Board of Public Works Meeting July 05, 2022



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 July 05, 2022

A Regular Meeting of the Board of Public Work will be held Tuesday, July 05, 2022 at 5:30 p.m. in the Council Chambers 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/83258948246?pwd=STVzaVcvVTdsN2dvaTZCN21LaDRndz09

Meeting ID: 832 5894 8246 Passcode: 587502

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

I. MESSAGES FROM BOARD MEMBERS

II. PETITIONS & REMONSTRANCES

- 1. Appeal Notice of Violation # 51009 and # 51132 for Excessive Growth at 1217 W. 6th Street
- 2. Appeal Notice of Violation #51369 for Excessive Growth at 4224 E. Penn Court

III. <u>TITLE VI ENFORCEMENT</u>

1. Abatement at 2225 S. High

IV. CONSENT AGENDA

- 1. Approval of Minutes June 21, 2022
- 2. Elders Journey Homecare Adopt-A-Median Partnership Agreement
- 3. Acceptance of Public Improvements Associated with Mill Creek Phase II Section I Subdivision
- 4. Resolution 2022-47; Monroe County History Center's 100 Years of Community
- 5. Noise Permit; Mother Hubbard's Garden Gala
- 6. Approval of Payroll

V. NEW BUSINESS

- 1. Resolution 2022-42; Meridiam Fiber Project
- 2. Memorandum of Understanding between City of Bloomington Utilities and Public Works for Cost Sharing in Street Sweeping Study
- 3. Resolution 2022-44; New Mobile Vendor in Public Right-of-Way, Moon Pennies, LLC
- 4. Contract with Constellation Stage and Screen for Renovations to the John Waldron Arts Center
- 5. Shared-Use E-Bike Agreement with Lime
- 6. Approve Contract with Haire Construction, LLC for Repair Unsafe Structure at 410 S. Highland Ave.
- 7. Approve Contract with Haire Construction, LLC for Repair Unsafe Structure at 708 S. Adams St.
- 8. Construction Inspection Contract with Rundell Ernstberger Associates, Inc., for the Hopewell Phase 1 East Project.
- 9. Addendum 2 to LPA-Consulting Contract with VS Engineering for the 1st St Reconstruction Project from Fairview St to College Ave.
- 10. Request from Reed and Sons Construction for Lane Closures on W Fountain Dr. (July 11, 2022 to July 23, 2022).
- 11. Request from F.A. Wilhelm Construction for sidewalk closures on S Strong Dr. (July 01, 2022 to May 01, 2023).
- 12. Request from Lineal Contracting for use of the Right-of-Way in The Stands neighborhood and along S Rogers St. The work on S Rogers St will take approximately 45 days. The work in The Stands will take approximately 90 days.
- 13. Change Order #1 to Contract with Strauser Construction for Remodel of FS#5.

VI. STAFF REPORTS & OTHER BUSINESS

VII. APPROVAL OF CLAIMS

VIII. ADJOURNMENT

Auxiliary aids for people with disabilities are available upon request with adequate notice. Please call 812-349-3410 or email public.works@bloomington.in.gov.

STAFF REPORT

Appeal of Excessive Growth NOV Ticket # 51009, 51132

Appellant Information:

Karen Cherrington (owner) 1211 W. 6th Street

Bloomington, IN 47404

Date Appealed: 5/26/2022

Citation Information:

Issued: 5/18 and 5/25/2022

By: Chastina Chipman Place: 1217 W. 6th Street For: Weeds/Noxious Plants

Attachments:

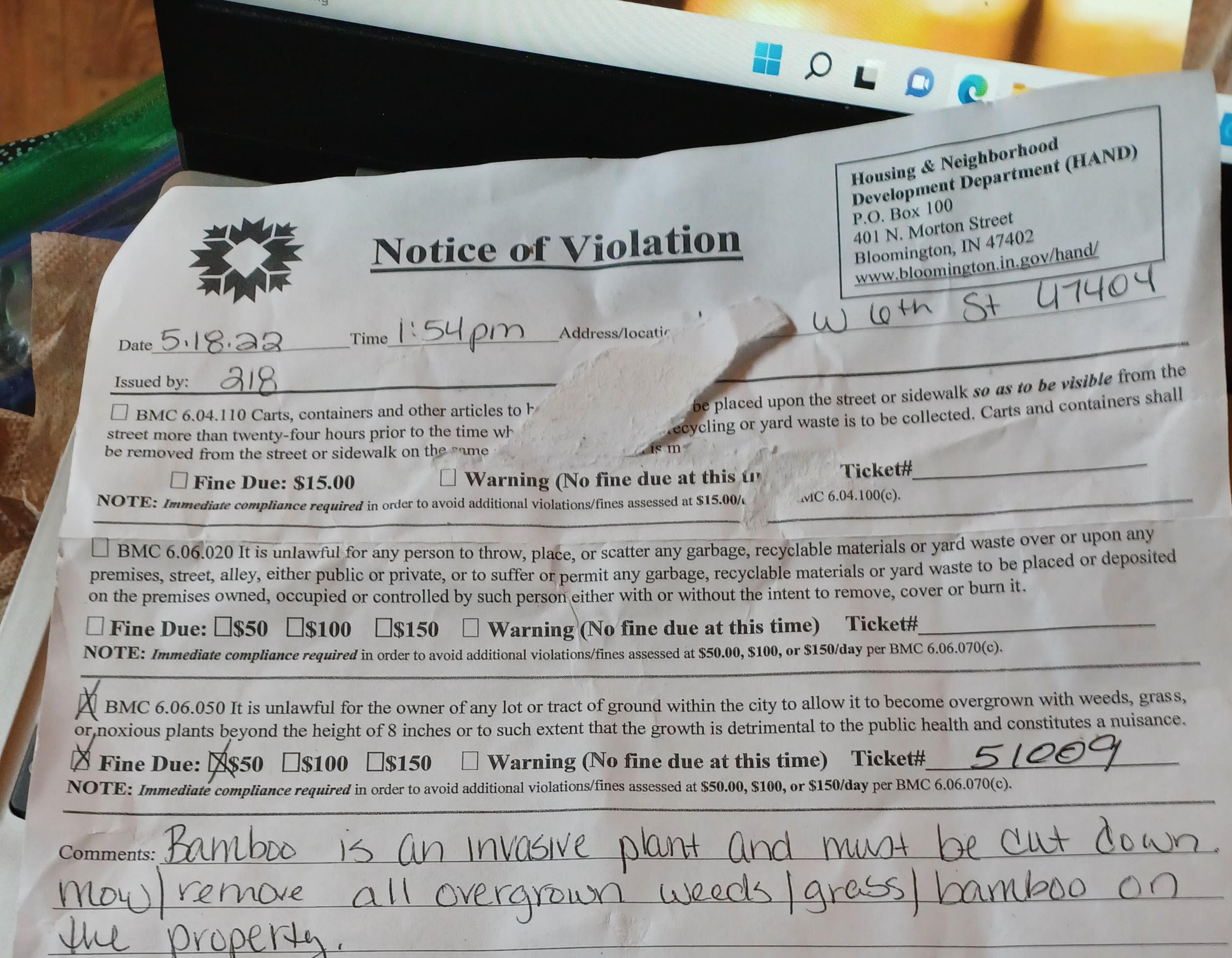
- 1. Notices of Violation
- 2. Appellant's Appeal of Notice of Violation
- 3. Photographs of the Property
- 4. History of Citations for excessive growth and bamboo on the Property
- 5. Amendment 50 to Ordinance 19-24 adding yellow groove bamboo to Title 20 invasive prohibited grasses list.

Facts & Discussion:

- 1. Bloomington Municipal Code 6.06.050 makes it unlawful for "the owner of any lot or tract of ground within the city to allow it to become overgrown with weeds, grass, or noxious plants beyond the height of eight inches or to such extent that the growth is detrimental to the public health and constitutes a nuisance."
- 2. On May 18 and May 25, 2022, City of Bloomington Neighborhood Compliance Officer Chastina Chipman did personally observe bamboo, a weed, growing on the Property at a height greater than eight inches in violation of BMC 6.06.050. Officer Chipman issued a Notice of Violation with a fine of \$50.00 under ticket number of 51009 on May 18, 2022 and for \$100.00 under ticket number 51132 on May 25, 2022, for excessive growth of weeds in violation of BMC 6.06.050.
- 3. The NOV was delivered by first class mail to the owner of the property and a copy left in a conspicuous place on the property where the violation occurred in compliance with 6.06.070(b).
- 4. Karen Cherrington (Hereinafter the "Owner") owns this Property and is a person who shall be considered a responsible party under 6.06.070(a).
- 5. Owner asks for relief from the ticket stating that Owner planted the bamboo prior to the bamboo being placed on the prohibited species list and feels the bamboo is desirable and beneficial to her property.
- 6. Bamboo has been recognized as a weed under the Bloomington Municipal Code as a result of its invasive nature and aggressive, fast-paced spread. HAND has issued several citations to the Owner over the past year. In 2021, HAND proposed an opportunity for the Owner to remove the invasive species over a longer period of time due to the stubborn root systems and difficulties with exterminating the plant. However, the Owner has been firm in her desire to keep the existing bamboo.

Staff Recommendation:

The Appeal should be denied because the NOV and fines were properly issued, notice properly given, and photographic evidence by the inspection officer shows the bamboo is pervasive on the Property and has been allowed to grow at or greater than eight inches, which is a violation of BMC 6.06.050.



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

This NOV may be appealed to the City's Board of Public Works, provided a written appeal is filed with the Board, via the City's Public Works Department, within seven days of the date of issuance of this NOV.

	Δ.	
Owner Na	ame Cherrington, Ke	anen
A 11-000	211 W Whis	7.
Address 1	onunton	State) N
City DI	0011012101	State 11
ip Code	41404	

Agent Name	
Address	
City	State
Zip Code	

Mail Copies To: Resident: Owner: X Agent



BPW:

Notice of Violation

Housing & Neighborhood
Development Department (HAND)
P.O. Box 100
401 N. Morton Street
Bloomington, IN 47402

	*www.bloomington.in.gov/nand/
Date 5.25.22 Time 12:50 pm Address/loca	ution 217 W WH ST. 47404
Issued by: 218	
BMC 6.04.110 Carts, containers and other articles to be picked up sha street more than twenty-four hours prior to the time when such solid wast be removed from the street or sidewalk on the same day as the collection	e, recycling or yard waste is to be collected. Carts and containers shall is made.
☐ Fine Due: \$15.00 ☐ Warning (No fine d NOTE: Immediate compliance required in order to avoid additional violations/fines asse	
BMC 6.06.020 It is unlawful for any person to throw, place, or scatter premises, street, alley, either public or private, or to suffer or permit any gon the premises owned, occupied or controlled by such person either with	garbage, recyclable materials or yard waste to be placed or deposited
☐ Fine Due: ☐\$50 ☐\$100 ☐\$150 ☐ Warning (No fine NOTE: Immediate compliance required in order to avoid additional violations/fines asset	
BMC 6.06.050 It is unlawful for the owner of any lot or tract of groun or noxious plants beyond the height of 8 inches or to such extent that the	growth is detrimental to the public health and constitutes a nuisance.
NOTE: Immediate compliance required in order to avoid additional violations/fines ass	te due at this time) Ticket#5/132
comments: Remove all overgrown	bamboo on the property
 Fine must be paid within 2 weeks from date of issuance of the Notice of Vio Department for further enforcement action. This NOV must be returned with above. Please make check/money order payable to "The City of Bloomi Circuit Courts. 	th payment. You may pay in person or mail payment to the address used ngton." All fines listed above may be contested in the Monroe County
Fines shall not attach to non-possessory residential rental property owner(s) exact copy of any and all leases in effect during the time period covered by responsible for fines due. A non-possessory residential rental property owner Property owner(s) shall otherwise be held responsible for fines if a lease is	er is the owner of record, but one that is not a resident of said property.
	nty Circuit Courts in assessing fines, ordering remediation of the property (the y may hire a private third-party contractor to bring the property into y, and pursuing any other remedies available by law, including but not limited City of Bloomington Board of Public Works, enters the property and abates
This NOV may be appealed to the City's Board of Public Works, provided Department, within seven days of the date of issuance of this NOV.	a written appeal is filed with the Board, via the City's Public Works
Owner Name (herrington, Karen	Agent Name
Address 211 W ath 87.	Address
city Bloomergton State IN	CityState
Zip Code 47404	Zip Code Noil Conics To: Resident: Owner: * Agent:
ow.	Mail Copies To: Resident:Owner: Agent:

Appeal of Excessive Growth Citation to the Board of Public Works



City of Bloomington CITY OF 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 Excessive Growth 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 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

Name: Karen Cherrington	Phone Number <u>812-606-3319</u>
Citation Number: 51009	Date on Excessive Growth Citation: <u>5/18/22</u>
(Located in the top right hand corner of	the citation)
Local Address:	Permanent Address:
1217 W 6th 47404	1211 W 6th 47404
	Today's Date:5/26/22
Reason for Appeal: see attachment	
	
Impossible to remove bamboo in a week plus	s I really want it there anyway. It protects my yard from pollutants
and is a wonderful habitat for wildlife. I keep i	it maintained and it does not jump or invade anywhere. I feel I'm
and is a wonderful habitat for wildlife. I keep in being targeted as there are many other bamb	it maintained and it does not jump or invade anywhere. I feel I'm poo patches in the neighborhood and they are not being asked to
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Dear Board of Appeals,

I am writing to appeal a ticket I received on May 18th, #51009 after reveiving a warning just a week prior on May 11th, #50884. These are both in reference to the bamboo growing on the property I own adjacent to my own home. I keep the hills around the property (house) and the outside edges trimmed on the front, back, and sides. Any poison ivy has been treated. I was fortunate that my daughter was able to use her electric weed eater to cut even more in this last week. To fully cut the bamboo in just a week with the weather and people not available has been very hard to get any work done. I am physically unable to mow or cut myself. I will be 74 my next birthday, had a hip replacement, and have four compression fractures in my back so any work like this I need to hire out. I am being told I need to cut down my bamboo to 8 inches as it has just recently been added to the invasive species list. Cutting down bamboo in a week would be one of the worst things to do...that creates sharp spikes that are then impossible to remove. The only way to remove bamboo is to dig it up, but it can be maintained as I have done for many years. The bamboo does not jump the alley and I live nextdoor and it has not come into my yard as it can be mowed to keep it within a certain area. I've talked with my neighbor who has lived there 6 years and he loves the bamboo, says it's never come into his yard, and he often cuts the bamboo canes to use in his garden. Actually it is harvested frequently and it serves as a perfect habitat for birds and other wildlife. I feel like it is wonderful to have it there. It keeps my backyard private and helps with noise and pollution from the intersection of Adams and Kirkwood. I feel like it protects me as well. I love my home and saved it from certain demolition many years ago, fully rehabing it to suit my needs as I got older. I've lived on The Near West Side over 50 years and raised my family here and truly love it and feel devoted to the well being and preservation of such a wonderful place. Unfortunately whereas my home is my sanctuary behind me some of the homes on Kirkwood due to not the best location are rentals that attract very short term tenants. We frequently find needles in the alley and currently there are tenants who like to scream at each other and drive fast down the alleys with gravel flying. The tall bamboo keeps me protected and private while I work in my garden and sit outside which is almost always in the summer months.

I own several rentals in town and pay over 40,000 a year in property taxes. I am an excellent landlord and have had tenants for over 15 years. I don't own the houses, the banks do, so my social security is low and I can't afford spending the thousands it will take to eradicate the bamboo that ultimately I really want there. I am also wondering why I am being targeted when there are swaths of bamboo all over town. I've asked several friends who have bamboo in the neighborhood and they haven't received these same warnings/tickets. Why is this? I'm asking you to please grandfather the bamboo. I feel it would greatly depreciate my property value and certainly my daily life to have it gone. It's not hurting anything and benefits many.

I do have a plan for the property. I already have done a lot to clear it of any weed trees. I want to fully clear out the middle and it's mostly cleared out now. The bamboo will remain on the edges and can be mainened by mowing when new stalks emerge in spring.

In conclusion the points I'd like to make is that's it's really impossible to cut bamboo in a week without a huge crew and tons of money (and a plan). Also, I really really want it there. It benefits wildlife, especially the birds. It protects me and my homestead from noise and car pollution...it's not invading anywhere at all and I am capable of controlling it. I hire people in the spring to take down all the new growth (underway now). Once bamboo stalks harden they are extremely difficult to remove which is why I maintain it in Spring. I don't have the money to spend on this, especially when I love it and want it there. My budget is extremely tight. Why am I being targeted? It really doesn't feel fair, as I'm sure you can understand. Removing it hurts more than it benefits by far, please consider grandfathering it. Thank you.

Karen Cherrington













New Citation Search	Report	Legallt	Logout	Help	
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Total: 6 records.

			Owner					Date	Due	Compliance		Date	Complied	Date		Legal
ID A	Address	Owner	Address	Agent Tenants	Violation	Citation	Amount	Written	Date	Deadline	Inspector	Complied	Status	Paid	Status	Action
51132 12 6		Cherrington, Karen	1211 W 6TH ST		Excessive Growth	FINE	100.0	05/25/2022	06/16/2022	06/01/2022	Chastina Chipman	Edit Date Complied	Not Complied		UNPAID	
51009 12 67		Cherrington, Karen	1211 W 6TH ST		Excessive Growth	FINE	50.0	05/18/2022	06/16/2022	05/25/2022	Chastina Chipman	Edit Date Complied	Not Complied		UNPAID	
50884 12 67		Cherrington, Karen	1211 W 6TH ST		Excessive Growth	WARNING		05/11/2022		05/18/2022	Chastina Chipman	Edit Date Complied	Not Complied		WARNING	
49878 12 67	217 W TH ST	Cherrington, Karen	900 W 6TH		Excessive Growth	FINE	50.0	11/17/2021	12/01/2021	11/24/2021	Chastina Chipman	Edit Date Complied	Complied		SENT TO LEGAL	Sent to Collection
49477 12 67	217 W TH ST	Cherrington, Karen	900 W 6TH		Excessive Growth	ADMIN VOID		09/14/2021		09/21/2021	Chastina Chipman	Edit Date Complied	Complied		WARNING	
48752 12 67	217 W TH ST	Cherrington, Karen	900 W 6TH		Excessive Growth	WARNING		07/21/2021		07/28/2021	Chastina Chipman	Edit Date Complied	Complied		WARNING	

AMENDMENT FORM

Ordinance 19-24: To Repeal and Replace <u>Title 20</u> (linked) of the Bloomington Municipal Code entitled "Unified Development Ordinance"

Please complete all fields indicated in <u>yellow</u>.

Amendment Number: Am 50

Name of Sponsor(s): Cm. Sandberg & staff

Date Submitted: 11/4/2019

UDO Chapter, Section, and Page

obe chapter, section, and rage	
Chapter & Section	Page #
20.04.080(d) Permitted Plant Species	161-165
20.04.080(e) Prohibited Plant Species	166-168

Supported by Following Sections of the Comprehensive Plan

Chapter	Section	Page #
_	(e.g., Overview, Goals & Policies, or Programs)	

Synopsis and Legislative Intent (brief description of amendment and its motivation)

This amendment is proposed by Cm. Sandberg at the request of staff. The amendment makes changes to the landscaping lists to identify evergreens, to remove poor quality/invasive species, or to add new species.

Council Action – 03 December 2019:

Amend Am 50 by adding "Yellow Groove Bamboo" and "Phyllostachys aureosulcata" under prohibited invasive grasses (see below in **green** font)

8 - 0 (Chopra absent)

Adopt Am 50 as Amended

8 – 0 (Chopra absent)

ADOPTED

Amendment (indicate text added in **bold** and text to be deleted via strikeout)

E.g., Except for as necessary for the development of the Convention Center site, discourage large footprint buildings (i.e. with a maximum size greater than of a quarter of a block) in order to encourage local developers and businesses and better urban form create a more pedestrian-friendly public realm.

City of Bloomington's Board of Public Works Decision on Appeal of Excessive Growth NOV #51009, 51132

On May 18, 2022 and May 25, 2022, the City of Bloomington Department of Housing and Neighborhood Development (HAND) issued Notice of Violation #51109 and 51132 respectively to Karen Cherrington. Karen Cherrington timely appealed the Ticket to the Board of Public Works. The Board of Public Works heard testimony and received evidence regarding Notices of Violation on Tuesday, July 05, 2022. The Board of Public Works finds as follows:

- 1. Karen Cherrington is the owner of the real property located at 1217 W. 6th Street, Bloomington, Indiana (the "Property").
- 2. On May 18 and May 25, 2022, City of Bloomington Neighborhood Compliance Officer Chastina Chipman did personally observe bamboo, a weed, growing on the Property at a height greater than eight inches.
- 3. Karen Cherrington admits that the property has bamboo growing at a height in excess of 8 inches, and has allowed the bamboo to grow on the property for several years.
- 4. The bamboo Karen Cherrington is growing on the Property is on the invasive and prohibited plants list in Table 04-18 under Title 20 of the Bloomington Municipal Code ("BMC") and is a "Weed" pursuant to Title 6 of the BMC. The bamboo was not on the prohibited plant list when Karen Cherrington originally planted it.
- 5. HAND appropriately issued the tickets to Karen Cherrington pursuant to BMC 6.06.050 because Karen Cherrington allowed the Property to be overgrown with a weed in a height exceeding 8 inches.

After reviewing all of the evidence and testimony presented, the Board of Public Works hereby:

Upholds the Following Notice of Violation:	·
Voids the Following Notice of Violation:	·
So ordered this 5th day of July, 2022.	
Kyla Cox Deckard, President	
Board of Public Works	
City of Bloomington	

STAFF REPORT

Appeal of Excessive Growth NOV Ticket # 51369

Appellant Information:

Mark Harper (owner) 4224 E. Penn Ct.

Bloomington, IN 47408 Date Appealed: 6/23/2022 <u>Citation Information</u>: Issued: 6/16/2022

By: Jo Stong

Place: 4224 E. Penn Ct. For: Weeds/Noxious Plants

Attachments:

1. Notices of Violation

2. Appellant's Appeal of Notice of Violation

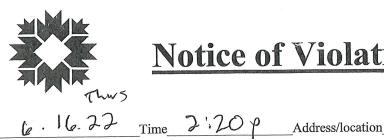
3. Memo from Jo Stong

Facts & Discussion:

- 1. Bloomington Municipal Code 6.06.050 makes it unlawful for "the owner of any lot or tract of ground within the city to allow it to become overgrown with weeds, grass, or noxious plants beyond the height of eight inches or to such extent that the growth is detrimental to the public health and constitutes a nuisance."
- 2. On June 16, 2022, Neighborhood Compliance Officer Jo Stong inspected the property located at 4224 E. Penn Ct, Bloomington, IN (Hereinafter the "Property") and personally observed Chinese Bushclover (Sericea Lespedeza), a prohibited weed and noxious plant, had grown in violation of BMC 6.06.050. Officer Stong issued a Warning Notice of Violation without a fine under citation number of 51369 on June 16, 2022, for excessive growth, in violation of BMC 6.06.050.
- 3. Chinese Bushclover (Sericea Lespedeza) is a prohibited invasive plant species under both the Bloomington Municipal Code and the State of Indiana's prohibited plant species list.
- 4. The NOV was delivered by first class mail to the owner of the property and a copy left in a conspicuous place on the property where the violation occurred in compliance with 6.06.070(b).
- 5. Mark Harper (Hereinafter the "Owner") owns this Property and is a person who shall be considered a responsible party under 6.06.070(a).
- 6. Owner asks for relief from the ticket stating that Owner likes the plant and wants to keep it.

Staff Recommendation:

The Appeal should be denied because the NOV was properly issued, notice properly given, and evidence from the compliance officer shows the prohibited weed was allowed to grow at or greater than eight inches, which is a violation of BMC 6.06.050.



Notice of Violation

Housing & Neighborhood Development Department (HAND) P.O. Box 100

401 N. Morton Street Bloomington, IN 47402 www.bloomington.in.gov/hand/

Issued by	y: 230	47408
BMC	6.6.04.110 Carts, containers and other articles to be picked up sl	nall not be placed upon the street or sidewalk so as to be visible from the ste, recycling or yard waste is to be collected. Carts and containers shall n is made.
	\Box Fine Due: \$15.00 \Box Warning (No fine	
NOTE:	Immediate compliance required in order to avoid additional violations/fines as	ssessed at \$15.00/day per BMC 6.04.100(c).
nremises	6.06.020 It is unlawful for any person to throw, place, or scattes, street, alley, either public or private, or to suffer or permit any remises-owned, occupied or controlled by such person either wi	er any garbage, recyclable materials or yard waste over or upon any garbage, recyclable materials or yard waste to be placed or deposited th or without the intent to remove, cover or burn it.
☐ Fine	Due: □\$50 □\$100 □\$150 □ Warning (No fi	ne due at this time) Ticket#
NOTE:	Immediate compliance required in order to avoid additional violations/fines as	ssessed at \$50.00, \$100, or \$150/day per BMC 6.06.070(c).
or noxio	us plants beyond the height of 8 inches or to such extent that the Due: \$\int\\$50 \$\int\\$100 \$\int\\$150 \$\times \text{Warning (No fine)}\$	and within the city to allow it to become overgrown with weeds, grass, e growth is detrimental to the public health and constitutes a nuisance. The due at this time) Ticket# 5 (3 6 9
NOTE:	Immediate compliance required in order to avoid additional violations/fines a	ssessed at \$50.00, \$100, or \$150/day per BMC 6.06.070(c).
CASECLAS AND		
Commer	nts: Cut the overgrowth.	
	J	
Depa abov	artment for further enforcement action. This NOV must be returned w	Tiolation (NOV) to avoid this matter being forwarded to the City's Legal with payment. You may pay in person or mail payment to the address listed nington." All fines listed above may be contested in the Monroe County
exac	at copy of any and all leases in effect during the time period covered by	s) for a period of seven (7) days provided HAND is presented with a true and y the NOV (per occurrence), at which time said tenant(s) shall be held ner is the owner of record, but one that is not a resident of said property. It is not presented in the time period indicated.
City com	has the authority to bring the property into compliance itself or the C	ly, and pursuing any other remedies available by law, including but not limited City of Bloomington Board of Public Works, enters the property and abates the
4. This	s NOV may be appealed to the City's Board of Public Works, provided artment, within seven days of the date of issuance of this NOV.	l a written appeal is filed with the Board, via the City's Public Works
Ow	vner Name Mark Harper	Agent Name
Ad	dress 4224 E- Pen Ct.	Address
Cit		CityState
Zip	Code 47408	Zip Code NAC ANT
RPW		Mail Copies To: Resident: Sowner: X Agent



Appeal of Excessive Growth Citation to the Board of Public Works

City of Bloomington
Department of Public Works
401 North Morton Street, Suite 120
Phone (812)349-3410

mysteries of the galaxies (b gmail Comments)
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 Excessive Growth 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 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.

denied, you may file an appeal with the Monroe County Circuit v	vithin seven (7) days from the date of the Board's decision.
Name: Mark L. Harper	Phone Number <u>812 219-3191</u>
Citation Number:	Date on Excessive Growth Citation:
(Located in the top right hand corner of the citation)	
Local Address: 4224 E. Rennet	Permanent Address:
47408	
Reason for Appeal:	Today's Date: Pe nywdreds = hundreds of beautifu N my incredible, edible: Front YAR This possible FINEL, warning
(You may continue on another page if necessary)	
On this day, I submitted my completed appeal of Exces When the Board of Public Works will consider my app	
Signature Mand Stapper	Date Date
For use by Public Works:	
Date Appeal Received: Received:	ceived By:
Date Appeal Forwarded to Legal Department:	

MEMO:

To: City of Bloomington Board of Public Works, Daniel Dixon

From: Jo Stong, Neighborhood Compliance Officer, HAND

Date: June 23, 2022

Re: Warning citation issued at 4224 E. Penn Court

On June 16, 2022 I issued a warning to the property located at 4224 E. Penn Court (citation #51369) for excessive growth. I did not take a photo at that time as it was a warning and not a fine for overgrowth. On June 23, 2022 property owner Mark Harper called me and said he wanted to appeal the ticket, and that most of his yard had been taken over by a plant that has a beautiful flower that he does not want to mow. I contacted Linda Thompson to request a site visit with her, which we planned for next week. Later that day I went out to the property to identify plants in his yard. The most prevalent plant in the front yard was identified as Chinese bushclover, or Sericea (lespedeza cuneate), an invasive herbaceous perennial.

City of Bloomington's Board of Public Works Decision on Appeal of Excessive Growth NOV #51369

On June 16, 2022, the City of Bloomington Department of Housing and Neighborhood Development (HAND) issued Notice of Violation #51369 to Mark Harper. Mark Harper timely appealed the Notice of Violation to the Board of Public Works. The Board of Public Works heard testimony and received evidence regarding Notices of Violation on Tuesday, July 5, 2022. The Board of Public Works finds as follows:

- 1. Mark Harper is the owner of the real property located at 4224 E. Penn Ct, Bloomington, Indiana (the "Property").
- 2. On June 16, 2022, City of Bloomington Neighborhood Compliance Officer Jo Stong did personally observe Sericea Lespedeza (Chinese Bushclover), a prohibited weed, growing on the Property at a height greater than eight inches.
- 3. Mark Harper admits that the property has Sericea Lespedeza growing at a height in excess of 8 inches, and has allowed such to grow on the property.
- 4. Sericea Lespedeza is on the invasive and prohibited plants list in Table 04-18 under Title 20 of the Bloomington Municipal Code ("BMC") as well as a prohibited invasive plant species under the State of Indiana's Terrestrial Plant Rule (312 IAC 18-3-25) and is a "Weed" pursuant to Title 6 of the BMC.
- 5. HAND appropriately issued the warning to Mark Harper pursuant to BMC 6.06.050 because the Mark Harper allowed the Property to be overgrown with Sericea Lespedeza.

After reviewing all of the evidence and testimony phereby:	presented,	the Board	of Public	Works
Upholds the Following Notice of Violation:				·

Voids the Following Notice of Violation:

So ordered this 5th day of July, 2022.

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

Staff Report

To: Board of Public Works

From: Daniel Dixon Date: July 05, 2022

Re: Request to Abate property at 2225 S. High St., Bloomington, IN

Attachments:

- 1. NOV Issued May 19, May 31, and June 9, 2022.
- 2. Photograph(s) of the property
- 3. GIS property information
- 4. Order for Abatement (proposed)

Facts:

- 1. Bloomington Municipal Code § 6.06.050 makes it unlawful for "the owner of any lot or tract of ground within the city to allow it to become overgrown with weeds, grass, or noxious plants beyond the height of eight inches or to such extent that the growth is detrimental to the public health and constitutes a nuisance."
- 2. On May 19, May 31, and June 9, 2022, a City of Bloomington Neighborhood Compliance Officer inspected the property located at 2225 S. High Street, Bloomington, IN (Hereinafter the "Property") and issued Notice(s) of Violation for excessive growth in violation of BMC § 6.06.050 (Hereinafter the "NOV").
- 3. The NOV was/were issued to William W. Adam (Hereinafter the "Owner") because he is the Owner of the Property which is in violation of BMC § 6.06.050 in that it contains grass growing at a height exceeding 8 inches, weeds and/or noxious plants also growing at a height exceeding 8 inches and the condition of the property is overgrown.
- 4. The violations have not been corrected and the NOV were not appealed.
- 5. The NOV were posted in a conspicuous place at the Property in accordance with BMC § 6.06.070(b).
- 6. The Notice of Request to Abate was served on the Owner of the Property by certified mail in accordance with BMC § 6.06.080(b).
- 7. The abatement order should be continuous.

Status of the Property and Reason for Abatement:

The Property remains out of compliance. Vegetation throughout the entire Property is overgrown. The property needs to be abated to eliminate the violation and public nuisance.

Staff Recommendation:

Staff recommends that the property be abated as soon as reasonably possible and that the order be continuous in nature.



BPW:

Notice of Violation

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

Dat	e 5.19-22 Time 12:20 Address/location 2225 5. High 47401		
Issu	ued by: 238		
stre	BMC 6.04.110 Carts, containers and other articles to be picked up shall not be placed upon the street or sidewalk so as to be visible from the set more than twenty-four hours prior to the time when such solid waste, recycling or yard waste is to be collected. Carts and containers shall removed from the street or sidewalk on the same day as the collection is made.		
NO	Fine Due: \$15.00		
pre	BMC 6.06.020 It is unlawful for any person to throw, place, or scatter any garbage, recyclable materials or yard waste over or upon any mises, street, alley, either public or private, or to suffer or permit any garbage, recyclable materials or yard waste to be placed or deposited the premises owned, occupied or controlled by such person either with or without the intent to remove, cover or burn it.		
	Fine Due: \$\Bigs_\$50 \$\Bigs_\$100 \$\Bigs_\$\$150 \$\Bigs_\$ Warning (No fine due at this time) Ticket#		
NO	TE: Immediate compliance required in order to avoid additional violations/fines assessed at \$50.00, \$100, or \$150/day per BMC 6.06.070(c).		
or I	BMC 6.06.050 It is unlawful for the owner of any lot or tract of ground within the city to allow it to become overgrown with weeds, grass, noxious plants beyond the height of 8 inches or to such extent that the growth is detrimental to the public health and constitutes a nuisance. Fine Due: \$\Begin{array}\$\sigma \$\sigma \$\sig		
####	Descript about this aroter		
Co	mments: Received complaint about this property.		
	Cy's ma ongrown.		
1.	Fine must be paid within 2 weeks from date of issuance of the Notice of Violation (NOV) to avoid this matter being forwarded to the City's Legal Department for further enforcement action. This NOV must be returned with payment. You may pay in person or mail payment to the address listed above. Please make check/money order payable to "The City of Bloomington." All fines listed above may be contested in the Monroe County Circuit Courts.		
2.	it will make the property owner(a) for a paried of seven (7) days provided HAND is presented with a true and		
3.	G + G' - ' G G G' - ' G		
4.	This NOV may be appealed to the City's Board of Public Works, provided a written appeal is filed with the Board, via the City's Public Works Department, within seven days of the date of issuance of this NOV.		
	Owner Name William W. Kdam Agent Name		
	Address 7275 S. High Address		
	City State W City State		
	Zip Code 4740 \ Zip Code		
	BPW: Mail Copies To: Resident: Owner: X Agent:		



Notice of Violation

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

Date	te 5/31.27 Time 2:377 Address/I	ocation 2225 5- High St. 47401	
Issu	ued by: 230	47401	
stree	set more than twenty-four hours prior to the time when such solid we removed from the street or sidewalk on the same day as the collection.		
NO	☐ Fine Due: \$15.00 ☐ Warning (No fine TE: Immediate compliance required in order to avoid additional violations/fines		
prer	BMC 6.06.020 It is unlawful for any person to throw, place, or scat mises, street, alley, either public or private, or to suffer or permit an the premises owned, occupied or controlled by such person either was a supplied.	ter any garbage, recyclable materials or yard waste over or upon any y garbage, recyclable materials or yard waste to be placed or deposited ith or without the intent to remove, cover or burn it.	
	Fine Due: \$\Bigcup\$50 \$\Bigcup\$100 \$\Bigcup\$		
or n	rine Due (\$50 \$100 \$150 \$150 \$Warning (No 1) TE: Immediate compliance required in order to avoid additional violations/fines		
Con	mments:		
1.	Fine must be paid within 2 weeks from date of issuance of the Notice of Department for further enforcement action. This NOV must be returned above. Please make check/money order payable to "The City of Bloo Circuit Courts.	violation (NOV) to avoid this matter being forwarded to the City's Legal with payment. You may pay in person or mail payment to the address listed mington." All fines listed above may be contested in the Mouroe County	
2.	Fines shall not attach to non-possessory residential rental property owner(s) for a period of seven (7) days provided HAND is presented with a true and exact copy of any and all leases in effect during the time period covered by the NOV (per occurrence), at which time said tenant(s) shall be held responsible for fines due. A non-possessory residential rental property owner is the owner of record, but one that is not a resident of said property. Property owner(s) shall otherwise be held responsible for fines if a lease is not presented in the time period indicated.		
3.	The City may seek action by its Board of Public Works or the Monroe County Circuit Courts in assessing fines, ordering remediation of the property (the City has the authority to bring the property into compliance itself or the City may hire a private third-party contractor to bring the property into compliance) and/or assessing costs associated with clean-up of the property, and pursuing any other remedies available by law, including but not limited to injunctive relief. If the City or their designee, with permission from the City of Bloomington Board of Public Works, enters the property and abates the violation the owner shall be responsible for reimbursing the City for the abatement and all associated cost.		
4. This NOV may be appealed to the City's Board of Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal is filed with the Board, via the City's Public Works, provided a written appeal with the Board, via the City's Public Works, provided a written appeal with the Board, via the City's Public Works, provided a written appeal with the Board, via the City's Public Works, provided			
	Owner Name William W. Adam Address 2225 S. High St.	Agent Name	
	Address 7275 S. High St.	Address	
	City State V	City State	
	Zip Code 47401	Zip Code	
I	BPW:	Mail Copies To: Resident: Owner: Agent:	



Notice of Violation

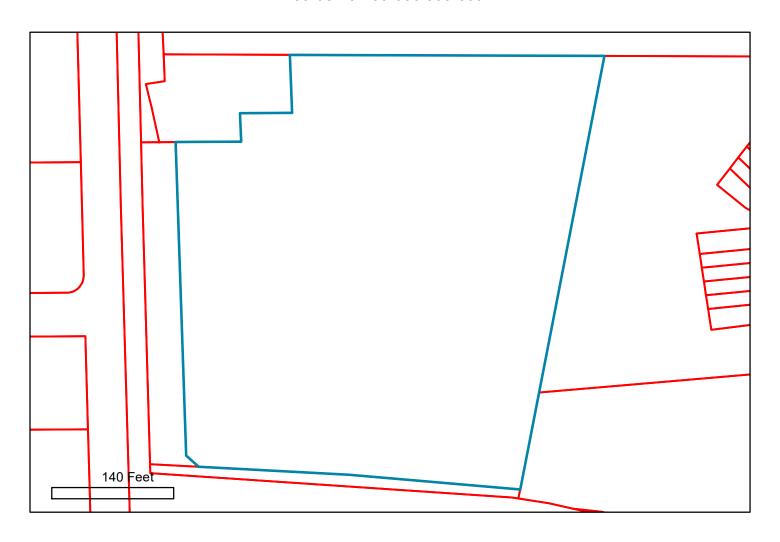
Housing & Neighborhood
Development Department (HAND)
P.O. Box 100
401 N. Morton Street
Bloomington, IN 47402
www.bloomington.in.gov/hand/

Dat				
Issu	ied by: 230			
stre	BMC 6.04.110 Carts, containers and other articles to be picked up shall not be placed upon the street or sidewalk so as to be visible from the tet more than twenty-four hours prior to the time when such solid waste, recycling or yard waste is to be collected. Carts and containers sharemoved from the street or sidewalk on the same day as the collection is made.			
	☐ Fine Due: \$15.00 ☐ Warning (No fine due at this time) ☐ Ticket#			
NO	TE: Immediate compliance required in order to avoid additional violations/fines assessed at \$15.00/day per BMC 6.04.100(c).			
pre	BMC 6.06.020 It is unlawful for any person to throw, place, or scatter any garbage, recyclable materials or yard waste over or upon any mises, street, alley, either public or private, or to suffer or permit any garbage, recyclable materials or yard waste to be placed or deposited the premises owned, occupied or controlled by such person either with or without the intent to remove, cover or burn it.			
	Fine Due: \$\Bigcap\$50 \$\Bigcap\$\$\$\$150 \$\Bigcap\$\$ Warning (No fine due at this time) Ticket#			
NO	TE: Immediate compliance required in order to avoid additional violations/fines assessed at \$50.00, \$100, or \$150/day per BMC 6.06.070(c).			
or j	BMC 6.06.050 It is unlawful for the owner of any lot or tract of ground within the city to allow it to become overgrown with weeds, grass, poxious plants beyond the height of 8 inches or to such extent that the growth is detrimental to the public health and constitutes a nuisance.			
	Fine Due: \$\Bigcap\$ \Bigcap\$ \Bigcap\$ \$\Bigcap\$ \$\Bigcap\$\$ \$\Bigca			
NO	VTE: Immediate compliance required in order to avoid additional violations/fines assessed at \$50.00, \$100, or \$150/day per BMC 6.06.070(c).			
econolello C	C + H-0 - 125-5-14			
Con	Property will go to the Board of Public Works			
	for permission to abate.			
1.	Fine must be paid within 2 weeks from date of issuance of the Notice of Violation (NOV) to avoid this matter being forwarded to the City's Legal Department for further enforcement action. This NOV must be returned with payment. You may pay in person or mail payment to the address listed above. Please make check/money order payable to "The City of Bloomington." All fines listed above may be contested in the Monroe County Circuit Courts.			
2.	(A) C (A) A			
3.	The City may seek action by its Board of Public Works or the Monroe County Circuit Courts in assessing fines, ordering remediation of the property (the City has the authority to bring the property into compliance itself or the City may hire a private third-party contractor to bring the property into compliance) and/or assessing costs associated with clean-up of the property, and pursuing any other remedies available by law, including but not limited to injunctive relief. If the City or their designee, with permission from the City of Bloomington Board of Public Works, enters the property and abates the violation the owner shall be responsible for reimbursing the City for the abatement and all associated cost.			
4. This NOV may be appealed to the City's Board of Public Works, provided a written appeal is filed with the Board, via the City's Public Works Department, within seven days of the date of issuance of this NOV.				
	Owner Name Agent Name			
	Address 2225 S. High St. Address			
	City State N City State			
	Zip Code Zip Code			
]	BPW: Will Copies To: Resident: Owner: Agent:			



Monroe County, IN

2225 S High ST, Bloomington, IN 47401-4314 53-08-10-400-006.000-009



Parcel Information

Parcel Number: 53-08-10-400-006.000-009

Alt Parcel Number: 015-53480-00

Property Address: 2225 S High ST

Bloomington, IN 47401-4314

Neighborhood: High Street - South - A

Property Class: 1 Family Dwell - Unplatted (0 to 9.99 Acres)

Owner Name: Adam, William W

Owner Address: 2225 S High St

Bloomington, IN 47401

Legal Description: 015-53480-00 PT SW SE 10-8-1W;

4.174A

Taxing District

Township: PERRY TOWNSHIP

Corporation: MONROE COUNTY COMMUNITY

Land Description

Land Type	<u>Acreage</u>	<u>Dimensions</u>
9	1.0	
91	3.174	

City of Bloomington's Board of Public Works Order Of Abatement for NOV (excessive growth)

This matter is before the Board of Public Works for Abatement of Notice of Violations issued on May 19, May 31, and June 9, 2022 (Hereinafter the "NOV"). The Board of Public Works received information regarding the NOV at its regular meeting on Tuesday, July 05, 2022.

The Board of Public Works now finds as follows:

- 1. William W. Adam (Hereinafter the "Owner") owns the real estate located at 2225 S. High St., Bloomington, IN, and whose legal description is 015-53480-00 PT SW SE 10-8-1W; 4.174A. (Hereinafter the "Property").
- 2. On May 19, May 31, and June 9, 2022, a City of Bloomington Neighborhood Compliance Officer issued NOV after personally observing excessive growth on the Property, in violation of BMC § 6.06.050.
- 3. The NOV were properly issued to the Owner in accordance with BMC 6.06.070(b).
- 4. The NOV were not appealed.
- 5. The violation(s) cited in the NOV were not remedied.
- 6. Notice of the City's request to abate the Property was properly issued and the Owner properly notified in accordance with BMC 6.06.080(b).

After reviewing all of the evidence and testimony presented, the Board of Public Works hereby Orders as follows:

- 1. The City, via either its employees or a third-party private contractor hired by the City, is authorized to enter into and onto the Property in order to bring said Property into compliance with Chapter 6.06 of the City of Bloomington Municipal Code. Specifically, the City, via either its employees or a third-party contractor hired by the City, is authorized to enter into and onto the Property to reduce the weeds, grass or noxious plants present on said Property to a height below eight inches and to remove all overgrowth.
- 2. The City shall bill the Owner for all associated costs of abatement. The Owner shall remit payment in full no later than ten days from receipt of the bill.
- 3. If the Owner fails to comply with paragraph 2 above, a certified copy of the statement of costs incurred by the City shall be filed in the office of the Monroe County Auditor. The Monroe County Auditor shall thereupon place the amount due on the tax duplicate for the Property.
- 4. **CONTINUOUS ABATEMENT:** In accordance with Section 6.06.080(e) of the City of Bloomington Municipal Code, this Order of Abatement is a **CONTINUOUS ORDER OF ABATEMENT.** The City is hereby authorized to abate any further ordinance violations of Chapter 6.06 of the City of Bloomington Municipal Code at this Property concerning excessive growth without notice or a hearing in front of this Board while this Order remains in effect.

- 5. THIS ABATEMENT ORDER SHALL CONTINUE FOR TWELVE MONTHS FROM THE DATE OF THE FIRST NOTICE OF VIOLATION AND EXPIRES ON THE 19th DAY OF MAY, 2023.
- 6. Public Works shall notify the Owner of this Order and HAND shall post this Order on the Property at the time of abatement.
- 7. All appeals from the Board's decision on an abatement request shall be made to courts of competent jurisdiction within ten days.

So Ordered this 05th Day of July, 2022.

Kyla Cox Deckard, President Board of Public Works City of Bloomington The Board of Public Works meeting was held on Tuesday, June 21, 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

Jackie Moore - City Legal Christopher Wheeler - City Legal

Jo Stong - Housing and Neighborhood Development Mike Arnold - Housing and Neighborhood Development

Neil Kopper - Engineering Matt Smethurst - Engineering Sara Gomez - Engineering Roy Aten - Engineering

MESSAGES FROM BOARD

MEMBERS

Wason also formally welcomed Lloyd.

None

PETITIONS & REMONSTRANCES

Jo Stong, Housing and Neighborhood Development, presented Abatement at 2225 S. High Street. See meeting packet for details.

Karon wanted to formally welcome Jennifer Lloyd to the Board of Public Works.

TITLE VXII ENFORCEMENT
Abatement at 2225 S. High Street

Board Comments: William Walker Adam, property owner, stated his case to appeal abatement.

Karon made a motion to table the Abatement at 2225 S High Street. Lloyd seconded. All in favor, motion is passed.

Stong, Housing and Neighborhood Development, presented Abatement at 4416 E. Clayton Court. See meeting packet for details.

Abatement at 4416 E. Clayton Court

Board Comments: Karon asked if there has to be a certain number of tickets to come to the Board; Stong said no.

Karon made a motion to approve Abatement at 4416 E. Clayton Court. Lloyd seconded. All in favor, motion is passed.

1. Approval of Minutes; June 07, 2022

2. Resolution 2022-38; Renew Mobile Vendor in Public Right-of-Way; Wever's Smoke Eaters

- 3. Buskirk-Chumley Partnership Agreement
- 4. Bonding Agreement with Monroe County Highway Department

CONSENT AGENDA

- 5. 2023 Service Agreement with Precision Concrete
- 6. Resolution 2022-43; Bloomington Housing Authority Family Night Out
- 7. Approval of Payroll

Board Comments: Wason asked the Buskirk-Chumley Partnership Agreement be moved to New Business. Jacquelyn Moore, City Legal, stated item number 5 should read 2022 Service Agreement with Precision Concrete.

Karon made a motion to move the Buskirk-Chumley Partnership Agreement to New Business. Lloyd seconded. Cox Deckard took a roll call vote. Karon voted yes, Lloyd voted yes, Cox Deckard voted yes. All in favor, motion is passed.

Adam Wason, Public Works, presented Buskirk-Chumley Partnership Agreement. See meeting packet for details.

Board Comments: Cox Deckard asked if this agreement is the same as previous years; Wason agreed.

Karon made a motion to approve Buskirk-Chumley Partnership Agreement. Lloyd recused herself. Cox Deckard took a roll call vote. Karon voted yes, Cox Deckard voted yes. All in favor, motion is passed.

Mike Arnold, Housing and Neighborhood Development, presented Resolution 2022-39; Uphold Order to Remove Structure at 2607 N. Walnut Street. See meeting packet for details.

Board Comments: Vince Taylor, attorney for owner of property, stated they are looking for a company to do the demolition. Alexa Knighty, Property Manager, stated she is having a hard time trying to find a company to bid on the demolition of the property. Knighty is ultimately looking for the City's help to find an agency that could assist. Lloyd asked what measures are being considered in the meantime to keep the property safe. Cox Deckard wanted clarification that the property owner is consenting to a demolition; Qiao Xhao, President of Prime Power, Inc., consented to a demolition. Christopher Wheeler, City Legal, asked the Board to still consider upholding the order to remove on July 31st. Cox Deckard asked what the next steps are if the order is upheld and progress is not made. Wheeler stated if the owner doesn't comply by July 31st, he would come back to the Board to request bids from contractors.

Karon made a motion to approve Resolution 2022-39; Uphold Order to Remove Structure at 2607 N. Walnut Street. Karon made a motion to approve Resolution 2022-39; Uphold Order to Remove Structure at 2607 N. Walnut Street. Lloyd seconded. All in favor, motion is passed.

Neil Kopper, Engineering, presented Encroachment Resolution 2022-34 for a Retaining Wall at IUEMS on W. 1st Street. See meeting packet for details.

Board Comments: None

Karon made a motion to approve Encroachment Resolution 2022-34 for a Retaining Wall at IUEMS on W. 1st Street. Lloyd seconded. All in favor, motion is passed.

NEW BUSINESS
Buskirk-Chumley Partnership
Agreement

Resolution 2022-39; Uphold Order to Remove Structure at 2607 N. Walnut Street

Encroachment Resolution 2022-34 for a Retaining Wall at IUEMS on W. 1st Street

Kopper presented Encroachment Resolution 2022-40 for Flood Mitigation Walls, Accessible Ramp, Deck, Deck Access Stair, and Walk at 403 E. 4th Street. See meeting packet for details.

Board Comments: None

Karon made a motion to approve Encroachment Resolution 2022-40 for Flood Mitigation Walls, Accessible Ramp, Deck, Deck Access Stair, and Walk at 403 E. 4th Street. Lloyd seconded. All in favor, motion is passed.

Matt Smethurst, Engineering, presented Contract with Renascent, Inc. for the Hopewell Phase I East Demolition Project. See meeting packet for details.

Board Comments: Cox Deckard asked if the Engineering team felt comfortable with the decision to pick the lowest and most responsible bidder; Smethurst agreed. Cox Deckard also asked if Engineering has worked with Renascent before; Smethurst said they are doing the demolition of a hospital in Indianapolis. Cox Deckard wanted to know where the property stands right now in the process of demolishing. Smethurst said the demolition will take 60 days which will lead up until the end of the summer. The reconstruction plan is being finalized and hopeful to bid that project out later this year. Summer of 2023 is when the project will be completed.

Karon made a motion to approve Contract with Renascent, Inc. for the Hopewell Phase I East Demolition Project. Lloyd seconded. All in favor, motion is passed.

Roy Aten, Engineering, presented Design Contract Modification #4 for the B-Line Extension Project. See meeting packet for details.

Board Comments: Lloyd asked what the unexpected property discrepancy was. Aten responded that there were two property lines that didn't meet and they could not be acquired until ownership was determined.

Karon made a motion to approve Design Contract Modification #4 for the B-Line Extension Project. Lloyd seconded. All in favor, motion is passed.

Matt Smethurst, Engineering, presented Award Contract to E&B Paving, Inc. for the Smith Road Resurfacing Project. See meeting packet for details.

Board Comments: None.

Karon made a motion to approve Award Contract to E&B Paving, Inc. for the Smith Road Resurfacing Project. Lloyd seconded. All in favor, motion is passed.

Sara Gomez, Engineering, presented Award Contract to Groomer Construction for the Dunn Street Sidewalk Improvements Project. See meeting packet for details.

Board Comments: Karon about the timing of the project completion date and the return of the students. Gomez answered there are numerous projects within that area and that Engineering has continued to have very close coordination with all involved. Wason stated the entire area is being closely monitored and thanked the Engineering Department for all of the coordination. Karon echoed the thanks.

Karon made a motion to approve Award Contract to Groomer Construction for the Dunn Street Sidewalk Improvements Project. Lloyd seconded. All in favor, motion is passed.

Encroachment Resolution 2022-40 for Flood Mitigation Walls, Accessible Ramp, Deck, Deck Access Stair, and Walk at 403 E. 4th Street

Contract with Renascent, Inc. for the Hopewell Phase I East Demolition Project

Design Contract Modification #4 for the B-Line Extension Project

Award Contract to E&B Paving, Inc. for the Smith Road Resurfacing Project

Award Contract to Groomer Construction for the Dunn Street Sidewalk Improvements Project Neil Kopper, Engineering, presented Memorandum of Understanding between Indiana University and City of Bloomington Regarding the N. Eagleson Bridge Replacement Project. See meeting packet for details.

Board Comments: Karon asked about the portion of Eagleson that would be transferred. Wason and Kopper confirmed that a portion is owned by Indiana University. Cox Deckard asked if the railroad would be involved. Kopper confirmed.

Karon made a motion to approve Memorandum of Understanding between Indiana University and City of Bloomington Regarding the N. Eagleson Bridge Replacement Project. Lloyd seconded. All in favor, motion is passed.

Adam Wason, Public Works, presented on behalf of Paul Kehrberg, Request from Indiana University for Road Closure on N. Fee Lane between 11th and 13th Streets (June 29, 2022-August 13, 2022).

Board Comments: Cox Deckard asked if there would be advanced signage. Wason confirmed.

Karon made a motion to approve Request from Indiana University for Road Closure on N. Fee Lane between 11th and 13th Streets (June 29, 2022-August 13, 2022). Lloyd seconded. All in favor, motion is passed.

Wason mentioned that the Animal Shelter is at full capacity and urged adoption of a furry friend. He also mentioned some special events that would be coming before the Board at a future date. There are concerns from public safety regarding the footprint of some of the special events and staff is working to get those issues resolved. He thanked the crews across the city who have had to endure the heat.

Karon made a motion to approve claims in the amount of \$847,586.53. Lloyd seconded. All in favor, motion is passed.

Cox Deckard called for adjournment at 6:34 p.m.

Accepted By:

Kyla Cox Deckard, President

Jennifer Lloyd, Vice President

Elizabeth Karon, Secretary

Attest to:

Date:

Memorandum of Understanding between Indiana University and City of Bloomington Regarding the N. Eagleson Bridge Replacement Project

Request from Indiana University for Road Closure on N. Fee Lane between 11th and 13th Streets (June 29, 2022-August 13, 2022)

STAFF REPORTS AND OTHER BUSINESS

CLAIMS

ADJOURNMENT



CONTRACT COVER MEMORANDUM

TO: Beth Cate, Corporation Counsel FROM: Paula McDevitt, Administrator

DATE: June 28, 2022

RE: Adopt-A-Median Partnership with Elders Journey Homecare

Contract Recipient/Vendor Name:	Elders Journey Homecare
Department Head Initials of Approval:	PM
Responsible Department Staff: (Return signed copy to responsible staff)	Division Director: Tim Street
Responsible Attorney: (Return signed copy to responsible attorney)	Daniel Dixon
Record Destruction Date: (Legal to fill in)	
Legal Department Internal Tracking #: (Legal to fill in)	
Due Date For Signature:	June 24, 2022
Expiration Date of Contract:	June 28, 2027
Renewal Date for Contract:	June 28, 2027
Total Dollar Amount of Contract:	\$0
Funding Source:	N/A
W9/EFT Complete: (Staff Member of Responsible Dept to fill in - Vendor #)	N/A
Affirmative Action Plan Complete (if applicable): (Staff Member of Responsible Dept. to fill in;\$10,000+)	N/A
Procurement Summary Complete: (Staff Member of Responsible Dept. to fill in)	N/A

Summary of Contract:

BPRD maintains numerous street medians, roundabouts, and public right-of-ways throughout Bloomington. Of these, there are three grassy medians on Clarizz Boulevard. Each has been 'adopted' since 2005. In the spring of this year one of the long-time adopters decided to end our partnership. Within weeks Elders Journey Homecare contacted us to express their desire to become the new 'adopter'. They agree to regularly maintain the turf, keep the litter picked up and generally keep the median looking good for passersby. This partnership will be in effect for five years.



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

Adopt-A-Median Partnership Agreement

This agreement between the City of Bloomington, Department of Parks and Recreation (hereafter "City") and **Elders Journey Homecare**, (hereinafter "Adopter") is to provide a means of improving, beautifying, and maintaining the median located on **Clarizz Boulevard**. The median described is approximately 250 feet in length and 12 feet in width.

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

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

The City of Bloomington reserves the right to provide and place no more than two (2) signs of City design in a location in the median visible from the street indicating that the median has been "adopted" by the Adopter. The costs associated with the manufacture, maintenance, and placement of the sign(s) shall be borne by the City of Bloomington.

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

The Adopter agrees that its volunteers, employees, or subcontractors are not acting as agents or employees of the City of Bloomington, and also shall agree to release the City of Bloomington from any liability arising hereunder, including from the negligence of releasee, and shall indemnify the City of Bloomington against any claims which may arise due, in whole or in part, to the negligence of the Adopter in its acts or omissions pursuant to this agreement. This agreement may be renewed by the written agreement of both parties upon original date of expiration.

Agreed to the	_ day of	_, 2022	
"ADOPTER";		"CITY";	
"By:			
, Owner Elders Journey Homecare	Date	Paula McDevitt, Director City of Bloomington Parks and Recreation Department	Date
		Kathleen Mills, President Board of Park Commissioners	Date
		Beth Cate, Corporation Counsel Da City of Bloomington	te
		Adam Wason, Director City of Bloomington Public Works Department	Date
		Kyla Cox-Deckard, President Board of Public Works	Date



Board of Public Works Staff Report

Project/Event: Speedway Centennial Anniversary

Petitioner/Representative: Monroe County History Center (MCHC)

Staff Representative: April Rosenberger **Event Date:** Thursday, September 01, 2022

Meeting Date: July 05, 2022

The Monroe County History Center is requesting the closure of Municipal Lot #5 from 3:00 p.m. to 9:00 p.m. on Thursday, September 01, 2022 to host a family friendly event featuring drivers with historic cars from local collectors.

A noise permit is also requested as part of this event.



Contact Name:

Contact Phone:

1. Applicant Information

AndreaHadsell

812-332-2517ext.2

SPECIAL EVENT APPLICATION

City of Bloomington
Department of Economic and Sustainable Development
401 N. Morton Street, Suite 150
Bloomington, Indiana 47404
812-349-3418
Department of Public Works
812-349-3410

Mobile Phone:

Organization: MonroeCountyHistoryCenter Address: 202E6thStreet City, State, Zip: Bloomington,IN47408 Contact E-Mail Address: education@monroehistory.org Organization E-Mail and URL: Org Phone No: 812-332-2517 Fax No: 2. Any Key Partners Involved (including Food Vendors if applicable) Organization Name: Address: City, State, Zip: Contact E-Mail						
Address: 202 E6thStreet City, State, Zip: Bloomington,IN 47408 Contact E-Mail Address: education@monroehistory.org Organization E-Mail and URL: Org Phone No: 812-332-2517 Fax No: 2. Any Key Partners Involved (including Food Vendors if applicable) Organization Name: Address: City, State, Zip: Contact E-Mail	Title/Position:	EducationManager				
City, State, Zip: Bloomington,IN47408 Contact E-Mail Address: education@monroehistory.org Organization E-Mail and URL: Org Phone No: 812-332-2517 Fax No: 2. Any Key Partners Involved (including Food Vendors if applicable) Organization Name: Address: City, State, Zip: Contact E-Mail		MonroeCounty History Center				
Contact E-Mail Address: Organization E-Mail and URL: Org Phone No: 812-332-2517 Fax No: 2. Any Key Partners Involved (including Food Vendors if applicable) Organization Name: Address: City, State, Zip: Contact E-Mail	Address:	202 E6thStreet				
Address: Organization E-Mail and URL: Org Phone No: 812-332-2517 Fax No: 2. Any Key Partners Involved (including Food Vendors if applicable) Organization Name: Address: City, State, Zip: Contact E-Mail	City, State, Zip:	Bloomington,IN 47408				
E-Mail and URL: Org Phone No: 812-332-2517 Fax No: 2. Any Key Partners Involved (including Food Vendors if applicable) Organization Name: Address: City, State, Zip: Contact E-Mail		education@monroehistory.org				
2. Any Key Partners Involved (including Food Vendors if applicable) Organization Name: Address: City, State, Zip: Contact E-Mail	_	https://monroehistory.org/				
Organization Name: Address: City, State, Zip: Contact E-Mail	Org Phone No:	812-332-2517	Fax No:			
Organization Name: Address: City, State, Zip: Contact E-Mail						
Name: Address: City, State, Zip: Contact E-Mail	2. Any Key Par	tners Involved (including Food	Vendors if applicable)			
City, State, Zip: Contact E-Mail						
Contact E-Mail	Address:					
	City, State, Zip:					
Addi Coo.	Contact E-Mail Address:					
Phone Number: Mobile Phone:	Phone Number:		Mobile Phone:			
Organization Name:	_					
Address:	Address:					
City, State, Zip:	City, State, Zip:					
E-Mail Address:	E-Mail Address:					
Phone Number: Mobile Phone:	Phone Number:		Mobile Phone:			
Organization Name:						
Address:	Address:					
City, State, Zip:	City, State, Zip:					
E-Mail Address:	E-Mail Address:					
Phone Number: Mobile Phone:	Phone Number:		Mobile Phone:			

3. Event Informat	ion:			
Type of Event			Walk ☐ Festival ☐ Block Party n Description of Event)	
Date(s) of Event:	September 1,2022			
Time of Event:	Date: 9/1/2022	Start: 6:00p	Date: 9/1/2022 End: 8	:00pm
Setup/Teardown time Needed	Date: 9/1/2022	Start: 3:00pi	m Date: 9/1/2022 End: 9	:00pm
Calendar Day of Week:	Thursday			
Description of Event:	The Bloomington S The Monroe County and historic cars fro	peedway celebrates 100 y History Centerwill host y Miocalcollectors on Sep	Dyears of community history in 2022. afamily-friendly event featuring drivers otember 1.	
List of Street Closures (If applicable)	Parkinglot-6th&LincolnS	Streets		
Expected Number of Participants:	150		Expected # of vehicles (Use of Par Spaces to close): 10	king

	R EVENT IS A RUN/WALK/PARADE, YOU ARE REQUIRED TO SECURE AND ATTACHED DWING: Moving Events – Use and/or Closure of City Streets/Sidewalks
	 A map of the proposed rights-of-way closure or route in its entirety (streets shall be properly labeled and identified) The starting point shall be clearly marked The ending point shall be clearly marked The number of lanes to be restricted on each road shall be clearly marked Each intersection along the route shall be clearly identified A notation of how each intersection is to be blocked shall be specifically noted at each intersection (ie: Type 3 barricades and/or law enforcement); and The location of any staging area(s) for the rights-of-way closure and how much space the staging area(s) shall utilize
	Notification to businesses /residents that will be impacted by event of the day the application will be heard by Board of Public Works (Example attached)
	Using a City park or trail? Parks & Recreation Department Approved Special Use Permit □Not applicable
	Certificate of Liability Insurance – Proof of insurance listing the City of Bloomington as additional insured for an amount no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. DEADLINE: To Public Works no later than five days before event.
	A properly executed Maintenance of Traffic Plan *Determine if No Parking Signs will be required * Determine if Barricades will be required
	For every 500 attendees who will be present at your event at any one time, you must hire one uniformed off-duty Indiana Certified Police Officer as security (however, the City reserves the right to request one officer be present for every 250 attendees, depending on the nature of the particular event)
	Secured a Parade Permit from Bloomington Police Department Not applicable
	Noise Permit application Not applicable
	Waste and Recycling Plan if more than 100 participates (template attached)
AND ATTA	R EVENT IS A FESTIVAL/SPECIAL COMMUNITY EVENT YOU ARE REQUIRED TO SECURE CH, AND SUBMIT THE FOLLOWING: Events – Closure of Streets/ Sidewalks/ Use of Metered Parking
X	A map of the proposed rights-of-way closure in its entirety (streets shall be properly labeled and identified) The starting point shall be clearly marked The ending point shall be clearly marked The number of lanes to be restricted on each road shall be clearly marked Each intersection along the route shall be clearly identified A notation of how each intersection is to be blocked shall be specifically noted at each intersection (ie: type 3 barricades and/or law enforcement); and The location of any staging area(s) for the rights-of-way closure and how much space the staging area(s) shall utilize
X	Notification to business/residents who will be impacted by event of the day the application will be heard by Board of Public Works (Example attached)
	Using a City park or trail? Parks & Recreation Department Approved Special Use Permit XNot applicable
Z X	A properly executed Maintenance of Traffic Plan *Determine if No Parking Signs will be required * Determine if Barricades will be required
	For larger events, you may be required to submit an Emergency Management Plan for review by the Bloomington Fire and Police Departments
M	Noise Permit application Not applicable
	Beer & Wine Permit Not applicable

X	Certificate of Liability Insurance listing the City of Bloomington as additional insured. For an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. DEADLINE : To Public Works no later than five days before event.					
	For every 500 attendees who will be present at your event at any one time, you must hire one uniformed off-duty Indiana Certified Police Officer as security (however, the City reserves the right to request one officer be present for every 250 attendees, depending on the nature of the particular event)					
	If Food Vendors are part of Festival (Monroe County Health Department Licenses & Fire Inspection)					
X	Waste and Recycling Plan if more than 100 participates (template attached)					
6. CHECKI	.IST					
M	Determine what type of Event					
M	Complete application with attachment Detailed Map Proof of notification to businesses/residents (copy of letter/flyer/other) Maintenance of Traffic Plan Noise Permit Application (if applicable) Certificate of Liability Insurance Secured a Parade Permit from Bloomington Police Department (if applicable) Beer and Wine Permit (if applicable) Waste and Recycling Plan (if applicable) Waste and Recycling Plan (if applicable)					
	Date Application will be heard by Board of Public Works (contact ESD at 812-349-3418 for date)					
	Approved Parks Special Use Permit (if using a City Park)					

NOTE: The City of Bloomington reserves the right to cancel any event at any time should such event begin to threaten public safety or if an emergency necessitates cancellation.

☐ Contacted DPW at 812-349-3410 to request and schedule No Parking Signs

Fire Inspection)
No Parking Signs

If using food vendors assure proper paperwork in order (Monroe County Health Department Licenses &

☐ Board of Public Works approved events are provided by Department of Public Works (DPW)

Amusement and Entertainment Permits: The Indiana Department of Homeland Security requires that certain events be inspected by a representative from the Department of Homeland Security. Amusement and Entertainment permits are required for events at a variety of locations and venues. Some of the most common kinds of places that require amusement entertainment permits are places where the following kinds of events occur: concerts and other shows, amusement rides, movies, dances, and bowling. It is your responsibility to contact the Department of Homeland Security to see if your event requires an Amusement and Entertainment Permit and an inspection. The Department of Homeland Security can be reached at (317)232-2222 or online at https://www.in.gov/dhs/2795.htm.



NOISE PERMIT

City of Bloomington 401 N. Morton St., Suite 120 Bloomington, Indiana 47404 812-349-3410

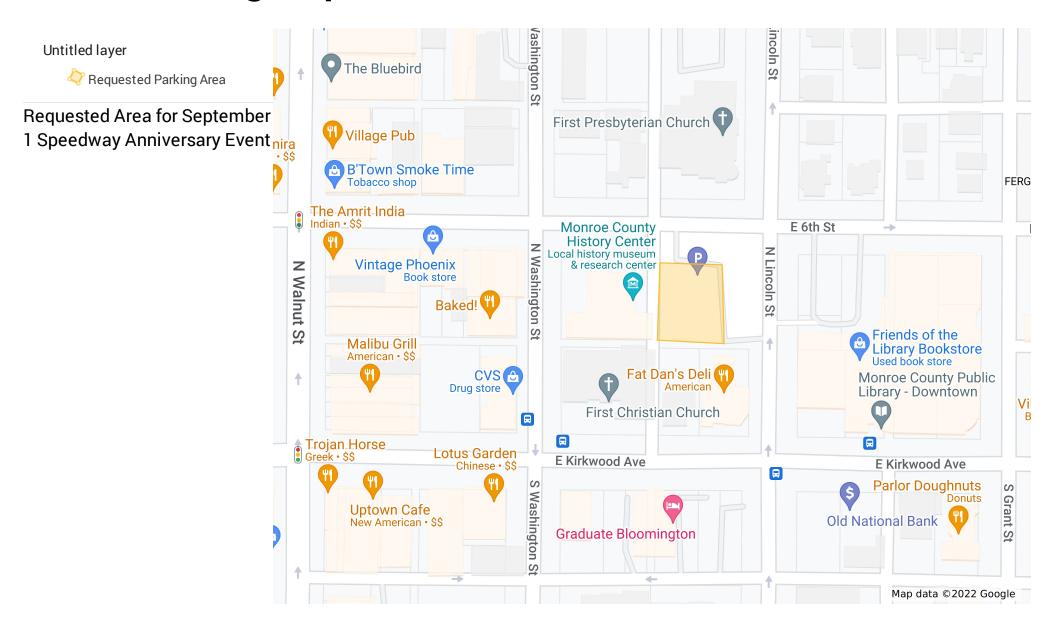
Application and Permit Information

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

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

Contact April Rosen	bergei	r with any questions: (812) 349-3410 or april.rosenberger@bloomington.in.gov					
Event and Noise	e Info	ormation					
Name of Event:		Speedway Centennia	al Anniversary				
Location of Event:		202 E6thStreet, Bloor	mington,IN 47	408			
Date of Event:		September 1,2022					Start: 6:00pm
Calendar Day of We	ek:	Thursday				Time of Event:	End: 8:00pm
Description of Even	t:	The Bloomington Speedway celebrates 100 years of community history in 2022. The Monroe County History Center will host a family-friendly event featuring drivers and historic cars from local collectors on September 1.				22. rivers	
Source of Noise:		☐ Live Band ☐ Instrument ☐ Loudspeaker ☐ Will Noise be Amplifie ☐ Yes ☐ No				Will Noise be Amplified? ☐ No	
Is this a Charity Eve	ent?	☐ Yes 【XNo If Yes, to Benefit:					
Applicant Inform	matic	on					
Name:	Andre	eaHadsell					
Organization:	Monre	oeCounty History Center				Title:	Education Manager
Physical Address:	202 E	6thStreet, Bloomington	n,IN 47408				
Email Address:	educa	ation@monroehistory.c	org			Phone Number:	812-332-2517
Signature:	L	L WILL				Date:	April 29,2022
FOR CITY OF BL	OOM	IINGTON USE	ONLY				
	desi	gnee of the Ma	yor of th	e City o			le, We, the Board of eby waive the City
Kyla Cox Deckard, President				llingsworth, Vice-l	President		
Date				Elizabeth Karon, Secretary			

MCHC_Parking Map



RESOLUTION 2022-47 SPEEDWAY CENTENNIAL ANNIVERSARY 100 YEARS OF COMMUNITY

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

WHEREAS, the Monroe County History Center is sponsoring the Speedway Centennial Anniversary on Thursday, September 01, 2022 and

WHEREAS, the Monroe County History Center has requested that the Board of Public Works allow them to use Municipal Parking Lot #5 to host a family friendly event featuring drivers and historic cars from local collectors for the general public; and

WHEREAS, the Monroe County History Center has agreed to provide the City with a Certificate of Insurance naming the City of Bloomington as additionally insured.

NOW, THEREFORE, BE IT RESOLVED that the City of Bloomington approves the event herein described, provided that:

- 1. The City of Bloomington Board of Public Works agrees that Municipal Parking Lot #5 may be utilized on Thursday, September 01, 2022
- 2. Monroe County History Center agrees to obtain and place at its own expense barricades and signage required. Monroe County History Center agrees to close Municipal Parking Lot #5 not before 3:00 p.m. on Thursday, September 01, 2022 and to remove barricades and signage by 9:00 p.m. on Thursday, September 01, 2022.
- 3. The sponsors will be responsible for removing all trash, picking up litter including cigarette butts from the street and sidewalks within these blocks, cleaning any grease or other food products from the pavement and sidewalks, and removing any signs posted as part of the event. Cleanup shall be completed by 8:00 p.m. on Thursday, September 01, 2022.
- 4. By granting permission to utilize City property to facilitate this activity, the Board of Works also waives the City Noise Ordinance in accordance with Section 14.09.070 of the Bloomington Municipal Code, and therefore amplified sound and music may be played during the hours of the event.
- 5. The Board of Public Works herein declares the above-described and approved event to be a Special Event for purposes of Chapters 4.16, 4.28, and 4.30 of the Bloomington Municipal Code.
- 6. Monroe County History Center shall be responsible for notifying the general public, public transit and public safety agencies of the parking lot closing in advance by notice at least 48 hours in advance.

law, Monroe County History Cemembers, successors and assign Bloomington, the Board, and the Board from any and all claims, arising out of bodily injury or proccur as a result of the use of sa	ne City's property and to the fullest extent permitted by enter, for itself, its officers, directors, agents, employees, s, does hereby indemnify and hold harmless the City of e offices, agents and employees of the City and the demands, damages, costs, expenses or other liability roperty damage (collectively "Claims") which may id property, including, but not limited to, any claim or whether or not sounding in tort or contract.
	signing this agreement, represents that he/she has been on of the entity to enter into the agreement and has
ADOPTED THIS 5 th DAY OF JULY, 2	2022.
BOARD OF PUBLIC WORKS:	MONROE COUNTY HISTORY CENTER
Kyla Cox Deckard, President	Signature
Jennifer Lloyd, Vice President	Printed Name
Elizabeth Karon, Secretary	Position
Date	Date



Board of Public Works Staff Report

Project/Event: Mother Hubbard's Garden Gala

Petitioner/Representative: Megan Betz Staff Representative: April Rosenberger

Meeting Date: July 05, 2022

Mother Hubbard's Cupboard will be hosting their annual Garden Gala fundraiser in their own parking lot and garden. The Gala will include a catered snacks, a bar, raffle, live music and garden tours. The Gala will begin at 6:30 p.m. and end at 9:00 p.m. on Saturday, September 03, 2022.



NOISE PERMIT

City of Bloomington 401 N. Morton St., Suite 120 Bloomington, Indiana 47404 812-349-3410

Application and Permit Information

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

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

Contact April Rosenberger with any questions: (812) 349-3410 or april.rosenberger@bloomington.in.gov

Event and Noise Inf	ormation
Name of Event:	Garden Gala
Location of Event: Date of Event: Calendar Day of Week: Description of Event:	1100 W. Allen St. Bloomington, IN 47403 09/03/2022 Saturday Time of Event: End: 9:00 pm The gala is our annual fundratur, hosted in our parking lot & garden. Event includes catered snacks, a bar, a rafth, music, & garden tours.
Source of Noise:	Live Band Instrument Loudspeaker Will Noise be Amplified?
Is this a Charity Event?	Yes No If Yes, to Benefit: Mother Hubbards Cupboard
Applicant Informati	
Name: iv	gan Betz
Organization: Moi	ther Hubbard's Cupboard Title: CEO President
Physical Address: 00	W. Allen St. Bloomington, IN 47403
Email Address: (e)	(mhc food pantry-org Phone Number: 812 - 339 - 5887
Signature:	nexB Date: 05/25/2022
FOR CITY OF BLOO	MINSTON USE ONLY
Public Works, the des	ection 14.09.070 of the Bloomington Municipal Code, We, the Board of ignee of the Mayor of the City of Bloomington, hereby waive the City he above mentioned event. ORKS
Kyla Cox Deckard, Presid	
Date	Elizabeth Karon, Secretary

REGISTER OF PAYROLL CLAIMS

Board: Board of Public Works Claim Register

				Bank	
Date:	Type of Claim	FUND	Description	Transfer	Amount
7/1/2022	Payroll				489,619.87
					489,619.87
		ALLOWANC	E OF CLAIMS		
total amount o	1		<u> </u>	s are hereby allowed in the	
Kyla Cox Deck	kard, President	Jennifer Lloyd,	Vice President	Elizabeth Karon, Sec	cretary
	y that each of the above ith IC 5-11-10-1.6.	e listed voucher(s) o	or bill(s) is (are) true and	correct and I have audited	same in
		Fiscal Officer_			



Placeholder:

Staff Report for Resolution 2022-42;

Meridiam Fiber Project Agreement will be available by the

July 05, 2022 BPW Meeting

CITY OF BLOOMINGTON BOARD OF PUBLIC WORKS RESOLUTION 2022-42

Resolution in Support of the City's Plan to Bring Open-Access High-Speed Fiber Internet to Nearly Every Resident and Neighborhood within the City

WHEREAS, the Board of Public Works is empowered by Indiana Code § 36-9-6-2 to supervise city streets and rights of way; and

WHEREAS, pursuant to IC § 36-9-6-3, the Board of Public Works has custody of and may maintain all real and personal property of the city;

WHEREAS, the City neither desires nor intends to vacate any of this right of way; and

WHEREAS, since 2016 Bloomington has sought a partner to build and operate a city-wide Fiber To the Premises (FTTP) system operating on open access and net neutrality principles and to work with the City to bridge the "digital divide" and bring high-speed internet to virtually every neighborhood and resident in the City, including low-income households; and

WHEREAS, Meridiam SAS, a benefit corporation, is a public infrastructure developer and manager specializing in transportation, energy transformation, and fiber infrastructure; and

WHEREAS, Meridiam has pledged to invest more than Fifty Million Dollars (\$50,000,000) in Bloomington to build a city-wide FTTP network to supply high-speed fiber-based internet service to City residents, to operate the network according to open access and net neutrality principles, and to partner with the City in a robust Digital Equity Program that will provide income-qualifying residents with cost-free high-speed internet access; and

WHEREAS, Meridiam has established a Bloomington-based company, Hoosier Networks, LLC, to own the network and contract with a third-party internet service provider, which will supply internet service to City residents in accordance with a Master Development Agreement (MDA) executed by the City and Hoosier Networks, a copy of which is attached hereto; and

WHEREAS, Section 2.1.3 of the MDA provides that after the City and Hoosier Networks LLC agree on the locations of the new FTTH network, they will use their best efforts to enter into a Master Easement Agreement and Master License Agreement providing Hoosier Networks LLC the necessary access to public right-of-way and City Conduit to complete the network installation; and

WHEREAS, the parties have agreed on a map indicating the locations of the new FTTH network, which is attached to and incorporated into the MDA; and

WHEREAS, Section 2.1.3 of the MDA identifies obtaining necessary Board of Public Works approvals as part of the parties' "best efforts" to enter into the Master Easement and Master License Agreements; and

WHEREAS, the proposed Master Easement Agreement, which is attached to the MDA, sets out general terms and conditions for accessing public right-of-way that would give Hoosier Networks LLC access to public right-of-way on terms and conditions that are equivalent to those governing other telecommunications providers, including the need to submit individual permit applications to perform specific installation work

proposed in the right-of-way; and

WHEREAS the City has roughly seventeen (17) miles of unused Conduit that may be used in installing part of the fiber optic network, and may add more conduit in future; and

WHEREAS, pursuant to Resolution 03-28 of the Common Council of the City of Bloomington, the Bloomington Digital Underground Advisory Committee (BDUAC) advises the City on management of the BOU, related City telecommunications and IT infrastructure investments, and strategic IT initiatives; and

WHEREAS, on June 16, 2022, the BDUAC passed Resolution 2022-01 supporting "the use by Hoosier Networks, LLC, of the roughly seventeen (17) miles of unused Conduit in this project as well as access by Hoosier Networks, LLC to additional conduit the City may add in future that the City is not using itself and makes available for others' use in accordance with Resolution 03-28" passed by the Common Council in 2003; and

WHEREAS, the terms of the proposed Master License Agreement provide for access to City Conduit on terms consistent with Resolution 03-28.

NOW, THEREFORE, BE IT RESOLVED THAT:

- 1. The City of Bloomington Board of Public Works supports the City's and Meridiam's efforts to establish a high-speed open-access fiber internet network for the benefit of nearly all City of Bloomington residents.
- 2. The City of Bloomington Board of Public Works approves Hoosier Networks LLC's access to the public right of way in connection with building and operating its network and in accordance with the terms of the attached Master Easement Agreement and all individual permits obtained pursuant to the attached MDA and Master Easement Agreement.
- 3. The City of Bloomington Board of Public Works approves Hoosier Networks LLC's use of the roughly seventeen (17) miles of unused City conduit in connection with building and operating its network and in accordance with the terms of the attached Master License Agreement.

ADOPTED T	HIS	DAY OF	, 2022.
BOARD OF PUBLIC	WORKS		
Kyla Cox Deckard, Pr	resident		
Jennifer Lloyd, Vice	President		
Elizabeth Karon, Secr	retary		

MASTER DEVELOPMENT AGREEMENT

This Master Development Agreement is made this 22nd day of June, 2022 (the "Effective Date"), between the City of Bloomington, Indiana (the "City") and Hoosier Networks, LLC, a Delaware limited liability company ("Developer"), each sometimes referred to as a "Party" and collectively referred to as the "Parties" (the "Agreement").

RECITALS

- WHEREAS, Developer and its Affiliates (collectively, "Meridiam") have expertise in the development and construction of fiber-to-the-home ("FTTH") networks;
- WHEREAS, Meridiam's core investment philosophy includes achieving the United Nations Sustainable Development Goals (UN-SDG), and the Parties desire to achieve such goals as part of the development of the Project (as defined below);
- WHEREAS, the City has been actively seeking to find an experienced and financially stable commercial partner for a public/private partnership to construct, maintain and operate an FTTH network within the City that would provide substantial community coverage including Income-qualifying Resident units (the "Project");
- WHEREAS, Developer desires to work with the City to construct, maintain and operate an end-to-end fiber network that serves the community on a long-term duration that matches or exceeds the thirty (30) year investment horizon of Meridiam;
- WHEREAS, the City has established an ongoing Digital Equity initiative to support, among other things, equitable access to broadband infrastructure, and Meridiam is uniquely positioned to further the City's Digital Equity goals;
- WHEREAS, Developer has agreed that it will require, among other things, the Primary ISP(s) (as defined below) to offer the services described in the Agreement, including availability of 1Gbps service with protection for network neutrality;
- WHEREAS, Developer has agreed that the System (as defined below) will be operated as an Open-Access Network (as defined below) over the life of the Project, subject to the initial exclusivity period, and the System will be capable of providing at least 1 Gbps services;
 - WHEREAS, City desires to enter into an agreement with Developer for the Project;
- WHEREAS, the City has agreed to assist Developer in gaining access to the Public ROW (as defined below) for purposes of installing the Developer's fiber network in the Public ROW;
- WHEREAS, the City has agreed to grant to Developer access to the City Conduit (as defined below) for purposes of installing the Developer's fiber network in the City Conduit;
- WHEREAS, the City has agreed to assist Developer with access and easements to install and operate the PoP, Huts or Cabinets (each as defined below) for Developer's fiber network;

WHEREAS, in conjunction with this Agreement and the implementation of Developer's fiber network in the City, the Parties intend to also enter into the Ancillary Agreements as defined below; and

WHEREAS, the Parties agree that it is of mutual benefit for the Parties to enter into this Agreement relating to the FTTH network and certain other matters described herein including the commitments of each Party with respect thereto;

NOW, THEREFORE, in consideration of the mutual obligations of the Parties, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties covenant and agree as follows:

SECTION 1

Definition of Terms

1.1 Terms.

For the purpose of this Agreement, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below.

- "Agreement" means this written contract between the City and Developer and any renewals, extensions or amendments the Parties make to it.
- "Affiliate" means any entity owned or controlled by Developer, owning or controlling Developer or under common ownership or control with Developer.
- "Ancillary Agreements" mean the Master License Agreement and the Master Easement Agreement between the City and Developer, and, if necessary, a facilities easement agreement and any such other agreements and instruments necessary to the implementation of the Project.
- "Applicable Law" means any applicable federal, state, City, or municipal statute, code, rule, regulation, treaty having the force of law, judgment, common or customary law or similar governmental restriction or directive by any Governmental Authority, in each case, as amended, re-enacted or replaced from time to time.
- "Block" means its commonly understood meaning of a group of Homes, Commercial Properties or Government Properties separated by streets and alleys.
- "Bloomington Network" has the meaning assigned to such term in Section 10.1.2 (Transfer of Agreement and/or Project; Developer Transfer).
- "Boundary" or "Boundaries" means the present corporate boundaries of the City as of the Effective Date and includes all locations designated by the City for annexation in the 2017-2022 process as reflected on the Boundary Map attached as Exhibit E and more fully described in Section 4.3 (Boundary Revisions). Any further changes to the City's corporate boundaries by annexation or other legal means that occur during the term of this Agreement will be deemed to be

- within the Boundary as mutually agreed by the Parties pursuant to Section 4.3 (Boundary Revisions).
- "City" means the City of Bloomington, Indiana, including its officers, employees, and agents or its lawful successor, transferee, designee, or assignee.
- "City Conduit" means the proprietary City-owned telecommunications conduit presently in place and as may be added by the City within the Boundary, as more fully described on Appendix 2 to this Agreement.
- "City Indemnitees" has the meaning assigned to such term in Section 8.5 (Indemnification).
- "Commencement Date" has the meaning assigned to such term in Section 2.2 (Term of Agreement).
- "Commercial Property" means the real property that is improved with, or consisting of, a building that is intended for commercial use, but in any case, excluding Homes, MDUs and Government Property.
- "Confidential Information" has the meaning assigned to such term in Section 5.3.1 (Treatment of Confidential and Proprietary Information).
- "Construction Commencement Date" has the meaning assigned to such term in Section 4.1 (Construction of the System).
 - "Construction Partner" means Atlantic Engineering Group LLC.
- "Core and Trunk" means the fiber optic cable emanating from the PoP to the Local Network Access Point for purposes of making a Drop to the Premise Wall.
 - "Developer" has the meaning assigned to such term in the introductory paragraph hereof.
- "Developer Conduit" means the proprietary Developer-owned conduit that shall be installed by Developer throughout the Public ROW as part of the FTTH network, and which may be made up of a combination of wires, cables, ducts, conduits, connectors, vaults, manholes, manhole covers, pedestals, appliances, splitters, Pops, Huts, attachments, and other related property or equipment.
- "Developer Default" has the meaning assigned to such term in Section 8.1 (Developer Default).
- "Developer Indemnitees" has the meaning assigned to such term in Section 8.5 (Indemnification).
- "Developer General Liability Insurance" has the meaning assigned to such term in Section 6.1.1 (Developer Liability Insurance).
 - "Digital Equity" means the fair distribution of the internet and modern technology

throughout society. Factors that contribute to digital equity include access to the internet, and the quality and affordability of internet service; the availability of quality computing devices; and one's training, comfort, and ability to effectively use computers and the internet. A more familiar term, digital divide, refers to societal disparities in digital equity. Digital equity disparities often mirror other societal equity gaps such as those related to income, race, age, gender, and geographic location, among others. Action taken to mitigate the impacts of digital equity disparities is often referred to as digital inclusion.

- "Digital Equity Fund" has the meaning assigned to such term in Section 7.6.2 (Digital Equity Program; Obligations of the Parties).
- "Digital Equity Program" means the joint initiative between the parties to improve Digital Equity in Bloomington.
- "Drop" means the fiber optic cable run from the Local Network Access Point located at the Core and Trunk to the Premise Wall.
- "Effective Date" has the meaning assigned to such term in the introductory paragraph hereof.
- "Extraordinary Force Majeure Event" has the meaning assigned to such term in Section 10.2 (Force Majeure).
- "FON" means Developer's fiber optic network built to enable multi gigabit technologies and includes all passive and electronic equipment utilized to deploy a distributed fiber network within the Boundary.
 - "FTTH" has the meaning assigned to such term in the recitals hereof.
- "Government Property" means property owned or leased by the City or Governmental Authority, including material, equipment, special tooling, special test equipment, and real property. Government Property does not include intellectual property and software.
- "Governmental Authority" means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government including, without limitation, any governmental or quasi-governmental entity.
- "Home" means a single-family dwelling, or a single dwelling unit located within a MDU located within the Boundary.
- "Huts" means enclosures, including, but not limited to, active cabinets and passive cabinets, placed within the Public ROW for the protection of active and passive equipment for the provision of Service throughout the System.
- "Income-qualifying Residents" means residents within the Boundary of the City of Bloomington described in Section 7.6.1 (Digital Equity Program; Eligibility).
 - "Local Network Access Point" means a physical connection point, whether located inside

or outside any Premise, infrastructure, or throughout the Public ROW (including, without limitation, manholes, handholes, pedestals, flowerpots and other end user access points) that enables Service Providers to access the necessary network support infrastructure to be able to provide network Services to Subscribers.

"Meridiam" has the meaning assigned to such term in the recitals hereof.

"Multi-tenant Dwelling Unit" or "MDU" means residential premises such as apartment buildings, condominium buildings, or cooperatives that are occupied by multiple dwelling units, as defined by the Federal Communications Commission, located within the Boundary.

"Network Neutrality" or "net neutrality" is the principle that Internet service providers ("ISPs") must treat all Internet communications including encrypted communications equally, not block access to lawful sites, services and content, and not offer paid prioritization or otherwise prioritize, discriminate or charge differently based on user, content, website, platform, application, type of equipment, source address, destination address, or method of communication.

"Non-System Conduit" has the meaning assigned to such term in Section 7.1.1 (City Conduit Maintenance).

"Open Access Network" means a telecommunications network architecture whereby the owner or the manager of the network may not supply services on / access to the network on an exclusive basis. It is a wholesale infrastructure network available for use by other unrelated entities. Some open access networks deploy with a temporary exclusivity period for an initial ISP partner to ensure the financial viability of the infrastructure.

"Optical Network Terminal" or "ONT" means the device and its uninterruptible power supply that is installed on or in the Subscriber's Home, MDU, Commercial Property or Government Property, as may be applicable in each case, and which is necessary for the delivery of Service from the fiber optic network, and is powered by the Subscriber's working electrical service.

"Party" or "Parties" have the meaning assigned to such terms in the introductory paragraph hereof.

"Permitted Transfer" has the meaning assigned to such term in Section 10.1.2.1 (Transfer of Agreement and/or Project; Restriction).

"Permitted Transferee" has the meaning assigned to such term in Section 10.1.2.1 (Transfer of Agreement and/or Project; Restriction).

"Person" means any natural person or any association, firm, partnership, joint venture, corporation, limited liability company, or other legally recognized entity, whether for-profit or notfor profit, but shall not mean the City or Developer.

"PoP" means point of presence, which is the physical central location of the System containing the equipment such as the carrier routes and optical light terminals, necessary for the operation of the System and from which the fiber optic cables for the System emanate.

- "Potential Purchaser List" has the meaning assigned to such term in Section 10.1.2.2 (Transfer of Agreement and/or Project; Veto Right).
- "Premise" means a Home, MDU, Commercial Property or Government Property, as applicable, located within the Boundary.
- "Premise Wall" means the exterior of an outside wall of a Premise to which the fiber optic cable will be terminated.
- "Primary ISP" has the meaning assigned to such term in Section 7.4 (Developer Requirements for Primary ISP Service).
 - "Project" has the meaning assigned to such term in the recitals hereof.
- "Property Tax Relief" means an arrangement to be approved by the Common Council of the City of Bloomington and any other relevant Governmental Authority (and approved by Developer) that will effectively reduce certain personal property taxes owed by Developer in connection with installation and operation of the System.
- "Public ROW" means the surface of, and the space below, public street, highway, bridge, alley, boulevard, public way, or other public right of way including, but not limited to, public utility easements, dedicated utility strips, or rights of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter granted or dedicated to or under the jurisdiction of the City in the Boundary. Public ROW shall also mean any easement now or hereafter held by the City within the Boundary for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall exclude other easements or rights of way including, but not limited to prescriptive easements.
- "Relevant Permit" means each authorization, license, or permit that is necessary or desirable under Applicable Law for Developer to carry out installation of the System in the manner prescribed in this Agreement and the Ancillary Agreements, which shall include, but not be limited to, City, county, state, and federal permits, encroachments and/or lease agreements for specified areas within the Public ROW and/or the City Conduit.
- "Secondary ISP" has the meaning assigned to such term in Section 7.5 (Developer Requirements of Secondary ISPs).
- "Service" means internet, voice, data, and video service or any combination thereof, provided by a Service Provider over the System.
- "Service Provider" means any Person that provides internet, cable, voice, telephone, video or other services over the System. Developer is not a Service Provider.
- "Service Provider General Liability Insurance" has the meaning assigned to such term in Section 6.1.1 (*Developer Liability Insurance*).
- "SPOC" has the meaning assigned to such term in Section 7.3.1 (a) (Obligations of the City).

"Subscriber" means a Home, MDU, Commercial Property or Government Property, as applicable, that has entered into an agreement to receive Service.

"Substantial Completion" means the point at which Developer has achieved the level of completion set forth in Section 4.4 (Achievement of Substantial Completion).

"System" means all parts of the FON system including, but not limited to, Developer's entire FON system and Developer's Conduit that will allow the delivery of internet, voice, video and data signals to Subscriber premises, with the fiber optic cable to be laid from the PoP through the Public ROW and to the Premise Wall and terminating at the Optical Network Terminal installed at the Premise location.

"System Conduit" has the meaning assigned to such term in Section 7.1.1 (City Conduit Maintenance).

"TIF" has the meaning assigned to such term in Section 10.12 (Property Tax Relief).

"Transfer" has the meaning assigned to such term in 10.1.2 (Transfer of Agreement and/or Project; Developer Transfer).

SECTION 2 Grant of Authority

2.1 Grant of Rights.

- 2.1.1 <u>Developer Rights to Public ROW.</u> Pursuant to and as more specifically described in the Ancillary Agreements and subject to any required approval by the Board of Public Works or other Governmental Authority, the City will grant and convey to Developer the right, access and authority to erect, install, construct, repair, replace, reconstruct, maintain, operate or retain in, on, over, under, upon, across, or along any Public ROW, the System including, but not limited to, wires, cables, ducts, conduits, connectors, vaults, manholes, manhole covers, pedestals, appliances, splitters, PoPs, Huts, attachments, and other related property or equipment as may be reasonably necessary or appurtenant to the System, within the Boundary, and all extensions and additions thereto.
- 2.1.2 <u>Developer Rights to City Conduit</u>. Pursuant to and as more specifically described in the Ancillary Agreements and subject to any required approval by the Board of Public Works or other Governmental Authority, the City warrants that the City Conduit is available and will be available to Developer for purposes of installing the System, and therefore grants and conveys to Developer (i) the right to install the System within a specified section of the City Conduit and (ii) the right to access and use certain specified City owned, managed or abandoned telecommunications infrastructure with respect to communications related uses. In the case of both (i) and (ii) Developer's rights are exclusive unless the section of the City Conduit and associated telecommunications infrastructure can be simultaneously used by another entity without materially affecting the functionality and operation of the System and the Developer and any such entity can agree on sharing costs and expenses for their pro-rata use of the City Conduit and infrastructure.

Any and all costs associated with installation and maintenance of the System within the City Conduit or the use of the other assets shall be borne by Developer (and any other entity using such items as referenced above).

2.1.3 Ancillary Agreements. After the Parties agree on the locations of the System, the Parties agree to use best efforts to promptly enter into a Master Easement Agreement in the form attached hereto as Exhibit A, which sets forth the rights granted to Developer to install the System and Huts within the Public ROW, the Master License Agreement in the form attached hereto as Exhibit B, and, if necessary, a facilities easement agreement that sets forth the rights granted to Developer for the facilities to be located on or within property the City owns. To the extent that any or all Ancillary Agreements may require the approval of the Board of Public Works, the Utilities Service Board, the City Council, or certain other Governmental Authorities, the Parties agree to promptly execute and promptly bring said Ancillary Agreements to the required Boards and Commissions once they have agreed on the locations of the System. These Ancillary Agreements shall be incorporated into this Agreement and made a part hereof and shall be recorded with the Monroe County's Recorder's Office.

2.2 Term of Agreement.

The term of the Agreement shall commence on the Effective Date of this Agreement (the "Commencement Date") and expire at midnight on the date that is thirty (30) years from the date on which Property Tax Relief is effective, unless and until terminated earlier pursuant to this Agreement. Developer shall have the option to renew this Agreement for succeeding terms of up to thirty (30) years each, provided that (a) there is no uncured breach by Developer of a material term of this Agreement on the effective date of the new term, (b) neither party gives written notice to the other at least ninety (90) days prior to the expiration of any term of its intention not to renew this Agreement, and (c) Developer agrees to provide equivalent assistance to Income-qualifying Residents as provided during the original term, and to require the Primary ISP or any ISPs then operating on the network to do the same given then-available subsidies or benefits programs. If the term of this Agreement is extended for any additional term, pursuant to the foregoing, this Agreement shall continue in full force and effect during such additional term.

2.3 Non-Solicitation.

Subject to the terms of this Agreement, City will grant Developer the rights necessary to use agreed-upon City assets mutually determined by the Parties as essential for the Agreement. For the period following the Effective Date and through termination of this Agreement (including any renewals thereof), the City agrees and acknowledges that it will refrain from partnering with another FTTH infrastructure provider for the purpose of building a city-wide network that will operate under the principles established in this Agreement unless such other provider can meet, at a minimum, each of the material terms of this Agreement (including without limitation, any such new provider achieving (a) the Digital Equity goals set forth in Section 7.6, (b) the 85% pass-rate set forth in Section 4.4.1, and (c) a minimum of 1 Gbps connectivity speed at outset and mandatory system upgrades to ensure increases in speed above 1 Gbps to maintain the City's competitive edge as set forth in Sections 7.3.2(i) and 7.3.2(j)).

2.4 Costs, Fees, Expenses and other Charges.

Except as expressly set forth herein, each Party shall bear and be responsible for all of its own costs, fees, expenses and other charges incurred in executing and performing this Agreement. In furtherance and not limitation of the foregoing:

- (a) Developer shall, at its sole expense, obtain and maintain any and all business licenses required to operate within the City, the state where the City is located, and any other legally required business licenses.
- (b) Developer or its construction contractor or other equipment service providers, suppliers and installers shall, at their sole expense, obtain and maintain insurance on the FON and other components of the System, all as set forth in Section 6 (*Insurance*) of this Agreement;
- (c) Developer shall, at its sole expense, maintain the FON, Developer's Conduit and other components of the System in good working order; and
- (d) The City shall, at its sole expense, obtain and maintain general commercial liability insurance coverage on the City Conduit.

SECTION 3 The System

3.1 System Description.

System Installation. Developer agrees to install the System within the Boundary 3.1.1 using the Public ROW and the City Conduit, via aerial installation, and/or by constructing Developer's Conduit. The System shall use fiber optic cable emanating from the PoP to the Public ROW and from there to the Premise Wall terminating at the Optical Network Terminal installed at the Premise location. The Parties recognize that there is no agreed design or configuration of the actual location of the System within the Public ROW and that Developer shall have the right to determine the actual physical location of the fiber optic cable and equipment to, through, and from the Public ROW to the Premise Wall in accordance with the provisions of this Agreement and in compliance with all Applicable Law. Developer shall make the System available to all Premises presently located within the Boundary by providing Core and Trunk in the Public ROW past each Premise: provided, however, that, in the event Developer cannot install the System or other necessary equipment to pass that Premise or group of Premises for any of the following reasons, then Developer shall not be required to make the System available to such Premise or group of Premises: (a) a lack of a right to access and use the Public ROW and/or the City Conduit due to the City not possessing the right, title, interest or authority to permit Developer to use and occupy the Public ROW and/or the City Conduit; (b) a lack of access or right to access and use property; (c) Developer encountering geographical conditions in one or more passages of the Public ROW and/or the City Conduit that would cause installation costs using standard methods to be more than thirty percent (30%) greater than the average cost per Premise passed for the rest of the City using

such methods, or delay installation of the System by Developer for a period of more than ninety (90) days, as demonstrated through documentation provided by Developer to the City; (d) the approved utility space within the Public ROW and/or the City Conduit is full and therefore being unable to support System installation; (e) a Premise or group of Premises are Indiana University on-campus locations; (f) a Premise or group of Premises are locations currently served by multiple fiber providers; or (g) a Premise or group of Premises are government or university locations that are directly served by government or university fiber.

3.2 Permits and General Obligations.

By virtue of this Agreement, Developer may locate the System within the Boundary, subject to Relevant Permits or other forms of plan review and approval or authorization necessary to construct, install, operate, maintain, replace, reconstruct, or repair the System or any part thereof, during the term of this Agreement and any extensions. Without limiting the generality of the City obligations set forth in Section 7.3.1 (Obligations of the City), the City will inform Developer regarding the process of working with other agencies and authorities having relevant jurisdiction to secure such Relevant Permits, licenses, agreements or other forms of approval to cross and/or occupy such rights of way, or to utilize its and their existing infrastructure to support the construction and installation of the System. Construction and installation of the System shall be performed in a safe manner using materials of good and durable quality. All transmission and distribution structures and equipment installed by Developer for use in the System in accordance with the terms and conditions of this Agreement shall be located so as to avoid interference with the proper use of the Public ROW and/or the City Conduit and the rights of property owners who own property that adjoin any such Public ROW.

3.3 Developer Support for Permitting and Inspection Process

To reduce delays in obtaining necessary permits and approvals that otherwise may result from limited City resources to process applications, Developer has agreed (a) to place \$150,000 per year for two (2) years in an escrow account for this Project that the City may draw on during the term of this Agreement to pay for the services of (i) an Engineering Department Permit Administrator and (ii) a Field Inspector as may be required at the sole discretion of the City, and (b) to pay permit fees as assessed by the relevant agencies and authorities. As with other communications providers, Developer may request permit fee waivers, exceptions or reductions for this Project and the City agrees to use its best efforts to facilitate any such requests. The duties of the Engineering Department Permit Administrator on this Project will be as follows: review permit applications, confirm validity of bond and insurance, coordinate with other City departments on planned work in relevant areas including open trenching and paving operations, coordinating with field inspector(s), prepare reports for the Board of Public Works, attend Board work sessions and meetings, approve permits, enter approved permits into tracking system, receive permit fees, respond to public questions and reports, process formal warnings and violations, and coordinate GIS and as-builts. The duties of the Field Inspector on this Project will be as follows: conduct site visits for pre-construction photos and work plan evaluation, conduct pre-construction site meetings, conduct initial and daily MOT checks, inspect subgrade prior to placement of concrete or asphalt, inspect completed project, re-inspect as needed to address issues that have arisen, conduct onsite meetings to address residents' concerns, and coordinate with utilities and City departments.

SECTION 4 Construction

4.1 Construction of the System

The City acknowledges that Developer may employ an independent contractor to construct and/or install the System. Construction of the System will commence on or before the date which is twelve (12) months after the date the Common Council of the City finally approves Property Tax Relief (the "Construction Commencement Date"). Developer will provide the City with its build schedule and System location information by no later than one-hundred and twenty (120) days prior to the Construction Commencement Date. Developer will keep the City informed on the progress of this build schedule at least at monthly intervals unless the Parties mutually agree otherwise and shall timely inform the City in the event where such build schedule must be adjusted by more than five (5%) percent.

- 4.1.1 Developer intends to use varying construction techniques for the System construction and deployment, which may include, but are not limited to, any of the following:
 - i. Traditional open trench construction;
 - Directional boring;
 - ii. Fiber optic cable placed in the City Conduit;
 - iii. Fiber optic cable placed in Developer's Conduit;
 - iv. Aerial; and/or
 - v. Techniques ancillary to or related to the foregoing.

The City agrees to work cooperatively with Developer in reviewing all other potential construction methods. Developer Conduit shall generally be installed at a depth of 3 feet or greater, but no shallower than 2 feet in depth. The parties agree, however, that micro-trenching and nanotrenching techniques shall not be used in this Project.

- 4.2 <u>Subscriber Connections</u>; <u>Fiber to the Premise Wall</u>. The System will provide a terminated fiber to Premises, along the existing utility route receiving a Drop via a Drop from the Core and Trunk to the Premise Wall in a manner to be determined by Developer, which shall be consistent with local requirements at all times. The location and the method of the Drop to the Premise Wall will vary depending on the circumstances of the Subscriber location.
 - 4.3 **Boundary Revisions**. The Parties agree and acknowledge that changes to the City's

corporate boundaries by annexation or other legal means may occur during the term of this Agreement. As reflected in the Definition of "Boundary" or "Boundaries" above, Developer shall include in the definition of the current Boundary for the purposes of this Project, locations designated by the City for annexation in the 2017-2022 process as reflected on the Boundary Map attached as Exhibit "E". Developer shall use all commercially reasonable efforts to include any further new locations within the definition of the Boundary, upon mutual agreement of the Parties, within twelve (12) months after the City provides written notice to Developer of the change of the Boundary.

4.4 Achievement of Substantial Completion and Order of Provision of ISP Service.

- 4.4.1 <u>Basic Percentage of Premises Passed to Achieve Substantial Completion.</u>
 Developer shall be deemed to achieve Substantial Completion of the System when: (a) the Core and Trunk of the System has been installed such that it passes 85% of the Premises (as defined in Section 4.4.2 below) within the Boundary as of the Effective Date on an equitable basis without regard to economic or social status of any Subscriber; (b) splitters have been installed for each of the Blocks; and (c) each Block's optical time-domain reflectometer ("OTDR") measurements are consistent with the Telecommunications Industry Association (TIA) 455-8 series standard for the Measurement of Splice or Connector Loss and Reflectance.
- 4.4.2 <u>Premises Included/Excluded in Calculation of Substantial Completion.</u> For the purposes of calculating Substantial Completion, Premises shall include all residential locations within the Boundary as of the Effective Date except for locations that are excluded for reasons set out in subsections 3.1.1(a)-(g) of this Agreement. Each of the individual units in a MDU shall be considered, and counted, as an individual Premise separate from other units in the same MDU.
- 4.4.3 <u>Verification and Documentation of Substantial Completion.</u> Developer shall provide the City with documentation, in form and content reasonably satisfactory to the City, prepared by a professional independent third party knowledgeable with FTTH system design and functionality, verifying that Developer has achieved Substantial Completion.
- 4.4.4 Order of Provision of ISP Service. The Parties agree that ISP Service shall be provided over the System to areas within the Boundary in the following order: first, all areas within the City's corporate limits as of the Effective Date of this Agreement and any areas outside the corporate limits that are necessary to facilitate completion of the System within those corporate limits; and second, all areas designated by the City for annexation in the 2017-2022 process, whether or not the areas are ultimately annexed, and any areas outside the areas designated for annexation that are necessary to facilitate completion of the System within those areas. The Parties further agree that this subsection does not affect Developer's ability to simultaneously pursue projects outside the Boundary as defined in Section 1.1; however, the pursuit of such other projects shall not affect the timely provision of ISP Service to areas within the Boundary under this Agreement.
- 4.4.5 <u>Timing of Substantial Completion</u>. Developer shall use its best efforts to achieve Substantial Completion within thirty-six (36) months from the Construction Commencement Date.

Oversight and Regulation by City

5.1 Oversight of Construction.

In accordance with Applicable Law, the City shall have the right to oversee and inspect the construction of the System in the Public ROW. While construction of the System is underway, Developer shall report its progress to the Bloomington Digital Underground Advisory Committee in a public meeting at least once every three months and shall provide status updates on progress to internal City staff in a meeting at least once every month. Developer agrees to provide the City with information on a timely basis about the System construction activities such as a weekly written summary and access to System management systems upon request. Developer agrees to provide the City with access to the Construction Partner's live dashboard/reports on the Project, and to coordinate with appropriate City personnel regarding inspections of completed segments of the Project.

5.2 Compliance With Applicable Laws.

Developer and the City shall, at all times during the life of this Agreement, be subject to and comply in all material respects with all Applicable Laws.

5.3 Proprietary Information and Assignment.

Treatment of Confidential and Proprietary Information. Subject to 5.3.1 Applicable Law, the Parties agree that, without the prior written consent of each other Party, all information regarding the System, including, without limitation, plans, drawings, designs, conceptual renderings, cost information, specifications, photographs, reports, manuals, and other documents ("Confidential Information"), is proprietary and shall be kept confidential and shall not be disclosed to any Persons other than the Parties' authorized representatives, accountants, consultants, auditors, attorneys and other agents or authorized representatives. Each Party agrees to assert applicable exemptions to any request for Confidential Information and to promptly notify each other Party if such Party receives a request relating to the other Party or the System or any Confidential Information. Notwithstanding the foregoing, this obligation shall not apply to information that: (a) is already known or becomes known to the public other than by disclosure by the Party seeking to rely on this exception to the confidentiality obligation under this Agreement (for the avoidance of doubt, this includes information disclosed by Developer in connection with City inspections of the Project and with seeking approval from a Government Authority for activities undertaken in connection with this Agreement), (b) is or was independently developed by a Party without using any information subject to the confidentiality obligation under this Agreement, (c) was available to a Party prior to its disclosure to such Party by the other Party under this Agreement, (d) is obtained from a third party that is not known to be under a confidentiality obligation to the owner of the information, or (e) is required to be disclosed by, or in accordance with, legal procedure or Applicable Law or by action of any court of competent jurisdiction or any competent judicial, governmental, regulatory or supervisory authority; provided, that the disclosing Party shall provide the owner of the information reasonable prior notice of such disclosure and a reasonable opportunity to address or contest the disclosure. The obligations of the Parties under this Section shall terminate on the date that is five (5) years after the Effective Date of this Agreement.

SECTION 6 Insurance

6.1 Insurance.

- 6.1.1 <u>Developer Liability Insurance</u>. During the term of this Agreement, and as provided herein, thereafter, Developer or its contractors, subcontractors, co-employers, or labor leasing entities and suppliers shall, at its own cost and expense, procure and maintain the following minimum insurance coverages covering its obligations under this Agreement and naming the City as an additional insured or loss payee and containing a waiver of subrogation in favor of the City: comprehensive general liability insurance, automobile liability insurance, and workers' compensation insurance (the "Developer General Liability Insurance") with the respective limits set forth below, or greater if required by law, covering the construction of the System. Developer shall require the Service Provider to procure and maintain, at its own cost and expense, comprehensive general liability insurance (the "Service Provider General Liability Insurance") with the respective limits set forth, or greater if required by law.
 - 6.1.1.1 Type and Limits. Such policy or policies shall be commercial general liability insurance on a Standard CG000l Commercial General Liability form and on an occurrence basis insuring against claims for personal injury (including bodily injury and death), and property damage (including loss of use). Coverage shall include blanket contractual liability and broad form property damage, premises-operations, explosion, collapse, underground hazard (commonly referred to as "X", "C" and "U" coverages), and products-completed operations coverage, and shall have the following minimum limits of liability:

ТҮРЕ	LIMITS
Commercial General Liability	\$2,000,000 per occurrence; \$2,000,000 aggregate
Automobile Liability	\$1,000,000
Workers Compensation	Statutory

The Commercial General Liability and Automobile Liability policy

may have deductibles or self-insured retentions acceptable to the City but not more than \$50,000.00. The Commercial General Liability policy shall provide, without limitation, full separation of insureds, contractual liability coverage and broad form property damage coverage (including completed operations).

- **Qualified Insurers.** All insurance required under this Section 6.1.1 will be provided through companies authorized to do business in the state where the City is located and with an A.M. Best's rating of at least A-VII.
- 6.1.1.3 <u>Certificates of Insurance.</u> Developer shall provide the City with certificates of insurance and policy endorsements evidencing at least the minimum coverages required by this Agreement. Coverages shall not be reduced, canceled, non-renewed or materially changed without thirty (30) days advance written notice to the City.
- 6.1.1.4 No Waiver. Receipt or review by the City of any copies of insurance policies, endorsements or certificates that fail to comply with the requirements of this Agreement, or the City's failure to request or obtain evidence of insurance or to object to the insurance provided, shall not be deemed a waiver of any requirements contained in this Agreement and shall not relieve Developer of its duty to comply with the requirements contained in this Agreement.
- 6.1.1.5 No Tort Immunity Waiver. By requiring and having such insurance, the City does not intend to waive any rights and protections available to the City under the Indiana Tort Claims Act or under any other Applicable Law.
- 6.1.1.6 Primary Coverage. General liability and automobile liability policies maintained by Developer shall be primary coverage, and any coverage maintained by or available to the City shall be excess and non-contributory. The additional insured endorsements shall contain a primary insurance clause reflective of the following: "The insurance provided to the additional insured by this endorsement is excess over any valid and collectible 'other insurance' or self-insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover under this endorsement. However, if the 'written contract requiring insurance' specifically requires that this insurance apply on a primary and non-contributory

basis, this insurance is primary to 'other insurance' available to the additional insured which covers that Person or organization as a named insured for such loss, and we will not share with that 'other insurance' or self-insurance. But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible 'other insurance' or self-insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that Person or organization is an additional insured under such 'other insurance' or self-insurance."

Professional Liability Insurance. Such insurance shall include full 6.1.1.7 prior acts coverage (or a retroactive date no later than the date of commencement of the construction activities) and shall have limits of not less than \$5,000,000.00 per claim and \$5,000,000.00 annual aggregate, or limits carried, whichever are greater, with deductibles or self-insured retentions acceptable to Developer but not more than Such insurance shall include, without limitation, contractual liability coverage to the maximum extent possible for the indemnifications contained in this Agreement. This insurance shall be maintained by Developer or its contractor continuously in effect until all claims and suits arising out of the activities contemplated by this Agreement and Ancillary Agreements are barred by the applicable statutes of limitations and repose. Any material change in limits, coverages or loss of aggregate limit due to outstanding claims must be reported to the City within thirty (30) days of any such events.

6.1.2 <u>City's Liability Insurance</u>. During the term of this Agreement, and as provided herein, thereafter, the City shall, at its own cost and expense, procure and maintain the following minimum insurance coverages covering its obligations under this Agreement.

ТҮРЕ	LIMITS
Commercial General Liability	\$1,000,000 per occurrence; \$2,000,000 aggregate
Automobile Liability	\$1,000,000
Public Officials	\$1,000,000 per occurrence; \$2,000,000 aggregate
Excess Liability Insurance	\$5,000,000

SECTION 7 Parties' Obligations

7.1 City Conduit Maintenance

- Developer shall have no duty to operate, maintain or repair the City Conduit not 7.1.1 containing any part of the System (the "Non-System Conduit") or to keep the Non-System Conduit in good working order, except where the City and Developer agree to enter into an operation, maintenance and repair agreement whereby Developer shall perform these obligations. In conducting its own operation, maintenance, and repair of the Non-System Conduit, the City shall use its best efforts to avoid damaging or minimize adversely affecting the System. The City, at its sole cost, shall maintain and repair the Non-System Conduit in accordance with the City maintenance obligations described in an Exhibit C to be finalized by the Parties within sixty (60) days of execution of this Agreement and attached hereto and incorporated as though fully set forth in this Agreement. The City shall not make any modifications to, or alter, Developer's Conduit or the City Conduit containing any part of the System (together, the "System Conduit") without providing prior written notice to Developer. In the event of an emergency repair to the City Conduit containing any part of the System, the City shall use best endeavors to mitigate damage to the System and will notify Developer at the earliest possible opportunity.
- 7.1.2 In the event City reasonably believes the System is interfering with the City Conduit or Public ROW and so notifies Developer, Developer shall initiate reasonable steps to remedy such interference within the cure period set forth in Section 8.2.1(c) below.
- 7.1.3 In the event Developer reasonably believes that the City has failed, or is failing, to maintain, repair, and keep the City Conduit in good working order in accordance with this Section 7.1, Developer, at its option, has the right, but not the duty, to perform repairs to, and maintain, the City Conduit with ten (10) days prior written notice to the City and an estimate of cost of service. The City will determine if Developer or the City will perform the services reasonably requested by Developer. If the City elects to have Developer procure the services, the City shall promptly reimburse Developer for all such costs incurred by Developer upon presentment of proof of the costs, such as invoices and statements from contractors and vendors.

7.2 Developer's Conduit Maintenance

7.2.1 Developer, at its sole cost, shall operate, maintain and repair the System Conduit in accordance with the Developer maintenance obligations set forth in an Exhibit D to be finalized by the Parties within sixty (60) days of execution of this Agreement and

attached hereto and incorporated as though fully set forth in this Agreement, so as to avoid damage to the Non-System Conduit and to minimize adversely affecting the System Conduit. The City shall have no duty to maintain or repair the System Conduit or to keep the System Conduit in good working order. In the event of an emergency repair to the System Conduit, Developer shall use best endeavors to mitigate damage to the System and will notify the City at the earliest possible opportunity.

7.2.2 To the extent the City reasonably believes that the System Conduit poses an immediate public health or safety hazard or is at immediate risk of damaging public utilities in its immediate vicinity, the City, at its option, has the absolute right, but not the duty, to perform repairs to, and maintain, the System Conduit at Developer's sole cost and expense, and will notify Developer at the earliest possible opportunity; provided, however, the Parties agree to work cooperatively to determine if Developer or the City shall perform the services requested by the City. If the City procures the services, Developer shall promptly reimburse the City for all such costs incurred by the City upon presentment of proof of the costs, such as invoices and statements from contractors and vendors.

7.3 Project Covenants.

- **7.3.1** Obligations of the City. As a material inducement to Developer's execution and delivery of this Agreement, in addition to all other duties and obligations contained elsewhere in this Agreement, City has the following duties and obligations:
- Provide an authorized City single point of contact ("SPOC") for Developer, who will be a full-time employee of the City, and who shall be responsible to address all issues related to the System, providing coordination and liaison with City departments, and serving as a communications and troubleshooting resource for Developer.
- (b) Offer the full cooperation of all City departments with respect to relevant issues regarding the System, including, but not limited to, assisting Developer with how to obtain all Relevant Permits. Such cooperation will be supervised by the SPOC.
- (c) Participate in status meetings on at least a monthly basis, unless the Parties mutually agree otherwise, for the coordination of all matters related to the System.
- (d) Grant Developer the rights to use agreed-upon City assets determined by the Parties as essential for the installation of the System.
- (e) Provide timely and diligent review of all applications for Relevant Permits, to the extent such Relevant Permits are necessary for construction, installation or maintenance activities for the System within the Public ROW and City Conduit.
- (f) Not to prohibit Developer's (1) right to possess, use and procure benefits from

the System, including Developer's right to sell the Service within the Boundary, (2) right to grant any valid, effective and enforceable security over all or part of the System assets, its shares, or any of the Ancillary Agreements, and (3) right to assign and/or transfer by way of security its rights and/or obligations under this Agreement or any of the Ancillary Agreements to any third party financing entity for the purpose of obtaining financing, hedging or other accommodation in connection with financing of the Project, provided such assignment and/or transfer in no way diminishes the City's rights under this Agreement, including but not limited to the City's right to consent under Section 10.1.2.3 (Transfer of Agreement and/or Project; Assignment of Agreement for Financing Purposes).

- (g) Work with Developer to identify telecommunication and internet requirements for the City's government and public service needs, including police, fire and emergency services. The City will assist in facilitating discussions with the school districts.
- (h) Provide to Developer an inventory of all telecommunications and dark fiber services that the City or its agencies procure from third parties, and, subject to Applicable Law, give Developer full consideration on all in place telecommunication and internet services (upon expiration of existing contracts to the extent permitted under the terms of such contracts), and future telecommunication and internet services, including, without limitation, internet of things and smart city applications. This consideration is to be provided upon Substantial Completion.
- (i) In the same way it would do for any requester, assist Developer in locating publicly available information about: (i) any new City agencies or Government Properties being constructed within the Boundary which may require installation of a FTTH network to provide Services, and (ii) any open trench projects relating to new roads, real estate and housing developments alongside other public utilities (electric, gas, water, telecommunications, and cable providers). Developer will be responsible for contacting the project owner to determine if there is an opportunity to join the project.
- Provide Developer with City maintained and controlled geographic information system (GIS) data and any other mapping data or telecommunications infrastructure records available to the City to assist Developer with confirmatory due diligence in connection with the Project; provided, however, any such disclosure will only be provided to the extent permitted under Applicable Law and under any disclosure and confidentiality limitations of relevant contracts entered into by the City.
- (k) Contribute the City owned, managed, or abandoned telecommunications infrastructure and conduit, or available spare fibers (if needed, on a non-permanent basis), including approximately seventeen (17) miles of City Conduit in the downtown core and an interstate crossing to deliver services to residents and businesses of the City.
- (1) In the event emergency repairs must be made to the System installed by Developer in the Public ROW or in Developer's Conduit due to damage caused

directly or indirectly by the City or any City agency during construction of the System or after Substantial Completion has been achieved, the City shall coordinate such repairs with Developer and any utilities or other users of the Public ROW in order to facilitate prompt repairs to the Developer Conduit, whether located in the Public ROW or in Developer's Conduit, at the cost of the City, with such coordination to be supervised by the SPOC.

- (m) Ensure that Developer will have the benefit of quiet enjoyment of the Public ROW and the City Conduit.
- (n) Use best efforts to minimize any material delay related to Developer's building a citywide Open Access Network.
- (o) Not provide telecommunications, internet, voice, data and/or video service or any Service to Homes, MDUs, Commercial Properties, businesses, or private organizations (other than those directly served by government fiber) within the City either on the System or on a network owned by a third-party developer. For avoidance of doubt, the Parties agree and acknowledge that the City provides and may continue to provide free public WiFi as a service as well as telecommunications, internet, voice, data and/or video service to multiple public facilities through City fiber and leased third-party dark fiber and cable systems, that the City reserves the use of its dark fiber to itself, and that the City provides itself with lit fiber services. Said ongoing service to public facilities includes, but is not limited to, facilities operated by the Monroe County Community School Corporation, Monroe County Public Library, Monroe County Government, the Bloomington Public Transportation Corporation, Indiana University, Indiana University Health, and similar governmental entities.
- (p) Assist Developer with the process for (a) seeking waivers, reductions, or exceptions to the Relevant Permit fees imposed or required by the Board of Public Works or other local Governmental Authority under the City's local ordinance for the use and access to the Public ROW contemplated by this Agreement and (b) applying for the Property Tax Relief.
- **7.3.2** Obligations of Developer. As a material inducement to the City's execution and delivery of this Agreement, in addition to all other duties and obligations contained elsewhere in this Agreement, Developer has the following duties and obligations:
- (a) Attend meetings at least at monthly intervals unless the Parties mutually agree otherwise with the SPOC of the City and relevant City departments and personnel during the construction of the System.
- (b) Provide the City with access to Developer's SIMPL (Sustainability Impact Measurement Platform) dashboard/reports on the Project to ensure the Project's mutual Environmental, Social and Governance goals and Sustainable Development Goals are met.
- (c) Comply with all City requirements for Relevant Permits and Public ROW use

applications.

- (d) Upon commencement of construction of the System, continue such construction until Substantial Completion of the System, subject in all respects to Section 10.2 (Force Majeure) of this Agreement.
- (e) Install fiber optic cable and other equipment necessary to connect the City Conduit described on Appendix 2, attached hereto and incorporated as though fully set forth herein, to the System for exclusive City use.
- (f) Agree that as its leading municipal partner and facilitator, the City will be prioritized for first build-out among the communities included in the Project.
- (g) Not extend the exclusivity period with its Primary ISP(s) beyond the periods set forth in clause (h) below without the prior written approval of the City.
- (h) Operate the System as an Open Access Network over the life of the Project with an initial exclusive period for the Primary ISP of no more than five (5) years, with up to two (2) one-year extensions available if the Primary ISP meets all of its obligations under this Agreement and achieves, in the year preceding each extension, thirty-five percent (35%) market penetration as specified in the performance assessment model set out in Exhibit F. Such initial exclusive period shall begin upon the earlier of Substantial Completion or Service being first activated over the System. Following the initial exclusive period (and any extensions thereof), Developer shall permit Secondary ISPs to offer Services over the System.
- (i) Design, build and maintain a fiber optic Open-Access Network capable of providing at least 1 Gbps services throughout the Boundary.
- (j) Ensure that throughout the term of this Agreement the System is modernized and upgraded to ensure that the City continues to be a leading community in high-speed broadband throughout the term of this agreement.
- (k) Establish a local office in the City, employing local residents.
- (l) Comply with the provisions of Section 10.1 (*Transfer of Agreement and/or Project*) in the event Developer proposes to Transfer the Agreement and/or Project in whole or part, whether due to default, bankruptcy, or any other circumstance.
- (m) Provide the City with dark fiber from a common meet point to any City building within the Boundary for the length of this Agreement at a price not to exceed the lesser of (i) the price Developer charges to any other North American municipality or organization for similar fiber on a per mile/per strand basis (to the extent such fiber strands are available, but in any event, not to exceed 12 fiber strands at any point in the network), and (ii) the Developer's wholesale price.
- (n) If Developer does not reach Substantial Completion, then in addition to the other remedies the City has under this Agreement, and unless the City agrees otherwise, pay to the City one hundred and fifty thousand dollars (\$150,000) as liquidated damages.

- (o) In the event that the System is inoperable for eighteen (18) consecutive months, the System shall be deemed abandoned and Developer shall provide written notice to the City of such abandonment date. In such event, the City shall be deemed the owner of all abandoned System assets (fiber, conduit, maintenance holes, etc.) except that the City shall have the option to take or decline ownership of the portions of the System installed aerially.
- 7.4 <u>Developer Requirements for Primary ISP Service</u>. In addition to all other duties and obligations contained elsewhere in this Agreement, Developer shall require that each entity providing the primary Services, the "**Primary ISP**," undertake the following duties and obligations. For avoidance of doubt, there shall be a Primary ISP subject to these obligations throughout the term of this Agreement:
- (a) Make available at least a 1Gbps (symmetrical) Service in all System locations within the Boundary, and ensure that throughout the term of this Agreement the Primary ISP services support and complement Developer's upgrades and modernization to the System (up to 10Gbps) to ensure that the City continues to be a leading community in high speed broadband throughout the term of this agreement.
- (b) Provide Network Neutrality protection.
- (c) Actively participate in and adhere to the City's Digital Equity Program as described in Section 7.6.
- (d) Establish local peering arrangements with Indiana University ("IU"), the City, and the Monroe County Community School Corporation ("MCCSC"), and pursue local peering with incumbent ISPs. To the extent commercially reasonable, the Primary ISP will seek to peer with other local service providers and anchor institutions, for example, the larger IU campus locations and Ivy Tech Community College networks for purposes of efficiently making educational and research resources available.
- (e) If deploying local WiFi network from home routers, support IU authentication (currently Eduroam).
- (f) Operate one or more Bloomington retail locations.
- (g) Provide the City, upon the City's request, its top tier Enterprise internet bandwidth (at least 1 Gbps) during such time as it remains the Primary ISP at a price not to exceed the lesser of (i) the price the Primary ISP charges to any other North American municipality or organization for similar service and (ii) the Primary ISP's wholesale price.
- 7.5 <u>Developer Requirements of Secondary ISPs</u>. After the initial exclusive period described in Section 7.3.2 (h) Developer shall permit additional ISPs to offer Services over the System ("Secondary ISPs"). Developer shall require that each Secondary ISP undertake, at a minimum, the following duties and obligations:

- (a) Make available at least a 1Gbps (symmetrical) service to all locations served.
- (b) Provide Network Neutrality protection.
- (c) Evaluate with the City and Developer the feasibility of participating in the Digital Equity Program.

For the avoidance of doubt, Services over the System shall always be provided by at least one Primary ISP whether or not Secondary ISPs offer Services over the System.

- 7.6 <u>Digital Equity Program</u>. The purpose of this program is to improve digital equity in the City for Income-qualifying Residents.
 - Pligibility. Income-qualifying Residents are residents who are eligible to participate in the Parties' Digital Equity Program because they live within the Boundary of the City and qualify for assistance under one or more of the following: Supplemental Nutrition Assistance Program (SNAP); HUD Housing Vouchers owners (also referred to as Section 8 Vouchers or Housing Choice Vouchers "HCV"); The Indiana Temporary Assistance for Needy Families (TANF); the Indiana Department of Education's free meals eligibility criteria; Old Age, Survivors, and Disability Insurance (OASDI) recipients of Supplemental Security Income (SSI); Medicaid; WIC; or Veterans Pension or Survivor Benefits. Eligibility shall include any such future benefit programs which are mutually agreed by the parties.
 - 7.6.2 Obligations of the Parties. The Parties shall participate in a joint Digital Equity Program in at least the following ways:
 - (a) The City shall:
 - i. Contribute \$1,000,000 (One Million Dollars) in total to a Digital Equity fund (the "**Digital Equity Fund**") to help improve Digital Equity. The City will direct Digital Equity Fund monies to the following:
 - 1. Covering fifty percent (50%) of Drop costs to Income-qualifying Resident units, up to \$350 per unit; and
 - 2. If, at the end of the period described in Section 7.3.2(h) above, City funds remain in the Digital Equity fund, such funds shall be used for any activities supporting Digital Equity for City residents.
 - ii. Assist Developer in exploring available grants, subsidies and other programs to support the onboarding of Income-qualifying Residents to the Project.
 - iii. Use its best efforts to increase community awareness of the Project, the Digital Equity initiative, and any potential subsidies, vouchers or other incentives available to residents.
 - iv. Using census data, public housing data, and other relevant factors, define geographic areas and/or a parcel list of units within the Boundary that qualify as low-income areas for targeted investment, and update the map of low-income areas every five (5) years.

- (b) Developer shall:
 - i. Pay the City a digital infrastructure dividend of \$85,000 (Eighty-Five Thousand Dollars) per year for the term of this Agreement, for exclusive use within the Digital Equity Program. Should the term of the Agreement be renewed, this dividend shall increase to \$100,000 per year during the renewal term.
 - ii. Cover at least fifty percent (50%) of Drop costs to Incomequalifying Residents while City funds described in Section 7.6.2(a)(i) remain available, and 100% of Drop costs thereafter.
 - iii. Connect to all units at Bloomington Housing Authority properties (currently Crestmont, Reverend Butler and Walnut Woods BHA apartment complexes).
 - iv. Using the most recent map provided by the City under Section 7.6.2(a)(iv), report to the City on a quarterly basis the percentage of low-income units and the percentage of total units (A) connected and (B) receiving service from its Primary ISP.
 - v. Require its Primary ISP, and encourage all other ISPs offering Services over the System, to do the following:
 - 1. Offer a 250 Mbps or faster connection to income-qualifying endusers for \$30 per month (or at such different prices as may be adjusted from time to time to match the relevant ACP or similar benefit programs then in effect, in order to achieve a net zero cost to these users for service). In furtherance of the foregoing, the enduser may elect to use ACP to pay for this service.
 - 2. Waive startup fees for installation of Service (ONT) for Incomequalifying Resident units.
 - 3. Enroll and participate in Federal and state low-income subsidy programs including, but not limited to Lifeline, the Emergency Broadband Benefit Program (EBB), the Affordable Connectivity Program ("ACP"), and substantially similar federal and state programs enacted in the future.

SECTION 8

Default, Enforcement and Termination of Agreement

- 8.1 Developer Default. A "Developer Default" occurs in each of the following events or circumstances:
 - **8.1.1** Payment Default. Developer fails to pay when due (i) any amount payable to the City pursuant to this Agreement or any other Ancillary Agreement, (ii) any reimbursement obligation in respect of a maintenance or repair service provided by the City for Developer's benefit pursuant to Section 7.2.2 (Developer's Conduit

Maintenance), in each case, unless such failure to pay is caused by administrative or technical error and such payment is made within five (5) Business Days following its due date.

- 8.1.2 <u>Cross-Default</u>. Developer defaults for a period beyond any applicable grace period in the performance of any obligation under this Agreement, including, without limitation, the cure periods set forth in Section 8.2.1 (*Developer's Right to Cure or Respond*), and Section 8.2.2 (*Enforcement*).
- 8.1.3 <u>Covenant Default</u>. Developer fails to comply with any covenant or obligation applicable to it set forth in this Agreement, including, but not limited to Section 3.1.1 (System Installation), Section 3.2 (Permits and General Obligations), Section 5.2 (Compliance with Applicable Laws), Section 7.3 (Project Covenants) or Section 7.3.2 (Obligations of Developer).
- **8.1.4** Failure to Perform Other Obligations. The failure of Developer to perform or cause to be performed any other obligation required to be performed by Developer under this Agreement, or the failure of any representation and warranty set forth herein to be true and correct as and when made.
- Bankruptcy, Etc. (a) Developer admits in writing its inability to pay its debts 8.1.5 generally as they become due; (b) Developer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state, district or territory thereof; (c) Developer makes an assignment for the benefit of creditors; (d) Developer consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Developer has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Developer's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Developer's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

8.2 Notice of Developer Default, and Right to Cure

In the event the City believes that Developer is in Default under Section 8.1, the City shall promptly notify Developer in writing with specific details regarding the exact nature of the alleged noncompliance or Developer Default.

- **8.2.1 Developer's Right to Cure or Respond.** Unless a longer period is otherwise mutually agreed among the Parties, Developer shall have thirty (30) days from its receipt of the City's notice described in Section 8.2 above:
 - (a) to respond to the City contesting the assertion by the City of a Developer Default;

- (b) to cure such Developer Default; or
- (c) in the event that, by nature of the Developer Default, such Developer Default cannot be cured within the thirty (30) day period, to initiate commercially reasonable steps to remedy such Developer Default and notify the City of the steps being taken and the projected date that they will be completed. Any Developer Default arising under this Section 8.2.1(c) shall not be considered an uncured Developer Default while Developer is taking remedial steps to cure such Developer Default.
- **8.2.2** Enforcement. After the City complies with its obligations in Section 8.1 of this Agreement and if Developer fails to cure any Developer Default within the thirty (30) day notice period, or if such a cure is not possible within thirty (30) days pursuant to Section 8.2.1 (c) above and Developer has failed to take commercially reasonable steps to remedy the Developer Default as required by Section 8.2.1 (c) above, the City may:
- (a) provide ninety (90) days prior written notice to Developer instructing it to stop construction and/or installation of the System; *provided, however*, that unless the System is abandoned as provided in Section 7.3.2(o), Developer shall retain all ownership and operational rights over the System and *provided, further* that Developer shall in no event be required to remove any part or all of the System if such a notice is issued by the City;
- (b) seek specific performance of any provision of this Agreement which lends itself to such remedy as an alternative to damages;
- (c) seek damages from Developer by filing a complaint in any court of competent jurisdiction; or
- (d) terminate this Agreement by written notice, in which case this Agreement shall be of no further force or effect. In the event of termination pursuant to this subsection, the City may at its sole and absolute discretion prevent Developer from conducting any additional construction and revoke the Ancillary Agreements except as they relate to such areas where the System is constructed and operating, which areas Developer shall continue to own and operate in accordance with the terms of this Agreement, including Section 7.3.2(o) regarding System abandonment. The City shall not be prevented from seeking damages from Developer in the event of termination for cause.

8.3 City Breach or Default.

In the event Developer believes that the City has not complied with a material term of this Agreement, Developer shall use best efforts to promptly notify the City in writing with specific details regarding the exact nature of the alleged noncompliance, default or failure.

8.3.1 City's Right to Cure or Respond.

Unless otherwise mutually agreed among the Parties, the City shall have thirty (30) days from its receipt of Developer's notice described in Section 8.3 above:

- (a) to respond to Developer, contesting the assertion of noncompliance or default;
- (b) to cure such default; or
- (c) in the event that, by nature of the noncompliance or default, such noncompliance or default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify Developer of the steps being taken and the projected date that they will be completed.

8.3.2 Enforcement.

After Developer complies with its obligations pursuant to Section 8.3 above and if the City fails to cure any noncompliance, default or failures within the thirty (30) day notice period, or if such a cure is not possible within thirty (30) days pursuant to Section 8.3.1 (c) above and the City has failed to take commercially reasonable steps to remedy the noncompliance, default or failure as required by Section 8.3.1 (c) above, then the City may not enforce any of Developer's obligations pursuant to this Agreement until such time when the City has cured any such noncompliance, default or failure. Notwithstanding the foregoing, during such time when the City fails to remedy any noncompliance, default or failure pursuant to the terms of this Section 8.3.2, the City's obligations under this Agreement shall remain fully enforceable by Developer and Developer may seek specific performance of any provision of this Agreement which lends itself to such remedy as an alternative to damages.

In addition to the limitation of liability in Subsection 8.6 below, City's total damages liability arising out of or related to this Agreement, under whatever legal theory, shall not exceed \$10,000 (Ten Thousand Dollars) and shall be limited in scope and amount by any protections available to the City as a political subdivision of the State of Indiana.

8.3.3 Right to Terminate.

In the event the City fails to comply with the requirements of this Agreement or any of the Ancillary Agreements or otherwise breaches either of the Ancillary Agreements, Developer shall have the immediate right, at its option, to terminate this Agreement and shall be entitled to any and all other rights and remedies available to it at law or in equity as provided for under this Agreement.

8.4 Termination.

In addition to the termination provisions set out in this Section 8, either Party may terminate this Agreement immediately upon written notice to the other Party if (1) the Parties have not entered into the Master Easement Agreement and Master License Agreement within thirty-six (36) months after the Effective Date, (2) Developer has not commenced construction in accordance with the requirements of Section 4.1 of this Agreement, subject in all respects to Section 10.2 (Force Majeure), or (3) the Property Tax Relief is not finally approved by the

8.5 Indemnification.

Developer agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees ("City Indemnitees"), at Developer's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City Indemnitees arising out of the acts or omissions of Developer, its employees, and/or authorized subcontractors, pursuant to this Agreement. Developer also agrees to defend, indemnify, hold free and harmless the City Indemnitees from any claims, actions, suits or other legal proceedings relating to intellectual property rights in connection with the System. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by Developer, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the acts or omissions of Developer, its employees, and/or authorized subcontractors, whether or not Developer, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, Developer shall not be liable for the defense or indemnification of the City Indemnitees for claims, actions, complaints or suits arising out of the negligence or willful misconduct of the City Indemnitees. Developer agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from the Service Provider(s) and each and every contractor, subcontractor, consultant, subconsultant, or any other Person or entity involved by, for, with or on behalf of Developer in the performance of this Agreement. In the event Developer fails to obtain such indemnity obligations from others as required here, Developer agrees to be fully responsible according to the terms of this section.

The City agrees to defend, indemnify, hold free and harmless Developer, its officers, agents and employees ("Developer Indemnitees"), at the City's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the Developer Indemnitees arising out of the acts or omissions of the City, its officers, agents, and/or employees, pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the City, its officers, agents, and/or employees, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the acts or omissions of the City, its officers, agents, and/or employees, whether or not the City, its officers, agents, and/or employees are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the City shall not be liable for the defense or indemnification of the Developer Indemnitees for claims, actions, complaints or suits arising out of the negligence or willful misconduct of the Developer Indemnitees.

8.6 Limitation of Liability.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EXCEPT FOR A BREACH OF CONFIDENTIALITY OBLIGATIONS OR A PARTY'S INDEMNIFICATION OBLIGATIONS AS SET FORTH IN THIS AGREEMENT, AND DEVELOPER'S OBLIGATION UNDER SECTION 7.3.2(n), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES OF ANY KIND OR

NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOST SAVINGS OR HARM TO BUSINESS. EACH PARTY HEREBY RELEASES THE OTHER PARTY, ITS SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE TRUSTEES, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AND AGENTS, FROM ANY SUCH CLAIMS.

SECTION 9 Dispute Resolution

9.1 Matter Resolution.

Without limiting any of the rights of the Parties under this Agreement, in an effort to avoid the expense and delay of litigation in the event any claims, disputes or controversies arising out of, or in connection with, the breach, interpretation, application, or enforcement of this Agreement, or arising out of, or in connection with, the System, the Parties shall try in good faith to settle the matter. All negotiations pursuant to this Section 9.1 shall be considered confidential settlement discussions, and neither of the Parties may offer into evidence, mention or otherwise use statements made in connection with such negotiations in any subsequent litigation proceeding.

SECTION 10 Miscellaneous Provisions

10.1 Transfer of Agreement and/or Project.

10.1.1 City Transfer

The City shall not be permitted to assign, sell or transfer this Agreement, or its rights and duties under this Agreement, without the prior written consent of Developer at any time prior to the fifth (5) year anniversary of this Agreement, as counted from the Effective Date.

10.1.2 Developer Transfer

If Developer desires to sell, transfer, assign, give, or otherwise dispose of, or permit or suffer the involuntary transfer (including, but not limited to, any transfer by judicial sale, legal process, execution, operation of law, attachment, or enforcement of a pledge, trust, or other security interest) in whole or in part of this Agreement, and/or the Project within the Boundary (the "Bloomington Network"), to any Person, firm, corporation, or entity (each of the foregoing, a "Transfer"), Developer shall follow the procedures provided in Sections 10.1.2.1, 10.1.2.2 and 10.1.2.3.

10.1.2.1 <u>Restriction</u>. Subject to Section 10.1.2.3 below, Developer will not Transfer its interests or obligations in this Agreement, nor any part thereof, nor all or any part of the Bloomington Network, without written agreement of the City prior to the date that is ten (10) years from the Effective Date. Notwithstanding the foregoing sentence, Developer may (a) Transfer all or part of the Bloomington Network (or equity therein) to an Affiliate provided such transferee agrees in writing in form and content acceptable to the City to be bound by each provision of this

Agreement; or (b) provided Developer continues to control the Bloomington Network, Transfer up to 25% of the Bloomington Network (or equity therein) to a non-Affiliate (each of (a) and (b) being a "Permitted Transfer" and each transferee thereunder, a "Permitted Transferee").

10.1.2.2 <u>Veto Right</u>. Prior to any Transfer (other than to a Permitted Transferee) that would cause a change in board control or reduce Developer's ultimate ownership stake below seventy five percent (75%) of the Bloomington Network, Developer will notify the City in writing of the name of any proposed transferee or transferees (the "Potential Purchaser List"). The City will, within thirty (30) days of receipt of the Potential Purchaser List, inform Developer in writing whether any proposed transferee is unacceptable to the City and the grounds for such objection. Unless the City indicates its approval of the proposed transferee, which approval shall not be unreasonably withheld, Developer may not Transfer the Bloomington Network to such proposed transferee. The Parties understand and agree that the City's approval of a proposed transferee will depend substantially on whether the proposed transferee will agree to be bound by, and be able to fulfill, each provision of this Agreement.

that Developer will seek to obtain third-party financing for the cost of constructing and operating the System, and the City will reasonably cooperate with Developer in order to effectuate such financing. In furtherance of the foregoing, Developer may assign this Agreement and any Ancillary Agreements to a third-party financing entity solely for purposes of securing the financing entity's interest in the System, provided that such assignment does not alter or diminish Developer's duties and obligations or the City's rights under this Agreement. City shall, if requested by such third-party financing entity, provide such customary and reasonable documents, including consents to assignment, as may be reasonably requested with respect to the assignment and status of this Agreement and any Ancillary Agreements, provided that such documents do not alter or diminish the rights of the City under this Agreement. Any assignment to a third-party financing entity as described above shall not relieve or discharge Developer from any of its obligations hereunder absent the written consent of the City.

10.1.2.4 Voiding of Invalid Transfer. Any assignment by Developer not permitted under this Section 10.1 shall be void *ab initio*.

10.2 Force Majeure.

Neither Party will be held in default under, or in breach or noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of this Agreement), where such noncompliance or alleged defaults occurred or were caused by a labor strike, riot, accidents, acts of war or terrorism, riot or insurrection, civil or military disturbances, health epidemic or pandemic, earthquake, flood, hurricane, drought, tornado, unusually severe weather conditions, or other catastrophic act of nature, labor disputes, governmental, administrative or judicial order, failure of utility service necessary to construct the System, governmental, administrative or judicial order, or any other event that is reasonably beyond the Party's ability to anticipate or control, including, but not limited to, work delays caused by waiting for utility providers to service or monitor their own utility infrastructure on which Developer's fiber optic cable and/or equipment may be deployed, as

well as unavailability of materials and/or reasonably qualified labor to perform the work. In the event a force majeure condition extends for a period of over thirty (30) calendar days (an "Extraordinary Force Majeure Event"), the term of this Agreement shall be deemed to be automatically extended, on a day-to-day basis, and by a period of time equal to the duration of such Extraordinary Force Majeure Event.

10.3 Notice.

All notices shall be in writing and shall be served upon the other Party by hand delivery, overnight mail, electronic mail, or by facsimile with confirmed transmission and addressed as follows:

The City:

Rick Dietz 401 N. Morton Street Bloomington, IN 47404

With a copy (which shall not constitute notice) to

City of Bloomington Legal Department ATTN: Corporation Counsel 401 N. Morton St. Suite 220 Bloomington, IN 47404

Developer:

Nick Phillips Hoosier Networks, LLC 605 Third Avenue, 36th floor New York, NY 10158

With a copy (which shall not constitute notice) to:

Nick Phillips Meridiam North America Infrastructure Corp. 605 Third Avenue, 36th Floor New York, NY 10158

Notices shall be deemed received the same day with delivery upon hand delivery, and the

next business day with delivery upon overnight mail, electronic mail, or by courier.

10.4 Entire Agreement.

This Agreement, including all Exhibits and Appendices, embodies the entire understanding and agreement of the City and Developer with respect to the subject matter hereof. This Agreement supersedes all other agreements whether written, verbal, or otherwise between Developer and the City with respect to the subject of this Agreement.

10.5 Severability.

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

10.6 Governing Law and Venue.

This Agreement shall be deemed to be executed in the County of Monroe and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Indiana, as applicable to contracts entered into and performed entirely within the State, irrespective of conflict of laws principles. The sole and exclusive venue for all claims, disputes or controversies arising out of, or in connection with the breach, interpretation, application, or enforcement of this Agreement, or arising out of, or in connection with, the System, shall be the United States District Court for the Southern District of Indiana, or if there is no federal court jurisdiction, the Monroe County Circuit Court in Monroe County, Indiana.

10.7 Modification.

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

10.8 No Third-Party Beneficiaries.

This Agreement is solely for the benefit of the Parties and their respective permitted successors and permitted assigns. Nothing in this Agreement or in any prior agreement is or was intended to confer third party beneficiary status on any party or Person not a party to this Agreement, including a member of the public.

10.9 No Waiver of Rights.

Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural that Developer or the City may have under federal or state law unless such waiver is expressly stated herein.

10.10 No Rights to the System.

The City expressly agrees that except as provided in Section 7.3.2(o) regarding abandonment of the System, it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the System. Developer shall (a) at all times, retain title to and ownership of the System, (b) have the right to lease to, or otherwise permit the use of the System or parts thereof by the Service Provider and/or any other provider(s) of internet, cable, telephone, video and other services in compliance with the terms of this Agreement and the Ancillary Agreements, and (c) as provided in Section 10.1 have the right to assign, or provide another security interest in the System to its financing sources.

10.11 Authority.

The Parties represent and warrant that they each possess the authority to enter into this Agreement. The City represents and warrants that it possesses the authority required by any City ordinance or rule and required by the State of Indiana laws and regulations to enter into this Agreement.

10.12 **Property Tax Relief.**

The Parties agree to use their best efforts to pursue before the relevant Government Authorities a tax increment financing ("TIF") form of Property Tax Relief that provides for Developer to receive ninety-five percent (95%) of Indiana state personal property taxes that it pays on the Project during the first twenty (20) years of the term of this Agreement. Developer represents and warrants to the City that it will not accept from any other municipality in Indiana in which Developer is building a community-wide FTTH project, Property Tax Relief that affords more favorable terms to such other municipality than the terms of the City's TIF.

10.13 Third Parties.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either Developer or the City.

10.14 No Partnership.

Nothing in this Agreement shall be construed to create any association, partnership, joint venture or agency relationship between the City and Developer or to impose any such obligation or liability upon either Party other than a contractual relationship as expressly set forth in this Agreement. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party other than a contractual relationship as expressly set forth in this Agreement; nor shall either Party in any manner act or indicate to any third party that it is acting as the agent of the other Party.

10.15 Headings.

The headings and captions of this Agreement are solely for the convenience of the Parties and shall not be deemed to modify or vary any of the substantive terms thereof.

10.16 Counterparts.

This Agreement may be executed in one or more counterpart copies, all of which counterparts shall have the same force and effect as if all Parties had executed a single copy of this

Agreement.

10.17 No Waiver.

Failure by either Party to assert or declare any one breach or failure to perform shall not be construed as a waiver of any other or subsequent breach or failure to perform.

10.18 Successors and Assigns.

The rights, powers and remedies of each Party shall inure to the benefit of such Party and its successors and permitted assigns.

10.19 Attorneys' Fees.

If any action shall be instituted between the City and Developer in connection with this Agreement, the prevailing Party in such action shall have the right to recover its reasonable costs, attorney's fees and expenses incurred in connection with such action.

10.20 <u>Injunctive Relief.</u>

The Parties acknowledge and agree that any violation or breach of the provisions of this Agreement may result in irreparable injury to a Party for which a remedy at law may be inadequate. In addition to any relief at law that may be available to a non-breaching Party for such violation or breach, and regardless of any other provision contained in this Agreement, such Party shall be entitled to seek injunctive and other equitable relief and shall not be required to post any bond in connection therewith.

(signature page follows next)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year stated above.

ted:	
	Y OF BLOOMINGTON Idiana municipal corporation MAYS R
API	PROVED AS TO FORM:
By:_ Its:_	Beth Cate CORPORATION COUNSEL
	OSIER NETWORKS, LLC laware Limited Liability Company
a De	laware Limited Liability Company Authorized Representative

Exhibits and Appendices

Exhibit A: Form of Master Easement Agreement

Exhibit B: Form of Master License Agreement

Exhibit C: City Maintenance Obligations

Exhibit D: Developer Maintenance Obligations

Exhibit E: Project Boundary

Exhibit F: Exclusive Period Performance Assessment

Exhibit G: Digital Equity Performance Assessment

Appendix 1: ROW Map

Appendix 2: Conduit Map

Exhibit A

Form of Master Easement Agreement

[to be attached]

MASTER EASEMENT AGREEMENT

THIS AGREEMENT (hereinafter referred to as "Agreement") dated as of [__] 20__, entered into at [place] by and between Hoosier Networks, LLC, a Delaware limited liability company, hereinafter referred to as "PERMITTEE", and the CITY OF BLOOMINGTON, a municipal corporation, hereinafter referred to as "CITY".

WITNESSETH

WHEREAS, PERMITTEE and CITY have entered into a Master Development Agreement dated as of_______, 2022 (hereinafter referred to as the "Development Agreement") relating to the installation of a fiber optic cable system and associated appurtenances (hereinafter referred to as the "System"); and

WHEREAS, pursuant to the Development Agreement, CITY has agreed to grant to PERMITTEE the right to install the System within portions of the CITY's rights-of-way.

NOW, THEREFORE, in consideration of the promises hereinafter made, said parties hereby agree as follows:

- 1. The above recitals are, by this reference, hereby incorporated as if they had been set forth in the text of this Agreement.
- 2. All terms not defined herein shall have the same meaning as set forth in the Development Agreement.
- 3. CITY hereby grants and conveys to PERMITTEE, and its licensees, successors, lessees, transferees, and assigns, the right of encroachment in portions of the City's rights-of-way (Public ROW), upon the terms set forth herein, to erect, install, construct, operate, repair, replace, reconstruct, remove, maintain, use, or retain in, on, over, under, upon, across, along, and through, certain portions of the Public ROW as more particularly shown on Appendix 1 and made a part hereof thereto (the "Encroachment Area"), for the purposes of erecting, installing, constructing, operating, repairing, replacing, reconstructing, removing, maintaining, using and retaining said System, including, without limitation, wires, cables, ducts, conduits, connectors, vaults, huts, cabinets, manholes, manhole covers, pedestals, appliances, splitters, attachments, and other property, equipment, components, materials, apparatus and appurtenances to the System (the "Improvements"). This right of encroachment is subject to easements, covenants, conditions, and regulations in existence as of the date hereof.
- 4. Except in the event of an emergency, PERMITTEE shall provide notice to CITY at least forty-eight (48) hours prior to any intended access to the Encroachment Area. In the event of an emergency (which shall include any loss of service on the

System), PERMITTEE shall provide notice to CITY as soon as practicable and if at all possible prior to accessing the Encroachment Area. PERMITTEE shall comply at all times with the then current traffic control handbook.

- 5. All of the rights and privileges conferred upon PERMITTEE pursuant to this Agreement may be exercised by PERMITTEE, its successors and assigns, employees, agents, licensees, invitees, lessees, designated personnel, contractors, and all others authorized by them ("Permittee Personnel"), from time to time and at any time, without notice to CITY except as set forth in Section 4 of this Agreement. PERMITTEE shall have the right to assign or transfer this Agreement and the rights contained herein in its favor without the consent of CITY provided that such assignment or transfer complies with the Development Agreement and that PERMITTEE provides notice to CITY prior to such assignment or transfer.
- Subject to easements, covenants, conditions, and regulations in existence as of the 6. date hereof, PERMITTEE shall be permitted to make such alterations to the Encroachment Area as are reasonably necessary to erect, install, construct, repair, replace, reconstruct, remove, maintain, operate, and use, the System including, without limitation, adding and moving electrical lines and other utilities and apparatus. PERMITTEE shall be responsible for all costs incurred in the alterations. All construction, installation, maintenance and repair of the Encroachment Area shall be conducted so as to interfere as little as practicable with CITY's use and operation of the Encroachment Area. The installation of the System and alterations by PERMITTEE in the Encroachment Area shall be done in a good and workmanlike manner by competent personnel or contractors, in conformity with all Relevant Permits, licenses, ordinances, laws and regulations, and free from any liens for labor or materials. Any damage to the Encroachment Area caused by reason of the exercise of PERMITTEE's rights hereunder shall be corrected within a reasonable time by PERMITTEE at its sole cost and expense.
- 7. PERMITTEE will maintain the Improvements in accordance with the Development Agreement.
- 8. PERMITTEE shall not install or construct any other structures or improvements other than the Improvements and associated appurtenances described herein.
- 9. The Improvements installed within this area by PERMITTEE shall be made at no expense to CITY. PERMITTEE shall be responsible, and assume all costs, for any relocation or protection of any part of the System in the event the relocation or protection of the System is necessary due to changes in any Public ROW or in the event the City Conduit is changed at any time during the term of this Agreement.
- 10. CITY, at its sole cost, shall operate, maintain and repair the City Conduit not containing any part of the System, and shall use its best efforts to avoid damaging or minimize adversely affecting the System. PERMITTEE shall have no duty to

maintain or repair the Non-System City Conduit or to keep such Conduit in good working order, except where CITY and PERMITEE agree to enter into an operation, maintenance and repair agreement whereby PERMITEE shall perform these obligations. CITY shall not make any modifications to, or alter, the City Conduit or Developer's Conduit containing any part of the System without prior written notice to PERMITTEE.

- 11. CITY, its agents or assigns, or any utility company or CITY franchisee may at any time enter upon the areas covered by this Agreement for the purpose of installing, maintaining, relocating, altering, enlarging, repairing, or inspecting any utility, facility, or public work thereon.
- 12. This Agreement shall be binding upon the successors and assigns of PERMITTEE.
- PERMITTEE agrees to defend, indemnify, and hold harmless CITY, its officers, 13. agents, employees, and volunteers (the "City Indemnitees") from all loss, cost, and expense arising out of any liability or claim of liability for personal injury, bodily injury to persons, property damage, or impairment of contractual activities due to the acts or omissions of PERMITTEE or those of any of its officers, agents, employees, or assigns whether such act is authorized by this Agreement or not; and PERMITTEE shall pay for any and all damages, done or caused by such persons. CITY assumes no responsibility whatsoever for any property placed in the right of way. PERMITTEE further agrees to waive all rights of subrogation against CITY. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by PERMITEE, its officers, agents, and/or employees, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the acts or omissions of PERMITTEE, its officers, agents, and/or employees, whether or not PERMITTEE, its officers, agents, and/or employees are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, PERMITTEE shall not be liable for the defense or indemnification of the City Indemnitees for claims, actions, complaints, or suits arising out of the negligence or willful misconduct of the City Indemnitees.
- 14. CITY agrees to defend, indemnify, hold free and harmless PERMITTEE, its officers, agents and employees ("Developer Indemnitees"), at the CITY's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the Developer Indemnitees arising out of the acts or omissions of the CITY, its officers, agents, and/or employees, pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the CITY, its officers, agents, and/or employees, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the acts or omissions of the CITY, its officers, agents, and/or employees, whether or not the CITY, its officers, agents, and/or employees are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the CITY shall not be liable for the defense or indemnification of the

Developer Indemnitees for claims, actions, complaints or suits arising out of the negligence or willful misconduct of the Developer Indemnitees.

- 15. PERMITTEE shall restore damaged or disturbed surfaces or underground utilities at or adjacent to the Easement Area to a usable and acceptable state, but for normal wear and tear. Restoration shall be carried out immediately after construction and completed within sixty (60) days of construction completion, or at a later date as mutually agreed upon between PERMITTEE and the CITY. To the extent the restoration is not completed within the specified timeframe, PERMITEE and CITY may either (i) mutually agree upon a timeline extension, with the PERMITTEE providing a detailed development plan to reach the new scheduled completion date, or (ii) mutually agree that the CITY shall complete the restoration work itself at the PERMITTEE's expense.
- 16. The term of this AGREEMENT is for THIRTY (30) years commencing on the Effective Date of the Development Agreement unless or until terminated earlier pursuant to this AGREEMENT. The term of this AGREEMENT shall be renewed for succeeding terms of THIRTY (30) years each, unless either party gives written notice to the other at least ninety (90) days prior to the expiration of any term of its intention not to renew this AGREEMENT or an uncured breach exists per Section 8.2 of the Development Agreement. This Agreement shall terminate upon the termination or expiration of the Development Agreement, including any extensions thereof.
- 17. The System and all of its parts and components which are installed and constructed by PERMITTEE in the Encroachment Area shall at all times be and remain the property of PERMITTEE.
- 18. PERMITEE understands and agrees that from time to time during the term of this Agreement and any renewals, the CITY may need to engage in road improvements or other infrastructure projects and that such projects may require relocation or rerouting PERMITEE System components. The CITY will give PERMITEE prompt notice of any such improvements and will use its best efforts to minimize impeding, disturbing, interfering with, or restricting, PERMITTEE's access to, use and possession of the Encroachment Area. CITY will alter the Encroachment Area to accommodate relocation or re-routing. Costs of such relocation or re-routing will be borne by PERMITEE in accordance with CITY's standard policy.
- 19. The terms, conditions and rights contained herein shall be covenants running with the land and shall remain in effect for as long as the Development Agreement remains in effect. Upon the termination of this Agreement, PERMITTEE shall not be obligated to and shall not, without the City's prior approval, remove all or any part of the System from the Public ROW. PERMITTEE shall provide the CITY with a record showing which parts of the System are abandoned upon termination no later than fifteen (15) days after termination. The terms and conditions contained

herein shall bind, inure to the benefit of, and be enforceable by, CITY and PERMITTEE, and their respective successors and assigns (including, without limitation, any and all successors to CITY in title to all or any portion of the Public Way).

- 20. If any term, provision or condition in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law.
- 21. The rights granted pursuant to this Agreement shall not terminate or be in any way impaired by reason of a change in any uses of the Public ROW or the present Improvements or fixtures thereon.
- 22. In the event of a conflict between the terms of this Agreement and the terms of the Development Agreement, the terms of the Development Agreement shall control.
- 23. In the event of a breach of this Agreement by a Party, the other Party shall be entitled to specific performance of any provision which reasonably lends itself to such remedy and other equitable relief such as injunctive relief, in addition to all other remedies permitted by law including, without limitation, damages.

[SIGNATURE BLOCK ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have caused this Master Easement Agreement to be executed as of the day and year stated above.

CITY OF BLOOMINGTON	
An Indianamunicipal corporation	
Ву:	
Its:	
[APPROVED AS TO FORM]	
[Corporation Counsel]	
HOOSIER NETWORKS, LLC a Delaware Limited Liability Company	
By:	
Its:	

ACKNOWLEDGEMENT

State of			
County of	A AMPRICA .		
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I certify under PENA	LTY OF PERJURY ut	nder the laws of the Sta	te of [jurisdiction] that the
foregoing paragraph is			a i
WITNESS my hand a	nd official seal.		
Signature		(Seal)	

Exhibit B

Form of Master License Agreement

[to be attached]

MASTER LICENSE AGREEMENT

THIS AGREEMENT (hereinafter referred to as "Agreement") dated as of [_] 20__, entered into at [place], by and between Hoosier Networks, LLC, a Delaware limited liability company, hereinafter referred to as "LICENSEE," and the CITY OF BLOOMINGTON, a municipal corporation, hereinafter referred to as "CITY".

WITNESSETH

WHEREAS, LICENSEE and CITY have entered into a Master Development Agreement dated as of______, 2022 (hereinafter referred to as the "Development Agreement") relating to the installation of a fiber optic cable system and associated appurtenances (hereinafter referred to as the "System"); and

WHEREAS, pursuant to the Development Agreement, CITY has agreed to grant to LICENSEE the right to install the System within portions of the City Conduit (as defined in the Development Agreement) as set forth in the survey attached hereto as APPENDIX 2.

NOW, THEREFORE, in consideration of the premises and promises hereinafter made, said parties hereby agree as follows:

- 1. The above recitals are, by this reference, hereby incorporated as if they had been set forth in the text of this Agreement.
- 2. All terms not defined herein shall have the same meaning as set forth in the Development Agreement.
- 3. CITY hereby grants and conveys to LICENSEE, and its licensees, successors, lessees, transferees, and assigns, a license to occupy portions of the City Conduit, upon the terms set forth herein, to erect, install, construct, operate, repair, replace, reconstruct, remove, maintain, use, or retain in, on, over, under, upon, across, along, and through, certain portions of the City Conduit as more particularly shown on Appendix 2 and made a part hereof thereto (the "License Area"), for the purposes of erecting, installing, constructing, operating, repairing, replacing, reconstructing, removing, maintaining, using and retaining said System, including, without limitation, wires, cables, ducts, conduits, connectors, vaults, huts, cabinets, manholes, manhole covers, pedestals, appliances, splitters, attachments, and other property, equipment, components, materials, apparatus and appurtenances to the System (the "Improvements"). This license is subject to easements, covenants, conditions, and regulations in existence as of the date hereof.
- 4. Except in the event of an emergency, LICENSEE shall provide notice to CITY at least forty-eight (48) hours prior to any intended access to the License Area. In the event of an emergency (which shall include any loss of service on the System), LICENSEE shall provide notice to CITY as soon as practicable and if at all possible prior to accessing the License Area. LICENSEE shall comply at all times

with the then current traffic control handbook.

- 5. All of the rights and privileges conferred upon LICENSEE pursuant to this Agreement may be exercised by LICENSEE, its successors and assigns, employees, agents, licensees, invitees, lessees, designated personnel, contractors, and all others authorized by them ("LICENSEE PERSONNEL"), from time to time and at any time, without notice to CITY except as set forth in Section 4 of this Agreement. LICENSEE shall have the right to assign or transfer this Agreement and the rights contained herein in its favor without the consent of CITY, provided that such assignment or transfer complies with the Development Agreement and that LICENSEE provides notice to CITY prior to such assignment or transfer.
- Subject to easements, covenants, conditions, and regulations in existence as of the 6. date hereof, LICENSEE shall be permitted to make such alterations to the License Area as are reasonably necessary to erect, install, construct, repair, replace, reconstruct, remove, maintain, operate, and use, the System including, without limitation, adding and moving electrical lines and other utilities and apparatus. LICENSEE shall be responsible for all costs incurred in the alterations. All construction, installation, maintenance and repair of the License Area shall be conducted so as to interfere as little as practicable with CITY's use and operation of the License Area. The installation of the System and alterations by LICENSEE in the License Area shall be done in a good and workmanlike manner by competent personnel or contractors, in conformity with all Relevant Permits, licenses. ordinances, laws and regulations, and free from any liens for labor or materials. Any damage to the License Area caused by reason of the exercise of LICENSEE's rights hereunder shall be corrected within a reasonable time by LICENSEE at its sole cost and expense.
- 7. LICENSEE will maintain the Improvements in accordance with the Development Agreement.
- 8. LICENSEE shall not install or construct any other structures or improvements other than the Improvements and associated appurtenances described herein.
- 9. The Improvements installed within this area by LICENSEE shall be made at no expense to CITY. LICENSEE shall be responsible, and assume all costs, for any relocation or protection of any part of the System in the event the relocation or protection of the System is necessary due to changes in any Public Way or in the event the City Conduit is changed at any time during the term of this Agreement.
- 10. CITY, at its sole cost, shall operate, maintain and repair the City Conduit not containing any part of the System, and shall use its best efforts to avoid damaging or minimize adversely affecting the System. LICENSEE shall have no duty to maintain or repair the non-System City Conduit or to keep such Conduit in good working order, except where CITY and LICENSEE agree to enter into an operation, maintenance and repair agreement whereby LICENSEE shall perform

these obligations. CITY shall not make any modifications to, or alter, the City Conduit or Developer's Conduit containing any part of the System without prior written notice to LICENSEE.

- 11. CITY, its agents, or assigns, or any utility company or CITY franchisee may at any time, enter upon the areas covered by this Agreement for the purpose of installing, maintaining, relocating, altering, enlarging, repairing, or inspecting any utility, facility, or public work thereon.
- 12. This Agreement shall be binding upon the successors and assigns of LICENSEE.
- LICENSEE agrees to defend, indemnify, and hold harmless CITY, its officers, 13. agents, employees, and volunteers (the "City Indemnitees") from all loss, cost, and expense arising out of any liability or claim of liability for personal injury, bodily injury to persons, contractual activities due to the acts or omissions of LICENSEE or those of any of its officers, agents, or employees, or assigns whether such act is authorized by this Agreement or not; and LICENSEE shall pay for any and all damages, done or caused by such persons. CITY assumes no responsibility whatsoever for any property placed in the right of way. LICENSEE further agrees to waive all rights of subrogation against CITY. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by LICENSEE, its officers, agents, and/or employees, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the acts or omissions of LICENSEE, its officers, agents, and/or employees, whether or not LICENSEE, its officers, agents, and/or employees are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, LICENSEE shall not be liable for the defense or indemnification of the City Indemnitees for claims, actions, complaints, or suits arising out of the negligence or willful misconduct of the City Indemnitees.
- 14. CITY agrees to defend, indemnify, hold free and harmless LICENSEE, its officers, agents and employees ("Developer Indemnitees"), at the CITY's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the Developer Indemnitees arising out of the acts or omissions of the CITY, its officers, agents, and/or employees, pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the CITY, its officers, agents, and/or employees, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the acts or omissions of the CITY, its officers, agents, and/or employees, whether or not the CITY, its officers, agents, and/or employees are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the CITY shall not be liable for the defense or indemnification of the Developer Indemnitees for claims, actions, complaints or suits arising out of the negligence or willful misconduct of the Developer Indemnitees.
- 15. LICENSEE shall restore damaged or disturbed surfaces or underground utilities at or adjacent to the License Area to usable and acceptable state, but for normal wear

and tear. Restoration shall be carried out immediately after construction and completed within sixty (60) days of construction completion, or at a later date as mutually agreed upon between LICENSEE and the CITY. To the extent the restoration is not completed within the specified timeframe, LICENSEE and CITY may, either (i) mutually agree upon a timeline extension, with LICENSEE providing a detailed development plan to reach the new scheduled completion date, or (ii) mutually agree that the CITY shall complete the restoration work itself at the LICENSEE's expense.

- 16. The term of this AGREEMENT is for THIRTY (30) years commencing on the Effective Date of the Development Agreement unless or until terminated earlier pursuant to this AGREEMENT. The term of this AGREEMENT shall be renewed for succeeding terms of THIRTY (30) years each unless either party gives written notice to the other at least ninety (90) days prior to the expiration of any term of its intention not to renew this AGREEMENT, or an uncured breach exists per Section 8.2 of the Development Agreement. This Agreement shall terminate upon the termination or expiration of the Development Agreement, including any extensions thereof.
- 17. The System and all of its parts and components which are installed and constructed by LICENSEE in the License Area shall at all times be and remain the property of LICENSEE.
- 18. LICENSEE understands and agrees that from time to time during the term of this Agreement and any renewals, the CITY may need to engage in road improvements or other infrastructure projects and that such projects may require relocation or rerouting LICENSEE System components. The CITY will give LICENSEE prompt notice of any such improvements and will use its best efforts to minimize impeding, disturbing, interfering with, or restricting, LICENSEE's access to, use and possession of the License Area. Costs of relocation or re-routing will be borne by LICENSEE in accordance with CITY's standard policy.
- 19. The terms, conditions and rights contained herein shall be covenants running with the land and shall remain in effect for as long as the Development Agreement remains in effect. Within thirty (30) days after termination of this Agreement, LICENSEE shall, at City's election, remove any abandoned or unused Improvements from the City Conduit. The terms and conditions contained herein shall bind, inure to the benefit of and be enforceable by, CITY and LICENSEE, and their respective successors and assigns (including, without limitation, any and all successors to CITY in title to all or any portion of the City Conduit).
- 20. If any term, provision or condition in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law.

- 21. In the event of a conflict between the terms of this Agreement and the terms of the Development Agreement, the terms of the Development Agreement shall control.
- 22. In the event of a breach of this Agreement by a Party, the other Party shall be entitled to specific performance of any provision which reasonably lends itself to such remedy and other equitable relief such as injunctive relief, in addition to all other remedies permitted by law including, without limitation, damages.

[SIGNATURE BLOCK ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have caused this Master License Agreement to be executed as of the day and year stated above.

CITY OF BLOOMINGTON	
An Indianamunicipal corporation	
By:	-
Its:	
[APPROVED AS TO FORM]	
[Corporation Counsel]	
HOOSIER NETWORKS, LLC a Delaware limited liability company	
Ву:	-
Its:	

ACKNOWLEDGMENT

State of		
County of		
On	before me,	personally
appeared	, who proved to me on the basis	
me that he/she/they	name(s) is/are subscribed to the within in executed the same in his/her/their authorie(s) on the instrument the person(s), or the uted the instrument.	ized capacity(ies), and that by
I certify under PENA foregoing paragraph	ALTY OF PERJURY under the laws of the is true and correct.	e State of [jurisdiction] that the
WITNESS my hand	and official seal.	
Signature	(Seal)	

Exhibit C

City Maintenance Obligations

[to be finalized by the Parties within sixty (60) days of executing the Agreement]

Exhibit D

Developer Maintenance Obligations

[to be finalized by the Parties within sixty (60) days of executing the Agreement]

Exhibit E

(See Section 1 (Definition of Terms; Boundary) of the Agreement

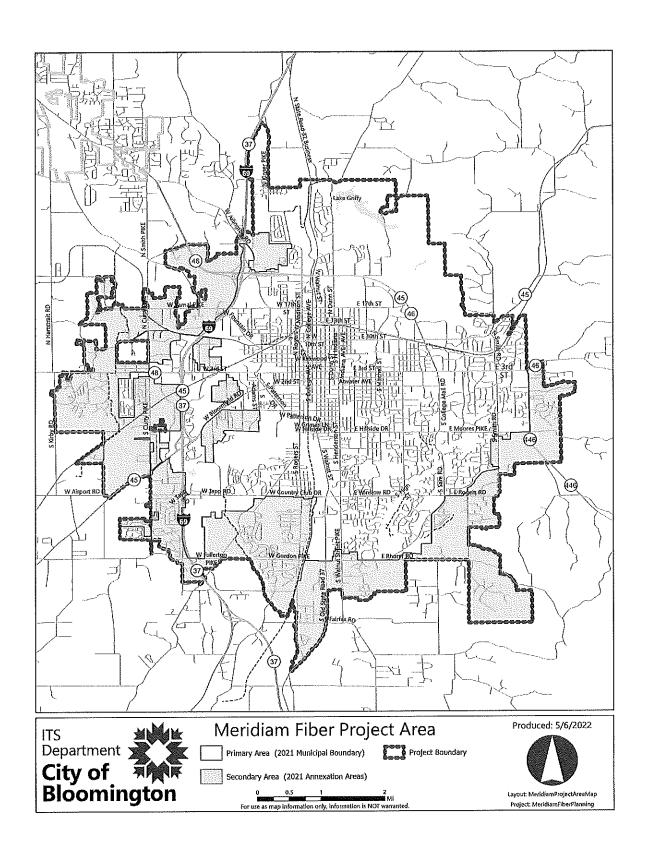


Exhibit F

Exclusive Period Performance Assessment

Per Section 7.3.2(h), Developer's Primary ISP shall be entitled to a five-year exclusivity period on the Bloomington Network, with the potential to extend that period for up to two additional years if the Primary ISP meets the specified level of market penetration -35% – by Year 5.

This arrangement is intended to provide a brief initial period to demonstrate the viability of the business model, while ensuring that the network operates on an open access basis thereafter.

Because the Bloomington Network will take approximately three years to complete, the Primary ISP will not have the full five (5) years of operation in which to achieve 35% market penetration. Accordingly, to assess whether the Primary ISP has achieved 35% market penetration overall by the end of Year 5, and again in Year 6, the parties will adjust the percentage of penetration needed in areas served for fewer than five (5) years, as reflected in the chart below.

Using this assessment approach, to merit an extension of exclusivity, in Years 5 and 6:

- 35% of units passed in Month 0 to 9 must be active network users;
- 30% of units first passed in Month 10 to 21 must be active network users;
- 25% of units first passed in Month 22 to 33 must be active network users;
- 20% of units first passed in Month 34 to 45 (if any) must be active network users;
- 10% of units first passed in Month 46 to 57 (if any) must be active network users; and
- 10% of units first passed in Month 58 to 70 (if any) must be active network users.

For assessment purposes, at the end of Year 5 and, as applicable, Year 6, these percentages for units passed are multiplied by units passed in the respective years, to yield a numerical target for each build year. These targets are summed across all of the build years to yield a performance target number of units. If the actual number of units connected on the date of assessment is equal or greater than the sum of the target number, then the assessment is positive. Otherwise, it fails.

The following tables illustrate successful and failed performance assessment scenarios for the determination of whether the Primary ISP's exclusivity period will extend for one or two additional years prior to operating the network on a full open-access basis.

Scenerio #1 - ISP exceeds target

		Units Passed		Target	Actual Units	
5 1 1	Month Unit	duing the	Agreed	Units	Connected during the Period	Actual to
Period	Activated	Period	Take Rate	connected	the Periou	Target
1	0 - 9	100	35%	35	45	10
2	10 - 21	50	30%	15	14	-1
3	22 -33	100	25%	25	20	-5
4	34 - 45	100	15%	15	25	10
5	46 ~ 57	100	10%	10	12	2
		450		100	116	16

Scenerio #2 - ISP fails to exceed target

		Units Passed		Target	Actual Units	
Period	Month Unit Activated	duing the Period	Agreed Take Rate	Units connected	Connected during the Period	Actual to Target
1	0 - 9	100	35%	35	20	-15
2	10 - 21	50	30%	15	20	5
3	22 -33	100	25%	25	25	0
4	34 - 45	100	15%	15	20	5
5	46 - 57	100	10%	10	5	-5
		450		100	90	-10

¹⁾ The 3 month delay is tended to adjust for the units that were added during the second half of the year

Exhibit G

Digital Equity Performance Assessment

This Exhibit more fully describes the Digital Equity performance goals which the parties will aim to meet under Section 7.6.2 of the Agreement.

One significant measure of the success of the Digital Equity Program is to achieve take rates in low-income communities equivalent to take rates in non-low-income communities.

To assess the performance of the Developer against this Digital Equity Program goal, the Parties agree to the following:

- City will define a geographic footprint (or parcel list) of low-income units totaling 20% of units within the Boundary to define low-income areas for targeted investment. At the City's discretion this map may be informed by low-income census block, public housing and other factors.
- On a quarterly basis Developer will report to the City the low-income and overall take rate.

Areas identified as low-income can be adjusted once every 5 years with one-year advanced notice.

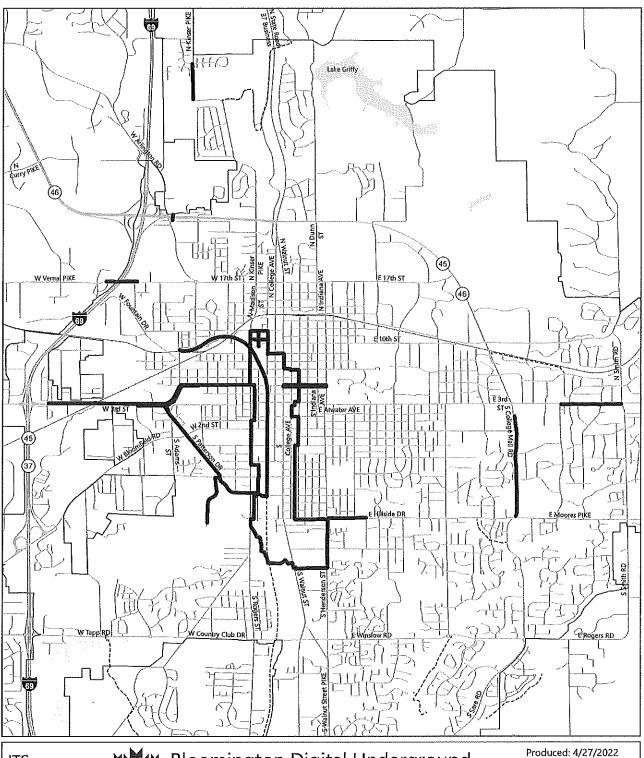
Appendix 1

[To be included with any Master Easement Agreement]

Appendix 2

See attached conduit map below. This map reflects the path of the City's telecommunications conduit network. This network consists of underground conduit, maintenance holes, hand holes, telecom tubs and associated assets. At all points on the map included herein there are at least 2 conduits installed. Conduit #1 is occupied by City of Bloomington fiber for use by the City as described in this Agreement. Wherever present, the unused #2 conduit may be used by Meridiam to fulfill its obligations for the term of this agreement. Conduit #2 is either 1.5in, 2in, or 4 inch conduit in different places in the network. Conduit #2 is the specified section of the City's Conduit, and the other network components described in this Appendix 2 are the City owned, managed or abandoned telecommunications infrastructure, referenced in Section 2.1.2 of this Agreement.

From time to time the City may add additional conduit to its conduit network. The City will provide Developer with access to such additional conduit that forms part of Conduit #2, subject to the terms of this Agreement.





170 aced. 4/27/2522

Layout: BDULocationMap_8.5x11
Project: BDUInfrastructureMaps

CITY OF BLOOMINGTON BLOOMINGTON DIGITAL UNDERGROUND ADVISORY COMMITTEE RESOLUTION 2022-01

Resolution in Support of the City's Plan to Bring High-Speed Fiber Optic Network to Nearly Every Resident and Neighborhood within the City

WHEREAS, the Bloomington Digital Underground (BDU) is a comprehensive program to install fiber-optic cable and conduit throughout the city, with the goal of building an advanced telecommunication infrastructure in the city rights-of-way to position Bloomington for economic growth driven by the Internet and electronic commerce; and

WHEREAS, the Bloomington Digital Underground (BDU) is the City of Bloomington's core fiber-optic network, connecting City, County, MCPL, MCCSC and other facilities; and

WHEREAS, pursuant to Resolution 03-28 of the Common Council of the City of Bloomington, the BDU Advisory Committee (BDUAC) advises the City on management of the BDU, related City telecommunications and IT infrastructure investments, and strategic IT initiatives; and

WHEREAS, since 2016 Bloomington has sought a partner to build and operate a city-wide Fiber To the Premises (FTTP) system operating on open access and net neutrality principles and to work with the City to bridge the "digital divide" and bring high-speed internet to virtually every neighborhood and resident in the City, including low-income households; and

WHEREAS, Meridiam SAS, a benefit corporation, is a public infrastructure developer and manager specializing in transportation, energy transformation, and fiber infrastructure; and

WHEREAS, Meridiam has pledged to invest more than Fifty Million Dollars (\$50,000,000) in Bloomington to build a city-wide FTTP network to supply high-speed fiber-based internet service to City residents, to operate the network according to open access and net neutrality principles, and to partner with the City in a robust Digital Equity Program that will provide income-qualifying residents with cost-free high-speed internet access; and

WHEREAS, Meridiam will establish a Bloomington-based company, Hoosier Networks, LLC, to own the network and contract with a third-party internet service provider to supply internet service to City residents in accordance with the terms of a Master Development Agreement between Hoosier Networks and the City; and

WHEREAS, the City has roughly seventeen (17) miles of unused Conduit that may be used in installing part of the fiber optic network; and

WHEREAS, Meridiam's plans for using City conduit comport with the contemplated uses of City conduit and associated telecommunications assets described in Resolution 03-28.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City of Bloomington Digital Underground Advisory Committee supports the City's and Meridiam's efforts to establish a high-speed open access fiber optic network that will be available to nearly all City of Bloomington residents.

2. The BDUAC supports the use by Hoosier Networks, LLC, of the roughly seventeen (17) miles of unused Conduit in this project as well as access by Hoosier Networks, LLC to additional conduit the City may add in future that the City is not using itself and makes available for others' use in accordance with Resolution 03-28.
ADOPTED THIS 16th DAY OF June, 2022.
BLOOMINGTON DIGITAL UNDERGROUND ADVISORY COMMITTEE
DUZ
Mike Trotzke MW MM
Chris Robb Mike Sullivan
Mike Allen
Michelle Cole
Marianne Chitwood Marianne Chitwood
Mike Satterfield

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF BLOOMINGTON PUBLIC WORKS DEPARTMENT AND THE CITY OF BLOOMINGTON UTILITIES DEPARTMENT

FOR CONTRIBUTION TO STREET SWEEPING STUDY

WHEREAS, the City of Bloomington, Indiana ("City"), pursuant to statutory authority set out in Indiana Code Section 36-4-9-4, has established a Public Works Department ("Public Works") which acts by and through the City's Board of Public Works ("BPW"), and pursuant to statutory authority set out in Indiana Code Section 8-1.5-3-3, has established the City of Bloomington Utilities Department ("CBU") which acts by and through its Utilities Service Board ("USB"); and,

WHEREAS, Public Works is currently responsible for all street sweeping operations for the City; and

WHEREAS, on April 11, 2022, USB approved a contract by and between CBU and Wood Environment & Infrastructure Solutions, Inc. to conduct a study that will analyze street sweeping operations for the City to determine compliance with state and federal regulation of municipal sanitary storm sewer systems ("MS4") and to review current street sweeping activities (identifying problems/needs/issues/opportunities) while investigating identified opportunities and actions that would increase the effectiveness of the City's street sweeping program (the "Project"); and

WHEREAS, BPW acknowledges that it will benefit from this Project and would therefore like to contribute financially to this Project by making a one-time financial payment of Ten Thousand and Zero/One-Hundredths (\$10,000.00) Dollars to CBU; and

WHEREAS, BPW and CBU wish to formalize this Memorandum of Understanding;

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

- 1. The parties acknowledge that the total cost for the Project is not to exceed Thirty Nine Thousand, Five Hundred Eighty and Zero/One-Hundredths (\$39,580.00) Dollars and CBU.
- 2. BPW shall make a one-time financial payment of Ten Thousand and Zero/One-Hundredths (\$10,000.00) Dollars to CBU.
- 3. CBU will pay all invoiced amounts to Wood Environment & Infrastructure Solutions, Inc. for the cost of the Project.

IN WITNESS WHEREOF, the parties hereto have executed this *Memorandum of Understanding* which shall become effective as of the date last entered below.

		CITY OF BLOOMINGTON BOARD OF PUBLIC WORKS		
Jeffrey L. Ehman Jeffrey L. Ehman (Jun 8, 2022 09:15 EDT)	Jun 8, 2022		D (1	
Jeff Ehman, President	Dated	, President	Dated	
		, Vice-President	Dated	
		, Secretary	Dated	
Attest:				
Varlah	Jun 8, 2022			
Vic Kelson, Director City of Bloomington Utilities	Dated	Adam Wason, Director Public Works	Dated	



CONTRACT COVER MEMORANDUM

TO: Controller, Mayor & USB

FROM: James Hall, Assistant Director-Environmental Programs, CBU

DATE: 5/24/2022

RE: Request Approval of MOU between CBU and PW for cost sharing on

street sweeping study

Contract Recipient/Vendor Name:	CBU and PW
Department Head Initials of Approval:	/VK//AW/
Responsible Department Staff: (Return signed copy to responsible staff)	James Hall
Responsible Attorney: (Return signed copy to responsible attorney)	Christopher J. Wheeler
Record Destruction Date: (Legal to fill in)	2034
Legal Department Internal Tracking #: (Legal to fill in)	22-257
Due Date For Signature:	June 7, 2022
Expiration Date of Contract:	none
Renewal Date for Contract:	none
Total Dollar Amount of Contract:	\$10,000.00
Funding Source:	PW: 101-02-020000-53170
W9/EFT Complete: (Staff Member of Responsible Dept. to fill in)	n/a
Affirmative Action Plan Complete (if applicable): (Staff Member of Responsible Dept. to fill in)	n/a
Procurement Summary Complete: (Staff Member of Responsible Dept. to fill in)	n/a

Summary of Contract: Public Works agrees to pay CBU \$10,000.00 towards the total cost of the street sweeping study being conducted by Wood Environmental & Infrastructure Solutions, Inc. (Total cost of the study is NTE: \$39,580.00)

AGREEMENT BETWEEN THE CITY OF BLOOMINGTON UTILITIES DEPARTMENT AND

WOOD ENVIRONMENT & INFRASTRUCTURE SOLUTIONS, INC. FOR

A STUDY TO ANALYZE STREET SWEEPING OPERATIONS AT CITY OF BLOOMINGTON IN REFERENCE TO MS4 COMPLIANCE

THIS AGREEMENT is executed by and between the City of Bloomington, Indiana, Utilities Department through the Utilities Service Board (hereinafter referred to as "City"), and Wood Environment & Infrastructure Solutions, Inc., a foreign for-profit corporation, duly incorporated in the State of Indiana with its principal place of business located at 1105 Lakewood Parkway, Suite 300, Alpharetta, GA 30009, (hereinafter referred to as the "CONTRACTOR");

WHEREAS, City desires to retain Contractor for the services identified in the Scope of Work which is attached hereto, marked as Exhibit "A", and by this reference incorporated herein; and

WHEREAS, Contractor is qualified and willing to perform the work as per its Bid on the Bid Summary sheet; and

WHEREAS, in accordance with Indiana Code § 5-16-13 et seq., incorporated herein by reference, Contractor is a Tier 1 or General Contractor for this project; and

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

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

I. TERM & EXPIRATION

- **A.** This Agreement shall be in effect upon execution of this Agreement by all parties.
- **B.** This Agreement shall expire once all terms and conditions of this Agreement are completed, or on February 28, 2023, whichever shall first occur.

II. SCOPE OF SERVICES

- A. Contractor shall provide services as specified in **Exhibit** "A", "Scope of Work", attached hereto and incorporated into this Agreement.
- **B.** Contractor shall complete all work required under this Agreement on or before December 31, 2022, unless the parties mutually agree to a later completion date. Substantial Completion shall mean completion of all work.
- C. Contractor agrees that no charges or claims for damages shall be made by him for any delays or hindrances, from any cause whatsoever during the progress of any portion of the services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of

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

III. COMPENSATION

- A. Upon the submittal of approved claims, City shall compensate Contractor in a lump sum not to exceed Thirty Nine Thousand, Five Hundred Eighty and Zero Dollars (\$39,580.00). City may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following:
 - 1. Defective work.
 - 2. Evidence indicating the probable filing of claims by other parties against Contractor which may adversely affect City.
 - **3.** Failure of Contractor to make payments due to sub-Contractors, material suppliers or employees.
 - 4. Damage to City or a third party.
- **B.** Contractor shall not perform any work or incur any expenses in its performance of the terms and conditions of this Agreement that will increase the not to exceed amount. Contractor must immediately notify the Department and then receive advanced written authorization from the Department prior to Contractor performing any work and/or incurring any expenses that would cause an increase in the not to exceed amount. The Department shall not make any payment to Contractor for any unauthorized work or expenses.
- C. The submission of any request for payment shall be deemed a waiver and release by Contractor of all liens and claims with respect to the work and period to which such payment request pertains except as specifically reserved and noted on such request.
- **D.** Contractor shall maintain proper account records for the scope of all services of this Agreement and provide an accounting for all charges and expenditures as may be necessary for audit purposes. All such records shall be subject to inspection and examination by City's representatives at reasonable business hours.

IV. 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.

V. RETAINAGE

For public works contracts in excess of \$100,000, the City requires that retainage be held as set out below.

THIS SECTION INTENTIONALLY LEFT BLANK

VI. GENERAL PROVISIONS

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

B. Abandonment, Default and Termination

- 1. City shall have the right to abandon the work contracted for in this Agreement without penalty. If City abandons the work described herein, Contractor shall deliver to City all surveys, notes, drawings, specifications and estimates completed or partially completed and these shall become the property of City. The earned value of the work performed shall be based upon an estimate of the proportion between the work performed by Contractor under this Agreement and the work which Contractor was obligated to perform under this Agreement. This proportion shall be mutually agreed upon by City and Contractor. The payment made to Contractor shall be paid as a final payment in full settlement of his services hereunder.
- 2. If Contractor defaults or fails to fulfill in a timely and proper manner the obligations pursuant to this Agreement, City may, after seven (7) days' written notice has been delivered to Contractor, and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to Contractor. In the alternative, City, at its option, may terminate this Agreement and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by Contractor, and may finish the project by whatever method it may deem expedient, and if the such action exceeds the unpaid balance of the sum amount, Contractor or his surety, shall pay the difference to City.
- 3. <u>Default:</u> If Contractor breaches this Agreement or fails to perform the work in an acceptable manner, he shall be considered in default. Any one or more of the following will be considered a default:
 - **a.** Failure to begin the work under this Agreement within the time specified.
 - b. Failure to perform the work with sufficient supervision, workmen, equipment and materials to insure prompt completion of said work within the time limits allowed.
 - **c.** Unsuitable performance of the work as determined by Utilities Engineer or his representative.

- d. Neglecting or refusing to remove defective materials or failure to perform anew such work as shall have been rejected.
- e. Discontinuing the prosecution of the work or any part of it.
- **f.** Inability to finance the work adequately.
- g. If, for any other reason, Contractor breaches this Agreement or fails to carry on the work in an acceptable manner.
- 4. City shall send Contractor a written notice of default. If Contractor, or his Surety, within a period of ten (10) days after such notice, fails to remedy the default, then City shall have full power and authority, without violation of the Contract, to take the prosecution of the work out of the hands of said Contractor, to appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable, and may, at its option, turn the work over to the Surety, or enter into an agreement with another Contractor for the completion of the Agreement according to the terms and provisions thereof, or City may use such other methods as, in its opinion, shall be required for the completion of said Contract in an acceptable manner.
- 5. All cost of completing the work under the Contract shall be deducted from the monies due or which may become due to said Contractor. In case the expenses so incurred by City shall be less than the sum which would have been payable under the Contract if it had been completed by said Contractor, Contractor shall be entitled to receive the difference. However, in case such expense shall exceed the sum which would have been payable under the Contract, Contractor and his Surety will be liable and shall pay to City the amount of said excess. By taking over the prosecution of the work, City does not forfeit the right to recover damages from Contractor or his Surety for his failure to complete the work in the time specified.
- 6. Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of the Agreement by City are at any time not forthcoming or are insufficient, through failure of any entity to appropriate the funds or otherwise, then City shall have the right to terminate this Agreement without penalty by giving prior written notice documenting the lack of funding in which instance, unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void.
- 7. City agrees that it will make its best effort to obtain sufficient funds, including but not limited to, including in its budget for each fiscal period during the term hereof a request for sufficient funds to meet its obligations hereunder in full.
- 8. If the City has to pursue legal action against the Contractor for breach of any term of this Agreement, Contractor will be liable for all costs of litigation including, but not limited to attorney fees. Any action shall be filed in Monroe County, Indiana.
- C. <u>Independent Contractor Status</u>. Both parties agree that for the purpose of this Agreement, Contractor shall be an Independent Contractor and not an employee of City
- D. <u>Successors and Assigns</u>. No portion of this Agreement shall be sublet, assigned, transferred or otherwise disposed of by Contractor except with the written consent of City being first obtained.

Consent to sublet, assign, transfer, or otherwise dispose of any portion of this Agreement shall not be construed to relieve Contractor of any responsibility of the fulfillment of this Agreement.

E. Extent of Agreement: Integration.

- 1. This Agreement consists of the following parts, each of which is as fully a part of this Agreement as if set out herein:
 - a. This Agreement
 - b. Exhibit A, with any attachments thereto
 - c. Exhibit B
 - d. Exhibit C
 - e. All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto.
- 2. In resolving conflicts, errors, discrepancies and disputes concerning the Scope of Work to be performed by Contractor, and other rights and obligations of City and Contractor, the document expressing the greater quantity, quality or other scope of work in question, or imposing the greater obligation upon Contractor and affording the greater right or remedy to City shall govern; otherwise the documents shall be given precedence in the order as enumerated above.

F. Insurance.

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

Cover	age	<u>Limits</u>
A.	Worker's Compensation & Disability	Statutory Requirements
В.	Employer's Liability Bodily Injury by Accident Bodily Injury by Disease Bodily Injury by Disease	\$100,000 each accident \$500,000 policy limit \$100,000 each employee
C.	Commercial General Liability (Occurrence Basis) Bodily Injury, personal injury, property damage, contractual liability, products- completed operations, General Aggregate Limit (other than Products/Completed Operations)	\$1,000,000 per occurrence and \$2,000,000 in the aggregate
	Products/Completed Operation	\$1,000,000
	Personal & Advertising Injury Limit	\$1,000,000

Each Occurrence Limit \$1,000,000

Fire Damage (any one fire) \$50,000

D. Comprehensive Auto Liability (single limit, \$1,000,000 each

owned, hired and non-owned) accident

Bodily injury and property damage

E. Umbrella Excess Liability \$5,000,000 each

occurrence and aggregate

The Deductible on the Umbrella Liability shall not be more than

\$10,000

2. Contractor's comprehensive general liability insurance shall also provide coverage for the following:

- a. Premises and operations;
- b. Contractual liability insurance as applicable to any hold-harmless agreements;
- c. Completed operations and products; which also must be maintained for a minimum period of two (2) years after final payment and Contractor shall continue to provide evidence of such coverage to City on an annual basis during the aforementioned period;
- **d.** Broad form property damage including completed operations;
- e. Fellow employee claims under Personal Injury; and
- f. Independent Contractors.
- 3. With the prior written approval of City, Contractor may substitute different types or amounts of coverage for those specified as long as the total amount of required protection is not reduced.
- 4. Certificates of Insurance showing such coverage then in force (but not less than the amount shown above) shall be on file with City prior to commencement of work. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled or non-renewed until at least sixty (60) days' prior written notice has been received by City. The City shall be named as an additional insured on the Commercial General Liability, Automobile Liability, and Umbrella Excess Liability policies. The Contractor shall agree to a waiver of subrogation on its Worker's Compensation policy.
- G. <u>Necessary Documentation</u>. Contractor certifies that it will furnish City any and all documentation, certification, authorization, license, permit or registration required by the laws or rules and regulations of the City of Bloomington, the State of Indiana and the United States. Contractor further certifies that it is now and will maintain in good standing with such governmental agencies and that it will keep its license, permit registration, authorization or certification in force during the term of this Agreement.

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

I. Non-Discrimination.

- 1. Contractor and sub-Contractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, training, conditions or privileges of employment, because of race, sex, color, religion, national origin, ancestry, disability, sexual orientation, gender identity, veteran status, or housing status. Breach of this covenant may be regarded as a material breach of the Agreement.
- 2. Contractor certifies for itself and all its sub-Contractors compliance with existing laws of the City of Bloomington, the State of Indiana and the United States regarding:
 - a. Prohibition of discrimination in employment practices on the basis of race, sex, color, religion, national origin, ancestry, disability, sexual orientation, gender identity, veteran status, housing status or any other legally protected classification;
 - **b.** The utilization of Minority and Women Business Enterprises. Contractor further certifies that it:
 - i. Has formulated its own Affirmation Action plan for the recruitment, training and employment of minorities and women, including goals and timetable; which has been approved by the City's Contract Compliance Officer.
 - ii. Encourages the use of small business, minority-owned business and women-owned business in its operations.
- 3. 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 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.
- **4.** FURTHER, PURSUANT TO INDIANA CODE § 5-16-6-1, CONTRACTOR AGREES:

- a. That in the hiring of employees for the performance of work under this Agreement or any sub agreement hereunder, no Contractor, or sub-Contractor, nor any person acting on behalf of such Contractor or sub-Contractor, shall by reason of race, sex, color, religion, national origin, ancestry, or any other legally protected classification, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates.
- b. That no Contractor, sub-Contractor, or any person on their behalf, shall, in any manner, discriminate against or intimidate any employee hired for performance of work under this Agreement on account of race, religion, color, sex, national origin, ancestry or any other legally protected classification.
- c. That there may be deducted from the amount payable to Contractor, by City, under this Agreement, penalty of Five Dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement. Any such person discriminated against retains the right to file a discrimination complaint with the appropriate civil rights agency or court.
- d. That this Agreement may be canceled or terminated by City and all money due or to become hereunder may be forfeited, for a second or any subsequent violations of the terms or conditions under this section of the Agreement.

J. Workmanship and Quality of Materials.

- 1. Contractor shall guarantee the work for a period of one (1) year from the date of substantial completion. Failure of any portion of the work within one (1) year due to improper construction, materials of construction, or design may result in a refund to City of the purchase price of that portion which failed or may result in the forfeiture of Contractor's Performance Bond.
- 2. OR EQUAL/OR EQUIVALENT: Wherever in any of the Agreement Documents an article, material or equipment is defined by describing a proprietary product, or by using the name of a manufacturer or vender, the term "Or Equal" or the term "The Equivalent" if not inserted, shall be implied, and it is done for the express purpose of establishing a basis of durability and efficiency and not for the purpose of limiting completion. Whenever material or equipment is submitted for approval as being equal to that specified, the submittal shall include sufficient information and data to demonstrate that the material or equipment conforms to the Contract requirements. The decision as to whether or not such material or equipment is equal to that specified shall be made by the Utilities Engineer. The approval by the Utilities Engineer of alternate material or equipment as being equivalent to that specified, shall not in any way relieve Contractor of responsibility for failure of the material or equipment due to faulty design, material, or workmanship, to perform the function required by the Contract Documents. Specifications as determined by other entities within the City of Bloomington such as Planning and Transportation shall

- only be substituted or changed by their approval which shall be submitted in writing to the Utilities Engineer.
- 3. City shall be the sole judge of the sufficiency of workmanship and quality of materials. Disputes shall be resolved by the Utilities Director and are not subject to arbitration.
- K. <u>Safety</u>. Contractor shall be responsible for the safety of employees at all times and shall provide all equipment necessary to insure their safety. Contractor shall ensure the enforcement of all applicable safety rules, regulations, ordinances and laws, whether federal, state or local. Contractor's Superintendent of Safety shall make daily inspections upon the arrival and leaving of the site at the close of each workday.

THIS SECTION INTENTIONALLY LEFT BLANK

L. Amendments/Changes.

- 1. Except as provided in Paragraph VI.L.2, this Agreement may only be amended by written instrument signed by both City and Contractor under the same formality as this Agreement.
- 2. Without invalidating the Agreement and without notice to any surety, City may, at any time or from time to time, order, in writing, additions, deletions, or revisions in the work. If such an order will not result in an increase in the Agreement time and/or price, then Contractor shall promptly proceed with the work involved, which will be performed under the applicable terms and conditions of the Agreement. If, however, Contractor believes that any such order by the City will result in an increase in the Agreement time and/or price, then Contractor shall immediately notify City in writing, stating the general nature of the increase in time and/or price along with supporting data. Contractor shall not proceed with the work involved until and unless City has reviewed the notice of increased time and/or price and provided written authorization to proceed with the order. No claim by Contractor for any increase in the Agreement time and/or price will be valid if not submitted in accordance with this Paragraph.
- 3. Contractor shall carry on the work and adhere to the progress schedule during any and all disputes or disagreements with City. No work shall be delayed or postponed pending resolution of any dispute or disagreement except as Contractor and City may otherwise agree in writing.

M. Performance Bond and Payment Bond.

- 1. For contracts in excess of \$100,000, Contractor shall provide City with a Performance Bond and a Payment Bond in the amount of one hundred percent (100%) of the contract amount.
- 2. Failure by Contractor to perform the work in a timely or satisfactory fashion may result in forfeiture of Contractor Performance Bond.

- 3. If the surety on any bond furnished by Contractor becomes a party to supervision, liquidation, or rehabilitation action pursuant Indiana Code § 27-9 et seq. or its right to do business in the State of Indiana is terminated, Contractor shall, within thirty (30) calendar days thereafter, substitute another bond and surety, both of which must be acceptable to City.
- N. Payment of Sub-Contractors. Contractor shall pay all sub-Contractors, laborers, material suppliers and those performing services to Contractor on the project under this Agreement. City may, as a condition precedent to any payment hereunder, require Contractor to submit satisfactory evidence of payments of any and all claims of sub-Contractors, laborers, material suppliers, and those furnishing services to Contractor. Upon receipt of a lawful claim, City shall withhold money due to Contractor in a sufficient amount to pay the sub-Contractors, laborers, material suppliers, and those furnishing services to Contractor.
- O. <u>Written Notice</u>. Written notice shall be considered as served when delivered in person or sent by mail to the individual, firm, or corporation, or to the last business address of such known to Contractor who serves the Notice. Notice shall be sent as follows:

TO CITY: TO CONTRACTOR:

City of Bloomington Utilities Dept.	Wood Environment & Infrastructure Solutions,		
	Inc.		
Attn: James Hall, Assistant Director of	Attn: R.Scott Taylor,		
Environmental Programs	Senior Associate		
600 E. Miller Drive	1105 Lakewood Parkway, Suite 300		
Bloomington, IN 47401	Alpharetta, GA 30009		

- P. <u>Severability and Waiver</u>. In the event that any clause or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any other provision of this Agreement. Failure of either party to insist on strict compliance with any provision of this Agreement shall not constitute waiver of that party's right to demand later compliance with the same or other provisions of this Agreement.
- Q. Notice to Proceed. Contractor shall not begin the work pursuant to the "Scope of Work" of this Agreement until it receives an official written Notice to Proceed from the City. Contractor shall start active and continuous work on the Agreement within five (5) calendar days after the date of the Notice to Proceed. In no case shall work begin prior to the date of the Notice to Proceed. If a delayed starting date is indicated in the proposal, the five (5) calendar day limitation will be waived. Work day charges will then begin on a date mutually agreed upon, but not later than the delayed starting date specified. In the event that any Agreement is canceled after an award has been made but prior to the issuing of the Notice to Proceed, no reimbursement will be made for any expenses accrued relative to this contract during that period.

R. Steel or Foundry Products.

1. To comply with Indiana Code § 5-16-8, affecting all contracts for the construction, reconstruction, alteration, repair, improvement or maintenance of public works, the following provision shall be added: If steel or foundry products are to be utilized or

supplied in the performance of any contract or subcontract, only domestic steel or foundry products shall be used. Should City feel that the cost of domestic steel or foundry products is unreasonable; City will notify Contractor in writing of this fact.

- 2. Domestic Steel products are defined as "Products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two (2) or more of such operations, from steel made in the United States by open hearth, basic oxygen, electric furnace, Bessemer or other steel making process."
- 3. Domestic Foundry products are defined as "Products cast from ferrous and nonferrous metals by foundries in the United States."
- 4. The United States is defined to include all territory subject to the jurisdiction of the United States.
- 5. City may not authorize or make any payment to Contractor unless City is satisfied that Contractor has fully complied with this provision.

S. Verification of Employees' Immigration Status

- 1. Contractor enrolled in and verified the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists). Contractor signed the affidavit, attached as **Exhibit "B"**, affirming that Contractor does not knowingly employ an unauthorized alien. "Unauthorized alien" is defined at 8 U.S. Code 1324a(h)(3) as a person who is not a U.S. citizen or U.S. national and is not lawfully admitted for permanent residence or authorized to work in the U.S. under 8 U.S. Code Chapter 12 or by the U.S. Attorney General.
- 2. Contractor and any of its sub-Contractors may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that the Contractor or any of its sub-Contractors learns is an unauthorized alien. If the City obtains information that the Contractor or any of its sub-Contractors employs or retains an employee who is an unauthorized alien, the City shall notify the Contractor or its sub-Contractors of the Agreement violation and require that the violation be remedied within thirty (30) calendar days of the date of notice. If the Contractor or any of its sub-Contractors verify the work eligibility status of the employee in question through the E-Verify program, there is a rebuttable presumption that the Contractor or its sub-Contractor did not knowingly employ an unauthorized alien. If the Contractor or its sub-Contractor fails to remedy the violation within the thirty (30) calendar day period, the City shall terminate the Agreement, unless the City determines that terminating the Agreement would be detrimental to the public interest or public property, in which case the City may allow the Agreement to remain in effect until the City procures a new Contractor. If the City terminates the Agreement, the Contractor or its sub-Contractor is liable to the City for actual damages.
- 3. Contractor shall require any sub-Contractors performing work under this Agreement to certify to the Contractor that, at the time of certification, the sub-Contractor does not knowingly employ or contract with an unauthorized alien and the sub-Contractor has

enrolled in and is participating in the E-Verify program. Contractor shall maintain on file all sub-Contractors' certifications throughout the term of this Agreement with the City.

T. Non-Collusion. Contractor certifies that it has not, nor has any other member, representative, or agent of Contractor, 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. Contractor signed the affidavit, attached as Exhibit "C" and by this reference incorporated herein, affirming that Contractor has not engaged in any collusive conduct.

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

City of Bloomington

CITY OF BLOOMINGTON		WOOD ENVIRONMENT & INFRASTRUGTURE SOLUTIONS, INC.
BY:		BY: / Date / March 22, 2022
Jeffrey Ehman, Chair	DATED	Edwin Watkins DATED
Utilities Service Board		Wood Environment & Infrastructure
Inc.		Solutions, Inc.
Vic Kelson, Director City of Bloomington Utilities	DATED	
John Hamilton, Mayor	DATED	

EXHIBIT "A"

SCOPE OF SERVICES

Please see the attached



Wood Environment & Infrastructure Solutions, Inc. 216 Centerview Dr. Suite 300 Brentwood, TN 37027 T: 317-260-7604

February 18, 2022

www.woodplc.com

Subject:

Scope of Services to the City of Bloomington, IN: Street Sweeping Study

Dear James,

Wood Environment & Infrastructure Solutions, Inc. (Wood) appreciates the opportunity to continue providing stormwater management consulting services to the City of Bloomington, IN.

Project Background

Wood understands that CBU would like a review and/or assessment of its current street sweeping program that can identify problems, needs, or issues the program may currently have and opportunities or actions that could be taken to improve the program.

As part of this review, Wood will develop a set of recommendations that, if implemented, are expected to have a high probability of increasing the material pick up performance of the program, maintaining compliance with CBU's MS4 Permit. Wood will also determine resource requirements and costs of the recommended actions.

Scope of Services

The tasks and deliverables of the proposed scope of services are outlined below. The total cost for **Project Management**, **Task 1**, **Task 2**, and **Task 3** is **\$39.580** and shall be performed on a time and materials basis. Individual tasks and deliverables are provided below.

Task 1. Initial Review of Street Sweeping Program: Problems, Needs, Issues & Opportunities The purpose of Task 1 is to conduct an initial review of the City of Bloomington's current street sweeping program to identify, describe, and quantify a comprehensive set of program problems, needs, issues and opportunities. Wood will coordinate with CBU to schedule meeting(s) with appropriate departments who are currently managing the Street Sweeping Programs. The meetings will interview the department staff to obtain the following type of information:

- Type, manufacturer, age and models of sweeping equipment being used
- Operation of the sweeping equipment (e.g. forward sweeping speed & operator experience)
- Maintenance of the sweeping equipment (e.g. broom replacement frequency)
- Specified frequency of sweeping and documentation of sweeping being achieved
- Sweeping routes and how these routes were created
- Parked car interference and its potential impact on pick up effectiveness







- Scheduling of sweeping operations (e.g. day/residential, night commercial)
- Established sweeping program budget and comparison to cities of similar size

The end product of this task will be a description of the current street sweeping program and an outline of the opportunities that will be investigated in the next Task in order to improve program effectiveness.

Meetings/Deliverables:

- Up to eight (8) hours of meetings w/ CBU staff and Street Sweeping Operations Staff
- Memorandum on the current street sweeping program and an outline of the opportunities that will be investigated to implement actions needed that could improve program effectiveness

Total Cost: The total cost for this task is \$12,180.00

Task 2. Investigate Identified Opportunities & Actions

Wood will investigate the various opportunities and potential actions identified to improve the Street Sweeping Program identified in **Task 1**. Wood will define the pros and cons associated with the implementation of each action being investigated. Costs associated with implementing each action will be provided. If possible, the range of potential increase of material pickup if the action is implemented will be provided. If necessary, cities of similar size and developed areas will be interviewed to provide lessons learned and assist with accuracy of information. The type of items that could be provided are:

- Investigation into the pros and cons of implementing regulations that would restrict parking during scheduled sweeping as well as the enforcement of those regulations will be investigated.
- Investigation into the routes and software used to develop the routes for effectiveness
- Investigation into the frequency of sweeping

The end product will be a draft memorandum discussing the results of the investigation of the actions needed to implement the various opportunities identified. The memo will also provide CBU staff with a list of actions that Wood would recommend for implementation and a list of actions the team feels additional study is needed.

Meetings/Deliverables:

- Up to eight (8) hours of meetings w/ CBU staff and Street Sweeping Operations Staff
- Memorandum discussing the results of the investigations including the preliminary list of recommended actions, summary of peer city review, and list of actions that warrant further investigation

Total Cost: The total cost for this task is \$14,840.

Task 3. Final Recommendations

Wood will provide the **Task 2** Memorandum to CBU staff for review and comment. Once the memo is reviewed Wood will have a meeting with CBU staff to review the recommendations. The primary purpose of the meeting is to finalize: (1) the list of recommendations; and (2) identify areas that need further study. If areas need further study, Wood will address before finalizing the recommendations. At this point, to implement the recommendations, detailed work plans will need to be created. **Phase 2** of this project could possibly provide the detailed work plans.

However, it could be important at this point to go back to Council and provide a high level summary of the memo and findings in order to obtain buy in before advancing the program recommendations.

Meetings/Deliverables:

- Up to four (4) hours of meetings w/ CBU staff and Street Sweeping Operations Staff
- Final Memorandum w/ recommendations
- Presentation to Council

Total Cost: The total cost for this task is \$11,010.

Cost Assumptions

The assumptions listed below were made to develop the above cost estimates. Should any of these assumptions prove incorrect during the course of this project, a change order may be required with need for additional cost/funds.

- Wood standard T&M rates shall be used and are attached to this scope
- No travel by Wood staff is required;
- No other project expenses are required;
- All meetings will be held over Teams or Phone conferencing system, with other project communication via email or direct phone as necessary;
- ► Task deliverables will all be submitted electronically.

Thank you for returning to Wood for your stormwater management needs. We value our relationship with the City of Bloomington.

This proposal was prepared and reviewed by the following Wood staff.

Sincerely,

Wood Environment & Infrastructure Solutions, Inc.

Heather Williams

Hose Will

Project Manager

R. Scott Taylor, PE Senior Associate

of Sath Safe

EXHIBIT "B"

AFFIDAVIT REGARDING E-VERIFY

The undersigned, being duly sworn, hereby affirms	and says that:
1. The undersigned is the of of	Wood Environment & Infrastructure Sollion (company name)
	dersigned has contracted with or is seeking to contract
3. The undersigned hereby states that, to the best of herein does not knowingly employ an "unauthorize 1324a(h)(3).	f his/her knowledge and belief, the company named ad alien," as defined at 8 United State Code
4. The undersigned hereby states that, to the best of herein is enrolled in and participates in the E-verify	f his/her knowledge and belief, the company named program.
I affirm under the penalties of perjury that the foregoest of my knowledge and belief. Signature Edwin W. Watkins	going facts and information are true and correct to the
Printed name	
TENNESSEE STATE OF INDIANA) SS: COUNTY OF DAVIDSON	
Before me, a Notary Public in and for said County and acknowledged the execution of 2022.	and State, personally appeared <u>FDWIN WATKINS</u> f the foregoing this <u>22ND</u> day of <u>MARCH</u>
My Commission Expires: 10-2-2023	Phinda L. Biggs Notary Public
County of Residence: CHEAT HAM	RHONDA L. BIGGS Name Printed
NICAL BIOMA	Commission Number

EXHIBIT "C"

AFFIDAVIT REGARDING NON-COLLUSION

The undersigned, being duly sworn, hereby affirm	ns and says that:
	ember, representative, or agent of the firm, company,
(company name)	
corporation or partnership represented by (cor	mpany name), entered into any combination,
collusion or agreement with any person relative t	to the price to be offered by any person nor to prevent
any person from making an offer nor to induce a	nyone to refrain from making an offer and that this offer
is made without reference to any other offer.	
Laffirm under the penalties of periury that the for	regoing facts and information are true and correct to the
best of my knowledge and belief.	
Dated this 12nd day of March Signature Edwin W. Wakins Printed name TENNESSEE STATE OF INDIANA	2022.
) SS: COUNTY OF DAVIDSON	
Before me, a Notary Public in and for said Coun and acknowledged the execution 2022.	ty and State, personally appeared EDWIN WATKINS of the foregoing this 22ND day of MARCH
My Commission Expires: 10-2-2023	Bhanda L. Biggs Notary Public
County of Residence: CHEATHAM	Notary Public RHONDA L. B. GGS Name Printed
MINIMUM MANAGERIAN	Commission Number



Board of Public Works Staff Report

Project/Event: Resolution 2022-44 - Solicitor in Right of Way

Petitioner/Representative: Theresa Farrell of Moon Pennies LLC

Staff Representative: Susan Coates **Meeting Date:** July 5, 2022

Moon Pennies LLC, by Theresa Farrell, has applied for a Solicitor's License for selling nutrional dog treats. An applicant wanting to operate in the right of way must obtain permission from the Board of Public Works before a license may be issued. The Department of Economic & Sustainable Development has reviewed the application and will confirm that all rules and regulations have been met prior to issuing a license.

The business will operate by selling nutrional dog treats.

This application is for one (1) year.

Staff is supportive of the request.

Susan Coates

Moon Pennies, LLL.



SOLICITOR LICENSE APPLICATION

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

1. License Le	ength and	Fee Applie	cation				
Length of License:	24 Hours	☐ 3 Days	□ 7 Days	☐ 30 Days	☐ 3 Months	☐ 6 Months	1 Year
License Fee:	\$25	\$30	\$50	\$75	\$150	\$200	\$350
2. Applicant	Informati	on					
Name:	57	FAT	225	11/	KEN T	FARR	2=11
Title/Position:							
Date of Birth:	01	120	1197	0 /	06	18/10	2401
Address:	81	5 N	I. At	# 31		•	
City, State, Zip:	BIO		man	IUC	-10, 4	740	7
E-Mail Address:	Lba	rko	moor	penr	7105.	net	
Phone Number:	(815) 272	- 2320	Mobile I	Phone: 8	12-272	-5239
3. Indiana Co If applicant is no							
Name:	J. a residerii	. Or Iriularia,	uley must de:	signate a resi	dent to serve	as a contact.	
Address:							
City, State, Zip:					-		
E-Mail Address:							
Phone Number:				Mobile F	Phone:		

Received in ESD JUN 2 1 2022

4. Company Infor						
Name of Employer:	MOON PENNIES	LLC				
Address of Employer:	815 W. 4TH ST. Blooming TON, IN. 47404					
City, State, Zip:	Blooming TOW, IN. 47409					
Employment Start Date:	U3/02/22 End Date (If known):					
Phone Number:						
Website / Email:	ibarkomoonper	ALCO MINISTER CONTRACTOR CONTRACT				
Company is a:	Limited Corporation Partnership Propried (LLC)					
KEN FA	REII SISW.	4TH ST. BICOMINDITION IV. 47404 4TH ST. STON IV. 47404				
and the same of th	rporation Information (For Corporations a	and LLC's Only)				
Date of incorporation or organization:	03/02/2022					
State of incorporation or organization:	INDIANA					
(If Not Indiana) Date qualified to transact business in state of Indiana:						

	hours of า:	9-5	Today WK.
will cond private p	places where you uct business (If roperty, attach ermission from owner):	9-5 N/A	
license, e City of B	u had a similar either from the loomington, or a municipality,	Yes 🗆	No ⊠-
(If Yes)	Provide details		
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John Hamilton

Mayor CITY OF BLOOMINGTON

DEPARTMENT OF ECONOMIC & SUSTAINABLE DEVELOPMENT

401 N. Morton St Suite 130

p. 812.349.3418

P.O. Box 100

Bloomington, Indiana 47402

f. 812.349.3520

RELEASE, HOLD-HARMLESS AND INDEMNIFICATION AGREEMENT

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

- 1. The undersigned, in exchange for the issuance of a license by the City of Bloomington Controller, agrees to release, hold harmless, and forever indemnify the City of Bloomington and any and all City employees, officers, and agents from any claim or claims which may arise out of any incident connected with or in any way related to his/her issuance of a license by the City of Bloomington or his/her operation of a business which was licensed by the City of Bloomington. This includes claims for personal injury, death, property damage, and/or any other type of harm or injury.
- 2. The undersigned shall, and hereby does, indemnify, defend, and hold harmless the City of Bloomington and any and all City employees, officers, and agents from and against any and all actions, costs, claims, suits, losses, expenses or damages, including but not limited to attorneys' fees and court costs, arising out of the undersigned's operation of a business which has been licensed by the City of Bloomington.
- 3. The undersigned understands this release binds him/herself, his/her spouse, and all heirs, executors, partners, co-owners and administrators of those individuals.

The undersigned acknowledges that he/she has read this release and understands all of its terms. The undersigned signs this release voluntarily and with full knowledge of its significance.

Name, Printed

John Hamilton Mayor CITY OF BLOOMINGTON

DEPARTMENT OF ECONOMIC & SUSTAINABLE DEVELOPMENT

401 N. Morton St Suite 130

p. 812.349.3418 f. 812.349.3520

P.O. Box 100 Bloomington, Indiana 47402

Prohibited Location Agreement

Bloomington Municipal Code Section 4.16.130 prohibits Solicitors from operating in certain locations. This Agreement provides for all of the prohibited locations. All signatories to this Agreement are required to review this Agreement prior to signing this Agreement.

As a licensed Solicitor, I understand and agree that I cannot and will not conduct business in a manner that would violate any of the below-listed location restrictions:

- No solicitor shall locate in any parking lot, parking space, or parking facility owned, leased or managed by the City of Bloomington unless approval has been given by the City's Board of Public Works
- No solicitor shall locate in a street, street median strip or alleyway
- No solicitor shall locate within a one block radius of a Special Event unless prior approval
 has been granted by either the operator of the Special Event or the City's Board of Public
 Works
- No solicitor shall be located in a manner which would significantly impede or prevent the
 use of any City of Bloomington property, or which would endanger the safety or property
 of the public
- No solicitor shall locate in a neighborhood or on property wherein a sign reading "No Solicitation", or something of a similar nature, has been duly erected and displayed
- No solicitor shall locate on the B-Line Trail except in the following permitted areas:
 - o Between the north side of Dodds Street and the south side of 2nd Street
 - o Between the north side of 3rd Street and the south side of 4th Street
 - o Between the north side of 6th Street and the south side of Fairview Street

I, the undersigned, understand that if I conduct business in any of the above-described prohibited locations or manner that I subject myself to fines and possible revocation of my Solicitor License, as so described in Chapter 4.16 of the Bloomington Municipal Code.

Vendor:

Name: MACON PENNIES, LLC

Date: 06/21/22

Kuit Fand

John Hamilton Mayor CITY OF BLOOMINGTON

DEPARTMENT OF ECONOMIC & SUSTAINABLE DEVELOPMENT

401 N. Morton St Suite 130

p. 812.349.3418

P.O. Box 100

f. 812.349.3520

Bloomington, Indiana 47402

Standard of Conduct Agreement

Bloomington Municipal Code Section 4.16.150 provides Standards of Conduct for all Solicitors. This Agreement provides a list of said Standards of Conduct. All signatories to this Agreement are required to review this Agreement prior to signing this Agreement.

As a licensed Solicitor I understand and agree that I cannot and will not conduct business in a manner that would violate any of the Standards of Conduct noted below:

- Solicitors shall conduct themselves at all times in an orderly and lawful manner, and shall not make, or cause to be made, any unreasonable noise of such volume as to be in violation of the City of Bloomington Noise Ordinance as stated in Title 14 of the Bloomington Municipal Code
- A device may not be used which would amplify sounds nor may attention be drawn to the solicitor by an aural means or a light-producing device (examples of such devices may include, but are not meant to be limited to the following: bull horns and strobe lights)
- No solicitor shall expose any person to any undue safety or health hazards nor create a public nuisance
- Solicitors shall be required to obey the commands of law enforcement officers or fire officials with respect to activity carried out inside of the City's jurisdiction
- No person shall engage in abusive solicitation. Such abusive activity shall mean to do one or more of the following while soliciting or immediately thereafter:
 - Coming closer than three feet to the person solicited unless and until the person solicited indicates that the person wishes to make a purchase or otherwise receive the solicitation
 - o Blocking or impeding the passage of the person solicited
 - o Repeating the solicitation after the person solicited has indicated an objection to the solicitation
 - o Following the person solicited by proceeding behind, ahead or alongside such person after the person has indicated an objection to the solicitation
 - Threatening the person solicited with physical harm by word or gesture
 - Abusing the person solicited with words which are offensive and inherently likely to provide an immediate violent reaction
 - o Touching the solicited person without the solicited person's consent.
- No solicitor shall approach any vehicle driving upon, stopped upon, or parked upon any public or private street or alley
- No solicitor shall conduct his/her business from a street, alley, traffic island, or median.

I, the undersigned, understand that if I conduct business in violation of any the above described standards of conduct that I subject myself to fines and possible revocation of my Solicitor License, as so described in Chapter 4.16 of the Bloomington Municipal Code.

Vendor:

Name: 14001

Signature:

Date: 06/2

State of Indiana Office of the Secretary of State

Certificate of Organization of MOON PENNIES LLC

I, HOLLI SULLIVAN, Secretary of State, hereby certify that Articles of Organization of the above Domestic Limited Liability Company have been presented to me at my office, accompanied by the fees prescribed by law and that the documentation presented conforms to law as prescribed by the provisions of the Indiana Code.

NOW, THEREFORE, with this document I certify that said transaction will become effective Tuesday, March 01, 2022.



In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis, March 02, 2022.

HOLLI SULLIVAN
SECRETARY OF STATE

202203011570432 / 9331727

To ensure the certificate's validity, go to https://bsd.sos.in.gov/PublicBusinessSearch

APPROVED AND FILED

HOLLI SULLIVAN INDIANA SECRETARY OF STATE 03/02/2022 08:10 AM

ARTICLES OF ORGANIZATION

Formed pursuant to the provisions of the Indiana Code.

ARTICLE I - NAME AND PRINCIPAL OFFICE ADDRESS

BUSINESS ID

202203011570432

BUSINESS TYPE

Domestic Limited Liability Company

BUSINESS NAME

MOON PENNIES LLC

PRINCIPAL OFFICE ADDRESS

815 West 4th Street, Bloomington, IN, 47404 - 5013, USA

ARTICLE II - REGISTERED OFFICE AND ADDRESS

REGISTERED AGENT TYPE

Business Commercial Registered Agent

NAME

REGISTERED AGENTS INC

ADDRESS

5534 Saint Joe Road, Fort Wayne, IN, 46835, USA

ARTICLE III - PERIOD OF DURATION AND EFFECTIVE DATE

PERIOD OF DURATION

Perpetual

EFFECTIVE DATE

03/01/2022

EFFECTIVE TIME

05:38PM

ARTICLE IV - GOVERNING PERSON INFORMATION

TITLE

Member

NAME

Theresa Farrell

ADDRESS

815 West 4th Street, Bloomington, IN, 47404 - 5013, USA

TITLE

Member

NAME

Kenneth Farrell

ADDRESS

815 West 4th Street, Bloomington, IN, 47404 - 5013, USA

APPROVED AND FILED
HOLLI SULLIVAN
INDIANA SECRETARY OF STATE
03/02/2022 08:10 AM

MANAGEMENT INFORMATION

THE LLC WILL BE MANAGED BY MANAGER(S)

No

IS THE LLC A SINGLE MEMBER LLC?

No

SIGNATURE

THE SIGNATOR(S) REPRESENTS THAT THE REGISTERED AGENT NAMED IN THE APPLICATION HAS CONSENTED TO THE APPOINTMENT OF REGISTERED AGENT.

THE UNDERSIGNED, DESIRING TO FORM A LIMITED LIABILITY COMPANY PURSUANT TO THE PROVISIONS OF THE INDIANA BUSINESS FLEXIBILITY ACT EXECUTES THESE ARTICLES OF ORGANIZATION.

IN WITNESS WHEREOF, THE UNDERSIGNED HEREBY VERIFIES, SUBJECT TO THE PENALTIES OF PERJURY, THAT THE STATEMENTS CONTAINED HEREIN ARE TRUE, THIS DAY March 1, 2022.

THE UNDERSIGNED ACKNOWLEDGES THAT A PERSON COMMITS A CLASS A MISDEMEANOR BY SIGNING A DOCUMENT THAT THE PERSON KNOWS IS FALSE IN A MATERIAL RESPECT WITH THE INTENT THAT THE DOCUMENT BE DELIVERED TO THE SECRETARY OF STATE FOR FILING.

SIGNATURE

Theresa Farrell

TITLE

Member

Business ID: 202203011570432

Filing No: 9331727

INDIANA STATE CHEMIST & SEED COMMISSIONER

Purdue University 175 S. University St. West Lafayette, Indiana 47907-2063 Ph: (765) 494-1492

INDIANA COMMERCIAL FEED LICENSE

This authorizes the firm listed hereon to manufacture and/or distribute commercial feed under the firm name listed hereon in or into indiana; or, as an out-of-state distributor, to cause any property labeled commercial feed to be distributed into the state of Indiana

LICENSE NUMBER: 276491 EXPIRATION DATE: 12/31/2022

ØØG93J MOON PENNIES 815 WEST 4TH STREET BLOOMINGTON IN 47404

State Chemist & Seed Commissioner

IRS DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE CINCINNATI OH 45999-0023

Date of this notice: 03

Employer Identification | 88-1000424

Form: SS-4

Number of this notice: (

For assistance you may con 1-800-829-4933

IF YOU WRITE, ATTACH THE STUB AT THE END OF THIS !

MOON PENNIES LLC THERESA FARRELL MBR 815 W 4TH ST BLOOMINGTON, IN 47404

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We as: EIN 88-1000424. This EIN will identify you, your business accounts, tax return documents, even if you have no employees. Please keep this notice in your permanents.

1/2

EIN

MOON PENNIES LLC - EIN Assignment Letter.pdf

Unread



* Favorite

Your EIN (Employee ID Number) docs issued by the IRS.

Date of this notice: 03-03-2022

Employer Identification Number: 88-1000424

Form: SS-4

Number of this notice: CP 575 B

MOON PENNIES LLC THERESA FARRELL MBR 815 W 4TH ST BLOOMINGTON, IN 47404

For assistance you may call us at: 1-800-829-4933

IF YOU WRITE, ATTACH THE STUB AT THE END OF THIS NOTICE.

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 88-1000424. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

Taxpayers request an EIN for their business. Some taxpayers receive CP575 notices when another person has stolen their identity and are opening a business using their information. If you did not apply for this EIN, please contact us at the phone number or address listed on the top of this notice.

When filing tax documents, making payments, or replying to any related correspondence, it is very important that you use your EIN and complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information is not correct as shown above, please make the correction using the attached tear-off stub and return it to us.

Based on the information received from you or your representative, you must file the following forms by the dates shown.

Form 1065

03/15/2023

If you have questions about the forms or the due dates shown, you can call us at the phone number or write to us at the address shown at the top of this notice. If you need help in determining your annual accounting period (tax year), see Publication 538, Accounting Periods and Methods.

We assigned you a tax classification (corporation, partnership, estate, trust, EPMF, etc.) based on information obtained from you or your representative. It is not a legal determination of your tax classification, and is not binding on the IRS. If you want a legal determination of your tax classification, you may request a private letter ruling from the IRS under the guidelines in Revenue Procedure 2020-1, 2020-1 I.R.B. 1 (or superseding Revenue Procedure for the year at issue). Note: Certain tax classification elections can be requested by filing Form 8832, Entity Classification Election. See Form 8832 and its instructions for additional information.

A limited liability company (LLC) may file Form 8832, Entity Classification Election, and elect to be classified as an association taxable as a corporation. If the LLC is eligible to be treated as a corporation that meets certain tests and it will be electing S corporation status, it must timely file Form 2553, Election by a Small Business Corporation. The LLC will be treated as a corporation as of the effective date of the S corporation election and does not need to file Form 8832.



Business Binder-Receipt

State Farm Fire and Casualty Company A stock company with home offices in Bloomington, IL

Policy Type — Business Insurance

Policy number: 94-EK-T198-0 Effective date: June 21, 2022

PRIMARY NAMED INSURED

Prepared for: MOON PENNIES LLC

815 W 4TH ST

BLOOMINGTON, IN 47404-5013

POLICY PREMIUM

Total annual premium: \$325.00

SECTION I - PROPERTY

Location number	= = = = = = = = = = = = = = = = = = =	Limit of Insurance Coverage A Building	Limit of Insurance Coverage B Business Personal Property
001	815 W 4th St Bloomington IN 47404-5013	No Coverage	\$10,000 Replacement Cost

SECTION II - LIABILITY

Coverage	Limits	
Coverage L - Business Liability Per Occurrence	\$1,000,000	
Coverage M - Medical Expenses Each Person	\$5,000	
Aggregate Limits	Limits	
Products/Completed Operations Aggregate	\$2,000,000	
General Aggregate	\$2,000,000	
DEDUCTIBLES		

DEDUCTBLES

Section I Deductibles	Amount
Policy Deductible	\$1,000



ADDITIONAL ENDORSEMENTS

Inland Marine — Computer Property

Computer hardware/software limit: \$25,000 Loss of income and extra expense limit: \$25,000

Deductible: \$500

Your State Farm Agent

Mike Weston 1880 S Walnut Street Bloomington, IN 47401-5825

Bus: 812-336-4665 ext.

Email: mike.weston.bytm@statefarm.com

BINDER: State Farm® will provide coverage to the applicant and his or her legal representative on the property described for up to ninety (90) days from the Effective Date, subject to all terms and conditions of the policy and endorsements for which application has been made. If no Effective Date is indicated, this Binder does not provide any coverage. This Binder will be void when the declarations page is issued on the policy for which application has been made or when coverage under this Binder is canceled in accordance with policy provisions.

The premium due State Farm for the coverage provided by this Binder will be the full annual premium for the policy for which the application has been made, and will be pro-rated for the length of time coverage is provided under this Binder.

If coverage in this Binder replaces coverage in other policies terminating at 12 Noon (Standard Time) on the inception date of this Binder, this Binder will be effective at 12 Noon (Standard Time) instead of 12:01 a.m. Standard Time.

CITY OF BLOOMINGTON BOARD OF PUBLIC WORKS RESOLUTION 2022-44

Solicitor in Public Right of Way Moon Pennies LLC

WHEREAS, the Board of Public Works is empowered by Indiana Code§ 36-9-6-2 to supervise the streets, alleys, sewers, public grounds, and other property of the City of Bloomington ("City");

WHEREAS, Moon Pennies LLC ("Solicitor"), is seeking a Business License under Bloomington Municipal Code 4.16;

WHEREAS, the issuance of a Business License under Bloomington Municipal Code 4.16 requires Solicitor to submit documentation to the City-set forth at Bloomington Municipal Code 4.16.050-including proof of registration with the Indiana Secretary of State and proof of insurance;

WHEREAS, Solicitor has agreed to the Standards of Conduct set forth in Bloomington Municipal Code § 4.16.150, the location restrictions found in Bloomington Municipal Code § 4.16.130, and signed the Release, Hold-Harmless, and Indemnification Agreement as required by Bloomington Municipal Code § 4.16.090;

WHEREAS, Solicitor desires to be able to use City property, which includes public any and all public right-of-way; and

WHEREAS, under the Bloomington Municipal Code § 4.16.050, approval to use public sidewalks must be provided by the Board of Public Works via resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS THAT:

- 1. Solicitor has permission to use the right of way as indicated in the staff memo, on a temporary and transient basis, for the purpose of selling nutrional dog treats for one (1) year, beginning on July 5, 2022, and ending on July 4, 2022.
- 2. For the avoidance of doubt, this Resolution is not the Business License referenced by Chapter 4.16 of the Bloomington Municipal Code. Thus, Solicitor must ensure that all necessary documentation has been submitted to the City of Bloomington Controller and that the Business License has been issued by the City of Bloomington Controller before utilizing the permission to use on-street public parking and sidewalks granted in the paragraph above. Soliciting without a business license is a violation of Bloomington Municipal Code § 4.16.160(a)(l), and would subject Solicitor to a fine of \$2,500 for the first offense.
- 3. For the avoidance of doubt, the following conditions-which in some instances may mirror those that exist under Title 4.16 of the Bloomington Municipal Code-attach to this approval:
 - a. Solicitor agrees to maintain a clear five-foot path for pedestrians on the sidewalk at all times.
 - b. Solicitor will have obtained a valid business license issued by the City of Bloomington Controller prior to operation on City property, and will maintain a valid business license throughout the term of Solicitor's operation on City property.
 - c. Solicitor may not use any device to amplify sounds or draw attention to the Solicitor aurally or with a light-producing device;
 - d. Solicitor may not operate in a manner that would significant impede or prevent the use of any City property, or in a manner that would endanger the safety or property of the public.
 - e. Solicitor will comply with all other laws, ordinances, rules and regulations in effect at the time it conducts their business.
 - f. Solicitor is prohibited from operating within a one block radius of a Special Event, unless prior approval has been granted by either the operator of the Special Event or the City's Board of Public Works.

BOARD OF PUBIC WORKS:	
Kyla Cox Deckard, President	-
Jennifer Lloyd, Vice-President	-
Elizabeth Karon, Secretary	-
ALL TERMS AND CONDITIONS CONTAINED IN THIS REAGREED TO BY SOLICITOR:	SOLUTION 2022-44 ARE ACCEPTABLE AND
Theresa Farrell	
Member, Moon Pennies LLC	

ADOPTED THIS 5th DAY OF JULY, 2022



Board of Public Works Staff Report

Project/Event: John Waldron Arts Center interior Renovations

Petitioner/Representative: ESD

Staff Representative: Holly Warren

Meeting Date: July 5, 2022

Event Date: July - October 2022

Report: The City of Bloomington Economic & Sustainable Development Department, with the support of the Office of the Mayor, endorses interior renovations to the John Waldron Arts Center. Structural renovations will include the cutting of new doorways and removal and relocation of stairs to upgrade the dressing room in the facility's ground level Firebay theater, demolishing a wall and cutting new entry ways on the second floor of the building to build out a cafe and new ticketing booth, leveling the floor of the third floor auditorium. Cosmetic changes throughout the building will include new paint, wall paper, and murals. ESD is requesting the Board of Public Works to permit these renovations to upgrade the building in order to make the facility more accessible to the public when it reopens in fall 2022.

Recommend X Approval by Holly Warren

JOHN WALDRON ARTS CENTER MANAGEMENT AND LEASE AGREEMENT

THIS JOHN WALDRON ARTS CENTER MANAGEMENT AND LEASE AGREEMENT is entered into by the City of Bloomington, Indiana ("City" or "Landlord"), and Cardinal Stage Company, Inc., to be named Constellation Stage and Screen, Inc. as of July 1, 2022, a 501(c)(3) nonprofit corporation under Indiana law, created through the statutory merger of Cardinal Stage Company, Inc.; Bloomington Playwrights Project Inc., and the Pigasus Institute Inc. (the "Constellation"), and in consideration of their mutual undertakings, the parties agree as follows:

RECITALS

WHEREAS, the City owns the John Waldron Arts Center (the "Waldron"), which is an historic building located at 122 S. Walnut Street, Bloomington, Indiana, operated as a theater and arts center; and

WHEREAS, Constellation is a nonprofit corporation under Indiana law, as of July, 1, 2022, and maintain its 501(c)(3) tax exempt authorization, with an express purpose, *inter alia*, to promote the arts in the Bloomington community; and

WHEREAS, the City has determined that it is in the public interest to partner with and lease a portion of the Waldron to Constellation for a term commencing on July 1, 2022, with the intent to continue the parties' successful partnership into the future; and

WHEREAS, the City desires to lease a portion of the Waldron to Constellation to carry out its nonprofit corporate purposes and to occupy and manage the Premises to promote the arts, engage with the community, and create a dynamic creative environment, and Constellation desires to do the same.

Now, therefore, in exchange for the mutual and reciprocal covenants of the parties, it is AGREED:

ARTICLE I LEASE AND PREMISES

Section 1.01 Lease and Description. Landlord demises and leases to Constellation and Constellation leases from Landlord the Real Estate located at the common address of 122 S Walnut Street, Bloomington, Monroe County, Indiana, consisting of the Waldron Arts Center building and other improvements located thereon, and all appurtenances thereto, with the exception of Unit B--the space occupied by WFHB Bloomington Community Radio (all being referred to herein as the "Premises") and described on Exhibit A, attached hereto.

ARTICLE II TERM AND OPTION TO RENEW

Section 2.01 <u>Term.</u> Except as otherwise provided by this Agreement, the initial term of this Lease ("Initial Term") shall commence on July 1, 2022, ("Commencement Date") and shall terminate on June 30, 2027.

Section 2.02 <u>Renewal Options</u>. Provided Constellation is not in default at the time of the expiration of the Initial Term or a subsequent renewal term, Constellation has the option to extend this Lease for two (2) consecutive renewal terms of five (5) years for each renewal period upon prior written notice by Constellation to Landlord, not less than one hundred eighty (180) days prior to the termination of the then-current Term. Notwithstanding this provision, however, in the event the Landlord has established a separate performing arts facility ready for occupancy, then in such instance, the Landlord may provide notice to Constellation during any renewal term that the Lease shall expire in one hundred and eight (180) days from the date of the Notice.

Section 2.03. Option to Lease and Purchase. In the event WFHB is no longer a tenant of Landlord, Landlord agrees that Constellation's Premises shall be modified and enlarged to include the WFHB premises (depicted as Unit B on Exhibit A). The Parties shall execute an Addendum to give effect to the expansion of the leased space, which expanded area shall be governed by the terms and condition of this Agreement.

ARTICLE III RENT

Section 3.01 <u>Annual Rent</u>. Constellation's obligation to pay rent shall commence on July 1, 2022. Rent to be paid during the Lease term shall be paid by Constellation to the Landlord in the amount of One Dollar (\$1.00) per year, due and payable, in advance, on July 1st of each calendar year. All payments shall be due and payable without demand or notice and without relief from valuation and appraisement laws.

ARTICLE IV CAPITAL INVESTMENT AND REPAIR ACCOUNT

Section 4.01 <u>Capital Investment</u>. Constellation represents that it will receive an investment award from a local benefactor; provided however Constellation shall not be deemed to be in default of the Lease if the investment award is not received or is less than has been represented to Constellation, due to factors beyond the control of Constellation. Pursuant to that representation, Constellation shall make an initial capital investment of \$700,000.00 within the first year of the term of this Agreement and substantially in accordance with the Schedule of Investment attached to this Agreement as Exhibit B. The capital investment shall be used for renovations to the Premises, upgrades to the theatrical equipment including lighting and sound, and seating for audiences, all as set forth by Exhibit B; however, Constellation may reasonably adjust Exhibit B to align the capital investments with prioritized upgrades and adjustments necessary due to cost fluctuations.

Section 4.02 <u>Commitment Letter</u>. To memorialize Constellation's capital investment commitment as outlined in Section 4.01, Constellation shall provide a Commitment Letter from its benefactor, which shall be attached to this Agreement as Exhibit C.

Section 4.03 Repair Account. Within 30 days of the execution of this Agreement, Constellation shall place \$50,000.00 into a dedicated account to be used exclusively for repair and maintenance of the Premises ("Repair Account"). For years two through five of the Initial Term, Constellation shall add no less than \$12,500.00 each year to the Repair Account for a minimum total amount of \$100,000.00 over the Initial Term of the Agreement. The funds deposited in the Repair Account shall be used exclusively for those items detailed in Article V of this Agreement.

If the parties exercise the option to renew this Agreement for additional terms, the remaining balance of the Repair Account shall rollover, and Constellation shall deposit the following amounts for each renewal terms on a pro rata basis for each year of the term:

Initial Term (Years 1 through 5): \$100,000.00 (\$50,000 initial investment + \$50,000 over the term)

First Renewal Term: \$50,000 (\$10,000 per year)

Second Renewal Term: \$50,000 (\$10,000 per year)

Upon the expiration or sooner termination of this Agreement, the remaining funds in the Repair Account shall be audited by a third-party chosen and funded by the City, in its sole discretion. Following the audit, the City shall then be reimbursed from the Repair Account for any expenses related to repairs, utility payments, taxes, fees, permits, structural repairs, replacements, or remedies the City or a related entity incurred under the terms of this Agreement. Any funds remaining after reimbursing the City will be remitted to Constellation. Upon completion, Constellation shall be entitled to a copy of the audit and detail regarding charges deducted from the Repair Account funds.

ARTICLE V IMPROVEMENTS, ALTERATIONS AND MAINTENANCE

Section 5.01 Tenant Improvements. Upon written approval and consent by Landlord, Constellation may cause improvements to be made to the Premises for its operations. Prior to construction of any improvements, Constellation shall provide Landlord with the plans, specifications, and design, which must comply with all applicable regulations, ordinances and rules. Landlord shall reply to requests within 20 business days or approval shall be assumed. Constellation shall also be required to obtain approval from the Bloomington Board of Public Works of improvements to the building and any other necessary approval as required by law. Such improvements, once approved by Landlord, will be at Constellation's costs. Constellation may install trade fixtures and equipment necessary to its business operation, which fixtures and equipment may be removed upon termination of this Lease, including those covered by Section 4.01. Upon prior written

consent from Landlord, Constellation may enter the Premises and make improvements prior to Constellation's possession of the Premises.

Section 5.02 <u>Alterations</u>. Except as provided above, no alterations of, or additions to, the Premises may be made without first obtaining the written consent of Landlord.

Section 5.03 Expenses, Repairs, and Maintenance. Contingent upon Constellation maintaining the Premises as required under this Agreement, Landlord shall only be responsible for replacement, as needed, of the building structure, including the roof, and major mechanical systems such as the HVAC system as specified in Section 2 of Exhibit D, attached hereto and by reference incorporated herein. Constellation shall keep the Premises in the same condition as exists at the commencement of the Lease or as they may be put in during the term of this Lease, reasonable wear and tear excepted and in accordance with Exhibit D. Constellation shall pay and be solely responsible for all maintenance and repair to the Premises as provided by Exhibit D. Constellation shall pay and be solely liable and responsible for any and all operating expenses incurred and contracts and agreements entered into in the course of its operation and management of the Premises except as expressly provided by this Lease. Operating expenses shall include inspection, repair, maintenance, and replacement of any items detailed in Exhibit D, Section 1, and that may be reasonably related to the operation of the Premises.

If Constellation fails to perform Constellation's obligations under this Section, Landlord will provide Tenant with written notice and a period of no less than thirty (30) days to respond, except in the case of an emergency, which shall be determined in the sole discretion of the Landlord. If the Constellation fails to perform Constellation's obligations at the end of this notice period, Landlord may at its option (but shall not be required to) enter upon the Premises, and put the Premises in good order, condition and repair, and the reasonable cost thereof, together with interest thereon at the rate of eight percent (8%) per annum (the "Default Rate"), shall become due and payable as Additional Rent to Landlord.

Section 5.04 <u>Service Agreements</u>. Constellation shall be responsible and solely liable for any service or repair agreement necessary to perform its obligations under this Agreement. These agreements shall include, but not be limited to, utility services, fire system maintenance, snow removal, landscape maintenance, and elevator maintenance. Any expense under this Section may be covered out of the Repair Account.

Section 5.05 <u>Inspection</u>. Upon reasonable advance notice, Landlord reserves the right to enter and inspect the Premises for compliance with this Agreement in accordance with Section 12.02.

ARTICLE VI USE, MANAGEMENT, AND OPERATION

Section 6.01 <u>Use and Possession of Premises</u>. Landlord shall provide and Constellation shall accept possession of the Premises on the Commencement Date. Constellation shall use the Premises for the operation of its business and for no other purpose unless approved in advance by Landlord. Constellation's business shall include:

venue and facility for performing and visual arts, entertainment, private events, educational programs, community events, food and beverage service, arts retail, and any other programs and events benefiting the public ("Permitted Use"), all consistent with Organization's nonprofit purpose.

Constellation shall operate the Premises in a professional manner and utilize its best efforts to preserve and expand the facility's role as a high quality, accessible community resource, and to support and promote diverse arts programs of local, regional, and national artists and events.

Section 6.02 <u>Compliance</u>. Constellation shall keep the Premises in a clean condition and shall conduct its business therefrom in a safe and lawful manner. Constellation shall use and maintain the Premises at all times in compliance with all legal requirements and Constellation shall not permit any nuisance to exist on the Premises and shall not commit waste thereon. Constellation shall not use, generate, manufacture, produce, store, release, discharge or dispose of on, under or about the Premises any Hazardous Substance. Constellation shall not use or permit the Premises to be in violation of, any environmental laws. Constellation shall maintain the Premises, subject to and in accordance with applicable zoning, municipal, county, state and federal laws, ordinances and regulations and recorded covenants and restrictions governing and regulating the use of the Premises.

Section 6.03 <u>Surrender and Holdover</u>. Upon the expiration or sooner termination of this Agreement, Constellation shall surrender to Landlord the Premises, in the same condition in which Constellation received them including later added and approved improvements, the effects of ordinary wear, acts of God, casualty, insured damage, insurrection, riot or public disorder excepted. Any damage to the Premises caused by Constellation shall be repaired immediately by Constellation. At Landlord's option, if Constellation fails to remove its personal property or fixtures within ten (10) days following expiration of the Term, then the same shall be deemed the property of Landlord. If, with the consent of Landlord, Constellation remains in possession of any part of the Premises after the expiration of the Term, then Constellation shall be a tenant from month to month at the same rental and subject to all of the other applicable terms and conditions hereof.

Section 6.04 Management. Constellation shall manage the Premises as follows:

- (a). Constellation agrees to maintain its principal corporate office with regular office hours set by the Constellation in its sole discretion on the Premises.
- (b). At its sole cost and expense, Constellation shall engage such personnel as necessary in its sole opinion for the operation of the Premises in conformance with the terms of this Agreement. Constellation and its personnel, agents, volunteers, contractors or subcontractors shall in no event be construed to be, or represent themselves to be employees of the City.
- (c). Constellation shall be solely liable and responsible for any and all operating expenses incurred and contracts and agreements entered into in the course of its

operation and management of the Premises, provided, however, that Organization does not assume, and shall not be liable for, any financial obligations of the City regarding the Premises. However, expenses such as property taxes charged directly to the City that stem from Constellation's operation, contracts and agreements with third parties must be reimbursed by Constellation to the City. Constellation shall also take responsibility for all expenses related to the Alcoholic Beverage permit the City obtained for Constellation as provided in Section 6.07. Upon receiving such an expense, the City shall invoice Constellation, and such invoice shall be paid by the Constellation within thirty (30) days of its receipt.

- (d). Constellation shall operate the Premises as a venue in accordance with this Article VI, and Constellation may, at its sole discretion, produce and promote its own events. Constellation shall have the authority to make all scheduling decisions for the Premises, except as otherwise agreed in accordance with this Agreement, and at its sole discretion, set rental rates. Constellation shall keep the City informed regarding its rental rates and shall advise the City of any proposed change to the rates prior to making those changes public and at least thirty (30) days prior to the effective date of the change.
- (e). Constellation shall create an Open Stages Program ("Program") to give access to the facilities, the Ted Jones Playhouse, and Organization's Rehearsal and Film Studios to emerging artists and art groups at a discounted rate for a minimum of eight (8) weeks per year ("Program Rate"). At least half (4) of the Program weeks must be distributed throughout the academic year from September through April. The city and Constellation shall agree each year to the Program Rate to be offered for the Program. In the event Constellation cannot fill a reserved date by participants under the Program by a deadline of four (4) months prior to the reserved date, Constellation may reallocate the date to other users. Each year of this Agreement, the City and Constellation shall revisit the requirements of this Section 6.04(e) and agree to maintain, alter, or amend the terms of the Program during the Annual Presentation detailed in Section 7.04.
- (f). The City's logo and/or such other acknowledgement of the City's support that the City deems appropriate, in its sole discretion, shall be displayed in the Premises, on Constellation's website, and in Constellation's promotional materials.
- (g). Constellation shall be solely responsible for obtaining and maintaining any licenses or permits required by any governmental entity in connection with the operation of the Premises, except as expressly provided in this Agreement. Constellation shall not enter into any contracts or agreements that authorize or allow for violation of any City ordinance.

Section 6.05 <u>Visual Arts Advisory Committee and Gallery</u>. Constellation shall create a Visual Arts Advisory Committee to advise the Constellation on visual arts display and use of the gallery spaces within the Waldron ("Committee").

- (a). Constellation shall engage an Arts Galleries Manager who will report to the Artistic Director of the Constellation. The Arts Galleries Manager shall serve as a staff liaison to the Committee and work sufficient hours to ensure property management of the visual arts space within the Premises ("Arts Galleries"), which shall average approximately 60 hours per month for the first year of this Agreement. Following the first year, the Tenant, Landlord, and Committee shall include in its annual review the function of the Arts Gallery Manager in accordance with Section 6.05(d).
- (b). The Committee shall advise on decisions by the Constellation regarding the Arts Galleries including hours, labor, expenses, and decisions associated with marketing, development, staffing, management, maintenance, art display and hanging, and oversight of the Arts Galleries. The Committee shall also advise on the reasonable hours and pay of the Arts Galleries Manager and the appointment or hiring of any future gallery staff.
- (c). The Committee shall be composed of no fewer than seven (7) members including four members from the Bloomington visual arts community at-large, two members representing the Constellation, and the City of Bloomington Assistant Director of the Arts. At least half (50%) of the voting members of the Committee shall be appointed by the City.
- (d). The Constellation Board shall retain oversight of the Committee, but cannot disband or alter the purview of the Committee without the express written consent of the City. Each year of this Agreement, the City and Constellation shall review the status of the requirements and benchmarks laid out in this Section during the Annual Presentation detailed in Section 7.04, as appropriate, to ensure the goal of maintaining a vibrant visual arts component to programming within the Premises.
- (e). Subject to the terms of a separate Grant Agreement to be executed by the Parties, the City shall match Constellation's investment in the visual arts/gallery programming up to a maximum City contribution of Twenty-Five Thousand Dollars (\$25,000.00) for each of the first two years of the Initial Term. In the event that the Constellation fails to perform any of the requirements of this Section 6.05 of the Agreement, the City may require repayment of City's grant funds pursuant to the terms of the grant agreement referenced above. For purposes of the Grant Agreement, Constellation's qualifying expenses shall include: Arts Galleries Manager costs, gallery-related promotion and marketing expenses, and any costs directly related to exhibition crew members, professional installation and removal of artwork, and security personnel.
- (f). In addition to the requirements of this Section, Constellation shall do the following:
 - Provide no fewer than four (4) visual arts exhibitions per year for the duration of this Agreement. Constellation will provide the Committee with plans for each exhibition and ample time to provide feedback.
 - Maintain regular, weekly hours during which the Visual Arts Gallery will be open to the public.
 - Host ten (10) public gallery events, including, at a minimum participation in the Gallery Walk First Friday events for each visual arts exhibition.

Section 6.06 <u>City Use and Participation</u>. The City shall have the right to use the Waldron's event venue space, with no rental fee, for up to five (5) events each calendar year, which dates will be coordinated with Constellation in advance. Constellation shall maintain an annual calendar on its website and the City may consult the calendar to determine the availability of the event venue space for that calendar year and provide the Constellation with the City's request at least 30 days prior to the designated day(s) requested.

Section 6.07 <u>Sale of Alcoholic Beverages</u>. The City, as owner of the Premises, will obtain an Alcoholic Beverages permit for the Premises and shall retain rights to this permit because it has applied for an alcoholic beverage permit (liquor, beer and wine retailer for a Civic Center, license type 219) pursuant to Indiana Code § 7.1-3-1-25. Constellation shall be named a partner and as manager of the permit. This permit is not part of the Alcoholic Beverage permits that are granted following a quota system, and can only be obtained when the City applies for it. If granted, such a permit is particular to the circumstances of the location in that the building must be owned by the City, and that it must be open for specific purposes. Constellation agrees to abide by the following conditions for the permit:

- (a). Constellation agrees to be in compliance with all laws, federal, state and local, that apply to alcoholic beverages, which is only to be used in the Premises. Constellation agrees that its obligations to indemnify the City under this Agreement extend to its actions under the laws applicable to this permit, including, without limitation, any penalties for violations of the permit or its requirements.
- (b). Constellation shall, at its own expense during the duration of this Agreement, maintain liquor liability insurance in compliance with Section 9.03 of this Agreement, and carry the financial cost for application and renewals, or any other expense related to the permit.
- (c). Constellation agrees that, in the event of termination of this Agreement for any reason, or if Constellation determines it cannot, will not start, or continue to perform its rights and obligations under the alcoholic beverages permit, Constellation will, at the option of the City exercised in writing, either surrender the Alcoholic Beverages permit or take all necessary or desirable lawful steps requested by the City to transfer the alcoholic beverage permit to another prospective permittee to be designated by the City, and approved of by the Indiana Alcohol and Tobacco Commission. Such steps may include, but are not limited to, having Constellation's officers and/or directors execute lawful documents at the request of the City. In the event of such surrender or transfer upon termination of this Agreement, Constellation will not be entitled to any monetary payment or other compensation for complying with this Agreement.

Section 6.08 <u>Firearms Policy</u>. Pursuant to Indiana Code § 35-47-11.1-4(10), Constellation 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. If Constellation develops such a policy for its activities, the City and Constellation may implement and enforce it. If Constellation wishes to develop such a policy, it shall provide a copy of the policy to the City within

thirty (30) days of the adoption of such policy, with such policy to be incorporated into this Agreement as an attachment hereto.

Section 6.09 <u>Nondiscrimination</u>. Constellation shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination, including but not limited to employment and public accommodations.

Constellation 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 Constellation believes that a City employee engaged in such conduct towards Constellation and/or any of its employees, Constellation or its employees may file a complaint with the City department head in charge of Constellation'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.

Section 6.10 <u>Bloomington Community Radio (WFHB) Access</u>. Until such time as Bloomington Community Radio, Inc. ("WFHB") ceases operations or its governing body or board elects otherwise, if ever, WFHB shall continue to occupy the space that it has occupied as a tenant under a lease since July 1, 1992, for WFHB community radio operations and as depicted in Exhibit A-1. Said space is approximately two thousand, two hundred and twenty three (2,223) square feet, and is separate from the Premises as described by this Lease. WFHB shall be entitled to use portions of the Premises, such as the Firebay, at the Program Rate (defined in Section 6.04(e)) and upon the schedule as provided to participants of the Program or as otherwise agreed by WFHB and Constellation.

ARTICLE VII REPORTING

Section 7.01 Annual Activity Report. Constellation shall provide an annual written report of Waldron fundraising and operations to the City, which shall be delivered to the City no later than August 31 beginning in 2023 and each subsequent year of the Agreement. The annual report shall be comprehensive and shall address all relevant topics, including, but not limited to, a listing of all programs and events and visual arts exhibitions held in the Waldron during the previous year, participation in the Open Stages Program, income and expenses related to the Waldron property, balances and expenses from the Repair Account, updates on the preventative maintenance Constellation undertook in the previous year, progress reports on fundraising related to the Waldron, including the amount of funds received through fundraising, the number of donors of funds, and the steps taken to generate funds.

Section 7.02 <u>IRS Form 990</u>. Constellation shall provide a copy of its timely filed IRS Form 990, Return of Organization Exempt from Income Tax Form. The Form 990 shall be provided to the City within thirty (30) days of when it is filed with the Internal Revenue Service.

Section 7.03 <u>Taxes</u>. Constellation will remain compliant with all returns and payments associated with all applicable taxes—including payroll taxes. Upon request, Constellation will provide the City with a copy of all returns filed with and payments made to all taxing entities within thirty (30) days of the City's request.

Section 7.04 <u>Annual Presentation and Meeting</u>. The City shall set a meeting after August 31 and prior to October 15 beginning in 2023 and for each subsequent year of the Agreement to present its annual report to the Director of the City's Economic and Sustainable Development Department and to respond to questions. Constellation shall designate at least one voting member of its Board and one staff member to present the report during the City's meeting. Upon request by the City, Constellation shall also present to any board, commission, public entity as may reasonably requested by the City, including but not limited to the City of Bloomington Common Council.

Section 7.05 Activity Reports. During the year and in addition to the annual report, Constellation representatives shall provide to the City such information as may be reasonably requested by the City concerning Waldron operations and events. Constellation shall provide Waldron participation data to the City on a quarterly basis to the City no more than fifteen (15) days after the end of each quarter, including participation and use under the Open Stages Grant Program detailed in Section 6.04(e). This data may be used in public reports produced by the City.

Section 7.06 <u>Records Inspection</u>. The City may, upon one (1) week notice, inspect the books and records maintained by Constellation related to the Premises, at the cost of the City.

ARTICLE VIII TAXES AND UTILITIES

Section 8.01 <u>Utilities</u>. Constellation shall pay and be solely liable for all costs associated with water, sewer, gas, heat, light, power, telephone, Internet/WiFi and cable/satellite provided to the Premises, as well as any other services or utilities that connect to the Premises, including any taxes or assessments, penalties and interest due thereon. Constellation shall not be responsible for paying any special assessments except to the extent that any special assessments result from Tenant activity or improvement. All utilities will be directly put into Constellation's name. Constellation shall be directly responsible for all trash disposal services for the Premises. If the Landlord pays for any taxes, utility, assessment, bill, fine, or charge, Constellation shall reimburse the Landlord within thirty (30) days of receipt of any invoice from the Landlord for such expenses.

Section 8.02 <u>Taxes and Assessments</u>. Both Landlord and Constellation are tax exempt organizations and, accordingly, no taxes are expected to be assessed against the Premises or personal property of Constellation located therein. However, to the extent any such tax is due and owing, Constellation shall pay all taxes and shall be further responsible for all personal property taxes, inventory taxes or any other taxes or assessments associated with the Premises or Constellation's operations thereon.

ARTICLE IX INDEMNIFICATION AND INSURANCE

Section 9.01 <u>Liability Insurance</u>. Constellation shall, at its sole expense, obtain and keep in force during the Initial Term and any renewals or extensions thereof, a policy of comprehensive general liability insurance insuring the City, Landlord and Constellation against liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be in an amount of not less than \$1,000,000 combined limit for any one accident or occurrence. The limits of said insurance shall not, however, limit the liability of Constellation hereunder. If Constellation shall fail to procure and maintain said insurance Landlord may, but shall not be required to, procure and maintain the same, but at the expense of Constellation.

Section 9.02 <u>Property Insurance</u>. Landlord shall maintain property insurance for the Premises for the building and contents to insure against loss or damage by fire or other type of loss customarily covered by such insurance. Landlord reserves the right to alter the insurance limits required hereunder if circumstances necessitate higher or lower limits and shall provide ninety (90) days advance notice of any such change to Constellation, itemizing the cost and detail of such change. Constellation will insure its business personal property and the tenant improvements made by Constellation.

Section 9.03 <u>Insurance Policies</u>. Insurance required hereunder shall be obtained from companies that are acceptable to the City and Landlord and the insurance policy(ies) obtained under this Article shall name the City and Landlord as an additional insureds. Constellation shall deliver to Landlord certificates evidencing the existence and amount of insurance required to be maintained by Constellation hereunder with limits of no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. No such policy shall be cancelable or subject to reduction of coverage or other modification except after ten (10) days prior written notice to the City and Landlord. Constellation shall, within ten (10) days prior to the expiration of such policies, furnish Landlord with renewals or "binders" thereof, or Landlord may order such insurance and charge the cost thereof to Constellation, which amount shall be payable by Constellation upon demand. Constellation shall not do or permit to be done anything which shall invalidate the insurance policies maintained by Landlord or Constellation.

In addition, Constellation shall, at its own expense during the duration of this Agreement, maintain liquor liability insurance with an insurance carrier approved by the City. Constellation's liquor liability insurance shall name the City as an additional insured. Constellation shall maintain liquor liability insurance with limits no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. Additionally, Constellation's liquor liability insurance policy shall require that the City be provided at least thirty (30) days' notice in writing of any intended cancellation. Constellation shall provide the City with insurance certificates evidencing the required liquor liability coverage.

Section 9.04 <u>Indemnity</u>. Constellation shall indemnify and hold harmless Landlord from and against any and all claims arising from Constellation's use of the Premises, or from the conduct of Constellation's operations or from any activity, work or things done,

permitted or suffered by Constellation in or about the Premises and shall further indemnify and hold harmless Landlord from and against any and all claims arising from any breach or default in the performance of any obligation on Constellation's part to be performed under the terms of this Lease, or arising from any negligence of Constellation, or any of Constellation's agents, contractors or employees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Constellation upon notice from Landlord shall defend the same at Constellation's expense by counsel satisfactory to Landlord.

Landlord shall indemnify and hold harmless Constellation from and against any and all claims arising from any breach or default in the performance of any obligation on Landlord's part to be performed under the terms of this Lease, or arising from any negligence of Landlord, or Landlord's agents, contractors or employees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Constellation by reason of any such claim, Landlord upon notice from Constellation shall defend the same at Landlord's expense by counsel satisfactory to Constellation.

Section 9.05 Environmental Covenants. Constellation covenants and agrees, at its sole cost and expense, to comply with all valid and applicable local, state and federal environmental laws and regulations concerning Constellation's storage, handling, use, transportation and disposal of hazardous materials, hazardous substances, and petroleum products (all of which are collectively called "Hazardous Substances" as defined by the laws and regulations aforementioned.)

ARTICLE X DESTRUCTION OR CONDEMNATION

Section 10.01 Damage or Destruction/Obligation to Rebuild. In the event the Premises are damaged or destroyed partially or totally, from any cause whatsoever, whether or not such damage or destruction is covered by any insurance required to be maintained by this Agreement, then Landlord may in its sole discretion repair, restore, and rebuild the Premises to substantially its condition existing immediately prior to such damage or destruction. If Landlord elects not to repair, then in such event, the balance of the Repair Fund maintained by Constellation shall be returned, in full, to Constellation in accordance with the procedures set forth in Section 4.03 of this Agreement. If Landlord elects to repair or rebuild, this Lease shall continue in full force and effect. Such repair, restoration and rebuilding (all of which are herein called the "repair") shall be commenced within a reasonable time after such damage or destruction and shall be diligently prosecuted to completion. During the period of repair and so long as the damages or destruction is not caused by Constellation, Constellation's sublessees, members, or assigns, the rent and deposits into Repair Account payable by Constellation hereunder shall abate if Constellation is totally deprived of possession of the Premises; if Constellation is able, in good faith, to continue its operation of its business during the period of repair, then the rent and deposits into the Repair Account payable by Constellation hereunder are still due in accordance with the terms of this Agreement.

Section 10.02 Condemnation. If the Premises, or any portion thereof, are condemned by any legally constituted authority, then this Lease shall terminate as to the part condemned as of the date the condemning authority takes title or possession, whichever first occurs. If any material part of the Premises is taken by condemnation, either party within ten (10) days after Landlord shall have given Constellation written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession), may terminate this Lease as of the date the condemning authority takes such possession. If neither Landlord nor Constellation terminates this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining. Subject to the rights of a mortgagee, any award for the condemnation of all or any part of the Premises or any payment made under threat of condemnation shall be the sole property of Landlord, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages, but Constellation shall be entitled to any award for loss of or damage to Constellation's trade fixtures and removable personal property. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall, to the extent of severance damages received by Landlord in connection with such condemnation and not applied by a mortgagee in reduction of its mortgage balance, repair any damage to the Premises caused by such condemnation except to the extent that Constellation has been reimbursed therefore by the condemning authority.

Section 10.03 Mechanic's Liens. Constellation shall not permit any Statement of Intention to Hold a Mechanic's Lien ("Statement") to be filed against the Premises or any part thereof nor against any interest or estate therein by reason of labor, services or materials claimed to have been performed or furnished to or for Constellation. If a Statement is filed, Landlord at its option may compel the prosecution of an action for the foreclosure of such mechanic's lien by the lienor, and if such an action is commenced, Constellation, upon demand by Landlord, shall cause the lien to be released by the filing of a written undertaking with a surety approved by the court and obtaining an order from the court releasing the Premises from such lien. Except consistent with Article V, this Lease does not authorize the performance of labor or services or the furnishing of materials for the alteration or repair of the Premises; nor does it grant Constellation the right to contract for, authorize or permit the performance of any labor or services or the furnishing of any material that would permit the attaching of a valid mechanic's lien.

ARTICLE XI EVENTS OF DEFAULT AND REMEDIES

Section 11.01 Events of Default. Any of the following events shall constitute a default hereunder ("Event of Default"):

- (a) The failure to pay any installment of Rent or any other payment or charge required to be paid by Constellation hereunder, including to the Repair Account in Section 4.03, for more than twenty (20) days after the due date;
- (b) A Party's failure to perform or observe any other covenant, term or condition of this Lease to be performed or observed, which failure, if curable, continues for

thirty (30) days after notice thereof is given by the non-breaching party;

- (c) Abandonment of the Premises or cessation of business operations for a period of thirty (30) days or longer, except in connection with events covered under section 8.01;
- (d) The filing or execution or occurrence of:
 - (1) an involuntary petition in bankruptcy against Constellation that is not dismissed within sixty (60) days after the filing thereof;
 - (2) A petition against Constellation seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Act, that is not dismissed within sixty (60) days after the filing thereof;
 - (3) A general assignment for the benefit of creditors by Constellation; or
 - (4) The taking of any part of the leasehold created hereby or any part thereof, upon foreclosure, levy, execution, attachment or other process of law or equity;
- (e) Constellation's failure to maintain its status under the Internal Revenue Code as a tax exempt non-profit corporation, unless otherwise agreed to in writing by the Landlord;
- (f) The City or Landlord's failure to perform or observe any condition or obligation as required by this Lease within thirty (30) days after receiving written notice by Constellation of such failure, provided that:
 - (1) If the nature of such default reasonably requires more than thirty (30) days, the City or Landlord shall not be in default hereunder if it has promptly commenced such cure and is diligently pursuing the same; or
 - (2) If the nature of such default poses an imminent danger to persons or property, then such period of time to cure the default shall be mutually agreed-upon and reasonable in light of the circumstances.

Section 11.02 <u>Remedies</u>. Upon the occurrence of any Event for Default by Constellation, Landlord may, at its option, in addition to any other remedy or right it has hereunder, at law or at equity:

- (a) Re-enter the Premises, without demand or notice, and resume possession by an action in law or equity or by force or otherwise, and without being liable in trespass or for any damages, and without terminating this Lease. Landlord may remove all persons and property from the Premises and such property may be removed and stored at the cost of Constellation.
- (b) Terminate this Lease at any time upon the date specified in a notice to Constellation. Constellation's liability for damages shall survive such termination. Upon termination such damages recoverable by Landlord from Constellation shall include all sums due and arising as a result of the breach.

Upon the occurrence of any Event of Default by Landlord, Constellation shall be entitled to all remedies available at law or in equity and damages arising from breach.

Section 11.03 Fees and costs. Upon the occurrence of any Event of Default, the nonbreaching party may, if such default has not been cured within any grace period provided in this Agreement, cure that default for the account and at the expense of the other party. All sums paid hereunder shall bear interest at the Default Rate (8%) until paid. The breaching party shall pay the non-breaching party's reasonable expenses and attorneys' fees incurred as a result of enforcement of the breaching party's failure to comply with any covenant, term or condition of this Lease.

Section 11.04 <u>Mediation</u>. Before executing on its remedies in this Section XI, the parties agree that they shall first attempt to resolve the dispute among them, and failing resolution, shall submit a dispute to mediation, for which the parties shall share the expense.

ARTICLE XII OTHER TERMS AND CONDITIONS

Section 12.01 <u>Assignment</u>. A party may not assign or transfer its interest in this Lease, except with the prior written consent of the other party to such assignment. Notwithstanding this provision, Constellation may sublease or enter into necessary agreements to further its mission as an arts and entertainment venue.

Section 12.02 Access by Landlord to Premises. Landlord, its agents, prospective tenants, purchasers or mortgagees may inspect and examine the Premises at all reasonable times upon prior notice to Constellation. For a period commencing six (6) months prior to the expiration of the Term, Landlord may list the property electronically and in the final ninety (90) days may post "For Rent" signs. Nothing in this Section 12.02 shall limit the Landlords ability, at the Landlord's sole discretion, to offer the building for sale or place "For Sale" signs in and around the building.

Section 12.03 <u>Quiet Enjoyment</u>. If Constellation performs all of the covenants and agreements herein provided to be performed on Constellation's part, Constellation shall, at all times during the Term, have the peaceable and quiet enjoyment of possession of the Premises without any manner of hindrance from Landlord or any parties lawfully claiming under Landlord, but subject to the rights of any governmental authority having jurisdiction over the Premises or the rights retained by the City or Landlord in this Lease or by law.

Section 12.04 Non-Collusion. Constellation is required to certify that it has not, nor has any other member, representative, or agent of Constellation, 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. Constellation shall sign an affidavit, attached hereto as Exhibit E, affirming that Constellation has not engaged in any collusive conduct. Exhibit E is attached hereto and incorporated by reference as though fully set forth.

Section 12.05 <u>E-Verify</u>. Pursuant to Indiana Code § 22-5-1.7-11(a), Constellation shall enroll in and verify the work eligibility status of all newly hired employees through the E-Verify program. Constellation is not required to continue this verification if the E-

Verify program no longer exists. Constellation shall sign an affidavit affirming that they participate in the E-Verify program and that they do not currently knowingly employ an unauthorized alien. The affidavit is attached to and incorporated into this Agreement as Exhibit F.

Section 12.06 <u>Severability</u>. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

Section 12.07 <u>Interest on Past-Due Obligations</u>. Except as otherwise expressly provided herein, any amount due to Landlord which is not paid when due shall bear interest at the Default Rate of eight percent (8%) per annum until such amounts are paid in full. Payment of such interest shall not excuse or cure any default by Constellation hereunder.

Section 12.08 <u>Time</u>. Time is of the essence.

Section 12.09 Captions. Paragraph and subparagraph captions are not a part hereof.

Section 12.10 <u>Notices</u>. Any notices to be given hereunder shall be deemed sufficiently given when in writing and (i) actually served on the party to be notified, (ii) placed in an envelope directed to the party to be notified at the following addresses and deposited in the United States mail by certified or registered mail, postage prepaid, or (iii) sent by email to the parties at the following addresses:

(1) If to Landlord:

Holly Warren

Assistant Director of the Arts

City of Bloomington

401 N. Morton Street, Suite 150

Bloomington, IN 47404

Holly. Warren@bloomington.in.gov

Copy to:

Beth Cate

Corporation Counsel

401 N. Morton Street, Suite 220

Bloomington, IN 47404

Beth.Cate@bloomington.in.gov

(2) If to Constellation:

Jennifer Lloyd

Director of Operations

122 S Walnut St

Bloomington, IN 47404 jennifer@cardinalstage.org

Such addresses may be changed by either party by written instruction as to the new address.

Section 12.11 <u>Waivers</u>. No waiver of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach of the same or any other provision. A party's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of consent to or approval of any subsequent act. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Constellation of any provision hereof, other than the failure of Constellation to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

Section 12.12 <u>Recording</u>. Either party shall, upon request of the other, execute, acknowledge and deliver to the other a "short form" memorandum of this Lease for recording purposes.

Section 12.13 <u>Cumulative Remedies</u>. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

Section 12.14 <u>Binding Effect</u>; Choice of Law. Subject to any provisions hereof restricting assignment or subletting by Constellation, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Indiana.

Section 12.15 <u>Final Agreement</u>. This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

Section 12.16 <u>Jurisdiction</u>. In any dispute that arises under this Agreement, the parties agree that the proper venue for any legal action shall be Monroe County, Indiana.

Section 12.17 <u>Accord and Satisfaction</u>. No payment by Constellation or receipt by Landlord of a lesser amount than the rent and amounts otherwise due herein stipulated shall be deemed to be other than on account of the earliest rent then unpaid, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

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IN WITNESS WHEREOF, Landlord the day of 6/29/2022 counterparts, each shall be deemed an original	d and Tenant have executed this Lease as of, 2022, and if this Lease is executed in al.
I ANDI ODD.	TIPN 1 4 3 700
LANDLORD:	TENANT:
City of Bloomington, Indiana	Constellation Stage and Screen, Inc.
DocuSigned by:	DocuSigned by:
By: Beth Cate	By: Kate Galvin
John Hamilton, Mayor	Kate Galvin, Executive Director
Approved as to Form:	
City of Bloomington	
•	CarminParker, PC
DocuSigned by:	By: (Mulle farner)
By: Deth Cate FB7C0A5D6563447	By:////////////////////////////////
Beth Cate Corporation Counsel	Counsel
	COMILIDOR

EXHIBIT A Depiction of the Premises

Legal Description:

Lot 91, City of Bloomington, as recorded in Book A, Page 5 (in the Office of the Monroe County Recorder) Section 33, Township 9 North, Range 1 West, Monroe County, Indiana.

This real estate is commonly known as the John Waldron Arts Center located at 122 S. Walnut in Bloomington, Indiana.

The demised property subject to this Agreement is all areas of the property above excluding the 2,223 square feet of Unit B depicted below and in Exhibit A-1 as the "WFHB Lease Space."



EXHIBIT A-1
UNIT B (WFHB Lease Space) and First Floor Waldron Arts Center

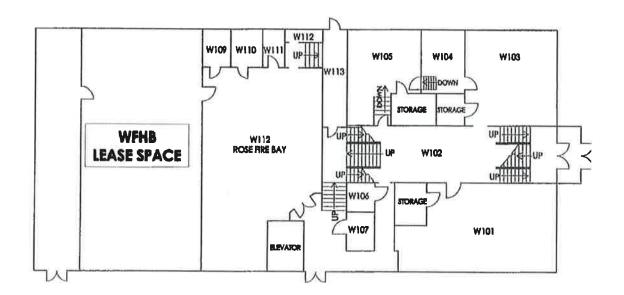


EXHIBIT B Estimated Schedule of Capital Investment

Premises Renovation

Second Quarter Spending 2022		
Ground Floor (5,005 sq ft)		
Demolition	\$28,300	
Restroom Revisions	\$60,250	
Electrical Revisions & Lighting	\$44,100	
Painting	\$6,550	
Flooring	\$8,850	
7	TOTAL	\$148,050
Third Quarter Spending 2022		
Main Floor (5,077 sq ft)		
Demolition	\$25,000	
Restroom Revisions	\$62,100	
Electrical Revisions & Lighting	\$16,700	
Painting	\$5,050	
Flooring	\$6,190	
3rd Floor (4,983 sq ft)		
Demolition	\$16,200	
Restroom Revisions	\$62,000	
Electrical Revisions & Lighting	\$16,900	
Painting	\$6,050	
Flooring	\$7,790	
7	TOTAL	\$223,980
Additional Purchasing/Non Renovation		
Venue & Equipment		
Staging & Masking	\$96,524	
Lighting	\$83,268	
Sound & Other	\$102,028	
Other		
Security System & Installation	\$6,000	
Bar/Concessions/Catering Equipment	\$15,000	
Information Technology	\$3,000	
Exterior Signage	\$15,000	
Main Lobby Design	\$15,000	
Main Lobby Box Equipment	\$4,000	
Discretionary	\$40,000	
	OTAL	\$379,820

Estimated Total Renovation \$751,850

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EXHIBIT C Commitment Letter

EXHIBIT D Repairs and Maintenance

Section 1. Constellation shall be responsible for Premises, including:

- Repair and maintenance building interior walls, floors, floor coverings, ceilings, toilets, sinks, toilet paper dispensers, paper towel dispensers, soap dispensers, water fountains, lighting fixtures, railings, interior doors, interior door glass
- Routine inspection and protective and preventative maintenance
- Repair and maintenance of all electronic and telecommunications equipment and soft goods
- Repair and maintenance of internal finishes, stages, rigging, dividing walls, cubicles, freestanding chairs, tables, desks, counters, and other furniture
- Repair and maintenance of the mechanical systems—electrical, plumbing, elevator, and HVAC (including annual service contract for HVAC system)
- Repair and maintenance of the exterior of the Premises, including roof, mortar, doors, and windows
- Repair and maintenance of the Premise's fire alarm and sprinkler system, (including annual service contract for the alarm system) and fire extinguishers
- Replacement, repair, and maintenance of security systems, cameras, door locks and window locks
- Replacement, maintenance, and repair of flooring or floor covering within the Premises
- Replacement, repair, maintenance, and purchase of equipment and furniture necessary for Constellation's operation, including but not limited to any equipment or furniture necessary to operate the theater space and visual arts venue
- Replacement, repair, and maintenance of information technology (IT) equipment, including servers, wireless network infrastructure, and any other IT or telecommunications equipment
- Repair, maintenance, and replacement of lighting, signs, and any other items and equipment associated with the Premises
- Landscaping and maintenance of the outdoor space on the Premise's parcel, including but not limited to snow removal from the sidewalks and other green space or landscape architecture on the Premises
- An annual report on such repair and maintenance as well as preventative maintenance

Section 2. The City of Bloomington shall be responsible for:

- Replacement of the Waldron's exterior structure as necessary, including doors and windows
- Replacement of the roof
- Replacement of mechanical systems (electrical, plumbing, elevator, and HVAC) other than those referenced in Exhibit A, Section 1

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ATTACHMENTS

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STATE OF INDIANA)
) SS
COUNTY OF MONROE)

NON-COLLUSION AFFIDAVIT

The undersigned offeror or agent, being duly sworn on oath, says that she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by her, 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 June, 2022.
By:	Thate So	
	Kate Galvin, Execut	ive Director of
	Constellation Stage	and Screen, Inc.
STAT	E OF INDIANA)
COU	NTY OF MONROE)SS:)

Before me, a Notary Public in and for said County and State, personally appeared Kate Galvin, Executive Director of Constellation Stage and Screen, Inc. and acknowledged the execution of the foregoing this \ 744 day of June, 2022.

Notary Public's Stenature

Printed Name of Notary Public

My Commission Expires: 3

County of Residence: Morgan
Commission Number: NP0651563

436613 / 24972-2

* SEAL *

MINDY S MACKIN My Commission Expires March 21, 2030 Commission Number NP0651563 Morgan County

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

E-VERIFY AFFIDAVIT

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

- 1. The undersigned is the executive director of Constellation Stage and Screen, Inc.
- 2. Employer of the undersigned has contracted with the City of Bloomington to provide services;
- 3. Employer of the undersigned is enrolled in and participates in the State of Indiana E-Verify program.
- 4. The undersigned is authorized by her employer to sign affidavits on its behalf.
- 5. The undersigned states that, to the best of her knowledge and belief the employer named above does not knowingly employ an "unauthorized alien," as defined at 8 U.S.C. § 1324a. (h)(3), and is enrolled and participating in E-verify to check the eligibility status of all its newly hired employees, and requires the same from its sub-contractors who work under this Agreement.

Kate Do	0/17/22
Kate Galvin	Date
STATE OF INDIANA)	
COUNTY OF MONROE)	

Signature of Notary Public
Mindy S Mackin

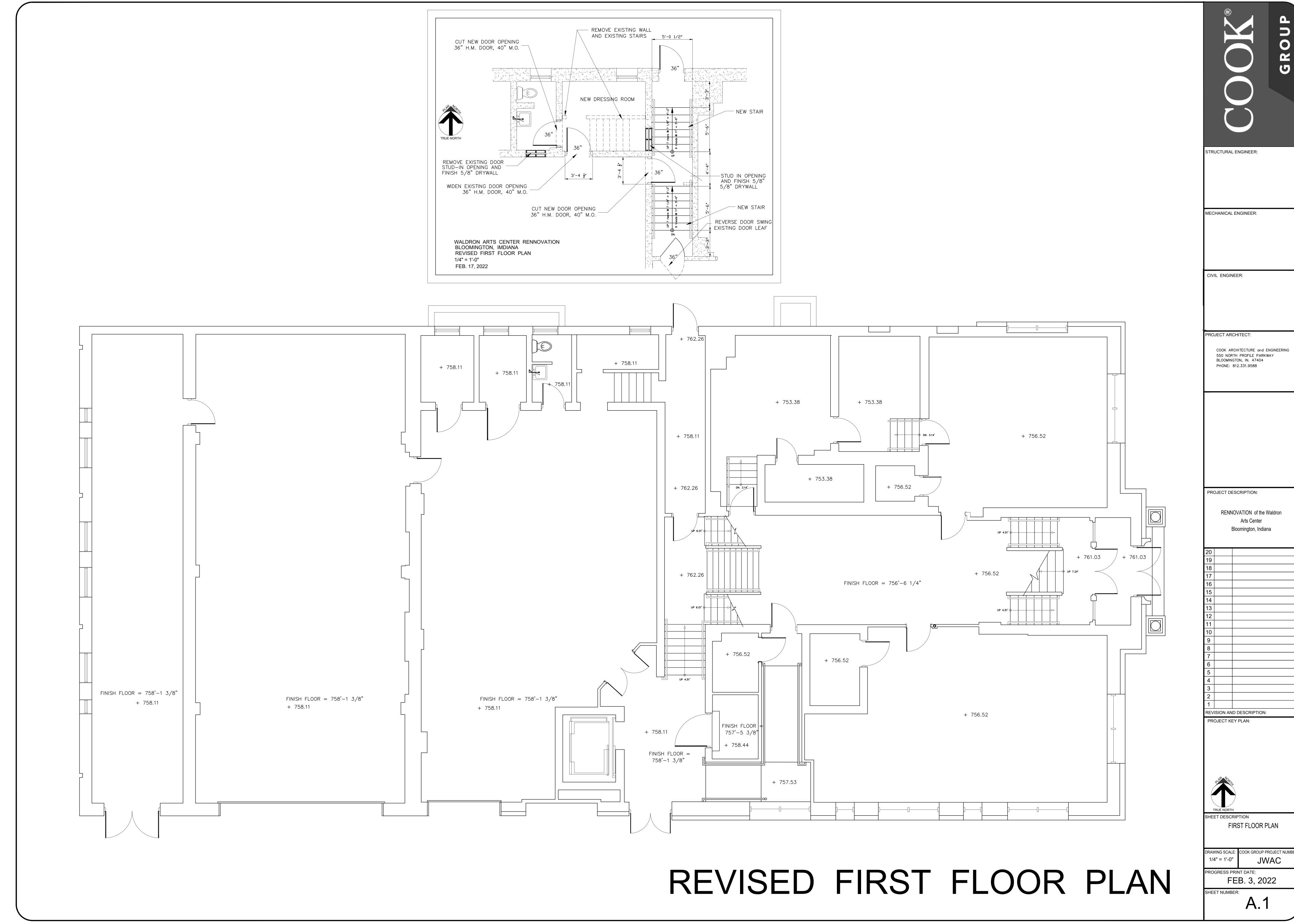
Printed Name of Notary Public

County of Residence: Morgan

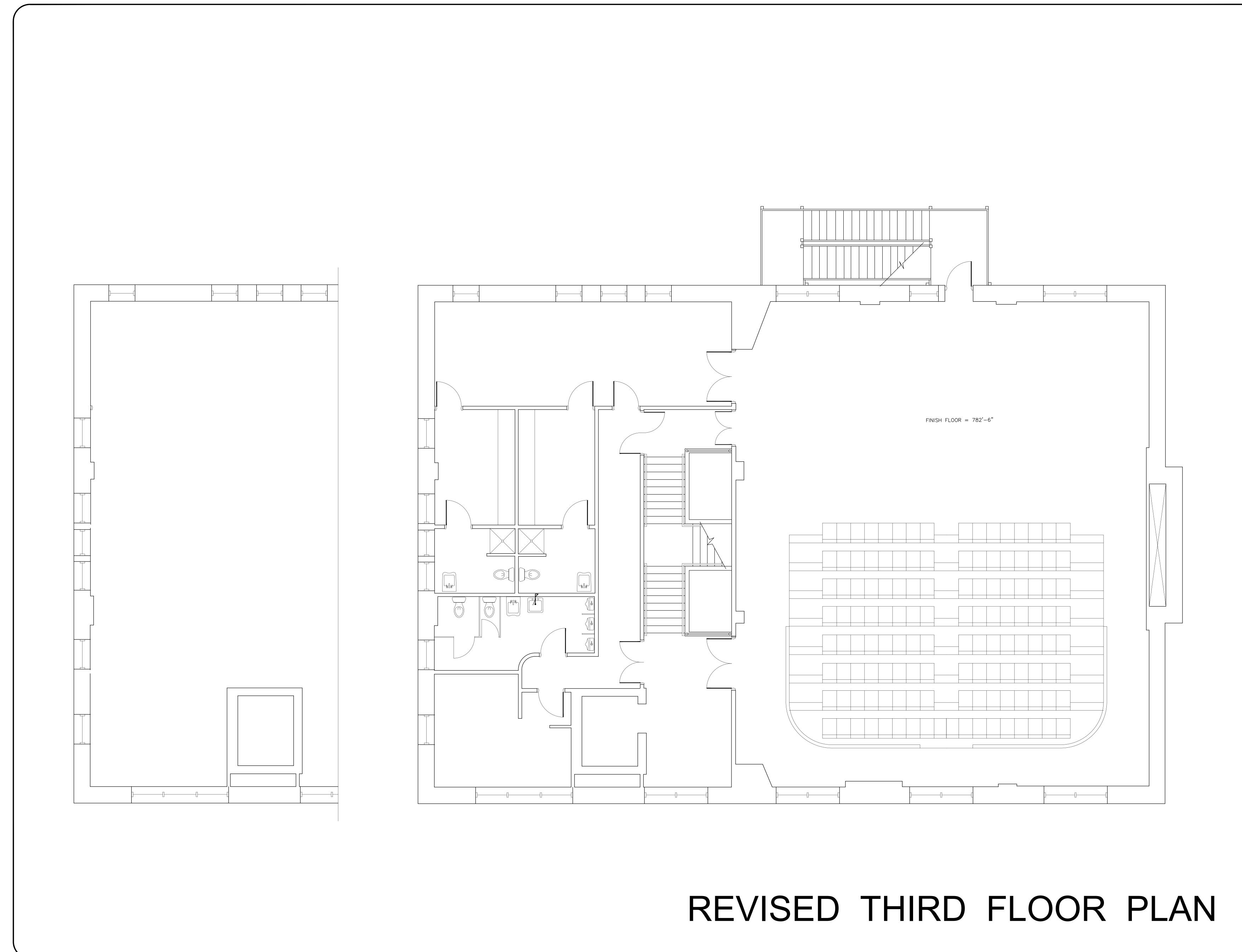
My Commission Expires: 3 al a030

436614/24972-2 Commission# NPD651563

MINDY S MACKIN
My Commission Expires
March 21, 2030
Commission Number NP0651563
Morgan County



A.2



STRUCTURAL ENGINEER: MECHANICAL ENGINEER: CIVIL ENGINEER: PROJECT ARCHITECT: COOK ARCHITECTURE and ENGINEERING 550 NORTH PROFILE PARKWAY BLOOMINGTON, IN. 47404 PHONE: 812.331.9588

PROJECT DESCRIPTION:

RENNOVATION of the Waldron

Arts Center

Bloomington, Indiana



SHEET DESCRIPTION
THIRD FLOOR PLAN

DRAWING SCALE: COOK GROUP PROJECT NUMBE 1/4" = 1'-0" JWAC

PROGRESS PRINT DATE:
FEB. 3, 2022

A.3







