

RESOLUTION R-36-16

A RESOLUTION AUTHORIZING THE EXECUTION OF A CERTAIN CONSTRUCTION, USE, AND INDEMNIFICATION AGREEMENT (346 East Oak Avenue)

BE IT AND IT IS HEREBY RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to sign and the City Clerk is directed to attest to the Construction, Use and Indemnification Agreement dated June 29, 2016, between the City of Wheaton and Michael and Lisa Samuels for 346 East Oak Avenue, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 15th day of August, 2016.



Michael Gresk
Mayor

ATTEST:



Shaun Bennett-Hagen
City Clerk

Roll Call Vote

Ayes:	Councilman Prendiville Councilman Rutledge Mayor Gresk Councilman Saline Councilman Scalzo Councilman Suess Councilwoman Fitch
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Nays:	None
Absent:	None

Motion Carried Unanimously

CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT

RIGHT-OF-WAY (346 E. OAK AVE)

Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 29th day of April, 2014, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and MICHAEL AND LISA SMITH ("Owner").

WITNESSETH

WHEREAS, the City is in possession of a right-of-way within the City limits of the City of Wheaton, Illinois, and legally described herein; and

WHEREAS, MICHAEL AND LISA SMITH (hereinafter "Owner"), the owner of the premises located at 346 E. OAK AVE, Wheaton, Illinois, which property is legally described herein and is contiguous to a portion of the right-of-way; and

WHEREAS, the Owners would like to use a portion of the City's right-of-way for the purpose of constructing and maintaining a lawn irrigation system; and

WHEREAS, the Owners acknowledges that this Agreement is not an easement and does not vest them with any property rights or claims to any portion of said right-of-way.

NOW, THEREFORE, BE IT AND HEREBY AGREED by the City Council of the City of Wheaton, an Illinois municipal corporation, and the Owner as follows:

1.) The foregoing recitals are incorporated herein as representing the intent of the undersigned and as substantive representations and covenants.

2.) MICHAEL AND LISA SMITH are the owners of property located at 346 E OAK AVE, Wheaton, Illinois, legally described on Exhibit A attached hereto and made a part hereof.

3.) The Owners, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, are hereby authorized to use a portion of the right-of-way more specifically identified as that portion of the right-of-way 346 E Oak Ave Wheaton, IL

for construction of and use of a lawn irrigation system as depicted on Exhibit B attached hereto and made a part hereof. The installation and use of the lawn irrigation system shall conform to all applicable ordinances of the City. Those ordinances are material terms and conditions of this Agreement.

4.) The City retains the right to enter said right-of-way for any purpose to perform any work including but not limited to constructing and maintaining the City utility systems (watermain, storm and sanitary sewers) and other infrastructure. If the City performs any work within said right-of-way which causes damage to the lawn irrigation system, the Owners shall be responsible to repair the lawn irrigation system at their sole cost and expense. The Owner hereby acknowledges and agrees that City its, employees and agents shall have no liability to the Owner for any damage, removal or other casualty to the lawn irrigation system caused by the City, its employees or agent regardless of the cause.

5.) The City may terminate and cancel this Agreement together with all rights and privileges granted hereunder, by notifying the Owners in writing at least fourteen (14) days prior to termination.

6.) Upon termination of this Agreement, the City may destroy, demolish, or remove any improvements placed upon the right-of-way by the Owners without liability.

7.) To the greatest extent permitted under Illinois law, Owners shall defend, indemnify and hold the City harmless from any and all claims, actions, causes of action, costs, judgments, injuries, property damage, expenses (including reasonable attorney's and expert's fees) which arise or may be caused by the negligence of the Owners, or Owners' agents, as a result of the design, construction, maintenance, use or abandonment of the lawn irrigation system described herein.

8.) This Agreement is not an easement. Should a court of competent jurisdiction construe it as an easement it shall be a temporary easement which shall expire 14 days after such construction.

9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall precede all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement may be modified only by a further written Agreement between the parties, and no modification shall be effective unless properly approved and signed by each party.

10.) This Agreement shall be recorded in the Office of the Record of Deeds, DuPage County, Illinois, at the expense of the Owners.

11.) The Owners obligations under this Agreement shall be joint and several.

12.) This Agreement shall be binding on the Owners, their successors, heirs and assigns.

IN WITNESS WHEREOF, the Corporate authorities and the Owners have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here all on the date and year first above written.

Michael J. Samuels
Owner

Lisa Samuels
Owner

Subscribed and sworn to before me this 30th day of JUNE, 2010.

Meghan E. McHugh Notary Public

(Notary Seal)



Attested by:

Shawn Bennett-Hoy
City Clerk

Michael J. Samuels
Mayor, City of Wheaton

EXHIBIT A

Legal Description:

LOT 1 IN BLOCK 10 IN ARTHUR T. MCINTOSH AND COMPANY'S RESUBDIVISION OF BLOCKS 1 TO 11 AND 13 TO 15, IN N.E. GARY'S SECOND ADDITION TO WHEATON, IN THE SOUTH HALF OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED APRIL 21, 1923 AS DOCUMENT 184742, IN DU PAGE COUNTY, ILLINOIS.

AREA OF SITE 412 SQ FT

346 E. Oak Ave Wheaton, IL 60187
address

P.I.N. 05-09-415-007

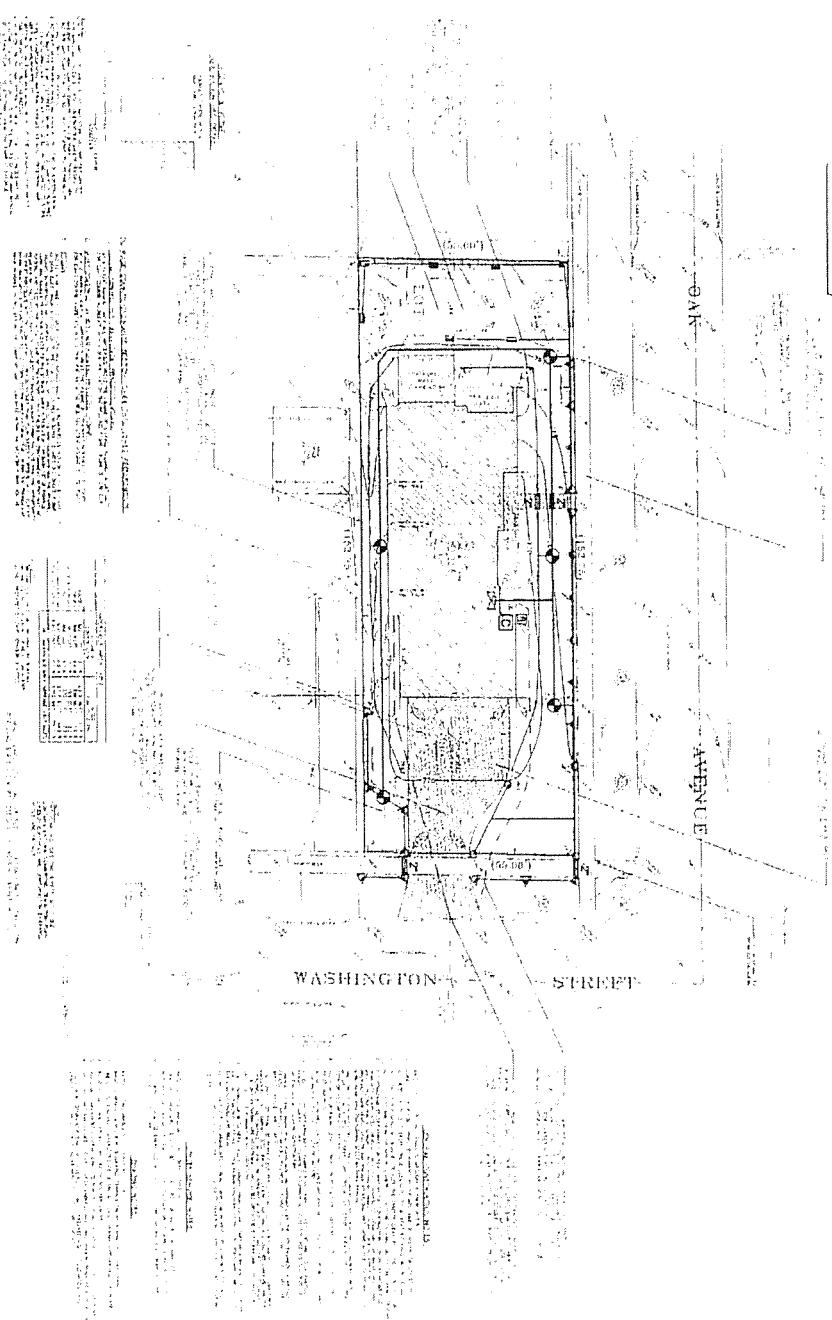
EXHIBIT B

IRRIGATION COMPONENTS

SYMBOL	DESCRIPTION
1	4" SPRAY HEAD, 8' RADIUS
2	4" SPRAY HEAD, 10' RADIUS
3	4" SPRAY HEAD, 12' RADIUS
4	4" SPRAY HEAD, 15' RADIUS
5	4" SPRAY HEAD, 17' RADIUS
6	4" SPRAY HEAD, 19' RADIUS
7	4" SPRAY HEAD, 21' RADIUS
8	12" SPRAY HEAD, 4' RADIUS
9	12" SPRAY HEAD, 10' RADIUS
10	12" SPRAY HEAD, 17' RADIUS
11	12" SPRAY HEAD, 19' RADIUS
12	12" SPRAY HEAD, 15' RADIUS
13	12" SPRAY HEAD, STRIP PATTERN
14	HOT HEAD, 20-15 RADIUS
15	ROTATING SPRINKLER
16	ROTATING SPRINKLER
17	ELECTRIC VALVE
18	ELECTRIC ON/OFF VALVE
19	CLAMP/PIGGYBACK
20	CLAMP/PIGGYBACK
21	CLAMP/PIGGYBACK

SYSTEM DETAILS

1. This drawing is for departmental purposes only. Actual layout of irrigation heads, valves, controller and other equipment shall be determined on site.
2. System to provide head to head spacing with 1st coverage within the area shown on plan.
3. All valves & irrigation heads shall be Class 200 PVC pipe, listed as shown on plan. Minimum wall size shall be 1" (1/8" schedule thickness).
4. All valves shall be Class 200 PVC. All valves shall be able to withstand 1/2" of fire hose to be connected to the irrigation system. All valves shall be able to withstand 1/2" of fire hose to be connected to the irrigation system.
5. Drip irrigation lines shall be used for areas where grass, shrubs, trees, etc. are to be protected by others.
6. All fire hose to be connected shall be 1 1/2" thick butyl/EPD malleable. Hose to be added in some areas is irrigation materal.
7. All irrigation valves shall be 1 1/2" thick butyl/EPD malleable. Hose to be added in some areas is irrigation materal.
8. The controller shall be installed as directed by the owner. The owner shall provide 120VAC power to the controller.
9. Controller location:
10. A backflow preventer with connection to irrigation system, water supply, point of connection (downstream of the backflow preventer) to provide a point of injection for converted air to drop the system if released water in pressurization or water shut down of the system.
11. All valves shall be installed at valve boxes with granite.
12. Locals and valves on the heads edge of planting beds (where required).
13. All valves shall be 1 1/2" thick butyl/EPD malleable. Hose to be added in some areas is irrigation materal.
14. Drip irrigation lines shall be 1/2" thick butyl/EPD malleable. Hose to be added in some areas is irrigation materal.
15. PSL or point of service line shall be 1 1/2" thick butyl/EPD malleable. Hose to be added in some areas is irrigation materal.
16. PSL or point of service line shall be 1 1/2" thick butyl/EPD malleable. Hose to be added in some areas is irrigation materal.



REVISIONS

DESCRIPTION		BY
NO	DATE	BY
1	1/20/06	MM

348 EAST OAK AVENUE
WHEATON, ILLINOIS

BECMAR
SPRINKLER SYSTEMS, INC.
ERICA STREET AND
INDUSTRIAL PARK
www.becmar.com

FLOW: 15 GPM
PRESSURE: 45 PSI
SHEET: 1 OF 1 SHEETS
DATED: 01/20/06

IR-10

