OFFENSE:

OR

Excessive Loud Noise

Residence Vehicle

Contrary to the BMC § 114.09.030
at 1319 N. Washington St, Bloomington, IN.

Officer's Signature *[Signature]* I.D. No. 1611

City of Bloomington, Indiana

Date 4/21/2022

Signature *[Signature]*

Your signature is not an admission of guilt.

SEE OTHER SIDE FOR ADDITIONAL INFORMATION

City of Bloomington's Board of Public Works **Order on Appeal of Notice of Violation Ticket** **#39904**

This matter is before the Board of Public Works for an Appeal of Notice of Violation # 39904 (the "NOV") at 1319 N. Washington Street. (the "Property"). The Board of Public Works received information regarding the NOV at its regular meeting on January 3, 2022.

The Board of Public Works now finds as follows:

1. Brandon Shermersheim ("Appellant") appealed the NOV.
2. Appellant resides at the Property.
3. At approximately 11:30 p.m. on 8/20/2022 Bloomington Police Dispatch received a report of loud music and noise coming from the Property.
4. City of Bloomington Police Officer Thomas Kreuzman responded to the call and, at approximately 11:40 p.m. on 8/20/2022, while not physically on the Property, heard music and sound coming from the Property.
5. These facts establish a prima facie violation of BMC 14.09.070(c)(4) in that the sound was clearly audible to a person with normal hearing from any place other than the premises from which the source of the sound is located, when the sound occurs between the hours of 9:00 p.m. and 7:00 a.m.
6. Appellant is a person under BMC 14.09.030(b) who can be held responsible for this violation.
7. The facts support a finding that the Appellant did violate BMC § 14.09 regarding unreasonable noise, and that this is Appellant's first violation of BMC § 14.09 within 12 months.

After reviewing all of the evidence and testimony presented, the Board of Public Works hereby Orders that the Appeal of NOV #39904 is denied.

So Ordered this 3rd Day of January, 2023.

Kyla Cox Deckard, President
Board of Public Works
City of Bloomington

The Board of Public Works meeting was held Monday, December 20, 2022 at 5:30 pm in the Council Chambers of City Hall at 401 N. Morton St., Bloomington, Indiana and virtually through Zoom with Kyla Cox Deckard presiding.

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

Present: Kyla Cox Deckard
Jennifer Lloyd
Elizabeth Karon

ROLL CALL

City Staff: Adam Wason – Public Works
April Rosenberger-- Public Works
Mike Rouker – City Legal
Chaz Mottinger – Economic and Sustainable Development
Neil Kopper – Engineering
Patrick Dierkes -- Engineering
Sara Gomez – Engineering
Paul Kehrberg -- Engineering

Kyla Cox Deckard extended a thank you to City staff, Public Works in particular, who will be called into action during the upcoming adverse weather conditions.

**MESSAGES FROM BOARD
MEMBERS**

None

**PETITIONS &
REMONSTRANCES**

1. Approval of Minutes; December 06, 2022
2. Confirm Flavia Burrell as 2023 Board of Public Works' Designated Representative on the City's Plan Commission
3. 2023 BDUAC Appointments
4. 2023 CATS Funding Agreement
5. 2023 PEG Content Provider Agreement (WTIU)
6. 2023 PEG Content Provider Agreement (MCPL)
7. 2023 Service Agreement with SSW Enterprises for Cleaning Services at Public Works Facilities
8. Amendment to Agreement with CentralSquare (Lucity) for GIS Web Map Functionality
9. Change Order #2 for the Dunn St. Sidewalk Project
10. Change Order #2 for the Hopewell Phase I East Demolition Project
11. Request from Land-Ron, Inc. for Dumpster Placement on W. 9th St. between Walnut and Morton (December 20, 2022-February 16, 2023)
12. Resolution 2022-91; Pili's Party Truck #1
13. Resolution 2022-92; Pili's Party Truck #2
14. Resolution 2022-93; Pili's Party Truck #3
15. Approval of Payroll

CONSENT AGENDA

Item #2 Confirm Flavia Burrell as 2023 Board of Public Works' Designated Representative on the City's Plan Commission was removed from Consent and placed on New Business.
Item #3 2023 BDUAC Appointments were removed from the Consent Agenda and placed on New Business.

Board Comments: None

Karon made a motion to approve the Consent Agenda. Lloyd seconded. All in favor, motion is passed.

Adam Wason, Public Works, presented Confirm Flavia Burrell as 2023 Board of Public Works' Designated Representative on the City's Plan Commission. See meeting packet for details.

Board Comments: Karon asked about the appointment term. Wason stated he believes the reappointment is annual.

Karon made a motion to Confirm Flavia Burrell as 2023 Board of Public Works' Designated Representative on the City's Plan Commission. Lloyd seconded. All in favor, motion is passed.

Adam Wason, Public Works, presented 2023 BDUAC Appointments. See meeting packet for details.

Board Comments: None

Karon made a motion to approve the 2023 BDUAC Appointments. Lloyd seconded. All in favor, motion is passed.

Mike Rouker, City Legal, presented Resolution 2022-89; City of Bloomington Policy and Procedures on Private Art Installations within the Public Right of Way. See meeting packet for details.

Board Comments: Lloyd asked about art in the Parks. Rouker answered that this policy would not touch any of the installations in the Parks. Cox Deckard mentioned a revision to the policy to reflect the definition of temporary as 7 days instead of 5 days. Rouker confirmed the revision.

Public Comments: Thomas Westgard, stated he thinks this policy puts an undue burden on the Board of Public Works. Mr. Westgard stated the policy is redefining speech. Dave Askins, B Square Bulletin, asked if the Middle Way House Wrapped in Love display for 2023-2024 would be expected to apply as a special event as they did in 2021. He also asked if the policy prevented hate speech. Askins asked about American Sign Language (ASL) and if the hand-shapes that correspond with the letters would count as a symbol as defined in the policy. Finally, Askins asked why the language of the policy read number instead of numeral. Rouker addressed the questions from both public commenters. Rouker stated that this is the Policy of the City, not specifically his. Rouker said that there will be close cases on universally recognized symbols. The City does not believe this policy presents any problems in terms of the way that it regulates speech. The City will not ask the Board to play the role of law professor and to figure out what qualifies and what doesn't under the policy. Rouker said the scope of this policy is just regarding private requests to put art installations in the public right-of-way. He added that Middle Way House Wrapped in Love display will have to be discussed as it is presented going forward. But, that any request for art in the public right-of-way would have to be compliant with the policy. Rouker stated that hate speech would not be permissible, as it would fall within the category of obscene or vulgar. Rouker addressed the signs used in ASL. His initial reaction is that it would be impermissible as it is a universally known symbol. But, without further discussion

NEW BUSINESS

Confirm Flavia Burrell as 2023 Board of Public Works' Designated Representative on the City's Plan Commission

2023 BDUAC Appointments

Resolution 2022-89; City of Bloomington Policy and Procedures on Private Art Installations within the Public Right-of-Way

with the legal team, he was not comfortable addressing that question. Finally, the linguistic distinction between number and numeral does not affect the policy. Cox Deckard noted that the policy does mention temporary art, it is not restricted by the clause as far as speech, symbols, etc. Rouker confirmed that speech component of the policy applies only to semi-permanent and permanent art. However, the application of any art installation would need to be reviewed. Cox Deckard asked if the Special Events application would be updated. Rouker confirmed. Karon asked if the current special event application can be used until the revised application can be released. Rouker confirmed, but the policy would still apply.

Mike McAfee, Executive Director of Visit Bloomington, expressed that the upcoming Freezefest event would follow the policy and that he will do anything that is needed to work with the City.

Karon made a motion to approve Resolution 2022-89; City of Bloomington Policy and Procedures on Private Art Installations within the Public Right-of-Way. Lloyd seconded. All in favor, motion is passed.

Chaz Mottinger, Economic and Sustainable Development, presented Resolution 2022-86; Freezefest. See meeting packet for details.

Resolution 2022-86; Freezefest

Board Comments: Cox Deckard addressed questions discussed during the work session regarding cars being parked in the crosswalk and the placement of the ice sculptures in the public right-of-way. Mottinger confirmed that barricades are being used instead of cars and that the ice sculptures will be in the street, but only while the street is closed.

Karon made a motion to approve Resolution 2022-86; Freezefest. Lloyd seconded. All in favor, motion is passed.

Neil Kopper, Engineering, presented Amendment #1 to Preliminary Engineering Contract with Eagle Ridge Civil Engineering for the Neighborhood Greenways Project. See meeting packet for details.

Amendment #1 to Preliminary Engineering Contract with Eagle Ridge Civil Engineering for the Neighborhood Greenways Project

Board Comments: Lloyd asked about if the decision to change the design on the project from 7th and Longview to Morningside was based on changing priorities within the department. Kopper stated that is primarily correct, but that there is a lot of construction near Pete Ellis and Longview so it isn't an ideal time to be in that area.

Karon made a motion to approve Amendment #1 to Preliminary Engineering Contract with Eagle Ridge Civil Engineering for the Neighborhood Greenways Project. Lloyd seconded. All in favor, motion is passed.

Neil Kopper, Engineering, presented LPA Consulting Contract with VS Engineering for Preliminary Engineering Services on the Crosswalk Safety Improvements Project. See meeting packet for details.

LPA Consulting Contract with VS Engineering for Preliminary Engineering Services on the Crosswalk Safety Improvements Project

Board Comments: None

Karon made a motion to approve the LPA Consulting Contract with VS Engineering for Preliminary Engineering Services on the Crosswalk Safety Improvements Project. Lloyd seconded. All in favor, motion is passed.

Patrick Dierkes, Engineering, presented Preliminary Engineering Contract with Bledsoe Riggert Cooper James for the Moores Pike/ SE Park Trail Realignment. See meeting packet for details.

Preliminary Engineering Contract with Bledsoe Riggert Cooper James for the Moores Pike/ SE Park Trail Realignment

Board Comments: None

Karon made a motion to approve Preliminary Engineering Contract with Bledsoe Riggert Cooper James for the Moores Pike/ SE Park Trail Realignment. Lloyd seconded. All in favor, motion is passed.

Sara Gomez, Engineering, presented Contract with Smock Fansler Corporation for the 10th & Jefferson Retaining Wall Project. See meeting packet for details.

Contract with Smock Fansler Corporation for the 10th & Jefferson Retaining Wall Project

Board Comments: Cox Deckard asked if the bid was in line with what the City was expecting. Gomez confirmed.

Karon made a motion to approve Contract with Smock Fansler Corporation for the 10th & Jefferson Retaining Wall Project. Lloyd seconded. All in favor, motion is passed.

Paul Kehrberg, Engineering, presented Request from Duke Energy for Lane and Sidewalk Closures along North and South Rogers and S. Morton St. (January 03, 2023 – January 27, 2023). See meeting packet for details.

Request from Duke Energy for Lane and Sidewalk Closures along North and South Rogers and S. Morton St. (January 03, 2023 – January 27, 2023)

Board Comments: None

Karon made a motion to approve Request from Duke Energy for Lane and Sidewalk Closures along North and South Rogers and S. Morton St. (January 03, 2023 – January 27, 2023). Lloyd seconded. All in favor, motion is passed.

Paul Kehrberg, Engineering, presented Request from Renascent, Inc. for Lane Closures on W. 1st Street (January 03, 2023 – January 13, 2023). See meeting packet for details.

Request from Renascent, Inc. for Lane Closures on W. 1st Street (January 03, 2023 – January 13, 2023)

Board Comments: None

Karon made a motion to approve Request from Renascent, Inc. for Lane Closures on W. 1st Street (January 03, 2023 – January 13, 2023). Lloyd seconded. All in favor, motion is passed.

Adam Wason, Public Works, mentioned the upcoming winter weather event. He stated that City street crews are in snow control mode. He thanked the Street and Fleet departments for their hard work in getting prepared for the weather event. Wason also mentioned that additional sanitation pick up scheduled for Friday have been cancelled.

STAFF REPORTS AND OTHER BUSINESS

Karon made a motion to approve claims in the amount of \$1,090,761.09. Lloyd seconded. All in favor, motion is passed.

CLAIMS

Cox Deckard called for adjournment at 6:25 p.m.

ADJOURNMENT

Accepted By:

Kyla Cox Deckard, President

Jennifer Lloyd, Vice President

Elizabeth Karon, Secretary

Date:

Attest to:



Board of Public Works Staff Report

Project/Event: Cooperative Services Agreement Program Partnership with
Centerstone of Indiana, Inc.

Petitioner/Representative: Department of Public Works

Staff Representative: Adam Wason, Director

Meeting Date: January 03, 2023

The purpose of this agreement is to provide well maintained and clean public spaces through a program partnership which allows their clients to work for Centerstone as part of the Brighten B-Town Program.

City of Bloomington Contract and Purchase Justification Form

Vendor: Centerstone of Indiana, Inc.

Contract Amount: \$350,000.00

This form should be completed and attached to the contract documents and forwarded to the Legal Department Attorney assigned to your Department. Contracts will not be approved by the Controller if a completed form is not included with the contract documents.

PURCHASE INFORMATION

1. Check the box beside the procurement method used to initiate this procurement: (Attach a quote or bid tabulation if applicable)

| | | | |
|--|--|---|---|
| <input type="checkbox"/> Request for Quote (RFQ) | <input type="checkbox"/> Request for Proposal (RFP) | <input type="checkbox"/> Sole Source | <input checked="" type="checkbox"/> Not Applicable (NA) |
| <input type="checkbox"/> Invitation to Bid (ITB) | <input type="checkbox"/> Request for Qualifications (RFQu) | <input type="checkbox"/> Emergency Purchase | |

2. List the results of procurement process. Give further explanation where requested. Yes No

| # of Submittals: | Yes | No | Was the lowest cost selected? (If no, please state below why it was not.) | Yes | No |
|--------------------------------------|--------------------------|--------------------------|---|--------------------------|--------------------------|
| Met city requirements? | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> |
| Met item or need requirements? | <input type="checkbox"/> | <input type="checkbox"/> | | | |
| Was an evaluation team used? | <input type="checkbox"/> | <input type="checkbox"/> | | | |
| Was scoring grid used? | <input type="checkbox"/> | <input type="checkbox"/> | | | |
| Were vendor presentations requested? | <input type="checkbox"/> | <input type="checkbox"/> | | | |

3. State why this vendor was selected to receive the award and contract:

Renewal of Cooperative Services Agreement with Centerstone of Indiana, Inc. to provide well maintained and clean public spaces through a program partnership which allows their clients to work for Centerstone as part of the Brighten B-Town Program.

Adam Wason

Director

Public Works

Print/Type Name

Print/Type Title

Department

**CITY OF BLOOMINGTON
COOPERATION SERVICES AGREEMENT
WITH CENTERSTONE OF INDIANA, INC.**

This Agreement is made and entered into by and between the City of Bloomington Public Works Department (“COB - DPW”) and Centerstone of Indiana, Inc. (“CS”).

WHEREAS, COB - DPW and CS (“the Parties”) desire to cooperate as part of an employment program to support the Brighten B-Town maintenance and beautification efforts Citywide, and

WHEREAS, CS is qualified to perform such services for COB - DPW; and

WHEREAS, COB - DPW is authorized to plan and develop partnerships and contractual arrangements with non-city organizations to ensure delivery of services.

NOW, THEREFORE, the Parties do mutually agree as follows:

I. Purpose of Agreement

The purpose of this Agreement is to outline a program partnership, which will provide an opportunity for CS clients to work for CS as part of the Brighten B-Town by combining available resources from each Party to the Agreement.

II. Duration of Agreement

This Agreement shall be in effect from the date of signing until December 31, 2023 unless terminated earlier as provided under Section XI.

III. City of Bloomington Public Works Department Responsibilities

A. The goal of COB - DPW is to provide well maintained and clean public spaces.

B. COB - DPW agrees to:

1. Define the work areas in the public rights-of-way to be cleaned and maintained under this program which may include: curb painting; vegetation and debris removal; snow removal; general maintenance; cleaning; and other efforts as part of the Brighten B-Town program administered by the Facilities Division of the Public Works Department;
2. COB - DPW shall, under the coordination of the Public Works Director, the Facilities and Operations Manager, the Special Projects and Operations Manager, and the Downtown Specialist, coordinate the weekly work plans with CS to be completed during work hours of 9:00 a.m. - 2:00 p.m., Monday - Friday from the execution date through December 31, 2023;
3. Provide on-site training for the CS Brighten B-Town team members on work zone safety, maintenance duties and expectations;

4. Provide maintenance equipment and supplies necessary to maintain the designated rights-of way;
5. Provide personal protective equipment for the CS Brighten B-Town team members; and
6. Pay CS invoiced amounts for labor costs of the COB-DPW and CS Brighten B-Town partnership. Payment shall not to exceed the rate of \$15.29, plus FICA for CS Brighten B-Town team members, which shall not exceed an aggregate amount of Three Hundred Fifty Thousand Dollars (\$350,000.00).
7. Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the COB-DPW are at any time not forthcoming or are insufficient, through failure of any entity, including the COB-DPW itself, to appropriate funds or otherwise, then the COB-DPW shall have the right to terminate this Agreement without penalty.

IV. CENTERSTONE Responsibilities

A. The goal of CS is to conduct an employment placement program for Centerstone Brighten B-Town.

B. CS agrees to:

1. Conduct hiring interviews, hire, pay, and assume liability/risk coverage for maintenance crews;
2. Provide up to ten (10) employees Monday through Friday from 7:30 a.m. - 2:30 p.m. to complete cleaning and maintenance tasks as described above;
3. Invoice COB - DPW monthly for labor costs, plus FICA depending on the positions filled and hours worked, at the rate of \$15.29 per hour for the calendar year 2023;
4. Provide transportation each day to the agreed upon work sites that are part of the weekly work plans;
5. Provide a Supervisor to transport and supervise crew on site;
6. Have substitute workers available to fill in or permanently take a spot on the crew;
7. Address behavioral issues that come up at sites;

8. Complete maintenance log daily per site; and
9. Communicate with designed COB - DPW staff on issues, progress, and supply needs.

V. Terms Mutually Agreed To By the Parties to this Agreement

A. The intent of this Agreement is to document a mutually beneficial partnership between CS and COB - DPW in an amount not to exceed Three Hundred Fifty Thousand Dollars (\$350,000.00);

B. The staff and personnel involved in this Agreement will at all times represent the Parties to this Agreement in a professional manner and reflect the commitment of the Parties to quality services and customer satisfaction;

C. During the performance of any and all Services under this Agreement, CS 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; and c) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code. All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Department of Public Works, and the officers, employees and agents of each shall be named as insureds under the General Liability, Automobile, and Worker's Compensation policies, and such policies shall stipulate that the insurance will operate as primary insurance and that no other insurance of the City's will be called upon to contribute to a loss hereunder. CS shall provide COB - DPW with a certificate of insurance prior to the commencement of operations under this Agreement. CS and its insurer shall notify COB - DPW within ten (10) days of any insurance cancellation;

D. The commitment of personnel, facilities, supplies and payments will be honored according to the timetable agreed upon by the Parties;

E. CS is recognized as having the expertise and experience to hire and supervise the Brighten B-Town work crews safely and effectively. COB - DPW shall have the right to review risk management, agreement terms, and service quality issues;

F. Municipal Code Sections 6.12.020 and 14.36.090, respectively, prohibit smoking and vaping inside city facilities and the consumption of alcoholic beverages on City property;

G. Pursuant to Indiana Code Sections 35-47-11.1-2 and -3, the City is prohibited from enforcing a firearms policy in public parks and City facilities as of July 1, 2011. However, per Indiana Code Section 35-47-11.1-4(10), CS may develop and implement, at its own discretion, rules of conduct or admission regarding the carrying and storage of

firearms, upon which attendance at and participation in its activities is conditioned, and the City is hereby authorized to enforce said policy for purposes of this Agreement. If CS implements such a policy, it shall provide a copy of the policy to the City, which shall be attached to this Agreement and incorporated herein by reference;

H. The Parties shall evaluate this Agreement and the services provided hereunder during the month of December 2023; and

VI. Indemnification and Release

CS shall release, hold harmless, and indemnify the City of Bloomington, its Public Works Department, and its officers, employees, agents, and assigns (Releasees) from any and all claims which may arise as a result of CS’s activities under this Agreement. This includes claims for personal injury, property damage, or any other type of claim which might be brought against Releasees or CS, or its employees, agents or patrons, by any third party, even if caused by the negligence of Releasees.

VII. Independent Contractor Status

During the entire term of this Agreement, CS 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 COB-DPW. CS shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of employees.

VIII. Notices and Representatives

A. Notice regarding any significant concerns or issues of non-compliance shall be provided to those contacts as follows:

| | |
|-----------------------|-----------------------|
| Centerstone | COB - DPW |
| Christina L. Murphy | Adam Wason |
| 645 S. Rogers St. | 401 N. Morton Street |
| Bloomington, IN 47403 | Bloomington, IN 47404 |
| (812)337-2237 | (812) 349-3410 |

B. Representatives for the day-to-day operational implementation of this Agreement are:

| | |
|-----------------------|--------------------------|
| Centerstone | COB - DPW |
| Christina L. Murphy | J. D. Boruff, Facilities |
| 645 S. Rogers St. | 812 325-2592 |
| Bloomington, IN 47403 | |
| (812) 337-2237 | |

IX. Non-Discrimination

CS shall comply with Bloomington Municipal Code 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment.

CS understands that the City of Bloomington prohibits its employees from engaging in harassment or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If CS believes that a City employee engaged in such conduct towards CS and/or any of its employees, CS or its employees may file a complaint with the City department head in charge of the grant and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

X. Compliance with Laws

In performing the Services under this Agreement, CS 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. Where such statutes, ordinances, plans or regulations of any public authority having any jurisdiction over the project are in conflict, CS shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify COB-DPW in a timely manner of the conflict, attempts of resolution, and planned course of action.

XI. Termination and Modification

This Agreement may be terminated only upon the mutual written agreement of the Parties. Likewise, the parties may modify any term of this Agreement through mutual written agreement.

XII. E-Verify

CS 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). CS shall sign an affidavit, attached as Exhibit A, affirming that CS does not knowingly employ an unauthorized alien. CS shall require any subcontractors performing work under this contract to certify to the CS 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. CS shall maintain on file all subcontractors' certifications throughout the term of the contract with the City.

XIII. Termination

This Agreement may be terminated only upon the mutual written agreement of the Parties.

XIV. Integration and Modification

This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between COB-DPW and the CS. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

XV. Non-Collusion

CS is required to certify that it has not, nor has any other member, representative, or agent of CS, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. CS shall sign an affidavit, attached hereto as Exhibit B, affirming that CS has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

[Signature Page Follows]

Signed and Agreed to this 3rd day of January, 2023.

CENTERSTONE OF INDIANA, INC.

Suzanne Koesel, CEO

Date

CITY OF BLOOMINGTON

Adam Wason, Director, COB - DPW

Date

Kyla Cox Deckard, President
Board of Public Works

Date

Beth Cate, Corporation Counsel

Date

EXHIBIT B

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

NON-COLLUSION AFFIDAVIT

The undersigned offeror or agent, being duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.

OATH AND AFFIRMATION

I affirm under the penalties of perjury that the foregoing facts and information are true and correct to the best of my knowledge and belief.

Dated this _____ day of _____, _____.

CENTERSTONE OF INDIANA, INC.

By: _____
Suzanne Koesel, CEO

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

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

Notary Public

Printed name

My Commission Expires: _____

County of Residence: _____

Commission No. _____



Board of Public Works Staff Report

Project/Event: Renew Contract with PEI Maintenance & Contracting for Fuel Tank Inspection and Service

Petitioner/Representative: Fleet Maintenance

Staff Representative: Jason Speer

Meeting Date: January 03, 2023

PEI will establish baseline configurations, perform monthly inspection of tanks which is required by IDEM and annual inspection for each tank.

City of Bloomington Contract and Purchase Justification Form

Vendor: PEI Maintenance & Contracting

Contract Amount: \$5,790.00

This form should be completed and attached to the contract documents and forwarded to the Legal Department Attorney assigned to your Department. Contracts will not be approved by the Controller if a completed form is not included with the contract documents.

PURCHASE INFORMATION

1. Check the box beside the procurement method used to initiate this procurement: (Attach a quote or bid tabulation if applicable)

| | | | |
|--|--|---|---|
| <input type="checkbox"/> Request for Quote (RFQ) | <input type="checkbox"/> Request for Proposal (RFP) | <input type="checkbox"/> Sole Source | <input checked="" type="checkbox"/> Not Applicable (NA) |
| <input type="checkbox"/> Invitation to Bid (ITB) | <input type="checkbox"/> Request for Qualifications (RFQu) | <input type="checkbox"/> Emergency Purchase | |

2. List the results of procurement process. Give further explanation where requested.

| # of Submittals: | Yes | No | Was the lowest cost selected? (If no, please state below why it was not.) | Yes | No |
|--------------------------------------|--------------------------|--------------------------|---|-------------------------------------|--------------------------|
| Met city requirements? | <input type="checkbox"/> | <input type="checkbox"/> | | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Met item or need requirements? | <input type="checkbox"/> | <input type="checkbox"/> | | | |
| Was an evaluation team used? | <input type="checkbox"/> | <input type="checkbox"/> | | | |
| Was scoring grid used? | <input type="checkbox"/> | <input type="checkbox"/> | | | |
| Were vendor presentations requested? | <input type="checkbox"/> | <input type="checkbox"/> | | | |

3. State why this vendor was selected to receive the award and contract:

This is the renewal of the contract that will continue the maintenance of the fuel island and maintain monthly and annual EPA requirements

Jason Speer

Fleet Maintenance Director

Public Works/ Fleet Maintenance

Print/Type Name

Print/Type Title

Department

**PROJECT NAME: Services Regarding Underground Storage Tank at Fuel Sites –
Adams Street and Henderson Street**

AGREEMENT FOR SERVICES

This Agreement, entered into on this _____ day of _____, 2023, by and between the City of Bloomington of Public Works Department ("the Department"), and PEI Maintenance & Contracting (hereinafter referred to as "Consultant"),

WITNESSETH:

WHEREAS, the Board wishes to retain Consultant's services **for establishment of baseline configurations, monthly inspection of tanks which is required by IDEM, and annual inspection for each tank; and,**

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

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

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 Department 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 Department as may be requested and desirable, including primary coordination with the Public Works Department officials designated 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. Jason Speer, Manager of the Fleet Maintenance Division of the Public Works

Department, shall be the sole judge of the adequacy of Consultant's work in meeting such standards. However, Speer shall not unreasonably withhold his approval as to the adequacy of such performance.

Article 3. Responsibilities of the Department: The Department 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 Department:

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 Department hereby designates Jason Speer, Manager of the Fleet Services Division of the Department of Public Works, ("Speer") to serve as the Department's representative for the project. Speer shall have the authority to transmit instructions, receive information, interpret and define the Department's requirements and make decisions with respect to the Services.

C. Decisions

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

Article 4. Compensation: The Department shall pay consultant for all fees and expenses for calendar year 2023 an amount not to exceed **Five Thousand, Seven Hundred Ninety Dollars (\$5,790.00)**.

The 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 progress statements for each phase and shall be invoiced for the work completed only.

Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. **Invoices shall be sent via email to public.works@bloomington.in.gov or via first class mail postage prepaid to Public Works Department, 401 N. Morton Street, Suite 120, Bloomington, IN 47404.** Payment will be remitted to Consultant within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services authorized in

writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

Article 5. Appropriation of Funds: Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the Department are at any time not forthcoming or are insufficient, through failure of any entity, including the Department itself, to appropriate funds or otherwise, then the Department 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 contained in Consultant's proposal for this Agreement. 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 Department may terminate or suspend performance of this Agreement at the Department'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 Department, and the Department 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 Department, 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 Department to perform the duties described in this Agreement is the qualification and experience of the Consultant. Consultant thus agrees that the work to be done pursuant to this Agreement shall be performed pursuant to this Agreement shall be performed by Consultant. Consultant shall not subcontract any part of the Services without the prior written permission of the Department. The Department reserves the right to reject any of the Consultant's personnel or proposed outside professional sub-Consultants, and the Department reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 10. Ownership of Documents and Intellectual Property: All documents, drawings and specifications, including digital format files, prepared by Consultant and furnished to the Department as part of the Services shall become the property of the Department. 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 11. 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 Department.

Article 12. Indemnification: To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the City of Bloomington, the Board of Public Works, and the officers, agents and employees of the City and the Department 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 sub-consultants in the performance of services under this Agreement.

Article 13. Insurance: During the performance of any and all Services under this Agreement, Consultant shall maintain the following insurance in full force and effect:

- a. Automobile Liability Insurance, with a minimum combined single limit of \$100,000 for each person and \$1,000,000 for each accident.
- b. General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.
- 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 Department, 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 Department prior to the commencement of work under the Agreement. Approval of the insurance by the Department 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 Department required proof that the insurance has been procured and is in force and paid for, Department shall have the right at Department's election to forthwith terminate the Agreement.

Article 14. 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 15. 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 16. 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 17. Assignment: Neither the Department 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 Department'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 18. Third Party Rights: Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Department and the Consultant.

Article 19. 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 20. Non-Discrimination: Contractor 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. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassment or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If the Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

Article 21. 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 Department 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 Department in a timely manner of the conflict, attempts of resolution, and planned course of action.

Article 22. Notices: Any notice required by this Agreement shall be made in writing to the addresses specified below:

Department:

City of Bloomington
Department of Public Works
Attn: Jason Speer
City Hall at Showers
401 N. Morton Street
Bloomington, IN 47404

Consultant:

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

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

Article 23. Intent to be Bound: The Department 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 24. Integration and Modification: This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department 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 25. Verification of New Employee' Employment Status: Consultant is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists.) Consultant shall sign an affidavit, attached as Exhibit E, affirming that Consultant does not knowingly employ an unauthorized alien. "Unauthorized alien" is defined at 8 U.S. Code 1324a(h)(3) as a person who is not a U.S. citizen or U.S. national and is not lawfully admitted for permanent residence or authorized to work in the U.S. under 8 U.S. Code Chapter 12 or by the U.S. Attorney General.

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

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

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

Article 26. No Collusion: Consultant is required to certify that it has not, nor has any other member, representative, or agent of Consultant, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Consultant shall sign an affidavit, attached hereto as Exhibit F, affirming that Consultant has not engaged in any collusive conduct.

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

Article 27. Warranty: Consultant warrants all workmanship for a period of twelve (12) months following completion. A copy of Consultant's Warranty Information is attached hereto as Exhibit G and incorporated herein by reference as though fully set forth.

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

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

Owner

Consultant

City of Bloomington
Board of Public Works

PEI Maintenance & Contracting

By: _____
Kyla Cox Deckard, President

By: _____
Rod Armes,
President

Attest: _____
Adam Wason
Director, Department of Public Works

By: _____
John Hamilton
Mayor

EXHIBIT A

SCOPE OF SERVICES

PEI will establish baseline configurations and perform monthly inspection of underground tanks at the Adams Street and Henderson Street sites, as well as an annual inspection of each tank.

EXHIBIT B
COMPENSATION

This project is to be conducted with an agreed Not to Exceed Cost of **Five Thousand, Seven Hundred Ninety Dollars (\$5,790.00)**.

EXHIBIT D

NON-COLLUSION AFFIDAVIT

STATE OF INDIANA)
) SS:
COUNTY OF _____)

The undersigned offeror or agent, being duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.

OATH AND AFFIRMATION

I affirm under the penalties of perjury that the foregoing facts and information are true and correct to the best of my knowledge and belief.

Dated this _____ day of _____, 20_____.

(Name of Organization)

By: _____

(Name and Title of Person Signing)

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of _____, 20_____.

My Commission Expires:

Notary Public Signature

Resident of _____ County

Printed Name

Commission No.: _____



Board of Public Works Staff Report

Project/Event: Outdoor Lighting Service Agreements with Duke Energy

Petitioner/Representative: Engineering and Public Works Departments

Staff Representative: Christina Smith

Meeting Date: January 3, 2023

The Engineering Department requested and received a lighting plan for a portion of the West Allen Street Neighborhood Greenway Project between S Rogers Street to S Morton Street.

The lighting plan for this section of the project will consist of three (3) LED fully shielded pedestrian scale street lights. These lights will be leased through Duke Energy with the City paying for the equipment, ongoing monthly energy usage and maintenance costs with Duke providing the maintenance services.

The one time equipment costs will be paid out of the project funding source and the ongoing monthly costs will be paid out of the Local Road & Street Fund within the Street Operations Division's budget.

Location: West Allen Street Neighborhood Greenway Project between S Rogers Street to S Morton Street

Fixtures: Three (3) 50W LED Traditional fixtures with a black finish

Poles: Three (3) Aluminum poles with a black finish

Temperature: 3,000 Kelvin

Equipment Costs: \$12,692.59

Estimated Monthly Charge: \$24.93

City of Bloomington Contract and Purchase Justification Form

Vendor: Duke Energy

Contract Amount: \$12,692.59

This form should be completed and attached to the contract documents and forwarded to the Legal Department Attorney assigned to your Department. Contracts will not be approved by the Controller if a completed form is not included with the contract documents.

PURCHASE INFORMATION

1. Check the box beside the procurement method used to initiate this procurement: (Attach a quote or bid tabulation if applicable)

| | | | |
|--|--|---|--|
| <input type="checkbox"/> Request for Quote (RFQ) | <input type="checkbox"/> Request for Proposal (RFP) | <input checked="" type="checkbox"/> Sole Source | <input type="checkbox"/> Not Applicable (NA) |
| <input type="checkbox"/> Invitation to Bid (ITB) | <input type="checkbox"/> Request for Qualifications (RFQu) | <input type="checkbox"/> Emergency Purchase | |

2. List the results of procurement process. Give further explanation where requested.

| | Yes | No | | Yes | No |
|--------------------------------------|-------------------------------------|-------------------------------------|---|--------------------------|--------------------------|
| # of Submittals: | | | Was the lowest cost selected? (If no, please state below why it was not.) | <input type="checkbox"/> | <input type="checkbox"/> |
| Met city requirements? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | | | |
| Met item or need requirements? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | | | |
| Was an evaluation team used? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | | | |
| Was scoring grid used? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | | | |
| Were vendor presentations requested? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | | | |

3. State why this vendor was selected to receive the award and contract:

Duke Energy is a sole source provider for street light installation within the public right of way. The City leases street lights from Duke Energy and pays for the installation costs, energy, and maintenance costs with Duke providing the maintenance services. The City does not have the labor force or equipment necessary to provide maintenance services for over 3,000 street lights within the public right of way.

 Christina Smith

Print/Type Name

 Project Coordinator

Print/Type Title

 Department of Public Works

Department



IN01 LIGHTING SERVICE AGREEMENT

Account Information:
CITY OF BLOOMINGTON
PO BOX 100
BLOOMINGTON IN

Project Information:

Indiana

Account Number:

Work Order Number:
47126401

Customer Contact Information:
CITY OF BLOOMINGTON
SMITHC@BLOOMINGTON.IN.GOV

Duke Energy Representative Contact Info:
Craig Barker

..

This Lighting Service Agreement is hereby entered into this 15th day of November, 2022, between Duke Energy (hereinafter called the "Company") and CITY OF BLOOMINGTON (hereinafter referred to as the "Customer") for lighting service at the above location(s). The Customer agrees to receive and pay for lighting service from the Company in accordance with the rates, terms and provisions of the Company's Rate Schedule LED and Service Regulations, or its successor, as the same is on file with the Indiana Public Service Commission (INDIANA UTILITY REGULATORY COMMISSION) and as may be amended and subsequently filed with the INDIANA UTILITY REGULATORY COMMISSION.

To the extent there is any conflict between this Agreement and the Lighting Service Rate Schedule, the Lighting Service Rate Schedule shall control. In the event of termination by the Customer during the initial term of this agreement under this rate schedule or upon early termination of service under this schedule, the customer agrees to pay remaining terms of this agreement as delegated by the INDIANA UTILITY REGULATORY COMMISSION.

The date of *initiation* of service shall be defined as the date the first light(s) is energized or billing is transferred and shall continue hereafter until terminated *by either party upon written notice 22 days prior to termination*. It is further agreed that Duke Energy reserves the right to discontinue service and remove any Duke Energy-owned facilities from the Customers premise if the Customer violates any of the terms of the Service Regulations, Rate Schedule or this Agreement.

Customer Signature _____

Date Signed _____

Duke Energy Representative Craig Barker

Date Signed 11/15/2022



| Summary of Estimated Charges | | | | |
|------------------------------|----------------------|------------------------|-----------------------------|----------------------------------|
| Minimum Service Term | Initial Monthly Cost | Total One Time Charges | Total Cost for Initial term | Ongoing Monthly Charge post Term |
| 0 Years () Months | 24.93 | 12692.59 | 12692.59 | 24.93 |

| Monthly Base Charges | | | | | | | | |
|----------------------|----------|--|--------------------|-------------|--------|------------|-----------|-------------|
| Service Required | Quantity | Product Description Fixtures and Poles | Equipment Rental** | Maintenance | Energy | Unit Total | Sub-Total | |
| I | 003 | LFIX-TRAD-LED-50- BLK-V-3000K-M | 4230.86 | 7.09 | 1.22 | 4239.17 | 12717.51 | |
| | | Rental, Maintenance, F&E Totals: | \$12,692.58 | \$21.27 | \$3.66 | | | |
| | | Estimated Change to Base Monthly Charge Total | | | | | | \$12,717.51 |

THIS IS NOT A BILL. PLEASE DO NOT SEND A PAYMENT IN RESPONSE TO THIS COMMUNICATION.



PROPOSALS ARE VALID FOR 90 DAYS FROM THE DATE POSTED ON THE LIGHTING SERVICE AGREEMENT PAGE AND THE AGREEMENT MUST BE SIGNED AND RETURNED BEFORE THE PROPOSAL EXPIRATION DATE.

After the Initial Term expires, the monthly equipment charges will no longer be reflected on the monthly bill, though and energy and maintenance charges continue for the life of the lighting system covered by this agreement.

See Section I, below for further lighting equipment and cost detail. Requests for changes in number of lights and poles, pole locations, equipment or other requests will result in a recalculation of the amounts above. Please see attached drawing or Exhibit 'A' for the proposed placement of lighting equipment.

IN WITNESS WHEREOF, the parties hereto have caused two copies of this Agreement to be executed by a duly authorized representative(s), effective the Current Date first written above. This Lighting Service Agreement ("Agreement") is made and entered into by the subsidiary of Duke Energy Corporation, a Delaware corporation, named above (hereafter, "Company"). Neither Duke Energy Corp. nor any of its other affiliated companies are parties to this Agreement.

WITNESSETH:

WHEREAS, Customer desires to have: a Company-owned outdoor lighting system ("System"), on designated property; and

WHEREAS, Company has the ability to own, install, operate and maintain an outdoor lighting system.

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

SECTION I. – EQUIPMENT AND INSTALLATION

- 1.1 In accordance with conditions set forth herein, Company agrees to install for Customer all necessary equipment to provide, operate and maintain an outdoor lighting system. The cost of any additional electrical distribution facilities required to provide energy to the System may or may not be included in the monthly terms of this Agreement according to Company discretion.
- 1.2 Tariff riders and sales tax are not included, which may cause the amounts quoted to fluctuate

A. ENERGY USAGE – BASED ON UTILITY REGULATORY COMMISSION APPROVED RATE

| | |
|---|--|
| **CALCULATION FOR ESTIMATING UNMETERED ENERGY USAGE | |
| Impact Watts = the energy used by the lamp watts plus ballast watts. | |
| · Impact watts times estimated Annual Burn Hours as shown in lines above equal annual watt hours. | · Annual kWh divided by twelve (12) months equals monthly kWh. |
| · Annual watt hours divided by 1000 hours equals annual kilowatt hours (kWh). | · Monthly kWh times current rate per kWh equals the monthly dollar amount for each item. |

LIGHTING LAYOUT DESIGN DISCLAIMER

Company will install the System in accordance with Customer's specifications concerning the design and layout (including pole locations, number, and types of lights). Customer is responsible for all aspects of the design and layout of the System. Customer understands that its design and layout of the System may not be in accordance with minimum foot-candle and lighting uniformity standards. Therefore, Customer agrees to release, indemnify, hold harmless, and defend Company (including Company's parent, subsidiary and affiliate companies and all of their respective employees, officers, directors and agents) from and against any and all claims, demands, causes of action, liabilities, losses, damages, and/or expenses resulting from (or alleged to result from) the design and/or layout of the System, including damage to or destruction of personal property, personal injuries including death, and reasonable attorneys' fees.

THIS IS NOT A BILL. PLEASE DO NOT SEND A PAYMENT IN RESPONSE TO THIS COMMUNICATION.

SECTION II. – CUSTOMER OPTIONS FOR SYSTEM OPERATING HOURS

- 2.1 HOURS OF OPERATION are the typical dusk-to-dawn photoelectric cell automatically operated System or as prescribed by a schedule agreed upon by the company and the customer. Lights turn on approximately 1/2 hour after sunset and shut-off 1/2 hour before sunrise. This may be a monthly estimated energy usage based on luminaire impact wattage and lamp source equally over twelve months (See Section I - B, above) or metered using actual energy usage plus a monthly meter charge or based upon a calculation related to an agreed upon schedule of usage and the luminaire impact wattage.

SECTION III. – ENERGY USAGE COST CALCULATION - See Section I

- 3.1 Except as otherwise provided in this Agreement, Customer shall pay Company the monthly energy charges. Monthly charges are based on estimated unmetered charges using the calculation methods shown on Section I of this Agreement and adding any energy tariff riders and applicable sales tax. Both unmetered and metered outdoor lighting energy usage charges are based on the per kilowatt hour amount approved by the appropriate State Utility Commission.
- 3.2 The "Schedule of Rates, Classifications, Rules and Regulations for Electric Service", and/or General Terms and Conditions of the Company, and all amendments thereto, are filed with and approved by the appropriate State regulatory entity, (the "Commission") and shall be deemed a part of this Agreement as if fully set forth herein.

SECTION IV. – SYSTEM MAINTENANCE

- 4.1 Normal maintenance includes the replacement or repair of any item included in the System except seasonal outlets. Maintenance is performed after notification from the Customer that a problem exists and/or during a Company scheduled maintenance cycle. Company will stock only the most common equipment; acquisition of some repair parts could cause a delay in permanent repair.
- 4.2 Normal maintenance covers ordinary wear and tear with proper use of the System. Repairs or replacements requested as a result Customer caused damage will be performed on a time and material cost basis, in which instance an estimate of costs will be provided to the Customer before the work begins. Company reserves the right to charge Customer for repair costs incurred due to vandalism.
- 4.3 Maintenance does not include partial or full System replacement or major repairs due to System age. Different types of lighting equipment have different life spans. Lighting equipment suppliers may also discontinue manufacture of certain equipment. End of life for a System will be determined by the Company.
- 4.4 Company reserves the right to update or modify the monthly maintenance charges to reflect changes in Company costs for materials and labor no more often than every three years on a Company assigned schedule, which may not coincide with the term of this Agreement.
- 4.5 Company reserves the right to charge a fee equal to a minimum of one-hour labor and transportation costs for trips to disconnect and reconnect lights in a Company-owned lighting System when requested to do so more times than the Company deems necessary.

SECTION V. – PAYMENT

- 5.1 Customer hereby agrees to pay Company the monthly costs set forth in accordance with the applicable tariff rate for the energy provided for the term of this Agreement. The estimated monthly amount due are summarized on Page 3 of this agreement and are current at the time the Agreement is initiated. A monthly bill will be rendered and due each month in accordance with the applicable tariff rate and payment rules. Any Customer charge that is not paid in full on or before its due date, shall incur a late fee.
- 5.2 Should any change in the energy usage monthly charges be ordered by the Commission, then payments by Customer to Company for this service shall thereafter be made upon the basis of such new rates as changed and approved by the Commission.

SECTION VI. – TERM OF AGREEMENT

- 6.1 Service under this Agreement shall commence as soon as practicable after the System is installed and operational. The Company shall notify Customer in writing as to the date on which service will begin.

THIS IS NOT A BILL. PLEASE DO NOT SEND A PAYMENT IN RESPONSE TO THIS COMMUNICATION.

- 6.2 The initial term of this Agreement shall be in accordance with the Option indicated on Page 3 of this Agreement ("Initial Term"). After the Initial Term, this Agreement shall continue in force and effective in successive automatic one-year extensions unless terminated by either party upon sixty (60) days written notice.

SECTION VII. – OTHER TERMS AND CONDITIONS

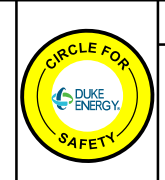
- 7.1 Other Terms and Conditions set forth in Exhibit "B" hereof are incorporated herein by reference and made a part of this Agreement
- 7.2 This Agreement constitutes the final written expression between the parties. It is a complete and exclusive statement and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to the System. However, nothing herein shall preclude either party from commencing an action for unpaid bills, other damages, or breach of prior agreements during the time they were in effect.
- 7.3 This Agreement, the construction of this Agreement, all rights and obligations between the parties to this Agreement, and any and all claims arising out of or related to the subject matter of this Agreement (including tort claims), shall be governed by the laws of the State in which the service is rendered without regard to its conflict of laws provisions

EXHIBIT 'B' - OTHER TERMS AND CONDITIONS

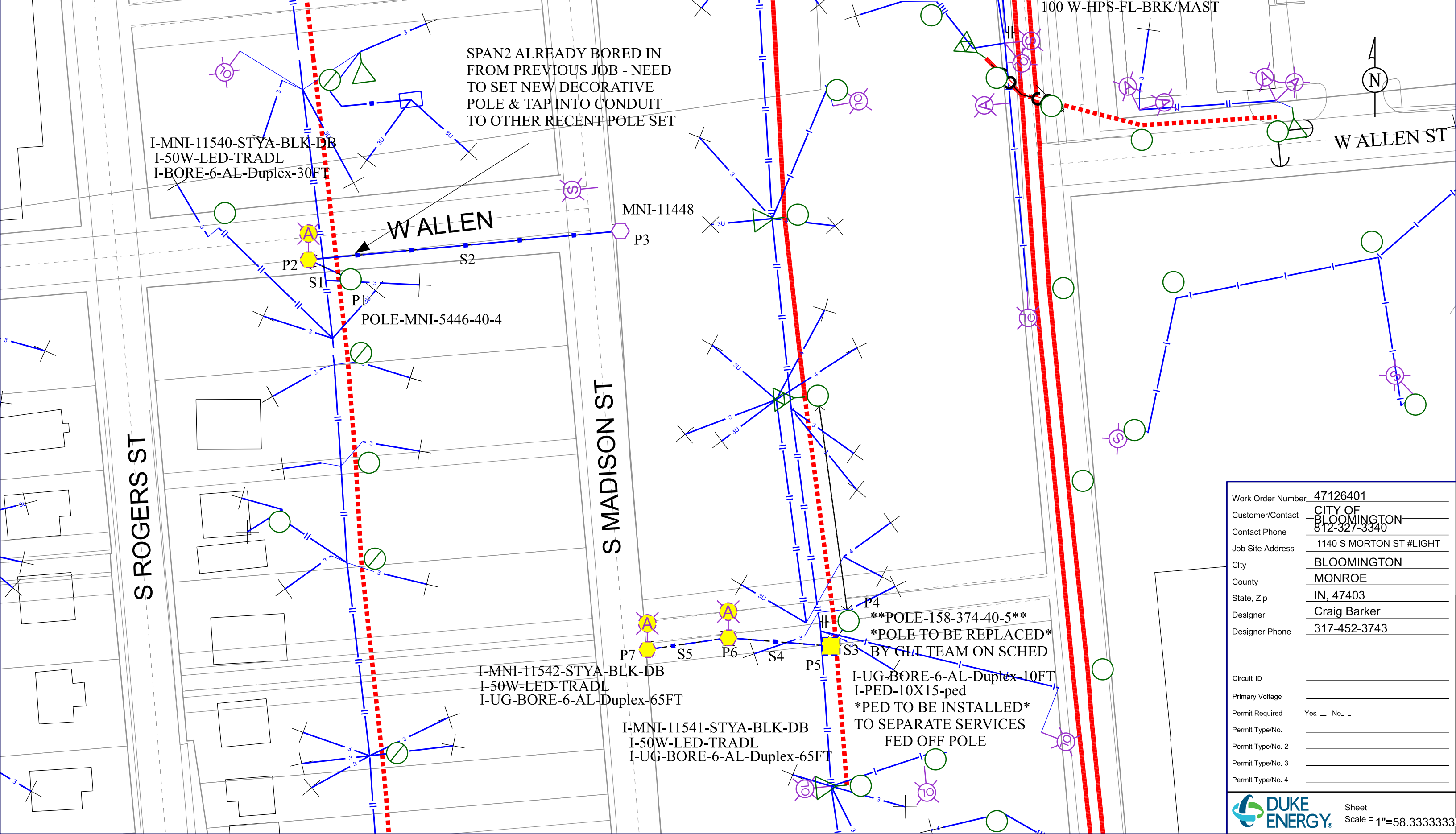
- 1 All System facilities installed by Company under this Agreement are and shall remain the property of Company. The termination of this Agreement for any reason whatsoever shall not in any way affect such ownership by Company, deprive Company of the right either to remove any or all property comprising the System or any part thereof or to use the same in or in connection with the rendering of other service by Company.
 - 2 If Customer requests part or all of the System's removal before the end of the System's useful life, including by reason of termination of this Agreement, Customer must pay Company's unrecovered costs of the System, to be determined at the sole discretion Company, plus System removal costs.
 - 3 The obligations of Customer to pay the monthly invoice and any applicable late fees or any amount due and owing to Company as a result of this Agreement or in connection with the rights and privileges granted hereby, are independent of the liabilities or obligations of Company hereunder. Customer shall make all such payments due to Company without any deductions, setoffs or counterclaims against such payments on account of any alleged breach or default by, or claims against, the Company pursuant to this Agreement or otherwise or on account of any claims against or default by any third party.
 - 4 Service under this rate schedule shall be for a minimum initial term of ten (10) years from the commencement of service and shall continue until terminated by either party by sixty (60) days written notice. Upon early termination of service under this schedule, the customer shall pay an amount equal to the remaining monthly lease amount for the term of contract, applicable Customer Charges and removal cost of the facilities.
 - 5 Company's installation of the System is contingent upon obtaining adequate easements and rights-of-way, if necessary, and Customer agrees to assist the Company when necessary in obtaining easements or rights-of-way which shall include permission to install and maintain service lines and facilities required for serving and providing the System.
 - 6 Company is an independent contractor and not an agent or employee of Customer and nothing contained in this Agreement shall be so construed as to justify a finding of the existence of any relationship between Company and Customer inconsistent with that status. Company shall have exclusive control of and responsibility for its labor relations.
 - 7 Company does not warrant nor guarantee the safety of Customer or any third party, nor does it warrant or guarantee the security of Customer's property or any third-party property, lighting levels, or uniformity of lighting as a result of Customer's use of the System. Company is not liable for any injury to Customer, or any persons or property arising out of the System use other than that arising from the sole negligence of the company. COMPANY EXPLICITLY DISCLAIMS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EITHER EXPRESSED OR IMPLIED, OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.
 - 8 If a breach or default occurs, the non-breaching party shall provide the breaching party with a thirty (30) day written notice to cure such default or breach, or if the defect cannot be cured within thirty (30) days, the breaching party shall nonetheless commence to cure such defect and shall, in good faith, complete such cure in as timely and expeditious manner as is feasible in the circumstances. If the breaching party fails to cure or
- THIS IS NOT A BILL. PLEASE DO NOT SEND A PAYMENT IN RESPONSE TO THIS COMMUNICATION.

to commence the cure of the defect within the prescribed time frame set forth herein, the non-breaching party, at its sole discretion, shall provide notice to the breaching party of the immediate termination of this Agreement. Events beyond Company's control, including but not limited to acts of nature, electricity outages, and inability to obtain needed replacement parts, shall not constitute breaches of this Agreement.

- 9 Customer desiring a Company-installed System on a public rights-of-way or on other property not under customer's jurisdiction must provide the Company with written permission from the entity with legal jurisdiction over that right-of-way or property before installation will begin. Customer must reimburse Company for costs associated with obtaining easements.
- 10 Company reserves the right to refuse to install Company equipment on another's property, however, any Company agreement to install System luminaires or other Company facilities on poles or structures owned by a third entity is contingent upon receiving written consent for such installation from that entity. Customer will be required to reimburse the Company for monthly fees charged for pole contacts for System attachments on poles or structures not owned by the Company, (i.e., owned by other utilities or entities). This fee will be imposed only when contacting or modifying existing poles to allow for clearances required for the System equipment.
- 11 Company shall not be liable for any claims, demands, cause of action, liabilities, loss, damage or expense of whatever kind or nature, including attorney fees, incurred by Customer for actions involving a structure not Company-owned on which the Company has placed Company-owned equipment at Customer request. Additionally, the Company will not be responsible for any repairs needed by the structure that is not owned by Company. If the structure becomes unsuitable, or unsafe to support Company-owned equipment the Company retains the right to remove the equipment from the structure. If Company equipment is removed under these conditions Customer will owe Company a pro-rated amount for the removed equipment plus removal costs minus salvage value.
- 12 When changes are requested by Customer at any time after the System is installed and before the normal end of System life, Company will evaluate and estimate the costs of the changes. The changes will be made after the Customer pays the agreed upon amount if any to make changes. Changes include such matters as relocating poles, changing luminaire styles (post top, cobrahead, floodlight), their locations, wattage, and lamp source (e.g., metal halide, high pressure sodium, light emitting diode). Any such agreed upon changes will be documented either by a new or an amended Agreement. New equipment added to the System will require a new Agreement.
- 13 If any part, term, or provision of this Agreement is adjudged by a court of competent jurisdiction to be contrary to the law governing this Agreement, the validity of the remaining parts, terms, and provisions shall not be affected thereby.
- 14 This Agreement, and all the terms and provisions hereof, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, personal representatives, and/or permitted assigns.
- 15 Each party to this Agreement represents that it is sophisticated and capable of understanding all of the terms of this Agreement, that it has had an opportunity to review this Agreement with its counsel, and that it enters this Agreement with full knowledge of the terms of the Agreement.
- 16 No delay of or omission in the exercise of any right, power or remedy accruing to any party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of any future exercise of any right, power or remedy.
- 17 Neither party shall assign this Agreement without the prior written consent of the other party, which consent, if given shall not relieve the party of making such assignment from full responsibility for the fulfillment of its obligations under this Agreement. PROVIDED, THAT the Company may assign this Agreement to its parent or any subsidiary entity or to an affiliate.

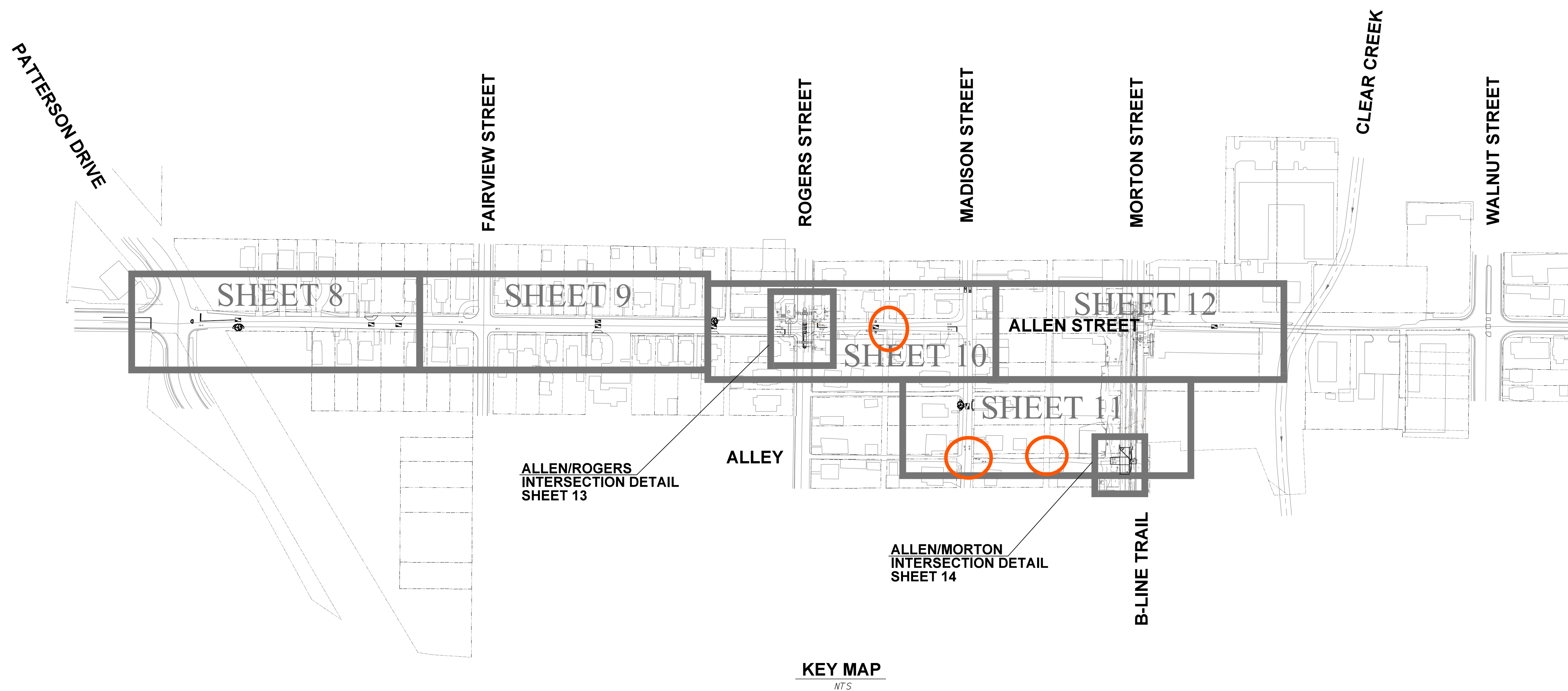


REMEMBER: Work zone area conditions may have changed for this job! Everyone is responsible for verifying the above safety information is correct prior to any work being performed each day.



| | |
|-------------------|-------------------------|
| Work Order Number | 47126401 |
| Customer/Contact | CITY OF BLOOMINGTON |
| Contact Phone | 812-327-3340 |
| Job Site Address | 1140 S MORTON ST #LIGHT |
| City | BLOOMINGTON |
| County | MONROE |
| State, Zip | IN, 47403 |
| Designer | Craig Barker |
| Designer Phone | 317-452-3743 |

| | |
|-------------------|------------|
| Circuit ID | |
| Primary Voltage | |
| Permit Required | Yes _ No _ |
| Permit Type/No. | |
| Permit Type/No. 2 | |
| Permit Type/No. 3 | |
| Permit Type/No. 4 | |



A:\00 6/17/2022 10:26:03 AM C:\Users\Robert.Allen\OneDrive - 12-2020 Eagle Ridge Civil\HPEN\Y\Projects\0240\Dgn\Plan\Prof_240_Plan002.dgn

DRAFT FINAL PLANS

| | | | |
|--------------------------|--|-----------------|------|
| RECOMMENDED FOR APPROVAL | | DESIGN ENGINEER | DATE |
| DESIGNED: BR | | DRAWN: RBA | |
| CHECKED: MT | | CHECKED: BR | |

CITY OF BLOOMINGTON
DEPARTMENT OF ENGINEERING

KEY MAP
WEST ALLEN STREET

| | |
|------------------|----------------------|
| HORIZONTAL SCALE | ERCES PROJECT NUMBER |
| N/A | 240 |
| VERTICAL SCALE | |
| | SHEET NUMBER |
| | 7 |

REGISTER OF PAYROLL CLAIMS
Board: Board of Public Works Claim Register

| Date: | Type of Claim | FUND | Description | Bank Transfer | Amount |
|------------|---------------|------|-------------|---------------|-------------------|
| 12/30/2022 | Payroll | | | | 490,416.75 |
| | | | | | <u>490,416.75</u> |

ALLOWANCE OF CLAIMS

We have examined the claims listed on the foregoing register of claims, consisting of 1
claim, and except for the claims not allowed as shown on the register, such claims are hereby allowed in the
total amount of \$ 490,416.75

Dated this 3rd day of January year of 2023.

Kyla Cox Deckard, President Jennifer Lloyd, Vice President Elizabeth Karon, Secretary

I hereby certify that each of the above listed voucher(s) or bill(s) is (are) true and correct and I have audited same in accordance with IC 5-11-10-1.6.

Fiscal Officer _____



Board of Public Works Staff Report

| | |
|-----------------------------------|--|
| Project/Event: | Change Order #1 for the Smith Road Resurfacing Project |
| Petitioner/Representative: | Engineering Department |
| Staff Representative: | Matt Smethurst |
| Date: | January 3rd, 2023 |

Report: This project was awarded to E & B Paving, Inc. The project included the milling and resurfacing of Smith Road from 3rd Street to 10th Street.

Change Order #1 will balance all of the pay items in the contract with an overrun or underrun.

The original contract amount for the project was \$334,334.00. Change Order #1 would result in a decrease to the contract of \$1,761.65. The new contract sum would be \$332,572.35.

This project is funded through a Community Crossing Matching Grant and local funds.

City of Bloomington Contract and Purchase Justification Form

Vendor: E&B Paving, LLC

Contract Amount: \$334,334.00

This form should be completed and attached to the contract documents and forwarded to the Legal Department Attorney assigned to your Department. Contracts will not be approved by the Controller if a completed form is not included with the contract documents.

PURCHASE INFORMATION

1. Check the box beside the procurement method used to initiate this procurement: (Attach a quote or bid tabulation if applicable)

| | | | |
|---|--|---|--|
| <input type="checkbox"/> Request for Quote (RFQ) | <input type="checkbox"/> Request for Proposal (RFP) | <input type="checkbox"/> Sole Source | <input type="checkbox"/> Not Applicable (NA) |
| <input checked="" type="checkbox"/> Invitation to Bid (ITB) | <input type="checkbox"/> Request for Qualifications (RFQu) | <input type="checkbox"/> Emergency Purchase | |

2. List the results of procurement process. Give further explanation where requested. Yes No

| | | | | | |
|--------------------------------------|-------------------------------------|-------------------------------------|---|-------------------------------------|--------------------------|
| # of Submittals: 2 | Yes | No | | Yes | No |
| Met city requirements? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Was the lowest cost selected? (If no, please state below why it was not.) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Met item or need requirements? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | | | |
| Was an evaluation team used? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | | | |
| Was scoring grid used? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | | | |
| Were vendor presentations requested? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | | | |

3. State why this vendor was selected to receive the award and contract:

E&B Paving, LLC was the lowest responsive and responsible bidder.

Matt Smethurst

Project Manager

Engineering

Print/Type Name

Print/Type Title

Department



City of Bloomington, Indiana

Change Order Details

Smith Road Resurfacing

| | |
|----------------------------------|---|
| Description | Milling and resurfacing of Smith Road between 3rd Street and 10th Street. |
| Prime Contractor | E & B Paving, INC 2520 W Industrial Park Dr Bloomington, IN 47404 |
| Change Order | 1 |
| Status | Approved |
| Date Created | 12/21/2022 |
| Type | Other |
| Summary | Balancing |
| Awarded Project Amount | \$334,334.00 |
| Authorized Project Amount | \$334,334.00 |
| Change Order Amount | -\$1,761.65 |
| Revised Project Amount | \$332,572.35 |

Increases/Decreases

| Line Number | Item ID | Unit | Unit Price | Current | | Change | | Revised | |
|---------------------------------------|-----------|------|------------|-----------|--------------|------------|-------------|-----------|--------------|
| | | | | Quantity | Amount | Quantity | Amount | Quantity | Amount |
| Section: 1 - Description | | | | | | | | | |
| 0060 | 202-52710 | SYS | \$16.000 | 194.000 | \$3,104.00 | 27.500 | \$440.00 | 221.500 | \$3,544.00 |
| SIDEWALK CONCRETE, REMOVE | | | | | | | | | |
| Reason: Balancing Change Order | | | | | | | | | |
| 0070 | 205-06933 | EACH | \$140.000 | 28.000 | \$3,920.00 | -28.000 | -\$3,920.00 | 0.000 | \$0.00 |
| TEMPORARY INLET PROTECTION | | | | | | | | | |
| Reason: Balancing Change Order | | | | | | | | | |
| 0090 | 306-08034 | SYS | \$4.250 | 8,959.000 | \$38,075.75 | 820.000 | \$3,485.00 | 9,779.000 | \$41,560.75 |
| MILLING, ASPHALT, 1 1/2 IN. | | | | | | | | | |
| Reason: Balancing Change Order | | | | | | | | | |
| 0100 | 401-07321 | TON | \$125.000 | 828.000 | \$103,500.00 | -7.400 | -\$925.00 | 820.600 | \$102,575.00 |
| QC/QA-HMA, 2, 64, SURFACE, 9.5 mm | | | | | | | | | |
| Reason: Balancing Change Order | | | | | | | | | |
| 0110 | 401-10258 | LFT | \$0.500 | 8,400.000 | \$4,200.00 | -5,365.000 | -\$2,682.50 | 3,035.000 | \$1,517.50 |
| JOINT ADHESIVE, SURFACE | | | | | | | | | |

| Line Number | Item ID | Unit | Unit Price | Current | | Change | | Revised | |
|--|-----------|------|------------|-----------|-------------|----------|------------|-----------|-------------|
| | | | | Quantity | Amount | Quantity | Amount | Quantity | Amount |
| Reason: Balancing Change Order | | | | | | | | | |
| 0120 | 406-05521 | SYS | \$0.250 | 8,959.000 | \$2,239.75 | 820.000 | \$205.00 | 9,779.000 | \$2,444.75 |
| ASPHALT FOR TACK COAT | | | | | | | | | |
| Reason: Balancing Change Order | | | | | | | | | |
| 0140 | 604-06070 | SYS | \$135.000 | 116.000 | \$15,660.00 | 36.000 | \$4,860.00 | 152.000 | \$20,520.00 |
| SIDEWALK, CONCRETE | | | | | | | | | |
| Reason: Balancing Change Order | | | | | | | | | |
| 0230 | 808-02977 | EACH | \$578.000 | 12.000 | \$6,936.00 | 1.000 | \$578.00 | 13.000 | \$7,514.00 |
| PAVEMENT MESSAGE MARKING, THERMOPLASTIC, BIKE SYMBOL | | | | | | | | | |
| Reason: Balancing Change Order | | | | | | | | | |
| 0240 | 808-03439 | LFT | \$11.350 | 50.000 | \$567.50 | 10.000 | \$113.50 | 60.000 | \$681.00 |
| TRANSVERSE MARKING, THERMOPLASTIC, CROSSWALK LINE, WHITE, 24 IN. | | | | | | | | | |
| Reason: Balancing Change Order | | | | | | | | | |
| 0260 | 808-75043 | LFT | \$2.160 | 5,400.000 | \$11,664.00 | 319.000 | \$689.04 | 5,719.000 | \$12,353.04 |
| LINE, THERMOPLASTIC, SOLID, WHITE, 6 IN. | | | | | | | | | |
| Reason: Balancing Change Order | | | | | | | | | |

| Line Number | Item ID | Unit | Unit Price | Current | | Change | | Revised | |
|---|-----------|------|------------|-----------|--------------|----------|-------------|-----------|--------------|
| | | | | Quantity | Amount | Quantity | Amount | Quantity | Amount |
| 0270 | 808-75245 | LFT | \$0.990 | 5,400.000 | \$5,346.00 | 374.000 | \$370.26 | 5,774.000 | \$5,716.26 |
| LINE, THERMOPLASTIC, SOLID, YELLOW, 4 IN. | | | | | | | | | |
| Reason: Balancing Change Order | | | | | | | | | |
| 0280 | 808-75297 | LFT | \$11.350 | 75.000 | \$851.25 | -5.000 | -\$56.75 | 70.000 | \$794.50 |
| TRANSVERSE MARKING, THERMOPLASTIC, STOP LINE, WHITE, 24 IN. | | | | | | | | | |
| Reason: Balancing Change Order | | | | | | | | | |
| 0290 | 808-75300 | LFT | \$2.160 | 348.000 | \$751.68 | -20.000 | -\$43.20 | 328.000 | \$708.48 |
| TRANSVERSE MARKING, THERMOPLASTIC, CROSSWALK LINE, WHITE, 6 IN. | | | | | | | | | |
| Reason: Balancing Change Order | | | | | | | | | |
| 0320 | 304-07490 | TON | \$325.000 | 15.000 | \$4,875.00 | -15.000 | -\$4,875.00 | 0.000 | \$0.00 |
| HMA PATCHING, TYPE B | | | | | | | | | |
| Reason: Balancing Change Order | | | | | | | | | |
| 14 items | | | Totals | | \$201,690.93 | | -\$1,761.65 | | \$199,929.28 |

Not valid until signed by the Engineer, Contractor, and Owner

Engineer

Contractor

Board of Public Works

Title

Title

Title

Date

Date

Date