



CITY OF BURLINGTON

Administration Department
300 N. Pine Street, Burlington, WI, 53105
(262) 342-1161 - (262) 763-3474 fax
www.burlington-wi.gov

AGENDA COMMITTEE OF THE WHOLE

Tuesday, December 19, 2017

6:30 p.m.

Common Council Chambers, 224 East Jefferson Street

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

Student Representatives:

Gabriel King, Burlington High School
Jack Schoepke, Burlington High School

1. **Call to Order - Roll Call**
2. **Citizen Comments**
3. **Approval of Minutes** (*Grandi*)
 - A. Approval of the December 5, 2017 Committee of the Whole Minutes.
4. **RESOLUTIONS:** There are none.
5. **ORDINANCES:** There are none.
6. **MOTIONS:**
 - A. **Motion 17-888** - to approve a Separation Agreement, Waiver and Release between the City of Burlington and City of Burlington Police Department Dispatch Employee, Colleen Schwochert.
 - B. **Motion 17-889** - to approve a Separation Agreement, Waiver and Release between the City of Burlington and City of Burlington Police Department Dispatch Employee, Lauri Gatto.
 - C. **Motion 17-890** - to approve a Separation Agreement, Waiver and Release between the City of Burlington and City of Burlington Police Department Dispatch Employee, Nadine Bogusz.

D. **Motion 17-891** - to consider approving an Airport Hangar Lease with the Burlington Development Group for 701 Airport Road at the Burlington Municipal Airport.

7. **ADJOURNMENT** (*Dawidziak*)

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 3A

DATE: December 19, 2017

SUBJECT: Committee of the Whole Minutes for December 5, 2017.

SUBMITTED BY: Diahnn Halbach, City Clerk

BACKGROUND/HISTORY:

The attached minutes are from the December 5, 2017 Committee of the Whole meeting.

BUDGET/FISCAL IMPACT:

N/A

RECOMMENDATION:

Staff recommends approval of the attached minutes from the December 5, 2017 Committee of the Whole meeting.

TIMING/IMPLEMENTATION:

This item is scheduled for final consideration at the December 19, 2017 Common Council meeting.

Attachments

COW Minutes



City Clerk
300 N. Pine Street, Burlington, WI, 53105
(262) 342-1161 - (262) 763-3474 fax
www.burlington-wi.gov

CITY OF BURLINGTON
Committee of the Whole Minutes
Jeannie Hefty, Mayor
Diahnn Halbach, City Clerk
Tuesday, December 5, 2017

1. **Call to Order / Roll Call**

Council President Jon Schultz called the meeting of the Common Council to Order on Tuesday, December 5, 2017 at 6:30 p.m. starting with Roll Call. Present: Kott, Johnson, Grandi, Dawidziak, Schultz, Preusker, Bauman. Excused: Mayor Hefty, Vos.

Student Representatives Present: Gabriel King, Jack Schoepke. Excused: None.

Also present: City Administrator Carina Walters, City Attorney John Bjelajac, Director of Administrative Services Megan Watkins, Director of Finance Steve DeQuaker, Police Chief Mark Anderson, Fire Chief Alan Babe, DPW Director Peter Riggs, Building Inspector Gregory Guidry, and Library Director Joe Davies. Also in attendance: Tom Foht, Kapur and Associates.

2. **Citizen Comments** - There were none.

3. **Approval of Minutes**

A motion was made by Alderman Schultz with a second by Alderman Dawidziak to approve the November 21, 2017 Committee of the Whole meeting minutes. With all in favor, the motion carried.

4. **DISCUSSION:**

A. Racine County Executive Jonathan Delagrave to give update regarding Foxconn and to discuss the County's 2018 budget.

County Executive Jonathan Delagrave assured Council and staff that Racine County Dispatch would not let the City of Burlington down and is looking forward to providing County Dispatch services to the City. In addition, Delagrave gave a brief update on FoxConn, stating that the local development plan has been signed and that the County would be able to provide up to \$750,000 to existing businesses who could potentially experience growth and increased wages. Delagrave also stated there are plans for State, County, and local road improvements and that surrounding municipalities will have the ability to control their own destiny by working with their local government officials for future development and growth spurred by FoxConn.

B. Discussion regarding an update on the Burlington Community Pool.

Carina Walters began the pool update by explaining that Council will need to decide on some policy issues regarding the name of the pool, and future City purchases that include furnishings and concession stand equipment. Walters also stated that the City has a contingency fund and any dollars spent out of this fund, would require Council approval. Walters further explained that construction costs were higher than expected, which amounted to an additional \$150,000 for the removal of poor soils under the building, swale, and parking lot undercuts; additional overages included the addition of a high dive, air conditioning, fire alarms, and a sound/security system.

Alderman Grandi asked if the savings from the Kendall Street project was reflected in the current budget. Walters responded that savings from the project has been accounted for and that due to those savings, the overages have not exceeded that amount.

Walters asked Council to decide on the name of the pool, giving them a choice between "Burlington Community Pool" or "Burlington Community Aquatic Center". Council chose to go with "Burlington Community Aquatic Center".

Jeanne Otter explained the concession costs and the RFP process used, of which Badger and A to Z were chosen to provide the necessary equipment, as they were the lowest bidders and would also provide set up and training. Otter stated that the total costs for furnishings and concession equipment amounted to \$77,037.

Alderman Bauman asked if there was a timeframe in which a decision needed to be made and suggested waiting until the construction has been completed just in case there are more unexpected costs. Walters responded that Council could choose to wait, however, the quotes are for 2017 and could possibly go up in 2018. Walters also stated that there is \$461,000 left in the contingency and that Scherrer Construction has assured staff that the primary risk of additional construction costs are out of the way.

Alderman Preusker questioned using the contingency fund for concession equipment and stated that the agreement was for the City to fund and construct the pool not furnish it and that fundraising via the community fund should be used instead.

Alderman Johnson suggested Council approve the expenditures and order equipment before prices go up. Alderman Grandi stated that the Pool Board has worked very hard and the City should continue to help them if able to do so.

5. **RESOLUTIONS:**

- A. **Resolution 4872(30)** - to consider adoption of the 2018 Annual Budget for the City of Burlington.

President Schultz introduced Resolution 4872(30). DeQuaker reviewed the 2018 budget and explained all the items the 2018 budget encompasses, including the projected fund balance, an increase in water rates, cost of living adjustment, equipment replacement fund, future closing of TIF 3, Library funding, self-insurance fund, and a large increase in health insurance premiums due to a high claims year. DeQuaker stated that the projected MIL rate for the City is \$9.87 per 1,000 with approximately 40 cents per 1,000 related to the pool debt service, which equates to the City MIL rate being 93 cents higher in 2017 than in 2016, (\$163 for an average household).

- B. **Resolution 4873(31)** - to approve an agreement between the City of Burlington and the Southeastern Wisconsin Regional Planning Commission (SEWRPC) for a stormwater management study.

President Schultz introduced Resolution 4873(31). Walters explained that due to the flooding experienced on the southern side of the City, which affected the industrial area along McHenry Street, City staff requested that SEWRPC prepare a stormwater management analysis for a portion of the City's storm sewer system. Walters stated that the main objective of the analysis is to create a reasonable representation of the existing system, and then evaluate alternatives to reduce surface flooding.

- C. **Resolution 4874(32)** - to consider approving a letter of agreement between the City of Burlington and the Racine County Economic Development Corporation (RCEDC) for 2018 economic development services in the amount of \$48,426.28.

President Schultz introduced Resolution 4874(32). Walters reviewed the 2018 RCEDC Agreement and stated that the annual cost remains the same as it was in 2017.

6. **ORDINANCES:** There were none.

7. **MOTIONS:** There were none.

8. **ADJOURNMENT**

A motion was made by Alderman Preusker with a second by Alderman Dawidziak to adjourn. With all in favor, the meeting adjourned at 8:01 p.m.

Minutes respectfully submitted by:

Diahnn C. Halbach
City Clerk
City of Burlington



COMMITTEE OF THE WHOLE

ITEM NUMBER 6A

DATE: December 19, 2017

SUBJECT: MOTION 17-888 - to approve a Separation Agreement, Waiver and Release between the City of Burlington and City of Burlington Police Department Dispatch Employee, Colleen Schwochert.

SUBMITTED BY: Carina Walters, City Administrator

BACKGROUND/HISTORY:

On October 17, 2017 the Common Council approved an Amended Contract for Joint Dispatch Services between Racine County, the City of Racine, the Village of Caledonia, the Village of Mt. Pleasant, and the Village of Sturtevant.

The following municipalities have approved or will be approving the Joint Dispatch Agreement:

- Racine County approved on December 5, 2017.
- Caledonia approved on December 4, 2017.
- Mt. Pleasant approved on December 11, 2017.
- Sturtevant will approve on December 19, 2017.
- *City of Racine has not yet approved and a meeting date was not provided as of this printing.*

The final step in the consolidation process is approving the separation agreements with the three dispatchers: Colleen Schwochert, Lauri Gatto, and Nadine Bogusz.

The attached Separation Agreement (Motion 17-888) is for Colleen Schwochert.

BUDGET/FISCAL IMPACT:

RECOMMENDATION:

Staff recommends approval of this Motion.

TIMING/IMPLEMENTATION:

This item is for discussion at the 12/19/17 Committee of the Whole meeting and due to timing, is scheduled for final consideration at the same evening Common Council meeting.

Attachments

Separation Agreement_Schwochert

**SEPARATION AGREEMENT, WAIVER AND RELEASE BETWEEN:
CITY OF BURLINGTON AND COLLEEN SCHWOCHERT**

THIS AGREEMENT by and between the City of Burlington (the “City”) and Colleen Schwochert (“Employee”) is made and is effective as of the date following the revocation period identified herein and the formal approval of this Agreement by the City Council of the City of Burlington (the “Effective Date”).

WHEREAS, Employee was employed by the City in the Dispatch Center;

WHEREAS, the City endured catastrophic rain and flooding in July 2017 that destroyed equipment in the Dispatch Center;

WHEREAS, following the flooding, the City considered restoring the Dispatch Center but instead has chosen to eliminate the Dispatch Center and contract out for services through a Joint Dispatch Services Agreement resulting in the elimination of five City employment positions;

WHEREAS, the City and Employee desire, through this Agreement, for the City to make salary continuation pay and benefits in this Agreement available to the Employee, provided Employee remains employed by the City and working for the City as a Dispatcher until December 31, 2017, and to settle all claims between the parties related to Employee’s employment with the City and Employee’s separation, and any other claims; and

WHEREAS, Employee and the City desire to accept the terms of this Agreement.

NOW, THEREFORE, the parties to this Agreement, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are here by acknowledged, agree as follows:

1. **Deadline and Separation.** Employee and City agree that Employee shall separate from employment with the City effective on or before the end of the workday on December 31, 2017. Employee’s separation is final and Employee’s employment shall end on or before December 31, 2017 regardless of the terms of this Agreement. The remaining terms and conditions proposed in this Agreement will not be effective unless this Agreement is signed by Employee and returned to the City Administrator not later than January 1, 2018 (or forty-five days after the date this Agreement is provided, if that date is later than December 31, 2017). Such return may be accomplished by personal delivery or by mailing a signed copy of the Agreement to the City Administrator’s attention in a postage prepaid envelope postmarked on or before January 1, 2018 (or forty-five days after the date this Agreement is provided, if that date is later than December 31, 2017). As a result, no payments or benefits under this Agreement will be made to Employee until after the Effective Date, and payments due to Employee that accrue prior to the Effective Date shall be made on the second payroll period following the Effective Date.
2. **Payments.** In consideration for Employee’s acceptance of this Agreement, and in addition to the payment of final wages due, including accrued but unused vacation and

compensatory time off, and provided Employee maintains employment with the City as a Dispatcher for the City until December 31, 2017 (the "End Date"), then Employee will continue to be paid Employee's regular wage as if regularly scheduled to work from the End Date through May 27, 2018 ("Salary Continuation Pay") according to the document marked as Exhibit A. Employee understands that if Employee is not employed by the City on the End Date because she is/was terminated for violating City policy, resigns, retires, quits, or otherwise voluntarily separates employment prior to the End Date, then Employee is not entitled to Salary Continuation Pay or benefits, described below, under this Agreement. These payments will be made on the City's regularly scheduled paydays and will be less applicable payroll taxes. All Salary Continuation Pay and other payments under this Agreement are being allocated for purposes of unemployment insurance to each of the pay periods occurring during the applicable pay period. This Agreement does not guarantee Employee the receipt of unemployment benefits. Employee's remaining accrued but unused vacation time shall be paid out to Employee in a separate lump sum payment in accordance with relevant wage and hour regulations.

3. **Benefits.** All benefits through the City will terminate as of midnight on December 31, 2017, except that, in consideration of Employee's promises and obligations under this Agreement, and provided Employee maintains employment with the City as a Dispatcher for the City until the End Date, then the City shall pay the City's share of Employee's City-provided health insurance premiums through February 28, 2018, and Employee shall be responsible for paying the Employee's share. The City agrees to deduct the Employee's share via payroll deduction if permitted by law. For purposes of state and federal insurance continuation laws, including COBRA, the City will send out separate notice of Employee's rights under those laws. Employee acknowledges and agrees that Employee is entitled to no further payments, compensation or benefits, unless otherwise stated in this Agreement. Employee agrees that all payments have been made to Employee as part of this Agreement through any payments made herein, and Employee hereby waives any rights to compensation, leave, or benefits from the City.

4. **Waiver and Release.** In consideration of the City's obligations and promises under this Agreement, Employee does hereby fully and forever discharge and release the City, which includes all departments and agencies, and all of the foregoing's past and present employees, officers, agents, representatives, insurers, and attorneys (collectively, the "Released Parties"), from any and all actions, causes of action, claims, demands, damages (including but not limited to punitive damages), costs, expenses, attorneys' fees, and compensation on account of, or in any way growing out of any and all known and unknown damage resulting to or to result from any action by the Released Parties which arose on or before the date of Effective Date of this Agreement.

By way of example, only, and without in any way limiting the generality of the foregoing language, Employee's release shall include all claims for relief or causes of action under Title VII of the Civil Rights Act of 1964, as amended, the Americans With Disabilities Act of 1991, 42 U.S.C. § 12101 *et seq.*; the Rehabilitation Act of 1973, as amended, 29 U.S.C. secs. 791, 793 and 794; the Age Discrimination in Employment Act; the Genetic Information Nondiscrimination Act of 2008 — Public Law 110-233; the Civil Rights

Enforcement Statutes, 42 U.S.C. secs. 1981 through 1988; the Age Discrimination in Employment Act; the Lilly Ledbetter Act, 42 U.S.C. 2000e-5; the Equal Pay Act, 29 U.S.C. 206; Employee Retirement Income Security Act of 1974, 29 U.S.C. sec. 1001, et seq.; the National Labor Relations Act; 29 U.S.C. sec 151, et seq.; the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; the Sherman Act, as amended, 15 U.S.C. §1 et seq., §15 U.S.C. §12 et seq.; the Wisconsin Fair Employment Laws, § 111.33, et seq.; the Wisconsin Family and Medical Leave Act, § 103.10, Wis. Stats., Wisconsin Statute Section 111.70; state and federal Whistleblower laws, and any other federal, state or local statute, ordinance, or regulation or public policy dealing in any respect with employment, discrimination, harassment, retaliation, adverse employment action, or separation of employment, including any claims alleging a violation of public policy, and, in addition, from all claims, demands, or actions brought on the basis of alleged wrongful or retaliatory discharge, breach of an oral or written contract, misrepresentation, defamation, interference with contract or intentional or negligent infliction of emotional distress, damage to business or professional reputation, conspiracy, negligence, invasion of privacy, or any other intentional tort or negligence claim or contract claim of any sort under the common law of any state or other jurisdiction.

The parties understand and agree Employee affirmatively waives any right to personal relief under a charge, lawsuit, or claim filed against the Released Parties with the Equal Employment Opportunity Commission or Equal Rights Division to the extent such relief is legally subject to waiver for any cause of action released under this Agreement.

The parties understand and agree Employee waives any right to and shall not accept or recover any monetary damages or any other damages or anything of value from the Released Parties as a result of filing a lawsuit, charge, claim, or action or for any related claim, action or judgment against the Released Parties. Employee agrees that in the event Employee, or another person acting on Employee's behalf and with Employee's authorization, files for or receives any money or benefit as a result of such lawsuit, charge, claim, action, investigation, charge or proceeding or related claim, action or judgment, that is paid by the Released Parties, then Employee shall indemnify and fully reimburse the Released Parties for its costs and attorneys' fees in defending the action, regardless of the outcome of any case, and Employee shall indemnify and fully reimburse the Released Parties for any amounts paid to Employee, to Employee's attorneys, or on Employee's behalf within ten days of the receipt of such payment.

Employee waives her right to file and process any grievance pursuant to the City's Wis. Stat. § 66.0509 grievance procedure and applicable grievance policy.

This Section 4 shall have no effect on and shall not apply to any claim by Employee: (a) to receive any vested retirement benefits; (b) pursuant to Wisconsin's worker's compensation laws or Wisconsin's unemployment compensation laws; or (c) any claim to challenge the validity of this Agreement or this Section 4. This Section 4 shall also have

no effect on any claim Employee may have against a Released Party involving purely personal conduct by that Released Party wherein the City or any other Released Party has no duty to defend or indemnify that Released Party.

5. **Older Workers Benefit Protection Act.** This Agreement is governed by the Older Workers Benefit Protection Act. Under this Act, Employee has been offered at least forty-five (45) days after being given this Agreement during which Employee may consider whether or not to sign this Agreement, because this Agreement is being considered as part of a program offered to a group of employees. Further, in compliance with that Act, Employee has seven (7) days following Employee's signing of this Agreement during which Employee may revoke this Agreement. Therefore, this Agreement will not be effective or enforceable until the eighth day after the date Employee signs this Agreement for delivery to the City and the formal approval of this Agreement by the City Council of the City of Burlington ("Effective Date"). To be effective, a revocation must be received in writing within the seven (7) day period by the City Administrator. The parties understand and agree that if Employee revokes this Agreement within the seven-day period referred to above, the City will not have any obligation to Employee under this Agreement. Attached as Exhibit B is a list of information the City is required to provide to Employee under the Older Worker Benefits Protection Act regarding the employees affected by this program.
6. **Advice to Consult Legal Counsel.** Because this Agreement includes a waiver of Employee's rights under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Wisconsin Fair Employment Act, and the other statutes and claims referred to in Section 4, Employee is advised to consult an attorney before signing this Agreement.
7. **Acknowledgement.** Employee acknowledges the City has given Employee at least forty five (45) days to read this Agreement, to discuss the terms and conditions of this Agreement with Employee's adviser of choice, and to consider whether or not to sign this Agreement. Employee agrees Employee has read this Agreement and fully understands the terms and conditions thereof, which are contractual and binding and are not merely a recital. Employee acknowledges that Employee has had sufficient time to read this Agreement and consider acceptance of it and voluntarily enters into this Agreement with full knowledge of its meaning and with the specific intention of resolving all outstanding matters involving the City. In entering into this Agreement, Employee is relying on Employee's own judgment and knowledge and not on representations or statements made by the City.
8. **No Admission of Liability.** The parties' participation in this Agreement is not to be construed as an admission of any wrongdoing or liability whatsoever by or on behalf of Employee, the City, or the City's employees, officers, agents, representatives, insurers, and attorneys.
9. **Choice of Law and Entire Agreement.** This Agreement shall be construed and enforced in accord with the laws of the State of Wisconsin. It constitutes the entire agreement between the parties as to issues provided for in this Agreement and is based on

language mutually presented and agreed to by the parties and as a result no rules of construction shall be applicable to either party. Headings are for the convenience of the parties only and shall not affect the interpretation or application of this Agreement.

10. **Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement to be illegal or unenforceable, the offending provision will be deemed amended or deleted to the extent necessary to conform to the applicable law and without materially altering the mutual interest of the parties to facilitate Employee's separation from the City without the assertion of any claims released in Section 4 and with the fullest protection of the City as identified in that Section.
11. **Counterparts.** This Agreement may be executed in counterparts and shall be as effective as if executed on one document. Facsimile and electronic signatures shall be as effective and valid as original signatures.

IN WITNESS THEREFORE, the undersigned further state that they have carefully read the foregoing Agreement, know and understand its contents and sign the same under their own free will, being duly authorized to do so.

Approved by the City of Burlington on December 19, 2017.

Date

City of Burlington

Date

Diahn Halbach, City Clerk, City of Burlington

I ACKNOWLEDGE THAT I HAVE READ AND FULLY UNDERSTAND THE FOREGOING AGREEMENT. I FURTHER ACKNOWLEDGE THAT THE AGREEMENT FULLY AND ACCURATELY SETS FORTH THE TERMS AND CONDITIONS DISCUSSED AND AGREED UPON FOR MY SEPARATION FROM THE CITY. I HEREBY AGREE TO ALL SUCH TERMS AND CONDITIONS AND ACKNOWLEDGE THAT I HAVE BEEN GIVEN 45 DAYS AFTER BEING GIVEN THIS AGREEMENT TO CONSIDER WHETHER OR NOT TO SIGN THE AGREEMENT.

Date

By: _____
Employee (Print Name): _____
Address: _____

Exhibit A – Agreed Upon Separation Payment List for Colleen Schwochert

FN	LN	TITLE	HIRE	YRS	Hourly Base	Severance -1 Week Per Year
Colleen	Schwochert	Dispatcher	3/11/1996	21.82	\$20.01	\$16,351.48

Exhibit B - List of Employees and Positions Impacted
By Restructuring through Involuntary Separation
as a result of Dispatch Center Restructuring

<u>Name</u>	<u>Position</u>	<u>Age</u>
Colleen Schwochert	Dispatcher	60
Lauri Gatto	Dispatcher	53
Nadine Bogusz	Dispatcher	55



COMMITTEE OF THE WHOLE

ITEM NUMBER 6B

DATE: December 19, 2017

SUBJECT: MOTION 17-889 - to approve a Separation Agreement, Waiver and Release between the City of Burlington and City of Burlington Police Department Dispatch Employee, Lauri Gatto.

SUBMITTED BY: Carina Walters, City Administrator

BACKGROUND/HISTORY:

On October 17, 2017 the Common Council approved an Amended Contract for Joint Dispatch Services between Racine County, the City of Racine, the Village of Caledonia, the Village of Mt. Pleasant, and the Village of Sturtevant.

The following municipalities have approved or will be approving the Joint Dispatch Agreement:

- Racine County approved on December 5, 2017.
- Caledonia approved on December 4, 2017.
- Mt. Pleasant approved on December 11, 2017.
- Sturtevant will approve on December 19, 2017.
- *City of Racine has not yet approved and a meeting date was not provided as of this printing.*

The final step in the consolidation process is approving the separation agreements with the three dispatchers: Colleen Schwochert, Lauri Gatto, and Nadine Bogusz.

The attached Separation Agreement (Motion 17-889) is for Lauri Gatto.

BUDGET/FISCAL IMPACT:

RECOMMENDATION:

Staff recommends approval of this Motion.

TIMING/IMPLEMENTATION:

This item is for discussion at the 12/19/17 Committee of the Whole meeting and due to timing, is scheduled for final consideration at the same evening Common Council meeting.

Attachments

Separation Agreement_Gatto

**SEPARATION AGREEMENT, WAIVER AND RELEASE BETWEEN:
CITY OF BURLINGTON AND LAURI GATTO**

THIS AGREEMENT by and between the City of Burlington (the “City”) and Lauri Gatto (“Employee”) is made and is effective as of the date following the revocation period identified herein and the formal approval of this Agreement by the City Council of the City of Burlington (the “Effective Date”).

WHEREAS, Employee was employed by the City in the Dispatch Center;

WHEREAS, the City endured catastrophic rain and flooding in July 2017 that destroyed equipment in the Dispatch Center;

WHEREAS, following the flooding, the City considered restoring the Dispatch Center but instead has chosen to eliminate the Dispatch Center and contract out for services through a Joint Dispatch Services Agreement resulting in the elimination of five City employment positions;

WHEREAS, the City and Employee desire, through this Agreement, for the City to make salary continuation pay and benefits in this Agreement available to the Employee, provided Employee remains employed by the City and working for the City as a Dispatcher until December 31, 2017, and to settle all claims between the parties related to Employee’s employment with the City and Employee’s separation, and any other claims; and

WHEREAS, Employee and the City desire to accept the terms of this Agreement.

NOW, THEREFORE, the parties to this Agreement, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are here by acknowledged, agree as follows:

1. **Deadline and Separation.** Employee and City agree that Employee shall separate from employment with the City effective on or before the end of the workday on December 31, 2017. Employee’s separation is final and Employee’s employment shall end on or before December 31, 2017 regardless of the terms of this Agreement. The remaining terms and conditions proposed in this Agreement will not be effective unless this Agreement is signed by Employee and returned to the City Administrator not later than January 1, 2018 (or forty-five days after the date this Agreement is provided, if that date is later than December 31, 2017). Such return may be accomplished by personal delivery or by mailing a signed copy of the Agreement to the City Administrator’s attention in a postage prepaid envelope postmarked on or before January 1, 2018 (or forty-five days after the date this Agreement is provided, if that date is later than December 31, 2017). As a result, no payments or benefits under this Agreement will be made to Employee until after the Effective Date, and payments due to Employee that accrue prior to the Effective Date shall be made on the second payroll period following the Effective Date.
2. **Payments.** In consideration for Employee’s acceptance of this Agreement, and in addition to the payment of final wages due, including accrued but unused vacation and

compensatory time off, and provided Employee maintains employment with the City as a Dispatcher for the City until December 31, 2017 (the "End Date"), then Employee will continue to be paid Employee's regular wage as if regularly scheduled to work from the End Date through April 1, 2018 ("Salary Continuation Pay") according to the document marked as Exhibit A. Employee understands that if Employee is not employed by the City on the End Date because she is/was terminated for violating City policy, resigns, retires, quits, or otherwise voluntarily separates employment prior to the End Date, then Employee is not entitled to Salary Continuation Pay or benefits, described below, under this Agreement. These payments will be made on the City's regularly scheduled paydays and will be less applicable payroll taxes. All Salary Continuation Pay and other payments under this Agreement are being allocated for purposes of unemployment insurance to each of the pay periods occurring during the applicable pay period. This Agreement does not guarantee Employee the receipt of unemployment benefits. Employee's remaining accrued but unused vacation time shall be paid out to Employee in a separate lump sum payment in accordance with relevant wage and hour regulations.

3. **Benefits.** All benefits through the City will terminate as of midnight on December 31, 2017, except that, in consideration of Employee's promises and obligations under this Agreement, and provided Employee maintains employment with the City as a Dispatcher for the City until the End Date, then the City shall pay the City's share of Employee's City-provided health insurance premiums through February 28, 2018, and Employee shall be responsible for paying the Employee's share. The City agrees to deduct the Employee's share via payroll deduction if permitted by law. For purposes of state and federal insurance continuation laws, including COBRA, the City will send out separate notice of Employee's rights under those laws. Employee acknowledges and agrees that Employee is entitled to no further payments, compensation or benefits, unless otherwise stated in this Agreement. Employee agrees that all payments have been made to Employee as part of this Agreement through any payments made herein, and Employee hereby waives any rights to compensation, leave, or benefits from the City.
4. **Waiver and Release.** In consideration of the City's obligations and promises under this Agreement, Employee does hereby fully and forever discharge and release the City, which includes all departments and agencies, and all of the foregoing's past and present employees, officers, agents, representatives, insurers, and attorneys (collectively, the "Released Parties"), from any and all actions, causes of action, claims, demands, damages (including but not limited to punitive damages), costs, expenses, attorneys' fees, and compensation on account of, or in any way growing out of any and all known and unknown damage resulting to or to result from any action by the Released Parties which arose on or before the date of Effective Date of this Agreement.

By way of example, only, and without in any way limiting the generality of the foregoing language, Employee's release shall include all claims for relief or causes of action under Title VII of the Civil Rights Act of 1964, as amended, the Americans With Disabilities Act of 1991, 42 U.S.C. § 12101 *et seq.*; the Rehabilitation Act of 1973, as amended, 29 U.S.C. secs. 791, 793 and 794; the Age Discrimination in Employment Act; the Genetic Information Nondiscrimination Act of 2008 — Public Law 110-233; the Civil Rights

Enforcement Statutes, 42 U.S.C. secs. 1981 through 1988; the Age Discrimination in Employment Act; the Lilly Ledbetter Act, 42 U.S.C. 2000e-5; the Equal Pay Act, 29 U.S.C. 206; Employee Retirement Income Security Act of 1974, 29 U.S.C. sec. 1001, et seq.; the National Labor Relations Act; 29 U.S.C. sec 151, et seq.; the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; the Sherman Act, as amended, 15 U.S.C. §1 et seq., §15 U.S.C. §12 et seq.; the Wisconsin Fair Employment Laws, § 111.33, et seq.; the Wisconsin Family and Medical Leave Act, § 103.10, Wis. Stats., Wisconsin Statute Section 111.70; state and federal Whistleblower laws, and any other federal, state or local statute, ordinance, or regulation or public policy dealing in any respect with employment, discrimination, harassment, retaliation, adverse employment action, or separation of employment, including any claims alleging a violation of public policy, and, in addition, from all claims, demands, or actions brought on the basis of alleged wrongful or retaliatory discharge, breach of an oral or written contract, misrepresentation, defamation, interference with contract or intentional or negligent infliction of emotional distress, damage to business or professional reputation, conspiracy, negligence, invasion of privacy, or any other intentional tort or negligence claim or contract claim of any sort under the common law of any state or other jurisdiction.

The parties understand and agree Employee affirmatively waives any right to personal relief under a charge, lawsuit, or claim filed against the Released Parties with the Equal Employment Opportunity Commission or Equal Rights Division to the extent such relief is legally subject to waiver for any cause of action released under this Agreement.

The parties understand and agree Employee waives any right to and shall not accept or recover any monetary damages or any other damages or anything of value from the Released Parties as a result of filing a lawsuit, charge, claim, or action or for any related claim, action or judgment against the Released Parties. Employee agrees that in the event Employee, or another person acting on Employee's behalf and with Employee's authorization, files for or receives any money or benefit as a result of such lawsuit, charge, claim, action, investigation, charge or proceeding or related claim, action or judgment, that is paid by the Released Parties, then Employee shall indemnify and fully reimburse the Released Parties for its costs and attorneys' fees in defending the action, regardless of the outcome of any case, and Employee shall indemnify and fully reimburse the Released Parties for any amounts paid to Employee, to Employee's attorneys, or on Employee's behalf within ten days of the receipt of such payment.

Employee waives her right to file and process any grievance pursuant to the City's Wis. Stat. § 66.0509 grievance procedure and applicable grievance policy.

This Section 4 shall have no effect on and shall not apply to any claim by Employee: (a) to receive any vested retirement benefits; (b) pursuant to Wisconsin's worker's compensation laws or Wisconsin's unemployment compensation laws; or (c) any claim to challenge the validity of this Agreement or this Section 4. This Section 4 shall also have

no effect on any claim Employee may have against a Released Party involving purely personal conduct by that Released Party wherein the City or any other Released Party has no duty to defend or indemnify that Released Party.

5. **Older Workers Benefit Protection Act.** This Agreement is governed by the Older Workers Benefit Protection Act. Under this Act, Employee has been offered at least forty-five (45) days after being given this Agreement during which Employee may consider whether or not to sign this Agreement, because this Agreement is being considered as part of a program offered to a group of employees. Further, in compliance with that Act, Employee has seven (7) days following Employee's signing of this Agreement during which Employee may revoke this Agreement. Therefore, this Agreement will not be effective or enforceable until the eighth day after the date Employee signs this Agreement for delivery to the City and the formal approval of this Agreement by the City Council of the City of Burlington ("Effective Date"). To be effective, a revocation must be received in writing within the seven (7) day period by the City Administrator. The parties understand and agree that if Employee revokes this Agreement within the seven-day period referred to above, the City will not have any obligation to Employee under this Agreement. Attached as Exhibit B is a list of information the City is required to provide to Employee under the Older Worker Benefits Protection Act regarding the employees affected by this program.
6. **Advice to Consult Legal Counsel.** Because this Agreement includes a waiver of Employee's rights under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Wisconsin Fair Employment Act, and the other statutes and claims referred to in Section 4, Employee is advised to consult an attorney before signing this Agreement.
7. **Acknowledgement.** Employee acknowledges the City has given Employee at least forty five (45) days to read this Agreement, to discuss the terms and conditions of this Agreement with Employee's adviser of choice, and to consider whether or not to sign this Agreement. Employee agrees Employee has read this Agreement and fully understands the terms and conditions thereof, which are contractual and binding and are not merely a recital. Employee acknowledges that Employee has had sufficient time to read this Agreement and consider acceptance of it and voluntarily enters into this Agreement with full knowledge of its meaning and with the specific intention of resolving all outstanding matters involving the City. In entering into this Agreement, Employee is relying on Employee's own judgment and knowledge and not on representations or statements made by the City.
8. **No Admission of Liability.** The parties' participation in this Agreement is not to be construed as an admission of any wrongdoing or liability whatsoever by or on behalf of Employee, the City, or the City's employees, officers, agents, representatives, insurers, and attorneys.
9. **Choice of Law and Entire Agreement.** This Agreement shall be construed and enforced in accord with the laws of the State of Wisconsin. It constitutes the entire agreement between the parties as to issues provided for in this Agreement and is based on

language mutually presented and agreed to by the parties and as a result no rules of construction shall be applicable to either party. Headings are for the convenience of the parties only and shall not affect the interpretation or application of this Agreement.

10. **Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement to be illegal or unenforceable, the offending provision will be deemed amended or deleted to the extent necessary to conform to the applicable law and without materially altering the mutual interest of the parties to facilitate Employee's separation from the City without the assertion of any claims released in Section 4 and with the fullest protection of the City as identified in that Section.
11. **Counterparts.** This Agreement may be executed in counterparts and shall be as effective as if executed on one document. Facsimile and electronic signatures shall be as effective and valid as original signatures.

IN WITNESS THEREFORE, the undersigned further state that they have carefully read the foregoing Agreement, know and understand its contents and sign the same under their own free will, being duly authorized to do so.

Approved by the City of Burlington on December 19, 2017.

Date

City of Burlington

Date

Diahn Halbach, City Clerk, City of Burlington

I ACKNOWLEDGE THAT I HAVE READ AND FULLY UNDERSTAND THE FOREGOING AGREEMENT. I FURTHER ACKNOWLEDGE THAT THE AGREEMENT FULLY AND ACCURATELY SETS FORTH THE TERMS AND CONDITIONS DISCUSSED AND AGREED UPON FOR MY SEPARATION FROM THE CITY. I HEREBY AGREE TO ALL SUCH TERMS AND CONDITIONS AND ACKNOWLEDGE THAT I HAVE BEEN GIVEN 45 DAYS AFTER BEING GIVEN THIS AGREEMENT TO CONSIDER WHETHER OR NOT TO SIGN THE AGREEMENT.

Date

By: _____
Employee (Print Name): _____
Address: _____

Exhibit A – Agreed Upon Separation Payment List for Lauri Gatto

FN	LN	TITLE	HIRE	YRS	Hourly Base	Severance -1 Week Per Year
Lauri	Gatto	Dispatcher	6/4/2004	13.59	\$20.01	\$10,179.14

Exhibit B - List of Employees and Positions Impacted
By Restructuring through Involuntary Separation
as a result of Dispatch Center Restructuring

<u>Name</u>	<u>Position</u>	<u>Age</u>
Colleen Schwochert	Dispatcher	60
Lauri Gatto	Dispatcher	53
Nadine Bogusz	Dispatcher	55



COMMITTEE OF THE WHOLE

ITEM NUMBER 6C

DATE: December 19, 2017

SUBJECT: **MOTION 17-890** - to approve a Separation Agreement, Waiver and Release between the City of Burlington and City of Burlington Police Department Dispatch Employee, Nadine Bogusz.

SUBMITTED BY: Carina Walters, City Administrator

BACKGROUND/HISTORY:

On October 17, 2017 the Common Council approved an Amended Contract for Joint Dispatch Services between Racine County, the City of Racine, the Village of Caledonia, the Village of Mt. Pleasant, and the Village of Sturtevant.

The following municipalities have approved or will be approving the Joint Dispatch Agreement:

- Racine County approved on December 5, 2017.
- Caledonia approved on December 4, 2017.
- Mt. Pleasant approved on December 11, 2017.
- Sturtevant will approve on December 19, 2017.
- *City of Racine has not yet approved and a meeting date was not provided as of this printing.*

The final step in the consolidation process is approving the separation agreements with the three dispatchers: Colleen Schwochert, Lauri Gatto, and Nadine Bogusz.

The attached Separation Agreement (Motion 17-890) is for Nadine Bogusz.

BUDGET/FISCAL IMPACT:

RECOMMENDATION:

Staff recommends approval of this Motion.

TIMING/IMPLEMENTATION:

This item is for discussion at the 12/19/17 Committee of the Whole meeting and due to timing, is scheduled for final consideration at the same evening Common Council meeting.

Attachments

Separation Agreement_Bogusz

**SEPARATION AGREEMENT, WAIVER AND RELEASE BETWEEN:
CITY OF BURLINGTON AND NADINE BOGUSZ**

THIS AGREEMENT by and between the City of Burlington (the “City”) and Nadine Bogusz (“Employee”) is made and is effective as of the date following the revocation period identified herein and the formal approval of this Agreement by the City Council of the City of Burlington (the “Effective Date”).

WHEREAS, Employee was employed by the City in the Dispatch Center;

WHEREAS, the City endured catastrophic rain and flooding in July 2017 that destroyed equipment in the Dispatch Center;

WHEREAS, following the flooding, the City considered restoring the Dispatch Center but instead has chosen to eliminate the Dispatch Center and contract out for services through a Joint Dispatch Services Agreement resulting in the elimination of five City employment positions;

WHEREAS, the City and Employee desire, through this Agreement, for the City to make salary continuation pay and benefits in this Agreement available to the Employee, provided Employee remains employed by the City and working for the City as a Dispatcher until December 31, 2017, and to settle all claims between the parties related to Employee’s employment with the City and Employee’s separation, and any other claims; and

WHEREAS, Employee and the City desire to accept the terms of this Agreement.

NOW, THEREFORE, the parties to this Agreement, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are here by acknowledged, agree as follows:

1. **Deadline and Separation.** Employee and City agree that Employee shall separate from employment with the City effective on or before the end of the workday on December 31, 2017. Employee’s separation is final and Employee’s employment shall end on or before December 31, 2017 regardless of the terms of this Agreement. The remaining terms and conditions proposed in this Agreement will not be effective unless this Agreement is signed by Employee and returned to the City Administrator not later than January 3, 2018 (or forty-five days after the date this Agreement is provided, if that date is later than December 31, 2017). Such return may be accomplished by personal delivery or by mailing a signed copy of the Agreement to the City Administrator’s attention in a postage prepaid envelope postmarked on or before January 3, 2018 (or forty-five days after the date this Agreement is provided, if that date is later than December 31, 2017). As a result, no payments or benefits under this Agreement will be made to Employee until after the Effective Date, and payments due to Employee that accrue prior to the Effective Date shall be made on the second payroll period following the Effective Date.
2. **Payments.** In consideration for Employee’s acceptance of this Agreement, and in addition to the payment of final wages due, including accrued but unused vacation and

compensatory time off, and provided Employee maintains employment with the City as a Dispatcher for the City until December 31, 2017 (the "End Date"), then Employee will continue to be paid Employee's regular wage as if regularly scheduled to work from the End Date through January 7, 2018 ("Salary Continuation Pay") according to the document marked as Exhibit A. Employee understands that if Employee is not employed by the City on the End Date because she is/was terminated for violating City policy, resigns, retires, quits, or otherwise voluntarily separates employment prior to the End Date, then Employee is not entitled to Salary Continuation Pay or benefits, described below, under this Agreement. These payments will be made on the City's regularly scheduled paydays and will be less applicable payroll taxes. All Salary Continuation Pay and other payments under this Agreement are being allocated for purposes of unemployment insurance to each of the pay periods occurring during the applicable pay period. This Agreement does not guarantee Employee the receipt of unemployment benefits. Employee's remaining accrued but unused vacation time shall be paid out to Employee in a separate lump sum payment in accordance with relevant wage and hour regulations.

3. **Benefits.** All benefits through the City will terminate as of midnight on December 31, 2017, except that, in consideration of Employee's promises and obligations under this Agreement, and provided Employee maintains employment with the City as a Dispatcher for the City until the End Date, then the City shall pay the City's share of Employee's City-provided health insurance premiums through February 28, 2018, and Employee shall be responsible for paying the Employee's share. The City agrees to deduct the Employee's share via payroll deduction if permitted by law. For purposes of state and federal insurance continuation laws, including COBRA, the City will send out separate notice of Employee's rights under those laws. Employee acknowledges and agrees that Employee is entitled to no further payments, compensation or benefits, unless otherwise stated in this Agreement. Employee agrees that all payments have been made to Employee as part of this Agreement through any payments made herein, and Employee hereby waives any rights to compensation, leave, or benefits from the City.
4. **Waiver and Release.** In consideration of the City's obligations and promises under this Agreement, Employee does hereby fully and forever discharge and release the City, which includes all departments and agencies, and all of the foregoing's past and present employees, officers, agents, representatives, insurers, and attorneys (collectively, the "Released Parties"), from any and all actions, causes of action, claims, demands, damages (including but not limited to punitive damages), costs, expenses, attorneys' fees, and compensation on account of, or in any way growing out of any and all known and unknown damage resulting to or to result from any action by the Released Parties which arose on or before the date of Effective Date of this Agreement.

By way of example, only, and without in any way limiting the generality of the foregoing language, Employee's release shall include all claims for relief or causes of action under Title VII of the Civil Rights Act of 1964, as amended, the Americans With Disabilities Act of 1991, 42 U.S.C. § 12101 et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. secs. 791, 793 and 794; the Age Discrimination in Employment Act; the Genetic

Information Nondiscrimination Act of 2008 — Public Law 110-233; the Civil Rights Enforcement Statutes, 42 U.S.C. secs. 1981 through 1988; the Age Discrimination in Employment Act; the Lilly Ledbetter Act, 42 U.S.C. 2000e-5; the Equal Pay Act, 29 U.S.C. 206; Employee Retirement Income Security Act of 1974, 29 U.S.C. sec. 1001, et seq.; the National Labor Relations Act; 29 U.S.C. sec 151, et seq.; the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; the Sherman Act, as amended, 15 U.S.C. §1 et seq., §15 U.S.C. §12 et seq.; the Wisconsin Fair Employment Laws, § 111.33, et seq.; the Wisconsin Family and Medical Leave Act, § 103.10, Wis. Stats., Wisconsin Statute Section 111.70; state and federal Whistleblower laws, and any other federal, state or local statute, ordinance, or regulation or public policy dealing in any respect with employment, discrimination, harassment, retaliation, adverse employment action, or separation of employment, including any claims alleging a violation of public policy, and, in addition, from all claims, demands, or actions brought on the basis of alleged wrongful or retaliatory discharge, breach of an oral or written contract, misrepresentation, defamation, interference with contract or intentional or negligent infliction of emotional distress, damage to business or professional reputation, conspiracy, negligence, invasion of privacy, or any other intentional tort or negligence claim or contract claim of any sort under the common law of any state or other jurisdiction.

The parties understand and agree Employee affirmatively waives any right to personal relief under a charge, lawsuit, or claim filed against the Released Parties with the Equal Employment Opportunity Commission or Equal Rights Division to the extent such relief is legally subject to waiver for any cause of action released under this Agreement.

The parties understand and agree Employee waives any right to and shall not accept or recover any monetary damages or any other damages or anything of value from the Released Parties as a result of filing a lawsuit, charge, claim, or action or for any related claim, action or judgment against the Released Parties. Employee agrees that in the event Employee, or another person acting on Employee's behalf and with Employee's authorization, files for or receives any money or benefit as a result of such lawsuit, charge, claim, action, investigation, charge or proceeding or related claim, action or judgment, that is paid by the Released Parties, then Employee shall indemnify and fully reimburse the Released Parties for its costs and attorneys' fees in defending the action, regardless of the outcome of any case, and Employee shall indemnify and fully reimburse the Released Parties for any amounts paid to Employee, to Employee's attorneys, or on Employee's behalf within ten days of the receipt of such payment.

Employee waives her right to file and process any grievance pursuant to the City's Wis. Stat. § 66.0509 grievance procedure and applicable grievance policy.

This Section 4 shall have no effect on and shall not apply to any claim by Employee: (a) to receive any vested retirement benefits; (b) pursuant to Wisconsin's worker's compensation laws or Wisconsin's unemployment compensation laws; or (c) any claim to

challenge the validity of this Agreement or this Section 4. This Section 4 shall also have no effect on any claim Employee may have against a Released Party involving purely personal conduct by that Released Party wherein the City or any other Released Party has no duty to defend or indemnify that Released Party.

5. **Older Workers Benefit Protection Act.** This Agreement is governed by the Older Workers Benefit Protection Act. Under this Act, Employee has been offered at least forty-five (45) days after being given this Agreement during which Employee may consider whether or not to sign this Agreement, because this Agreement is being considered as part of a program offered to a group of employees. Further, in compliance with that Act, Employee has seven (7) days following Employee's signing of this Agreement during which Employee may revoke this Agreement. Therefore, this Agreement will not be effective or enforceable until the eighth day after the date Employee signs this Agreement for delivery to the City and the formal approval of this Agreement by the City Council of the City of Burlington ("Effective Date"). To be effective, a revocation must be received in writing within the seven (7) day period by the City Administrator. The parties understand and agree that if Employee revokes this Agreement within the seven-day period referred to above, the City will not have any obligation to Employee under this Agreement. Attached as Exhibit B is a list of information the City is required to provide to Employee under the Older Worker Benefits Protection Act regarding the employees affected by this program.
6. **Advice to Consult Legal Counsel.** Because this Agreement includes a waiver of Employee's rights under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Wisconsin Fair Employment Act, and the other statutes and claims referred to in Section 4, Employee is advised to consult an attorney before signing this Agreement.
7. **Acknowledgement.** Employee acknowledges the City has given Employee at least forty five (45) days to read this Agreement, to discuss the terms and conditions of this Agreement with Employee's adviser of choice, and to consider whether or not to sign this Agreement. Employee agrees Employee has read this Agreement and fully understands the terms and conditions thereof, which are contractual and binding and are not merely a recital. Employee acknowledges that Employee has had sufficient time to read this Agreement and consider acceptance of it and voluntarily enters into this Agreement with full knowledge of its meaning and with the specific intention of resolving all outstanding matters involving the City. In entering into this Agreement, Employee is relying on Employee's own judgment and knowledge and not on representations or statements made by the City.
8. **No Admission of Liability.** The parties' participation in this Agreement is not to be construed as an admission of any wrongdoing or liability whatsoever by or on behalf of Employee, the City, or the City's employees, officers, agents, representatives, insurers, and attorneys.
9. **Choice of Law and Entire Agreement.** This Agreement shall be construed and enforced in accord with the laws of the State of Wisconsin. It constitutes the entire

agreement between the parties as to issues provided for in this Agreement and is based on language mutually presented and agreed to by the parties and as a result no rules of construction shall be applicable to either party. Headings are for the convenience of the parties only and shall not affect the interpretation or application of this Agreement.

10. **Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement to be illegal or unenforceable, the offending provision will be deemed amended or deleted to the extent necessary to conform to the applicable law and without materially altering the mutual interest of the parties to facilitate Employee's separation from the City without the assertion of any claims released in Section 4 and with the fullest protection of the City as identified in that Section.
11. **Counterparts.** This Agreement may be executed in counterparts and shall be as effective as if executed on one document. Facsimile and electronic signatures shall be as effective and valid as original signatures.

IN WITNESS THEREFORE, the undersigned further state that they have carefully read the foregoing Agreement, know and understand its contents and sign the same under their own free will, being duly authorized to do so.

Approved by the City of Burlington on December 19, 2017.

Date

City of Burlington

Date

Diahn Halbach, City Clerk, City of Burlington

I ACKNOWLEDGE THAT I HAVE READ AND FULLY UNDERSTAND THE FOREGOING AGREEMENT. I FURTHER ACKNOWLEDGE THAT THE AGREEMENT FULLY AND ACCURATELY SETS FORTH THE TERMS AND CONDITIONS DISCUSSED AND AGREED UPON FOR MY SEPARATION FROM THE CITY. I HEREBY AGREE TO ALL SUCH TERMS AND CONDITIONS AND ACKNOWLEDGE THAT I HAVE BEEN GIVEN 45 DAYS AFTER BEING GIVEN THIS AGREEMENT TO CONSIDER WHETHER OR NOT TO SIGN THE AGREEMENT.

Date

By: _____
Employee (Print Name): _____
Address: _____

Exhibit A – Agreed Upon Separation Payment List for Nadine Bogusz

FN	LN	TITLE	HIRE	YRS	Hourly Base	Severance -1 Week Per Year
Nadine	Bogusz	Dispatcher	3/16/16	1.80	\$20.01	\$1,346.54

Exhibit B - List of Employees and Positions Impacted
By Restructuring through Involuntary Separation
as a result of Dispatch Center Restructuring

<u>Name</u>	<u>Position</u>	<u>Age</u>
Colleen Schwochert	Dispatcher	60
Lauri Gatto	Dispatcher	53
Nadine Bogusz	Dispatcher	55



COMMITTEE OF THE WHOLE

ITEM NUMBER 6D

DATE: December 19, 2017

SUBJECT: MOTION 17-891 - to consider approving an Airport Hangar Lease with the Burlington Development Group for 701 Airport Road at the Burlington Municipal Airport.

SUBMITTED BY: Diahnn Halbach, City Clerk

BACKGROUND/HISTORY:

The Airport Committee met on November 30, 2017 and recommends that the City enter into a not-to-exceed twenty-nine year Airport Hangar Lease agreement, (December 1, 2017 to December 31, 2046), with Burlington Development Group for 701 Airport Road.

The amount of the lease equals the sum of \$.115 per square foot with a total of 13,200 square feet, for a total amount of \$1518.00, prorated in the first and last years of the Lease with the first-year payment of \$0 due at signing, and payable thereafter in advance of the 1st day of January of each and every consecutive year of the lease term commencing January 1, 2018.

BUDGET/FISCAL IMPACT:

An annual payment of \$1518.00 will be paid to the City each year by January 1 for lease of the hangar.

RECOMMENDATION:

Staff recommends approval of this Airport Hangar lease with Burlington Development Group.

TIMING/IMPLEMENTATION:

This item is scheduled for discussion at the December 19, 2017 Committee of the Whole meeting and due to timing is scheduled for final consideration at the same evening Common Council meeting.

Attachments

Airport Lease

AIRPORT LEASE

This lease Agreement, made and entered into this 1st day of December, 2017 by and between the City of Burlington, State of Wisconsin, a municipal corporation existing through and under the authority of the laws of the State of Wisconsin, hereinafter referred to as "Lessor", and Burlington Development Group whose mailing address is 703 Airport Rd. hereinafter referred to as "Lessee"; the Lessor and Lessee for and in consideration of the keeping by the parties of their respective obligations hereinafter contained, agree as follows:

ARTICLE 1 PREMISES SUBJECT TO LEASE

The premises subject of this Lease are:

That part of the hangar area of the Burlington Municipal Airport delineated on the official map of the Burlington Municipal Airport maintained at the office of the City Clerk at City Hall and identified as 701 airport Rd. This Lease does not include use of City Water.

ARTICLE 2 TERM

The term of this Lease shall be from December 1st, 2017 to December 31st, 2046 [not to exceed 29 years] both dates inclusive. This Lease shall be automatically renewed for successive ten-year periods thereafter upon mutually agreed-upon terms and approval of the renewal shall not be unreasonably withheld by the Lessor. This Lease is not transferable, See Article 5, Section G.

ARTICLE 3 RENT

The Lessee shall pay to the Lessor as rent for the Leased Premises the sum of \$.115cents per square foot for the leased area, which contains a total of 13200 square feet, for a total amount of \$ 1518.00, prorated in the first and last years of the Lease with the first-year payment of \$ 0 due at signing, and payable thereafter in advance of the 1st day of January of each and every consecutive year of the lease term commencing on January 1, 2018 subject to the provisions set forth in Article 5, Section A.

ARTICLE 4

Lessee agrees that rent charged is based on intended:

 Personal Use, defined as the use of the Leased Premises in a manner which does not meet the definition of Commercial Use; or

XX Commercial Use, defined as the operation of an airport-related business, which is open to the public, on or in the Leased Premises.

Lessee may change the intended use to that of another type, to be effective the following January 1st, if Lessee petitions the Airport Committee in writing no later than December 10th and the Committee approves the change no later than its December meeting. See also Article 5, Section F.

ARTICLE 5

ADDITIONAL PROVISIONS

- A. RENTAL INCREASES.** The Lessor may adjust the rental charge rate in the year 2010 and every five years thereafter, as determined by the Airport Committee in the same proportion as the cumulative change in the Consumer Price Index for all urban customers (CPI-U) over the same time period. In the event of a rate change, Lessor shall give Lessee sixty (60) days advance notice.
- B. IMPROVEMENTS.** Lessee agrees to erect on the Leased Premises a hangar, if not already constructed, and shall comply with all ordinances, building codes, and zoning restrictions for said airport, and the rules, regulations, and orders of the Airport Committee relative thereto.
- C. USE OF FACILITIES.** Lessee shall have the right to the non-exclusive use in common with others of the airport parking areas, appurtenances and improvements thereon; the right to install, operate, maintain and store, subject to approval of the Airport Committee, all equipment necessary for the safe hangaring of the Lessee's planes, specifically excluding any aviation gasoline or fuel; the right of ingress to or egress from the demised premises, which shall extend to Lessee's employees, guests and patrons; the right, in common with others so to do, to use common areas of the airport including runways, taxiways, aprons, roadways, and other conveniences for the take-off, flying and landing of aircraft of Lessee. Lessee shall not store any equipment or other material outside of its hangar without the written consent of the Airport Committee.
- D. COMPLIANCE WITH LAWS.** Lessee agrees to observe and obey during the term of this Lease all laws and ordinances, and the rules and regulations promulgated and enforced by the Airport Committee of the City of Burlington, and other proper authority having jurisdiction over the conduct of the operations of the airport including city, county, state and federal agencies or departments.
- E. INDEMNIFICATION.** Lessee agrees to indemnify and hold the Airport Committee and the City of Burlington free and harmless from loss from each and every claim and demand, of whatever nature, made on the behalf of or by any person or persons for any act or omission on the part of the Lessee, or Lessee's agents, employees, guests and patrons and from all loss or damage by reason of such acts or omissions.
- F. SUBLEASE-RENTAL OF PREMISES.** Lessee may sublet portions of the hangar constructed on the Leased Premises for the same purposes as stated in this Lease, subject to this policy of the Airport Committee relative to rental rates: It is agreed and understood by Lessee that the rate agreed to in this Lease is for (choose one) _____ personal use _____ XX commercial use. Under this agreement it is understood by the parties that if property is sublet, the appropriate rate will be applied to this Lease from the following January 1. In the event that Lessee fails to disclose a sublease, he agrees to pay the City the amount of the increased rental for the period of any failure to so disclose.

In the event Lessee does enter into a sublease, Lessee shall require any subtenant to abide with all of the conditions of this lease agreement including the requirement that the subtenant shall hold the Airport Committee and the City of Burlington free and harmless from any loss for each and every claim or demand, of whatever nature, made by the subtenant against the Lessee

herein or on behalf of or by any other person or persons for any act or omission on the part of the Lessee or subtenant or their agents or employees, or for any loss or damage by reason of such acts or omissions by the Lessee or its subtenant.

G. OWNERSHIP OF IMPROVEMENTS. Lessee shall retain title to all building or buildings constructed on said premises and such title shall be transferable subject to the Common Council's approval of a new Lease by and between the City of Burlington and the proposed transferee.

H. MAINTENANCE. Lessee shall maintain the structure(s) it occupies and the surrounding land and premises in good order and shall make such repairs as are necessary. In the event of fire or any other casualty, the owner of any such structure so affected shall either repair or replace the building and restore the leased land to its original condition or remove the damaged building and restore the leased area to its original condition; such action must be accomplished within 120 days of the date the damage occurred. In the event that Lessee determines not to rebuild and in fact restores the Leased area to its original condition, this Lease may be terminated pursuant to Article 5, Section U(3).

In the event Lessee fails to comply with this provision, Lessor may, after thirty (30) days notice to the Lessee, enter onto the premises for the purpose of completing said maintenance, making such repairs as are necessary, or restoring the leased land to its original condition. In the event Lessor does so, Lessor shall charge the Lessee the cost of any such maintenance or repairs. If Lessee refuses to pay any such charge within thirty (30) days, Lessor shall have the right to terminate this lease. See Article 5, Section U. In the event the Lessor removes Lessee's hangar under this section, Lessor shall proceed to enforce its lien rights pursuant to Article 5, Section U.

I. ACCESS FOR INSPECTION. Lessor reserves the right to enter upon the premises at any reasonable time for the purpose of making any inspection it may deem expedient to the proper enforcement of any of the covenants or conditions of this agreement.

J. FIRE AND POLICE PROTECTION. Lessor agrees to extend to Lessee the same fire and police protection extended to the other tenants of facilities in the airport. Lessee shall arrange for annual inspection of the hangar sites and buildings by the local fire inspector, or at such other frequency as required by state statute.

K. TAXES. Lessee shall pay all taxes or assessments that are levied against personal property of the Lessee and/or the buildings which are erected on lands leased exclusively to Lessee. In the event that said personal property taxes are not paid 30 days after becoming due, Lessee shall be considered in default of this Lease. See Article 5, Section M.

L. ADVERTISING. Lessee agrees that no sign or advertising matter may be erected without the written consent of the Lessor.

M. DEFAULT. If Lessee fails to pay rent when due, or commits waste or breaches any other covenant or condition of this Lease, Lessor shall give Lessee notice to pay the rent, repair the waste or comply with the Lease on or before a date at least 30 days after the giving of the notice, and that failure to comply will result in the termination of the tenancy. If the tenancy is so terminated, Lessor shall proceed under Article 5, Section U.

N. FUTURE DEVELOPMENT. Lessor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the

Lessee and without interference or hindrance from Lessee. The Lessor reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport; together with the right to direct and control all activities of the Lessee in this regard.

Lessor reserves the right to take any action it considers necessary to protect the aerial approaches to the airport against construction, together with the right to prevent the Lessee from erecting, or permit to be erected, any building or other structure on the airport which, in the opinion of the Lessor, would limit the usefulness of the airport or constitute a hazard to aircraft.

O. RESTRICTIONS. Lessor will not exercise or grant any right or privilege which would operate to prevent the Lessee from performing any services on its aircraft with its own employees that it may choose to perform. These services shall include, but are not limited to, maintenance and repair. Lessee may not provide any type of maintenance or service to aircraft not owned by Lessee upon said Leased Premises .

P. PREEMPTION OF LEASE. During the time of war or national emergency, Lessor shall have the right to lease the landing area, or any part thereof, to the United States Government for military or naval use; and if any such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the Government shall be suspended.

All leases shall be subordinate to the provisions of any existing or future agreement between the Lessor and the United States relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the airport.

Q. NON-DISCRIMINATION. The Lessee, for himself or successors in interest and assigns, as a part of the consideration hereof, does hereby covenants and agree that: (1) no person, on the grounds of race, color, religion, or national origin, shall be excluded from participation in, denied the benefits of, or otherwise subject to discrimination in the use of the leased facilities of the City of Burlington Municipal Airport; (2) in the construction and maintenance of any improvements on, over, or under such land and the furnishing of services thereon or therein, no person on the grounds of race, color, religion or national origin shall be excluded from participation in, denied the benefits of, or otherwise subject to discrimination; (3) the Lessee shall use the premises in compliance, as applicable, with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Sub-Title A, Office of the Secretary, Part 21, Non-Discrimination, in federally assisted programs of Title VI of the Civil Rights Act of 1964, and as said regulation may be amended.

R. HAZARDOUS SUBSTANCE INDEMNIFICATION. Lessee represents and warrants that its use of the Premises herein will not generate any Hazardous Substance, and it will not store or dispose on the Premises nor transport to or over the Premises any Hazardous Material or Substance in violation of any applicable federal, state, or local law, regulation or rule then presently in effect. Lessee further agrees to hold the City of Burlington harmless from and indemnify the City of Burlington against any release of such Hazardous Substance and any damage, loss, or expense or liability resulting from such release, including all attorney's fees, costs and penalties incurred as a result thereof which was caused by Lessee or any of its employees or agents. "Hazardous Substance" shall be interpreted broadly to mean any substance or material defined as a radioactive substance, or other similar term by any

federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time, and it shall be interpreted to include, but shall not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

The City of Burlington represents and warrants that it has no knowledge of any Hazardous Substance existing on the Owned Premises in violation of any applicable federal, state or local law, regulation or rule. The City of Burlington further agrees to hold Lessee harmless from and indemnify Lessee against any damage, loss, or expense or liability resulting from the existence on the Owned Premises of any such Hazardous Substance, including all attorneys' fees, costs and penalties incurred as a result thereof, unless caused by Lessee, any other Lessee, or any of their employees, agents, guests or patrons.

S. INSURANCE. The Lessee agrees that it will deposit with the Lessor a policy of comprehensive liability insurance. The policy shall be issued by a company licensed to do business in Wisconsin and shall insure the Lessee against loss from liability to the amount of \$1,000,000 for each occurrence and in the amount of \$2,000,000 aggregate, which shall name the Lessor as an additional insured. The cancellation or other termination of any insurance policy issued in compliance with this section shall automatically terminate the Lease unless another policy has been filed and approved pursuant to this section and shall be in effect at the time of such cancellation or termination.

T. SNOW REMOVAL POLICY. The Lessor's and the Lessee's responsibilities for snow removal are defined under the City of Burlington's Snow Removal Policy. This Policy was adopted by a resolution of the Burlington Common Council. This policy may be amended or updated at any time without notification. Each party agrees to abide by the then-current terms of said Policy.

U. TERMINATION. (1) By Default. In the event that Lessee defaults under Article 5, Sections H., M., or S., or by other operation of law, the tenancy shall be terminated, Lessor shall have the right to re-enter or repossess the leased property, either by force, summary proceedings, surrender, or otherwise, and dispossess and remove there from Lessee, and its effects, without being liable to any prosecution therefore, and Lessee shall surrender possession of the premises, and Lessee hereby expressly waives the service of notice of intention to re-enter or of instituting legal proceedings to that end.

(2) By Expiration. In the event that this Lease is terminated pursuant to Article 2 hereof, Lessee shall either: a. Sell its hangar to a third party, and the buyer thereof shall enter into a new Lease with the City of Burlington, which sale and transfer shall not be effective until and unless approved by the Common Council; or b. By or before the last date of the term of the Lease, remove its hangar and all equipment and restore the premises to the condition it was in prior to the construction of the hangar.

(3) By Mutual Consent. This Lease may be terminated by the mutual consent of the parties, upon the entry into a new Lease or such other terms and conditions agreed to as evidenced by the signatures of the parties hereto.

(4) Lien Rights. Lessor shall, in any event, have liens on Lessee's hangar and other personalty, including Lessee's aircraft, pursuant to Wis. Stat. §§ 704.05(5) and 779.43(3), and shall enforce such liens as provided by law, but shall have, in addition to those rights provided by Wis. Stat. § 704.05(5)(a) 1. and 2., the right to demand payment of past due rent and/or other charges due from Lessee under the terms of this Lease for release of the lien, or apply the

proceeds of sale to past due rent and/or other charges due from Lessee under the terms of the Lease.

V. GENERAL PROVISIONS. The following provisions shall apply to this Agreement:

- (1) Rights and liabilities of the parties shall bind and inure to the benefit of their personal representatives, heirs, successors and assigns.
- (2) This agreement constitutes the entire agreement pertaining to the subject matter and supersedes all prior and contemporaneous agreements of the parties in connection therewith.
- (3) In construing this Lease, feminine or neuter pronouns may be substituted for those masculine in form and vice versa and plural terms may be substituted for singular and singular for plural in any place in which the context so requires.
- (4) The captions contained in this Agreement are for reference only and do not form part of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals they day and year first herein written.

Approved by the Airport Committee on: 4/30/17

AIRPORT MANAGER:

LESSEE:

Gary B. Maigner

Signature

Gary B. Maigner
Print (or type) name

Gary B. Maigner
Signature

Gary B. Maigner
Print (or type) name
Burlington Development Group

Approved by Common Council on: _____

CITY OF BURLINGTON

Signature

Kres
Title