



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

**AGENDA**  
**COMMITTEE OF THE WHOLE**

**Tuesday, March 5, 2019**

**6:30 p.m.**

**Common Council Chambers, 224 East Jefferson Street**

Mayor Jeannie Hefty  
Susan Kott, Alderman, 1st District  
Theresa Meyer, Alderman, 1st District  
Bob Grandi, Alderman, 2nd District  
Ryan Heft, Alderman, 2nd District  
Steve Rauch, Alderman, 3rd District  
Jon Schultz, Council President, Alderman, 3rd District  
Thomas Preusker, Alderman, 4th District  
Todd Bauman, Alderman, 4th District

**Student Representatives:**

Jack Schoepke, Student Representative (BHS)  
Morgan Tracy, Student Representative (BHS)

1. **Call to Order - Roll Call**
2. **Citizen Comments**
3. **Approval of Minutes** (*T. Meyer*)
  - A. To approve the Committee of the Whole Minutes for February 20, 2019.
4. **PRESENTATIONS:**
5. **DISCUSSION:**
6. **RESOLUTIONS:**
  - A. **Resolution 4936(38)** - To approve Task Order Number 108, with Kapur and Associates, for Engineering Services regarding the City of Burlington Municipal Landfill.
  - B. **Resolution 4938(40)** - To Approve a Task Order Number One with Ayres Associates to Update the Comprehensive Outdoor Recreation Plan.
  - C. **Resolution 4939(41)** - To Approve a Task Order Number Two for Ayres Associates for Design and Construction Management Services for Riverside Park Improvements.
7. **ORDINANCES:**

- A. **Ordinance 2045(11)** - To amend Sections 148-7(A), "Performance standards for construction Sites under one acre" 148-9(E)9, "Permit requirements; application procedures; fees" and 148-10(A)4(h) "Erosion and sediment control plans: statement; amendments" of the Municipal Code of Burlington.
  
- 8. **MOTIONS:**
  - A. **Motion 19-922** - To consider approving a Certificate of Appropriateness for property located at 448 Milwaukee Avenue.
  
  - B. **Motion 19-923** - To consider approving the 2019 Fireworks Agreement for July 4, 2019 with Five Star Fireworks Co.
  
- 9. **ADJOURNMENT** (*B. Grandi*)

*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**

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**DATE:** March 5, 2019

**SUBJECT:** MEETING MINUTES - To approve the Committee of the Whole Minutes for February 20, 2019.

**SUBMITTED BY:** Diahnn Halbach, City Clerk

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**BACKGROUND/HISTORY:**

The attached minutes are from the February 20, 2019 Committee of the Whole meeting.

**BUDGET/FISCAL IMPACT:**

N/A

**RECOMMENDATION:**

Staff recommends approval of the attached minutes from the February 20, 2019 Committee of the Whole meeting.

**TIMING/IMPLEMENTATION:**

This item is scheduled for final consideration at the March 5, 2019 Common Council meeting.

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**Attachments**

COW Minutes

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**CITY OF BURLINGTON**  
**Committee of the Whole Minutes**  
**Jeannie Hefty, Mayor**  
**Diahnn Halbach, City Clerk**  
**Wednesday, February 20, 2019**

1. **Call to Order - Roll Call**

Mayor Hefty called the Common Council meeting to order at 6:30 p.m. Roll Call - Present: Mayor Hefty, Alderman Susan Kott, Alderman Theresa Meyer, Alderman Bob Grandi, Alderman Ryan Heft, Alderman Steve Rauch, Alderman Todd Bauman, Alderman Tom Preusker. Excused: Alderman Jon Schultz.

Student Representatives - Present: Jack Schoepke (BHS) Excused: Morgan Tracy (BHS)

Staff present: Administrator Carina Walters, City Attorney John Bjelajac, Finance Director Steve DeQuaker, Assistant City Administrator/Zoning Administrator Megan Watkins, Public Works Director Peter Riggs, Fire Chief Alan Babe, Police Chief Mark Anderson, Human Resource Manager Jason Corbin, Building Inspector Gregory Guidry and Intern Nick Faust.

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

3. **Approval of Minutes** - To approve the February 5, 2019 Committee of the Whole Meeting Minutes. Motion: Alderman Bauman. Second: Alderman Kott. With all in favor, the motion carried.

4. **DISCUSSION:**

A. A discussion regarding dogs in City parks.

Alderman Heft stated that he has received feedback from concerned citizens who would like to see dogs allowed in parks. Heft stated that dogs are a part of families and people should be able to enjoy the parks while walking their dogs.

Alderman Bauman stated that he had spoken with the Mayor of Lake Geneva to inquire if they have had any problems with dogs in their parks, since Lake Geneva allows dogs in all of their parks. According to Bauman, they have had very few complaints and haven't experienced any problems. Bauman feels that dogs should be allowed in the parks.

Alderman Kott stated that the issues of maintenance and costs incurred should be a non-issue because the city already has workers maintaining the parks.

Alderman Rauch stated that one of the Park Boards concerns was the possibility of children being chased or harmed and suggested restrictions be added if necessary to ensure safety of others; however, also felt dogs should be allowed in the parks.

Alderman Grandi stated that he felt the ordinance is too restrictive and also felt that dogs should be

allowed in parks. Grandi then asked what the next steps should be. Administrator Walters responded that staff will either modify or create a new ordinance and bring it back to Council for discussion.

Alderman Preusker said that he would like more information and is interested in emulating what other communities have done to allow dogs in their parks. Preusker also stated that geese present a greater biohazard than dogs and dogs actually deter the geese. Preusker suggested adding restrictions such as no dogs in the playground areas.

Administrator Walters confirmed that staff would move ahead with updating the ordinance.

B. A discussion regarding Wastewater Rate Implementation.

Public Works Director, Peter Riggs, reviewed the background history stating that during the review of the 2019 rate increase, a discrepancy was discovered with the rate charged to Category B customers, which are industrial properties. Riggs stated that it was determined that the 2017 rate increase was not applied to these customers and totals \$609,000 of lost revenue for both 2017 and 2018. Riggs presented 4 options to Council that would help rectify the situation and stated that staff recommends Option 3, which presents a moderate delay in the rate adjustment to Category B customers and would result in an estimated \$164,211 of lost revenue in 2019. Riggs also stated that staff does not recommend recouping the lost revenue from these customers from 2017-2019.

Alderman Rauch inquired as to why doesn't the City want to recoup these costs and asked if it could be collected in stages. Riggs replied that staff felt it would be too big of an impact to these customers.

Alderman Grandi asked if Category B customers were notified of the rate increase. Riggs stated that there had been a different director at the time this all took place, but he is not aware of any notifications that were sent other than through the public notification of the budget process. Grandi added that he felt it would be unfair to go back and try to recoup costs that was a result of the city's error but feels that the City should implement the rate increase immediately. Grandi also stated that it was very upsetting to learn that residential customers were paying for the rate increase, while others were not. Grandi then asked if revenues were in the red because of this and how has the City survived without this revenue. Riggs responded that wastewater revenues matched with the budget amounts because volume had increased and because it trended well with the budget, the missing increase wasn't immediately discovered until further exploration of the revenue streams and the implementation of the 2019 rate increase.

Alderman Bauman stated that he's not fond of the immediate response but would support the second option of a short delay in which the rate increase could be implemented as of April 1, 2019. Bauman also agreed with Grandi in regards to not going back and trying to recoup lost revenue due to the city's mistake. Bauman added that this is the second time the City has failed in implementing wastewater increases to these customers which has resulted in a substantial amount of lost revenue and suggested a better policy be put into place as to be sure this doesn't happen again.

Alderman Preusker felt that since the city has gone through the due process, approved the budget and communicated the increase to the public, the only thing that didn't happen was actually implementing the rate increase and therefore is in favor of Option 1, which is immediate implementation of the rate increase.

Alderman Grandi suggested making it the city's policy to send wastewater rate increase notifications to all customers moving forward.

Bob Prailes, 580 Adam Street, stated that this is the second time in six years a mistake was discovered which is \$1.2 million that residential tax payers have had to pay and wanted to know what process would be put into place to be sure this doesn't happen again.

Alderman Preusker agreed with Prailes and Category B customers are the biggest users and should be paying their fair share. Director Riggs responded that steps are already being taken to prevent this situation from happening again, which includes the consolidation of staff into one building. Riggs also stated that they will add a level of formality by sending out notifications to all customers.

Alderman Rauch stated that he feels the city should recoup the costs of lost revenue, while Alderman Preusker stated that the customers paid the amount they were billed for and shouldn't have to pay for the City's mistake.

Administrator Walters stated that staff will identify whether or not costs can be recouped and start immediate rate implementation.

5. **RESOLUTIONS:**

- A. **Resolution 4932(34)** - To consider approving the Annual Contract between the City of Burlington and the Racine County Economic Development Corporation (RCEDC) for 2019 Economic Development Initiatives in the amount of \$47,638.82.

Jenny Trick, RCEDC, reviewed the 2019 Agreement and stated that activities remained relatively the same except for the administration fee of \$5,238.82 which is now charged to Burlington's CDBG RLF loan fund which was originally sourced with the Wisconsin CDBG program.

There was no further discussion.

- B. **Resolution 4933(35)** - To accept A Unanimous Petition for Direct Annexation of 0.48 acres at 1063 Spring Valley Road in the Town of Burlington, Racine County, Wisconsin.

Zoning Administrator Megan Watkins presented the petition for direct annexation which was received from the property owners located at 1063 Spring Valley Road in the Town of Burlington in order to have access to municipal water and sewer for their residence. Watkins further stated that the property petitioned for annexation consists of .48 acres and will be permanently zoned Rs-1 Single Family Residential and that the parcel is contiguous and across from the Aurora Health Center.

- C. **Resolution 4934(36)** - To approve restructuring and modifications to the Burlington Tax Incremental District (TID) Restructured Policy Manual.

Administrator Walters reviewed the background history and explained that the intent of this manual was to provide the Community Development Authority (CDA), charged with TID development parameters, on which businesses the city should allocate revolving loan fund dollars to. Walters added that since TID 3 and ER-TID 1 closed in 2018, Racine County Economic Development Corporation (RCEDC) and staff have been working towards updating the Burlington Tax Incremental District manual. Walters then introduced Carolyn Engel, Business Finance Manager for the RCEDC, to further explain the amendment to the Revolving Loan Fund manual.

Engel explained that the biggest change is the area in which funds can be allocated as well as a change in the approval process which would no longer involve approval from the CDA. Engel stated that final approval of the loan application is recommended to be the City Council since the RLF program would now be available City-wide. Engel then reviewed the red-lined changes in the manual.

There was no further discussion.

- D. **Resolution 4935(37)** - To approve a Final Plat and Development Agreement for the proposed Glen at Stonegate Subdivision, Addition No. II.

Zoning Administrator Watkins reviewed the background history stating that this 23-acre lot, owned by Birchwood Realty, LLC, is considered Addition No. II of the Glen at Stonegate Subdivision and is the final phase of this residential development project. Watkins also stated that the project proposes to develop thirty single-family lots and that the developer has agreed to deposit with the City an irrevocable letter of credit in an amount equal to the City Engineer's estimate of the total cost of installation of public construction, in the amount of \$1,037,411.55.

There was no further discussion.

6. **ORDINANCES:**

- A. **Ordinance 2043(9)** - To amend Section 119-5(B)(1)(a), "Official Maps, Based on the Flood Insurance Study (FIS) of the Municipal Code of Burlington.

Gregory Governatori, Kapur and Associates, explained that in order to remain compliant, an update to the City's ordinance needs to be made which reflects the current mapping and studies that are required by both the Federal Emergency Management Agency (FEMA) and the Wisconsin Department of Natural Resources (WDNR). Governatori further stated that this revision does not affect flood insurance zones, floodplain delineations, flood elevations, and/or floodways in the City and that this is simply an administrative update to revise the FIS numbers.

There was no further discussion.

- B. **Ordinance 2044(10)** - To repeal and recreate Chapter 155, "Fire Prevention, Protections and Control Code" of the Code of the City of Burlington.

Fire Chief Alan Babe explained that in 2013 Wisconsin Act 270 established a Uniform Commercial Building Code (UCBC) for the State of Wisconsin, as well as a Building Code Council for the purpose of establishing standard code provisions. Babe further stated that although the Wisconsin UCBC went into effect and has been practiced since 2014, it has not been officially codified and that this is housekeeping item to bring everything up-to-date. Chief Babe then presented a PowerPoint presentation that reviewed all the changes within the fire code for the City of Burlington.

There was no further discussion.

7. **MOTIONS:**

- A. **Motion 18-913** - To consider approval of a Certificate of Appropriateness and recommendation regarding the revised signage for property located at 457 Milwaukee Avenue.

Walters reviewed the background history regarding the proposed signage for Life Bridge Church on their west wall and is asking Council to make a recommendation to Gregory Guidry, Building Inspector, of being either in favor of the signage, against the signage or wishes to remain silent.

Alderman Kott stated that when the Historic Preservation Commission (HPC) first reviewed the application for improvements to the front facade, there was also a report from interim City Planner Mark Roffers recommending that HPC not approve the front facade grant until the owner first removed the paint on the west wall. Kott feels this Motion should be denied based on the owner not following through on the original request.

Alderman Preusker stated he also recommends that his Motion not be approved.

Alderman Grandi stated that he feels allowing this Motion would set a precedence in the historic district and should be prohibited.

Alderman Bauman said he was confused as to how this particular project got to this point and stated how he felt the owner hasn't broken any rules or is doing anything wrong and feels the church should be allowed to proceed with the project.

Building Inspector Gregory Guidry stated that most of the ordinances pertain to the front facing facades and very little about side facades. Guidry also stated that there is an existing sign there now and that ordinances and codes are written to maintain the aesthetic, integrity and value of the City; however not all codes can be written to cover every situation that might occur and many times it becomes the intent of the project and a matter of deciding when exceptions could and should be made, whereas the HPC has approved other projects that were per the ordinance.

Jon Thorngate, Administrative Pastor at Life Bridge Church, stated that it was never their intentions to be deceptive about anything and they have always intended to remove the existing sign; however did not recall any discussions about the front facade grant being contingent on the removal of the signs on the side wall. Thorngate stated that the church has invested \$70,000 towards improving the front of the building and the delay in the project was due to financing and the design process itself. Thorngate added that they redesigned the original sign based on recommendations from the board and addressed all the concerns presented and now there are new concerns which is leading him to believe that it's not about specific concerns and more about having control. Thorngate also added that they have spoken with legal counsel and believe that they don't actually need city approval for their project; however is asking Council for their recommendation on which sign they approve of so that they can move forward with the project.

Alderman Meyer asked Thorngate why is the sign so important. Thorngate responded that it defines who they are and promotes their church and that many people think they are a furniture store.

Bob Prailes, 580 Adam Street, addressed Council and stated that the sign looks great and is a huge improvement and that Council should make a decision to approve this sign.

Jeff Erickson, 125 Accipiter Court, addressed the Council and stated he was a member of the HPC when plans were originally submitted for this project and doesn't recall any conversation involving removing the paint on the side wall in order to receive the facade grant. Erickson added that he has lived in this city for a very long time and thinks this is a great improvement to the community.

Administrative Walters asked Council for a final recommendation to Building Inspector Gregory Guidry. Alderman Bauman recommended approval of the sign and the remaining five alderman recommended not approving the sign.

B. **Motion 19-921** - To consider approving a Certificate of Appropriateness for property located at 164 E. Washington Street.

Building Inspector Gregory Guidry, reviewed the history and background of this project and explained that Brian Torgerson, owner, is requesting permission to improve three facades for his property located at 164 E. Washington Street. Guidry then reviewed the proposed changes. Jeff Erickson, representative for Torgerson, commented that there were some changes in the plans and then verbally explained those changes.

Alderman Kott commented to both Erickson and Torgerson stating how cooperative and willing they have been during this process in order to improve the appearance of this building and make it look more historical.

Alderman Rauch questioned if the applicant is in violation of any ordinances throughout the City.

Guidry stated that the applicant also owns a building on Pine Street in which he has received a letter to tear down the garage but is not in violation. Alderman Grandi asked if there are any violations on this property and how long have the violations existed. Guidry responded that there are violations on the current building however, the proposed improvements will fix these violations. Walters stated that records of violations go back ten years. Guidry further stated that if violations are resolved, citations can be reviewed.

Alderman Grandi asked if Council could put a timeframe on the project in order to receive the grant. Erickson stated the project could be completed in six months.

Alderman Rauch stated that he has a hard time approving three facade grants for an applicant with such a history of violations. Alderman Kott responded by saying that the end result will be worth it and the applicant is spending more than what he will be receiving.

8. **ADJOURNMENT**

Motion: Alderman Kott. Second: Alderman Heft. With all in favor, the meeting adjourned at 8:14 p.m.

Minutes respectfully submitted by:

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Diahnn C. Halbach  
City Clerk  
City of Burlington



**COMMITTEE OF THE WHOLE**

**ITEM NUMBER 6A**

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**DATE:** March 5, 2019

**SUBJECT:** **RESOLUTION 4936(38)** - To approve Task Order Number 108, with Kapur and Associates, for Engineering Services regarding the City of Burlington Municipal Landfill.

**SUBMITTED BY:** Peter Riggs, Director of Public Works

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**BACKGROUND/HISTORY:**

The City is required by the Wisconsin Department of Natural Resources (DNR) to complete regular monitoring and reporting for the closed, municipally owned, landfill located off of Maryland Avenue. Kapur and Associates have been providing these services on behalf of the City for many years. Kapur has thorough knowledge of the history and operations of the site. Task Order Number 108 provides for the following necessary services: environmental monitoring program, groundwater sampling, gas extraction system operation and maintenance, gas well point testing, and preparation and submittal of all DNR reporting. Task Order 108 provides for the completion of these services for 2019 and 2020.

**BUDGET/FISCAL IMPACT:**

The cost of Task Order Number 108 is \$52,732. This is a 5.8% increase (\$2,913) from the 2017-2018 Task Order Number 101 (\$49,819). Funding for the 2019 portion of this work was included in the 2019 Budget.

**RECOMMENDATION:**

Staff recommends approval of Task Order 108.

**TIMING/IMPLEMENTATION:**

This item is presented for discussion at the March 5, 2019 Committee of the Whole meeting and scheduled for final consideration at the March 19, 2019 Common Council Meeting.

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**Attachments**

Res 4936(38)  
Task Order 108

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**A RESOLUTION APPROVING TASK ORDER NUMBER 108, A TWO YEAR AGREEMENT, WITH KAPUR AND ASSOCIATES, INC. FOR LANDFILL SERVICES FOR THE NOT-TO-EXCEED AMOUNT OF \$52,732**

**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 coordination for municipal landfill services for: the semi-annual groundwater monitoring well sampling activities; methane gas monitoring and sampling activities at all points on the landfill perimeter, along with the gas extraction system, and inside designated properties/structures adjacent to or at the landfill; the evaluation of the groundwater laboratory data and gas monitoring results; and the preparation of DNR required reports, which 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 \$52,732 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 108 is hereby approved for the not-to-exceed amount of \$52,732.

**BE IT FURTHER RESOLVED** that the City Administrator is hereby authorized and directed to execute Task Order Number 108 on behalf of the City.

Introduced: March 5, 2019  
Adopted:

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Jeannie Hefty, Mayor

Attest:

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Diahnn Halbach, City Clerk

## **TASK ORDER NUMBER 108 DESIGN ENGINEERING SERVICES**

This Task Order is made as of December 31, 2018, 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;

To assist the City of Burlington with the following Tasks regarding the Environmental Monitoring Program, Groundwater Sampling, Gas Extraction System Operation & Maintenance, Gas Well Point Testing, and Preparation of the Wisconsin Department of Natural Resources (WDNR) Quarterly, Semi-Annual and Annual Reports for the Burlington Municipal Landfill, Milwaukee Avenue in the City of Burlington. This TASK ORDER is for two (2) years of oversight.

### **Section A. – Scope of Services**

Engineer shall perform the following Services as described in Attachment A to this Task Order:

1. Coordinate the semi-annual groundwater monitoring well sampling activities. Thirteen wells are sampled semi-annually for parameters outlined in the WDNR Landfill Monitoring Document.
2. Methane gas monitoring and sampling activities at all points on the landfill perimeter, along the gas extraction system, and inside designated properties/structures adjacent to or at the landfill. Sixty-three monitoring points are sampled on either an annual, semi-annual, or quarterly basis for parameters outlined in the WDNR Landfill Monitoring Document.
3. Evaluate the groundwater laboratory data and gas monitoring results.
4. Prepare the WDNR Monthly, Semi-Annual and Annual Reports including:
  - Summary of field and laboratory results from the groundwater sampling activities
  - Summary of the methane gas sampling;
  - Site Map and Figures presenting the location of ALL sampling points and improvements;
  - Tables
  - Photos (if applicable)
  - Laboratory report and chain-of-custody;
  - Conclusions and Recommendations for modifications to the WDNR sampling program.

**Section B. – Schedule**

Engineer shall start the Scope of Services with the January 2017 landfill gas monitoring event and complete the Annual Reports (for two years) by January 2018 and January 2019.

**Section C. – Compensation**

In return for the performance of the foregoing obligations, Owner shall pay to Engineer an amount not-to-exceed Fifty-Two Thousand, Seven Hundred and Thirty-Two dollars and Zero Cents (\$52,732.00) based on the costs outlined in Attachment A of this Task Order 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 rates 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: Travis W. Peterson

Signature: \_\_\_\_\_

Signature: Travis W. Peterson

Title: \_\_\_\_\_

Title: Environmental Manager

Date: \_\_\_\_\_

Date: November 12, 2018

## Kapur and Associates, Inc. Summary of Staff Hours and Labor Costs

<b>TASK ORDER #108</b>									
<b>Burlington Landfill - Groundwater and Gas Control System Monitoring, Sampling and Report Preparation For 2019-2020</b>									
CLASSIFICATION		Environmental Project Manager		Senior Project Scientist		Senior Environmental Technician		Total Labor	
Average Hourly Wage		\$139.00		\$112.00		\$82.00			
TASK DESCRIPTION	ACT. Code	Hours	Dollars	Hours	Dollars	Hours		Hours	Dollars
<b>FOR 2017 through 2018</b>									
Project Coordination		8	\$1,112.00	2	\$224.00			2	\$1,336.00
Groundwater Sampling		4	\$556.00	4	\$448.00	40	\$3,280.00	44	\$4,284.00
Gas Monitoring/Sampling		12	\$1,668.00	16	\$1,792.00	60	\$4,920.00	76	\$8,380.00
Gas System O&M		12	\$1,668.00	40	\$4,480.00	40	\$3,280.00	80	\$9,428.00
Meetings/Regulatory Correspondence		4	\$556.00	5	\$560.00	2	\$164.00	7	\$1,280.00
Evaluate Data		12	\$1,668.00	8	\$896.00	12	\$984.00	20	\$3,548.00
Prepare Update/Status Reports		8	\$1,112.00	22	\$2,464.00	32	\$2,624.00	54	\$6,200.00
Prepare Annual Report		2	\$278.00	18	\$2,016.00	12	\$984.00	30	\$3,278.00
<b>TOTALS</b>		<b>62</b>	<b>\$8,618.00</b>	<b>115</b>	<b>\$12,880.00</b>	<b>198</b>	<b>\$16,236.00</b>	<b>313</b>	<b>\$37,734.00</b>
<b>SubTotal:</b>								<b>\$37,734.00</b>	
<b>Expenses:</b>								<b>\$14,998.00</b>	
<b>Project Total:</b>								<b>\$52,732.00</b>	

Summary of Expenses	Units	Cost	Total
Methane Sampling	Per Year	\$1,150.00	\$2,300.00
Laboratory Analysis	Per Year	\$3,494.00	\$6,988.00
Field Equipment	Per year	\$2,855.00	\$5,710.00
<b>Totals</b>			<b>\$14,998.00</b>

Servicing and calibration  
 Groundwater sampling  
 Meters and sampling equipment for water quality, monitoring and sampling



**DATE:** March 5, 2019

**SUBJECT:** RESOLUTION 4938(40) - To Approve a Task Order Number One with Ayres Associates to Update the Comprehensive Outdoor Recreation Plan.

**SUBMITTED BY:** Peter Riggs, Director of Public Works

**BACKGROUND/HISTORY:**

The Comprehensive Outdoor Recreation Plan (CORP) is a policy document that provides the vision for the development and maintenance of the City's park system. The document inventories our outdoor amenities and identifies challenges and opportunities for growth. The document is critical for securing grant funding, such as the recently awarded DNR Stewardship Grant for the Riverside Park improvements.

To stay current, and eligible for grant funding, a CORP must be updated at least every 5 years. The City's first CORP was created in 1996. It was later updated in 2010 and again in 2014. The current CORP expires at the end of 2019.

The attached task order provides for contractual services through Ayres and Associates to update the CORP. Ayres has provided this service in the past and been successful in creating a document that can not only guide the City's park development but secure grant funding.

**BUDGET/FISCAL IMPACT:**

The cost of the Task Order is \$11,874. The 2019 Budget includes funding for this project.

**RECOMMENDATION:**

The Park Board has made a recommendation to approve this Task Order at their February 21, 2019 meeting. Staff also recommends approval.

**TIMING/IMPLEMENTATION:**

This item is presented for discussion at the March 5, 2019 Committee of the Whole meeting and is scheduled for final consideration at the March 19, 2019 Common Council meeting.

If approved by the Common Council, Ayres will begin working on the CORP update in April. Citizen engagement, discussions with the Park Board, meetings with stakeholders, and inventorying park amenities will occur in the summer. Completion of the document is expected in the Fall of 2019.

**Attachments**

- Res 4938(40)
- Task Order CORP update

**A RESOLUTION APPROVING TASK ORDER NUMBER 1 WITH AYRES ASSOCIATES FOR SERVICES RELATED TO THE COMPLETION OF THE COMPREHENSIVE OUTDOOR RECREATION PLAN (CORP) FOR 2020-2025**

**WHEREAS**, the City of Burlington has entered into agreements for engineering services with Ayres Associates; and,

**WHEREAS**, the City has requested assistance with planning efforts required to update the existing CORP.

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 \$11,874 and has been recommended for approval by the Park Board and the Director of Public Works.

**NOW, THEREFORE, BE IT RESOLVED** by the Common Council of the City of Burlington Task Order Number 1 is hereby approved for the not-to-exceed amount of \$11,874.

**BE IT FURTHER RESOLVED** that the City Administrator is hereby authorized and directed to execute Task Order Number 1 on behalf of the City.

Introduced: March 5, 2019  
Adopted:

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Jeannie Hefty, Mayor

Attest:

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Diahnn Halbach, City Clerk

January 22, 2019



Peter Riggs  
Director of Public Works  
City of Burlington  
2200 S. Pine Street  
Burlington, WI 53105

Re: CORP Update

Dear Peter,

Thank you for the opportunity to submit a proposal for the update of the CORP for the City of Burlington. We are excited to engage with you on this project and continue our work from the previous version. This proposal outlines our proposed scope of services, time schedule, fee, and contract terms and conditions.

Project Description

The project includes planning efforts required to update the existing CORP and submittal to DNR for adoption. Our approach to formulation of this type of plan goes beyond the basic requirements as outlined by the DNR. We view a CORP or Parks System Master Plan as a roadmap and working tool for the department to follow for a 5-10 year period. Our strategies outline development potential, maintenance issues, funding mechanisms, and demographic needs analysis. Per our discussion, I have also included a task for the completion of bidding documents for the new shelter and kayak launch at Riverside Park and Construction Administration Services.

Basemap information will be assembled from available GIS and LIDAR files.

Scope of Services

See below

Responsibilities of Owner and Others

Provide any basemap materials or other pertinent information to the project.

Time Schedule

The work is anticipated to take 4-5 months to complete and can begin in March, 2019.

Fee

In consideration of the preceding scope of services, our proposed fees are lump sum as follows:

I. CORP	\$ 11,874
II. Riverside Park Improvements	\$ 16,840
III. Riverside Park CA Services	\$ 6,500

Contract Terms and Conditions

See below.

Acceptance

If this proposal is acceptable to you, a signature on the enclosed copy of this letter will serve as our authorization to proceed.

Proposed by Consultant: Ayres Associates,  
Inc

Accepted by: City of Burlington



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Name: Blake Theisen  
Title: Project Manager  
Date: 1-22-2019

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Name:  
Title:  
Date:



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Name: Bruce Morrow, PLA  
Title: Group Manager  
Date: 1-22-2019

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## SCOPE

### TASK I. CORP UPDATE

- Conduct background research and data collection. Acquire and review existing plans, reports, and maps related to the project.
- Attend kickoff meeting with City staff and Park Board (Meeting #1). This meeting will address topics including:
  - Goals and objectives
  - Mission statement
  - Priorities
  - Existing park facilities
  - Staffing issues
  - Programming elements
  - Long-term needs
  - Proposed communitywide land use plans
- Establish project timeline and schedule public meeting dates.
- Tour existing City owned park and open space sites to conduct facility inventory and analysis. Ayres will also photo-document existing facilities in City parks during this visit. Elements to be investigated include:
  - Recreational facilities
  - Amenities
  - Site access and connectivity
  - Linear greenspaces and green infrastructure
  - ADA accessibility
  - Safety issues
  - Environmental impacts (drainage, noise abatement, wetlands, etc.)
- Create and administer online survey instrument.
- Analyze City staff and public input results.
- Create plan maps and identify zones of strengths and weaknesses. Maps may include:
  - Existing Park and Open Space System
  - Park Service Areas
  - Needs Assessment (demographic patterns, etc.)
- Formulate preliminary recommendations to include:
  - Promotion and education
  - Facilities and operations (including strategies for barrier-free access, ADA compliance)
  - Environmentally sustainable practices
  - Surplus or shortage property strategies
  - Programming and facility type gaps
- Attend review meeting with City staff and Park Board (Meeting #3).
- Prepare preliminary draft plan and associated graphics.

- Formulate cost estimates for proposed improvements/options.
- Create a 5- to 10-year capital improvement plan for the park system with cost projections for development, maintenance, and acquisition.
- Identify new opportunities and develop potential funding strategies.
- Prepare final draft report documents to include all graphic plans and relative character images.
- Present final plan to Park Board or Common Council (Meeting #4).

Deliverables for Task I (delivered electronically in PDF or native file format as requested):

- 1 summary memo from kickoff meeting
- Preliminary facility inventory matrix
- Digital site photographs
- Field notes and observations
- 10 (11"x17") preliminary plan maps
- 1 (8.5"x11") preliminary recommendations memo
- 1 PDF format set of presentation materials
- 10 (8.5"x11") Final color CORP plans including fold-out maps and graphics
- 1 compact disk or DVD containing PDF of all plan materials, site photos, and meeting minutes.

## TASK 2. RIVERSIDE PARK IMPROVEMENTS

- Develop construction plans and bid specifications for the improvements at Riverside Park in keeping with the recently awarded 2019 DNR grant scope. Elements to be included are a new open air pavilion to match the Whemhoff Jucker Pavillion, canoe/kayak launch, and associated site improvements for connectivity.
- Assemble bid form and special provision specifications for bidding.
- Compile estimate of probable construction costs.
- Assist the city with advertising for public bidding of the project.
- Review public bids and provide the City with bid tab and recommendation memo.

## TASK 3. CONSTRUCTION ADMINISTRATION SERVICES

- Attend construction meetings as required for the project (5 included in fee) and provide city with photo documentation of progress and meeting minutes.
- Review shop drawings, submittals, and pay requests.
- Conduct punch list review and provide checklist to owner and contractor.

## ASSUMPTIONS

Existing basemap information will be provided by the City in digital format (CAD/GIS). Topographic survey and geotechnical investigations are not included in this scope. Meeting locations will be reserved and noticed by the City.

**AYRES ASSOCIATES  
CONTRACT TERMS AND CONDITIONS**

**1. Performance of Services:** Consultant shall perform the services outlined in its proposal to Owner in consideration of the stated fee and payment terms.

**2. Billing and Payment:** Invoices for Consultant's services shall be submitted to Owner on a monthly basis. Invoices shall be due and payable within 30 days from date of invoice, except as described above. If any invoice is not paid within 30 days, Consultant may, without waiving any claim or right against Owner, and without liability whatsoever to Owner, suspend or terminate the performance of services. Accounts unpaid 30 days after the invoice date will be subject to a monthly service charge of 1.5% on the unpaid balance, or the maximum rate of interest permitted by law, if less. The amount of any excise, value-added, gross receipts, or sales taxes that may be imposed on payments shall be added to Consultant's compensation. No deductions or offsets shall be made from Consultant's compensation or expenses on account of any setoffs or back charges.

**3. Access to Site:** Owner shall furnish right-of-entry on the project site for Consultant and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of services. Consultant will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

**4. Location of Utilities:** Consultant shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend Consultant in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information or instructions which have been furnished to Consultant by others.

**5. Hazardous Materials:** In the event that unanticipated potentially hazardous materials are encountered during the course of the project, Owner agrees to negotiate a revision to the scope of services, time schedule, fee, and contract terms and conditions. If a mutually satisfactory agreement cannot be reached between both parties, the contract shall be terminated and Owner agrees to pay Consultant for all services rendered, including reasonable termination expenses.

**6. Insurance:** Consultant shall maintain Workers' Compensation, General Liability, and Automobile Liability Insurance during its services for Owner. Consultant shall furnish a Certificate of Insurance to Owner upon the signing of this agreement. Owner agrees that Consultant shall not be liable or responsible to Owner for any loss, damage, or liability beyond the amounts, limits, exclusions, and conditions of such insurance.

**7. Limitation of Professional Liability:** Owner agrees to limit Consultant's professional liability to an amount of \$50,000 or Consultant's fee, whichever is greater. In the event that Owner does not wish to limit Consultant's professional liability to this sum, Consultant agrees to raise the limitation of liability to a sum not to exceed \$1,000,000 for increased consideration of ten percent (10%) of the total fee or \$500, whichever is greater, upon receiving Owner's written request prior to the start of Consultant's services.

**8. Opinions of Probable Costs:** Consultant's opinions of probable project costs are made on the basis of Consultant's experience, qualifications and judgment; but Consultant cannot and does not guarantee that actual project costs will not vary from opinions of probable cost.

**9. Construction Review:** Consultant does not accept responsibility for the design of a construction project unless the Consultant's contract includes review of the contractor's shop drawings, product data, and other documents, and includes site visits during construction in order to ascertain that, in general, the work is being performed in accordance with the construction contract documents.

**10. Construction Observation:** On request, Consultant shall provide personnel to observe construction in order to ascertain that, in general, the work is being performed in accordance with the construction contract documents. This construction observation shall not make Consultant a guarantor of the contractor's work. The contractor shall continue to be responsible for the accuracy and adequacy of all construction performed. In accordance with generally accepted practice, the contractor will be solely responsible for the methods of construction, direction of personnel, control of machinery, and falsework, scaffolding, and other temporary construction aids. In addition, all matters related to safety in, on, or about the construction site shall be under the direction and control of the contractor and Consultant shall have no responsibility in that regard. Consultant shall not be required to verify any part of the work performed unless measurements, readings, and observations of that part of the construction are made by Consultant's personnel.

**11. Standard of Performance:** The standard of care for all professional services performed or furnished by Consultant under this contract will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant does not make any warranty or guarantee, expressed or implied, nor is this contract subject to the provisions of any uniform commercial code. Similarly, Consultant will not accept those terms and conditions offered by Owner in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

**12. Ownership of Documents:** All documents produced by Consultant under this contract are instruments of Consultant's professional service and shall remain the property of Consultant and may not be used by Owner for any other purpose without the prior written consent of Consultant subject to the requirements of Wisconsin's Public Records Law.

**13. Electronic Files:** Owner and Consultant agree that any electronic files furnished by either party shall conform to the specifications agreed to at the time this contract is executed. Electronic files furnished by either party shall be subject to an acceptance period of 60 days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files. Owner is aware that differences may exist between the electronic files delivered and the printed hard-copy documents. In the event of a conflict between the hard-copy documents prepared by Consultant and electronic files, the hard-copy documents shall govern.

**14. Financial and Legal Services:** Consultant's services and expertise do not include the following services, which shall be provided by Owner if required: (1) Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services; (2) Legal services with regard to issues pertaining to the Project as Owner requires, Contractor(s) raises, or Consultant reasonably requests; and (3) Such auditing services as Owner requires to ascertain how or for what purpose any Contractor has used the money paid.

**15. Termination of Services:** This contract may be terminated at any time by either party should the other party fail to perform its obligations hereunder. In the event of termination for any reason whatsoever, Owner shall pay Consultant for all services rendered to the date of termination, all reimbursable expenses incurred prior to termination, and reasonable termination expenses incurred as the result of termination.

**16. Controlling Law:** This contract is to be governed by the law of Wisconsin.

**17. Assignment of Rights:** Neither Owner nor Consultant shall assign, sublet or transfer any rights under or interest in this contract (including, but without limitation, moneys that may become due or moneys that are due) without the written consent of the other, except to the extent mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this contract. Nothing contained in this paragraph shall prevent Consultant from employing such independent subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

**18. Third Party Benefits:** This contract does not create any benefits for any third party.

**19. Dispute Resolution:** Owner and Consultant agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under the following dispute resolution provision. If direct negotiations fail, Owner and Consultant agree that they shall submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this contract or the breach thereof to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association effective on the date of this contract prior to exercising other rights under law.

**20. Exclusion of Special, Indirect, Consequential, and Liquidated Damages:** Consultant shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the project or this contract.

**21. Betterment:** If, due to Consultant's negligence, a required item or component of the project is omitted from the construction documents, Consultant's liability shall be limited to the reasonable cost of correction of the construction, less what Owner's cost of including the omitted item or component in the original construction would have been had the item or component not been omitted. It is intended by this provision that Consultant will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the project.

**22. Amendments:** This contract may only be amended, supplemented, modified, or canceled by a duly executed written instrument.



**DATE:** March 5, 2019

**SUBJECT:** **RESOLUTION 4939(41)** - To Approve a Task Order Number Two for Ayres Associates for Design and Construction Management Services for Riverside Park Improvements.

**SUBMITTED BY:** Peter Riggs, Director of Public Works

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**BACKGROUND/HISTORY:**

In April of 2018 the City secured Ayres Associates to assist with an application for a Wisconsin Department of Natural Resources (DNR) Stewardship Grant for improvements to Riverside Park. These improvements consist of replacement of the aging pavilion structure, installation of a canoe/kayak launch, and shoreline stabilization. These improvements were recommended in the 2015-2019 Comprehensive Outdoor Recreation Plan and are supported by the Park Board. The total project cost is estimated at \$160,000, half of which (\$80,000) would be eligible for reimbursement through the grant.

The City was successful in obtaining the grant and is ready to move forward with the next step of the project. Attached is the task order for Ayres Associates to assist the City with completion of bidding documents and construction administration for a cost of \$23,340. Ayres has assisted the City on numerous successful park projects in the past and is very familiar with the community.

**BUDGET/FISCAL IMPACT:**

This task order has a cost of \$23,340. This was accounted for in the 2019 Budget for the Park Development Fund.

**RECOMMENDATION:**

The Park Board passed a motion recommending the approval of the task order at their February 21, 2019 meeting. Staff also recommends approval of this task order.

**TIMING/IMPLEMENTATION:**

This item is presented for discussion at the March 5, 2019 Committee of the Whole and is scheduled for final consideration at the March 19, 2019 Common Council Meeting.

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**Attachments**

Res 4939(41)  
Riverside Improvements Task Order

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**A RESOLUTION APPROVING TASK ORDER NUMBER 2  
WITH AYRES ASSOCIATES FOR SERVICES RELATED TO THE  
RIVERSIDE PARK IMPROVEMENTS**

**WHEREAS**, the City of Burlington has entered into agreements for engineering services with Ayres Associates in the past; and,

**WHEREAS**, the City has requested assistance with preparation of bid documents and construction administration for planned improvements to Riverside Park to include:

- New open air pavilion to match the Wehmhoff Jucker Pavilion
- Canoe/kayak launch
- Shoreline restoration

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 \$23,340 and has been recommended for approval by the Park Board and the Director of Public Works.

**NOW, THEREFORE, BE IT RESOLVED** by the Common Council of the City of Burlington Task Order Number 2 is hereby approved for the not-to-exceed amount of \$23,340.

**BE IT FURTHER RESOLVED** that the City Administrator is hereby authorized and directed to execute Task Order Number 2 on behalf of the City.

Introduced: March 5, 2019  
Adopted:

\_\_\_\_\_  
Jeannie Hefty, Mayor

Attest:

\_\_\_\_\_  
Diahn Halbach, City Clerk

February 19, 2019



Peter Riggs  
Director of Public Works  
City of Burlington  
2200 S. Pine Street  
Burlington, WI 53105

Re: Riverside park improvements

Dear Peter,

Thank you for the opportunity to submit a proposal for the implementation of the Riverside Park grant improvements. As you know, we have worked in this park before and know the conditions well. This proposal outlines our proposed scope of services, time schedule, fee, and contract terms and conditions.

Project Description

The project includes planning efforts required for the completion of bidding documents for the new shelter and kayak launch at Riverside Park and Construction Administration Services.

Basemap information will be assembled from available GIS and LIDAR files.

Scope of Services

See below

Responsibilities of Owner and Others

Provide any basemap materials or other pertinent information to the project.

Time Schedule

The work is anticipated to take 2-3 months to complete and can begin in April, 2019.

Fee

In consideration of the preceding scope of services, our proposed fees are lump sum as follows:

I. Riverside Park Improvements	\$ 16,840
II. Riverside Park CA Services	\$ 6,500

Contract Terms and Conditions

See below.

Acceptance

If this proposal is acceptable to you, a signature on the enclosed copy of this letter will serve as our authorization to proceed.

Proposed by Consultant: Ayres Associates,  
Inc

Accepted by: City of Burlington



---

Name: Blake Theisen  
Title: Project Manager  
Date: 2/19/2019

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Name:  
Title:  
Date:



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Name: Bruce Morrow, PLA  
Title: Group Manager  
Date: 2/19/2019

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## SCOPE

### TASK 1. RIVERSIDE PARK IMPROVEMENTS

- Develop construction plans and bid specifications for the improvements at Riversdie Park in keeping with the recently awarded 2019 DNR grant scope. Elements to be included are a new open air pavilion to match the Whemhoff Jucker Pavillion, canoe/kayak launch, and associated site improvements for connectivity.
- Assemble bid form and special provision specifications for bidding.
- Compile estimate of probable construction costs.
- Assist the city with advertising for public bidding of the project.
- Review public bids and provide the City with bid tab and recommendation memo.

### TASK 2. CONSTRUCTION ADMINISTRATION SERVICES

- Attend construction meetings as required for the project (5 included in fee) and provide city with photo documentation of progress and meeting minutes.
- Review shop drawings, submittals, and pay requests.
- Conduct punch list review and provide checklist to owner and contractor.

### ASSUMPTIONS

Existing basemap information will be provided by the City in digital format (CAD/GIS). Topographic survey and geotechnical investigations are not included in this scope. Meeting locations will be reserved and noticed by the City.

**AYRES ASSOCIATES  
CONTRACT TERMS AND CONDITIONS**

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**3. Access to Site:** Owner shall furnish right-of-entry on the project site for Consultant and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of services. Consultant will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

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**6. Insurance:** Consultant shall maintain Workers' Compensation, General Liability, and Automobile Liability Insurance during its services for Owner. Consultant shall furnish a Certificate of Insurance to Owner upon the signing of this agreement. Owner agrees that Consultant shall not be liable or responsible to Owner for any loss, damage, or liability beyond the amounts, limits, exclusions, and conditions of such insurance.

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**8. Opinions of Probable Costs:** Consultant's opinions of probable project costs are made on the basis of Consultant's experience, qualifications and judgment; but Consultant cannot and does not guarantee that actual project costs will not vary from opinions of probable cost.

**9. Construction Review:** Consultant does not accept responsibility for the design of a construction project unless the Consultant's contract includes review of the contractor's shop drawings, product data, and other documents, and includes site visits during construction in order to ascertain that, in general, the work is being performed in accordance with the construction contract documents.

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**11. Standard of Performance:** The standard of care for all professional services performed or furnished by Consultant under this contract will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant does not make any warranty or guarantee, expressed or implied, nor is this contract subject to the provisions of any uniform commercial code. Similarly, Consultant will not accept those terms and conditions offered by Owner in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

**12. Ownership of Documents:** All documents produced by Consultant under this contract are instruments of Consultant's professional service and shall remain the property of Consultant and may not be used by Owner for any other purpose without the prior written consent of Consultant subject to the requirements of Wisconsin's Public Records Law.

**13. Electronic Files:** Owner and Consultant agree that any electronic files furnished by either party shall conform to the specifications agreed to at the time this contract is executed. Electronic files furnished by either party shall be subject to an acceptance period of 60 days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files. Owner is aware that differences may exist between the electronic files delivered and the printed hard-copy documents. In the event of a conflict between the hard-copy documents prepared by Consultant and electronic files, the hard-copy documents shall govern.

**14. Financial and Legal Services:** Consultant's services and expertise do not include the following services, which shall be provided by Owner if required: (1) Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services; (2) Legal services with regard to issues pertaining to the Project as Owner requires, Contractor(s) raises, or Consultant reasonably requests; and (3) Such auditing services as Owner requires to ascertain how or for what purpose any Contractor has used the money paid.

**15. Termination of Services:** This contract may be terminated at any time by either party should the other party fail to perform its obligations hereunder. In the event of termination for any reason whatsoever, Owner shall pay Consultant for all services rendered to the date of termination, all reimbursable expenses incurred prior to termination, and reasonable termination expenses incurred as the result of termination.

**16. Controlling Law:** This contract is to be governed by the law of Wisconsin.

**17. Assignment of Rights:** Neither Owner nor Consultant shall assign, sublet or transfer any rights under or interest in this contract (including, but without limitation, moneys that may become due or moneys that are due) without the written consent of the other, except to the extent mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this contract. Nothing contained in this paragraph shall prevent Consultant from employing such independent subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

**18. Third Party Benefits:** This contract does not create any benefits for any third party.

**19. Dispute Resolution:** Owner and Consultant agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under the following dispute resolution provision. If direct negotiations fail, Owner and Consultant agree that they shall submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this contract or the breach thereof to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association effective on the date of this contract prior to exercising other rights under law.

**20. Exclusion of Special, Indirect, Consequential, and Liquidated Damages:** Consultant shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the project or this contract.

**21. Betterment:** If, due to Consultant's negligence, a required item or component of the project is omitted from the construction documents, Consultant's liability shall be limited to the reasonable cost of correction of the construction, less what Owner's cost of including the omitted item or component in the original construction would have been had the item or component not been omitted. It is intended by this provision that Consultant will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the project.

**22. Amendments:** This contract may only be amended, supplemented, modified, or canceled by a duly executed written instrument.



**COMMITTEE OF THE WHOLE**

**ITEM NUMBER 7A**

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**DATE:** March 5, 2019

**SUBJECT:** **ORDINANCE 2045(11)** - To amend Sections 148-7(A), "Performance standards for construction Sites under one acre" 148-9(E)9, "Permit requirements; application procedures; fees" and 148-10(A)4(h) "Erosion and sediment control plans: statement; amendments" of the Municipal Code of Burlington.

**SUBMITTED BY:** Carina Walters, City Administrator

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**BACKGROUND/HISTORY:**

The City of Burlington is a MS4 (Municipal separate storm sewer system) permitted community. A MS4 is a city owned storm water conveyance system consisting of storm drains, pipes, culverts, and ditches that discharge storm water to waters of the U.S.). As part of the City of Burlington's Permit to Discharge and to be in compliance with CH. 283 Wis., Stats, and Chapters NR 151 and 216, Wis Adm. Code. Owners of an MS4 permit are required to develop and maintain a erosion control ordinance.

In January of 2015 the City received a Storm Water Management planning grant in the amount of \$80,000 to meet the initial permit requirements. The permit required the creation or modifications to multiple ordinances, as well as mapping and modeling of the city storm sewer system for runoff and pollutant loading. All criteria have been met.

As part of the requirement for the Final Grant reimbursement the Wisconsin Department of Natural resources has requested the following changes to the current erosion control ordinance.

**BUDGET/FISCAL IMPACT:**

N/A

**RECOMMENDATION:**

Staff recommends approval of this text amendment.

**TIMING/IMPLEMENTATION:**

This item is for discussion at the March 5, 2019 Committee of the Whole meeting and scheduled for final consideration at the March 19, 2019 Common Council meeting.

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**Attachments**

Ord. 2045(11)

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**AN ORDINANCE AMENDING SECTIONS 148-7(A), "Performance standards for construction Sites under one acre" 148-9(E)9, "Permit requirements; application procedures; fees" and 148-10(A)4(h) "Erosion and sediment control plans: statement; amendments" of the Municipal Code of Burlington**

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

I. Section 148-7(A) of the City of Burlington Municipal Code entitled, "Performance standards For Construction Sites Under One Acre" is hereby amended as follows:

A. Responsible party. The responsible party shall **comply with this section.**

~~B. implement an erosion and sediment control plan, developed in accordance with § 148-10, that incorporates the requirements of this section.~~ **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 the following:**

Section 148-9(E)(8) of the City of Burlington Municipal Code entitled, "Permit requirements; application procedures; fees."

**(9) A copy of the erosion and sediment control plan shall be kept at the construction site.**

Section 148-10(A)(4) of the City of Burlington Municipal Code entitled, "Erosion and sediment control plan; statement; amendments."

(g) Areas which will be vegetated following construction.

**(h) Areas used for infiltration of post-construction storm water runoff**

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

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 1148 of the Municipal Code of the City of Burlington shall continue and in full force and effect.

Introduced: March 5,  
2019  
Adopted:

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Jeannie Hefty, Mayor

Attest:

---

Diahnn Halbach, City Clerk



**DATE:** March 5, 2019

**SUBJECT:** **MOTION 19-922** - To consider approving a Certificate of Appropriateness for property located at 448 Milwaukee Avenue.

**SUBMITTED BY:** Gregory Guidry, Building Inspector

**BACKGROUND/HISTORY:**

According to Ch. 315-42E(1), the Common Council must approve any alteration including architectural appearance. Alterations include any exterior change (including painting), addition to, or demolition of any part or all of the exterior of a structure within the HPO District. In determining such approval, the Common Council shall take into consideration the recommendation of the Historic Preservation Committee.

- Re-painting the rear and the side of the building. The applicant has already painted the building in 160 Knoxville Gray, which is an approved historic color. The applicant was under the impression that if the building was painted with an approved historic color, then an approval would not be necessary. It was discussed at a previous meeting that if a color of the building was changed, it would require approval. If the building was painted the same color, then it would be considered maintenance and would not require approval. The applicant has submitted a Certificate of Appropriateness application with the new color.

**BUDGET/FISCAL IMPACT:**

N/A

**RECOMMENDATION:**

The Historic Preservation Commission (HPC) unanimously recommended approval of the Certificate of Appropriateness Application at their February 28, 2019 meeting.

**TIMING/IMPLEMENTATION:**

This item is for discussion at the March 5, 2019 Committee of the Whole meeting and per common practice is scheduled for final consideration at the Common Council meeting the same evening.

**Attachments**

COA 448 Milwaukee Ave.

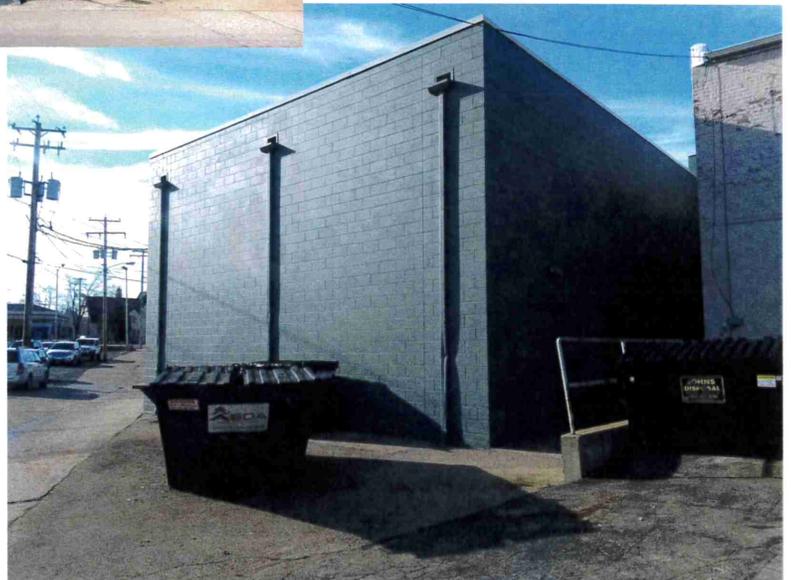
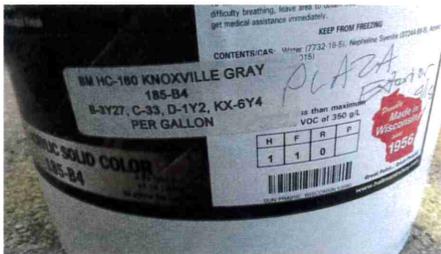
# PLAZA THEATER

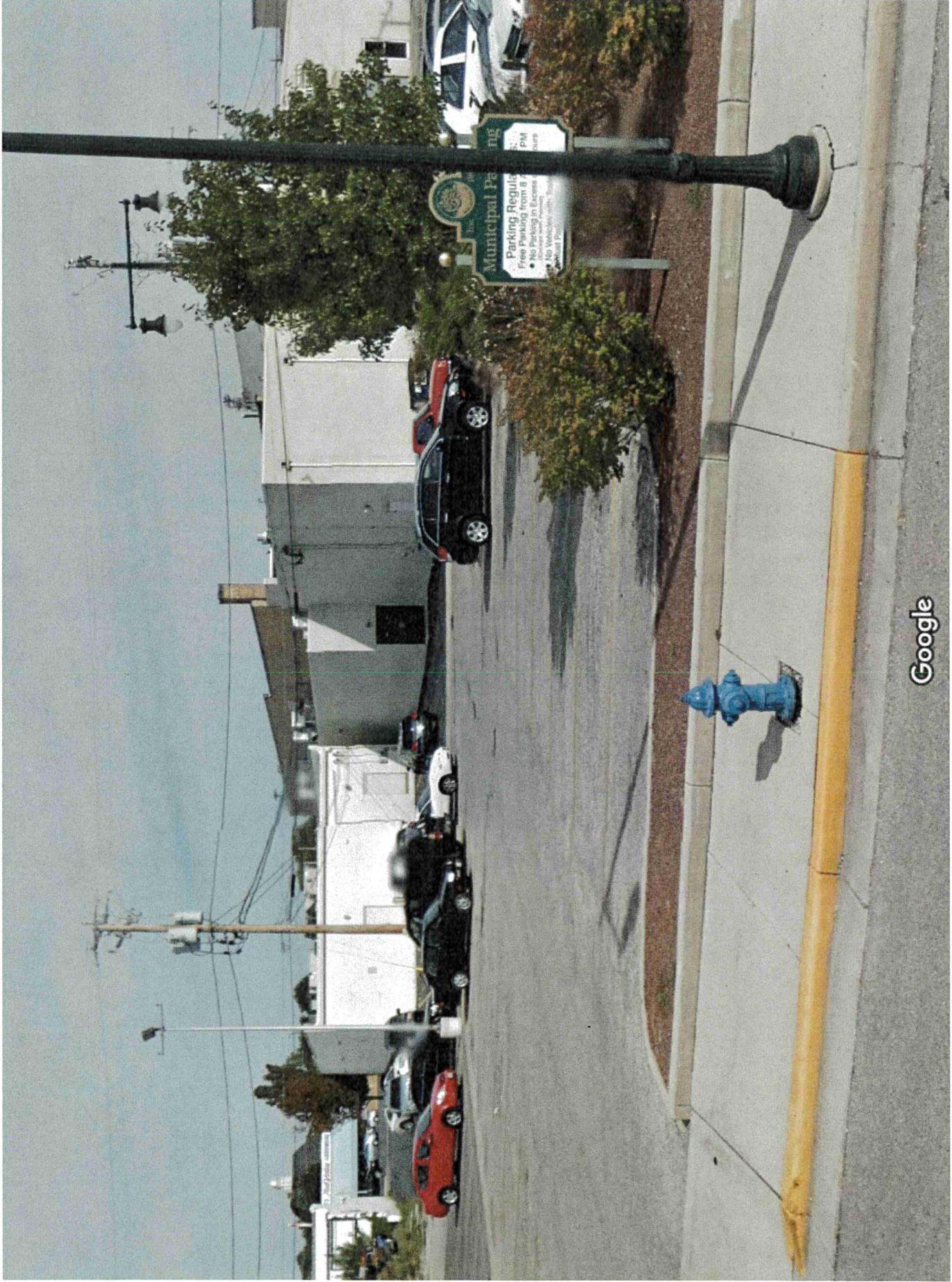
448 MILWAUKEE AVE., BURLINGTON

PROJECT INCLUDES PAINTING OF THE EXTERIOR REAR WALL AND SIDES OF THE BUILDING.

THE MASONRY BLOCK WAS PREVIOUSLY PAINTED WITH TWO DIFFERENT COLORS.

WE REPAINTED WITH HC-160 KNOXVILLE GRAY (B-3Y27, C-33, D-1Y2, KX-6Y4), AN APPROVED COLOR BY THE BURLINGTON HPC.







**COMMITTEE OF THE WHOLE**

**ITEM NUMBER 8B**

**DATE:** March 5, 2019

**SUBJECT:** **MOTION 19-923** -To consider approving the 2019 Fireworks Agreement for July 4, 2019 with Five Star Fireworks Co.

**SUBMITTED BY:** Megan Watkins, Assistant City Administrator | Zoning Administrator

**BACKGROUND/HISTORY:**

Presented before you tonight, is Five Star Firework’s 2019 Fireworks Agreement for this year’s July 4th fireworks, to be displayed on the ChocolateFest grounds located at 681 Maryland Avenue. Five Star Fireworks, Co. has provided fireworks for the July 4th in the City of Burlington since 2014 with great success and popularity.

In 2014, staff requested proposals to conduct the July 4th firework show from four firework companies, which were: J&M Displays, Five Star Fireworks Co., Krueger Pyrotechnics & Firework Display, and Bartolotta Fireworks Company, Inc. After discussion with the companies and review of the proposals, staff recommended and Council approved contracting with Five Star Fireworks in the amount of \$10,000.

The contract has continued to be renewed each year as Five Star Fireworks has continued to honor the \$10,000 price for its fireworks display. The terms and conditions in the agreement have remained the same as previous years. Five Star did indicate that they saw and increase in fireworks cost and insurance this year. They had to make several adjustments to the display, roughly 200 shells, to fit in our budget of \$10,000. Five Star feels the less shells should go unnoticed overall.

For your convenience, attached to the cover sheet is the itemized quote from 5-Star Fireworks, as well as the agreement for services on July 4, 2019.

**BUDGET/FISCAL IMPACT:**

The amount of the Agreement is \$10,000. A down payment of \$3,000 shall be made upon signing of the Agreement. The remaining amount is due 30 days after the display. Payment is made through the Festivals Account within the General Fund.

**RECOMMENDATION:**

Staff recommends approving the agreement.

**TIMING/IMPLEMENTATION:**

This item is for discussion at the March 5, 2019 Committee of the Whole meeting and is scheduled for the March 19, 2019 Common Council meeting for final consideration.

**Attachments**

Agreement

# FIVE STAR FIREWORKS, CO.

Mystic Fireworks, Inc., d/b/a Five Star Fireworks

P. O. Box 143

Oconomowoc, WI 53066-0143

Telephone (262)569-7820; Cell (262)490-4164

[www.fivestarfirerworks.com](http://www.fivestarfirerworks.com)

**THIS AGREEMENT** is made this 23<sup>rd</sup> day of January, 2019, between:

Mystic Fireworks Inc. d/b/a

**FIVE STAR FIREWORKS**

- and -

**CUSTOMER**, City of Burlington, 300 N. Pine St., Burlington, WI 53105

Customer agrees to engage Mystic Fireworks, Inc. d/b/a Five Star Fireworks, ("Five Star") to shoot a fireworks show ("Show") on July 4, 2019.

Customer agrees to pay Five Star the total price \$10,000.00, subject to modification for changes, for the labor, shooting and furnishing of fireworks for the Show referenced above.

A down payment of \$3,000.00 shall be made upon the signing of this Agreement. The remaining amount is due 30 days after the display.

Five Star and the Customer agree as follows:

## **FIREWORKS EXHIBITION TERMS AND CONDITIONS**

1. **Parties.** This contract engages the services of Five Star to produce and perform pyrotechnic displays over a one-year period for the Customer as referenced above.
2. **Product.** Five Star agrees to furnish to Customer a fireworks display Show containing the fireworks indicated on the attached Exhibit "A" which is a list of the purchased fireworks to be used for the Show.
3. **Supply.** In the event any of the fireworks listed in Exhibit "A" should not be available through no fault of Five Star, Five Star reserves the right to substitute said fireworks with comparable fireworks without further notice. Any said substitutions will be of equal or greater value to Customer and will not affect the "look" or "feel" of the Show.
4. **Date.** The date of the Show shall be for July 4, 2019.
5. **Weather.** In case of inclement weather, the displays will be rescheduled for the following day or on such other day and time as mutually agreed. In the event inclement weather forces the cancellation of the Show and said Show is not rescheduled, Customer shall pay a restocking charge of 15% of the cost of the Show.
6. **Financing/Sponsorship.** Should a Customer lose funding for the Show or a sponsor of the Show withdraws funds, the Customer must give written notice of same to Five Star indicating what amount of funds were lost and what is the new budget for the Show. Notice must be received before the end of May of the year the Show is to be produced. The Customer will have the following options:

- a. **Cancellation.** If the funds available for the Show are less than the amount necessary to conduct a reasonable Show, then the contract for that year may be canceled. If the Customer has additional years remaining on its contract, then the Customer must make all reasonable efforts to secure financing for the remaining Shows. Cancellation of the contract due to lack of funds does not free Customer of the terms of this Contract or allow Customer to search out other fireworks companies to shoot the Show.
- b. **Reorganization.** After informing Five Star of the loss of funds, Customer can arrange with Five Star a reorganization the Show given the new amounts available. If notice is received less than thirty (30) days prior to the Show, any cancellation or change will be disallowed. Five Star reserves the right to refuse cancellation or reorganization of the Show based on its own judgment of the facts in any given situation.

7. **Personnel.** Five Star shall provide qualified personnel who will handle the delivery, set-up and execution of the display fireworks, as well as appropriate clean-up of the display area. Said personnel are under the direct control and supervision of Five Star. Any changes in the Show or information regarding the Show on the date of the Show must be referred to the site supervisor.

8. **Safety.** Five Star shall take all safety precautions with respect to the Show, shall comply with all safety measures required by the Contract, and with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority for the safety of persons or property at the Show. The following provisions are also necessary for the safety of the Show:

- a. **Area.** Customer shall provide Five Star with sufficient area to shoot said Show in a safe and reasonable manner in accordance with NFPA guidelines and standards.
- b. **Police and Fire.** Customer shall provide all necessary police and fire personnel, as well as any other appropriate protection necessary. This includes, but is not limited to contact with the police and fire departments in the area, providing private security as necessary, providing access to fire suppression equipment and water, and any other necessary safety personnel or equipment.
- c. **After-Show Inspection and Clean-Up.** Five Star will, to the best of its ability, conduct a search of the grounds after the Show, in an effort to dispose of any unexploded shells and for a general clean-up of the area. The extent of this inspection and clean-up may be affected by other commitments, inclement weather, or other unforeseeable circumstances, including, but not limited to; fire, lighting, rain, snow, or any other factors that hamper its after-show inspection and clean-up.
- d. **Morning Search.** Customer explicitly acknowledges and accepts responsibility to conduct a search of the grounds and surrounding area the morning after the Show. Customer acknowledges that this search is of critical importance. If any unexploded or defective fireworks are found that were missed during Five Star's inspection the previous evening, Customer shall notify Five Star immediately for further instructions concerning proper disposal.

9. **Hold Harmless.** To save harmless Five Star and all other workers or subcontractors from any and all losses or damage (including, without limiting the generality of the foregoing, legal fees and disbursements paid or incurred by Five Star to enforce the provisions of this Contract) occasioned by

the failure of the Customer to carry out the provisions of this Contract unless such failure results from causes beyond the control of the Customer.

10. **Non-Assignment.** Not to assign or sub-let this Contract, or any part thereof, and not to assign any money due or to become due hereunder without first obtaining the written consent of the Customer hereto.

11. **Compliance.** To comply with all federal and state laws, codes, and regulations and all municipal ordinances and regulations effective where the work under this Contract is to be performed.

12. **Permits.** The customer will be responsible for obtaining all necessary permits for the Show. Failure to obtain permits may result in cancellation of the Show.

13. **Entire Agreement.** This Agreement constitutes the entire Contract of the parties. It is expressly agreed that no statement, arrangement, warranty, or understanding, oral or written, express or implied, will be recognized unless it is stated in, or otherwise permitted by, this Agreement. Customer warrants that the person executing this Agreement, and any subsequent change orders, has legal authority to do so. Customer acknowledges review and approval of the entire Agreement before execution. This Agreement is not assignable by either party without the other's consent.

14. **Debt or Obligations.** Each party shall be responsible for its separate debts and obligations.

15. **Payment.** The cost of each display shall be \$10,000.00, and the cost of \$2,000,000.00 liability insurance shall be included, for a total amount due of \$10,000.00, plus sales tax, if applicable. At the time of the signing of this Contract, the Customer shall pay a deposit in the amount of \$3,000.00. The remaining balance shall be due and payable 30 days after the evening of the Show. A 5% financing charge shall be applied per month until the receipt by Five Star of any unpaid balance.

16. **Indemnification.** Five Star shall indemnify Customer against all liability to any person for or by reason of any condition, whether defective or otherwise, of any fireworks, apparatus, equipment, or fixtures furnished by Five Star in connection with the Show, and against all liability to any person for or by reason of any act of omission of Five Star or any of its agents or employees.

17. **Severability.** The invalidity of any part of this Agreement shall not be deemed to affect the validity of any other part. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provisions.

18. **Access.** Customer agrees to maintain access for Five Star to the display area, to keep the site free from obstructions, and to obtain permission for Five Star to gain access through any property as necessary to facilitate the shooting of the Show. Customer shall be solely responsible for all risk, shall hold Five Star harmless and free of liability, and shall compensate for any damage or costs arising out of such access or the failure to maintain access.

19. **Protection of Customer's Property and Site.** Customer agrees to remove or protect any personal property inside and outside the display area. Five Star shall take reasonable efforts to avoid damage to existing property, and in such event, shall not be responsible for damage to the Customer's property or any other property in the area where the Show was shot, including existing walks, driveways, telephone or electric lines, lawn, shrubs, trees, homes or other property whether caused in whole or in part by Five Star, its employees or subcontractors, or their suppliers in the performance of the Show or in the delivery of materials to the display site.

20. **Insurance.** Five Star shall maintain workers compensation and general liability insurance (in an amount of \$2,000,000.00), as necessary, either through itself or its parent company, Five Star Fireworks, Corp. Customer, as appropriate, shall maintain homeowners insurance covering all physical loss to any structure or buildings near the display area, and expressly including, but not be limited to; coverage for multiple perils, collapse, fire, weather damage, theft, vandalism and malicious mischief, naming Five Star as additional insured. Customer assumes all risk of loss during the Show, save for what is covered under the policies held by Five Star on its behalf. It is the Customer's responsibility to contact their insurance agent and inform them of the necessary required coverage or assume any loss not covered by their insurance carrier.

21. **Alternative Dispute Resolution.** In the event that either party requests, in writing, that a dispute relating in any way to this Agreement be resolved by mediation, the other party to this contract *must* proceed to mediate the dispute prior to filing a lawsuit. In the event mediation is requested, the mediation shall be conducted by the Mediation Service of the Metropolitan Builders Association of Greater Milwaukee or any other mediator or group that the parties can mutually agree to. Disputes that are subject to mandatory mediation include, but are not limited to contractual disputes and disputes directly relating to the Show or to the provision of services and/or materials for the Show. The parties agree, in the event the dispute proceeds to mediation, that they will make a good faith effort to resolve their dispute(s) through the mediation process and that they will abide by the MBA Mediation Service policies and procedures.

22. **Waiver.** Customer's commencement of litigation against Five Star for breach of contract or other dispute(s) prior to providing the notice required above, shall be deemed a waiver of any and all claims Customer may have had against Five Star for breach of contract or other dispute(s).

23. **Acceptance.** In executing this Agreement, Customer represents that Customer has the necessary financial resources to fulfill its obligations under this Agreement and has the legal authority to execute this Agreement.

By signing this Agreement, Customer represents and warrants that: (1) they have the authority to execute this Agreement for the Show; and (2) they have reviewed and approved the Agreement and the attached Exhibit "A." This Agreement shall become binding on Five Star and Customer upon signing below.

**Submitted by Five Star:**

By: \_\_\_\_\_ Date: January 23, 2019  
Tim Heinecke, President

The undersigned Customer certifies that he/she has carefully read this entire Agreement before signing below and acknowledges receipt of a copy of the entire Agreement at the time of signing.

**Accepted by Customer:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

**Accepted by Five Star:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Tim Heinecke, President



PREPARED FOR

## City of Burlington

July 4, 2019

### GRAND OPENING TO MAIN EVENT

150 1 ¼ PURPLE AND GREEN STROBE WITH CRACKLE TAIL

### MAIN EVENT

12 THREE INCH FLASH SALUTES  
Salutes will be used to signal the open of your show  
and will continue throughout the program.

50 THREE INCH CROWN PYRO COLOR DISPLAY SHELLS  
40 THREE INCH DELUXE AN-PING DISPLAY SHELLS  
50 THREE INCH DANCING DRAGON DISPLAY SHELLS

152 Total Three Inch Shells

Three inch display shells include: Colored Diadems, Crossett's, Tiger Tails, Sneaking Peony's, and Bright Stars to name a few.

20 FOUR INCH DANCING DRAGON DISPLAY SHELLS  
20 FOUR INCH DANCING DISPLAY SHELLS WITH TAILS  
36 FOUR INCH SPECIALTY YUNG FENG DISPLAY SHELLS  
44 FOUR INCH FLOWER KING DISPLAY SHELLS WITH TAILS

120 Total Four Inch Shells

Four inch display shells include: Multi-Colored Crossett's, Shimmering Peony's, Bright Kamuros, Glowing Comets, and many more.

- 10 FIVE INCH CROWN PYRO DISPLAY SHELLS
- 15 FIVE INCH DANCING DRAGON DISPLAY SHELLS
- 10 FIVE INCH DANCING SPECIALTY DISPLAY SHELLS

Five inch display shells include: Falling Leaves, Colored Diadems, Falling Willows, Giant Peony's, Bright Stars, and a wide variety of other effects.

- 15 FIVE INCH AN-PING MULTI-BREAKING DISPLAY SHELLS  
ALL SHELLS ARE TWO FULL SIZE BREAKS

50 Total Five Inch Shells

- 27 SIX INCH MANTSUNA DISPLAY SHELLS

\*\*\*\* Highest quality shell imported from China. All Shells have multiple breaks, colors, patterns, and shapes.\*\*\*\*  
(BEST SELLER FOR YEARS IN A ROW)

27 Total Six Inch Shells

## **FINALE**

- 100 1 ½ INCH GLITTER CROWN WITH FALLING LEAVES
- 60 TWO INCH TITIANUM SALUTES WITH REPORT
- 200 1 ½ INCH ASSORTED COLOR DALIAHS WITH REPORT
- 60 THREE INCH DANCING FINALE COLOR SHELLS WITH TAILS
- 60 THREE INCH GOLD CROWN FINALE SHELLS
- 30 THREE INCH PYRO FINALE COLOR SHELLS AND SALUTES
- 30 THREE INCH AM PYRO CANOPY SHELLS WITH FLASH
- 20 FIVE INCH DANCING NISHI KAMURO FINALE SHELLS

The conclusion of your show will consist of more than 550 shells  
to end the show on an extremely dramatic note!



## SPECIAL EFFECTS

- |     |   |
|-----|---|
| 150 | 1 ½ INCH BROCADE COCONUT TO TIME RAIN   |
| 150 | 1 ½ INCH MIXED STRODE TO WILLOW         |
| 200 | 1 ½ INCH RED, WHITE, AND BLUE PEONY'S   |
| 200 | 1 ½ INCH GREEN STROBE TO CRACKLE PISTOL |

**Special effects will be presented as 4 dramatic segments throughout your show!!!**

The length of this show will be 21-24 minutes duration.  
Program Exhibit "A"

**Display Budget \$10,000.00**  
(Plus Sales Tax)