

**COUNCIL PROCEEDINGS
PUBLISHED BY THE AUTHORITY OF THE CITY COUNCIL
OF BLOOMINGTON, ILLINOIS**

The Council convened in regular Session in the Council Chambers, City Hall Building, at 7:00 p.m., Monday, June 10, 2013.

The Meeting was opened by Pledging Allegiance to the Flag followed by moment of silent prayer.

The Meeting was called to order by the Mayor who directed the City Clerk to call the roll and the following members answered present:

Aldermen: Judy Stearns, Mboka Mwilambwe, Kevin Lower, David Sage, Robert Fazzini, Jennifer McDade, Scott Black, Karen Schmidt, Jim Fruin and Mayor Tari Renner.

City Manager David Hales, City Clerk Tracey Covert, and Corporate Counsel Todd Greenburg were also present.

PUBLIC COMMENT: Mayor Renner opened the Public Comment section of the meeting. He added that there would not be a response from the City under the Public Comment portion of the meeting.

Alton Franklin, 508 Patterson Dr., addressed the Council. He planned to address two (2) things. He addressed the municipal aggregation notice. The results were not pleasant. He had reviewed his bill, done the computations and elected to opt out as there were no real savings.

He also addressed the Special Use for Ekstam Dr. which requested apartments in a B – 1, Highway Business District. He questioned the public notice. He believed that only five (5) people were in attendance. There were options. He suggested that the Zoning Board of Appeals change their meeting time. He acknowledged that there were also positive views towards this project. He noted the single egress and the number of apartments. The developer had offered a small playground.

He added that he had enjoyed the mayoral open houses. He had been a voice in the wilderness.

Peggy DeHaven, 7 Zavitz Ct., addressed the Council. She respectfully requested that the Council deny or lay over the Ekstam Dr. Special Use. She cited public safety and traffic concerns. She addressed EMS, (Emergency Medical Services), response times and the need to be reached in a timely manner. There was traffic control. Parking had been eliminated from the west side of Ekstam Dr. However, this change had not been enforced. There was a claim that speed humps would be installed. This statement was incorrect due to the traffic volume on Ekstam Dr. The Hafley intersection was congested at certain times

of day. There were concerns regarding crime, gangs, drug usage, etc. due to the number of apartments proposed. She cited Section 8 and the impact of same upon home values. In addition, there were public school concerns. Benjamin Elementary School was overcrowded. Unit 5 was not prepared for this request and did not have the funding.

Dean Gestner, 612 N. McLean #6, addressed the Council. He informed them that there were issues at the bus transfer stop on Front St. in front of the McLean County Law & Justice Center. Seniors and youth relied upon bus transportation. During the day, there were individuals hanging out, drinking, etc. Their behavior was problematic. He offered his ideas that certain blocks be designated with special penalties applied. The Council needed to review City ordinances and the Police Department's effectiveness. He believed that something needed to be done. This situation could not continue.

Bruce Meeks, 1402 Wright St., addressed the Council. He planned to address the Special Use on Ekstam Dr. and the Economic Development Incentive for 115 E. Monroe St. These represented legal obligations. He could not and did not believe that the citizens would support these two (2) items. He recommended that the Council change the Zoning Code as it applied to Special Uses. He encouraged the Council to rethink this item and vote no.

He addressed the Economic Development Incentive. He cited the application which had been provided to the Council. He read from same. The City would abate \$400,000. The City would provide assistance to the developers with cash flow over a five (5) year period.

The following was presented:

SUBJECT: Proclamation

RECOMMENDATION/MOTION: That the proclamation be made a matter of record.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Objective 1.c. Engaged residents that are well informed and involved in an open governance process.

BACKGROUND: The proclamation will be presented:

Declaring June 15, 2013 to be "Juneteenth" Celebration Day.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Not applicable.

Respectfully submitted for Council consideration.

Prepared by: Tracey Covert, City Clerk

Recommended by:

Tari Renner
Mayor

Motion by Alderman Black, seconded by Alderman Fazzini that the proclamation be made a matter of record.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Council Proceedings of May 13 and 28, 2013

RECOMMENDATION/MOTION: That the reading of the minutes of the previous Council Proceedings of May 13 and 28, 2013 be dispensed with and the minutes approved as printed.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Objective 1.d. City services delivered in the most cost-effective, efficient manner.

BACKGROUND: The Council Proceedings of May 13 and May 28, 2013 have been reviewed and certified as correct and complete by the City Clerk.

In compliance with the Open Meetings Act, Council Proceedings must be approved within thirty (30) days after the meeting or at the Council's second subsequent regular meeting whichever is later.

In accordance with the Open Meetings Act, Council Proceedings are made available for public inspection and posted to the City's web site within ten (10) days after Council approval, 5 ILCS 120/2.06(b).

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Not applicable.

Respectfully submitted for Council consideration.

Prepared by: Tracey Covert, City Clerk

Recommended by:

David A. Hales
City Manager

Motion by Alderman Black, seconded by Alderman Fazzini that the reading of the minutes of the previous Council Proceedings of May 13 and 28, 2013 be dispensed with and the minutes approved as printed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Bills and Payroll

RECOMMENDATION/MOTION: That the bills and payroll be allowed and orders drawn on the Treasurer for the various amounts as funds are available.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services.

STRATEGIC PLAN SIGNIFICANCE: Objective 1.d. City services delivered in the most cost-effective, efficient manner.

BACKGROUND: The list of bills and payrolls will be posted on the City's website on Thursday, June 6, 2013 by posting via the City's web site.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: Total disbursements information will be provided via addendum.

Respectfully submitted for Council consideration.

Prepared by: Tracey Covert, City Clerk

Financial & budgetary review by: Patti-Lynn Silva, Director of Finance

Recommended by:

David A. Hales
City Manager

Motion by Alderman Black, seconded by Alderman Fazzini that the Bills and Payroll be allowed and the orders drawn on the Treasurer for the various amounts as funds are available.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Bids for Aggregate and Associated Delivery of Material for the Public Works Department's Streets and Sewers Division

RECOMMENDATION/MOTION: That the bid for Aggregate Material be awarded to Rowe Construction Co., Bloomington, IL for the remainder of FY 2014, in an amount not to exceed \$66,305, and the Purchasing Agent be authorized to issue a Purchase Order for same.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Objective 2.a. Better quality roads, and functional, well maintained sewer collection system.

BACKGROUND: On April 23, 2013 at 3:30 p.m. bids were opened and read. A total of three (3) bids were received. Rowe Construction was the only bidder to fill out the entire bid form, including materials and additional fees if usage exceeded the listed quantities. The bids are as follows:

	FA1 Sand (price per ton x250)	3/8 inch washed rock (price per ton x 3500)	CA 6 Rock (price per ton x 500)	3 inch minus Oversized Rock (price per ton x 250)	5/8 inch washed rock (price per 1000)
Rowe Construction Co.	\$2,600	\$44,800	\$8,025	\$4,175	No Bid
Stark Materials Company	\$2,800	\$49,350	\$7,725	\$5,025	\$18,150
McLean County Asphalt	\$2,457.50	\$63,770	\$8,025	\$4,357.50	\$23,410

Additional Fees if usage exceeds above listed quantities:

	FA 1 Sand (price per ton delivered)	3/8" Washed Rock (price per ton delivered)	CA 6 Rock (price per ton delivered)	3" Limestone Oversized Rock (per ton delivered)	5/8" washed Rock (per ton delivered)
Rowe Construction Co.	\$10.40	\$12.80	\$16.05	\$16.70	No Bid
Stark Materials Company (not delivered)	\$11.20	\$14.10	\$15.45	\$20.10	\$18.51
McLean County Asphalt	No Bid	No Bid	No Bid	No Bid	No Bid

The Streets and Sewers Division provides street repairs for the Water Department, contractors and their own division for excavations resulting from water main repairs, sewer repairs and pavement failures. Therefore requiring large amounts of aggregate to be purchased throughout the fiscal year.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public notice of the bid was published in the Pantagraph on April 5, 2013. A total of three (3) bids were received.

FINANCIAL IMPACT: The FY 2014 General Fund Budget appropriated \$66,305 for the purchase of aggregate material in line item 10016120-71081. In accordance with this memorandum, staff will only purchase the aggregate material up to the appropriation amount of \$66,305. Stakeholders may locate this purchase in the FY 2014 General Fund Budget document on page #331.

Respectfully submitted for Council consideration.

Prepared by: Jim Karch, P.E., Director of Public Works

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion by Alderman Black, seconded by Alderman Fazzini that the bid for Aggregate Material be awarded to Rowe Construction Co., Bloomington, IL for the remainder of FY 2014, in an amount not to exceed \$66,305, and the Purchasing Agent be authorized to issue a Purchase Order.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Bids for Asphalt and Associated Delivery of Material for the Public Works Department’s Streets and Sewers Division

RECOMMENDATION/MOTION: That the bid for Asphalt and Material Delivery be awarded to McLean County Asphalt Co., Inc., Bloomington, IL for the remainder of FY 2014, in an amount not to exceed \$174,375.56, and the Purchasing Agent be authorized to issue a Purchase Order for same.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Objective 2.a. Better quality roads, and functional, well maintained sewer collection system.

BACKGROUND: On April 23, 2013 at 2:30 p.m. bids were opened and read. A total of two (2) bids were received. The bid results are as follows:

	Asphalt Surface Mix (actual asphalt)	Asphalt Binder (before is applied)	Asphalt UPM Coldmix (Potholes)
McLean County Asphalt	\$71.00	\$69.00	\$95.00
Stark Materials Co., Inc.	No Bid	No Bid	No Bid

These prices are the same price that McLean County Asphalt used for FY 2013.

The Streets and Sewers Division provides street repairs for the Water Department, contractors and their own division for excavations resulting from water main repairs, sewer repairs and pavement failures. Therefore requiring large amounts of asphalt to be purchased throughout the fiscal year.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public notice of the bid was published in the Pantagraph on April 5, 2013. A total of two (2) bids were received.

FINANCIAL IMPACT: The FY 2014 General Fund Budget appropriated \$185,000 for the purchase of asphalt material in line item 10016120-71082. The total cost to purchase the material is \$174,375.56, which is \$10,624.44 below the amount of the appropriation. Stakeholders may locate this purchase in the FY 2014 General Fund Budget document on page #331.

Respectfully submitted for Council consideration.

Prepared by: Jim Karch, P.E., Director of Public Works

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion by Alderman Black, seconded by Alderman Fazzini that the bid for Asphalt and Material Delivery be awarded to McLean County Asphalt Co., Inc., Bloomington, IL for the remainder of FY 2014, in an amount not to exceed \$174,375.56, and the Purchasing Agent be authorized to issue a Purchase Order.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Bids for Concrete and Associated Delivery of Material for the Public Works Department's Streets and Sewers Division

RECOMMENDATION/MOTION: That the bid for Concrete and Material Delivery be awarded to Stark Materials, Co., Inc., Bloomington, IL for the remainder of FY 2014, in an amount not to exceed \$166,582.88, and the Purchasing Agent be authorized to issue a Purchase Order for same.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Objective 2.a. Better quality roads, and functional, well maintained sewer collection system.

BACKGROUND: On April 23, 2013 at 2:30 p.m. bids were opened and read. A total of two (2) bids were received. The bid results are as follows:

	CONCRETE PV	CONCRETE SI	CONCRETE PP	CONCRETE PP4	CONCRETE CLSM	ADDITIVE CALSIUM CHLORIDE 2%	ADDI TIVE SUPE RPL AS- TIZE R
McLean County Asphalt	\$88.20	\$88.20	\$191.45	\$110.00	\$55.00	\$2.43	\$11.50
Stark Materials Co., Inc.	\$82.00	\$82.00	\$90.00	\$85.00	\$52.00	\$6.00	\$5.00

The Streets and Sewers Division provides street repairs for the Water Department, contractors and their own division for excavations resulting from water main repairs, sewer repairs and pavement failures. Therefore requiring large amounts of concrete to be purchased throughout the fiscal year.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public notice of the bid was published in the Pantagraph on April 5, 2013. A total of two (2) bids were received.

FINANCIAL IMPACT: The FY 2014 General Fund Budget appropriated \$173,644 for the purchase of concrete in line item 10016120-71081. The total cost to purchase the material is \$166,582.88, which is \$7,061.12 below the amount of the appropriation. Stakeholders may locate this purchase in the FY 2014 General Fund Budget document on page #331.

Respectfully submitted for Council consideration.

Prepared by: Jim Karch, P.E., Director of Public Works

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion by Alderman Black, seconded by Alderman Fazzini that the bid for Concrete and Material Delivery be awarded to Stark Materials, Co., Inc., Bloomington, IL for the remainder of FY 2014, in an amount not to exceed \$166,582.88, and the Purchasing Agent be authorized to issue a Purchase Order.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Bids for White and Yellow High Durability Latex Traffic Line Paint and Glass Beads for Pavement Marking Material for the Public Works Department's Streets and Sewers Division

RECOMMENDATION/MOTION: That the bid for Latex Traffic Paint and Glass Beads for Pavement Marking be awarded to Sherwin Williams, Bloomington, IL, for the remainder of FY 2014 in an amount not to exceed \$51,555, and the Purchasing Agent be authorized to issue a Purchase Order for same.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Objective 2.a. Better quality roads.

BACKGROUND: The Public Works Department's Streets and Sewers Division received permission to purchase a new self-propelled traffic line painting machine from E-Z Liner Industries at the Council's March 26, 2012 meeting. This machine requires the pavement marking beads to be loaded mechanically and the traffic line paint to be drawn from fifty-five (55) gallon drums. A bid specification was created which allows for the purchase of traffic line paint to be used not only with the new machine but also with the existing walk behind traffic line painting machines.

Bids received for FY 2013

On July 10, 2012 at 11:00 a.m. bids were opened and read. A total of five (5) bids were received. The five (5) bids are as follows:

Vendor	Traffic Line Paint and Beads
AllStates Coatings Company	\$42,794.90
Ennis Paint	\$61,644.185
Diamond Vogel Paints**	\$78,398.25
Sherwin Williams	\$89,177.35
Don Smith	No Bid

***Recommended*

The white and yellow high durability traffic line paint and glass beads for pavement marking provided by Diamond Vogel Paints, Bloomington, IL is recommended for the following reasons:

1. The paint specification provided by this vendor meets and/or exceeds the bid specification submitted by staff.
2. This bead specification provided by this vendor meets and/or exceeds the bid specification submitted by staff.
3. This is the lowest priced while meeting all of the bid specifications, without exception. The other vendors failed to include the addendum to the bid specification with their bid packet.

Bids received for FY 2014

On April 23, 2013 at 3:00 p.m. bids were opened and read. A total of three (3) bids were received. The three (3) bids are as follows:

Vendor	Traffic Line Paint and Beads
Diamond Vogel	\$62,705.50
Ennis Paint	\$57,800.50
Sherwin Williams	\$51,555.00

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public notice of the bid was published in the Pantagraph on April 5, 2013. Three (3) bid packages were provided. A total of three (3) bids were received.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$77,175 for purchase of traffic paint in line item 10016120-71096. The total cost to purchase the paint requested from the traffic line paint is \$51,555. There are sufficient budgeted funds on hand to pay for the traffic line paint. Stakeholders may locate this purchase in the FY 2014 General Fund Budget document on page #331.

Respectfully submitted for Council consideration.

Prepared by:

Jim Karch, P.E., Director of Public Works

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Recommended by:

David A. Hales
City Manager

Motion by Alderman Black, seconded by Alderman Fazzini that the bid for Latex Traffic Paint and Glass Beads for Pavement Marking be awarded to Sherwin Williams, Bloomington, IL for the remainder of FY 2014 in an amount not to exceed \$51,555, and the Purchasing Agent be authorized to issue a Purchase Order.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Advertisements for the Bloomington Center for the Performing Arts (BCPA) in *The Pantagraph*

RECOMMENDATION/MOTION: That the advertising contract be approved, in the amount of \$38,000, the formal bid process be waived, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 4. Grow the local economy, Goal 5. Great place – livable, sustainable City, and Goal 6. Prosperous Downtown Bloomington.

STRATEGIC PLAN SIGNIFICANCE: Objective 4.e. Strong working relationship among the City, businesses, economic development organizations. Objective 5.d. Appropriate leisure and recreational opportunities responding to the needs of residents. Objective 6.c. Downtown becoming a community and regional destination.

BACKGROUND: The Parks, Recreation & Cultural Arts (PRCA) Department requests permission to waive the formal bid process to allow for the purchasing of \$38,492.48 in advertisements to promote the programming of the BCPA in *The Pantagraph*, Bloomington, Illinois, from May 2013 - April 2014. A waiver from the formal bid process is requested as *The*

Pantagraph is the only major daily newspaper publishing for a general audience in Bloomington-Normal. As such, *The Pantagraph* provides the only practical solution to promoting BCPA and PRCA Department events and activities in the printed media to a broad audience.

As a result of the annual contract the ads will be billed at a rate of \$37.11 per column inch daily and \$42.27 for Sunday, which is reduced from the standard rate of \$60.54 daily/\$68.83 Sunday. This reduced rate will be extended to other PRCA Department events during the term of the contract. These rates are the same as rates for 2012 - 2013 and reflect a 38.7% discount from standard published rates.

As a media sponsor of the BCPA's 2013 - 2014 season, the BCPA will receive additional promotion of its events, including an additional forty-eight inches (48") of advertising for each of three (3) sponsored shows, plus promotion of BCPA programs through online contests sponsored by *The Pantagraph*.

Staff respectfully requests the formal bid process be waived to allow for these advertisements to be purchased. Funding for advertising will come from account 21101100-70610 of the BCPA budget.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: The BCPA Box Office requests information from patrons about where they heard about a show at each ticket transaction. Print media – primarily *The Pantagraph* – consistently ranks second on that list, only falling behind the BCPA's Season Brochure for effectiveness in reaching ticket buyers.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$285,405, including \$72,000 in direct advertising and \$213,505 in in-kind advertising for advertising BCPA sponsored events, in line item 10014125-70610-20000. The purpose of this \$38,492.48 contract is to assist the BCPA to attract audiences to its main stage and outdoor concert events throughout the year. Note this expenditure is only a portion of the total budget. The cost of this service will be offset by revenue generated from ticket sales and is further offset through in-kind trades and sponsorships. With the incorporation of the BCPA Fund into the General Fund in FY 2014, stakeholders may locate this purchase in the FY 2013 General Fund Budget document on page #409.

Respectfully submitted for Council consideration.

Prepared by: Joel Aalberts, Performing Arts Manager

Reviewed by: John R. Kennedy, Director of Parks, Rec & Cultural Arts

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion by Alderman Black, seconded by Alderman Fazzini that the Advertising Contract be approved, in the amount of \$38,492.48, the formal bid process be waived, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Professional Services Contract for the Bloomington Center for Performing Arts

RECOMMENDATION: That the contract with Steven Barclay Agency, be approved, in the amount of \$35,000, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 4. Grow the local economy; Goal 5. Great place – livable, sustainable City; and Goal 6. Prosperous Downtown Bloomington.

STRATEGIC PLAN SIGNIFICANCE: Objective 4.e. Strong working relationship among the City, businesses, economic development organizations; Objective 5.d. Appropriate leisure and recreational opportunities responding to the needs of residents; and Objective 6.c. Downtown becoming a community and regional destination.

BACKGROUND: Staff respectfully requests approval of contract to engage persons and/or groups represented by: Steven Barclay Agency to perform entertainment services in the Bloomington Center for the Performing Arts, (BCPA). Contract expenses for the contract will be \$35,000. The contract price covers the artist fees for the performance coming to the BCPA in November 2013. For proprietary and competitive advantage reasons we do not mention the acts by name in the staff back up report. As is standard industry practice, some artist contracts require some additional expenses for items such as travel, meals and lodging that vary from artist to artist. Travel expenses and local lodging fees occur less often, however virtually all artists are provided with meals and non-alcoholic beverages.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: The selection of these artists was coordinated with the Cultural Commission and the BCPA's Programming Advisory Committee. Staff and community advisors agree that the visiting professionals would attract broad, positive community involvement and contribute to the public service mission of the BCPA.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$511,300 in line item 10014125-70218-20000. The purpose of this \$35,000 contract is to engage persons and/or groups represented by: Steven Barclay Agency to perform entertainment services in the BCPA. Note this is only a portion of the total budget. The cost of this service will be offset by revenue generated from ticket sales, grants, playbills, concessions, and corporate advertisement and sponsorships. These revenues are also targeted to offset the additional artist expenses for travel, meals and lodging. With the incorporation of the BCPA Fund into the General Fund in FY 2014, stakeholders may locate this purchase in the FY 2013 General Fund Budget document on page #408.

Respectfully submitted for Council consideration.

Prepared by: Joel Aalberts, Performing Arts Manager

Reviewed by: John R. Kennedy, Director of Parks, Rec & Cultural Arts

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Motion by Alderman Black, seconded by Alderman Fazzini that the contract with Steven Barclay Agency be approved, in the amount of \$35,000, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Ratification of a Cable Television Franchise Agreement with iTV-3

RECOMMENDATION/MOTION: That the Franchise Agreement be approved and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 5. Great place- sustainable, livable City.

STRATEGIC PLAN SIGNIFICANCE: Objective 5.d. Appropriate leisure and recreational opportunities responding to the needs of residents. The franchise agreement will add more alternatives to City residents who desire to watch television but do not want to subscribe to satellite services or use antennas.

BACKGROUND: iTV-3 Inc. which currently has cable television franchises with Pekin, Morton and East Peoria, has requested a cable television franchise with the City, which was presented to the Council for consideration. iTV-3 does not have a franchise agreement with the Town of Normal, but iTV-3 officials have informed the City that after an agreement with Bloomington is approved it planned approach Normal in the future regarding a franchise agreement.

Cable television companies enter into agreements with municipalities which permit the cable companies to use the city rights of way for their cables in return for payments to the city for that privilege. Although they are referred to as “franchise” agreements, the term is somewhat misleading because the cable company does not receive a promise from the city that they will be the only cable company permitted to operate in the city. Any company such as iTV3 which desires to “overbuild” (that is, to install their own equipment in the City right of way) would be entitled to operate in the City provided that it enters into a similar agreement. In this regard, a “cable franchise” agreement is more comparable to a rental agreement for the use of City right of way.

As the cable television industry has grown and consolidated over the last fifty (50) years, both the federal and state governments have placed restrictions on the ability of municipalities to regulate cable companies. The Telecommunications Act of 1996 (Title 47 United States Code Sections 521 *et seq.*) eliminated the ability of municipalities to regulate rates which may be charged for any tier of service above the “basic tier”. Even the rates charged for the *basic* tier of service may be regulated only if there is a lack of competition in the municipality, (meaning that the cable company controls at least 85% of the market), and if the cable company’s rates for basic tier service exceed the federal “benchmark” rate for that level of service, (since the passage of the 1996 law, the basic tier rate for the existing cable TV provider, Comcast, has not exceeded the federal benchmark). Finally, federal law does not permit a municipality to require a cable company to pay more than five percent (5%) of gross revenues received from customers in the municipality for the permission to use the City right of way. The agreement requires iTV-3 to pay five percent (5%) of gross revenues in return for the franchise.

In 2007 and 2008, the Illinois General Assembly passed legislation which permits cable companies to bypass municipalities entirely and to obtain a franchise agreement from the Illinois Commerce Commission, (these laws are found in articles 21 and 22 of 220 ILCS 5, the Public Utilities Act, the Cable and Video Competition Law of 2007 and the Cable and Video Customer Protection Law). The purpose of the state legislation was to encourage competition by permitting cable companies to go to one place for franchise agreements rather than having to go to dozens or hundreds of municipalities.

iTV3 representatives have informed City staff that they desire to enter into a local franchise agreement with the City. This agreement is a virtual duplicate of the City's current franchise agreement with Comcast.

The agreement requires iTV3 to broadcast, without charge, programs made available to it by the City as well as educational institutions and City residents or organizations. It does not require iTV3 to produce such programs for free. When no programming has been offered by the City, an educational institution or a City resident or organization, iTV3 is permitted to broadcast other content on the channel.

The Agreement provides that iTV3 will provide complimentary basic cable service and a free standard installation at one (1) outlet to municipal buildings within 125' of iTV3's distribution cable; similar provisions apply to state accredited K - 12 public and private schools, excluding home schools. The Agreement also requires iTV3 to provide and maintain an "Emergency Alert System" consistent with state and federal standards.

The term of the agreement is for five (5) years. At the conclusion of that term, iTV-3 would either need to negotiate a new franchise agreement with the City or obtain a permit from the Illinois Commerce Commission.

iTV-3 will also be providing telecommunications services (i.e., telephone service) to consumers by use of the fiber optic lines it is installing in the City right of way. Pursuant to Section 35 of the Telecommunications Municipal Infrastructure Maintenance Fee Act (35 ILCS 635/1 *et seq.*), the City is prohibited from imposing franchise or other fees upon or require other compensation from telecommunications retailers for use of the public way. However, the City is permitted to tax telecommunications services purchased at retail from a retailer pursuant to its Telecommunications Tax, (2.5% of the gross charge for such service).

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: None.

FINANCIAL IMPACT: The amount received as compensation is consistent with previous cable TV franchise agreements and is the maximum permitted by federal law in the absence of specific findings of fact by the City showing the costs to the City of administering the franchise agreement justify a higher amount.

Respectfully submitted for Council consideration.

Prepared by:

J. Todd Greenburg, Corporation Counsel

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Recommended by:

David A. Hales
City Manager

**CABLE TELEVISION FRANCHISE AGREEMENT
BY AND BETWEEN THE CITY OF BLOOMINGTON
AND iTV-3, INC.**

This Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the City of Bloomington, Illinois (hereinafter, the “City”) and iTV-3, Inc. (hereinafter, “Grantee”) this 10th day of June, 2013 (the “Effective Date”).

The City, having determined that the financial, legal, and technical abilities of the Grantee are reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

This agreement is entered into by and between the parties under the authority of and shall be governed by the Cable Act.

SECTION 1: Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Act, unless otherwise defined herein.

“Cable Act” or “Act” means the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, 47 U.S.C. §§ 521 et seq., as the same may be amended from time to time.

“Cable Service” or “Service” means the one-way transmission to Subscribers of Video Programming or Other Programming Service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.

“Cable System” or “System,” has the meaning set forth in 47 U.S.C. § 522 of the Cable Act, and means Grantee's facilities, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within the Franchise Area, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that

serves Subscribers without using any public right-of-way, (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide Interactive On-Demand Services; (iv) an open video system that complies with section 653 of the Cable Act; or (v) any facilities of any electric utility used solely for operating its electric utility systems.

“Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as a television channel is defined by the Federal Communications Commission by regulation.

“Customer” means a Person who lawfully receives and pays for Cable Service with the Grantee’s express permission.

“FCC” means the Federal Communications Commission, or successor governmental entity thereto.

“Franchise” means the initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

“Franchise Agreement” or “Agreement” shall mean this Agreement and any amendments or modifications hereto.

“Franchise Area” means the present legal boundaries of the City as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means as provided in this Agreement.

“Grantee” shall mean iTV-3, Inc.

“Gross Revenue” means the Cable Service revenue received by the Grantee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles. Cable Service revenue includes monthly basic, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross revenues shall also include such other revenue sources directly related to Cable Service delivered over the Cable System as may hereafter develop, provided that such revenues, fees, receipts, or charges are deemed lawful and to be included in the gross revenue base for purposes of computing the Franchising Authority’s permissible franchise fee under the Cable Act, as amended from time to time. Gross Revenue shall not include refundable deposits, bad debt, investment income, programming launch support payments, advertising sales commissions and third party agency fees, nor any taxes, fees or assessments imposed or assessed by any governmental authority. Gross Revenues shall include

amounts collected from Subscribers for Franchise Fees pursuant to *City of Dallas, Texas v. F.C.C.*, 118 F.3d 393 (5th Cir. 1997), and amounts collected from non-Subscriber revenues in accordance with the Court of Appeals decision resolving the case commonly known as the “Pasadena Decision,” *City of Pasadena, California et. al., Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues, CSR 5282-R, Memorandum Opinion and Order, 16 FCC Rcd. 18192 (2001)*, and *In re: Texas Coalition of Cities for Utility Issues v. F.C.C.*, 324 F.3d 802 (5th Cir. 2003).

“Initial Franchise Service Area” means that portion of the Franchise Area served by the Grantee’s Cable System as of the Effective Date of this Franchise Agreement.

“Person” means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the City.

“Public, Educational and Governmental (PEG) Access Channel” shall mean a video Channel designated for non-commercial use by the public, educational institutions such as public or private schools, but not “home schools,” community colleges, and universities, as well as the City.

“Public, Educational and Government (PEG) Access Programming” shall mean non-commercial programming produced by any City residents or organizations, schools and government entities and the use of designated facilities, equipment and/or Channels of the Cable System in accordance with 47 U.S.C. 531 and this Agreement.

“Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Franchise Area, which shall entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the City within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee’s Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

“City” means the City of Bloomington, Illinois or the lawful successor, transferee, designee, or assignee thereof.

SECTION 2: Grant of Authority

2.1. The City hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be five (5) years from the Effective Date, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and/or applicable law.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

2.4. Police Powers. Nothing in this Franchise Agreement shall be construed as an abrogation by the City of any of its police powers to adopt and enforce generally applicable ordinances deemed necessary for the health, safety, and welfare of the public, and the Grantee shall comply with all generally applicable laws and ordinances enacted by the City pursuant to such police power.

2.5. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Public Ways.

2.6. Competitive Equity.

2.6.1. In the event the City grants an additional Franchise to use and occupy the public right of way for the purposes of operating a Cable System, the additional Franchise shall only be granted in accordance with the Illinois Level Playing Field Statute, 65 ILCS 5/11-42-11.

2.6.2. In the event an application for a new cable television franchise or other similar authorization is filed with the City proposing to serve the Franchise Area, in whole or in part, the City shall serve or require to be served a copy of such application upon any existing Company or incumbent cable operator by registered or certified mail or via nationally recognized overnight courier service.

2.6.3. Pursuant and in addition to Title/Chapter 38 of the City of Bloomington Municipal Code, during the term of this Franchise Agreement and any extension or renewal thereof, no application fee or Security Fund shall be required of the Grantee for any permit required by the City, provided that Grantee shall have timely made all payments to the City pursuant to Section 5.1 of this Franchise Agreement.

SECTION 3: Construction and Maintenance of the Cable System

3.1. Except as may be otherwise provided in this Franchise Agreement, Grantee shall comply with all generally applicable provisions of Title/Chapter 38, entitled “Streets, Sidewalks And Other Public Ways,” of the City of Bloomington Municipal Code, as may be amended from time to time.

3.2. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems’ transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee’s cable and other equipment without technical degradation of the Cable System’s signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.3. Improvements of Public Way. The Grantee agrees that it shall, upon reasonable notice by the City and at the Grantee’s own expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from such street or other public place any network, system, facilities, or equipment when required to do so by the City because of public health, safety and welfare improvements as deemed necessary by the City. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project in the event such funds are made available to other users of the Public Way.

3.4. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee’s relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way.

3.5. The Grantee shall not be required to relocate its facilities unless it has been afforded at least ninety (90) days notice of the necessity to relocate its facilities. Upon adequate notice the Grantee shall provide a written estimate of the cost associated with the work necessary to relocate its facilities. In instances where a third party is seeking the relocation of the Grantee’s facilities or where the Grantee is entitled to reimbursement pursuant to the preceding Section, the Grantee shall not be required to perform the relocation work until it has received payment for the relocation work.

SECTION 4: Service Obligations

4.1. General Service Obligation. The Grantee shall make Cable Service available beyond the Initial Franchise Service Area to every residential dwelling unit within the Franchise Area where a minimum of 15 households have requested service within 1200 feet of the existing Cable System's technically feasible connection point. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the Grantee's distribution cable.

4.1.1. The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis plus a reasonable rate of return.

4.2. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in 47 C.F.R., Part 76, Subpart K, or technical equivalent as amended from time to time.

4.3. New/Planned Developments. The City shall provide the Grantee with written notice of the issuance of building permits within the Franchise Area for projects requiring undergrounding of cable facilities. Such notices shall be provided at the time of notice to all utilities or other like occupants of the City's rights-of-way. The City agrees to require the builder or developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least sixty (60) business days written notice of the date of availability of open trenches. The City shall also provide the Grantee with summaries of all planned developments in the City at the same time as provided to all utilities or other like occupants of the City's right-of-way. Said notice is to allow the Grantee sufficient foresight into the future demands on its design, engineering, construction, and capital resources. Should the City fail to provide advance notice of such developments the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise.

4.4. Annexations. The City shall notify the Grantee of all annexations by the City; and of any and all planned developments in areas expected to be annexed at the same time the City informs utilities or other like occupants of the City's rights-of-way. Said notice is to allow the Grantee sufficient foresight into the future demands on its design, engineering, construction, and capital resources. Should the City fail to provide advance notice of actual and planned annexations, the Grantee shall be allowed an adequate time to prepare, plan and provide a detailed report as to the timeframe for it to construct its facilities and provide the services required under this Franchise. The parties agree that Grantee's Franchise and Franchise Fee obligations with respect to annexations are as set forth in the Counties Code – 55 ILCS 5/5-1095(a) – as amended from time to time; and that the period for which franchise fees shall continue to be paid to the county shall commence on the later of the date on which the Grantee was informed of the annexation or the actual date on which the annexation occurred. The City shall provide the Grantee with written notice of the issuance of building or development permits within the Franchise Area for projects requiring undergrounding of cable facilities. The City agrees to require the builder or developer, as a condition of issuing the permit, to give the

Grantee access to open trenches for deployment of cable facilities and at least sixty (60) business days written notice of the date of availability of open trenches.

4.5. Service to School Buildings and Governmental Facilities.

4.5.1. Service to School Buildings. The City and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to State accredited K-12 public and private schools not including “home schools,” located in the Franchise Area within one hundred twenty five feet (125) of the Grantee’s distribution cable.

4.5.2. Service to Governmental Facilities. The City and the Grantee acknowledge the provisions of 220 ILCS 5/22-501(f), whereby the Grantee shall provide complimentary basic Cable Service and a free standard installation at one outlet to municipal buildings located in the Franchise Area within one hundred twenty five (125) feet of Grantee’s distribution cable. “Municipal buildings” are those buildings owned or leased by the City for government administrative purposes, and shall not include buildings owned by City but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

4.5.3. Long Drops. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

4.6. Emergency Alerts. At all times during the term of this Franchise Agreement, the Grantee shall provide and maintain an “Emergency Alert System” (“EAS”) consistent with applicable Federal law and regulation – including 47 C.F.R., Part 11 and the “State of Illinois Emergency Alert System State Plan” – as may be amended from time to time. The City agrees to indemnify and hold the Grantee harmless from any damages or penalties arising out of the negligence of the City, its employees or agents in using such system.

SECTION 5: Oversight and Regulation by City

5.1. Franchise Fees. The Grantee shall pay to the City a Franchise Fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Grantee shall not be compelled to pay any higher percentage of fees than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. If mailed, the Franchise Fee shall be considered paid on the date it is postmarked. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the franchise fees paid during that period. Any undisputed Franchise Fee payment which remains unpaid in whole or in part, after the date specified herein shall be delinquent. For any delinquent Franchise Fee

payments, Grantee shall make such payments including interest at the prime lending rate as quoted by Chase Bank U.S.A or its successor, from the time of the discovery of the delinquent payment until the date paid. Any undisputed overpayments made by Grantee to the City shall be returned or credited upon discovery of such overpayment and shall be payable within thirty (30) days of the receipt of written notice from Grantee.

5.1.1. Change in Amount. The Parties acknowledge that, at present, the Cable Act limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. If, during the term of this Agreement, the Cable Act is modified so that the City would otherwise be authorized to collect a Franchise fee at a rate greater than five percent (5%) of Gross Revenues, the City may unilaterally amend this Agreement to increase the required percentage to be paid by the Grantee to the City up to the amount permitted by the Cable Act, provided that: (i) such amendment is competitively neutral; (ii) the City conducts a public hearing on the proposed amendment; (iii) the City approves the amendment by ordinance; and (iv) the City notifies Grantee at least ninety (90) days prior to the effective date of such an amendment. In the event a change in state or federal law reduces the maximum permissible franchise fee percentage that may be collected, the parties agree the Grantee shall reduce the percentage of franchise fees collected to the lower of: i) the maximum permissible franchise fee percentage; ii) the lowest franchise fee percentage paid by than any other video service provider, under state authorization or otherwise, providing service in the Franchise Area or any other cable provider granted a cable franchise by the City pursuant to Title 47; or, iii) such franchise fee percentage as may be approved by the City, provided that: (a) such amendment is competitively neutral; (b) the amendment is in compliance with the change in state or federal law; (c) the City approves the amendment by ordinance; and (d) the City notifies Grantee at least ninety (90) days prior to the effective date of such an amendment.

5.1.2 Taxes Not Included. The Grantee acknowledges and agrees that the term “Franchise Fee” does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators on their services but not including a tax, fee, or assessment which is unduly discriminatory against Cable Operators or Cable Subscribers).

5.2. Franchise Fees Subject to Audit. The City and Grantee acknowledge that the audit standards are set forth in the Illinois Municipal Code at 65 ILCS 5/11-42-11.05 (Municipal Franchise Fee Review; Requests For Information). Any audit shall be conducted in accordance with generally applicable auditing standards. The City and/or its designee may be required to execute a non-disclosure agreement with the Grantee prior to inspection of the Grantee’s financial records. Enforcement of such requirements and standards and the penalties for non-compliance with such standards shall be consistent with 65 ILCS 5/11-42-11.05.

5.3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Agreement, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The City agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the City that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable

System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise Fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority's representative. In the event that the City has in its possession and receives a request under the State of Illinois Freedom of Information Act (5 ILCS 140/1 et seq.), or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the City shall notify Grantee of such request and cooperate with Grantee in opposing such request. Grantee shall indemnify and defend the City from and against any claims arising from the City's opposition to disclosure of any information Grantee designates as proprietary or confidential.

SECTION 6: Transfer of Cable System or Franchise or Control of Grantee

6.1. Grantee shall notify the City of any change in ownership of the Cable System within 30 days of any transfer of ownership totaling more than 51% of the Cable System. iTV-3, Inc..

SECTION 7: Insurance and Indemnity

7.1. **Insurance.** Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the City certificates of insurance designating the City as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of one million dollars (\$1,000,000.00) for bodily injury or death to any one person, and one million dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and one million dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the City. The Grantee may meet the insurance minimum amounts through direct or umbrella coverage which meets or exceeds the total minimum insurance levels for all types of insurance. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the City from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement.

7.2. **Indemnification.** The Grantee shall indemnify, defend and hold harmless the City, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, provided that the City shall give the Grantee written notice of its obligation to indemnify and defend the City within ten (10) business days of receipt of a claim or action pursuant to this Section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

7.2.1. The Grantee shall not indemnify the City for any liabilities, damages, costs or expense resulting from the willful misconduct or negligence of the City, its officers, employees and agents.

SECTION 8: Public, Educational and Governmental (PEG) Access

8.1. PEG Capacity The Grantee shall provide capacity for the City's Public, Educational and Governmental ("PEG") Access Programming through Grantee's Cable System consistent with the requirements set forth herein. As of the Effective Date of this Agreement, the City utilizes two Channels which are time shared with the Town of Normal. Unless otherwise agreed to by the City and the Grantee to the extent required by applicable law, the Channel(s) may be carried on the Grantee's basic digital service tier. The City's PEG programming shall be provided consistent with Section 611 of the Cable Act, as amended from time to time.

8.2. The Grantee does not relinquish its ownership of or ultimate right of control over channel(s) by designating it for PEG use. However, the PEG channel(s) are, and shall be, operated by the City, and the City may at any time allocate or reallocate the usage of the PEG channel(s) among and between different non-commercial uses and Users. The City shall be responsible for the editorial control of the Video Programming on the PEG Channel(s) except to the extent permitted in 47 U.S.C. §531(e).

8.3. Origination Point. At such time that the City determines that it wants to establish capacity to allow its residents who subscribe to Grantee's Cable Service to receive PEG access programming originated from Schools and/or City facilities; or at such time that the City determines that it wants to change or upgrade a location from which PEG access programming is originated; the City will give the Grantee written notice detailing the point of origination and the capability sought by the City. The Grantee agrees to submit a cost estimate to implement the City's plan within a reasonable period of time. After an agreement to reimburse the Grantee for its expenditure, the Grantee will implement any necessary system changes within a reasonable period of time.

8.4. PEG Signal Quality. Provided PEG signal feeds are delivered by the City to the designated signal input point without material degradation, the PEG channel delivery system from the designated signal input point shall meet the same FCC technical standards as the remainder of the Cable System set forth in this Agreement.

8.5. Grantee Use of Unused Time. Because the City and Grantee agree that a blank or under utilized Access Channel is not in the public interest, in the event the City does not completely program a Channel, Grantee may utilize the Channel for its own purposes. Grantee may program unused time on the Channel subject to reclamation from the City upon no less than sixty (60) days notice. Except as otherwise provided herein, the programming of the Access Channel with text messaging or playback of previously aired programming shall not constitute unused time. Text messaging containing out of date or expired information for a period of thirty (30) days shall be considered unused time. A programming schedule that contains playback of previously aired programming that has not been updated for a period of ninety (90) days shall be considered unused time. Unused time shall be considered to be a period of time, in excess of six (6) hours, where no community produced programming of any kind can be viewed on an access Channel. Unused time shall not include periods of time where programming cannot be viewed that are caused by technical difficulties, transition of broadcast media, signal testing, replacement or repair of equipment, or installation or relocation of facilities.

SECTION 9: Enforcement of Franchise

9.1. Notice of Violation or Default. In the event the City believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

9.2. Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of the City's written notice: (A) to respond to the City, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that the cure will be completed.

9.3. Enforcement. Subject to applicable federal and state law, and pursuant to the provisions of 9.2 herein, in the event the City determines that the Grantee is in default of any material provision of the Franchise, the City may seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief.

9.4. Technical Violation. The City agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

a. in instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

b. where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

SECTION 10: Miscellaneous Provisions

10.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

10.2. Notice. Any notification that requires a response or action from a party to this franchise within a specific time-frame, or that would trigger a timeline that would affect one or both parties' rights under this franchise, shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:

City of Bloomington
109 E. Olive Street
Bloomington, IL. 61701

ATTN: Mayor Tari Renner

With a copy to:

To the Grantee:

iTV-3, Inc.
331 Fulton St, Suite 300
Peoria, Illinois 61602

ATTN: Levi Dinkla

Craig Hartner
2500 Lehigh Ave
Glenview, IL 60026

Recognizing the widespread usage and acceptance of electronic forms of communication, emails and faxes will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the person of record as specified above. Either party may change its address and addressee for notice by notice to the other party under this Section.

10.3. Entire Agreement. This Franchise Agreement embodies the entire understanding and agreement of the City and the Grantee with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, ordinances, understandings, negotiations and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

10.3.1. The City may adopt a cable television/video service provider regulatory ordinance that complies with applicable law, provided the provisions of any such ordinance adopted subsequent to the Effective Date of this Franchise Agreement shall not apply to the Grantee during the term of this Franchise Agreement.

10.4. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, 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.

10.5. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of Illinois, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Illinois and/or Federal law, as applicable.

10.6. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the City and the Grantee, 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.

10.7. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public to enforce the terms of this Franchise Agreement.

10.8. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under Federal or state law unless such waiver is expressly stated herein.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

For the City of Bloomington:

For iTV-3, Inc:

By: Tari Renner

By: _____

Name: _____

Title: Mayor

Title: _____

Date: June 11, 2013

Date: _____

Motion by Alderman Black, seconded by Alderman Fazzini that the Franchise Agreement be approved and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Variance from Chapter 38, Section 123(a) of City Code to Allow a Driveway Approach Twenty-three Feet (23') Wide at 203 Hampton Dr.

RECOMMENDATION/MOTION: That the variance be approved.

STRATEGIC PLAN LINK: Goal 3. Strong neighborhoods.

STRATEGIC PLAN SIGNIFICANCE: Objectives 3.c. Preservation of property/home valuation and 3.e. Strong partnership with residents and neighborhood associations.

BACKGROUND: Staff has received a written request from Robert Klock, owner, 203 Hampton Dr., to grant a variance to Chapter 38, Section 123(a) of City Code to allow a twenty-three feet (23') wide driveway approach at this address. This is an existing single family residence with a two (2) car garage on a corner lot that has 110' of frontage along Newport St. which is where the existing eighteen feet (18') wide driveway approach is located. The driveway is currently eighteen feet (18') wide and the owner is asking permission to add five feet (5') to the driveway. City Code allows residential double wide driveways to be up to twenty feet (20') wide at the property line. Driveway variances are recommended by the Public Works Department on a case by case basis after evaluation of criteria such as sight distance, width of adjacent roadway and amount of property frontage.

The following is the evaluation by staff on the different criteria:

- Sight distance – there are no identified issues with horizontal or vertical sight distance by allowing this variance.
- Width of adjacent roadway – the adjacent roadway is of sufficient width to allow the driveway widening without causing concern.
- Distance to intersection – the driveway is being expanded further away from the intersection so that is not a concern.
- Amount of property frontage – with 110' of frontage, this is enough to allow for expanding the existing driveway by five feet (5').

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Robert Klock, owner.

FINANCIAL IMPACT: None.

Respectfully submitted for Council consideration.

Prepared by: Jim Karch, Director of Public Works

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Recommended by:

David A. Hales
City Manager

Motion by Alderman Black, seconded by Alderman Fazzini that the variance be approved.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Request for Proposal (RFP) for Street Sign Inventory and Work Order/Asset Management System

RECOMMENDATION/MOTION: That the RFP for Street Sign Inventory be awarded to Cloudpoint Geographics, Roanoke, IL, in the amount of \$100,000, and the Purchasing Agent be authorized to issue a Purchase Order and the Budget Amendment Ordinance passed.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Objective 2.d. By purchasing these services, it allows the City's existing sign inventory to be updated in order to maintain compliance with the national Manual on Uniform Traffic Control Devices (MUTCD) and for the sign inventory to become a layer in the Geographic Information System (GIS).

BACKGROUND: The national MUTCD as published by the Federal Highway Administration (FHWA) requires agencies to maintain roadway signs to certain minimum standards including retro-reflectivity. As signs age in the field they fade and become less reflective making them difficult to see at night.

In the current MUTCD, there are requirements that agencies establish a method to identify deficient signs and replace them. The MUTCD states, "Implementation and continued use of an assessment or management method that is designed to maintain regulatory and warning traffic sign retro-reflectivity at or above the established minimum levels." One of the more popular established methods involves maintaining an accurate sign inventory and replacing deficient signs based on date installed. Another accepted method involves using a person sixty (60) years

of age or older to drive the streets at night to identify signs that need replacement. The most difficult and costly method involves using a retro-reflectometer to measure the retro-reflectivity at several locations on each and every sign in the field.

The City has an existing sign inventory that was started in 1988 and was used to obtain two (2) state grants to replace deficient signs in the 1990's and early 2000's. There is a need to update this inventory and establish a more efficient system to maintain the inventory in order to maintain compliance with the MUTCD.

There is also a need to collect the information in such a way that it can integrate into the MUNIS inventory and asset management system as well as MUNIS work order system. These MUNIS modules are scheduled for implementation in the future.

The City received seven (7) responses to this RFP which was due at 2:30 p.m. on March 21, 2013.

Company	Base Proposal
3M Company Roadway Maintenance Services, Traffic Safety & Security	\$132,741
Baxter Woodman Consulting Engineers	\$375,000
Cannon Group	\$299,840
Cloud Point Geographics	\$109,840
Data Transfer Solutions, LLC	\$92,956
Hanson Professional Services Inc.	\$294,750
Schnieder	\$256,400

After careful evaluation of the submittals, the selection team decided on Cloud Point Geographics, Roanoke, IL as the best fit for the City's needs. A significant factor behind this choice was the fact Cloud Point Geographics indicated that they will work with Tyler Technologies representatives to implement a workflow based on ESRI's ArcGIS and MUNIS Maplink/Work Order software system which is the City's Tyler MUNIS Enterprise Resource Planning System. Data Transfer Solutions, LLC, the lowest bidder, did not state this capability. The selection team included City staff from Public Works and Information Services Departments. RFPs were based on collecting data for 25,000 signs. The current sign inventory has 22,500 signs.

The City's policy has been to replace signs on a wear out basis. When a sign displays significant wear, a City crew will replace this sign with a MUTCD compliant signs. Furthermore, any sign which is knocked down will be replaced with MUTCD compliant sign. In FY 2013, the Streets & Sewer Division replaced approximately 1,500 signs. The FY 2013 budget appropriated approximately \$73,000 for various types of sign replacement, while the actual cost incurred was approximately \$90,000. In FY 2014, to address the heightened need for sign replacement the City has appropriated approximately \$170,000 which is a 132% increase from FY 2013. As the City progresses into future budgetary years, the City will continue to aggressively replace signs

in accordance to the budgetary allocation. Although staff does not anticipate significant future increases, staff does not expect the funds appropriated for sign replacement to decrease in the immediate future.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The FY 2013 Budget appropriated \$100,000 for this project in line item 10016210-70690. Due to the timing of the issuance of the RFP, staff was unable to complete the selection of a vendor before the end of FY 2013. Thus, these funds were not spent and/or encumbered in FY 2013. A budget amendment to re-appropriate these funds in FY 2014 is required. Staff has completed the RFP process and selected Cloud Point Geographic to provide a Street Sign Inventory and Work Order/Asset Management System. Although the total cost of the Cloud Point Geographic proposal exceeds the budget, staff will ensure the overall project expenses will not exceed \$100,000. Staff has incorporated a budget amendment into the memorandum to purchase this system in the FY 2014. Stakeholders may locate this line item in the Street Maintenance Budget in the FY 2014 General Fund Budget document on page #330.

Prepared by: Jim Karch, P.E., Director of Public Works

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Recommended by:

David A. Hales
City Manager

ORDINANCE NO. 2013 - 34

**AN ORDINANCE AMENDING THE BUDGET ORDINANCE
FOR THE FISCAL YEAR ENDING APRIL 30, 2014**

WHEREAS, on April 8, 2013 by Ordinance Number 2013 - 18, the City of Bloomington passed a Budget and Appropriation Ordinance for the Fiscal Year Ending April 30, 2014, which Ordinance was approved by Mayor Stephen F. Stockton on April 9, 2013; and

WHEREAS, a budget amendment is needed as detailed below;

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, ILLINOIS:

Section One: Ordinance Number 2013 - 18 (the Budget and Appropriation Ordinance for the Fiscal Year Ending April 30, 2014) is further hereby amended by inserting the following line items and amounts presented in Exhibit #1 in the appropriate place in said Ordinances.

Section Two: Except as provided for herein, Ordinance Number 2013 - 18 shall remain in full force and effect, provided, that any budgeted or appropriated amounts which are changed by reason of the amendments made in Section One of this Ordinance shall be amended in Ordinance Number 2013 - 18.

Section Three: This Ordinance shall be in full force and effect upon its passage and approval.

PASSED the 10th day of June, 2013.

APPROVED the 11th day of June, 2013.

APPROVED:

Tari Renner
Mayor

ATTEST:

Tracey Covert
City Clerk

(EXHIBIT #1 ON FILE IN CLERK'S OFFICE)

Alderman Stearns noted the \$100,000 cost for a street sign inventory. She questioned what the City had done in the past. She believed that there were other methods

to meet this requirement. She questioned the least expensive method. She was concerned about this expenditure.

David Hales, City Manager, addressed the Council. He informed them that the City had 25,000 traffic signs. Currently, the City utilized a manual system. The current staff resources were insufficient to manage these signs. He cited the federal government mandate regarding retro-reflectivity. In cities across the nation, automation was the better method to manage and control traffic signs. Each year, City staff would know the life cycle of each sign for replacement and/or repair. The cost of the current system was unknown. City staff looked to other cities for a cost effective approach.

Alderman Stearns noted the prior to this item, the system was managed with in-house staff.

Mr. Hales stated that City staff would continue to manage the automated system.

Motion by Alderman Fazzini, seconded by Alderman Black that the RFP for Street Sign Inventory be awarded to Cloudpoint Geographics, Roanoke, IL, in the amount of \$100,000, the Purchasing Agent be authorized to issue a Purchase Order, and the Budget Amendment Ordinance passed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: Alderman Stearns.

Motion carried.

The following was presented:

SUBJECT: Petition submitted by Illinois Wesleyan University, requesting Vacation of Beecher St. right of way between Franklin St. and East St. and the alley right of way accessed by Beecher St. on the south and Horenberger Dr. on the east

RECOMMENDATION/MOTION: That the vacation of the street and alley be approved and the Ordinance passed.

STRATEGIC PLAN LINK: Goal 1. Financially sound City providing quality basic services, Goal 3. Strong neighborhoods and Goal 5. Great place – livable, sustainable City.

STRATEGIC PLAN SIGNIFICANCE: Goal 3.d. Since the street and alley will not need to be maintained by the City there should be a cost savings realized over several years. The vacations will result in a safer more pedestrian friendly environment for the Wesleyan campus.

BACKGROUND: The petitioner is requesting to vacate two (2) sections of public right of way: one for Beecher St. and the other an alley off Beecher St. The Beecher St. portion is between East and Franklin St. The alley portion is just north of Beecher St. and west of Horenberger Dr. The adjacent properties are all owned by Illinois Wesleyan University (IWU). The intent for the street vacation is to create a safer pedestrian area without vehicle traffic for the many students who now must cross the street. The closure will not create a dead end. Traffic will be able circulate out to Emerson, Main or east towards Fell Ave. The alley appears to be merely a parking lot driveway that serves the Hansen Center. It is maintained by IWU.

The Planning Commission reviewed the petition and held a public hearing on May 22, 2013. Three (3) people representing IWU spoke in support of the petition emphasizing the need for pedestrian safety. No one else from the public spoke in opposition to or in support of the petition. One (1) person did ask where the alley was located and did not have any comment once she understood the alley was not adjacent to her property. The Planning Commission voted 8 - 0 to recommend approval of the petition.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public notice was published in the Pantagraph in accordance with City Code. Courtesy copies of the Public Notice were mailed to approximately thirty-two (32) property owners within the area.

FINANCIAL IMPACT: The financial impact on the funding of City services should not be significantly impacted. However there should be long term savings since the City will no longer have to maintain Beecher St. or the alley.

Respectfully submitted for Council consideration.

Prepared by: Mark Woolard, City Planner

Reviewed by: Mark Huber, Director of PACE

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

**PETITION FOR VACATION OF
A PORTION OF BEECHER ST. AND A PORTION OF THE ALLEYS IN BLOCK 11 IN
THE RESURVEY OF PHOENIX ADDITION TO BLOOMINGTON**

STATE OF ILLINOIS)

) ss.

COUNTY OF MCLEAN)

TO: THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF
BLOOMINGTON, MCLEAN COUNTY, ILLINOIS

Now comes Illinois Wesleyan University, hereinafter referred to as your Petitioner, respectfully representing and requesting as follows:

1. That your Petitioner is interested as adjacent land owner in the premises hereinafter described in Exhibit A attached hereto and made a part hereof by this reference;
2. That your Petitioner seeks approval of the vacation of a portion of Beecher Street and a portion of the alleys in Block 11 in the Resurvey of Phoenix Addition to Bloomington adjacent to said premise;
3. That said vacation of a portion of Beecher Street and a portion of the alleys in Block 11 in the Resurvey of Phoenix Addition to Bloomington is reasonable and proper because such street and alleys are not needed for public right of way by said City, its only use being the location of existing or proposed utilities.

WHEREFORE, your Petitioner prays that a portion of Beecher Street and a portion of the alleys in Block 11 in the Resurvey of Phoenix Addition to Bloomington be vacated with such reservation of utility easements as may seem proper.

Respectfully submitted,

By: Carl Teichman
Director of Government & Community Relations

ORDINANCE NO. 2013 - 35

AN ORDINANCE PROVIDING FOR THE VACATION OF A PORTION OF BEECHER ST. AND A PORTION OF THE ALLEYS IN BLOCK 11 IN THE RESURVEY OF PHOENIX ADDITION TO BLOOMINGTON

WHEREAS, there was heretofore filed with the City Clerk of the City of Bloomington, McLean County, Illinois, a petition requesting the vacation of a portion of Beecher Street and a portion of the alleys in Block 11 in the Resurvey of Phoenix Addition to Bloomington; and

WHEREAS, said petition complies in all respects with the ordinances of said City and the statutes of the State of Illinois in such case made and provided; and

WHEREAS, the City Council of said City has the power to pass this Ordinance and grant said vacation; and

WHEREAS, it is reasonable and proper to vacate said a portion of Beecher Street and a portion of the alleys in Block 11 in the Resurvey of Phoenix Addition to Bloomington requested in this case.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, MCLEAN COUNTY, ILLINOIS:

1. That a portion of Beecher Street and a portion of the alleys in Block 11 in the Resurvey of Phoenix Addition to Bloomington is hereby vacated, see Exhibit A.
2. The aforesaid vacation notwithstanding, the City reserves to itself and to all utilities an easement the full width of the vacated a portion of Beecher Street and a portion of the alleys in Block 11 in the Resurvey of Phoenix Addition to Bloomington for the purpose of laying, installing, maintaining, repairing, removing, or replacing such facilities as they may deem appropriate.
3. That this ordinance shall be in full force and effective as of the time of its passage and approval.

PASSED this 10th day of June, 2013.

APPROVED this 11th day of June, 2013.

Tari Renner
Mayor

ATTEST:

Tracey Cover
City Clerk

EXHIBIT A

Portion of Beecher Street to be vacated

A part of the Southeast Quarter and the Southwest Quarter of Section 33, Township 24 North, Range 2 East of the Third Principal Meridian, Bloomington, McLean County, Illinois, described as follows: That part of Beecher Street lying south of Block 10 Phoenix Addition to Bloomington according to the plat recorded in Plat Book 1, Page 27 and lying south of Block 3 in Ryburn and Nicholls Addition to Bloomington according to the plat recorded in Plat Book 1, Page 78, lying north of Lots 5 and 7 in the Southeast Quarter of Section 33 according to the plat recorded in Deed Record 37, Page 91, lying east of the East Right of Way of East Street and lying west of the West Right of Way Line of Franklin Street.

Portion of Block 11 Alley to be Vacated

A part of the Southeast Quarter of Section 33, Township 24 North, Range 2 East of the Third Principal Meridian, Bloomington, McLean County, Illinois, described as follows: The east-west alley and that part of the north-south alley in Block 11 lying south of the North Line of said east-west alley extended westerly in Block 11 in the Resurvey of Phoenix Addition to the City of Bloomington, McLean County, Illinois.

Alderman Schmidt cited her employment at Illinois Wesleyan University. She left the dais.

Mayor Renner introduced this item.

Motion by Alderman Black, seconded by Alderman Fazzini that the Vacations be approved and the Ordinance passed.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Mwilambwe, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

Alderman Schmidt returned to the dais.

The following was presented:

SUBJECT: Petition submitted by HL Bloomington LLC and Hundman Management LLC, requesting a Special Use Permit for multiple family dwellings for the property located at 1021, 1025, 1031, 1037 and 1041 Ekstam Dr.

RECOMMENDATION/MOTION: That the Special Use Permit be approved and the Ordinance passed.

STRATEGIC PLAN LINK: Goal 4. Grow the local economy.

STRATEGIC PLAN SIGNIFICANCE: Objective 4.a. The significance of the project, related to Goal 4 is that in growing or developing local businesses the local economy will grow as well. This goal would directly relate to growing local businesses for the apartment and construction businesses but also indirectly relate for retail businesses as they look to the number of households before investing in retail development.

BACKGROUND: The petitioners desire to develop the property on the east side of Ekstam Dr. consisting of five (5) two-story apartment buildings. The property is zoned B – 1, Highway Business District. This district allows many commercial uses as well as apartments with a special land use. The density will be close to that of the apartments which have already been developed on the west side of Ekstam. The development should be compatible with the other nearby apartments, condominiums and commercial uses. The development of the land to the east is limited because of restrictions for the airport flight path.

This case was before the Zoning Board of Appeals (ZBA) for a public hearing and review on May 15, 2013. The petitioner, his attorney and engineer spoke in favor of the petition. They believed there was ample acreage for commercial development within a mile of the site and this was an appropriate use given the surrounding uses. One other person from the public spoke generally in favor of the request stating the residential demarcation line will be farther south. Five (5) people spoke in opposition to the petition. The objections pertained to traffic, safety for many children, high density, insufficient parking, denial of the Pamela apartments, decreasing property values, businesses preferred, changing school enrollments, business security, and a lack of green space and parks. A petition was also submitted to the ZBA objecting to the special use.

Staff has evaluated the project and finds it to be an appropriate use for the site. The capacity of the street is adequate even for the increase in traffic generated by the new apartments. In response to earlier projects, changes have already been made to alleviate traffic congestion with street parking removed on the west side of Ekstam and installing speed humps. Certain issues such as Ekstam being blocked are only related to temporary construction activities.

The ZBA voted to recommend approval of the Special Use permit by a vote of 5 - 1.

During the public hearing process, there were several neighborhood issue raised that staff believed could be addressed outside the purview and standards considered by the ZBA. In an

additional attempt to clarify and alleviate some of these concerns, the City will take the following actions and suggest additional conditions related to this Special Use permit.

Staff is committed to have the Staff Traffic and Advisory Committee (STAC) evaluate additional parking restrictions (east) and appropriate traffic control on Ekstam Dr.

In conversations with the Police and Fire Chiefs, it was determined this development will not affect emergency response times as stated in the petition brought before the ZBA and submitted to the Council.

City staff recommends that in the event the Council approves the Special Use Permit, a condition be added to require the owners to provide an area on the site during construction of apartment buildings for all contractors to use for off-street parking and staging and to include in their contracts with all contractors and sub-contractors that the contractors and sub-contractors are required to use those provided areas for off-street parking and staging. In addition, staff is recommending an additional condition requiring the petitioner to use all City mandated road closure criteria in the event Ekstam Dr. should need to be closed for any reason. These conditions have been included in the proposed ordinance.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public notice was published in the Pantagraph in accordance with City Code. In accordance with the Zoning Code, courtesy copies of the Public Notice were mailed to forty-seven (47) property owners within 500'. In addition, public notice/identification signs were posted on the property.

FINANCIAL IMPACT: This development is expected to generate additional property taxes, plus sales taxes from the dwellings inhabitants spending funds within the City.

Respectfully submitted for Council consideration.

Prepared by: Mark Woolard, City Planner

Reviewed by: Mark R. Huber, Director, PACE

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Mayor Renner introduced this item.

David Hales, City Manager, presented a brief overview. This petition involved five (5) two story apartment buildings. The property was currently zoned B – 1, Highway Business District. A public hearing was held by the Zoning Board of Appeals, (ZBA). The ZBA recommended approval of the Special Use. City staff determined that the petition met the criteria for a Special Use and also recommended approval. The Ordinance had been amended and two (2) conditions had been added. One addressed off street parking for construction vehicles. The City's STAC, (Staff Traffic Analysis Committee), would look into no parking on the east side of Ekstam Dr. This committee would also look at signage at the intersection of Ekstam and Cornelius. The developer had modified their plan. Four (4) apartment units had been removed and a playground would be installed. The Council had been provided with information regarding Special Use permits and the options available.

Mayor Renner noted that the Council take action on this item or return it to the ZBA.

Todd Greenburg, Corporation Counsel, addressed the Council. The Council had the authority to approve the petition as presented or amend same. If the Council believed that it had been provided with insufficient information, then this item could be returned to the ZBA. He cited Chapter 2 of the City Code. The Council cannot rehear this petition. The ZBA's public hearing was the proper time and place to determine the Findings of Fact. There were six (6) standards established for the ZBA. If the evidence was insufficient, than the Council should remand the petition to the ZBA.

Mayor Renner noted that as a County board member, additional facts could not be considered by the County Board.

Mr. Greenburg cited the City's home rule status which granted the City additional authority.

Mr. Hales clarified that if the Council approved this petition it had two (2) options: approve as submitted or amend then approve.

Mayor Renner cited a third option: return to the ZBA. He requested comments from the Council regarding an amendment to the petition.

Alderman Fazzini noted the changes made by the developer. He believed that these changes were advantageous to the neighbors. He questioned remanding this item to the ZBA.

Alderman Fruin recommended that the Council comment's address minor modifications. He believed that the issues were understood. The City had no control over school redistricting. He noted that there were no concerns raised by the City's Police and/or Fire Departments. The ZBA and City staff had recommended approval. He questioned additional information to be gained from a second hearing. If returned to the ZBA, he anticipated new and substantial information.

Alderman Sage noted that the ZBA had not held a public hearing on the revised plan.

Mr. Hales informed the Council that the City received the revised plan on Friday, June 7, 2013. This revision included the installation of the playground. A playground was discussed at the ZBA hearing held on May 15, 2013. There had been no public comment regarding the new plan. The plan was changed without public comments.

Alderman Mwilambwe echoed Alderman Sage's comments. He noted the time spent. This was a new development. He was not comfortable with same. The Council had been provided with additional information. He questioned if this information would have any impact. He cited the playground's size as an example. The issue of time had been raised. He questioned if the amount of time spent had been adequate/good enough. He believed that the Council should err on the side of caution.

Alderman Schmidt added that no assumptions should be made. She believed that other items should be on the table. She cited school redistricting. The City needed to involve Unit 5.

Motion by Alderman Mwilambwe, seconded by Alderman Stearns that this item be remanded to the Zoning Board of Appeals for their July 17, 2013 meeting.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Mwilambwe, Schmidt, McDade, Lower, Sage, Fruin and Black.

Nays: Alderman Fazzini.

Motion carried.

The following was presented:

SUBJECT: Green Building, LLC Property Tax Abatement

RECOMMENDATION/MOTION: That the proposed property tax abatement be approved, the Agreement executed and the Resolution adopted.

STRATEGIC PLAN LINK: Goal 6: Prosperous Downtown Bloomington, and Goal 4: Grow the local economy.

STRATEGIC PLAN SIGNIFICANCE: Objectives 6.a: More beautiful, clean Downtown area; 6.b: Downtown vision and plan used to guide development, redevelopment and investments; 6.c: Downtown becoming a community and regional destination; 6.d: Healthy adjacent neighborhoods linked to Downtown; and 6.e: Preservation of historic buildings. Objectives 4.a:

Retention and growth of current local businesses; 4.b: Attraction of new targeted businesses that are the “right” fit for Bloomington; 4.c: Revitalization of older commercial homes; 4.d: Expanded retail businesses; and 4.e: Strong working relationship among the City, businesses & economic development organizations.

BACKGROUND: Green Building, LLC is a local development team which has decades of experience in the Bloomington-Normal community. The project in question would rehabilitate an existing structure located at 115 E. Monroe in the Downtown.

This project would serve two (2) primary functions. First, it would serve as a fifteen (15) unit residential apartment building for current and prospective residents of the Downtown community. A use that is currently in high demand as rental occupancy sits at 100% (Downtown Business Association) and businesses are increasing the number of short term employees working in the Downtown area. Secondly, the project site would serve to provide enhanced retail and restaurant space (2 units) for the commercial sector.

In all, this revitalization project would invest a minimum of \$1.6 million into taxable property in the City and would serve to revitalize an existing structure in the Downtown community, an area highlighted on the Economic Development Target Area Map. In addition to the rehabilitation of an existing structure in a focus area of our community, a few elements of particular interest in regards to this project include its compatible design and occupancy, a synergy with the concepts outlined in the forthcoming Downtown Plan, and a focus on environmentally sustainable outcomes.

In order to make the project financially feasible and thus complete the renovation, Green Building is requesting a freeze on real estate taxes owed on the site in question. The freeze, if approved by the taxing bodies, would allow Green Building to pay a portion of the new increment of property tax during each of the five (5) years while the company invests into the site. After the period of five (5) years is over, the company’s taxes will rise to take into account the full value of the new investment. At that point, all taxing bodies would begin to collect the full amount of post investment taxes.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: National Development Council, Economic Development Council for the Bloomington-Normal Area, Downtown Bloomington Association, Bloomington School District 87 Administration, McLean County Administration, Assessor for the Town of the City of Bloomington, and McLean County Chamber of Commerce; in addition to conducting informal meetings and communications with the aforementioned entities, the tax abatement agreement may be considered by the following committee and boards.

Proposed Schedule for Various Committees, Boards and Taxing Bodies

Date	Committee/Board
June 3	City of Bloomington Administration & Finance Committee
June 5	McLean County Finance Committee
June 10	City of Bloomington City Council

Date	Committee/Board
June 12	District 87 School Board
June 13	Bloomington Normal Airport Authority Board
June 18	McLean County Board
June 18	Heartland Community College Board
June 19	Bloomington Public Library Board
June 24	Town of the City of Bloomington Township Board
TBD	Bloomington Normal Water Reclamation District Board

FINANCIAL IMPACT: According to the National Development Council, which conducted a full financial analysis of the developers and the project in question, (including a three year review of personal and business financial statements), this incentive is necessary in order to make the project financially viable. The company has leveraged existing financial resources and programs, including the Downtown Bloomington Enterprise Zone (a \$92,540 value) and the City's Harriet Fuller Rust Façade Grant Program (a \$25,000 value), but a financial gap still exists. As proposed, this arrangement serves to strengthen the project's financial position and fill the identified financial gap.

As structured, the proposed property tax abatement agreement protects the taxing bodies by guaranteeing that they will collect the existing pre-project level of property taxes *plus* an additional increment equal to 76.28592% of the pre-project amount. For example, the City collected \$553.30 in 2011; therefore, in the first year of the tax abatement, the City will collect the pre-project amount of \$553.30 *plus* an additional \$422.09 of the new increment for a total of \$975.39 to be collected by the City. This will occur during each of the five (5) years during the tax abatement agreement. Upon completion of the five (5) year agreement, each taxing body will collect the full amount of taxes under the new assessment. For example, the City will go from collecting \$553.30 in the current year, to \$975.39 during each of the five (5) years under the tax abatement agreement and \$4,556.07 each year following the abatement. (An illustration of the incentive structure is included in the Financial Impact section.) Again, this approach would allow Green Building to close its financial gap while also maintaining an adequate market return in the initial years of the project.

It is important to note that the amount of abated taxes will vary from taxing body to taxing body, based on the size of each taxing body's specific levy (an estimate of said breakdown is provided within the Financial Impact section). As each taxing body will have their own tax abatement agreement, if one or more taxing bodies choose not to participate, this will have no effect whatsoever on taxing bodies that do choose to participate.

The tables below demonstrate the potential value of the capital investment and related property tax abatement as proposed for each of the taxing bodies affecting the parcel. *Please note that the proposed incentive embraces the goals and objectives outlined in the City's Economic Development Incentive Guideline, as adopted by the City Council in 2012.*

Property Assessment Estimate for Work to be Completed

Table and information provided by the Assessor for the Town of the City of Bloomington.

115 E. Monroe	2011 Assessment	New Assessment
	21 - 04 - 194 - 006	@ completion of work

Taxing Body	2011 Taxes	Year 1 Taxes	Year 2 Taxes	Year 3 Taxes	Year 4 Taxes	Year 5 Taxes	Year 6 Taxes
CUSD 87 Bloomington	\$2,432.10	\$4,287.44	\$4,287.44	\$4,287.44	\$4,287.44	\$4,287.44	\$20,026.86
City of Bloomington Library	\$130.93	\$230.81	\$230.81	\$230.81	\$230.81	\$230.01	\$1,078.14
Heartland Comm College 540	\$248.48	\$438.03	\$438.03	\$438.03	\$438.03	\$438.03	\$2,046.11
Total	\$4,084.28	\$7,199.99	\$7,199.99	\$7,199.99	\$7,199.99	\$7,199.99	\$33,631.50

In addition to the 76.28592% increase in property taxes in each of the first five (5) years of the agreement, there are a number of other ways in which this project will be beneficial to the community outside of the capital investment figures. As these aspects are difficult to quantify, an overview of the potential positive effects of this project are outlined below. Ultimately, this project will:

- Increase the food and beverage and sales tax revenue generated by the commercial units.
- Use local workforce during construction and upon completion of the retail and restaurant sections.
- Increase the property value of the affected building and have a positive impact on the surrounding area.
- Allow for the expansion of targeted local retail and restaurant owners where leakage exists and by effect increase retail sales and retail sales tax receipts.
- Renovate a Downtown property that has been in our community for over 100 years; when complete, citizens and local businesses will benefit from enhanced Downtown aesthetics.
- Stimulate positive communication between developers, City staff and economic development organizations within our community and open the door for future development opportunities.
- Enhance the perception of the Downtown among City residents.
- Be a source of pride for those actively working to improve the Downtown.

Respectfully submitted for Council consideration.

Prepared by: Justine Robinson, Economic Development Coordinator

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Legal review by: Rosalee Dodson, Asst. Corporation Counsel

Recommended by:

David A. Hales
City Manager

RESOLUTION NO. 2013 - 08**A RESOLUTION OF THE CITY OF BLOOMINGTON, ILLINOIS,
ABATING CITY PROPERTY TAX**

WHEREAS, the City of Bloomington (the “*City*”) is a home rule municipality pursuant to Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois with full power and authority to perform any function pertaining to its government and affairs; and,

WHEREAS, tax abatement is a tool often used as an incentive to induce business retention, business expansion and new development resulting in community revitalization; and;

WHEREAS, the promise of financial assistance can make the difference in a developer’s decision regarding the location of a project or the eagerness to expand or initiate a project; and,

WHEREAS, Green Building, LLC, a Delaware limited liability company (the “*Developer*”) has requested real estate tax abatements on the part of the local taxing districts in order to undertake the renovation of a century old building located at 115 E. Monroe Street (the “*Building*”) in the area known as “Downtown Bloomington”; and,

WHEREAS, the Developer has advised the City that without the real estate tax abatements as requested, this undertaking will not be economically viable; and,

WHEREAS, all parties believe the economic development impact of this proposed project will ultimately be advantageous to the community as a whole due to the capital investment by the Developer and the resulting job opportunity, neighborhood revitalization, and the increase in the tax base of all of the taxing districts; and,

WHEREAS, the Developer has submitted a plan for the redevelopment and rehabilitation of the Building, which has remained vacant for many years, to construct a multi-unit rental property with fifteen (15) residential units and commercial space on the ground floor (the “*Project*”); and,

WHEREAS, the current equalized assessed value of 115 East Monroe Street (the “*Subject Property*”) is described in *Exhibit A* attached hereto; and,

WHEREAS, Article 18 of the Illinois Revenue Code, 35 ILCS 200/18-165(a), provides that:

“Any taxing district upon a majority vote of its governing authority may, after the determination of the assessed valuation of its property, order the clerk of that county to abate any portion of its taxes on the following types of property:

(1)*Commercial and industrial.*

(A)The property of any commercial or industrial firm. . . . The abatement shall not exceed a period of ten (10) years and the ag-

gregate amount of abated taxes for all taxing districts combined shall not exceed \$4,000,000[;]”

WHEREAS, the Developer has estimated that the Project shall require an investment of \$1,600,000, to undertake and complete the Project; and,

WHEREAS, the Developer has requested that the City grant its request for a real estate tax abatement as permitted by Illinois law, provided that the Developer satisfy all of the terms and conditions as set forth in the Tax Abatement Agreement attached hereto and made a part hereof (the “*Agreement*”); and,

WHEREAS, the City is willing to grant such real estate tax abatement to the Developer in accordance with the terms and conditions set forth in the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Bloomington, McLean County, Illinois, as follows:

Section 1. The Tax Abatement Agreement by and between the City and Green Building, LLC, in the form attached hereto, is hereby approved and the Mayor is hereby authorized and directed to execute said Agreement on behalf of the City.

Section 2. The McLean County Clerk is hereby ordered to abate that portion of real estate taxes levied by the City against the Subject Property over and above the sum of \$975.39 commencing with the 2015 taxes payable in 2016; the 2016 taxes payable in 2017; the 2017 taxes payable in 2018; the 2018 taxes payable in 2019; and, the 2019 taxes payable in 2020; subject, however, to cancellation and termination upon written notice from the City Clerk of a default by the Developer under the Tax Abatement Agreement.

Section 3. The real estate tax abatement provided in Section Two shall terminate immediately upon written notice from the City Clerk that, at any time after December 31, 2014, a default has occurred on the part of the Developer which has not been cured.

Section 4. Any statutory reference contained herein shall include any and all amendments thereto and replacements thereof.

Section 5. This Resolution shall be in full force and effect upon its passage, approval, and publication as provided by law.

ADOPTED by the City Council of the City of Bloomington, McLean County, Illinois, this 10th day of June, 2013.

AYES: 9

NAYS: 0

ABSENT: 0

APPROVED:

Tari Renner
Mayor

ATTEST:

Tracey Covert
City Clerk

EXHIBIT A

(ON FILE IN CLERK'S OFFICE)

TAX ABATEMENT AGREEMENT

THIS TAX ABATEMENT AGREEMENT (the "*Agreement*") is made this ____ day of _____, 2013, between the City of Bloomington, McLean County, Illinois (the "*City*") and Green Building, LLC (the "*Developer*"), a Delaware limited liability company.

WHEREAS, the City of Bloomington (the "*City*") is a home rule municipality pursuant to Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois with full power and authority to perform any function pertaining to its government and affairs; and,

WHEREAS, tax abatement is a tool often used as an incentive to induce business retention, business expansion and new development resulting in community revitalization; and;

WHEREAS, the promise of financial assistance can make the difference in a developer's decision regarding the location of a project or the eagerness to expand or initiate a project; and,

WHEREAS, Green Building, LLC, a Delaware limited liability company (the "*Developer*") has requested real estate tax abatements on the part of the local taxing districts in order to undertake the renovation of a century old building located at 115 E. Monroe Street (the "*Building*") in the area known as "Downtown Bloomington"; and,

WHEREAS, the Developer has advised the City that without the real estate tax abatements as requested, this undertaking will not be economically viable; and,

WHEREAS, all parties believe the economic development impact of this proposed project will ultimately be advantageous to the community as a whole due to the capital investment by the Developer and the resulting job opportunity, neighborhood revitalization, and the increase in the tax base of all of the taxing districts; and,

WHEREAS, the Developer has submitted a plan for the redevelopment and rehabilitation of the Building, which has remained vacant for many years, to construct a multi-unit rental property with fifteen (15) residential units and commercial space on the ground floor (the “*Project*”); and,

WHEREAS, the current equalized assessed value of 115 East Monroe Street (the “*Subject Property*”) is described in *Exhibit A* attached hereto; and,

WHEREAS, the Subject Property is identified as tax parcel 21-04-194-006 (the “*Tax Parcel*”), which is 1.162 acres in size; and,

WHEREAS, for purposes of this Agreement, the “Base EAV” of the Subject Property will be deemed to be the 2011 assessed value of the Tax Parcel; and,

WHEREAS, Article 18 of the Illinois Revenue Code, 35 ILCS 200/18-165(a), provides that:

“Any taxing district upon a majority vote of its governing authority may, after the determination of the assessed valuation of its property, order the clerk of that county to abate any portion of its taxes on the following types of property:

Commercial and industrial.

The property of any commercial or industrial firm. . . . The abatement shall not exceed a period of ten (10) years and the aggregate amount of abated taxes for all taxing districts combined shall not exceed \$4,000,000[;]”

WHEREAS, the Developer has estimated that the Project shall require \$1,600,000 of investment, including the cost of acquisition, to undertake and complete the Project; and,

WHEREAS, the Developer has requested that the City grant its request for a real estate tax abatement as permitted by Illinois law, provided that the Developer satisfy all of the terms and conditions as set forth in the Tax Abatement Agreement attached hereto and made a part hereof (the “*Agreement*”); and,

WHEREAS, the City is willing to grant such real estate tax abatement to the Developer in accordance with the terms and conditions set forth in the Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual undertakings herein contained and other valuable consideration, the parties hereby agree as follows:

Section 1. The City hereby agrees to adopt a Resolution, in the form attached hereto as *Exhibit A* (the “*Resolution*”), directing the County Clerk to abate that portion of the real estate taxes levied by the City against the Subject Property over and above the sum of \$975.39. Said abatement shall be for a period of five (5) years, as stated in the Resolution. The City agrees to adopt and file any other documents that may be required from time to time to effectuate said abatements, including (*if necessary*) annual abatement resolutions.

Section 2. The Developer hereby agrees, on or before December 14, 2014, to redevelop and reconstruct the building located on the Subject Property to provide a multi-family rental facility with 15 residential units and commercial space on the ground floor (the “*Project*”) for a total investment of no less than \$1,600,000.

Section 3. The Developer hereby covenants and agrees to submit to the City on or before February 1, 2015, the following items, to-wit: paid invoices (including statements at least monthly for development and general contractor fees), bills, contracts (including the agreement of the parties relative to acquisition of the Subject Property), lien waivers or other evidence as may be requested by the City to demonstrate an investment of no less than \$1,600,000 to complete the Project.

Section 4. This Agreement is subject to termination by the City after sixty (60) days written notice at any time during the term of this Agreement:

1. The Developer has failed to demonstrate that it has invested at least \$1,600,000 for improvements related to the Subject Property, including, without limitation, acquisition costs, site work, building construction, costs and fees, and equipment (purchased and installed).
2. The Developer has failed to complete the Project on or before December 31, 2014.

Section 5. The Developer covenants and agrees, warrants and represents that it shall comply with all applicable federal, state and local laws, rules, regulations, ordinances, charters, statutes, codes, orders, policies and procedures relating to the Subject Property.

Section 6. For so long as this Agreement shall remain in full force and effect, the Developer agrees to provide access to and authorize inspection of the Subject Property upon request of the City to ensure that the improvements are made according to the specifications and conditions of this Agreement.

Section 7. In the event this Agreement is terminated due to the Developer’s breach of any provision of this Agreement, then all taxes abated by the City pursuant to this Agreement shall be repaid to the City within thirty (30) days of City’s request therefore. Additionally, the City shall direct the County Clerk not abate any of the City’s levy of property taxes of the Subject Property.

Section 8. The City may extend the date set forth in *Section 3 a.1* of this Agreement, if the Developer reasonably demonstrates the necessity for any such extension(s).

Section 9. The Agreement constitutes the entire contract between the parties hereto, and no oral statements or promises and no understanding not embodied in this writing shall be valid or binding. Any modification of this Agreement shall be in writing and executed with the same formality as this Agreement.

Section 10. This Agreement shall be governed by the laws of the State of Illinois. It is agreed by the parties that if any party commences suit, action or any other legal proceeding against the other, the venue shall be the Circuit Court of McLean County, Illinois. Each prevailing party in such suit, action, or proceeding has a right to recover from any adverse party, its attorney's fees, court costs, and other costs of litigation.

Section 11. Any statutory reference contained herein shall include any and all amendments thereto and replacements thereof.

Section 12. Any notice required under this Agreement shall be given to the respective parties as follows:

To the Developer:

Green Building, LLC
Attn: Robert J. Vericella
125 South Bellemont
Bloomington, Illinois 61701

To the City:

City of Bloomington
Attn: Justine Robinson
109 East Olive Street
Bloomington, Illinois 61701

with a copy to:

Kathleen Field Orr & Associates
Attn: Kathi Orr
53 West Jackson Blvd., Suite 935
Chicago, Illinois 60604

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the above date at Bloomington, Illinois.

City of Bloomington, McLean County, an Illinois municipal corporation

By:Tari Renner
Mayor

ATTEST:

Tracey Covert
City Clerk

Green Building, LLC, a Delaware limited Liability company

By:

Mayor Renner introduced this item.

Alderman Stearns expressed her belief that this was a good project for the Downtown. Property taxes would be abated. This was a what if project. A decaying historic building would be turned into an asset. The property value would be enhanced. She expressed her support for this item.

Motion by Alderman McDade, seconded by Alderman Stearns that the application be accepted, the Tax Abatement Agreement approved, the Mayor and City Clerk be authorized to execute the necessary documents, and the Resolution adopted.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Analysis of Bid for 2013 Contract for Sidewalk Reconstruction

RECOMMENDATION/MOTION: That the unit prices from George Gildner, Inc., Bloomington, IL be accepted, a contract for 2013 Sidewalk Replacement and Handicap Ramp Program be approved, in the amount of \$825,000, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities, and Goal 3. Strong neighborhoods.

STRATEGIC PLAN SIGNIFICANCE: Objective 2.a. This project upgrades sidewalks throughout the City, providing better pedestrian access. It also improves the infrastructure in neighborhoods, providing residents with a way to contribute to the quality of the sidewalks in their neighborhood.

BACKGROUND: This project includes four (4) budgeted projects; the 50/50 Residential Sidewalk Replacement Program, the Sidewalk Ramp Replacement Program, the Sidewalk Repair Program and the Community Development Block Grant (CDBG) sidewalk program:

50/50 Residential Sidewalk Replacement Program: Annual program that provides for replacement of public sidewalk up to \$50,000 with the participation of the property owner up to \$50,000. Program is voluntary based on first come first served until available money runs out. Low income households may qualify for assistance through CDBG programs.

Sidewalk Ramp Replacement Program: This program also provides for replacement of public sidewalk ramps in order to comply with Federal ADA, (American with Disabilities Act), requirements. Most locations are within the City's annual resurfacing contract. Other locations are determined by citizen request and then by public benefit.

Sidewalk Repair Program: Annual program that provides for repair of public sidewalks not addressed by the 50/50 program to correct hazardous conditions. Locations are determined by citizen request and then by public benefit.

CDBG Sidewalk Program: Program that provides for repair of public sidewalks with funding from CDBG funds through a grant from the United States Housing and Urban Development.

A presentation was given at the March 18, 2013 Infrastructure Committee meeting. This presentation helped to explain the prioritization of sidewalk repair and the system used to rate the sidewalks.

The substantial completion date for this project is in the contract as November 14, 2013. If there is still money remaining in the 50/50 program, it is extended until money runs out or April 30th, whichever is earlier. This past year an insert was mailed with the water bill to promote the program. This caused a sizable response to the program, all of the funds were used. If a water bill insert is provided this year, it may allow the funds to be spent sooner than last year.

The unit prices for five (5) major items are listed in the table below:

DESCRIPTION	UNITS	2012 Unit Price	2013 Unit Price	Change 2012-2013 (\$)
4" sidewalk remove/replace	SF	\$6.10	\$6.40	\$0.30
6" sidewalk remove/replace	SF	\$6.50	\$6.75	\$0.25
saw cutting	SF	\$1.50	\$1.40	-\$0.10
curb replacement	LF	\$22.00	\$22.75	\$0.75
retaining wall	SF	\$40.00	\$40.00	\$0.00

Four (4) bids were received and opened at 2 p.m. on May 28, 2013 in the Council Chambers. Since the low bid is under budget and the project bid documents allow the addition of repair locations, a contract for the entire budget amount will be awarded.

Bids:			
George Gildner, Inc., Bloomington, IL	<i>Low Bid</i>	\$693,597.75	
J.G. Stewart, Inc., Bloomington, IL		\$706,225.75	
WAS CON Co., Hammond, IL	<i>As Corrected</i>	\$2,573,615.00	
	<i>As Read</i>	\$1,755,002.00	
Rowe Construction Co., Bloomington, IL		\$865,237.65	
Engineer's Estimate:		\$8,23,337.50	
Budget:			
Residential Sidewalk Program		\$50,000	CIF
Residential Sidewalk Program		\$50,000	PRI PROP
Sidewalk Repair Program		\$675,000	CIF
CDBG		\$50,000	CDBG
TOTAL:		\$825,000	

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Not applicable.

FINANCIAL IMPACT: The FY 2014 Budget appropriated \$825,000 for four (4) City programs which fund the sidewalk repair and ramp replacement program. All three (3) programs are found within the Capital Improvement Fund. The first program, the sidewalk ramp replacement program, appropriated \$375,000 from line item 40100100-72560, while the second program, the sidewalk repair program, appropriated \$300,000 from line item 40100100-72560. The third program, the sidewalk replacement 50-50 program, appropriated \$150,000 of which \$50,000 is a contribution from CDGB funds account line item 22402440-72560-52000. Private property contributions will account for an additional \$50,000 and are managed through the Capital Improvement Fund. In comparison to the FY 2013 Budget which appropriated \$425,000 for the sidewalk repair and ramp replacement program, the FY 2014 sidewalk repair program increased over 100%. Stakeholders may locate this purchase in the FY 2014 Capital, Enterprise, and Other Fund Budget document on page #44 for the Community Development portion and page #106 for the Capital Improvement Fund portion.

Respectfully submitted for Council consideration.

Prepared by: Jim Karch, PE CFM, Director of Public Works

Reviewed by: Barbara J. Adkins, Deputy City Manager

Financial & budgetary review by: Tim Ervin, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Mayor Renner introduced this item. He noted that value of this contract.

Motion by Alderman Schmidt, seconded by Alderman McDade that the unit prices from George Gildner, Inc., Bloomington, IL be accepted, a contract for 2013 Sidewalk Replacement and Handicap Ramp Program be approved, in the amount of \$825,000, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

The following was presented:

SUBJECT: Professional Engineering Services Contract with Clark Dietz, Inc. for Locust St. Combined Sewer Overflow (CSO) Elimination and Water Main Replacement Phase 2 Construction Plan Design

RECOMMENDATION/MOTION: That the Professional Engineering Services Contract with Clark Dietz, Inc., Champaign, IL, for Locust St. CSO Elimination and Water Main Replacement Phase 2 Construction Plan Design be approved, in the amount of \$285,355, and the Mayor and City Clerk be authorized to execute the necessary documents.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities, and Goal 5. Great place - livable, sustainable City.

STRATEGIC PLAN SIGNIFICANCE: Objectives 2.b. and 5.b. The proposed contract provides good stewardship and improves quality of life by providing construction plans to build the next phase of sewer installation for eliminating the CSO at Locust St. and Colton Ave. Elimination of the CSO will improve water quality in our rivers and streams, and also help the City meet its commitment to eliminate CSO under directive from the Illinois Environmental Protection Agency (IEPA).

BACKGROUND: In compliance with IEPA policy for control of CSO, the City developed a Long Term Control Plan (LTCP) to identify CSO locations as a tool to work towards elimination

of CSO within the City sewer system. Of the seven (7) CSO locations originally identified, the only remaining locations are at Locust St., Colton Ave., and Maizefield Ave. The Maizefield CSO location is currently under a Professional Services Contract to determine the most cost effective means of eliminating that CSO. This proposed Phase 2 Construction Plan Design for the Locust/Colton CSO Elimination will create a set of bid documents to hire a contractor to install new sanitary sewer main to separate storm and sanitary flow in the Locust/Colton sewer shed, and also to install new water main to upgrade the system within the construction limits.

Clark Dietz was originally selected using a modified Quality Based Selection (QBS) process for Phase 1 of the Locust CSO Project, in part because they were the consultant that successfully developed the CSO Elimination Study Plan which identified the series of projects needed to eliminate the CSO. Additionally, during Phase 1 Clark Dietz created design plans beyond the limits of what was actually built in Phase 1, this was done in case low bid prices would allow additional sewer to be installed. Those extra plans beyond the Phase 1 design limit will be incorporated into the proposed Phase 2 Plans. It is anticipated that the QBS process may be utilized for future phases of the project.

The City anticipates applying for, and utilizing, the State Revolving Loan Fund (SRLF) for water and wastewater projects from the IEPA as the revenue source for construction funds to build this project. The SRLF provides a low interest rate and a twenty (20) year repayment schedule. Council approval will be required prior to acceptance of an IEPA Loan.

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Public Meetings were held during the planning and design stage of Phase 1, additional Public Meetings will be scheduled to update residents impacted by this proposed Phase 2 construction.

FINANCIAL IMPACT: The FY 2014 Budget appropriated Sewer, Storm and Water Funds in the amounts of \$235,000 for Planning/Design, \$30,000 for Land Acquisition and \$1,430,000 for Construction expenditures. While it is not anticipated that construction will occur in FY 2014, staff expects the design and potential land purchases for Phase 2 could occur in FY 2014. The cost allocation of the design contract with Clark Dietz, Inc. will be allocated with \$109,255 from Water Fund, \$88,050 from the Sewer Fund and \$88,050 from the Storm Water Fund for a total of \$285,355. The design expenditures are paid from line item 70050 within each respective fund. Stakeholders may locate this purchase in the FY 2014 Capital, Enterprise, and Other Fund Budget document on pages #134, #161 and #171.

Respectfully submitted for Council consideration.

Prepared by: Jim Karch, P.E., CFM, Director of Engineering

Reviewed by: Barb Adkins, Deputy City Manager

Reviewed by: Craig Cummings, Director of Water

Financial & budgetary review by: Timothy L. Ervin, CPFO, MS, Budget Officer

Legal review by: J. Todd Greenburg, Corporation Counsel

Recommended by:

David A. Hales
City Manager

(CONTRACT ON FILE IN CLERK'S OFFICE)

Mayor Renner introduced this item.

Motion by Alderman Schmidt, seconded by Alderman Stearns that the Professional Engineering Services Contract with Clark Dietz, Inc., Champaign, IL, for Locust St. CSO Elimination and Water Main Replacement Phase 2 Construction Plan Design be approved, in the amount of \$285,355, and the Mayor and City Clerk be authorized to execute the necessary documents.

The Mayor directed the clerk to call the roll which resulted in the following:

Ayes: Aldermen Stearns, Mwilambwe, Schmidt, McDade, Lower, Fazzini, Sage, Fruin and Black.

Nays: None.

Motion carried.

CITY MANAGER'S DISCUSSION: David Hales, City Manager, recognized Barb Adkins, Deputy City Manager, and other City staff for their efforts to respond to the Council's questions.

He addressed the economic development incentive for 115 E. Monroe. This item was the product of rigorous analysis. This was an improvement over the past. The City had collaborated with other local governmental units. The applicants made their case. This project would also make use of the Enterprise Zone. His goal was to reduce the time line going forward.

He also addressed the 2013 Sidewalk Reconstruction bid. He noted the funding increase for this item. He complimented City staff for the sidewalk rating system. In addition, he addressed the professional engineering contract for the Locust/Colton CSO (Combined Sewer Overflow) Elimination and Water Main Replacement, Phase 2 Construction Plan Design.

Mr. Hales cited the Special Use Petition on Ekstam Dr. The City's Comprehensive Land Use Plan, (CLUP), needed to be updated. This Special Use involved commercially zoned property next to residentially zoned property. Multi family dwellings were allowed

in a commercial zoning district by Special Use. He wanted to assure that in the future only commercial developments would be allowed in commercial zoning districts. This needed to be a part of the CLUP dialogue. He believed that large multi family developments needed open space to address quality of life issues. Currently, there was no requirement for same. These were topics that needed to be addressed. The City needed to take a serious look at same and learn from petitions filed.

MAYOR'S DISCUSSION: Mayor Renner informed the Council that the Ward 7 Town Hall Meeting would be held on Tuesday, June 11, 2013 at Crosswinds Church located at 404 Union St. This meeting was being hosted by the Northwest's Neighborhood Association. He added that Wards 4 and 5 would be scheduled next during the months of August and September 2013.

He also addressed the Mayoral Open Houses. He cited attendance at same. There had been open, respectful discussions on a number of issues.

He cited economic development discussions regarding the Downtown were moving forward. He stressed the need for a Downtown Plan.

Pension and infrastructure funding would be addressed by the Administration and Finance Committee.

Finally, he informed the Council that he had participated in a police ride along with Alderman Stearns to review nuisance properties. This issued needed to be addressed.

ALDERMEN'S DISCUSSION: Alderman Sage reminded those present that the Public Safety Committee would meet on Thursday, June 13, 2013 to address the proposed text amendment on dangerous and vicious dogs. He requested that the Council gather any questions. He hoped for an efficient and effective meeting. This issue would be returned to the Council at their June 24, 2013 meeting.

Alderman Sage recognized Barb Adkins', Deputy City Manager, thirty-four (34) years of service to the City.

Alderman Stearns addressed the proposed text amendment regarding dangerous and vicious dogs. She cited discussions between legal counsel for the Wish Bone Canine Animal Rescue and the City which was scheduled for Friday, June 14, 2013.

She also recognized the Parks, Recreation and Cultural Arts Department for the Trotter Foundation celebration in Withers Park on June 8, 2013. She cited the City's efforts to preserve and protect this fountain. She questioned the status of other monuments. She cited the Korean/Vietnam Wars memorial in Miller Park. She requested a status update.

David Hales, City Manager, addressed the Council. He would send the Council an email regarding same.

Alderman Schmidt noted that the Zoning Board of Appeals (ZBA) had cancelled their June 20, 2013 meeting.

Mr. Hales offered to inform the Council. Notice would also be provided.

She also addressed the Council's concern regarding the ZBA's 3:00 p.m. meeting time.

Finally, she questioned Mayor Renner regarding nuisance properties.

Mayor Renner expressed his opinion that these properties were physically in bad condition. He described them as hazardous. The majority of the properties were on the City's east side. He believed that the Police Department would show these properties to the Council.

Alderman Fazzini wanted to address three (3) items. The McLean County History Museum would hold its gala on Thursday, June 13, 2013. He cited the honorees. Over 500 tickets had been sold. The following individual would be recognized: Stevie and Roger Joslin, Woody Shadid, Ruth Waddell, and Judy Markowitz.

He had viewed the Council's May 28, 2013 meeting. He encouraged the Council to use their microphones.

He also addressed nuisance properties. The City needed to start charging higher fees. There should be a vacant property fee.

Alderman Fruin addressed meeting start times for City boards and/or commissions. The City should review all 3:00 p.m., 4:00 p.m. and 5:00 p.m. start times.

He also addressed the Ekstam Dr. Special Use petition. There had been good discussion regarding this challenging issue. Lessons had been learned. He cited the lack of an east/west street. Cornelius had been stubbed on both ends. He noted the concern regarding the lack of green space. He cited McGraw Park. He suggested that a temporary path way be provided.

Alderman Lower addressed the economic development incentive for 115 E. Monroe. He believed that this issue needed a closer look. It involved public funds. There should be metrics for performance and goals with a time line.

He also addressed the professional engineering services contract for Locust/Colton CSO Elimination and Water Main Replacement, Phase 2 Construction Plan Design. The City needed to adopt a more aggressive funding stance. The City should not be reliant upon federal and/or state funds. The City needed to be a leader.

The City needed to work with the developer regarding the Ekstam Dr. Special Use petition. Construction vehicles should be kept off the street. A buffer/beam could be built

to address congestion with the adjoining residential developments. City staff need to look into parking. He recommended that a trail be built to connect this proposed development with McGraw Park.

Motion by Alderman Fazzini, seconded by Alderman Black, that the meeting be adjourned. Time: 8:12 p.m.

Motion carried.

**Tracey Covert
City Clerk**

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