



AGENDA
COMMITTEE OF THE WHOLE
Tuesday, January 17, 2017 at 6:30 p.m.
Common Council Chambers - 224 East Jefferson Street

Mayor Jeannie Hefty
John Ekes, Alderman, 1st District
Edward Johnson, Alderman, 1st District
Bob Grandi, Alderman, 2nd District
Ruth Dawidziak, Alderman, 2nd District
Tom Vos, Council President, Alderman, 3rd District
Jon Schultz, Alderman, 3rd District
Thomas Preusker, Alderman, 4th District
Todd Bauman, Alderman, 4th District

Student Representatives
Gabriel King, Burlington High School
Ryan Werner, Burlington High School

1. Call to Order – Roll Call
2. Citizen comments
3. Approval of minutes for January 3, 2017 (*T. Vos*) *pg. 3*
4. **Topic: Resolution 4814(33)** – to consider approving the 2017 contract with Racine County Economic Development Corporation (RCEDC). This item is scheduled for final consideration at the February 7, 2017 Common Council meeting. *pg. 7*
5. **Topic: Resolution 4815(34)** – to consider approving a proposal from Midwest Netting Solutions for updating and enhancing the netting system at Beaumont Field. This item is scheduled same night Common Council meeting for final consideration. *pg. 16*
6. **Topic: Resolution 4816(35)** - to consider authorizing city officials to execute a Landlord’s Release and Consent to Johnson Bank for the benefit of DNR Investments, LLC for an airport hangar building at 988 Bravo Taxiway. This item is scheduled for the February 7, 2017 Common Council meeting for final consideration. *pg. 25*
7. **Topic: Resolution 4817(36)** - to consider approving Task Order Number 103, with Kapur and Associates, for Engineering Services regarding the 2017 Street and Sidewalk Improvement Program and associated utility improvements. This item is scheduled for the February 7, 2017 Common Council meeting for final consideration. *pg. 37*
8. **Topic: Ordinance 2017(13)** – to consider creating Section 119-5(B)(2)(a), “Floodplain Official Maps” of the Municipal Code. This item is scheduled for the February 7, 2017 Common Council meeting for final consideration. *pg.*
9. **Topic: Ordinance 2018(14)** - to consider repealing and recreating Chapter 270, “Stormwater Management” of the Municipal Code. This item is scheduled for final consideration at the February 7, 2017 Common Council meeting. *pg. 53*

Note: If you are disabled and have accessibility needs or need information interpreted for you, please call the City Clerk’s Office at 262-342-1161 at least 24 hours prior to the meeting. Page 1 of 106

- 10. **Topic: Ordinance 2019(15)** - to consider creating Chapter 271, “Storm Sewer Illicit Discharge and Connection” in the Municipal Code. This item is scheduled for final consideration at the February 7, 2017 Common Council meeting. *pg. 80*
- 11. **Topic: Ordinance 2020(16)** - to consider repealing and recreating Chapter 148 “Construction Site Erosion” in the Municipal Code. This item is scheduled for final consideration at the February 7, 2017 Common Council meeting. *pg. 92*
- 12. **Adjourn** (*J. Schultz*)

Note: If you are disabled and have accessibility needs or need information interpreted for you, please call the City Clerk’s Office at 262-342-1161 at least 24 hours prior to the meeting.



COMMITTEE OF THE WHOLE

ITEM NUMBER: 3

DATE: January 17, 2017

SUBJECT: January 3, 2017 Committee of the Whole Minutes

SUBMITTED BY: Diahnn Halbach, City Clerk

BACKGROUND/HISTORY:

The attached minutes are from the January 3, 2017 Common Council meeting.

BUDGET/FISCAL IMPACT:

N/A

RECOMMENDATION:

Staff recommends approval of the attached minutes from the January 3, 2017 Committee of the Whole meeting.

TIMING/IMPLEMENTATION:

This item is scheduled for final consideration at the January 17, 2017 Common Council meeting.

ATTACHMENTS:

Committee of the Whole Minutes



CITY OF BURLINGTON
Committee of the Whole Minutes
Jeannie Hefty, Mayor
Diahnn Halbach, City Clerk
Tuesday, January 3, 2017

1. Call to Order/Roll Call

Mayor Jeannie Hefty called the meeting to order at 6:31 p.m. starting with roll call. Aldermen present: John Ekes, Ed Johnson, Bob Grandi, Ruth Dawidziak, Jon Schultz, Tom Preusker and Todd Bauman. Excused: Tom Vos (arrived at 6:45 p.m.)

Also present: City Administrator Carina Walters, Finance Director Steve DeQuaker, Police Chief Mark Anderson, Fire Chief Alan Babe, DPW Director James Bergles, and Building Inspector Gregory Guidry.

Student Representatives - Present: Gabriel King, Ryan Werner. Excused: None

2. Citizens Comments and Questions

Lisa Hernandez, 489 Dardis Drive, commented on her concerns regarding the construction noise at KW Precast happening in the very early morning hours and wanted to know what the ordinance is and if anything could be done about it. Walters responded that she would gather her contact information so that either herself or the Chief of Police can call her directly after meeting with staff to review the ordinance and discuss the concerns to see what the City can do about the noise.

3. Approval of Minutes from December 20, 2016

A motion was made by Alderman Preusker with a second by Alderman Bauman to approve the minutes from December 20, 2016. With all in favor, the motion carried to approve the minutes.

4. Topic: Motion 17-857 to consider the Downtown Parking Analysis completed by Andy Miller, of Carl Walker.

Walters gave background history of the downtown parking situation and reviewed the study completed by Carl Walker. Walters stated that on May 17, 2016, Council discussed the possibility of amending the Official Traffic Map to change the Livery Parking Lot time from a 24 hour lot to a 3 hour lot pursuant to a request from business owner Fred Mabson and as a result, staff was directed to complete a comprehensive downtown analysis of its parking prior to making any changes to the Official Traffic Map. Walters reported that Andy Miller conducted an online survey as well as field observations, met with both Council and Chamber members, and held a public forum to present the findings from his studies. The study found that there is ample parking throughout the city and that 88% of the survey respondents have had little to no problems finding parking space. The majority of all respondents rated the overall parking experience to be average to excellent, but that enforcement of the current parking restrictions are inconsistent and that business owners and employees should utilize the parking garage or other public parking lots rather than street parking in front of their businesses. Walters went on to say that as a result of the study, it has been recommended to reinstitute 2 hour parking enforcement of the two-hour time limits for

on-street parking, improve communications and signage regarding public parking options, institute a 2-hour parking limit in the Livery Lot, upgrade lighting and install security cameras in the parking deck, and work with private lot owners and businesses to encourage the use of private off-street lots for public parking.

Alderman Schultz asked how the 24 hour parking permits work. Chief Anderson responded that residents living in the downtown district may purchase a downtown permit for \$10 per month or \$120 per year, which allows these residents to park in a municipal lot for over 24 hours.

Alderman Grandi expressed concern regarding the inconvenience to tenants and their guests parking in the Livery Lot if they are restricted to a 2-3 hour parking limit. Grandi inquired about the possibilities of allowing better signage for tenant only parking.

Alderman Schultz asked why limit enforcement to a part-time position vs a full-time position. Walters responded that \$30,000 has been allocated for a parking attendant, but hiring someone full time with benefits, could cost the City upwards near \$80,000. Walters suggested implementing a pilot program in order to better assess when or how often parking enforcement is needed.

Alderman Dawidziak stated she feels that if the City can't enforce the current ordinance or only part time at best, then implementing the other recommendations would be for nothing and that this seems to just be a bandaaid solution.

Student representative Ryan Werner asked why take any action if the study shows there isn't any real problem other than business owners utilizing on-street parking when they should be parking elsewhere rather than taking up valuable customer spaces. Werner stated that it doesn't seem impactful to spend money on something that doesn't seem to be much of an issue in the first place.

Alderman Schultz stated why have these ordinances if they aren't going to be enforced and that enforcement of the ordinance is what the City should be focusing on.

Kevin O'Brien, 516 N. Pine Street, stated that one of his businesses backs up to the Livery Lot and feels weak enforcement is the issue and needs to be corrected, including increasing the fines, full-time parking enforcement, and towing of vehicles who violate the ordinance.

Walters requested that Council approve the parking study and that staff will not go any further on this topic unless directed.

5. **Topic: Motion 17-858** to consider approving the City of Burlington Employee Handbook.

Walters explained that the Employee Handbook had been implemented by the prior City Administrator but it had not been approved by Council. Walters further stated that additional updates have been added to reflect recent changes and that staff, as well as the City's labor attorney has reviewed and is recommending approval of the Employee Handbook. Walters also added that she has a few more items that she would like to either add or tweak, and will have that completed before the next Council meeting.

Alderman Schultz asked if the handbook covers all the pay changes that was just implemented, including the grievance procedure. Walters responded that there already is an area that covers the grievance procedure, however, the pay plan and classification step scale needs to be added and some clarifying language with respect to holidays needs to be tidied up before it's presented to Council for approval on January 17, 2017.

Alderman Preusker inquired about whether or not longevity pay was necessary being such a trivial amount of money. Walters responded that the longevity pay would remain and is considered a benefit to the employees despite the nominal amount. Walters further stated that Council could

choose to remove this benefit, however, cautioned them to carefully consider that thought. Alderman Schultz asked why this was never mentioned during the compensation and benefits study and why Council knew nothing of this. Walters replied that longevity pay has been available since before 2009 and Council more than likely wasn't aware of this because the original handbook was completed at administrative level without Council approval, which is why this topic is being discussed tonight.

6. **Topic: Motion 17-859** to consider approving an Airport Hangar Lease with Nicole Pease, 817 Charlie Taxiway, at the Burlington Municipal Airport.
7. **Topic: Motion 17-860** to consider approving an Airport Hangar Lease with Dale Severs, 824 Hotel Taxiway, at the Burlington Municipal Airport.

Walters explained both Motions 17-859 and 17-860 and explained that the Airport Committee met and recommends that the City accept these hangar leases.

There was no further discussion.

8. **Topic: Resolution 4813(32)** to consider approving a Memorandum of Understanding between Racine County and the City of Burlington Fire Department for the purchase of radios.

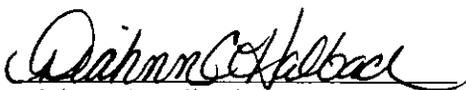
Chief Babe reminded Council and Staff of the opportunity being offered to the City of Burlington Fire Department from the Racine County Fire Chief's Association (RCFCA), to replace existing mobile and handheld portable radios. Babe then reviewed the Memorandum of Understanding and the associated costs.

Alderman Ekes asked why the Town of Burlington wasn't involved in this purchase and what kind of impact these radios will have on the city. Babe responded that the town already uses more current radios and that the city will experience a positive impact by taking advantage of the opportunity to update radios that are approaching 25 years in service and no longer supported by the manufacturer, as well as eliminate safety concerns for our firefighters operating under the current equipment.

9. **Adjourn**

A motion was made by Schultz with a second by Vos to adjourn the meeting. With all in favor, the meeting adjourned at 7:44 p.m.

Minutes respectfully submitted by:



Diahnn C. Halbach
City Clerk
City of Burlington



COMMITTEE OF THE WHOLE

ITEM NUMBER: 4

DATE: January 17, 2017

SUBJECT: RESOLUTION 4814(33) to consider approving the 2017 contract with RCEDC in the amount of \$48,669.26

SUBMITTED BY: Carina Walters, City Administrator

PURPOSE:

The Racine County Economic Development Corporation (RCEDC) has been an important entity in the City's economic development. In particular, the RCEDC works closely with staff and businesses wishing to locate to and/or expand in Burlington. Such initiatives have included both federal and state funding. Further, RCEDC has been an essential resource during the 2016 Downtown Strategic Plan sessions, as well as the continual monthly meetings with downtown business owners to facilitate the initiatives from the plan.

As in previous years, the cost of the RCEDC assistance for 2017 is divided into two components. The first component is economic and community development assistance. This cost is \$42,400, \$4 higher than 2016, and is included within the 2017 budget, paid to the RCEDC in quarterly payments. The second component is the administration of the City's revolving loan fund to local businesses in the amount of \$6,022. This is based on twenty percent (20%) of the incoming loan payments and may change should additional loans be approved throughout the year.

BUDGET/FISCAL IMPACT:

Costs associated with this contract are within the 2017 annual budget.

RECOMMENDATION:

Staff recommends approval of this annual renewal to retain valuable services and resources with RCEDC.

TIMING/IMPLEMENTATION:

This item is for discussion at the January 17, 2017 Committee of the Whole meeting and scheduled for final consideration at the February 7, 2017 Common Council meeting.

ATTACHMENTS:

Resolution
Annual contract

**A RESOLUTION APPROVING A LETTER OF AGREEMENT BETWEEN
THE CITY OF BURLINGTON AND THE RACINE COUNTY ECONOMIC
DEVELOPMENT CORPORATION (RCEDC) FOR 2017**

WHEREAS, the *Racine County Economic Development Corporation* provides economic development, community development, and related technical assistance to the City of Burlington; and,

WHEREAS, the *Racine County Economic Development Corporation* also coordinates this assistance on a day-to-day basis with the City Administration, as well as coordinating the discussion of policy-related issues with the City Administration, the Mayor and City Council; and,

WHEREAS, the City of Burlington believes that it is in the City's best interest to contract with the *Racine County Economic Development Corporation* for organizational development assistance, business retention assistance, business attraction activities, community development assistance, and business financing assistance; and,

WHEREAS, the *Racine County Economic Development Corporation* has been a qualified provider of such economic development related services for the City of Burlington in the past.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Burlington, Racine County, State of Wisconsin, that the City of Burlington shall enter into an agreement with the *Racine County Economic Development Corporation* for a period of one year, beginning January 1, 2017, as stated in the attached agreement (Exhibit "A"), dated November 14, 2016.

BE IT FURTHER RESOLVED that the City Administrator is hereby authorized and directed to execute this agreement on behalf of the City.

Introduced: January 17, 2017

Adopted: _____

Jeannie Hefty, Mayor

Attest:

Diahnn Halbach, City Clerk



November 14, 2016

Jeannie Hefty, Mayor
City of Burlington
300 North Pine St.
Burlington, WI 53105

Dear Mayor Hefty:

This letter is intended to serve as a letter agreement between the City of Burlington, hereinafter referred to as "Burlington" and the Racine County Economic Development Corporation (RCEDC). In accordance with this agreement, the RCEDC agrees to continue to provide economic and community development technical assistance to Burlington. Such assistance will be coordinated on a day-to-day basis with the Administration and, with regard to policy-related issues coordinated with City Administration, the Mayor and City Council.

As in years past, this letter agreement combines the economic development services contract with the administration of Burlington's Revolving Loan Fund (RLF).

PURPOSE

The purpose of the agreement is to further the overall goals of community and economic development by facilitating job growth and investment, resulting in new tax base for Burlington, through interagency cooperation and services provided by the RCEDC. In particular, this Agreement will result in the provision of technical assistance relative to Burlington's initiative to conduct various development and redevelopment projects in the central business district and its environs.

AGREEMENT

The RCEDC agrees to provide direct economic and community development assistance to Burlington in accordance with the objectives promulgated by the Mayor, City Council and City Administrator. The RCEDC will assign Jenny Trick, Executive Director as the economic development staff person to Burlington. Ms. Trick will act as the City's economic development advocate, in partnership with other RCEDC staff, and will expend her best efforts to promote business recruitment, business retention and expansion, community development and business finance resources to support Burlington and its companies.

The economic development services to be provided by the RCEDC will consist of the following:

Community Development Assistance

1. Update the Community Profile for Burlington. Utilizing the ESRI Business Analyst (BA) software, update the Community Profile for Burlington. This activity is in support of one of the Burlington Downtown Volunteer Committees.
2. Develop Recruitment Proposals for Priority Sites. Once priority sites are identified by the Burlington Downtown Volunteer Committee, utilizing the ESRI software, prepare site specific proposals for business recruitment and/or development consideration. This information will be provided to developers, site selectors, brokers and identified targeted industries (as per the ESRI report). Additionally this information will be added to other Partner Organization websites including, but not limited to, the City of Burlington, RCEDC, Burlington Chamber and others. This activity is in support of one of the Burlington Downtown Volunteer Committees.
3. Existing business growth and support. A variety of resources, both through RCEDC and its Partners, will be made available to Burlington's commercial businesses. Resources including access via RCEDC to ArcGIS resources including ESRI Business Analyst, Location Analytics, Tapestry data and Story Maps. In addition, small business resources through UW Extension, Small Business Development Center, Wisconsin Women's Business Initiative, SCORE, Gateway Technical College's Launch Box and GrowthWheel will be made available. Financial resources through RCEDC, Racine County, and Burlington will be marketed and direct assistance will be provided to businesses interested in applying for funding.
4. Provide suggested content and links for the Burlington website. Based on downtown retail recruitment programs and best practices of other proactive and growing small communities, RCEDC will continue to identify items and links to be added to the Burlington website. This activity is in support of one of the Burlington Downtown Volunteer Committees.
5. Downtown Strategic Plan Implementation. Continue to provide assistance to the lead partner team committee to ensure the implementation of the Downtown Strategic Plan. Furthermore RCEDC will continue to attend, research and provide relevant materials to the Incentives and Real Estate committees. RCEDC will work in partnership with the City and Committee Chairs and Co-chairs to revise and implement the Downtown Strategic Plan.
6. Business Friendly Evaluation. Working with the City Staff, review local review processes that businesses and developers take to gain approval of occupancy with the goal to reduce steps, time and costs to gain local approval. This activity is in support of one of the Burlington Downtown Volunteer Committees.

Business Retention and Expansion (BRE) Assistance

7. Continue to conduct an on-going business expansion and retention program that consists of the following:
 - Continue to implement the RCEDC CEO Call Program via the Synchronist interview software which includes comprehensive interviews with Racine County businesses with a goal to provide assistance to these businesses. Results from the interviews will assist RCEDC in identifying gaps in programs needed to support local companies. Interview summaries will be compiled by RCEDC, a report will be developed and shared with each community.

- Market and support peer learning and leadership programs such as the RCEDC CEO Roundtable, Living as a Leader program and others.

8. Assist Burlington businesses per direct contact or referral from the Mayor and Administrator and report findings to Burlington leadership. When meeting with local companies, RCEDC staff will provide information on existing State, federal and local economic development assistance programs that may assist the needs of local businesses. These programs include low-interest loans, tax credit programs, grants and workforce development training assistance.

Business Recruitment Activities

9. Continue the implementation of a targeted business recruitment program that includes emphasis on the following:

- Businesses seeking a location in the Chicago-Milwaukee corridor to grow their market and access Racine County prominent employers that include machinery manufacturing, fabricated metal products manufacturing, food manufacturing, electrical equipment manufacturing, chemical manufacturing, logistics and distribution and healthcare services.
- International businesses that are seeking an upper Midwest location to establish a sales office, distribution facility and/or manufacturing facility. This effort will be undertaken independent of or in partnership with the Wisconsin Economic Development Corporation, Milwaukee 7, international chambers, referrals from other intermediaries and more.

10. Provide assistance through the development of customized proposals to businesses interested in establishing a location within Burlington per direct contact or referral from the Mayor or members of the City's Staff, or other reliable sources. This activity includes providing copies of such proposals to the City Administrator, as well as a status report on such businesses as part of this agreement's semi-annual reports, monthly meetings with the City Administrator, and maintaining a periodic business follow-up procedures.

Marketing Activities

11. Continue to implement a proactive Business Development initiative that includes business recruitment and business retention and expansion strategies by undertaking the following:

- Independent or in partnership with Wisconsin Economic Development Corporation and/or the Milwaukee 7, attend domestic and international tradeshows and events for the purpose of recruiting new investment and businesses to Racine County;
- Maintain membership and regularly attend Chicago Area Industrial Real Estate (AIRE) networking functions;
- Maintain membership and regularly attend Milwaukee's NAIOP and CARW networking functions;
- Publish quarterly e-newsletter on economic development activities and events;
- Host events including the RCEDC annual meeting;
- Author local newspaper articles featuring economic development issues;
- Update RCEDC website, marketing materials and social media platforms with projects, local company news and national and international articles of business interest; and
- Feature local project successes on the RCEDC website.

Workforce Development Services

12. RCEDC will provide the services of the Workforce Development Solutions staff to support the talent recruitment and workforce training needs of Burlington businesses. To assist the unemployed and underemployed Burlington residents, the Workforce Development Solutions staff will develop and host job fairs, on-site company recruitment events and implement other employment enhancement programs including the GED Outreach initiative and Workplace Excellence Series program.
13. RCEDC will continue to be an advocate for Burlington in working with the Racine County Workforce Solutions Leadership to implement the workforce development plan "Higher Expectations/Strive Together".

Organizational Development Assistance

14. Identification and implementation of appropriate strategies to address additional economic development issues and concerns that are identified throughout the contract period.
15. Provide written semi-annual reports to the Mayor, City Council and City Administrator. This activity will include a summary of the activities conducted during the reporting period.
16. Coordinate Burlington's economic development initiatives with, but not limited to, the following agencies:
 - Gateway Technical College
 - Milwaukee 7
 - Real Racine
 - Southeastern Wisconsin Regional Planning Commission
 - U.S. Economic Development Administration
 - U.S. Small Business Administration
 - UW-Parkside
 - UW-Parkside Small Business Development Center
 - Wisconsin Economic Development Corporation
 - Wisconsin Department of Administration
 - We Energies

Business Financing

17. The RCEDC has been designated as the Burlington Revolving Loan Fund (RLF) program administrator since August 19, 1992. The services being provided by the RCEDC, in accordance with the administration of the Community Development Block Grant (CDBG)-RLF and Tax Incremental District (TID)-RLF, include the following:
 - A. Review and, if necessary, revision of the RLF program on an annual basis.
 - B. Preparation of the appropriate marketing plan and marketing materials.
 - C. Implementation of the marketing program, therefore re-lending the loan funds.
 - D. Meetings with potential clients to inform them of the parameters of the RLF program.
 - E. Screening of clients relative to their eligibility for the RLF program.
 - F. Working with eligible businesses in the preparation of applications to the RLF program and the review of these application materials for any deficiencies.

- G. Recommendations to the Community Development Authority and Council of the Whole (City Council) relative to loans that qualify for the RLF program.
- H. Coordination of all loan closings.
- I. Major servicing actions will be considered by the RCEDC and City of Burlington staff and a recommendation forwarded to the City Council for formal consideration.
- J. Collection of monthly payments and monitoring of the projects for compliance with Wisconsin Department of Administration regulations, and all other aspects of servicing the loans. Minor servicing actions will be considered by the RCEDC staff, together with the City Administrator and Mayor. These actions will include:
 - Actions that do not significantly affect the interest of the City in an adverse manner.
 - Subordination to a new senior lien holder (usually a bank) provided no new money is being lent.
 - Other servicing actions that can be defined as minor.
- K. In performing the work for this contract the RCEDC agrees to adhere to the following:
 - Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
 - Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall, on the grounds of race, color, national origin, sex, age or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- L. Coordinate the City's RLF program with other State and federal business loan programs in order to ensure the lowest cost business financing for the customer.

TIME PERIOD FOR THIS AGREEMENT AND COMPENSATION

The above-referenced assistance will be provided by the RCEDC staff during the time period beginning January 1, 2017 to December 31, 2017.

The cost of this assistance to Burlington is divided into two components. First, for economic and community development assistance, the cost is \$42,400, this cost is the same as it was in 2016. Second, the annual cost of administration of Burlington's RLF's is \$6,022, is based on 20 percent of the loan payments (see Attachment A) and is charged to the Burlington RLF loan fund. This cost may change should additional loans be made. The RCEDC will notify Burlington if there are any new loans.

Payments will be made during the first week of each quarter, upon the receipt of an invoice from the RCEDC. The cost of developing any additional materials and significant printing and mailing of items necessary to implement these services are outside the scope of the Agreement and will be negotiated on an as necessary basis.

INDEPENDENT CONTRACTOR

RCEDC shall be an independent contractor of Burlington. Neither RCEDC nor any of its officers, employees, or agents shall be considered to be an employee of Burlington as a result of the obligations undertaken pursuant to this agreement. RCEDC's officers, employees and agents shall make no commitments or representations to third parties without prior approval of Burlington. In addition, RCEDC hereby holds harmless Burlington and its departments, officers, employees and agents from

and against all claims, demands and liability for damages to third persons of any type whatever arising solely out of the actions of RCEDC under this agreement.

LIABILITY INSURANCE

The RCEDC is to carry liability insurance and list Burlington as an additional insured on the policy.

TERMINATION

This agreement may be terminated by either party upon thirty (30) days written notice in the event of default by the other party of any material provision hereof which remains unremedied for thirty (30) days following written notice of such default.

NOTICES

Notices under this agreement shall be mailed by registered mail to the Mayor and City Administrator, 300 N. Pine Street, Burlington, WI 53108, for the City, and to Jenny Trick, Executive Director, 2320 Renaissance Blvd., Sturtevant, WI 53177, for RCEDC, or shall be personally served on either said person of the person in charge of either respective office.

ASSIGNMENT

RCEDC agrees that it will not assign this agreement or any portion thereof, or any of its responsibilities hereunder, to any other party without first obtaining the written permission of the City.

If the terms and conditions of this proposal are satisfactory, please sign the two original documents where indicated and return to the RCEDC for RCEDC final signature.

Sincerely,



Jenny Trick, Executive Director

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the _____ day of _____, 2016.

CITY OF BURLINGTON

By: _____
Jeannie Hefty, Mayor

Witness: _____
Diahn Halbach, City Clerk

RACINE COUNTY ECONOMIC DEVELOPMENT CORPORATION

By: _____
Jenny Trick, Executive Director

Burlington Revolving Loan Fund 2017

	<u>Monthly</u>	<u>Annually</u>
Dawley Manufacturing	\$789.17 x 12 months	\$ 9,470.04
<u>Burlington Hotel Group</u>	<u>\$1,720.00 x 12 months</u>	<u>\$ 20,640.00</u>
Total		\$ 30,110.04

\$30,110.04 x 20% = **\$6,022.00** Annually

\$6,022.00/4 = **\$1,505.50 per quarter (to be invoiced)**

Burlington TID Revolving Loan Fund 2017

	<u>Monthly</u>	<u>Annually</u>
Fox Crossing Burlington, LLC (1)	\$ 468.52 x 12 months	\$ 0.00
Musicology, LLC (2)	\$ 1,219.30 x 11 months	\$ 0.00
<u>Hampton Hometown (3)</u>	<u>\$ 6,407.68 x 12 months</u>	<u>\$ 0.00</u>
Total		\$ 0.00

- (1) Fox Crossing Burlington, LLC pays a 0.5% servicing fee directly to RCEDC each month with their monthly payments, thus, they do not factor in to the above calculation.
- (2) Musicology, LLC pays a 0.5% servicing fee directly to RCEDC each month with their monthly payments, thus, they do not factor in to the above calculation.
- (3) Hampton Hometown pays a 0.5% servicing fee directly to RCEDC each month with their monthly payments, thus, they do not factor in to the above calculation.



DATE: January 17, 2017

SUBJECT: RESOLUTION 4815(34) to approve the proposal from Midwest Netting Solutions for rebuilding the backstop and replacing the netting system at Beaumont Field for Baseball 2000.

SUBMITTED BY: James T. Bergles, Director of Public Works

BACKGROUND/HISTORY:

Baseball 2000 is the controlling board for Beaumont Field that was organized by the City of Burlington Park Board. The purpose of Baseball 2000 is to operate and maintain Beaumont Field. It consists of one person from Burlington High School, Catholic Central High School, Burlington Barons Baseball Club, Burlington American Legion Baseball Inc., a member from the Park Board, and a sixth member being appointed by Baseball 2000. On the 16th day of November 2000, Baseball 2000 signed their first lease with the City of Burlington to operate Beaumont Field which is owned by the City of Burlington. The lessees have possession of the premises during baseball season which includes baseball contests and practice. The current condition of the backstop and safety netting has fallen into major disrepair; thus, causing the need for Baseball 2000 to address the Common Council. Per our agreement with Baseball 2000, the responsibility of the backstop and netting falls upon the City of Burlington which is why this item is before you.

In 2015, the right field foul line netting was taken down because of its deteriorated condition. There have been multiple stray balls that have missed the remaining netting and some have landed on vehicles traveling on Milwaukee Avenue. Baseball 2000 has been working with City staff regarding the replacement of the existing backstop and safety netting at Beaumont Field. Replacement of the backstop and netting will reduce the amount of baseballs making it to Milwaukee Avenue. Baseball 2000 has acquired bids from three netting contractors as listed in the attached report (C).

BUDGET/FISCAL IMPACT:

During the budget workshops, you were advised on the 2017 CIP, the cost for rebuilding the netting and backstop. The initial financial impact to the City of Burlington is \$66,184.00, with Baseball 2000 repaying 25% (\$16,546) of the total bill over 5 years. The end cost to the City will be \$49,638.00,

RECOMMENDATION:

The Parks Board heard the request for repair at its 1-12-17 meeting and has approved the proposal from Midwest Netting Solutions to install:

- 7 pole netting system at \$55,184
- Additional 3 ft. fence around new backstop \$6,000
- Additional concrete behind new backstop \$5,000
- Total cost of \$66,184

Staff also recommends replacement of the netting and backstop by Midwest Netting Solutions before the 2017 baseball season starts.

TIMING/IMPLEMENTATION:

This item is for discussion at the January 17, 2017 Committee of the Whole meeting and scheduled the same night Common Council meeting for final consideration.

ATTACHMENTS:

Resolution

3 proposals

Recommendation from Baseball 2000

Project Map

**A RESOLUTION TO APPROVE THE PROPOSAL FROM MIDWEST NETTING SOLUTIONS FOR
UPDATING AND ENHANCING THE NETTING SYSTEM AT BEAUMONT FIELD.**

WHEREAS, "Baseball 2000" received three proposals to update and enhance the netting system at Beaumont Field; and,

WHEREAS, the proposals were reviewed by City Administrator, Baseball 2000 and the Director of Public Works and based on Baseball 2000's recommendation, attached hereto, we recommend acceptance of the lowest bid from Midwest Netting Solutions as follows:

- 7 pole netting system \$55,184, including installation
- Additional 3 ft. fence around new backstop \$6,000
- Additional concrete \$5,000
- Total cost of \$66,184.00

a copy of which is attached hereto, and made a part thereof; and,

WHEREAS, the City Administrator, Baseball 2000 and the Director of Public Works have recommended approval of the total amount of: **\$66,184.00**.

WHEREAS, Baseball 2000 has agreed to contribute \$16,546 towards the total cost of the improvement, over the course of 5 years (starting in 2017) to fulfill covering 25% of the total project.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Burlington that the proposal to update and enhance the netting system at Beaumont Field, be awarded to Midwest Netting Solutions for the total amount of \$66,184.00.

Introduced: January 17, 2017
Adopted: _____

Jeannie Hefty, Mayor

Attest:

Diahn Halbach, City Clerk

September 15, 2016

Ryan Hoffman
Burlington Baseball 2000
PO BOX
Burlington WI 53105

Carina Walters
City Administrator
City of Burlington
300 N. Pine St.
Burlington WI 53105

Dear Mrs. Walters,

Thank you for taking the time to review the attached proposals for an updated and enhanced protection system at Beaumont Field. We feel confident that these proposals accomplish the goals set forth by baseball 2000 and the City of Burlington. With the installation of a new backstop and netting system, we feel this will dramatically reduce the number of balls entering Milwaukee Ave.

We have researched this project along with City staff and have received bids from three separate vendors. All three vendors have concluded that moving the backstop up 15-20 feet will reduce the number of balls leaving the playing field. In addition, adding a 7th pole down the right field line will give added protection from line drives hooked into Milwaukee Ave. This combination will serve as a great benefit to passing vehicles. All three vendors were given the same specs and all have relatively similar proposals. It is also worth noting that all three vendors pointed out various code violations that exist with our current backstop situation. This enhanced netting system will eliminate those violations.

Our recommendation is to work with Midwest Netting Solutions. They are the low bid and have outstanding references and a reliable background.

Midwest Netting Solutions Proposal:

- 7 pole netting system \$55,184 including installation
- Additional 3ft fence around new backstop \$6,000
- Additional Concrete \$5,000 (Needed due to moving backstop up to hold more balls)

Total Cost \$66,184

Baseball 2000 Contribution:

We are committed to this project similarly to the lighting project we worked with the City to complete in 2011. Baseball 2000 worked with the City on a payment plan over 10 years to payback over 25% of the total project costs. Also please note Baseball 2000 was able to pay off this project in 5 years. Using that model, Burlington Baseball 2000 would request the city budget for the entire \$66,184 to complete this project in the 2017 fiscal year, prior to the start of baseball games. Baseball 2000 would pay the city \$16,546 over the course of 5 years (starting in 2017) to fulfill covering 25% of the project.

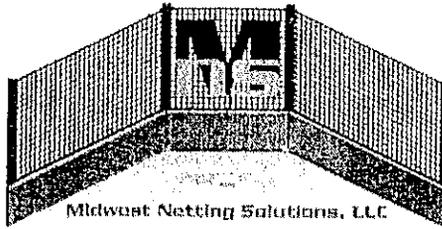
If you have any questions on this project, please feel free to contact Ryan Hoffman or Tyson Fettes. I appreciate your time and willingness to consider this project.

Best Regards,

Ryan Hoffman

Tyson Fettes

Baseball 2000



To: Ryan Hoffman – Beaumont Field

From: Matt Jacobs

Date: August 24, 2016

Ryan:

It was a pleasure speaking with you. As a follow up to our conversation, below is pricing for a 250' long x 40' AGL backstop netting system to be supplied and installed at your baseball field:

SPECS

- (6) 51' Long x 10 3/4" OD Black weather treated heavy duty steel poles will be secured in the ground 11' deep utilizing 24" boring and 4,000 psi concrete to attain a 405' above ground level.
- The 2 poles behind home plate will be approximately 50' OC with the poles angled toward 1st and 3rd base at 50' OC. There will be an additional pole placed further down the first base line at 50' OC, approximately 10' beyond the dugout with an additional pole placed further down the first baseline at 50' OC.
- A 150' long x 3' or 4' high Black chain link fence will be installed in between or directly in front of the 4 backstop poles. (*Fencing to be supplied and installed by others*).
- (5/16") 1 x 7 Galvanized steel strand cable will be secured to the top of each pole utilizing galvanized oval eye bolts and strandvises. Vertical face cables will be installed on each pole.
- (# 36), 1 3/4" Black, weather treated, rope bordered, on the square baseball netting will be secured to the cables and fence top rail utilizing spring loaded snaps, weather treated twine and heavy duty tie wraps.

Project Cost: \$47,718.00

The pricing shown reflects a delivered and installed cost. The turnaround time for completion of this project is 3 weeks from receipt of your approval. There may be an additional charge should we encounter rock or very poor soil conditions prior to reaching the necessary depths. Spoils to be disbursed onsite. (3) Progress payment are to be made upon delivery of the poles, installation of the poles and installation of the cable and netting.

We can supply and install an additional 40' AGL pole with netting 50' OC further down the rightfield line for an additional \$7,466.00.

I will follow up with you later today.

Thank you,
Matt Jacobs

Quote

Beacon Athletics
 8233 Forsythia Street, #120
 Middleton, WI 53562
 (800) 747-5985



visit our website at beaconathletics.com

Order Number: 0266722
 Order Date: 6/24/2016
 Salesperson: EH
 Customer Number: B53105I

Sold To:

Ship To:

BASEBALL 2000
 DAVE HALLENBECK
 6187 RAVEN CT
 BURLINGTON, WI 53105

RYAN HOFFMAN
 BURLINGTON BASEBALL 2000
 30105 MOCCASIN DR
 BURLINGTON, WI 53105

Project name: CITY OF BURLINGTON BASEBALL BACKSTOP RENOVATIONS

Customer P.O.	Ship VIA	F.O.B.	Terms
	COMMERCIAL FRT		ADVANCE PAYMENT

Item Number	Unit	Ordered	Shipped	Back Order	Price	Amount
QUOTE-BACKSTOP		1.0	0.0	0.0	23,527.0000	23,527.00

CUSTOM BACKSTOP SYSTEM #N5038A

APPROXIMATE COVERAGE AREA: 144'L X UP TO 40'T ABOVE GRADE (BACKSTOP WALL OR SIMILAR BY OTHERS TBD)

NETTING MATERIAL: #36 TWISTED KNOTTED NYLON - BLACK
 MESH: 1-3/4" SQUARE
 EDGING: SEWN HEMS AND GROMMETS TOP AND SIDES WITH MACHINE SEWN ROPE BOTTOM

SYSTEM INCLUDES:
 - NETTING AS NOTED ABOVE
 - FOUR (4) 40' ABOVE GRADE STEEL SUPPORT POLES
 - ALL HARDWARE TO FACILITATE A HOISTABLE BACKSTOP NET SYSTEM

*** SEE DRAWINGS #N5038-SR-1 AND SR-2 FOR PROPOSED DIMENSIONS AND LAYOUT ***

*** INSTALLATION NOT INCLUDED ***

FREIGHT FOR BACKSTOP SYSTEM: \$1,300.00

QUOTE-NETSYS		1.0	0.0	0.0	35,674.0000	35,674.00
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CUSTOM BARRIER NET SYSTEM #N5038B

APPROXIMATE COVERAGE AREA: THREE (3) 86'-0"L X 35'-0"T NET PANELS AS PART OF A 40'-0" ABOVE GRADE SYSTEM COVERING 198'-0" DOWN THE RIGHT FIELD FOUL LINE

NETTING MATERIAL: #36 TWISTED KNOTTED NYLON - BLACK
 MESH: 1-3/4" SQUARE
 EDGING: SEWN HEMS AND GROMMETS TOP AND SIDES WITH MACHINE SEWN ROPE BOTTOM

SYSTEM INCLUDES:
 - NETTING AS NOTED ABOVE
 - SEVEN (7) 40'-0" ABOVE GRADE STEEL SUPPORT POLES
 - ALL HARDWARE TO FACILITATE A HOISTABLE BARRIER NET SYSTEM

*** SEE DRAWING #N5038-SR-1 AND SR-2 FOR PROPOSED DIMENSIONS AND LAYOUT ***

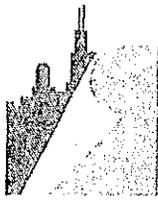
*** INSTALLATION NOT INCLUDED ***

FREIGHT FOR BARRIER NET SYSTEM: \$1,300.00

Sign up for the Beacon Newsletter to receive product information, sales and specials, field tips, demonstration videos and more.

Go to <http://beaconathletics.com/beacon-newsletter/> to sign up.

Net Order:	59,201.00
Discount:	0.00
Freight:	2,600.00
Sales Tax:	0.00
Order Total:	61,801.00



MIDWESTTM COVER

6463 Waveland St. – Unit A
Hammond, Indiana 46320

847-277-1140 • 800-594-0744 • FAX 847-277-1137

www.midwestcover.com

Date: 9/14/16

To: Ryan Hoffman

Description: Beaumont Net System

Thank you for the opportunity to quote on your project. We can supply and installed the requested 40' high x 250' long backstop netting system as follows:

(6) Heavy duty steel poles installed in the ground 9' – 11' deep, pending soil quality with 20" – 24" boring, poles not to exceed 50' on center.

We will utilize 3,500 psi concrete.

3' High chain link fence to be supplied and installed by your local fence contractor

Cable will be installed at the top of each pole with turnbuckles and cable clamps. We will determine if cables are needed down each pole.

250 Linear ft of 37' high # 36 baseball netting will be connected to the cables and fence with snaps and tie wraps.

Project Cost: \$55,900.00 (6) Pole System * \$64,000.00 (7) Pole System

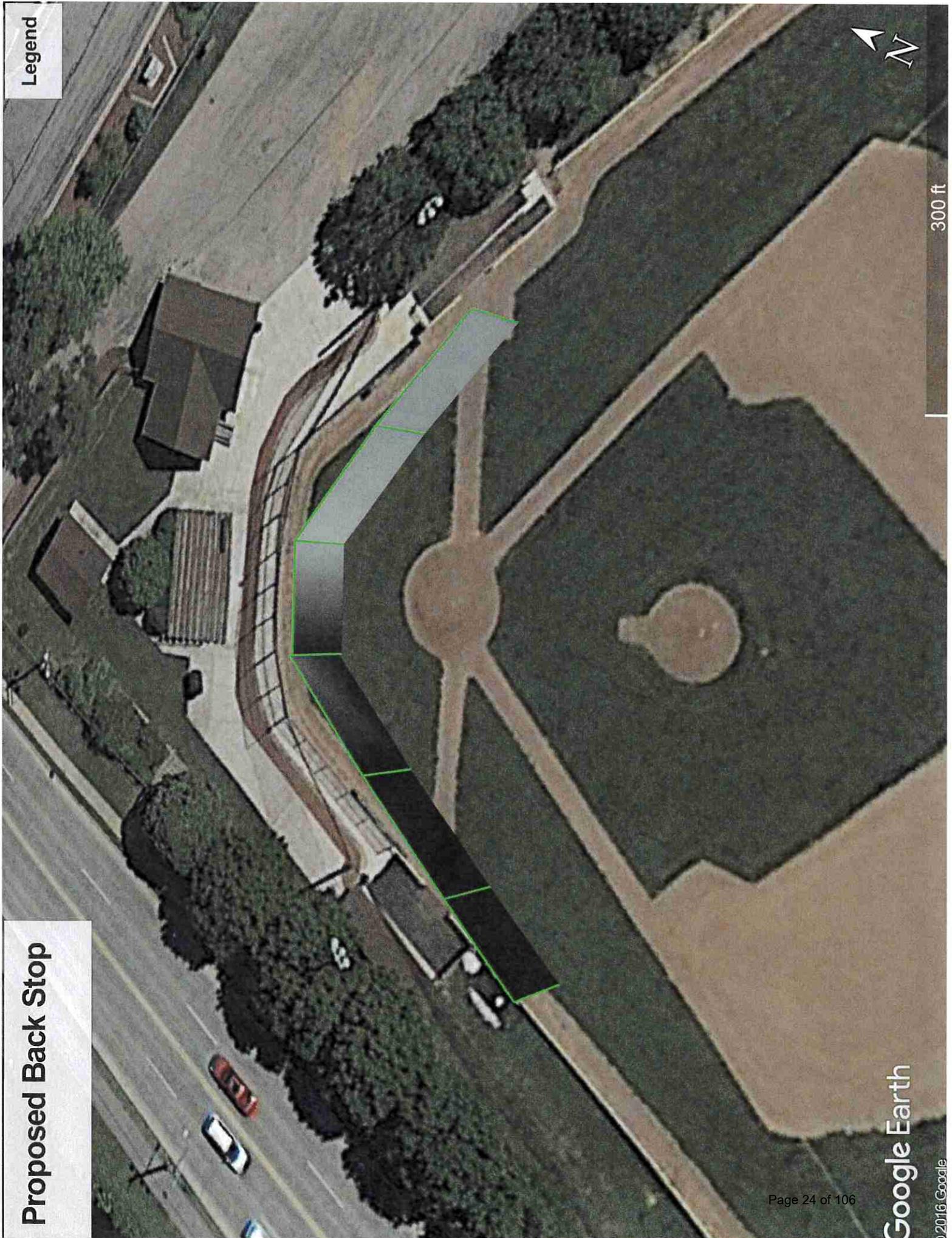
Spoils to be left onsite.

Additional charge for bad soil conditions or rock.

Lead Time: 6 Weeks

Legend

Proposed Back Stop





DATE: January 17, 2017

SUBJECT: RESOLUTION 4816(35) to consider authorizing city officials to execute a Landlord's Release and Consent to Johnson Bank for the benefit of DNR Investments, LLC for an airport hangar building at 988 Bravo Taxiway.

SUBMITTED BY: Carina Walters, City Administrator

BACKGROUND/HISTORY:

The attached resolution addresses a request by Johnson Bank for the City to sign a Landlord's Release and Consent regarding an airport hangar owned by DNR Investments, LLC at 988 Bravo Taxiway. The Landlord's Release and Consent merely seeks to obtain the 2,800 square foot pole building and/or other improvements on this property in the event DNR Investments, LLC defaults in their loan with Johnson Bank. The Landlord's Release and Consent does not allow for Johnson Bank to gain interest or place a lien on the Airport property DNR Investments, LLC is leasing from the City. The 29-year Airport Hangar Lease was approved with DNR Investments, LLC at the April 6, 2016 Common Council meeting.

BUDGET/FISCAL IMPACT:

N/A

RECOMMENDATION

This is before the Committee of the Whole as the City owns the property and has a Lease Agreement with DNR Investments, LLC. City Attorney John Bjelajac and staff recommend executing the Landlord's Release and Consent with Johnson Bank for collateral at 988 Bravo Taxiway.

TIMING/IMPLEMENTATION:

This item is scheduled for discussion at the January 17, 2017 Committee of the Whole meeting and will be placed on the February 7, 2017 Common Council agenda for final consideration.

ATTACHMENTS:

Resolution
Landlord's Release and Consent

**A RESOLUTION AUTHORIZING CITY OFFICIALS TO EXECUTE A
LANDLORD'S RELEASE AND CONSENT TO JOHNSON BANK FOR
THE BENEFIT OF DNR INVESTMENTS, LLC FOR AN AIRPORT HANGAR
BUILDING AT 988 BRAVO TAXIWAY**

WHEREAS, the Burlington Municipal Airport is owned and operated by the City of Burlington; and,

WHEREAS, DNR Investments, LLC entered into a 29-year Airport Hangar Lease with the City of Burlington for property located at 988 Bravo Taxiway, approved by the Common Council as Motion 16-831 on April 6, 2016; and,

WHEREAS, DNR Investments, LLC (the "Borrower") has secured financing with Johnson Bank ("the Lender"), 555 Main Street, Suite 250, Racine, WI 53403 for a 2,800 square foot building at 988 Bravo Taxiway (the "Hanger") to be used as an airport hangar on the grounds of the Burlington Municipal Airport; and,

WHEREAS, the Lender requires the execution of a Landlord's Release and Consent, hereto attached as Attachment "A", in order to provide such financing allowing Johnson Bank to obtain a security interest with the 2,800 square foot pole building and/or improvements (collateral) in the event of default by DNR Investment, LLC; and,

WHEREAS, said Landlord's Release and Consent does not create a lien on the real property owned by the City of Burlington at the Burlington Municipal Airport.

NOW THEREFORE BE IT RESOLVED by the Common Council of the City of Burlington, Racine County and Walworth County, State of Wisconsin, that the appropriate City officials are hereby authorized as Landlord to execute the attached Landlord's Release and Consent in favor of Johnsons Bank as a secured party, in relation to the stated collateral, being in part of the 2,800 square foot pole building and improvements located at 988 Bravo Taxiway in the City of Burlington Municipal Airport, Burlington, Wisconsin.

Introduced: January 17, 2017
Approved:

Jeannie Hefty, Mayor

Attest:

Diahn Halbach, City Clerk

LANDLORD'S RELEASE AND CONSENT

DOCUMENT NUMBER:

RETURN ADDRESS:
JOHNSON BANK
RACINE COMMERCIAL
555 MAIN STREET, SUITE 250
RACINE, WI 53403

PARCEL I.D. NUMBER:



00002288223359-200057506042016

THIS LANDLORD'S RELEASE AND CONSENT is entered into among DNR Investments, LLC ("Borrower"), whose address is 2050 Knob Road, Burlington, WI 53105; JOHNSON BANK ("Lender"), whose address is RACINE COMMERCIAL, 555 MAIN STREET, SUITE 250, RACINE, WI 53403; and City of Burlington, State of Wisconsin ("Landlord"), whose address is Burlington, WI. Borrower and Lender have entered into, or are about to enter into, an agreement whereby Lender has acquired or will acquire a security interest or other interest in the Collateral. Some or all of the Collateral may be affixed or otherwise become located on the Premises. To induce Lender to extend the Loan to Borrower against such security interest in the Collateral and for other valuable consideration, Landlord hereby agrees with Lender and Borrower as follows.

COLLATERAL DESCRIPTION. The word "Collateral" means certain of Borrower's personal property in which Lender has acquired or will acquire a security interest, including without limitation the following specific property:

Airport hangar on 988 Bravo Taxiway at Burlington Municipal Airport

BORROWER'S ASSIGNMENT OF LEASE. Borrower hereby assigns to Lender all of Borrower's rights in the Lease, as partial security for the Loan. The parties intend that this assignment will be a present transfer to Lender of all of Borrower's rights under the Lease, subject to Borrower's rights to use the Premises and enjoy the benefits of the Lease while not in default on the Loan or Lease. Upon full performance by Borrower under the Loan, this assignment shall be ended, without the necessity of any further action by any of the parties. This assignment includes all renewals of and amendments to the Lease or the Loan, until the Loan is paid in full. No amendments may be made to the Lease without Lender's prior written consent, which shall not be unreasonably withheld or delayed.

CONSENT OF LANDLORD. Landlord consents to the above assignment. If Borrower defaults under the Loan or the Lease, Lender may reassign the Lease, and Landlord agrees that Landlord's consent to any such reassignment will not be unreasonably withheld or delayed. So long as Lender has not entered the Premises for the purpose of operating a business, Lender will have no liability under the Lease, including without limitation liability for rent. Whether or not Lender enters into possession of the Premises for any purpose, Borrower will remain fully liable for all obligations of Borrower as lessee under the Lease. While Lender is in possession of the Premises, Lender will cause all payments due under the Lease and attributable to that period of time to be made to Landlord. If Lender later reassigns the Lease or vacates the Premises, Lender will have no further obligation to Landlord.

LEASE DEFAULTS. Both Borrower and Landlord agree and represent to Lender that, to the best of their knowledge, there is no breach or offset existing under the Lease or under any other agreement between Borrower and Landlord. Landlord agrees not to terminate the Lease, despite any default by Borrower, without giving Lender written notice of the default and an opportunity to cure the default within a period of sixty (60) days from the receipt of the notice. If the default is one that cannot reasonably be cured by Lender (such as insolvency, bankruptcy, or other judicial proceedings against Borrower), then Landlord will not terminate the Lease so long as Landlord receives all sums due under the Lease for the period during which Lender is in possession of the Premises, or so long as Lender reassigns the Lease to

**LANDLORD'S RELEASE AND CONSENT
(Continued)**

Loan No: 2288223359-200

Page 2

a new lessee reasonably satisfactory to Landlord.

DISCLAIMER OF INTEREST. Landlord hereby consents to Lender's security interest (or other interest) in the Collateral and disclaims all interests, liens and claims which Landlord now has or may hereafter acquire in the Collateral. Landlord agrees that any lien or claim it may now have or may hereafter have in the Collateral will be subject at all times to Lender's security interest (or other present or future interest) in the Collateral and will be subject to the rights granted by Landlord to Lender in this Agreement.

ENTRY ONTO PREMISES. Landlord and Borrower grant to Lender the right to enter upon the Premises for the purpose of removing the Collateral from the Premises or conducting sales of the Collateral on the Premises. The rights granted to Lender in this Agreement will continue until a reasonable time after Lender receives notice in writing from Landlord that Borrower no longer is in lawful possession of the Premises. If Lender enters onto the Premises and removes the Collateral, Lender agrees with Landlord not to remove any Collateral in such a way that the Premises are damaged, without either repairing any such damage or reimbursing Landlord for the cost of repair.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement: This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement. The covenants of Borrower and Landlord respecting subordination of the claim or claims of Landlord in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any claim or claims to which this Agreement shall apply. Lender need not accept this Agreement in writing or otherwise to make it effective. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. If Landlord is other than an individual, any agent or other person executing this Agreement on behalf of Landlord represents and warrants to Lender that he or she has full power and authority to execute this Agreement on Landlord's behalf. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is in writing and signed by Lender. Without notice to Landlord and without affecting the validity of this Consent, Lender may do or not do anything it deems appropriate or necessary with respect to the Loan, any obligors on the Loan, or any Collateral for the Loan; including without limitation extending, renewing, rearranging, or accelerating any of the Loan indebtedness.

AMENDMENTS. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

NO WAIVER BY LENDER. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Landlord, shall constitute a waiver of any of Lender's rights or of any of Landlord's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

SEVERABILITY. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

Agreement. The word "Agreement" means this Landlord's Release and Consent, as this Landlord's Release and Consent may be amended or modified from time to time, together with all exhibits and schedules attached to this Landlord's Release and Consent from time to time.

Borrower. The word "Borrower" means DNR Investments, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all of Borrower's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

Landlord. The word "Landlord" means City of Burlington, State of Wisconsin, and is used for convenience purposes only. Landlord's interest in the Premises may be that of a fee owner, lessor, sublessor or lienholder, or that of any other holder of an interest in the Premises which may be, or may become, prior to the interest of Lender.

Lease. The word "Lease" means that certain lease of the Premises, dated January 1, 2016, between Landlord and Borrower.

Lender. The word "Lender" means JOHNSON BANK, its successors and assigns.

Loan. The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced.

Note. The word "Note" means the Note dated June 4, 2016 and executed by DNR Investments, LLC in the principal amount of \$51,971.40, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Premises. The word "Premises" means the real property located in Racine County, State of Wisconsin, commonly known as 988 Bravo Taxiway, Burlington Municipal Airport, Burlington, WI 53105.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other

LANDLORD'S RELEASE AND CONSENT
(Continued)

Loan No: 2288223359-200

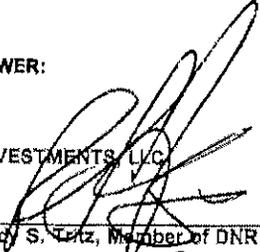
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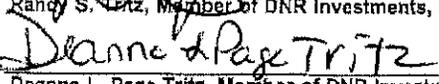
Instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

BORROWER AND LANDLORD ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS LANDLORD'S RELEASE AND CONSENT, AND BORROWER AND LANDLORD AGREE TO ITS TERMS. THIS AGREEMENT IS DATED JUNE 4, 2016.

BORROWER:

DNR INVESTMENTS, LLC

By: 
Randy S. Tritz, Member of DNR Investments, LLC

By: 
Deanna L. Page Tritz, Member of DNR Investments, LLC

LANDLORD:

CITY OF BURLINGTON, STATE OF WISCONSIN

By: _____
Authorized Signer for City of Burlington, State of Wisconsin

By: _____
Authorized Signer for City of Burlington, State of Wisconsin

LENDER:

JOHNSON BANK

X _____
Authorized Officer

This Landlord's Release and Consent was drafted by: _____

Complete either Authentication Section or Acknowledgment Section

AUTHENTICATION

Signature(s) of City of Burlington, State of Wisconsin authenticated this _____ day of _____, 20____.

Title: Member State Bar of Wisconsin or
authorized under Section 706.06, Wis. Stats.

LANDLORD'S RELEASE AND CONSENT
(Continued)

Loan No: 2288223359-200

Page 4

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Wisconsin)
) SS
COUNTY OF Racine)

On this 18th day of June, 20 16, before me, the undersigned Notary Public, personally appeared Randy S. Tritz, Member of DNR Investments, LLC and Deanna L. Page Tritz, Member of DNR Investments, LLC, and known to me to be members or designated agents of the limited liability company that executed the Landlord's Release and Consent and acknowledged the Agreement to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute this Agreement and in fact executed the Agreement on behalf of the limited liability company.

By [Signature] Residing at Kenosha, WI
Deak J. Petersen
[Type or Print Name]

Notary Public in and for the State of Wisconsin My commission expires 12/18/2016

GOVERNMENT ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 20 _____, before me, the undersigned Notary Public, personally appeared _____

and known to me to be (an) authorized agent(s) of the governmental entity that executed the Landlord's Release and Consent and acknowledged the Agreement to be the free and voluntary act and deed of the governmental entity, by authority of its enabling laws or by resolution of its governing body, for the uses and purposes therein mentioned, and on oath stated that he or she/they is/are authorized to execute this Agreement and in fact executed the Agreement on behalf of the governmental entity.

By _____ Residing at _____
[Type or Print Name]

Notary Public in and for the State of _____ My commission expires _____

LANDLORD'S RELEASE AND CONSENT
(Continued)

LENDER ACKNOWLEDGMENT

STATE OF _____)
)
) SS
COUNTY OF _____)

On this _____ day of _____, 20____, before me, the undersigned Notary Public, personally appeared _____ and known to me to be the _____, authorized agent for JOHNSON BANK that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of JOHNSON BANK, duly authorized by JOHNSON BANK through its board of directors or otherwise, for the uses and purposes therein mentioned, and an oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of JOHNSON BANK.

By _____ Residing at _____

[Type or Print Name]

Notary Public in and for the State of _____ My commission expires _____

LANDLORD'S RELEASE AND CONSENT

DOCUMENT NUMBER:

RETURN ADDRESS:
JOHNSON BANK
RACINE COMMERCIAL
555 MAIN STREET, SUITE 250
RACINE, WI 53403

PARCEL I.D. NUMBER:



00002288223359-200057506042016

THIS LANDLORD'S RELEASE AND CONSENT is entered into among DNR Investments, LLC ("Borrower"), whose address is 2050 Knob Road, Burlington, WI 53105; JOHNSON BANK ("Lender"), whose address is RACINE COMMERCIAL, 555 MAIN STREET, SUITE 250, RACINE, WI 53403; and City of Burlington, State of Wisconsin ("Landlord"), whose address is Burlington, WI. Borrower and Lender have entered into, or are about to enter into, an agreement whereby Lender has acquired or will acquire a security interest or other interest in the Collateral. Some or all of the Collateral may be affixed or otherwise become located on the Premises. To induce Lender to extend the Loan to Borrower against such security interest in the Collateral and for other valuable consideration, Landlord hereby agrees with Lender and Borrower as follows.

COLLATERAL DESCRIPTION. The word "Collateral" means certain of Borrower's personal property in which Lender has acquired or will acquire a security interest, including without limitation the following specific property:

Airport hangar on 988 Bravo Taxiway at Burlington Municipal Airport

BORROWER'S ASSIGNMENT OF LEASE. Borrower hereby assigns to Lender all of Borrower's rights in the Lease, as partial security for the Loan. The parties intend that this assignment will be a present transfer to Lender of all of Borrower's rights under the Lease, subject to Borrower's rights to use the Premises and enjoy the benefits of the Lease while not in default on the Loan or Lease. Upon full performance by Borrower under the Loan, this assignment shall be ended, without the necessity of any further action by any of the parties. This assignment includes all renewals of and amendments to the Lease or the Loan, until the Loan is paid in full. No amendments may be made to the Lease without Lender's prior written consent, which shall not be unreasonably withheld or delayed.

CONSENT OF LANDLORD. Landlord consents to the above assignment. If Borrower defaults under the Loan or the Lease, Lender may reassign the Lease, and Landlord agrees that Landlord's consent to any such reassignment will not be unreasonably withheld or delayed. So long as Lender has not entered the Premises for the purpose of operating a business, Lender will have no liability under the Lease, including without limitation liability for rent. Whether or not Lender enters into possession of the Premises for any purpose, Borrower will remain fully liable for all obligations of Borrower as lessee under the Lease. While Lender is in possession of the Premises, Lender will cause all payments due under the Lease and attributable to that period of time to be made to Landlord. If Lender later reassigns the Lease or vacates the Premises, Lender will have no further obligation to Landlord.

LEASE DEFAULTS. Both Borrower and Landlord agree and represent to Lender that, to the best of their knowledge, there is no breach or offset existing under the Lease or under any other agreement between Borrower and Landlord. Landlord agrees not to terminate the Lease, despite any default by Borrower, without giving Lender written notice of the default and an opportunity to cure the default within a period of sixty (60) days from the receipt of the notice. If the default is one that cannot reasonably be cured by Lender (such as insolvency, bankruptcy, or other judicial proceedings against Borrower), then Landlord will not terminate the Lease so long as Landlord receives all sums due under the Lease for the period during which Lender is in possession of the Premises, or so long as Lender reassigns the Lease to

**LANDLORD'S RELEASE AND CONSENT
(Continued)**

Loan No: 2288223359-200

Page 2

a new lessee reasonably satisfactory to Landlord.

DISCLAIMER OF INTEREST. Landlord hereby consents to Lender's security interest (or other interest) in the Collateral and disclaims all interests, liens and claims which Landlord now has or may hereafter acquire in the Collateral. Landlord agrees that any lien or claim it may now have or may hereafter have in the Collateral will be subject at all times to Lender's security interest (or other present or future interest) in the Collateral and will be subject to the rights granted by Landlord to Lender in this Agreement.

ENTRY ONTO PREMISES. Landlord and Borrower grant to Lender the right to enter upon the Premises for the purpose of removing the Collateral from the Premises or conducting sales of the Collateral on the Premises. The rights granted to Lender in this Agreement will continue until a reasonable time after Lender receives notice in writing from Landlord that Borrower no longer is in lawful possession of the Premises. If Lender enters onto the Premises and removes the Collateral, Lender agrees with Landlord not to remove any Collateral in such a way that the Premises are damaged, without either repairing any such damage or reimbursing Landlord for the cost of repair.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement: This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement. The covenants of Borrower and Landlord respecting subordination of the claim or claims of Landlord in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any claim or claims to which this Agreement shall apply. Lender need not accept this Agreement in writing or otherwise to make it effective. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. If Landlord is other than an individual, any agent or other person executing this Agreement on behalf of Landlord represents and warrants to Lender that he or she has full power and authority to execute this Agreement on Landlord's behalf. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is in writing and signed by Lender. Without notice to Landlord and without affecting the validity of this Consent, Lender may do or not do anything it deems appropriate or necessary with respect to the Loan, any obligors on the Loan, or any Collateral for the Loan; including without limitation extending, renewing, rearranging, or accelerating any of the Loan indebtedness.

AMENDMENTS. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

NO WAIVER BY LENDER. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Landlord, shall constitute a waiver of any of Lender's rights or of any of Landlord's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

SEVERABILITY. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

Agreement. The word "Agreement" means this Landlord's Release and Consent, as this Landlord's Release and Consent may be amended or modified from time to time, together with all exhibits and schedules attached to this Landlord's Release and Consent from time to time.

Borrower. The word "Borrower" means DNR Investments, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all of Borrower's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

Landlord. The word "Landlord" means City of Burlington, State of Wisconsin, and is used for convenience purposes only. Landlord's interest in the Premises may be that of a fee owner, lessor, sublessor or lienholder, or that of any other holder of an interest in the Premises which may be, or may become, prior to the interest of Lender.

Lease. The word "Lease" means that certain lease of the Premises, dated January 1, 2016, between Landlord and Borrower..

Lender. The word "Lender" means JOHNSON BANK, its successors and assigns.

Loan. The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced.

Note. The word "Note" means the Note dated June 4, 2016 and executed by DNR Investments, LLC in the principal amount of \$51,971.40, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Premises. The word "Premises" means the real property located in Racine County, State of Wisconsin, commonly known as 988 Bravo Taxiway, Burlington Municipal Airport, Burlington, WI 53105.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other

LANDLORD'S RELEASE AND CONSENT
(Continued)

Loan No: 2288223359-200

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Instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.
BORROWER AND LANDLORD ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS LANDLORD'S RELEASE AND CONSENT,
AND BORROWER AND LANDLORD AGREE TO ITS TERMS. THIS AGREEMENT IS DATED JUNE 4, 2016.

BORROWER:

DNR INVESTMENTS, LLC

By: [Signature]
Rand S. Tritz, Member of DNR Investments, LLC

By: [Signature]
Deanna L. Page Tritz, Member of DNR Investments, LLC

LANDLORD:

CITY OF BURLINGTON, STATE OF WISCONSIN

By: _____
Authorized Signer for City of Burlington, State of Wisconsin

By: _____
Authorized Signer for City of Burlington, State of Wisconsin

LENDER:

JOHNSON BANK

X _____
Authorized Officer

This Landlord's Release and Consent was drafted by: _____

Complete either Authentication Section or Acknowledgment Section

AUTHENTICATION

Signature(s) of City of Burlington, State of Wisconsin authenticated this _____ day of _____
20_____

Title: Member State Bar of Wisconsin or
authorized under Section 706.06, Wis. Stats.

LANDLORD'S RELEASE AND CONSENT
(Continued)

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LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF Wisconsin)
) SS
COUNTY OF Roane)

On this 18th day of June, 20 16, before me, the undersigned Notary Public, personally appeared Randy S. Tritz, Member of DNR Investments, LLC and Deanna L. Page Tritz, Member of DNR Investments, LLC, and known to me to be members or designated agents of the limited liability company that executed the Landlord's Release and Consent and acknowledged the Agreement to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute this Agreement and in fact executed the Agreement on behalf of the limited liability company.

By [Signature]
Deek J. Petersen
[Type or Print Name]

Residing at Kenosha, WI

Notary Public in and for the State of Wisconsin

My commission expires 12/18/2016

GOVERNMENT ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 20 _____, before me, the undersigned Notary Public, personally appeared _____

and known to me to be (an) authorized agent(s) of the governmental entity that executed the Landlord's Release and Consent and acknowledged the Agreement to be the free and voluntary act and deed of the governmental entity, by authority of its enabling laws or by resolution of its governing body, for the uses and purposes therein mentioned, and on oath stated that he or she/they is/are authorized to execute this Agreement and in fact executed the Agreement on behalf of the governmental entity.

By _____
[Type or Print Name]

Residing at _____

Notary Public in and for the State of _____

My commission expires _____

LANDLORD'S RELEASE AND CONSENT
(Continued)

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LENDER ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

On this _____ day of _____, 20____, before me, the undersigned Notary Public, personally appeared _____ and known to me to be the _____, authorized agent for JOHNSON BANK that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of JOHNSON BANK, duly authorized by JOHNSON BANK through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and in fact executed this said instrument on behalf of JOHNSON BANK.

By _____ Residing at _____

[Type or Print Name]

Notary Public in and for the State of _____ My commission expires _____



COMMITTEE OF THE WHOLE

ITEM NUMBER: 7

DATE: January 17, 2017

SUBJECT: RESOLUTION 4817(36) to consider Task Order Number 103, with Kapur and Associates, for Engineering Services regarding the 2017 Kendall Street and Sidewalk Improvement Program and associated utility improvements.

SUBMITTED BY: James T. Bergles, Director of Public Works

BACKGROUND/HISTORY:

During the budget workshop, staff identified Kendall Street, including sidewalks, to be reconstructed in fiscal year 2017. One of the subsequent steps includes approving a task order with Kapur and Associates for engineering services.

The 2017 Street and Sidewalk Improvement Program includes the reconstruction of Kendall Street, from W. State St. to W. Chestnut St., and the annual sidewalk reconstruction program. The task order includes topographic survey, soil boring, mapping, and plan preparation for the project. The utility portion of the Kendall St. project includes sanitary sewer replacement for the entire length of the project; 4" watermain replacement, from Lewis St. to W. Chestnut St. (with all lead water services being replaced from the main to the curb stop); and storm sewer replacement, as determined as the design phase moves forward.

Task Order #103 also includes assistance with utility coordination, cost estimates, bidding documents and all aspects associated with construction management.

BUDGET/FISCAL IMPACT:

The cost of Task Order No. 103 is \$316,240. This cost will be shared amongst the General Fund, Wastewater and Water utilities as planned with the 2017 CIP portion of the budget. In addition, the City will receive a reimbursement of \$18,165.25, for the Local Road Improvement Program (LRIP), which was approved by WisDOT.

RECOMMENDATION:

Staff recommends approval of this Task Order.

TIMING/IMPLEMENTATION:

This item is for discussion at the January 17, 2017 Committee of the Whole meeting and scheduled for final consideration at the February 7, 2017 Common Council Meeting.

ATTACHMENTS:

Resolution
Task Order No. 103

A RESOLUTION APPROVING TASK ORDER NUMBER ONE HUNDRED THREE WITH KAPUR AND ASSOCIATES, INC. FOR THE 2017 STREET AND SIDEWALK IMPROVEMENT PROGRAM AND ASSOCIATED UTILITY IMPROVEMENTS FOR THE NOT-TO-EXCEED AMOUNT OF \$316,240.

WHEREAS, the City of Burlington has entered into a master agreement for engineering services with Kapur and Associates, Inc.; and,

WHEREAS, the City has requested assistance with: the 2017 Street and Sidewalk Improvement Program. This includes: providing topographic survey and mapping, field reviews and plan preparation for the reconstruction of Kendall Street from W State Street to W. Chestnut Street. Plans to include location and detail of pavement and base removals, new asphaltic paving, sidewalk repairs, and curb and gutter replacement. Utility improvement plans will be prepared for approximately 600 LF of water main and lateral replacements, 2700 LF of sanitary sewer replacement and storm sewer replacement. It is anticipated that a traffic control plan will be prepared for this work. Coordinating and obtaining soil borings for the project. Coordinating with the Wisconsin DOT for plans, advertising requirements and information regarding the (Local Roads Improvement program) LRIP funding that is part of the project. Plan preparation and coordination with City staff for the repair of sidewalks in various areas within the City. Coordination with all utilities, construction cost estimates, and all aspects associated with bidding and construction management.

This has resulted in a task order, a copy of which is attached hereto and made a part thereof; and,

WHEREAS, said task order is for the not-to-exceed amount of \$316,240 and has been recommended for approval by the Director of Public Works.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Burlington Task Order Number One Hundred Three is hereby approved for the not-to-exceed amount of \$316,240.

BE IT FURTHER RESOLVED that the City Administrator is hereby authorized and directed to execute Task Order Number One Hundred Three on behalf of the City.

Introduced: January 17, 2017
Adopted:

Jeannie Hefty, Mayor

Attest:

Diahnn Halbach, City Clerk

**TASK ORDER NUMBER #103
CIVIL ENGINEERING SERVICES**

This Task Order is made as of January 11, 2017, under the terms and conditions established in the MASTER AGREEMENT FOR ENGINEERING SERVICES, (the Agreement), between the **City of Burlington (Owner)** and **Kapur & Associates, Inc. (Engineer)**. This Task Order is made for the following purpose:

Provide civil engineering services for the complete design and specification preparation for the 2017 City of Burlington - Street and Sidewalk Improvement Program and associated utility improvements.

Section A. – Scope of Services

Engineer shall perform the following Services:

1. Provide topographic survey and mapping, field reviews and plan preparation for the reconstruction of Kendall Street from W State Street to W. Chestnut Street. Plans to include location and detail of pavement and base removals, new asphaltic paving, sidewalk repairs and curb and gutter replacement. Utility improvement plans will be prepared for approximately 600 LF of water main and lateral replacements, 2700 LF of sanitary sewer replacement and storm sewer replacement. It is anticipated that a traffic control plan will be prepared for this work.
2. Coordinate and obtain soil borings for the project. It is anticipated eight borings to a depth of ten feet will be obtained to determine underling soils conditions. A soils report and recommendation will be provided for infrastructure and roadway improvement requirements.
3. Coordinate with the Wisconsin DOT for plans, advertising requirements and information regarding the (Local Roads Improvement program) LRIP funding that is part of the project.
4. Provide plan preparation with the coordination of City staff for the repair of sidewalks in complaint areas within the City.
5. Provide utility coordination of all private utilities for all streets including utility location for survey of street improvements requiring grading or utility improvements/repairs.
6. Provide construction cost estimate for all streets, sidewalk and utility improvements.

7. Prepare and provide Project Manual including but not limited to Advertisement for Bids, Instruction to Bidders, Bid Form, Bidder's Qualification Statement, Agreement, and General Conditions of Contract, Supplementary Conditions, and Special Provisions.
8. Attend Bid Opening.
9. Review Bids, make recommendation for award, and coordinate notice of award, agreement, and notice to proceed documentation.
10. Attend meetings as required and provide update memos to the Department of Public Works.

Construction Management Activities

11. Provide administrative services to manage client coordination/invoicing, project schedules, contract change order documentation, establish project logs, formatting monthly contract quantity estimating and contractor invoicing and contract closeout documentation for base bid projects.
12. Provide construction survey staking for necessary items within the construction contract. This survey provides for a "one time" staking for a particular item. If the contractor damages any stakes, they shall be responsible for the cost to replace those damaged stakes.
13. Coordinate and complete necessary material testing services for work completed.
14. Process payment requests from the contractor for their work and prepare recommendation for payment for City approval. Complete final close out documentation and acceptance of improvements memorandum. **(This task is completed on a monthly basis and is completed for all work approved for the prior month.)**
15. The Engineer will be responsible for notifying, scheduling, conducting, documenting, and distributing minutes of the preconstruction conference.
16. Prepare and provide project update memorandum and provide copies of the daily journal entries to City staff weekly.
17. Attend meetings as needed and coordinate with adjacent property owners and business as needed.
18. Upon project completion, all utility data and as-built information will be transferred to the City GIS system for permanent records. In addition Mylar as-builts, and AutoCAD information will be provided for City record.

19. It is anticipated the construction work under the 2017 City of Burlington - Street and Sidewalk Improvement Program will begin on or after April 11, 2017 and be completed by October 27, 2017. This schedule has been provided for estimating purposes only. Engineer and staking construction services are estimated on the engineering and survey staff being on site as needed and completing project paperwork for up to 18 weeks.

Section B. – Schedule

Engineer shall perform the Scope of Services and deliver the related Documents according to the following schedule:

1. Provide “Preliminary Plans” to the Department of Public Works for review and comment on or before February 23, 2017.
2. Provide “Draft” Final Plans and Specification to the Department of Public Works for review on or before March 2, 2017.
3. Final plans and project manual complete for bid on or before March 9, 2017.
4. Anticipated Bid Opening of March 16, 2017 with recommendation to council for March 21, 2017 meeting.

Section C. – Compensation

In return for the performance of the foregoing obligations, Owner shall pay to Engineer an amount not-to-exceed Three Hundred Sixteen Thousand Two Hundred Forty Dollars (\$316,240.00) payable according to the following terms:

A not-to-exceed amount based on the rates as listed in Attachment A of the Agreement, plus direct expenses. Cost plus services are limited to an agreed maximum figure unless amended.

Engineer may request a change to the billing hours if scope changes, beyond the control of the Engineer, resulting in an extension of the schedule or necessitates a change in personnel.

Compensation for Additional Services (if any) shall be paid by Owner to Engineer according to the hourly billing rates shown in Attachment A of the Agreement.

IN WITNESS WHEREOF, the Owner and Engineer have executed the Task Order.

Owner: City of Burlington

Engineer: Kapur & Associates, Inc.

By: _____

By: Thomas W. Foht

Signature: _____

Title: _____

Date: _____

Signature: _____

Title: Associate

Date: _____

Kapur Associates, Inc.
Summary of Staff Hours and Labor Costs
for the
City of Burlington

TASK ORDER 103																	
Burlington 2017 Street Program- Attachment A																	
CLASSIFICATION	Project Manager		Senior Project Engineer		Surveyor		Staff Engineer II		Construction Engineer		GIS Technician		Survey Crew		Total Labor		
	ACT. Code	Hours	Dollars	Hours	Dollars	Hours	Dollars	Hours	Dollars	Hours	Dollars	Hours	Dollars	Hours	Dollars		
Average Hourly Wage		\$135.00			\$90.00		\$78.00		\$90.00		\$79.00		\$115.00				
TASK DESCRIPTION																	
Kendall Street (Reconstruct)																	
Review Master Plan/Field Review				8	\$872.00			12	\$936.00	12	\$1,080.00				32	\$2,888.00	
Survey/Mapping				32	\$3,488.00	16	\$1,440.00						40	\$4,600.00	88	\$9,528.00	
Meetings as Required				84	\$9,156.00	8	\$720.00	60	\$4,680.00				4	\$312.00	190	\$19,458.00	
Plan Preparation/Review				64	\$6,976.00			240	\$18,720.00						304	\$25,656.00	
Sanitary Sewer Design				64	\$6,976.00			160	\$12,480.00						224	\$19,456.00	
Storm Sewer Design				64	\$6,976.00			240	\$18,720.00						304	\$25,656.00	
Water Main Design				16	\$1,744.00			80	\$6,240.00						96	\$7,984.00	
Permitting				32	\$3,488.00			40	\$3,120.00						72	\$6,608.00	
2017 Sidewalk Improvements																	
Field Reviews				4	\$312.00	4	\$360.00								8	\$672.00	
Plan Preparation/Review				2	\$270.00	4	\$436.00	20	\$1,560.00	8	\$720.00				34	\$2,986.00	
Project Manual/Administration																	
Administration				8	\$1,080.00			10	\$780.00	20	\$1,800.00				54	\$5,404.00	
Advertisement/Project Manual				4	\$540.00	10	\$1,080.00	24	\$1,872.00	16	\$1,440.00				54	\$4,942.00	
Attend Bid Opening				4	\$540.00					2	\$180.00				6	\$720.00	
Post Bid Opening Activities										16	\$1,440.00				16	\$1,440.00	
Meetings as Required				4	\$540.00	10	\$1,080.00	8	\$624.00	12	\$1,080.00				34	\$3,334.00	
Construction Management Activities																	
Construction Management Admin				8	\$1,080.00	44	\$4,796.00	40	\$3,120.00	84	\$7,560.00				176	\$16,556.00	
Shop Drawing Approvals				8	\$624.00	2	\$218.00	8	\$624.00	12	\$1,080.00				22	\$1,922.00	
Sanitary Sewer								240	\$16,720.00	320	\$28,800.00			16	\$1,840.00	\$49,360.00	
Storm Sewer								160	\$12,480.00	240	\$21,600.00			32	\$3,680.00	\$37,760.00	
Watermain								40	\$3,120.00	80	\$7,200.00			40	\$4,600.00	\$14,920.00	
Roadway								320	\$24,960.00	160	\$14,400.00			50	\$5,750.00	\$45,110.00	
As-Builts								24	\$2,160.00					24	\$2,160.00	\$4,920.00	
GIS Coordination														32	\$2,880.00	\$2,880.00	
TOTALS				64	\$8,640.00	450	\$49,050.00	24	2160	1730	\$135,228.00	986	\$88,740.00	206	\$23,542.00	3492	\$310,240
Expenses:																	
Project Total: \$316,240																	

Summary of Expenses	Units	Cost	Total
Estimated Expenses:			
Soil Borings	8	\$500.00	\$4,000.00
Soil Boring Report	1	\$2,000.00	\$2,000.00
Totals			\$6,000.00



DATE: January 17, 2017

SUBJECT: ORDINANCE 2017(13) creating Section 119-5(B)(2)(a), "Floodplain Official Maps" within the City of Burlington Municipal Code.

SUBMITTED BY: Jim Bergles, Public Works Director and Greg Govenatori, Kapur & Associates

PROJECT/SCOPE:

By June 2017, the City of Burlington will need to identify a long term solution for the Echo Lake Dam. Part of the long term solutions may include either a total spillway rebuild or removal of the dam.

In 2015, the Wisconsin Department of Natural Resources (DNR) recently approved the City of Burlington's dam failure analysis and who also set the hazard rating for the Burlington Dam. The rating is based upon the hydrologic and hydraulic analyses, including the dam failure analysis prepared by Kapur & Associates, entitled City of Burlington, "Dam Break Analysis, Racine County", dated April 2015. The hazard rating being assigned by the DNR is high hazard due to the lack of floodplain zoning within the dam failure floodplain (hydraulic shadow) downstream of the dam. The hazard rating that is possible, once the required zoning is adopted, will reduce to Significant Hazard. As a dam having an assigned significant hazard rating, the structure must be capable of passing the 500-year flood without overtopping. The dam, as currently configured, is not able to safely pass the required flows before overtopping occurs for a significant hazard dam.

Approving the floodplain map within the City of Burlington Municipal Code is the first of several stages the City must complete as identified by the Dam Break Analysis. In the case for Burlington, the floodplain zoning below the dam will change as a result of the study. The inundation area identified in the study as the hydraulic shadow must be adopted into the City's floodplain zoning ordinance as the hydraulic shadow and also used in the development of the Emergency Action Plan (EAP) for the dam. Once the hydraulic shadow has been adopted, the City or Burlington can request, in writing, that the DNR lower the hazard rating from high to significant.

As part of the Dam Safety reduction from High to Substantially-high the required zoning overlay district map must be adopted and incorporated into the City's floodplain/shoreland zoning ordinance. Other requirements include:

- By June 2017, the City will need to ensure stop logs are functional to exercise the dam.
- By November 2017, the City must complete concrete repairs, appropriate signage and removal overgrown vegetation from the concrete walls.

BUDGET/FISCAL IMPACT:

N/A

RECOMMENDATION:

Staff recommends approval of this text amendment.

TIMING/IMPLEMENTATION:

This item is for discussion at the January 17, 2017 Committee of the Whole meeting and is scheduled for final consideration at the February 7, 2017 Common Council meeting.

ATTACHMENTS:

Ordinance

Correspondence from the DNR

Shadow maps

**AN ORDINANCE CREATING SECTION 119-5(B)(2)(a) "FLOODPLAIN OFFICIAL MAPS" OF
THE MUNICIPAL CODE OF THE CITY OF BURLINGTON**

NOW THEREFORE BE IT RESOLVED that the Common Council of the City of Burlington does hereby ordain as follows:

- I. Section 119-5(B)(2)(a) of the City of Burlington Municipal Code entitled, "Official Maps: Based on other studies" is hereby created as follows:

Floodplain map and profile dated April 2015 entitled, "City of Burlington, Dam Break analysis, Racine County" approved by the Wisconsin Department of Natural Resources.

- II. It is further ordained that the application of this ordinance shall be effective after its passage and publication as required by law.
- III. All other provisions as contained in Chapter 119 of the Municipal Code of the City of Burlington shall continue and in full force and effect.

Introduced: January 17, 2017
Adopted:

Jeannie Hefty, Mayor

Attest:

Diahn Halbach, City Clerk

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison WI 53707-7921

Scott Walker, Governor
Cathy Stepp, Secretary
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711



July 8, 2015

Dan Jensen
City of Burlington
300 E. Jefferson St.
Burlington, WI 53105

Subject: Dam Failure Approval and Hazard Rating Assignment, Burlington Dam, Field File 51.01, Key Sequence #602, Racine County.

Dear Mr. Jensen:

We are sending you this approval of the dam failure analysis and setting the hazard rating for the Burlington Dam. The hydrologic and hydraulic analyses, including the dam failure analysis prepared by Kapur & Associates, entitled City of Burlington, Dam Break Analysis, Racine County and dated April 2015 are hereby approved. The hazard rating being assigned by this document is high hazard due to the lack of floodplain zoning within the dam failure floodplain (hydraulic shadow) downstream of the dam. The hazard rating that is possible, once the required zoning is adopted, is Significant Hazard. As a dam having an assigned significant hazard rating, the structure must be capable of passing the 500-year flood without overtopping. The dam, as currently configured is not able to safely pass the required flows before overtopping occurs for a significant hazard dam.

In this particular case, the floodplain zoning below the dam will change as a result of the study. The inundation area identified in the study as the hydraulic shadow must be adopted into the County's floodplain zoning ordinance as the hydraulic shadow and also used in the development of the Emergency Action Plan (EAP) for your dam. Once the hydraulic shadow has been adopted, the City or Burlington can request, in writing, that we lower the hazard rating from high to significant. Nathan Zoch in our Waukesha office will be assisting you and the county in the adoption of the zoning and development of the EAP. Please provide one copy of the maps, profiles and floodway data table directly to your Zoning Administrator and two copies of each to Nathan in our Waukesha office.

If you have questions about this document, please give me a call at 608-266-8033. If you have other questions pertaining to the operation and maintenance of your dam please contact Nathan Zoch at 262-574-2188, or email at Nathan.Zoch@wi.gov.

Thank you for your continued cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'William D. Sturtevant'. The signature is fluid and cursive.

William D. Sturtevant, P.E.
State Dam Safety Engineer
Bureau of Watershed Management
William.Sturtevant@wi.gov

cc. Nathan Zoch - Waukesha
Richard Schneider, P.E. - Kapur & Associates
City of Burlington - ZA
Racine County - ZA

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES**

IN THE MATTER of the Assignment of the Hazard Rating for the Burlington Dam, Located on the White River, in Racine County. FF #51.01

FINDINGS OF FACT

1. The Department of Natural Resources has examined the dam failure analysis, for the Burlington Dam, located in Section 32, Township 3 North, Range 19 East, Racine County, on the White River.
2. The Burlington Dam is owned and operated by the City of Burlington.
3. The analyses entitled "City of Burlington, Dam Break Analysis, Racine County" were performed by Kapur & Associates (Kapur) and dated April 2015.
4. Kapur has determined that a Rating of High Hazard would be appropriate for the dam and the area downstream of the dam until zoning within the dam failure floodplain (hydraulic shadow) has been adopted by the city.
5. There are dwellings within the hydraulic shadow downstream of the dam that would be inundated to a depth less than two feet should the dam fail.
6. There is no floodplain zoning downstream of the dam within the hydraulic shadow.
7. The dam is not able to safely pass the required flow through its spillways as defined by NR 333, for a significant hazard dam.
8. The analyses were performed in compliance with Wisconsin Administrative Codes NR 333, and NR 116.
9. The Department has determined that the project complies with Section 1.11, Wisconsin Statutes, and Section NR 1.95, Wisconsin Administrative Code.
10. The hazard rating meets the standards of Section NR 333.06, Wisconsin Administrative Code.

CONCLUSIONS OF LAW

1. The review has been conducted in accordance with Chapter 31, Wisconsin Statutes, and Chapters NR 333 and NR 116, Wisconsin Administrative Codes.
2. The Department has authority under Chapter 31, Wisconsin Statutes, and Chapter NR 333, Wisconsin Administrative Code, to assign a hazard rating.

ASSIGNMENT OF THE HAZARD RATING

1. The hazard rating of High Hazard is hereby assigned to the dam.
2. Have your consultant provide two additional copies of the maps, profiles and floodway data tables to Nathan Zoch in our Waukesha office for use in the floodplain zoning adoption process.

3. The spillway capacity of the dam must be brought into compliance with NR 333.06, Wisconsin Administrative Code, within 10 years from the date this document was mailed.

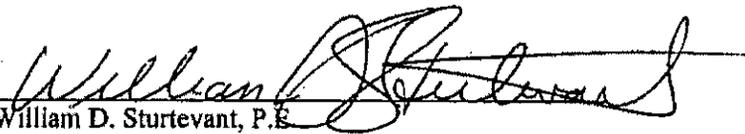
NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review must name the Department of Natural Resources as the respondent.

To request a contested case hearing pursuant to section 227.42, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. All requests for contested case hearings must be made in accordance with section NR 2.05(5), Wis. Adm. Code, and served on the Secretary in accordance with section NR 2.03, Wis. Adm. Code. The filing of a request for a contested case hearing does not extend the 30 day period for filing a petition for judicial review.

This decision was mailed on July 9, 2015.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By 
William D. Sturtevant, P.E.
State Dam Safety Engineer
Bureau of Watershed Management



DATE: January 17, 2017

SUBJECT: **ORDINANCE 2018(14)** repealing and recreating Chapter 270, "Stormwater Management" of the Municipal Code.

SUBMITTED BY: Jim Bergles, Public Works Director and Greg Govenatori, Kapur & Associates

PROJECT/SCOPE:

The City of Burlington was determined to be an urbanized area with a population of 10,000 or more based on the 2010 census data. This classification also states the City is required to create a stormwater management program or MS4, as part of the Federal Clean Water act and managed by the Wisconsin Department Resources.

A MS4 Permit is required for municipalities located within a federally-designated Urbanized Area or with a population of 10,000 or more based on the latest decennial census. The MS4 permit is similar in nature to the discharge permit for our waste water treatment plant, but not as narrowly defined. This permit will require guidelines for eliminating pollutants in our storm water discharge but will not specify the treatment methods. The MS4 permit requires the City to reduce polluted storm water runoff by implementing a storm water management program utilizing best management practices.

As part of the MS4 process, the City passed a resolution in December 2015 approving local funds to allow Kapur & Associates to begin assessing the stormwater that will lead to a Stormwater Management Plan. Additionally, the DNR indicated the city needed to update the three presented ordinances before you this evening to come into compliance with state regulations as follows:

1. Amend Ch. 270, Stormwater Management
2. Create Ch. 271, Storm Sewer Illicit Discharge and Connection
3. Recreate Ch. 148, Construction Site Erosion

As part of the City of Burlington General Permit to Discharge under the Wisconsin Pollutant Discharge Elimination System, and to be in compliance with the provision of Ch. 283 Wis., Stats., and Chs. NR 151 and 216, Wis. Adm. Code, *owners of a Municipal Separate Storm Sewer System (MS4) are required under section 2.5.1 of the permit to develop an ordinance or other regulatory mechanism to regulate post-construction storm water discharges from new development and redevelopment. This ordinance is required to meet specific minimums as required by the MS4 permit. The current Storm Water ordinance was adopted in 2001 and requires modifications to meet the standards of the permit. This ordinance has been recreated to meet the requirements of the permit and is to be in place prior to March of 2017.*

BUDGET/FISCAL IMPACT:

N/A

RECOMMENDATION:

Staff recommends approval of this text amendment to meet the requirements of the MS4 permit.

TIMING/IMPLEMENTATION:

This item is for discussion at the January 17, 2017 Committee of the Whole meeting and is scheduled a Public Hearing and consideration at the February 7, 2017 Common Council meeting.

ATTACHMENTS:

Ordinance

AN ORDINANCE TO REPEAL AND RECREATE CHAPTER 270 "STORMWATER MANAGEMENT" IN THE MUNICIPAL CODE OF THE CITY OF BURLINGTON

- I. Chapter 270 of the Code of the City of Burlington, Racine County, Wisconsin, Stormwater Management is hereby repealed and recreated as follows:

Section 270-1. General provisions.

- A. This chapter is adopted by the Common Council under the authority granted by § 62.234, Wis. Stats.
- B. This chapter supersedes all conflicting and contradictory stormwater management regulations previously enacted under § 62.23, Wis. Stats. Except as specifically provided for in § 62.234, Wis. Stats., § 62.23, Wis. Stats., applies to this chapter and to any amendments to this chapter.
- C. The provisions of this chapter are deemed not to limit any other lawful regulatory powers of the same governing body.
- D. The Common Council hereby designates the City Engineer to administer and enforce the provisions of this chapter:
- E. The requirements of this chapter do not pre-empt more stringent stormwater management requirements that may be imposed by the administrative rules, permits or approvals of the Department of Natural Resources, including but not limited to those authorized under § 283.33, Wis. Stats.

Section 270-2. Findings of fact.

The Common Council finds that uncontrolled stormwater runoff from land development and land redevelopment activity has a significant impact upon water resources and the health, safety and general welfare of the community and diminishes the public enjoyment and use of natural resources. Specifically, uncontrolled stormwater runoff can:

- A. Degrade physical stream habitat by increasing stream bank erosion, increasing stream bed scour, diminishing groundwater recharge, diminishing stream base flows and increasing stream temperature.
- B. Diminish the capacity of lakes and streams to support fish, aquatic life, and recreational and water supply uses by increasing loadings of sediment, suspended solids, nutrients, heavy metals, bacteria, pathogens and other urban pollutants.
- C. Alter wetland communities by changing wetland hydrology and by increasing pollutant loads.
- D. Reduce the quality of groundwater by increasing pollutant loading.
- E. Threaten public health, safety, property, and general welfare by overtaxing storm sewers,

drainageways, and other minor drainage facilities.

- F. Threaten public health, safety, property, and general welfare by increasing major flood peaks and volumes.
- G. Undermine floodplain management efforts by increasing the incidence and levels of flooding.

Section 270-3. Purpose and intent.

A. Purpose. The general purpose of this chapter is to set forth stormwater requirements and criteria which will diminish the threats to public health, safety and welfare and the aquatic environment due to runoff of stormwater from land development and land redevelopment activity. Specific purposes are to:

- (1) Further the maintenance of safe and healthful conditions.
- (2) Prevent and control the adverse effects of stormwater, prevent and control soil erosion, prevent and control water pollution, and protect spawning grounds, fish, and aquatic life.
- (3) Control exceedance of the safe capacity of existing drainage facilities and receiving water bodies, prevent undue channel erosion control increases in the scouring and transportation of particulate matter, and prevent conditions that endanger downstream property.
- (4) Control building sites, placement of structures, and land uses and promote sound economic growth.
- (5) Minimize the amount of pollutants discharged from the separate storm sewer to protect the waters of the state.

B. Intent. It is the Intent of the Common Council that this chapter manage the long-term, post-construction stormwater discharges from land development and land redevelopment activities by achieving a specific set of performance standards at locations where it applies.

(1) This chapter can be applied on a site-by-site basis. The Common Council recognizes, however, that the preferred method of achieving the stormwater performance standards set forth in this chapter is through the preparation and implementation of comprehensive, systems-level stormwater management plans that cover hydrologic units, such as watersheds, on a municipal and regional scale. Such plans may prescribe alternative applicability and performance standards for specific sites when the overall performance standards can be met in a more cost-effective approach.

- (a) Where such plans have been developed, and approved by the Common Council, it is the intent of this chapter that land development and redevelopment activity as defined in Ch. 270-4 will be required to meet the stormwater management measures set forth in the approved plan.
- (b) Where such stormwater management plans have not been developed, and approved by the Common Council, it is the Intent that the stormwater management standards set forth in Ch. 270-7A and B of this chapter be applied unless otherwise excepted by the Common Council.

(2) This chapter shall not apply to lands on which the only structures are buildings existing on the effective date of this chapter, which are not redeveloped in a manner that increases discharge volume after the effective date of this chapter.

Section 270-4. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADEQUATE SOD OR SELF-SUSTAINING VEGETATIVE COVER

Maintenance of sufficient vegetation types and densities such that the physical integrity of the streambank or lakeshore is preserved. Self sustaining vegetative cover includes grasses, forbs, sedges and duff layers of fallen leaves and woody debris.

ADMINISTERING AUTHORITY

The City Engineer is designated by the Common Council to administer this chapter.

AGRICULTURAL ACTIVITY

Planting, growing, cultivating and harvesting of crops for human or livestock consumption and pasturing or yarding of livestock. including sod farms and tree nurseries, but does not include the construction of buildings or facilities used for agriculture.

ATLAS 14

The National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Precipitation-Frequency Atlas of the United States, Volume 8 (Midwestern States), published in 2013.

AVERAGE ANNUAL RAINFALL

A typical calendar year of precipitation as determined by the Wisconsin Department of Natural Resources for users of models such as WinSLAMM, P8 or equivalent methodology. The average annual rainfall is chosen from a department publication for the location closest to the municipality

BEST MANAGEMENT PRACTICE (BMP)

A practice, technique or measure which is determined to be an effective means of preventing or reducing runoff pollutants to waters of the state, to a level compatible with the performance standards in Ch. 270-7 of this chapter.

BUSINESS DAY

A day the City Engineer's office is normally open for business.

CEASE AND DESIST ORDER

A court-issued order to halt land development and land redevelopment activity that is being conducted without the required permit.

CONSTRUCTION SITE

An area upon which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different schedules but under one plan. A long-range planning document that describes separate construction projects, such as a 20-year transportation improvement plan, is not a common plan of development.

COMMON PLAN OF DEVELOPMENT OR SALE

An area where multiple separate and distinct land development activities may be taking place at different times on different schedules but under one plan.

CONNECTED IMPERVIOUSNESS

An impervious surface connected to the waters of the state via a separate storm sewer, an

impervious flow path, or a minimally pervious flow path.

DESIGN STORM

A hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency, and total rainfall depth.

DEVELOPMENT

Residential, commercial, industrial or institutional land uses and associated roads.

DIRECT CONDUITS TO GROUNDWATER

Wells, sinkholes, swallets, fractured bedrock at the surface, mine shafts, non-metallic mines, tile inlets discharging to groundwater, quarries, or depressional groundwater recharge areas over shallow fractured bedrock.

DISCHARGE VOLUME

The quantity of runoff discharged from the land surface as the result of a rainfall event.

EXTRATERRITORIAL

The unincorporated area within three miles of the corporate limits of a first, second, or third class city or within 1.5 miles of a fourth-class city or village.

EFFECTIVE INFILTRATION AREA

The area of the infiltration system that is used to infiltrate runoff and does not include the area used for site access, berms or pretreatment.

EROSION

The process by which the land's surface is worn away by the action of wind, water, ice or gravity.

EXEPTIONAL RESOURCE WATERS

Waters listed in s. NR 102.11, Wis. Adm. Code.

FEE IN LIEU

A monetary payment to the City of Burlington in place of meeting all or part of the stormwater performance standards required by this chapter.

FILTERING LAYER

Means soil that has at least a 3-foot deep layer with at least 20 percent fines; or at least a 5-foot deep layer with at least 10 percent fines; or an engineered soil with an equivalent level of protection as determined by the regulatory authority for the site.

FINAL STABILIZATION

All land disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70 percent of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.

FINANCIAL GUARANTEE

A performance bond, maintenance bond, surety bond, irrevocable letter of credit, or similar guarantee submitted to the City of Burlington by the permit holder to assure requirements of this chapter are carried out in compliance with the stormwater management plan.

IMPERVIOUS SURFACE

A land cover that releases as runoff all or a large portion of the precipitation that falls on it. Rooftops, sidewalks, driveways, parking lots and streets are examples of surfaces that typically are impervious.

INFILTRATION

The process by which rainfall or surface runoff passes into or through the underlying soil.

INFILTRATION SYSTEM

A device or practice such as a basin, trench, rain garden or swale designed specifically to encourage infiltration, but does not include natural infiltration in pervious surfaces such as lawns, redirecting of rooftop downspouts onto lawns or minimal infiltration from practices, such as swales or road side channels designed for conveyance and pollutant removal only.

LAND DISTURBING CONSTRUCTION ACTIVITY

Any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

LANDOWNER

Any person holding fee title, an easement or other interest in property, which allows the person to undertake cropping, livestock management, land disturbing construction activity or maintenance of storm water BMPs on the property.

MAINTENANCE AGREEMENT

A legal document that is filed with the County Register of Deeds as a property deed restriction and which provides for long-term maintenance of stormwater management practices.

MAXIMUM EXTENT PRACTICABLE

The highest level of performance that is achievable but is not equivalent to a performance standard identified in this ordinance as determined in accordance with Ch. 270-55 of this ordinance.

NEW DEVELOPMENT

Means development resulting from the conversion of previously undeveloped land or agricultural land uses.

NRCS MSE3 or MSE4

Distribution means a specific precipitation distribution developed by the United States Department of Agriculture, Natural Resources Conservation Service, using precipitation data from Atlas 14.

OFF SITE

Located outside the property boundary described in the permit application for the land development or land redevelopment activity.

ON SITE

Located within the property boundary described in the permit application for the land development or land redevelopment activity.

ORDINARY HIGH-WATER MARK

Has the meaning given in s. NR 115.03 (6), Wis. Adm. Code.

OUTSTANDING RESOURCE WATERS

Means waters listed in s. NR 102.10, Wis. Adm. Code.

PEAK FLOW DISCHARGE RATE

The maximum unit volume of stormwater discharged during a specified unit of time.

PERFORMANCE STANDARD

A measurable number or measurable narrative for a pollution source that specifies the minimum acceptable outcome for a facility or practice.

PERMIT

A written authorization made by the City of Burlington to the applicant to conduct land development or land redevelopment activities.

PERMIT ADMINISTRATION FEE

A sum of money paid to the City of Burlington by the permit applicant for the purpose of recouping the expenses incurred by the authority in administering the permit

PERVIOUS SURFACE

A surface that infiltrates rainfall during a large portion of the design rainfall event Lawns, fields and woodlands are examples of pervious surfaces.

POLLUTANT

Has the meaning given in s. 283.01 (13), Wis. Stats.

POLLUTION

Has the meaning given in s. 281.01 (10), Wis. Stats.

POST-CONSTRUCTION STORM WATER DISCHARGE

Any stormwater discharged from a site following the completion of land-disturbing construction activity and final site stabilization.

POST-CONSTRUCTION SITE

Means a construction site following the completion of land disturbing construction activity and final site stabilization.

PREDEVELOPMENT CONDITION

The extent and distribution of land cover types present before the initiation of land development or land redevelopment activity, assuming that all land uses prior to development activity are managed in an environmentally sound manner.

PRETREATMENT

The treatment of stormwater prior to its discharge to the primary stormwater treatment practice in order to reduce pollutant loads to a level compatible with the capability of the primary practice.

PROTECTIVE AREA

Means an area of land that commences at the top of the channel of lakes, streams and rivers,

or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface.

REDEVELOPMENT

Means areas where development is replacing older development.

SEPARATE STORM SEWER

A conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all of the following criteria:

- (a) Is designed or used for collecting water or conveying runoff.
- (b) Is not part of a combined sewer system.
- (c) Is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.
- (d) Discharges directly or indirectly to waters of the state.

SILVICULTURE ACTIVITY

Activities including tree nursery operations, tree harvesting operations, reforestation, tree thinning, prescribed burning, and pest and fire control. Clearing and grubbing of an area of a construction site is not a silviculture activity.

SITE

The entire area included in the legal description of the land on which the land disturbing construction activity occurred.

STOP-WORK ORDER

An order issued by the City of Burlington which requires that all construction activity on the site be stopped.

STORM SEWER SYSTEM

A conveyance or system of conveyances, including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which is designed for collecting water or conveying stormwater.

STORMWATER MANAGEMENT PLAN

A document that identifies what actions will be taken to reduce stormwater quantity and pollutant loads from land development and land redevelopment activity to levels that meet the purpose and intent of this chapter.

STORMWATER MANAGEMENT SYSTEM PLAN

A comprehensive plan developed to address stormwater drainage and nonpoint source pollution control problems on a watershed or sub watershed basis and which meets the purpose and intent of this chapter.

STORMWATER RUNOFF

That portion of the precipitation falling during a rainfall event or that portion of melting snow that runs off the surface of the land and into the natural or artificial conveyance or drainage network.

TECHNICAL STANDARD

Means a document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

TOP OF THE CHANNEL

Means an edge, or point on the landscape landward from the ordinary high- water mark of a surface water of the state, where the slope of the land begins to be less than 12 percent continually for at least 50 feet. If the slope of the land is 12 percent or less continually for the initial 50 feet landward from the ordinary high-water mark, the top of the channel is the ordinary high-water mark.

TOTAL MAXIMUM DAILY LOAD OR TMDL

Means the amount of pollutants specified as a function of one or more water quality parameters, that can be discharged per day into a water quality limited segment and still ensure attainment of the applicable water quality standard.

TP-40

Technical Paper No. 40, Rainfall Frequency Atlas of the United States, published in 1961.

TR-55

The United States department of agriculture, natural resources conservation service (previously soil conservation service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986, which is incorporated by reference for this chapter.

TRANSPORTATION FACILITY

A highway, a railroad, a public mass transit facility, a public-use airport, a public trail or any other public work for transportation purposes such as harbor improvements under s. 85.095 (1)(b), Wis. Stats. "Transportation facility" does not include building sites for the construction of public buildings and buildings that are places of employment that are regulated by the Department pursuant to s. 281.33, Wis. Stats.

TSS

Total suspended solids.

TYPE II DISTRIBUTION

Means a rainfall type curve as established in the "United States Department of Agriculture, Soil Conservation Service, Technical Paper 149, published in 1973".

WATERS OF THE STATE

Those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within Wisconsin or its jurisdiction

Section 270-5. Applicability and Jurisdiction.

A. Applicability. Except as described below, this chapter applies to a post-construction site whereupon one acre or more of land disturbing construction activity occurs during construction.

(1) Notwithstanding the applicability requirements in par. (a), this ordinance applies to post-construction sites of any size that, as determined by the City Engineer are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body

of water, causes undue channel erosion, or increases water pollution by scouring or the transportation of particulate matter.

(2) This chapter applies to construction activities that are smaller than one acre if such activities are part of a larger common plan of development or sale that in total affects one or more acres.

(3) Agricultural facilities and practices are exempt from the provisions of this chapter.

(4) Underground utility construction, but not including the construction of any above ground structures associated with utility construction are exempt from the provisions of this chapter.

(5) A post-construction site with less than ten percent connected imperviousness, based on the area of land disturbance, provided the cumulative area of all impervious surfaces is less than one acre is exempt from the provisions of this chapter. However, the exemption of this paragraph does not include exemption from the protective area standards of this chapter.

B. Jurisdiction. This chapter applies to land development and land redevelopment activities within the boundaries of City of Burlington. This chapter applies to all lands located within the extraterritorial plat approval jurisdiction of the City of Burlington, even if plat approval is not involved.

C. Exclusions. This ordinance is not applicable to activities conducted by a state agency, as defined under s.227.01 (1), Wis. Stats.

Section 270-5.5. Applicability of Maximum Extent Practicable.

A. Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the City Engineer's satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

Section 270-6. Design standards.

Unless prior authorization is given by the City Engineer, the following methods shall be used in designing the water quality, peak discharge, and infiltration components of storm water practices needed to meet the water quality standards of this ordinance:

A. Consistent with the technical standards identified, developed or disseminated by the Wisconsin Department of Natural Resources under subchapter V of chapter NR 151, Wis. Adm. Code.

B. Where technical standards have not been identified, or developed by the Wisconsin Department of Natural Resources, other technical standards may be used provided that the methods have been approved by the City Engineer.

C. Maintenance of Effort. For redevelopment sites where the redevelopment will be replacing

older development that was subject to post-construction performance standards of NR 151 in effect on or after October 1, 2004, the responsible party shall meet the total suspended solids reduction, peak flow control, infiltration, and protective areas standards applicable to the older development or meet the redevelopment standards of this ordinance, whichever is more stringent.

D. A written storm water management plan in accordance with Ch. 270-9 shall be developed and implemented for each post-construction site.

Section 270-7. Stormwater management standards.

A. Stormwater discharge quantity. Unless otherwise provided for in this chapter, all land development and land redevelopment activities subject to this chapter shall establish on-site management practices to control the peak flow rates of stormwater discharged from the site and to preserve base flow in streams. The BMPs shall be designed, installed or applied and maintained to the maximum extent practicable in accordance with a stormwater management plan for the long-term control of post-construction stormwater discharges. All of the following apply:

1. By design, maintain or reduce the peak runoff discharge rates as compared to predevelopment conditions for the one, two- and ten-year, twenty-four-hour design storms applicable to the site, assuming good hydrologic conditions for predevelopment land covers as identified in TR-55 or an equivalent methodology. Storage shall be provided to accommodate up to a one-hundred-year, twenty-four-hour design storm for post-development land cover with a maximum discharge rate of the ten-year predevelopment rate. Predevelopment runoff curve numbers in Table 1 shall be used. Peak discharges shall be calculated using TR-55 runoff curve number methodology, Atlas 14 precipitation depths, and the appropriate NRCS Wisconsin MSE3 or MSE4 precipitation distribution. On a case-by-case basis, the City Engineer may allow the use of TP-40 precipitation depths and the Type II distribution

Runoff Curve Number	Hydrologic Soil Group			
	A	B	C	D
Woodland	30	55	70	77
Grassland	39	61	71	78
Cropland	55	69	78	83

(1) Discharge velocities must be non-erosive to discharge locations, outfall channels, and receiving streams.

(2) Minimize to the extent practical increases or decreases in the hydrology of wetlands. Where such changes are proposed, the impact of the proposal on wetland functional values shall be assessed using a methodology acceptable to the City Engineer. Significant degradation of wetland functional values shall be avoided. Acceptable

assessment methodologies can be found in a guide prepared by the Department of Natural Resources, Water Quality Standards for Wetlands: A Regulator's Guide, Bureau of Water Regulation and Zoning, September 1992.

(3) This subsection of the chapter does not apply to any of the following.

- (a) A post-construction site where the discharge is directly into a lake over 5,000 acres or a stream or river segment draining more than 500 square miles**
- (b) Except as provided under Ch. 270-6(C), a redevelopment post-construction site**
- (c) An infill development of less than 5 acres.**

B. Stormwater discharge quality. Unless otherwise provided for in this chapter, all land development and land redevelopment activities subject to this chapter shall establish on-site management practices to control the discharge of stormwater pollutants. The BMPs shall be designed, installed or applied and maintained in accordance with a stormwater management plan for the long-term control of post-construction stormwater discharges, to control total suspended solids and other pollutants carried in runoff to the maximum extent practicable. All of the following apply:

- (1) Bmp's shall be designed in accordance with Table 2. or to the maximum extent practicable as provided in subd. 6. The design shall be based on an average annual rainfall, as compared to no runoff management controls.**

Table 2. TSS Reduction Standards	
Development Type	TSS Reduction
New Development	80 percent
In-fill development	80 percent
Redevelopment	40 percent of load from parking areas and roads

- (2) Petroleum products in runoff from gas station pump areas and vehicle maintenance areas shall be controlled with a properly designed and maintained oil and grease separator or other equivalent practice, which shall remove all visible sheen from the runoff prior to discharge to waters of the state. A gas station pump area which has a properly designed canopy that catches and directs stormwater away from the potential spill areas beneath it and the availability and use of petroleum absorbent pads to immediately clean up spills shall be allowed as an equivalent practice to meet this subsection.**
- (3) Sufficient permanent vegetative cover shall be provided in riparian areas to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas. The minimum width of the riparian area is the width calculated using the procedures in NRCS Standard 393, dated January 1995, or 35 feet, whichever is greater. Riparian area widths are measured from the ordinary high-water mark of lakes, streams and wetlands. This subsection is not applicable to redevelopment sites or to structures that cross or access surface waters, such as boat landings, bridges and culverts.**
- (4) Discharge of urban stormwater pollutants to wetlands from land development and land redevelopment sites shall be minimized to the extent practical. Where such discharges are proposed, the impact of the proposed discharge on wetland functional values shall**

be assessed using a method acceptable to the City Engineer. At a minimum, stormwater discharges shall be pretreated prior to discharge to wetlands. Significant degradation of wetland functional values due to stormwater pollutant loads shall be avoided.

- (5) Stormwater ponds and infiltration devices shall not be located closer to water supply wells than as indicated below without first notifying and obtaining approval from the City Engineer:
 - (a) One hundred feet from a well serving a private water system or a transient, noncommunity public water system.
 - (b) One thousand two hundred feet from a well serving a municipal public water system, an other-than municipal public water system, or a nontransient, noncommunity public water system.
 - (c) The boundary of a recharge area to a wellhead identified in a wellhead area protection plan.
- (6) **Maximum Extent Practicable.** If the design cannot meet a total suspended solids reduction performance standard of Table 2., the storm water management plan shall include a written, site-specific explanation of why the total suspended solids reduction performance standard cannot be met and why the total suspended solids load will be reduced only to the maximum extent practicable.
- (7) **Off-Site Drainage.** When designing BMPs, runoff draining to the BMP from off- site shall be taken into account in determining the treatment efficiency of the practice. Any impact on the efficiency shall be compensated for by increasing the size of the BMP accordingly.

C. Infiltration.

- (1) **Best Management Practices.** BMPs shall be designed, installed, and maintained to infiltrate runoff in accordance with the following or to the maximum extent practicable:
 - (a) **Low imperviousness.** For development up to 40 percent connected imperviousness, such as parks, cemeteries, and low density residential development, infiltrate sufficient runoff volume so that the post- development infiltration volume shall be at least 90 percent of the pre- development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than one percent of the post-construction site is required as an effective infiltration area.
 - (b) **Moderate imperviousness.** For development with more than 40 percent and up to 80 percent connected imperviousness, such as medium and high density residential, multi-family development, industrial and institutional development, and office parks, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 75 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2 percent of the post- construction site is required as an effective infiltration area.
 - (c) **High imperviousness.** For development with more than 80 percent connected imperviousness, such as commercial strip malls, shopping centers, and commercial

downtowns, infiltrate sufficient runoff volume so that the post-development infiltration volume shall be at least 60 percent of the pre-development infiltration volume, based on an average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2 percent of the post-construction site is required as an effective infiltration area.

(2) Pre-development. The pre-development condition shall be the same as specified in Table 1 of the Peak Discharge section of this ordinance.

(3) Source Areas.

(a) Prohibitions. Runoff from the following areas may not be infiltrated and may not qualify as contributing to meeting the requirements of this section unless demonstrated to meet the conditions identified in Ch. 270-7(C)(6):

a. Areas associated with a tier 1 industrial facility identified in s. NR 216.21 (2)(a), including storage, loading and parking. Rooftops may be infiltrated with the concurrence of the regulatory authority.

b. Storage and loading areas of a tier 2 industrial facility identified in s. NR 216.21 (2)(b).

c. Fueling and vehicle maintenance areas. Runoff from rooftops of fueling and vehicle maintenance areas may be infiltrated with the concurrence of the regulatory authority.

(b) Exemptions. Runoff from the following areas may be credited toward meeting the requirement when infiltrated, but the decision to infiltrate runoff from these source areas is optional:

a. Parking areas and access roads less than 5,000 square feet for commercial development.

b. Parking areas and access roads less than 5,000 square feet for industrial development not subject to the Prohibitions under par a.

c. Except as provided under Ch. 270-6(C), redevelopment post-construction sites.

d. In-fill development areas less than 5 acres.

e. Roads on commercial, industrial and institutional land uses, and arterial residential roads.

(4) Location of Practices.

(a) Prohibitions. Infiltration practices may not be located in the following areas:

a. Areas within 1000 feet upgradient or within 100 feet downgradient of direct conduits to groundwater.

b. Areas within 400 feet of a community water system well as specified in s. NR 811.16 (4) or within the separation distances listed in s. NR 812.08 for any private well or non-community well for runoff infiltrated from commercial, including multi-family residential, industrial and institutional land uses or regional devices for one- and two-family residential development.

c. Areas where contaminants of concern, as defined in s. NR 720.03 (2), are present in the soil through which infiltration will occur.

(b) Separation distances.

- a. Infiltration practices shall be located so that the characteristics of the soil and the separation distance between the bottom of the infiltration system and the elevation of seasonal high groundwater or the top of bedrock are in accordance with Table 3:

Source Area	Separation Distance	Soil Characteristics
Industrial, Commercial, Institutional Parking Lots and Residential Arterial Roads	5 feet or more	Filtering Layer
Roofs Draining to Subsurface Infiltration Practices	1 foot or more	Native or Engineered Soil with Particles Finer than Coarse Sand
Roofs Draining to Surface Infiltration Practices	Not Applicable	Not Applicable
All Other Impervious Source Areas	3 feet or more	Filtering Layer

- b. Notwithstanding par. b., applicable requirements for injection wells classified under ch. NR 815 shall be followed.

(c) Infiltration rate exemptions. Infiltration practices located in the following areas may be credited toward meeting the requirements under the following conditions, but the decision to infiltrate under these conditions is optional:

- a. Where the infiltration rate of the soil measured at the proposed bottom of the infiltration system is less than 0.6 inches per hour using a scientifically credible field test method.
- b. Where the least permeable soil horizon to 5 feet below the proposed bottom of the infiltration system using the U.S. Department of Agriculture method of soils analysis is one of the following: sandy clay loam, clay loam, silty clay loam, sandy clay, silty clay, or clay.

(5) Alternate Use. Where alternate uses of runoff are employed, such as for toilet flushing, laundry, or irrigation or storage on green roofs where an equivalent portion of the runoff is captured permanently by rooftop vegetation, such alternate use shall be given equal credit toward the infiltration volume required by this section.

(6) Groundwater Standards.

- (a) Infiltration systems designed in accordance with this section shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating to groundwater and shall maintain compliance with the preventive action limit at a point of standards application in accordance with ch. NR 140. However, if site specific information indicates that compliance with a preventive action limit is not achievable, the infiltration BMP may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.

- (b) Notwithstanding par. a., the discharge from BMPs shall remain below the

enforcement standard at the point of standards application.

- (7) Pretreatment. Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with subd. 6. Pretreatment options may include, but are not limited to, oil and grease separation, sedimentation, biofiltration, filtration, swales or filter strips.
- (8) Maximum Extent Practicable. Where the conditions of subd. 3. and 4. limit or restrict the use of infiltration practices, the performance standard of Ch. 270-7 (C) shall be met to the maximum extent practicable.

D. PROTECTIVE AREAS.

(1) Definition. In this section, "protective area" means an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following widths, as measured horizontally from the top of the channel or delineated wetland boundary to the closest impervious surface. However, in this section, "protective area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, so that runoff cannot enter the enclosure at this location.

- (a) For outstanding resource waters and exceptional resource waters, 75 feet.
- (b) For perennial and intermittent streams identified on a U.S. Geological Survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.
- (c) For lakes, 50 feet.
- (d) For wetlands not subject to par. e. or f., 50 feet.
- (e) For highly susceptible wetlands, 75 feet. Highly susceptible wetlands include the following types: calcareous fens, sedge meadows, open and coniferous bogs, low prairies, coniferous swamps, lowland hardwood swamps, and ephemeral ponds.
- (f) For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include: degraded wetland dominated by invasive species such as reed canary grass; cultivated hydric soils; and any gravel pits, or dredged material or fill material disposal sites that take on the attributes of a wetland.
- (g) In pars. d. to f., determinations of the extent of the protective area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in s. NR 103.03.
- (h) Wetland boundary delineation shall be made in accordance with s. NR
- (i) 103.08 (1m). This paragraph does not apply to wetlands that have been completely filled in compliance with all applicable state and federal regulations. The protective area for wetlands that have been partially filled in compliance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after a fill has been placed. Where there is a legally authorized wetland fill, the protective area standard need not be met in that location.
- (j) For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.
- (k) Notwithstanding pars. a. to i., the greatest protective area width shall apply where rivers, streams, lakes and wetlands are contiguous.

(2) Applicability. This section applies to post-construction sites located within a protective

area, except those areas exempted pursuant to subd. 4.

(3) Requirements. The following requirements shall be met:

- (a) Impervious surfaces shall be kept out of the protective area entirely or to the maximum extent practicable. If there is no practical alternative to locating an impervious surface in the protective area, the storm water management plan shall contain a written, site-specific explanation.
- (b) Where land disturbing construction activity occurs within a protective area, adequate sod or self-sustaining vegetative cover of 70 percent or greater shall be established and maintained where no impervious surface is present. The adequate sod or self-sustaining vegetative cover shall be sufficient to provide for bank stability, maintenance of fish habitat, and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion such as on steep slopes or where high velocity flows occur.
- (c) BMPs such as filter strips, swales, or wet detention ponds, that are designed to control pollutants from non-point sources, may be located in the protective area.

(4) Exemptions. This section does not apply to any of the following:

- (a) Except as provided under Ch. 270-6(C), redevelopment post-construction sites.
- (b) In-fill development areas less than 5 acres.
- (c) Structures that cross or access surface water such as boat landings, bridges, and culverts.
- (d) Structures constructed in accordance with s. 59.692 (1v), Stats.
- (e) Areas of post-construction sites from which the runoff does not enter the surface water, including wetlands, without first being treated by a BMP to meet the local ordinance requirements for total suspended solids and peak flow reduction, except to the extent that vegetative ground cover is necessary to maintain bank stability.

E. SWALE TREATMENT FOR TRANSPORTATION FACILITIES.

(1) Requirement. Except as provided in subd. 2., transportation facilities that use swales for runoff conveyance and pollutant removal are exempt from the requirements of local ordinance requirements for peak flow control, total suspended solids control, and infiltration, if the swales are designed to do all of the following or to the maximum extent practicable:

- (a) Swales shall be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.
- (b) Swales shall comply with sections V.F. (Velocity and Depth) and V.G. (Slope Geometry Criteria) with a swale treatment length as long as that specified in section V.C. (Pre-Treatment) of the Wisconsin Department of Natural Resources technical standard 1005 "Vegetated Infiltration Swales", dated May 2007, or a superseding document. Transportation facility swale treatment does not have to comply with other sections of technical standard 1005.

(2) Other requirements.

- (a) Notwithstanding subd. 1., the [administering authority] may, consistent with water quality standards, require that other requirements, in addition to swale treatment, be met on a transportation facility with an average daily traffic rate greater than

2,500 and where the initial surface water of the state that the runoff directly enters is one of the following:

- a. An outstanding resource water.
- b. An exceptional resource water.
- c. Waters listed in section 303 (d) of the Federal Clean Water Act that are identified as impaired in whole or in part, due to non-point source impacts.
- d. Water where targeted performance standards are developed pursuant to s. NR 151.004, Wis. Adm. Code.

(b) The transportation facility authority shall contact the City Engineer to determine if additional BMPs beyond a water quality swale are needed under this subsection.

F. GENERAL CONSIDERATIONS FOR STORM WATER MANAGEMENT MEASURES. The following considerations shall be observed in on-site and off-site runoff management:

(1) Natural topography and land cover features such as natural swales, natural depressions, native soil infiltrating capacity, and natural groundwater recharge areas shall be preserved and used, to the extent possible, to meet the requirements of this section.

(2) Emergency overland flow for all storm water facilities shall be provided to prevent exceeding the safe capacity of downstream drainage facilities and prevent endangerment of downstream property or public safety.

G. BMP LOCATION.

(1) To comply with the performance standards required under Ch. 270-7 of this ordinance, BMPs may be located on-site or off-site as part of a regional storm water device, practice or system, but shall be installed in accordance with s. NR 151.003, Wis. Adm. Code.

(2) The City Engineer may approve off-site management measures provided that all of the following conditions are met:

(a) The City Engineer determines that the post-construction runoff is covered by a storm water management system plan that is approved by the City of Burlington and that contains management requirements consistent with the purpose and intent of this ordinance.

(b) The off-site facility meets all of the following conditions:

- a. The facility is in place.
- b. The facility is designed and adequately sized to provide a level of storm water control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this ordinance.
- c. The facility has a legally obligated entity responsible for its long-term operation and maintenance.

(3) Where a regional treatment option exists such that the City Engineer exempts the applicant from all or part of the minimum on-site storm water management requirements, the applicant shall be required to pay a fee in an amount determined in negotiation with the City Engineer. In determining the fee for post-construction runoff, the City Engineer shall consider an equitable distribution of the cost for land, engineering design, construction, and maintenance of the regional treatment option.

H. Exceptions. The City Engineer may establish stormwater management requirements either more stringent or less stringent than those set forth in Subsections A and B, provided that

at least one of the following conditions applies:

- (1) The City Engineer determines that an added level of protection is needed to protect sensitive resources.
 - (2) The City Engineer determines that the land development and land redevelopment activity is covered by an approved stormwater management system plan that contains management requirements consistent with the purpose and intent of this chapter.
 - (3) Provisions are made to manage stormwater by an off-site facility, provided that all of the following conditions for the off-site facility are met:
 - (a) The facility is in place.
 - (b) The facility is designed and adequately sized to provide a level of stormwater control equal to or greater than that which would be afforded by on-site practices meeting the performance standards of this chapter.
 - (c) The facility has a legally obligated entity responsible for its long-term operation and maintenance.
 - (4) The City Engineer finds that meeting the minimum on-site management requirements of this chapter is not feasible due to space or site restrictions.
- I. Fee in lieu of on-site stormwater management practices. Where the City Engineer waives under Ch. 270-8C all or part of the minimum on-site stormwater management requirements, notwithstanding Ch. 270-8C(1), the applicant shall be required to pay a fee in an amount determined in negotiation with the City of Burlington and approved by the Common Council. The purpose of the fee is to fund alternative municipal stormwater management measures to offset the environmental and flooding impacts of waiving the requirements. In determining the fee for land development and land redevelopment projects, the City shall consider an equitable distribution of the cost needed for land, engineering design, construction, and maintenance of stormwater management practices. All such fees collected shall be placed in a designated fund to be used exclusively for the City stormwater management practices to be constructed.

Section 270-8. Permit procedure.

- A. Permit required. No landowner or land operator may undertake a land development or land redevelopment activity subject to this chapter without receiving a permit from the City prior to commencing the proposed activity.
- B. Permit application and fee. Unless specifically excluded by this chapter, any landowner or operator desiring a permit shall submit to the City a permit application made on a form provided by the City of Burlington for that purpose.
- (1) Unless otherwise excepted by this chapter, a permit application must be accompanied by the following in order for the permit application to be considered for approval by the City Engineer: a stormwater management plan, a maintenance agreement, a financial guarantee and a nonrefundable permit administration fee established in Ch. 270-12 of this chapter.
 - (2) The stormwater management plan shall be prepared to meet the requirements of Ch. 270-7 and 270-9 of this chapter. The maintenance agreement shall be prepared to meet the requirements of Ch. 270-10 of this chapter, the financial guarantee shall meet the requirements of Ch. 270-11 of this chapter, and fees shall be those established by the

Common Council as set forth in Ch. 270-12 of this chapter.

C. Review and approval of permit application. The City Engineer shall review any permit application that is submitted with a stormwater management plan, maintenance agreement, and the required fee. The following approval procedure shall be used:

- (1) Within 30 days of the receipt of a complete permit application, including all items as required by Subsection B(1), the City Engineer shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved. The City Engineer shall base the decision on requirements set forth in Ch. 270-7, 270-9 and 270-10 of this chapter.
- (2) If the stormwater permit application, plan and maintenance agreement are approved, or if an agreed-upon payment of fees in lieu of stormwater management practices is made, the City shall issue the permit.
- (3) If the stormwater permit application, plan or maintenance agreement are not approved, the City Engineer shall write in detail the reasons.
- (4) The City Engineer may request additional information from the applicant. If additional information is submitted, the City Engineer shall have 15 days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.

D. Permit conditions. All permits issued under this chapter shall be subject to the following conditions, and holders of permits issued under this chapter shall be deemed to have accepted these conditions. The City Engineer may suspend or revoke a permit for violation of a permit condition, following written notification of the permittee. An action by the City to suspend or revoke this permit may be appealed in accordance with Ch. 270-14 of this chapter.

- (1) Compliance with this permit does not relieve the permit holder of the responsibility to comply with other applicable federal, state, and local laws and regulations.
- (2) The permit holder shall design and install all structural and nonstructural stormwater management measures in accordance with the approved stormwater management plan and this permit.
- (3) The permit holder shall notify the City at least two business days before commencing any work in conjunction with the stormwater management plan and within five business days upon completion of the stormwater management practices. If required as a special condition under Subsection D(4), the permit holder shall make additional notification according to a schedule set forth by the City Engineer so that practice installations can be inspected during construction.
- (4) Permits issued under this section may include any special conditions needed to meet the performance standards in Ch. 270-7 or a financial guarantee as provided for in Ch. 270-11 of this chapter.
- (5) Stormwater practice installations required as part of this chapter shall be certified "as built" by a licensed professional engineer. Completed stormwater management practices must pass a final inspection by the City Engineer or his designee to determine if they are in accordance with the approved stormwater management plan and this chapter. The City Engineer or his designee shall notify the permit holder in writing of any changes required in such practices to bring them into compliance with the conditions of this permit.
- (6) The permit holder shall notify the City Engineer of any significant modifications it intends to make to an approved stormwater management plan. The City Engineer will

- require that the proposed modifications be submitted for approval prior to incorporation into the stormwater management plan and execution.
- (7) The permit holder shall maintain all stormwater management practices in accordance with the stormwater management plan until the practices either become the responsibility of the City of Burlington or are transferred to subsequent private owners as specified in the approved maintenance agreement.
 - (8) The permit holder authorizes the City Engineer to perform any work or operations necessary to bring stormwater management measures into conformance with the approved stormwater management plan and consents to a special assessment or charge against the property as authorized under § 66.0627, Wis. Stats., or to charging such costs against the financial guarantee posted under Ch. 270-11 of this chapter.
 - (9) If so directed by the City Engineer, the permit holder shall repair, at the permit holder's own expense, all damage to adjoining private and municipal facilities and drainageways caused by stormwater runoff, where such damage is caused by activities that are not in compliance with the approved stormwater management plan.
 - (10) The permit holder shall permit property access to the City Engineer or his designee for the purpose of inspecting the property for compliance with the approved stormwater management plan and this permit.
 - (11) Where a stormwater management plan involves changes in direction or increases in peak rate and/or total volume of runoff from a site, the City Engineer will require the permittee to make appropriate legal arrangements with affected property owners concerning the prevention of endangerment to property or public safety.
 - (12) The permit holder is subject to the actions detailed in Ch. 270-13 of this chapter if the permit holder fails to comply with the terms of this permit.

E. Permit duration. Permits issued under this section shall be valid from the date of issuance through the date the City Engineer notifies the permit holder that all stormwater management practices have passed the final inspection. If work is not commenced within 180 days, the permit shall expire. The City Engineer may attach additional conditions before reissuing a permit.

Section 270-9. Stormwater management plan.

- A. Plan requirements. The stormwater management plan required under Ch. 270-8B(1) of this chapter shall contain any information the City Engineer requires to evaluate the environmental characteristics of the area affected by land development and land redevelopment activity, the potential impacts of the proposed development upon the quality and quantity of stormwater discharges, the potential impacts upon water resources and drainage utilities, and the effectiveness and acceptability of proposed stormwater management measures in meeting the performance standards set forth in this chapter. Unless specified otherwise by this chapter, stormwater management plans shall contain at a minimum the following information:
- (1) Name, address, telephone number, fax number and e-mail address for the following or their designees: landowner, developer, project engineer for practice design and certification, person(s) responsible for installation of stormwater management practices, and person(s) responsible for maintenance of stormwater management practices prior to the transfer, if any, of maintenance responsibility to another party.
 - (2) A proper legal description of the property proposed to be developed referenced to the United States Public Land Survey system or to block and lot numbers within a recorded land subdivision plat. Include a USGS 7.5 minute topographical map showing the

property boundaries of the proposed development.

(3) Predevelopment site conditions, including:

- (a) One or more site maps at a scale of not less than one inch equals 100 feet. The site maps shall show the following: site location and legal property description; predominant soil types and hydrologic soil groups; existing cover type and condition; topographic contours of the site at a scale not to exceed two feet; topography and drainage network, including enough of the contiguous properties to show runoff patterns onto, through and from the site; watercourses that may affect or be affected by runoff from the site; flow path and direction for all stormwater conveyance sections, including time of travel and time of concentration applicable to each; watershed boundaries used in determinations of peak flow discharge rates and discharge volumes from the site; lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site; limits of the one-hundred-year floodplain; location of wells located within 1,200 feet of stormwater detention ponds, infiltration basins, or infiltration trenches; and wellhead protection areas covering the project area and delineated pursuant to s. NR 811.16, Wis. Admin. Code.
- (b) Computations of peak flow discharge rates and discharge volumes for the two- and ten-year, twenty-four-hour storm events. All major assumptions used in developing input parameters shall be clearly stated. The computations shall be made for each discharge point in the development, and the geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).

(4) Post-development site conditions, including:

- (a) Explanation of the provisions to preserve and use natural topography and land cover features to minimize changes in peak flow runoff rates and volumes to surface waters and wetlands.
- (b) Explanation of any restrictions on stormwater management measures in the development area imposed by wellhead protection plans and ordinances.
- (c) One or more site maps at a scale of not less than one inch equals 100 feet showing the following: post-construction pervious land use, including vegetative cover type and condition; impervious land use, including all buildings, structures, and pavement; post-construction topographic contours of the site at a scale not to exceed two feet; post-construction drainage network, including enough of the contiguous properties to show runoff patterns onto, through and from the site; locations and dimensions of drainage easements; locations of maintenance easements specified in the maintenance agreement; flow path and direction for all stormwater conveyance sections, including time of travel and time of concentration applicable to each; location and type of all stormwater management conveyance and treatment practices, including the on-site and off-site tributary drainage area; location and type of conveyance system that will carry runoff from the drainage and treatment practices to the nearest adequate outlet, such as a curbed street, storm drain, or natural drainageway; watershed boundaries used in determinations of peak flow discharge rates and discharge volumes; any changes to lakes, streams, wetlands, channels, ditches, and other watercourses on and immediately adjacent to the site.
- (d) Computations of peak flow discharge rates for the two-, ten- and one-hundred-year, twenty-four-hour storm events and computation for storage of the one-hundred-year, twenty-four-hour storm event with a maximum ten-year predevelopment discharge rate. All major assumptions used in developing input parameters shall be clearly

stated. The computations of peak flow discharge rates shall be made for each discharge point in the development, and the geographic areas used in making the calculations shall be clearly cross-referenced to the required map(s).

- (e) Results of investigations of soils and groundwater required for the placement and design of stormwater management measures.
- (f) Results of impact assessments on wetland functional values.
- (g) Design computations and all applicable assumptions for the storm sewer system.
- (h) Design computations and all applicable assumptions for stormwater quality practices as needed to show that practices are appropriately sized to meet the performance standards of this chapter.
- (i) Detailed drawings, including cross sections and profiles of all permanent stormwater conveyance and treatment practices.

(5) A description and installation schedule for the stormwater management practices needed to meet the performance standards in Ch. 270-7.

(6) A maintenance plan developed for the life of each stormwater management practice, including the required maintenance activities and maintenance activity schedule.

(7) Cost estimates for the construction, operation, and maintenance of each stormwater management practice.

(8) Other information requested in writing by the City Engineer to determine compliance of the proposed stormwater management measures with the provisions of this chapter.

B. All site investigations, plans, designs, computations, and drawings shall be certified by a licensed professional engineer to be prepared in accordance with accepted engineering practice and requirements of this chapter).

C. Exceptions. The City Engineer may prescribe alternative submittal requirements for applicants seeking an exemption to on-site stormwater management performance standards under Ch. 270-7C of this chapter.

Section 270-10. Maintenance agreement.

A. Maintenance agreement required. The maintenance agreement required for stormwater management practices under Ch. 270-8B of this chapter shall be an agreement between the City and the permittee to provide for maintenance of stormwater practices beyond the duration period of this permit. The agreement or recordable document shall be recorded with the County Register of Deeds so that it is binding upon all subsequent owners of land served by the stormwater management practices.

B. Agreement provisions. The maintenance agreement shall contain the following information and provisions:

- (1) Identification of the stormwater facilities and designation of the drainage area served by the facilities.
- (2) A schedule for regular maintenance of each aspect of the stormwater management system consistent with the stormwater management plan required under Ch. 270-8B.
- (3) Identification of the landowner(s), organization or municipality responsible for long-term maintenance of the stormwater management practices identified in the stormwater plan required under Ch. 270-8B.

- (4) Requirement that the landowner(s), organization, or municipality shall maintain stormwater management practices in accordance with the schedule included in Subsection B(2).
- (5) Authorization for the City to access the property to conduct inspections of stormwater practices as necessary to ascertain that the practices are being maintained and operated in accordance with the agreement.
- (6) A requirement that the City shall maintain public records of the results of the site inspections, shall inform the landowner responsible for maintenance of the inspection results, and shall specifically indicate any corrective actions required to bring the stormwater management practice into proper working condition.
- (7) Agreement that the City notify the party designated under the maintenance agreement of maintenance problems which require correction. The specified corrective actions shall be taken within a reasonable time frame as set by the City Engineer.
- (8) Authorization of the City to perform the corrected actions identified in the inspection report if the landowner does not make the required corrections in the specified time period. The City Treasurer shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to § 66.0627, Wis. Stats.

Section 270-11. Financial guarantee.

- A. Establishment of guarantee. The City of Burlington may require the submittal of a financial guarantee, the form and type of which shall be acceptable to the City Attorney, and which generally shall be an irrevocable letter of credit. The financial guarantee shall be in an amount determined by the City to be the estimated cost of construction and the estimated cost of maintenance of the stormwater management practices during the period which the designated party in the maintenance agreement has maintenance responsibility. The financial guarantee shall give the City the authorization to use the funds to complete the stormwater management practices if the landowner defaults or does not properly implement the approved stormwater management plan, upon written notice to the landowner by the administering authority that the requirements of this chapter have not been met.
- B. Conditions for release. Conditions for the release of the financial guarantee are as follows:
 - (1) Agreement that the City notify the party designated under the maintenance agreement of maintenance problems which require correction. The specified corrective actions shall be taken within a reasonable time frame as set by the City Engineer.
 - (2) Authorization of the City to perform the corrected actions identified in the inspection report if the landowner does not make the required corrections in the specified time period. The City Treasurer shall enter the amount due on the tax rolls and collect the money as a special charge against the property pursuant to § 66.0627, Wis. Stats.

Section 270-12. Fee schedule.

The fees referred to in other sections of this chapter shall be established by the Common Council and may from time to time be modified. A schedule of the fees established by the Common Council shall be available for review in City Clerk's office.

Section 270-13. Enforcement; violations and penalties.

- A. Any land development and land redevelopment activity initiated after the effective date of this chapter by any person, firm, association, or corporation subject to the provisions of this

chapter shall be deemed a violation unless conducted in accordance with the requirements of this chapter.

- B. The City Engineer shall notify the responsible owner or operator by certified mail of any noncomplying land development and land redevelopment activity. The notice shall describe the nature of the violation, remedial actions needed, a schedule for remedial action, and additional enforcement action which may be taken.
- C. Upon receipt of written notification from the City Engineer under Subsection B, the permit holder shall correct work which does not comply with the stormwater management plan or other provisions of this permit. The permit holder shall make corrections as necessary to meet the specifications and schedule set forth by the City Engineer in the notice.
- D. If the violations of this chapter are likely to result in damage to properties (public or private), public facilities, or waters of the state, the City Engineer may enter the land and take emergency actions necessary to prevent such damage. The costs incurred by the City Engineer plus interest and legal costs shall be billed to the owner of title of the property.
- E. The City Engineer is authorized to post a stop-work order on all land development and land redevelopment activity in violation of this chapter or to request the City Attorney to obtain a cease and desist order in any court with jurisdiction.
- F. The City may revoke a permit issued under this chapter for noncompliance with the provisions of this chapter.
- G. Any permit revocation, stop-work order, or cease and desist order shall remain in effect unless retracted by the City or by a court with jurisdiction.
- H. The City is authorized to refer any violation of this chapter, or of a stop-work order or cease and desist order issued pursuant to this chapter, to the City Attorney for the commencement of further legal proceedings in any court with jurisdiction.
- I. Any person, firm, association, or corporation who or which does not comply with the provisions of this chapter shall be subject to a forfeiture of \$500 per day for each day of the violation.
- J. Every violation of this chapter is a public nuisance. Compliance with this chapter may be enforced by an injunction order at the suit of the City of Burlington pursuant to § 62.23(8), Wis. Stats. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to an injunction proceeding.
- K. When the City determines that the holder of a permit issued pursuant to this chapter has failed to follow practices set forth in the stormwater management plan or has failed to comply with schedules set forth in said stormwater management plan, the City Engineer or a party designated by the City Engineer may enter upon the land and perform the work or other operations necessary to bring the condition of said lands into conformance with requirements of the approved plan. The City Engineer shall keep a detailed accounting of the costs and expenses of performing this work. These costs and expenses shall be deducted from any financial security posted pursuant to Ch. 270-11 of this chapter. Where such a security has not been established, or where such a security is insufficient to cover these costs, the costs and expenses shall be entered on the tax roll as a special charge against the property pursuant to § 66.0627, Wis. Stats., and collected with any other taxes levied thereon for the year in which the work is completed.

Section 270-14. Appeals.

- A. The Common Council shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the City in administering this chapter. The Council shall also use the rules, procedures, duties, and powers authorized by statute in hearing and deciding appeals.
 - B. Appeals to the Common Council may be taken by any aggrieved person or by an officer, department, board, or bureau of the City affected by any decision in issuing or not issuing a permit.
- II. It is further ordained that the application of this ordinance shall be effective after its passage and publication as required by law.
- III. All other provisions as contained in Municipal Code of the City of Burlington shall continue and in full force and effect.

Introduced: January 17, 2017
Adopted:

Jeannie Hefty, Mayor

Attest:

Diahnn Halbach, City Clerk



DATE: January 17, 2017

SUBJECT: ORDINANCE 2019(15) to create Chapter 271 "Storm Sewer Illicit Discharge and Connection" in the Municipal Code.

SUBMITTED BY: Jim Bergles, Public Works Director and Greg Govenatori, Kapur & Associates

PROJECT/SCOPE:

As part of the MS4 process, the City passed a resolution in December 2015 approving local funds to allow Kapur & Associates to begin assessing the stormwater that will lead to a Stormwater Management Plan. Additionally, the DNR indicated the city needed to update the three presented ordinances before you this evening to come into compliance with state regulations as follows:

1. Amend Ch. 270, Stormwater Management
2. Create Ch. 271, Storm Sewer Illicit Discharge and Connection
3. Recreate Ch. 148, Construction Site Erosion

As part of the City of Burlington General Permit to Discharge under the Wisconsin Pollutant Discharge Elimination System and in compliance with the provision of Ch. 283 Wis., Stats., and Chapters NR 151 and 216, Wis. Adm. Code, *owners of a Municipal Separate Storm Sewer System (MS4) are required under section 2.3.1 of the permit to develop, implement and enforce a program to detect and remove illicit connections and discharges to the MS4. The program shall create an ordinance or other regulatory mechanism to prevent and eliminate illicit discharges and connections to the MS4. The ordinance has been created to meet the requirements of the permit and is to be in place prior to March of 2017.*

BUDGET/FISCAL IMPACT:

N/A

RECOMMENDATION:

Staff recommends approval of this ordinance to meet the requirements of the MS4 permit.

TIMING/IMPLEMENTATION:

This item is for discussion at the January 17, 2017 Committee of the Whole meeting and is scheduled for final consideration at the February 7, 2017 Common Council meeting.

ATTACHMENTS:

Ordinance

AN ORDINANCE TO CREATE CHAPTER 271 "STORM SEWER ILLICIT DISCHARGE AND CONNECTION" IN THE MUNICIPAL CODE OF THE CITY OF BURLINGTON

- I. Chapter 271 of the Code of the City of Burlington, Racine County, Wisconsin, Storm Sewer Illicit Discharge is hereby created as follows:

Chapter 271 STORM SEWER ILLICIT DISCHARGE AND CONNECTION

- (1) Purpose and Intent
- (2) Definitions
- (3) Applicability
- (4) Responsibility for Administration
- (5) Compatibility with other regulations
- (6) Severability
- (7) Ultimate responsibility
- (8) Discharge prohibitions
- (9) Watercourse protection
- (10) Compliance monitoring
- (11) Requirements to prevent, control, and reduce Stormwater pollutants using best management practices
- (12) Notification of spills
- (13) Violations, enforcement, and penalties
- (14) Cost of abatement of the violation
- (15) Appeals
- (16) Enforcement measures after appeal
- (17) Violations deemed a public nuisance
- (18) Remedies not exclusive

Section 271-1 Purpose and Intent.

The purpose of this ordinance is to provide for the health, safety, environment and general welfare of the citizens of the City of Burlington through the regulation of non-storm water discharges into waters of the state or the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into waters of the state or the MS4 to comply with requirements of the Wisconsin Pollutant Discharge Elimination System (WPDES) permit process. The objectives of this ordinance are:

- (1) To regulate the contribution of pollutants into waters of the state or the MS4 by storm water discharges by any user.
- (2) To prohibit illicit connections and discharges into waters of the state or the MS4.
- (3) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

Section 271-2 Definitions.

For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agency. Employees or designees of the Director of Public Works.

Best Management Practices (BMPs). Structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state. Pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Construction Activity. Activities subject to the City of Burlington construction permits per Construction Site Erosion Control Zoning Ordinance or WPDES construction permits per NR 216 and Ch. 283, Wis. Stats.

Contaminated storm water. Storm water that comes into contact with material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts or industrial machinery in the source areas listed in NR 216.

Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Department (WDNR). The Wisconsin Department of Natural Resources.

Discharge. As defined in Ch. 283, Wis. Stats., when used without qualification includes a discharge of any pollutant.

Discharge of pollutant or discharge of pollutants. As defined in Ch. 283, Wis. Stats. means any addition of any pollutant to the waters of this state from any point source.

Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit Discharge. Any discharge into waters of the state or the municipal separate storm sewer system that is not composed entirely of storm water. Non-storm water discharges that are not considered illicit discharges include water line flushing, landscape irrigation, diverted stream flows, uncontaminated groundwater infiltration, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, firefighting, and discharges authorized under a WPDES permit unless identified by the Director of Public Works as a significant source of pollutants to waters of the state.

Illicit Connections. An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface that allows an illicit discharge to enter waters of the state or the MS4 including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter waters of the state or the MS4 and any connections to waters of the state or the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,

Any drain or conveyance connected from a commercial or industrial land use to waters of the state or the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial Activity. Activities subject to WPDES Industrial Permits per NR 216 and ch. 283, Wis. Stats.

Maximum Extent Practicable (MEP). A level of implementing management practices in order to achieve a performance standard or other goal which takes into account the best available technology, cost effectiveness and other competing issues such as human safety and welfare, endangered and threatened resources, historic properties and geographic features.

Municipality. Any city, town, village, county, county utility district, town sanitary district, town utility district, school district or metropolitan sewage district or any other public entity created pursuant to law and having authority to collect, treat or dispose of sewage, industrial wastes, storm water or other wastes.

Municipal Separate Storm Sewer System (MS4). As defined in Wisconsin Administrative Code NR 216, means a conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all the following criteria:

- (a) Owned or operated by a municipality.
- (b) Designed or used for collecting or conveying storm water.
- (c) Which is not a combined sewer conveying both sanitary and storm water.
- (d) Which is not part of a publicly owned wastewater treatment works that provides secondary or more stringent treatment.

Non-Storm Water Discharge. Any discharge to the MS4 that is not composed entirely of storm water.

Owner. Any person holding fee title, an easement or other interest in property.

Outfall. The point at which storm water is discharged to waters of the state or to a storm sewer.

Person. An individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.

Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

Point source. A discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants may be discharged either into the waters of the state or into a publicly owned treatment works except for a conveyance that conveys only storm water or a discernible, confined and discrete conveyance of storm water for which a permit is required under s. 283.33 (1).

Pollution. As defined in Ch. 283, Wis. Stats., means any man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

Pollution prevention. Taking measures to eliminate or reduce pollution.

Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Storm Water Management Plan/Storm Water Pollution Prevention Plan. A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to waters of the state or the MS4 to the Maximum Extent Practicable.

Wastewater. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Watercourse. A natural or artificial channel through which water flows. These channels include: all blue and dashed blue lines on the USGS quadrangle maps, all channels shown on the soils maps in the NRCS soils book for Racine and Walworth Counties, all channels identified on a site, and new channels that are created as part of a development. The term watercourse includes waters of the state as herein defined.

Waters of the state. As defined in Ch. 283, Wis. Stats., means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.

Wisconsin Pollutant Discharge Elimination System (WPDES) Storm Water Discharge Permit. Means a Wisconsin pollutant discharge elimination system permit issued by the department pursuant to Ch. 283, Stats.

Section 271-3 Applicability.

This ordinance shall apply to all water and discharges entering waters of the state or the MS4 storm drain system generated on any lands unless explicitly exempted by the City of Burlington Department of Public Works.

Section 271-4 Responsibility for Administration.

The Director of Public Works shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the Director of Public Works may be delegated in writing by the Director of Public Works to persons or entities acting in the beneficial interest of or in the employ of the agency.

Section 271-5 Compatibility with Other Regulations.

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

Section 271-6 Severability.

The provisions of this ordinance are hereby declared to be severable. If any provision, clause,

sentence, or paragraph of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

Section 271-7 Ultimate Responsibility.

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

Section 271-8 Discharge Prohibitions.

1. Prohibition of Illicit Discharges.

No person shall throw, dump, spill, drain, or otherwise discharge, cause, or allow others under its control to throw, dump, spill, drain, or otherwise discharge into waters of the state or the MS4 any pollutants or waters containing any pollutants, other than storm water.

2. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows

- a. The following discharges are exempt from discharge prohibitions established by this ordinance: Water line flushing, landscape irrigation, diverted stream flows, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, and discharges authorized under a WPDES permit unless identified by the Director of Public Works as a significant source of pollutants to waters of the state.
- b. Discharges or flow from firefighting, and other discharges specified in writing by the Director of Public Works as being necessary to protect public health and safety.
- c. Discharges associated with dye testing, however this activity requires a verbal notification to the Director of Public Works and the Department of Natural Resources a minimum of one business day prior to the time of the test.
- d. Any non-storm water discharges permitted under a construction activity permit, industrial activity permit, or WPDES permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Director of Public Works prior to allowing discharges to waters of the state or the MS4.

3. Prohibition of Illicit Connections.

- a. The construction, use, maintenance or continued existence of illicit connections to waters of the state or the MS4 is prohibited.
- b. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- c. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to waters of the state or the MS4, or allows such a connection to continue.

- d. Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Director of Public Works.
- e. Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to waters of the state of the MS4, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Director of Public Works requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Director of Public Works.

Section 271-9 Watercourse Protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of soil erosion, trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Section 271-10 Industrial or Construction Activity Discharge

1. Submission of NOI to City of Burlington.
 - a. Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Burlington prior to the allowing of discharges to the MS4.
 - b. The operator of a facility, including construction sites, required to have an NPDES permit to discharge storm water associated with industrial activity shall submit a copy of the Notice of Intent (NOI) to the City of Burlington at the same time the operator submits the original Notice of Intent to the EPA as applicable.
 - c. The copy of the Notice of Intent may be delivered to the City of Burlington either in person or by mailing it to:
Notice of Intent to Discharge Storm Water
City of Burlington
300 N. Pine Street
Burlington, WI 53105
 - d. A person commits an offense if the person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the Notice of Intent to do so to the City of Burlington.

Section 271-11 Compliance Monitoring.

1. Right of Entry: Inspecting and Sampling.

The Director of Public Works shall be permitted to enter and inspect properties and facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.

- a. If a property or facility has security measures in force which require proper identification

and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the Director of Public Works.

b. Facility owners and operators shall allow the Director of Public Works ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records.

c. The Director of Public Works shall have the right to set up on any property or facility such devices as are necessary in the opinion of the Director of Public Works to conduct monitoring and/or sampling of the facility's storm water discharge.

d. The Director of Public Works has the right to require the owner or operator to install monitoring equipment as necessary, and make the monitoring data available to the Director of Public Works. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

e. Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the Director of Public Works and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.

f. Unreasonable delays in allowing the Director of Public Works access to a facility is a violation of this ordinance. A person who is the operator of a facility commits an offense if the person denies the Director of Public Works reasonable access to the facility for the purpose of conducting any activity authorized or required by this ordinance.

2. Special Inspection Warrant.

If the Director of Public Works has been refused access to any part of the premises from which storm water is discharged, and the Director of Public Works is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the Director of Public Works may seek issuance of a special inspection warrant per s. 66.0119, Wis. Stats.

Section 271-12 Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the use of Best Management Practices

The owner or operator of any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into waters of the state or the MS4 through the use of structural and non-structural BMPs. Further, any person responsible for a property or premise, that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to waters of the state or the MS4. Compliance with all terms and conditions of a valid permit authorizing the discharge of storm water associated with industrial activity or construction activity, to the maximum extent practicable, shall be deemed compliance with the provisions of this section.

Section 271-13 Notification of Spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or

operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which is resulting or may result in illicit discharges or pollutants discharging into storm water, the MS4, or waters of the state, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release, so as to minimize the impacts of the discharge.

In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services, and shall also notify the Director of Public Works. In the event of a release of non-hazardous materials, said person shall notify the Director of Public Works in person or by phone or email or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Director of Public Works within 3 business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least 5 years.

Failure to provide notification of a release as provided above is a violation of this ordinance.

Section 271-14 Violations, Enforcement, and Penalties.

1. Violations.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the Director of public Works is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation. The Director of public Works is authorized to seek costs of the abatement as outlined in Section 271-15.

2. Warning Notice.

When the Director of Public Works finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the Director of Public Works may serve upon that person a verbal or written Warning Notice, specifying the violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in the subsection shall limit the authority of the Director of Public Works to take action, including emergency action or any other enforcement action without first issuing a Warning Notice.

3. Notice of Violation.

Whenever the Director of Public Works finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the Director of Public Works may order compliance by written notice of violation to the responsible person.

The Notice of Violation shall contain:

- a. The name and address of the alleged violator;
- b. The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- c. A statement specifying the nature of the violation;

- d. A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;
- e. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- f. A statement that the determination of violation may be appealed to the Director of Public Works by filing a written notice of appeal within 5 business days of service of notice of violation; and
- g. A statement specifying that, should the violator fail to restore compliance within the established time schedule, representatives of the Director of Public Works may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this ordinance. The Director of Public Works may go on the land and commence the work after issuing the notice of intent. The Director of Public Works is authorized to seek costs of the abatement as outlined in Section 271-15.

Such notice may require without limitation:

- a. The performance of monitoring, analyses, and reporting;
- b. The elimination of illicit connections or discharges;
- c. That violating discharges, practices, or operations shall cease and desist;
- d. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- e. Payment of a fine to cover administrative and remediation costs; and
- f. The implementation of BMPs.
- g. Suspension of MS4 Access.

4. Emergency Cease and Desist Orders

When the Director of Public Works finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the state which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the Director of public Works may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

- a. Immediately comply with all ordinance requirements; and
- b. Take such appropriate preventative action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Director of Public Works may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the state, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Director of Public Works may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Director of Public Works that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this ordinance.

A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Director of Public Works within 30 days of receipt of the Notice of Violation.

5. Suspension due to Illicit Discharges in Emergency Situations

The Director of Public Works may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the state. If the violator fails to comply with a suspension order issued in an emergency, the Director of Public Works may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the state, or to minimize danger to persons.

6. Suspension due to the Detection of Illicit Discharge

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Director of Public Works will notify a violator of the proposed termination of its MS4 access.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the Director of Public Works.

7. Prosecution and Penalties.

Any person violating any provision of this ordinance shall be subject to a forfeiture of not less than \$25.00 nor more than \$1,000.00 and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.

The Director of Public Works may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, river bank cleanup, etc. Compliance with the provisions of this ordinance may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.

Section 271-15 Cost of Abatement of the Violation.

The costs of the work performed by the Director of Public Works pursuant to this ordinance, plus interest at the rate authorized by the City of Burlington shall be billed to the responsible party. In the event a responsible party fails to pay the amount due, the clerk shall enter the amount due on the tax rolls and collect it as a special assessment against the property pursuant to subch. VII of ch. 66, Wis. Stats.

Section 271-16 Appeals.

1. Board of Appeals.

The Board of Appeals created pursuant to Chapter 119.29 of City of Burlington Code of Ordinances enacted pursuant to 62.23(7)(e), Wis. Stats.:

- a. Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the Director of Public Works in administering this ordinance except for cease and desist orders obtained under Section 271-13(4).
- b. Upon appeal, may authorize variances from the provisions of this ordinance which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship; and shall use rules, procedures, duties and powers authorized by statute in hearing and deciding appeals and authorizing variances.

2. Who May Appeal.

Appeals to the board of appeals may be taken by an aggrieved person or by any office, department, board, or bureau of the City of Burlington affected by any decision of the Director of Public Works.

Section 271-17 Enforcement Measures After Appeal.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, the appropriate authority upheld the decision of the Director of Public Works, then representatives of the Director of Public Works may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this ordinance. The Director of Public Works may go on the land and commence the work after issuing the notice of intent. The Director of Public Works is authorized to seek costs of abatement as outlined in Section 271-14. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

Section 271-18 Violations Deemed a Public Nuisance.

Any condition in violation of any of the provisions of this ordinance and declared and deemed a nuisance, may be summarily abated or restored at the violator's expense.

Section 271-19 Remedies Not Exclusive.

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Director of Public Works to seek cumulative remedies.

The Director of Public Works may recover all attorneys' fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

- II. It is further ordained that the application of this ordinance shall be effective after its passage and publication as required by law.
- III. All other provisions as contained in Municipal Code of the City of Burlington shall continue and in full force and effect.

Introduced: January 17, 2017
Adopted:

Jeannie Hefty, Mayor

Attest:

Diahnn Halbach, City Clerk



DATE: January 17, 2017

SUBJECT: ORDINANCE 2020(16) to repeal and recreate Chapter 148 "Construction Site Erosion" in the Municipal Code.

SUBMITTED BY: Jim Bergles, Public Works Director and Greg Govenatori, Kapur & Associates

PROJECT/SCOPE:

As part of the MS4 process, the City passed a resolution in December 2015 approving local funds to allow Kapur & Associates to begin assessing the stormwater that will lead to a Stormwater Management Plan. Additionally, the DNR indicated the city needed to update the three presented ordinances before you this evening to come into compliance with state regulations as follows:

1. Amend Ch. 270, Stormwater Management
2. Create Ch. 271, Storm Sewer Illicit Discharge and Connection
3. Recreate Ch. 148, Construction Site Erosion

As part of the City of Burlington General Permit to Discharge under the Wisconsin Pollutant Discharge Elimination System and in compliance with the provision of Ch. 283 Wis., Stats., and Chs. NR 151 and 216, Wis. Adm. Code, *owners of a Municipal Separate Storm Sewer System (MS4) are required under section 2.4.1 of the permit to develop an ordinance or other regulatory mechanism to require erosion and sediment control at construction sites and establish sanctions to ensure compliance. The ordinance is required to meet specific minimums as required by the permit. The current erosion control ordinance was adopted in 2010 and requires modifications to meet the standards of the permit. This ordinance has been recreated to meet the requirements of the permit and is to be in place prior to March of 2017.*

BUDGET/FISCAL IMPACT:

N/A

RECOMMENDATION:

Staff recommends approval of this text amendment to meet the requirements of the MS4 permit.

TIMING/IMPLEMENTATION:

This item is for discussion at the January 17, 2017 Committee of the Whole meeting and is scheduled for final consideration at the February 7, 2017 Common Council meeting.

ATTACHMENTS:

Ordinance

AN ORDINANCE TO REPEAL AND RECREATE CHAPTER 148 “CONSTRUCTION SITE EROSION” IN THE MUNICIPAL CODE OF THE CITY OF BURLINGTON

- I. Chapter 148 of the Code of the City of Burlington, Racine County, Wisconsin, Site Construction Erosion is hereby repealed and recreated as follows:

148-1. Legislative authority.

- A. This chapter is adopted under the authority granted by § 62.234, Wis. Stats. This chapter supersedes all provisions of an ordinance previously enacted under § 62.23, Wis. Stats., that relate to construction site erosion control. Except as otherwise specified in § 62.234, Wis. Stats. § 62.23, Wis. Stats., applies to this chapter and to any amendments to this chapter.
- B. The provisions of this chapter are deemed not to limit any other lawful regulatory powers of the same governing body.
- C. The Common Council hereby designates the City Engineer to administer and enforce the provisions of this chapter.
- D. The requirements of this chapter do not preempt more stringent erosion and sediment control requirements that may be imposed by any of the following:
- (1) Wisconsin Department of Natural Resources administrative rules, permits or approvals including those authorized under § 281.16 and 283.33, Wis. Stats.
 - (2) Targeted nonagricultural performance standards promulgated in rules by the Wisconsin Department of Natural Resources under § NR 151.004, Wis. Adm. Code.

148-2. Findings of fact.

The Common Council finds that runoff from land-disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state in the City of Burlington.

148-3. Purpose.

It is the purpose of this chapter to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion; protect spawning grounds, fish and aquatic life; control building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth, by minimizing the amount of sediment and other pollutants carried by runoff or discharged from land-disturbing construction activity to waters of the state in the City of Burlington.

148-4. Applicability; jurisdiction; exclusions.

A. Applicability.

- (1) This chapter applies to the following land-disturbing construction activities except as provided under Subsection A(2).
 - (a) A construction site, which which one or more land disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land disturbing construction activities may be taking place at different times on different

~~schedules but under one plan. A long-range planning document that describes separate construction projects, such as a 20-year transportation improvement plan, is not a common plan of development. has one or more acres of land-disturbing construction activity.~~

- (b) Notwithstanding the applicability requirements in Subsection A(1)(a), this chapter applies to construction sites of any size that, in the opinion of the City Engineer, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.
- (2) This chapter does not apply to the following:
- (a) ~~Transportation facilities, except transportation facility construction projects that are part of a larger common plan of development such as local roads within a residential or industrial development.~~
 - (a) ~~Land-disturbing construction activity that includes the construction of a building and is otherwise regulated by the Wisconsin Department of Commerce under Comm 21.125 or Comm 60, Wis. Adm. Code.~~
 - (b) A construction project that is exempted by federal statutes or regulations from the requirement to have a national pollutant discharge elimination system permit issued under Title 40, Code of Federal Regulations, Part 122, for land-disturbing construction activity.
 - (c) Nonpoint discharges from agricultural facilities and practices.
 - (d) Nonpoint discharges from silviculture activities.
 - (e) Routine maintenance for project sites under five acres of land disturbance if performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility.

B. Jurisdiction. This chapter applies to land-disturbing construction activities on lands within the boundaries and jurisdiction of the City of Burlington, as well as the extraterritorial division of land subject to an ordinance enacted pursuant to § 236.45(2) and (3), Wis. Stats.

C. Exclusions. This chapter is not applicable to activities conducted by a state agency, as defined under § 227.01 (1), Wis. Stats., but also including the office of district attorney, which is subject to the state plan promulgated or a memorandum of understanding entered into under § 281.33 (2), Wis. Stats.

148-5. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADMINISTERING AUTHORITY

A governmental employee, or a regional planning commission empowered under §62.234, Wis. Stats., that is designated by the City of Burlington to administer this chapter.

AGRICULTURAL FACILITIES AND PRACTICES

Has the meaning in § 281.16(1), Wis. Stats.

~~**AVERAGE ANNUAL RAINFALL**~~

~~A calendar year of precipitation, excluding snow, which is considered typical.~~

BEST MANAGEMENT PRACTICE or BMP

Structural or nonstructural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants carried in runoff to waters of the state.

BUSINESS DAY

A day the office of the City Engineer is routinely and customarily open for business.

CEASE-AND-DESIST ORDER

A court-issued order to halt land-disturbing construction activity that is being conducted without the required permit.

CONSTRUCTION SITE

An area upon which one or more land-disturbing construction activities occur, including areas that are part of a larger common plan of development or sale where multiple separate and distinct land-disturbing construction activities may be taking place at different times on different schedules but under one plan.

DESIGN STORM

A hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.

DIVISION OF LAND

The creation from one parcel of two or more parcels or building sites of one or fewer acres each in area where such creation occurs at one time or through the successive partition within a five-year period.

EROSION

The process by which the land's surface is worn away by the action of wind, water, ice or gravity.

EROSION AND SEDIMENT CONTROL PLAN

A comprehensive plan developed to address pollution caused by erosion and sedimentation of soil particles or rock fragments during construction.

EXTRATERRITORIAL

The unincorporated area within three miles of the corporate limits of a first, second, or third class city, or within 1.5 miles of a fourth class city or village.

FINAL STABILIZATION

That all land-disturbing construction activities at the construction site have been completed and that a uniform perennial vegetative cover has been established, with a density of at least 70% of the cover, for the unpaved areas and areas not covered by permanent structures, or that employ equivalent permanent stabilization measures.

GOVERNING BODY

Town board of supervisors, county board of supervisors, city council, village board of trustees or village council.

LAND-DISTURBING CONSTRUCTION ACTIVITY

Any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land-disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

MEP or MAXIMUM EXTENT PRACTICABLE

The highest level of performance that is achievable but is not equivalent to a

performance standard identified in this ordinance as determined in accordance with 148-55 of this ordinance

~~A level of implementing best management practices in order to achieve a performance standard specified in this chapter which takes into account the best available technology, cost effectiveness and other competing issues, such as human safety and welfare, endangered and threatened resources, historic properties and geographic features. MEP allows flexibility in the way to meet the performance standards and may vary based on the performance standard and site conditions.~~

PERFORMANCE STANDARD

A narrative or measurable number specifying the minimum acceptable outcome for a facility or practice.

PERMIT

A written authorization made by the City Engineer to the applicant to conduct land-disturbing construction activity or to discharge post-construction runoff to waters of the state.

POLLUTANT

Has the meaning given in § 283.01 (13), Wis. Stats.

POLLUTION

Has the meaning given in § 281.01 (10), Wis. Stats.

RESPONSIBLE PARTY

Any entity holding fee title to the property or performing services to meet the performance standards of this chapter through a contract or other agreement.

RUNOFF

Stormwater or precipitation, including rain, snow or ice melt or similar water that moves on the land surface via sheet or channelized flow.

SEDIMENT

Settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

SEPARATE STORM SEWER

A conveyance or system of conveyances including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, constructed channels or storm drains, which meets all the following criteria:

- A. Is designed or used for collecting water or conveying runoff.
- B. Is not part of a combined sewer system.
- C. Is not draining to a stormwater treatment device or system.
- D. Discharges directly or indirectly to waters of the state.

SITE

The entire area included in the legal description of the land on which the land-disturbing construction activity is proposed in the permit application.

STOP-WORK ORDER

An order issued by the City Engineer which requires that all construction activity on the site be stopped.

TECHNICAL STANDARD

A document that specifies design, predicted performance and operation and maintenance specifications for a material, device or method.

TRANSPORTATION FACILITY

A highway, a railroad, a public mass transit facility, a public-use airport, a public trail or any other public work for transportation purposes such as harbor improvements under s. 85.095 (1)(b), Wis. Stats. "Transportation facility" does not include building sites for the construction of public buildings and buildings that

WATERS OF THE STATE

Has ncludes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

§ 148-55. Applicability of Maximum Extent Practicable

Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the City Engineer's satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.

~~148-55. Applicability of Maximum Extent Practicable~~

~~Maximum extent practicable applies when a person who is subject to a performance standard of this ordinance demonstrates to the City Engineer's satisfaction that a performance standard is not achievable and that a lower level of performance is appropriate. In making the assertion that a performance standard is not achievable and that a level of performance different from the performance standard is the maximum extent practicable, the responsible party shall take into account the best available technology, cost effectiveness, geographic features, and other competing interests such as protection of public safety and welfare, protection of endangered and threatened resources, and preservation of historic properties.~~

~~the meaning given in § 281.01 (18), Wis. Stats.~~

148-6. Technical standards.

A. Design criteria, standards and specifications.

(1) All BMPs required to comply with this chapter shall meet the design criteria, standards and specifications based on any of the following:

(a) Applicable design criteria, standards and specifications identified in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222 Latest Revision.

(b) Other design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under Subchapter V of Chapter NR 151, Wis. Adm. Code.

- (c) For this chapter, average annual basis is calculated using the appropriate annual rainfall or runoff factor, also referred to as the R factor, or an equivalent design storm using a type II distribution, with consideration given to the geographic location of the site and the period of disturbance.
- (2) Note to users: The USLE, and its successors RUSLE and RUSLE2, utilize an R factor which has been developed to estimate annual soil erosion, averaged over extended time periods. The R factor can be modified to estimate monthly and single-storm erosion. A design storm can be statistically calculated to provide an equivalent R factor as an average annual calculation.

B. Other standards. Other technical standards not identified or developed in Subsection A may be used, provided that the methods have been approved by the City Engineer.

148-7. Performance standards For Construction Sites Under One Acre.

A. Responsible party. The responsible party shall implement an erosion and sediment control plan, developed in accordance with § 148-10, that incorporates the requirements of this section.

- (1) The deposition of soil from being tracked onto streets by vehicles.
 - (2) The discharge of sediment from disturbed areas into on-site storm water inlets.
 - (3) The discharge of sediment from disturbed areas into adjacent waters of the state.
 - (4) The discharge of sediment from drainage ways that flow off the site.
 - (5) The discharge of sediment by dewatering activities.
 - (6) The discharge of sediment eroding from soil stockpiles existing for more than 7 days.
 - (7) The transport by runoff into waters of the state of chemicals, cement, and other building compounds and materials on the construction site during the construction period.
- (+)(8) However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this subdivision.

B. Location. The BMPs used to comply with this section shall be located prior to runoff entering waters of the state.

Note to users: Regional treatment facilities are appropriate for control of post-construction pollutants and they shall not be used for construction site sediment removal.

B.C. Implementation. The BMPs used to comply with this section shall be implemented as follows:

- (1) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin.
 - (2) Erosion and sediment control practices shall be maintained until final stabilization.
 - (3) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.
 - (4) Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.
- (+)(5) BMPs that are no longer necessary for erosion and sediment control shall be removed by the responsible party.

D. Alternate requirements. The City Engineer may establish stormwater management requirements more stringent than those set forth in this section if the City Engineer

determines that an added level of protection is needed for sensitive resources.

148-78. Performance ~~standards~~Standards for Construction Sites of One Acre or More.

- A. Responsible party. The responsible party shall implement an erosion and sediment control plan, developed in accordance with § 148-910, that incorporates the requirements of this section.
- B. Plan. A written plan shall be developed in accordance with § 148-910, and implemented for each construction site. Note to users: The written plan may be that specified within NR 216.46, the erosion control portion of a construction plan or other plan.
- C. Erosion and other pollutant control requirements. The plan required under Subsection B shall include the following:

~~(1) BMPs that, by design, achieve to the maximum extent practicable, a reduction of 80% of the sediment load carried in runoff, on an average annual basis, as compared with no sediment or erosion controls until the construction site has undergone final stabilization. No person shall be required to exceed an eighty-percent sediment reduction to meet the requirements of this subsection. Erosion and sediment control BMPs may be used alone or in combination to meet the requirements of this subsection. Credit toward meeting the sediment reduction shall be given for limiting the duration or area, or both, of land-disturbing construction activity, or other appropriate mechanism. Note to users: Soil loss prediction tools that estimate the sediment load leaving the construction site under varying land and management conditions, or methodology identified in Subch. V. of Ch. NR 151, Wis. Adm. Code, may be used to calculate sediment reduction.~~

(1) Erosion and Sediment Control Practices. Erosion and sediment control practices at each site where land disturbing construction activity is to occur shall be used to prevent or reduce all of the following:

~~(2) Notwithstanding Subsection C(1), if BMPs cannot be designed and implemented to reduce the sediment load by 80%, on an average annual basis, the plan shall include a written and site-specific explanation as to why the eighty-percent reduction goal is not attainable and the sediment load shall be reduced to the maximum extent practicable.~~

~~(3) Where appropriate, the plan shall include sediment controls to do all of the following to the maximum extent practicable:~~

~~(a) Prevent tracking of sediment from the construction site onto roads and other paved surfaces.~~

~~(b) Prevent the discharge of sediment as part of site dewatering.~~

~~(c) Protect the separate storm drain inlet structure from receiving sediment.~~

~~(d) The discharge of sediment from disturbed areas into on-site storm water inlets.~~

~~(e) The discharge of sediment from disturbed areas into adjacent waters of the state.~~

~~(f) The discharge of sediment eroding from soil stockpiles existing for more than 7 days.~~

~~(g) The discharge of sediment from erosive flows at outlets and in downstream channels.~~

~~(h) The transport by runoff into waters of the state of untreated wash water from vehicle and wheel washing.~~

~~(4)(2)~~ The use, storage and disposal of chemicals, cement and other compounds and materials used on the construction site shall be managed during the

construction period, to prevent their entrance into waters of the state. However, projects that require the placement of these materials in waters of the state, such as constructing bridge footings or BMP installations, are not prohibited by this subsection.

D. SEDIMENT PERFORMANCE STANDARDS. In addition to the erosion and sediment control practices under par. (a), the following erosion and sediment control practices shall be employed:

(1) BMPs that, by design, discharge no more than 5 tons per acre per year, or to the maximum extent practicable, of the sediment load carried in runoff from initial grading to final stabilization.

(2) No person shall be required to employ more BMPs than are needed to meet a performance standard in order to comply with maximum extent practicable. Erosion and sediment control BMPs may be combined to meet the requirements of this paragraph. Credit may be given toward meeting the sediment performance standard of this paragraph for limiting the duration or area, or both, of land disturbing construction activity, or for other appropriate mechanisms.

~~(4)~~(3) Notwithstanding subd. 1., if BMPs cannot be designed and implemented to meet the sediment performance standard, the erosion and sediment control plan shall include a written, site-specific explanation of why the sediment performance standard cannot be met and how the sediment load will be reduced to the maximum extent practicable.

E. Preventive Measures. The erosion and sediment control plan shall incorporate all of the following:

(1) Maintenance of existing vegetation, especially adjacent to surface waters whenever possible.

(2) minimization of soil compaction and preservation of topsoil.

(3) Minimization of land disturbing construction activity on slopes of 20 percent or more.

(4) Development of spill prevention and response procedures.

F. Location. The BMPs used to comply with this section shall be located prior to runoff entering waters of the state.

Note to users: Regional treatment facilities are appropriate for control of post-construction pollutants and they shall not be used for construction site sediment removal.

G. Implementation. The BMPs used to comply with this section shall be implemented as follows:

(1) Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin in accordance with the erosion and sediment control plan developed in § 148-8 (B).

(2) Erosion and sediment control practices shall be maintained until final stabilization.

(3) Final stabilization activity shall commence when land disturbing activities cease and final grade has been reached on any portion of the site.

(4) Temporary stabilization activity shall commence when land disturbing activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.

(5) BMPs that are no longer necessary for erosion and sediment control shall be

removed by the responsible party.

H. Alternate requirements. The City Engineer may establish stormwater management requirements more stringent than those set forth in this section if the City Engineer determines that an added level of protection is needed for sensitive resources.

148-89. Permit requirements; application procedures; fees.

- A. Permit required. No responsible party may commence a land-disturbing construction activity subject to this chapter without receiving prior approval of an erosion and sediment control plan for the site and a permit from the City Engineer.
- B. Permit application and fees. At least one responsible party desiring to undertake a land-disturbing construction activity subject to this chapter shall submit an application for a permit and an erosion and sediment control plan that meets the requirements of § 148-9-10 and shall pay an application fee as determined on the permit application form to the City of Burlington, Building Inspector. By submitting an application, the applicant is authorizing the City Engineer to enter the site to obtain information required for the review of the erosion and sediment control plan. Fees will double for any land disturbance activities requiring a permit beginning prior to receiving a permit.
- C. Review and approval of permit application. The City Engineer shall review any permit application that is submitted with an erosion and sediment control plan, and the required fee. The following approval procedure shall be used:
- (1) Within 10 business days of the receipt of a complete permit application, as required by Subsection B, the City Engineer shall inform the applicant whether the application and plan are approved or disapproved based on the requirements of this chapter.
 - (2) If the permit application and plan are approved, the City Engineer shall issue the permit.
 - (3) If the permit application or plan is disapproved, the City Engineer shall state in writing the reasons for disapproval.
 - (4) The City Engineer may request additional information from the applicant. If additional information is submitted, the City Engineer shall have 10 business days from the date the additional information is received to inform the applicant that the plan is either approved or disapproved.
 - (s) Failure by the City Engineer to inform the permit applicant of a decision within 10 business days of a required submittal shall be deemed to mean approval of the submittal and the applicant may proceed as if a permit had been issued.
- D. Surety bond. As a condition of approval and issuance of the permit, the City Engineer may require the applicant to deposit a surety bond or irrevocable letter of credit to guarantee a good faith execution of the approved erosion control plan and any permit conditions.
- E. Permit requirements. All permits shall require the responsible party to:
- (1) Notify the City Engineer within 48 hours of commencing any land-disturbing construction activity.
 - (2) Notify the City Engineer of completion of any BMPs within 14 days after their installation.
 - (3) Obtain permission in writing from the City Engineer prior to any modification pursuant to Ch. 148-9C-10C of the erosion and sediment control plan.
 - (4) Install all BMPs as identified in the approved erosion and sediment control plan.

- (5) ~~(5)~~ Maintain all road drainage systems, stormwater drainage systems, BMPs and other facilities identified in the erosion and sediment control plan.
 - (6) Repair any siltation or erosion damage to adjoining surfaces and drainage ways resulting from land-disturbing construction activities and document repairs in a site erosion control log.
 - (7) Inspect the BMPs within 24 hours after each rain of 0.5 inch or more which results in runoff during active construction periods, and, at least once each week, make needed repairs and document the findings of the inspections in a site erosion control log with the date of inspection, the name of the person conducting the inspection, and a description of the present phase of the construction at the site.
 - (8) Allow the City Engineer to enter the site for the purpose of inspecting compliance with the erosion and sediment control plan or for performing any work necessary to bring the site into compliance with the control plan. Keep a copy of the erosion and sediment control plan at the construction site.
- F. Permit conditions. Permits issued under this section may include conditions established by the City Engineer in addition to the requirements set forth in Subsection E, where needed to assure compliance with the performance standards in § 148-78.
- G. Permit duration. Permits issued under this section shall be valid for a period of 180 days, or the length of the building permit or other construction authorizations, whichever is longer, from the date of issuance. The City Engineer may extend the period one or more times for up to an additional 180 days. The City Engineer may require additional BMPs as a condition of the extension if they are necessary to meet the requirements of this chapter.
- H. Maintenance and removal. The responsible party throughout the duration of the construction activities shall maintain all BMPs necessary to meet the requirements of this chapter until the site has undergone final stabilization. The responsible party shall remove all erosion control devices upon stabilization of disturbed areas. Minor restoration may be required within areas of BMP removal at the responsible parties' costs.

148-910. Erosion and sediment control plan; statement; amendments.

A. Erosion and sediment control plan.

- (1) An erosion and sediment control plan shall be prepared and submitted to the City Engineer.
- (2) The erosion and sediment control plan shall be designed to meet the performance standards in Ch. 148-§7, Ch. 148-78 and other requirements of this chapter.
- (3) The erosion and sediment control plan shall address pollution caused by soil erosion and sedimentation during construction and up to final stabilization of the site. The erosion and sediment control plan shall include, at a minimum, the following items:
 - (a) The name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm. The application shall also include start and end dates for construction.
 - (b) Description of the site and the nature of the construction activity, including representation of the limits of land disturbance on a United States Geological Service 7.5 minute series topographic map.
 - (c) A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment

of permanent vegetation.

(d) Estimates of the total area of the site and the total area of the site that is expected to be disturbed by construction activities.

~~(e) Calculations to show the compliance with the performance standard in, Ch. 148-8 (D)(1).~~

~~(e) Estimates, including calculations, if any, of the runoff coefficient of the site before and after construction activities are completed.~~

~~(f) Calculations to show the expected percent reduction in the average annual sediment load carried in runoff as compared to no sediment or erosion controls.~~

~~(g)(f)~~ Existing data describing the surface soil as well as subsoils.

~~(h)(g)~~ Depth to groundwater, as indicated by Natural Resources Conservation Service soil information where available.

~~(i)(h)~~ Name of the immediate named receiving water from the United States Geological Service 7.5 minute series topographic maps.

(4) The erosion and sediment control plan shall include a site map. The site map shall include the following items and shall be at a scale not greater than 100 feet per inch and at a contour interval not to exceed five two feet.

(a) Existing topography, vegetative cover, natural and engineered drainage systems, roads and surface waters. Lakes, streams, wetlands, channels, ditches and other watercourses on and immediately adjacent to the site shall be shown. Any identified one-hundred-year floodplains, flood fringes and floodways shall also be shown.

(b) Boundaries of the construction site.

(c) Drainage patterns and approximate slopes anticipated after major grading activities.

(d) Areas of soil disturbance.

(e) Location of major structural and nonstructural controls identified in the plan.

(f) Location of areas where stabilization practices will be employed.

(g) Areas which will be vegetated following construction.

(h) Area extent of wetland acreage on the site and locations where stormwater is discharged to a surface water or wetland.

(i) Locations of all surface waters and wetlands within one mile of the construction site.

(j) An alphanumeric or equivalent grid overlying the entire construction site map.

(5) Each erosion and sediment control plan shall include a description of appropriate controls and measures that will be performed at the site to prevent pollutants from reaching waters of the state. The plan shall clearly describe the appropriate control measures for each major activity and the timing during the construction process that the measures will be implemented. The description of erosion controls shall include, when appropriate, the following minimum requirements:

(a) Description of interim and permanent stabilization practices, including a practice implementation schedule. Site plans shall ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.

(b) Description of structural practices to divert flow away from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from the site. Unless otherwise specifically approved in writing by the City Engineer, structural measures shall be installed on upland soils.

(c) Management of overland flow at all sites, unless otherwise controlled by outfall controls.

(d) Trapping of sediment in channelized flow.

(e) Staging construction to limit bare areas subject to erosion.

- (f) Protection of downslope drainage inlets where they occur.
- (g) Minimization of tracking at all sites.
- (h) Cleanup of off-site sediment deposits.
- (i) Proper disposal of building and waste materials at all sites.
- (j) Stabilization of drainageways.
- (k) Control of soil erosion from dirt stockpiles.
- (l) Installation of permanent stabilization practices as soon as possible after final grading.
- (m) Minimization of dust to the maximum extent practicable.

(6) The erosion and sediment control plan shall require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel, as necessary, to provide a nonerosive flow from the structure to a watercourse so that the natural physical and biological characteristics and functions are maintained and protected.

Note to users: The plan requirements of this subsection will meet the erosion control plan requirements of NR 216-46, Wis. Adm. Code, when prepared in accordance with good engineering practices and the design criteria, standards and specifications outlined in the Wisconsin Construction Site Best Management Practice Handbook (WDNR Pub. WR-222 November 1993 Revision).

B. Erosion and sediment control plan statement. For each construction site identified under Ch.148-4A(1), an erosion and sediment control plan statement shall be prepared. This statement shall be submitted to the City Engineer. The control plan statement shall briefly describe the site, including a site map. Further, it shall also include the best management practices that will be used to meet the requirements of the chapter, including the site development schedule.

C. Amendments. The applicant shall amend the plan if any of the following occur:

- (1) There is a change in design, construction, operation or maintenance at the site which has the reasonable potential for the discharge of pollutants to waters of the state and which has not otherwise been addressed in the plan.
- (2) The actions required by the plan fail to reduce the impacts of pollutants carried by construction site runoff.
- (3) The City Engineer notifies the applicant of changes needed in the plan.

148-~~40~~11. Fee schedule.

The fees referred to in other sections of this chapter shall be established by the City Administrator and may from time to time be modified by resolution. A schedule of the fees established by the City Administrator shall be available for review with the Building Inspector at City Hall.

148-~~41~~12. Inspection.

If land-disturbing construction activities are being carried out without a permit required by this chapter, the City Engineer may enter the land pursuant to the provisions of § 66.0119(1), (2), and (3), Wis. Stats.

148-~~42~~13. Enforcement.

A. Stop-work order; inspection.

- (1) The City Engineer may post a stop-work order if any of the following occurs:
 - (a) Any land-disturbing construction activity regulated under this chapter is being undertaken without a permit.

- (b) The erosion and sediment control plan is not being implemented in a good faith manner.
 - (c) The conditions of the permit are not being met.
 - (2) Note to users: The City Engineer shall inspect any construction site that holds a permit under this chapter at least once a month during the period starting March 1 and ending October 31 and at least two times during the period starting November 1 and ending February 28 to ensure compliance with the approved sediment and erosion control plan.
- B. If the responsible party does not cease activity as required in a stop-work order posted under this section or fails to comply with the erosion and sediment control plan or permit conditions, the City Engineer may revoke the permit.
 - C. If the responsible party, where no permit has been issued, does not cease the activity after being notified by the City Engineer, or if a responsible party violates a stop-work order posted under Subsection A, the City Engineer may request the City Attorney to obtain a cease-and-desist order in any court with jurisdiction.
 - D. The City Engineer, or the Board of Appeals may retract the stop-work order issued under Subsection A or the permit revocation under Subsection B.
 - E. After posting a stop-work order under Subsection A, the City Engineer may issue a notice of intent to the responsible party of its intent to perform work necessary to comply with this chapter. The City Engineer may go on the land and commence the work after issuing the notice of intent. The costs of the work performed under this subsection by the City Engineer, plus interest at the rate authorized by the City of Burlington, shall be billed to the responsible party. In the event a responsible party fails to pay the amount due, the Clerk shall enter the amount due on the tax rolls and collect as a special assessment against the property pursuant to Sub Ch. VII of Ch. 66, Wis. Stats.
 - F. Any person violating any of the provisions of this chapter shall be subject to a forfeiture of not less than ~~[amount]~~\$10.00 nor more than ~~[amount]~~\$500.00 and the costs of prosecution for each violation. Each day a violation exists shall constitute a separate offense.
 - G. Compliance with the provisions of this chapter may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings. Note to users: Injunctive orders are authorized pursuant to § 59.69(11), 61.35, or 62.23(8), Wis. Stats., for counties, villages and towns with village powers, and cities respectively.

148-~~13~~14. Appeals.

- A. Board of Appeals. The Board of Appeals created pursuant to Ch. 6-3 of the City's Ordinances pursuant to § 62.23(7)(e), Wis. Stats.:
 - (1) Shall hear and decide appeals where it is alleged that there is error in any order, decision or determination made by the City Engineer in administering this chapter except for cease and desist orders obtained under Ch. 148-~~12C~~13C.
 - (2) Upon appeal, may authorize variances from the provisions of this chapter which are not contrary to the public interest and where owing to special conditions a literal enforcement of the provisions of the chapter will result in unnecessary hardship; and
 - (3) Shall use the rules, procedures, duties and powers authorized by statute in hearing

and deciding appeals and authorizing variances.

B. Who may appeal. Appeals to the Board of Appeals may be taken by any aggrieved person or by any office, department, board, or bureau of the City of Burlington affected by any decision of the City Engineer.

148-1415. Severability.

If a court of competent jurisdiction judges any section, clause, provision or portion of this chapter unconstitutional or invalid, the remainder of the chapter shall remain in force and not be affected by such judgment.

- II. It is further ordained that the application of this ordinance shall be effective after its passage and publication as required by law.
- III. All other provisions as contained in Chapter 148 of the Municipal Code of the City of Burlington shall continue and in full force and effect.

Introduced: January 17, 2017

Adopted:

Jeannie Hefty, Mayor

Attest:

Diahnn Halbach, City Clerk