



Board of Public Works and Safety

Agenda Item

Cover Sheet

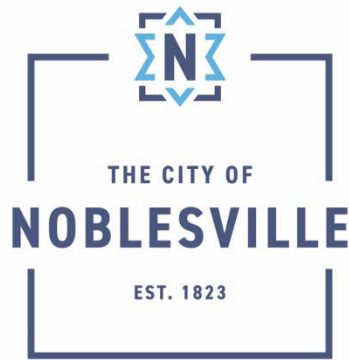
MEETING DATE: May 13, 2025

- ☐ Consent Agenda Item
- ☒ New Item for Discussion
- ☐ Previously Discussed Item
- ☐ Miscellaneous

ITEM #: 4

INITIATED BY: Aaron Head

- ☒ Information Attached
- ☐ Verbal
- ☐ No Paperwork at Time of Packets



TO: BOARD OF PUBLIC WORKS AND SAFETY
FROM: AARON HEAD, COMMUNITY ENGAGEMENT MANAGER
SUBJECT: NOBLESVILLE PREMIUM PROPERTIES (COURTHOUSE CLUB)
OUTDOOR DINING FENCE MOU
DATE: MAY 13, 2025

Attached is a memorandum of understanding with Noblesville Premium Properties LLC, building owner at 110 N. 9th Street for reimbursement for the purchase of a fence for an outdoor dining area for their tenant, Courthouse Club.

If you have any questions prior to the meeting on May 13th, please feel free to contact me at 317-776-6324 or at ahead@noblesville.in.us.

Memorandum of Understanding

This document constitutes a Memorandum of Understanding (hereinafter referred to as "MOU") between Noblesville Premium Properties, LLC (hereinafter referred to as "NPP"), a Noblesville business and the City of Noblesville, Indiana, a municipal corporation (hereinafter referred to as "City" or "Noblesville"), and is executed pursuant to the terms and conditions set forth herein.

Recitals

Whereas, NPP desires to activate outdoor space with cafe seating; and

Whereas, City, where possible, allows outdoor seating within fenced areas; and

Whereas, City owns, removes, stores and reinstalls fences each year for outdoor dining; and

Whereas, City desires to support NPP to provide space for outdoor dining, further providing economic vitality in the downtown.

Now therefore, in consideration of the mutual promises contained herein and other considerations, the receipt and sufficiency of which are hereby acknowledged; NPP and the City agree as follows:

1. **RECITALS.** The representations set forth in the above recitals are material to the MOU and are hereby incorporated into and made a part of the MOU as if fully set forth in the body of the MOU.
2. **DUTIES OF NPP AND CITY.** NPP and City shall perform the functions as set forth or described in **Exhibit A**, attached to and made a part of this MOU.
3. **TERM AND RENEWAL.**
 - A. The term of this MOU shall be for the life of the fenced area during standard outdoor dining season from May 1st through October 31st, and extended from time to time, beginning on approval by BOW, and unless terminated in accordance with this MOU.

4. COMPENSATION OF NPP.

- A. NPP shall furnish all labor, materials, supplies, and services in accordance with the conditions of this MOU necessary to perform the functions as defined in Exhibit A.
- B. Payment from the City will be for an amount not to exceed \$5,000, subject to an paid in full invoice being submitted by NPP at completion of installation.

5. TERMINATION FOR CAUSE OR CONVENIENCE.

- A. If NPP becomes insolvent, or if it refuses or fails to perform the work and functions provided by this MOU, or if it refuses to perform disputed work or functions as directed pending resolution of such dispute, or if it otherwise violates or fails to perform any term, covenant or provision of this MOU, then City may, without prejudice to any other right or remedy, terminate this MOU in whole or in part, in writing, provided that NPP shall be given, except in the case of emergencies, (a) not less than thirty (30) calendar days' notice of City's intent to terminate, and (b) an opportunity for consultation with City prior to termination. In determining the amount of final payment to be made to NPP upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by City to be incurred by reason of NPP's default.
- B. This MOU may be terminated in whole or in part in writing by City for City's convenience; provided that NPP is given (a) not less than ninety (30) calendar days' notice of intent to terminate and (b) an opportunity for consultation with City prior to termination. If City effects termination for convenience, City compensation shall be equitably adjusted.

6. GENERAL PROVISIONS.

- A. Non-Agent. Notwithstanding anything to the contrary in this MOU or elsewhere, NPP is not an agent of the City and shall not in any way purport to act or speak for or on behalf of the City.
- B. Independent Contractor. The parties agree that NPP is an independent contractor as that term is commonly used and is not an employee of City. As such, NPP is solely responsible for all taxes and none shall be withheld from the sums paid to NPP. NPP acknowledges that it is not insured in any manner by City for any loss of any kind whatsoever. NPP has no authority, express or implied, to bind or obligate City in any way.
- C. Remedies. Following the occurrence of any default, breach, or other failure to perform, or an act of negligence or misconduct causing damage to either Party, by the other or any of its employees, agents, or subcontractors, the aggrieved party shall have every remedy now or hereafter existing at law or in equity or by statute or otherwise which may be available. This provision shall survive any termination of this Agreement.
- D. Indemnification. NPP agrees to indemnify, defend, and hold harmless City and its officers, agents, officials, and employees for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any act or omission by NPP or any of its officers, agents, employees or subcontractors, regardless of whether or not it is caused in part by the negligence of a party indemnified hereunder. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage. This provision shall survive any termination of this Agreement.
- E. Insurance. NPP shall furnish, or cause to be furnished, City with certification of comprehensive general liability insurance coverage with a minimum limit of Two Million Dollars (\$2,000,000.00) per occurrence. NPP shall furnish certificates of insurance provided by the insurer, and the certificates shall provide that such insured is in effect and will not be cancelled during the required period without thirty (30) days prior written notice of such cancellation to City.

- F. Notice. Any notice or other correspondence required to be sent under this Agreement shall be sent to:

To NPP:

Noblesville Premium Properties, LLC
c/o Darren Ratcliff
20236 Hague Rd.
Noblesville, IN 46062

To Noblesville:

City of Noblesville
16 S. 10th Street
Noblesville, IN 46060
Mayor's Office

Copy to:
City of Noblesville
Attn: City Attorney 16 S. 10th Street
Noblesville, IN 46060

- G. Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of natural disaster, pandemic, or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds one hundred eighty (180) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

- H. Applicable Laws; Forum. NPP agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by Noblesville and NPP to determine whether the provisions of the Agreement require formal modification.

This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinances, Resolutions, Rules, Regulations, or Codes of Noblesville. Suit, if any, shall be brought in the State of Indiana, County of Hamilton.

- I. Waiver. Neither party's delay or inaction in pursuing the remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of Party's rights or remedies.
- J. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.
- K. Attorneys' Fees. NPP shall be liable to the City for reasonable attorneys' fees incurred by in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of NPP, from a breach of any provision of this Agreement, from an indemnity obligation, or from a failure to fulfill any provisions or responsibility provided herein. This provision shall survive any termination of this Agreement.
- L. Successors and Assigns. Noblesville and NPP each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, neither party shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of NPP or City.

Entered into this 6th date of May, 2025.

Noblesville Premium Properties, LLC

City of Noblesville

A handwritten signature in black ink, appearing to read "Darren Rateliff, Pres.", written over a horizontal line.

By: Darren Rateliff
Managing Member

A handwritten signature in black ink, appearing to read "Aaron Head", written over a horizontal line.

Aaron Head
Community Engagement Manager

EXHIBIT A

1. PURPOSE. As a downtown Noblesville business, NPP helps the City maintain a strong, vibrant, and economically stable downtown core. Downtown has been and will continue to be the heart of Noblesville and a key asset in providing culture, commerce and community to its residents and businesses.

NPP shall act to provide an inviting space and creating a unique experience within downtown Noblesville, further promoting the Noblesville community, economic development, and tourism.

2. RESPONSIBILITIES.

A. Contracting.

NPP shall contract with fence contractor approved by the City to install fence in designated area as outlined by the City.

B. Fencing.

Fence type will be consistent with other outdoor dining fences in downtown.

C. Ownership.

City shall be the sole owner of the fence and agrees to:

- Remove fence at end of outdoor dining season
- Store fence
- Install fence at beginning of subsequent year dining season

D. Maintenance

NPP agrees to provide any and all maintenance for any damage that could occur including replacing any pieces, parts or fence sections.

E. Maintenance, Contd.

NPP agrees to maintain the area in a clean and orderly fashion at all times and will not obstruct the required four (4) feet of ADA space outside of the fence area.

NPP agrees to provide any and all maintenance for any damage that could occur including replacing any pieces, parts or fence sections.

F. Reimbursement

After installation and inspection of the fence, NPP shall provide invoice noting that the contractor has been paid in full for the fence and installation. City shall submit a claim request to the City of Noblesville Office of Finance in a timely manner for reimbursement to NPP, not to exceed an amount of \$5,000.

All of which is approved by the Board of Public Works and Safety of the City of Noblesville this
_____ day of _____ 2025.

JACK MARTIN, PRESIDENT

JOHN DITSLEAR, MEMBER

LAURIE DYER, MEMBER

ROBERT J. ELMER, MEMBER

RICK L. TAYLOR, MEMBER

ATTEST:

EVELYN L. LEES, CLERK
CITY OF NOBLESVILLE, INDIANA