



CITY OF BURLINGTON

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

AGENDA COMMON COUNCIL

Tuesday, January 17, 2012

To immediately follow the 6:30 p.m. Committee of the Whole meeting
Common Council Chambers, 224 East Jefferson Street

Mayor Robert Miller
Robert Prailes, Alderman, 1st District
Edward Johnson, Alderman, 1st District
Jim Prailes, Alderman, 2nd District
Peter Hintz, Alderman, 2nd District
Tom Vos, Council President and Alderman, 3rd District
Steve Rauch, Alderman, 3rd District
Katie Simenson, Alderman, 4th District
Jeff Fischer, Alderman, 4th District

Student Representatives:

Sarvpal Dhillon, Burlington High School
Dale Morrow, Burlington High School

1. Roll Call
2. Pledge of Allegiance to the Flag.
3. Citizen Comments.
4. Chamber of Commerce Representative.
5. Approval of the Common Council minutes for December 20, 2011. (*K. Simenson*)
6. Letters and Communications: None
7. Reports by Aldermanic Representatives and Department Heads..
8. Reports 1-4: (*J. Fischer*)
 - Report 1 – Committee of the Whole minutes, December 20, 2011
 - Report 2 – Police & Fire Commission minutes, October 5, 2011
 - Report 3 – Burlington Housing Authority minutes, November 17, 2011
 - Report 4 – Plan Commission minutes, December 13, 2011
9. Payment of Vouchers. (*R. Prailes*)
10. Licenses and Permits. (*E. Johnson*)

11. **APPOINTMENTS AND NOMINATIONS:** (*J. Prailes*)

- A. Amy Zott to be reappointed to the Zoning Board of Appeals, term to expire 1/1/15.
- B. Jon Schultz to be reappointed to the Zoning Board of Appeals, term to expire 1/1/15.
- C. Daniel Snyder to be reappointed to the Zoning Board of Appeals, term to expire 1/1/15.
- D. Tom Stelling to be reappointed to the Historic Preservation Committee, term to expire 1/1/15.
- E. Judy Stone to be reappointed to the Historic Preservation Committee, term to expire 1/1/15.
- F. Joel Weis to be reappointed to the Historic Preservation Committee, term to expire 1/1/15.

12. **PUBLIC HEARINGS**

None

13. **RESOLUTIONS:**

- A. Resolution 4518(43) to approve Contract Change Order #2 for Riverside Park Shoreline & Improvements, reflecting final quantities and reducing the final contract amount by \$14,984.62. This item was discussed at tonight's Committee of the Whole meeting. (*T. Vos*)
- B. Resolution 4519(44) to approve Contract Change Order #2 for the 2011 Street & Sidewalk Improvement Project, reflecting final quantities and reducing the final contract amount by \$5,237.15. This item was discussed at tonight's Committee of the Whole meeting. (*S. Rauch*)
- C. Resolution 4521(46) to approve the purchase of an Intercom/Recording System for the Police Department from General Communications in the amount of \$14,990. This item was discussed at tonight's Committee of the Whole meeting. (*K. Simenson*)
- D. Resolution 4523(48) to approve a Lease Agreement with RJC Distribution, LLC for property located at 508 Sheldon Lease for three years. This item was discussed at tonight's Committee of the Whole meeting. (*J. Fischer*)

14. **ORDINANCES:**

None

15. **MOTIONS:**

None

16. **ADJOURN INTO CLOSED SESSION** (*R. Prailes*)

- 1. Wis. Stats 19.85(1)(c), considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.
 - Consideration of employee compensation

17. **RECONVENE INTO OPEN SESSION** (*E. Johnson*)

1. Consideration on recommendations from the City Council.

18. **ADJOURNMENT** (*J. Prailes*)

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.



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Common Council Agenda Item Number: 5	Date: January 3, 2012
Submitted By: Beverly R. Gill, City Clerk	Subject: Meeting Minutes

Details:

Attached please find the minutes from December 20, 2011 Common Council meetings. Staff recommends approval of these minutes.

Options & Alternatives:

N/A

Financial Remarks:

None.

Executive Action:

Staff recommends that the Common Council approve these minutes at the January 3, 2012 Common Council meeting.



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**City of Burlington
Official Minutes
Common Council
Robert Miller, Mayor
Beverly R. Gill, City Clerk
December 20, 2011**

1. CALL TO ORDER - ROLL CALL

Mayor Bob Miller called the meeting to order at 6:31 p.m. starting with roll call. Aldermen present: Bob Prailes, Ed Johnson, Peter Hintz, Jim Prailes, Tom Vos, Steve Rauch, Jeff Fischer, Katie Simenson

Student Representatives: Dale Morrow, Paul Dhillon

Also present: City Attorney John Bjelajac, City Administrator Kevin Lahner, Police Chief Peter Nimmer, Fire Chief Richard Lodle, Treasurer Steve DeQuaker, Supervisor Streets and Parks Dan Jensen, Library Director Gayle Falk, Assistant to the Administrator Megan Johnson, Tom Foht of Kapur Engineering and Stephanie Schulte of RCEDC

2. PLEDGE OF ALLEGIANCE

Mayor Miller led the council, staff and audience in the Pledge of Allegiance.

3. CITIZEN'S COMMENTS

None

4. CHAMBER OF COMMERCE REPORT

None

5. APPROVAL OF COMMON COUNCIL MINUTES FOR DECEMBER 6, 2011

A motion was made by Johnson with a second by Bob Prailes to approve the common council minutes of December 6, 2011. With all in favor, the motion carried.

6. LETTERS AND COMMUNICATIONS

None

7. REPORTS BY ALDERMANIC REPRESENTATIVES AND DEPARTMENT HEADS

Johnson questioned how the new machine was working for leaf pickup and how it worked on Teut Road.

Jensen replied that the new machine worked well but more information needed to get to the public as to what should not be placed in the curbing. Jensen also commented that the residents of Teut Road had their leaves picked up every Monday and it appeared to go smoothly.

Vos had calls from residents asking about the "lines" they had seen on the roads. Jensen replied it was the work of the city's tanker truck that was spreading salt brine on the roadway in anticipation of bad weather.

Lahner wanted council to recognize the cooperation between the Wastewater Treatment and Department of Public Works employees who converted an existing piece of equipment to dispense the salt solution on the roads. Jensen did the research to find the brine solution. Lahner also added that this is in the testing phase.

Jensen also added that there are two different types of solutions with the temperature the determining factor as to which one is used. He also added that the solution can be applied up to four days ahead of time.

8. REPORTS 1-2

A motion to approve Reports 1-2 was made by Jim Prailes with a second by Simenson. With all in favor, the motion carried.

9. PAYMENT OF VOUCHERS

A motion was made by Hintz with a second by Bob Prailes to approve vouchers, pre-paid and reimbursements in the amount of \$328,103.61. Simenson questioned the bill for R.R. Walton and asked if they had repaired the lights by Veteran's Terrace. Lahner replied that the city crew had done the repair. There was a recall on the buttons that had to wait for the company to repair which at this time has been done. Simenson also asked when the radium removal would begin. Lahner did not have the answer, but would contact Connie Wilson and provide the information to Simenson at a later time. Roll Call Aye: Bob Prailes, Johnson, Hintz, Jim Prailes, Vos, Rauch, Fischer, Simenson Nay: None Motion carried 8-0

10. LICENSES AND PERMITS

A motion was made by Vos with a second by Rauch to approve the licenses and permits as presented. With all in favor, the motion carried.

11. APPOINTMENTS AND NOMINATIONS

A motion was made by Rauch with a second by Hintz to approve the appointments and nominations. With all in favor, the motion carried.

12. PUBLIC HEARINGS

None

13. RESOLUTIONS

A. RESOLUTION 4510(35) "A RESOLUTION TO CONSIDER APPROVING A LETTER OF AGREEMENT BETWEEN THE CITY AND RACINE COUNTY ECONOMIC DEVELOPMENT CORPORATION (RCEDC) FOR ONE YEAR"

A request for a second reading and a motion to approve was made by Simenson with a second by Hintz. Roll Call Aye: Bob Prailes, Johnson, Hintz, Jim Prailes, Vos, Rauch, Fischer, Simenson Nay: None Motion carried 8-0

B. RESOLUTION 4511(36) "A RESOLUTION TO CONSIDER APPROVING TASK ORDER NUMBER EIGHTY-FOUR WITH KAPUR & ASSOCIATES FOR FINAL DESIGN AND CONSTRUCTION MANAGEMENT WITH THE WASTEWATER TREATMENT PLANT PHASE TWO PROJECT IN THE AMOUNT OF \$828,427"

A request for a second reading and a motion to approve was made by Fischer with a second by Vos. Discussion: Vos questioned the amount of savings. Foht replied that it was about eight million dollars because only the equipment upgrade was being done and not the expansion portion. Roll Call Aye: Bob Prailes, Johnson, Hintz, Jim Prailes, Vos, Rauch, Fischer, Simenson Nay: None Motion carried 8-0

C. RESOLUTION 4513(38) "A RESOLUTION TO CONSIDER APPROVING A LETTER OF ENGAGEMENT WITH PATRICK ROMENESKO FOR THE 2011 AUDIT IN THE AMOUNT OF \$30,800"

A request for a second reading and a motion to approve was made by Bob Prailes with a second by Johnson. Roll Call Aye: Bob Prailes, Johnson, Hintz, Jim Prailes, Vos, Rauch, Fischer, Simenson Nay: None Motion carried 8-0

D. RESOLUTION 4514(39) "A RESOLUTION TO CONSIDER APPROVING AN AMENDMENT TO THE FEE SCHEDULE TO INCREASE PARK RESERVATION FEES"

A request for a second reading and a motion to approve was made by Johnson with a second by Hintz. Roll Call Aye: Bob Prailes, Johnson, Hintz, Jim Prailes, Vos, Rauch, Fischer, Simenson Nay: None Motion carried 8-0

E. RESOLUTION 4515(40) "A RESOLUTION TO CONSIDER APPROVING TASK ORDER NUMBER EIGHTY-FIVE WITH KAPUR & ASSOCIATES FOR THE 2012 STREET AND SIDEWALK IMPROVEMENT PROGRAM"

A request for a second reading and a motion to approve was made by Jim Prailes with a second by Rauch. Roll Call Aye: Bob Prailes, Johnson, Hintz, Jim Prailes, Vos, Rauch, Fischer, Simenson Nay: None Motion carried 8-0

14. ORDINANCES

None

15. MOTIONS

None

16. ADJOURNMENT

A motion was made by Hintz with a second by Bob Prailes to adjourn the meeting. With all in favor, the meeting adjourned at 7:26 p.m.



Beverly R. Gill
City Clerk
City of Burlington
Racine and Walworth Counties



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Common Council Agenda Item Number: 8	Date: January 17, 2012
Submitted By: City Staff	Subject: Reports 1-4

Details:

Attached please find the following reports:

- Report 1 – Committee of the Whole minutes, December 20, 2011
- Report 2 – Police & Fire Commission minutes, October 5, 2011
- Report 3 – Burlington Housing Authority minutes, November 17, 2011
- Report 4 – Plan Commission minutes, December 13, 2011

Options & Alternatives:

N/A

Financial Remarks:

None.

Executive Action:

Staff recommends that the Council accept these reports at the January 17, 2012 Common Council meeting.



Minutes
City of Burlington Plan Commission
Police Dept. Courtroom
December 13, 2011, 6:30 p.m.

Mayor Robert Miller called the Plan Commission meeting to order this Tuesday evening at 6:30 p.m. Roll call: Aldermen Tom Vos and Robert Prailes; Commissioners Darrel Eisenhardt, Chris Reesman and John Lynch; Student Representative Bianca Clayton; and Town of Burlington Representative Phil Peterson were present. Student Representative Kyle Burns was excused. Commissioner Michael Deans arrived at 6:32 p.m. Also present were City Administrator Kevin Lahner and Zoning Administrator Patrick Scherrer.

APPROVAL OF MINUTES

Alderman Prailes moved and Alderman Vos seconded to approve the minutes of November 8, 2011. All were in favor and the motion carried.

CITIZEN COMMENTS

None

LETTERS & COMMUNICATIONS

None

PUBLIC HEARINGS

A. A Public Hearing to hear public comments regarding a Conditional Use application from Dan Cowan for property at 309 W. Market Street to use for snowmobile and ATV services and storage.

- Mayor Miller opened the public hearing at 6:33 p.m.
- There were no comments. Alderman Prailes moved and Alderman Vos seconded to close the Public Hearing at 6:34 p.m. All were in favor and the motion carried.

OLD BUSINESS

None

NEW BUSINESS

A. Consideration to approve a Conditional Use Application and Site Plan Application from Dan Cowan for property at 309 W. Market Street to use for snowmobile and ATV services and storage.

- Mayor Miller opened this item for discussion.

- Alderman Prailes questioned if the applicant anticipates a lot of customers as the adjoining business, MedSpeed, uses quite a few of the current parking spaces. The applicant, Dan Cowan, stated there will be 3-4 spaces available for his business. He does not feel there will be more than that amount of customers at one time.
- Alderman Prailes asked if the parking lot needed to be striped. Owner, Jean Gruenert, stated the lot is already striped. She further stated that the adjoining business parks their vans in the lot at night.
- Commissioner Deans questioned if there will be an exhaust system in place inside the building. Mr. Cowan stated there will not however he plans to keep the doors open if he needs to run the machines inside. He further stated that the small engines typically need to be started where the temperature is colder and will likely run them outside. Patrick Scherrer questioned if an exhaust hose could be installed in the building. Mr. Cowan stated he would look into it.
- Commissioner Lynch questioned if the applicant intends on storing the trailer to transport the machines in the building or in the parking lot. Mr. Cowan stated he is planning to keep it in the garage until it is needed and wouldn't use any of the parking stalls. Commissioner Lynch further stated he is concerned with customers parking with trailers in the lot and using all of the allotted stalls to unload equipment.
- Alderman Vos stated he is concerned with exhaust fumes in the building as the ceilings are low. He further stated he is concerned with the limited parking stalls. Mayor Miller recommended the applicant work with the adjoining business to ensure the four required stalls are available at all times.
- There were no further comments.

Commissioner Eisenhardt moved and Commissioner Lynch seconded to recommend approval of a Conditional Use and Site Plan at 309 W. Market Street Patrick Meehan's November 26, 2011 memorandum to the Plan Commission as follows:

- If outdoor lighting is proposed, total cut-off luminaires are to be used throughout the site meeting the requirements of Sections 315-30(H) and 315-137(C)(25) of the City Zoning Ordinance. A Lighting Plan meeting the following requirements shall be submitted and have, at a minimum, the following elements:
 - a. A catalog page, cut sheet, or photograph of the luminaire including the mounting method, a graphic depiction of the luminaire lamp (or bulb) concealment, and graphic depiction of light cut-off angles.
 - b. A photometric data test report of the proposed luminaire graphically showing the lighting distribution in all angles vertically and horizontally around the luminaire.
 - c. A plot plan, drawn to a recognized engineering or architectural scale, indicating the location of the luminaire(s) proposed, mounting and/or installation height in feet, the overall illumination levels (in footcandles) and lighting uniformities on the site, and the illumination levels (in footcandles) at the property boundary lines. This may be accomplished

by means of an isolux curve or computer printout projecting the illumination levels.

- d. Exterior lighting in the M-1 District shall be limited to total cut-off type luminaires (with angle greater than 90 degrees). The maximum permitted illumination shall be two (2) footcandles (as measured at the property line). The maximum permitted luminaire height shall be 30 feet as measured from surrounding grade to the bottom of the luminaire.
- The submitted plans need to meet the following requirements of Section 315-137(C) of the City Zoning Ordinance:
 - a. The site size needs to be indicated on a revised Site Plan.
 - b. The height of the existing building (in feet and stories) needs to be indicated on a revised Site Plan.

All in favor and the motion carried.

ADJOURNMENT

Commissioner Lynch moved and Commissioner Reesman seconded to adjourn the meeting at 6:44 p.m. *All were in favor and the motion carried.*



Recording Secretary
Megan E. Johnson
Assistant to the City Administrator

**City of Burlington Housing Authority
Riverview Manor**

November 17, 2011

The regular monthly meeting of the City of Burlington Housing Authority was held on Thursday, November 17th, 2011, 6:30 P.M. at Riverview Manor. The meeting was called to order by Vice Chairman Stubley.

COMMISSIONERS PRESENT: Vice-Chairman Stubley, Secretary Heck, Commissioners Stoehr and Iselin, also present was Resident Manager, Dorothy Henning. Chairman Lapp was excused.

Minutes from the October 20th, 2011 meeting was dispersed to board members and a motion was made by Stoehr, seconded by Iselin to approve the minutes as read, carried unanimously.

FINANCIAL REPORT:

Reserve Account balances as of October 31, 2011

Talmer Bank FBC	\$ 42,889.40
M&I Bank	<u>\$ 15,137.40</u>
TOTAL	\$ 58,026.80

OCCUPANCY REPORT:

Manager Henning reported that all units are occupied with 7 on the waiting list for 1 bedroom units and 3 for 2 bedroom units.

BUILDING AND MAINTENANCE:

The City has agreed to remove the tree near the main entrance of Riverview Manor. It was suggested that the city also be contacted for any information they may have of foresters that could be helpful with suggestions of trimming and/or removal of other trees at the Manor.

Wil-Kil will be giving a presentation to the residents on December 6th, at 2:00 P.M. regarding bed bugs. They currently have 2 beagles that are trained to search and locate the bugs. Manager Henning and Chairman Lapp attended the Wil-Kil session on bed bugs while attending the Wi-Carh Conference at Wisconsin Dells in November and found it very interesting and informative. Riverview Manor does not have a problem with bed bugs but Manager Henning felt the residents would be interested in the presentation and should attend if possible.

COMMUNICATION

Manager Henning reported on the very informative Wi-Carh Conference in Wisconsin Dells that she and Chairman Lapp attended on November 2nd.

Copies of the monthly bills and operating statements were dispersed and reviewed by board members

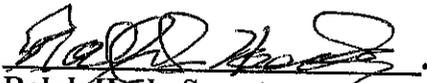
NEW BUSINESS: .

UNFINISHED BUSINESS

Patrick Romenesko, CPA, is currently working on the annual audit for Riverview Manor which will be received as soon as completed.

ADJOURNMENT:

There being no further business, motion to adjourn was made by Heck, seconded by Stublely and carried unanimously. Meeting adjourned 7:05 P.M. The next monthly meeting for December has not been scheduled but board members will be notified as soon as a date has been confirmed


Ralph Heck, Secretary

**City of Burlington Police & Fire Commission
Meeting Minutes**

Burlington Fire Station
165 West Washington Street
Burlington, WI 53105

October 5th, 2011

I.) Call to Order

The meeting was called to order by Chairman Hotvedt at 6:01 PM

II.) Roll Call

Present:

Jon Schultz, Barb Kopack-Hill, John Hotvedt, Ron Patla, Joe Busch (arrived at 6:30)

III.) Convene in Closed Session

Motion to convene in closed session pursuant to Section 19.85 (1c), Wis. Stats. at 6:01 PM

- Proposed by Barb Kopack-Hill, seconded by John Hotvedt
- **Passed unanimously**

IV.) Reconvene in Open Session

Motion to reconvene in open session at 6:20 PM

- Proposed by Barb Kopack-Hill, seconded by Ron Patla
- **Passed Unanimously**

Motion to approve both candidates for membership as volunteers with the City of Burlington Fire Department

- Proposed by Ron Patla, seconded by Barb Kopack-Hill
- **Passed Unanimously**

V.) Public Comments

None

VI.) Approval of Past Meeting's Minutes

None

VII.) Police and Fire Commission Business

New Business

None

Changing Monthly Meeting Time

Motion to change the monthly PFC meeting time to 5:30 PM

- Proposed by Joe Busch, seconded by Jon Schultz
- **Passed Unanimously**

VIII.) Fire Chief's Report and Fire Department Business

Fire Chief's Report

None

Applicants for Volunteer Membership

Interviewed during closed session and approved immediately following reconvening in open session per section IV.

IX.) Police Chief's Report and Police Department Business

Police Chief's Report

None

Expiration Date of the Current Sergeant Eligibility List

Chief Nimmer informed us that Sergeant Rendell may be taking on a new position elsewhere. The Commission never set an expiration date on the current Sergeant Eligibility List and there doesn't seem to be a default expiration period. The patrol office eligibility list is 12 months, but the probationary period is 18 months. The current Sergeant Eligibility List is 1 year and 1 month old, approved in September of 2010.

Section 7 only references the 18 month probationary period, and mentions nothing about the expiration of the eligibility list. Chief Nimmer is simply seeking clarification of the expiration period, since it is not defined.

Commissioner Kopack-Hill said when we reviewed and updated the guidelines, we decided to change the probationary time period from 12 months to 18 months.

Commissioner Patla suggested we set a specific period of time, but allow the option to extend or abolish the list after that time has expired. He prefers a 12 month period, but would be OK with 18 months.

Commissioner Busch suggested that either option (12 or 18) could offend someone. If you're not on the list you'd prefer a shorter period so you can get on, but if you're already on it you prefer a longer period before you have to reapply.

Chief Nimmer believes 18 months would be less of a headache given it would match the already defined period of 18 months for probationary status.

Motion to approve a clarification to the procedure for the promotion of a sergeant, previously approved by the commission, to provide that the eligibility list established thereunder shall be effective for period of 18 months, unless otherwise abolished or extended by action of the Police and Fire Commission.

- Proposed by John Hotvedt, seconded by Joe Busch
- **Passed Unanimously**

Chairman Busch suggested we add a clarification to the minutes as to why we're making this change. 18 months was agreed upon because it matches the existing probationary period. As stated before, Chief Nimmer is simply asking for clarification because the current list has no defined expiration date and there are no guidelines to direct him.

X.) Adjournment

Motion to adjourn the meeting at 6:47 PM

- Proposed by Joe Busch, seconded by Barb Kopack-Hill
- **Passed unanimously**



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Common Council Agenda Item Number: 10	Date: January 17, 2012
Submitted By: Beverly R. Gill, City Clerk	Subject: Licenses

Details:

Operator's Licenses

Baker, Kurt J.
Ebbers, Jenna L.
Frederick, Marie F.
Herda, Joseph M.
Hoffman, Charmain E.
Jimenez, Carlos D.
Kerr, Jaclyn K.
Pitner, Amy M.
Schaal, Julie A.
Schultz, Margaret M.
Squire, Kenneth G.
Singh, Kamveer
Taylor, Michelle M.
Murray, Denise A.
Blawat, Chelsey M.

Reserve Combination "Class B"

Name: Brickyard Barbeque Corporation
Agent: Wayne Schultz
Address: 235 Hawthorn Drive, Twin Lakes
Trade Name: Brickyard Barbeque
Address: 217 North Pine Street

Financial Remarks:

Applicants are charged a fee of which a portion funds the background checks performed by the Police Department. Business license fees are calculated on a case by case basis depending on the type of license applied for.

Executive Action:

Staff recommends the Common Council accept the presented licenses at the January 17, 2012 Council meeting.

KONICEK, KAISER, SCHOLZE & WANASEK, S.C.

ATTORNEYS AT LAW
133 SOUTH PINE STREET
POST OFFICE BOX 717
BURLINGTON, WISCONSIN 53105-0717

RICHARD SCHOLZE
BRIAN R. WANASEK
KELLY A. ISELIN

TELEPHONE: (262) 763-8185
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E-MAIL: BWanasek@kkswlaw.pro

DAVID P. KAISER (Of Counsel)
MILTON C. KONICEK (Retired)

December 15, 2011

Beverly Gill, City Clerk
City of Burlington
300 North Pine Street
Burlington, WI 53105

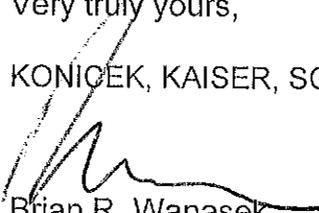
Dear Bev:

In re: WAN, LLC

As you are aware, WAN, LLC holds the reserve liquor license for the property located at 217 North Pine Street (formerly the Burlington Brewing Company). WAN, LLC is in the process of selling the property to Wayne Schultz, and has an accepted offer. The purpose of this letter is to inform you that WAN, LLC will surrender its license so that a transfer can be made to Mr. Schultz, conditioned upon the approval of Mr. Schultz for this license and the sale of the property to him or his assigns.

Very truly yours,

KONICEK, KAISER, SCHOLZE & WANASEK, S.C.



Brian R. Wanasek

BRW:kk

cc: WAN, LLC



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Common Council Agenda Item Number: 11	Date: January 17, 2012
Submitted By: Mayor Miller	Subject: Appointment A-F

Details:

- A. Amy Zott to be reappointed to the Zoning Board of Appeals, term to expire 1/1/15.
- B. Jon Schultz to be reappointed to the Zoning Board of Appeals, term to expire 1/1/15.
- C. Daniel Snyder to be reappointed to the Zoning Board of Appeals, term to expire 1/1/15.
- D. Tom Stelling to be reappointed to the Historic Preservation Committee, term to expire 1/1/15.
- E. Judy Stone to be reappointed to the Historic Preservation Committee, term to expire 1/1/15.
- F. Joel Weis to be reappointed to the Historic Preservation Committee, term to expire 1/1/15.

Options & Alternatives:

The Council may elect to deny this request and ask the Mayor to seek a different person for this board.

Financial Remarks:

None.

Executive Action:

Staff recommends that the Council accept these appointments at the January 17, 2012 Common Council meeting.



CITY OF BURLINGTON

Department of Public Works
Streets, Parks and Water Department
2200 S. Pine St., Burlington, WI, 53105
(262) 539-3770 – (262) 539-3773 fax
www.burlington-wi.gov

Committee of the Whole Item Number: 7	Date: January 17, 2012
Submitted By: Dan Jensen, DPW Supervisor	Subject: Resolution 4518(43) to consider Change Order #2 to the Riverside Park Shoreline and Trail Improvement Contract with Augie's Excavating, Inc.

Details:

Attached is a copy of Contract Change Order #2 to the Riverside Park Shoreline & Trail Improvements contract. The contract was awarded to Augie's Excavating, Inc. for the bid amount of \$134,843.68. Change Order Number One was approved November 1, 2011, reducing the contract total to \$98,935.38.

The project has been completed and all actual quantities have been determined. The cost created by difference between estimated and actual quantities is presented in the attached Change Order. Change Order Number Two decreases the amount of the contract by \$14,984.62 bringing the contract total to \$83,950.76.

Approving Change Order Number Two will equate Common Council approval of the contract amount with the amount of \$2,708.67 being requested for final payment to close contract.

Options & Alternatives: If the change order is not approved, the contract would not be reduced in price.

Financial Remarks:

Project is funded out of the Park Development Fund and grant proceeds.

Executive Action:

This item is for discussion at the January 17, 2011 Committee of the Whole meeting and due to the timeliness in payment of 2011 invoices, at the request of the City Treasurer, it is placed on tonight's January 17, 2011 Common Council meeting for consideration.

Resolution No. 4518(43)
Introduced by: Committee of the Whole

**A RESOLUTION APPROVING CONTRACT CHANGE ORDER NUMBER TWO WITH
AUGIE'S EXCAVATING, INC. FOR RIVERSIDE PARK SHORELINE & TRAIL
IMPROVEMENTS FOR A CREDIT IN THE AMOUNT OF \$14,984.62**

WHEREAS, Resolution 4487(12) approved the award of bid to Augie's Excavating, Inc. for Riverside Park Shoreline and Trail Improvements for the not to exceed total base bid of \$134,843.68; and,

WHEREAS, the City of Burlington entered into a contract with Augie's Excavating, Inc. for said improvements on July 5, 2011; and,

WHEREAS, during the course of work it was determined that a change in material was required and resulted in Change Order One reducing the contract by \$35,908.30 that was approved by Resolution 4508(33) on November 1, 2011; and,

WHEREAS, final quantities were calculated after work was completed revealing a reduction in the contract, which has resulted in a Change Order for a credit in the amount of \$14,984.62, a copy of which is attached hereto as "Exhibit A" and made a part hereof; and,

WHEREAS, said Change Order Two for a credit in the amount of \$14,984.62 has been recommended for approval by the City Engineer; and,

WHEREAS, the new contract price including Change Order Number Two is for the not-to- exceed amount of \$83,950.76.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Burlington that Change Order Two is hereby approved for credit in the amount of \$14,984.62.

BE IT FURTHER RESOLVED that the City Administrator is hereby authorized and directed to execute Change Order Two on behalf of the City.

Introduced: January 17, 2012
Adopted:

Robert Miller, Mayor

Attest:

Beverly R. Gill, City Clerk

RIVERSIDE PARK SHORELINE & TRAIL IMPROVEMENTS
Justification of Price for Contract Change Order #2

Description: This contract change order was added to the project to adjust the contract to match FINAL asbuilt quantities and FINAL contract cost, as requested by the Owner. The spreadsheet below shows the final quantities placed and the final cost of the project.

CITY OF BURLINGTON, WISCONSIN - BALANCE SHEET - FINAL

Riverside Park Shoreline & Trail Improvements - Base Bid							
Item No.	Item Description	Unit	Asbuilt Qty.	Bid Qty.	Bid Unit \$	Bid Total \$ w/ Asbuilt Qty.	% Comp
1	Mobilization	LS	1.00	1	\$ 250.00	\$ 250.00	100%
2	Silt Fence	LF	0.00	220	\$ 1.25	\$ -	100%
3	Turbidity Barrier Installed	LS	0.00	1	\$ 15,646.40	\$ -	100%
4	Tracking Pad	EACH	1.00	1	\$ 925.00	\$ 925.00	100%
5	General Site Clearing	LS	1.00	1	\$ 350.00	\$ 350.00	100%
6	Earthwork	LS	1.00	1	\$ 5,054.00	\$ 5,054.00	100%
7	CIP Concrete Pad	SF	260.00	260	\$ 10.58	\$ 2,750.80	100%
8	CIP Concrete Foundations	CY	12.00	12	\$ 563.34	\$ 6,760.08	100%
9	Rip Rap	CY	0.00	1455	\$ 59.46	\$ -	100%
10	Geotextile Fabric	SY	910.00	805	\$ 3.22	\$ 2,930.20	100%
11	Fishing Platform	EACH	2.00	2	\$ 6,625.00	\$ 13,250.00	100%
12	Benches (Assembly & Install only)	EACH	3.00	3	\$ 92.00	\$ 276.00	100%
13	Bike Rack (Install only)	EACH	2.00	2	\$ 100.00	\$ 200.00	100%
SUBTOTAL - Base Bid						\$ 32,746.08	100%

Change Order #1							
Item No.	Item Description	Unit	Asbuilt Qty.	Bid Qty.	Bid Unit \$	Bid Total \$ w/ Asbuilt Qty.	% Comp
CCO-1.01	Rip Rap Field Stone	TON	667.94	660	\$ 75.40	\$ 50,362.68	100%
CCO-1.02	Tree Stump/Root Removal	Hr	2.00	2	\$ 421.00	\$ 842.00	100%
SUBTOTAL - CCO #1						\$ 51,204.68	100%

TOTAL - Base Bid & CCO #1	\$ 83,950.76	100%
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CITY OF BURLINGTON

Department of Public Works
Streets, Parks and Water Department
2200 S. Pine St., Burlington, WI, 53105
(262) 539-3770 – (262) 539-3773 fax
www.burlington-wi.gov

Committee of the Whole Item Number: 8	Date: January 17, 2012
Submitted By: Dan Jensen, DPW Supervisor	Subject: Resolution 4519(44) to consider Change Order #2 to the 2011 Street and Sidewalk Improvement Project to the R. R. Walton & Company, LTD.

Details:

Attached is a copy of Contract Change Order #2 to the 2011 Street and Sidewalk Improvement Project. The contract was awarded to the R. R. Walton & Company, LTD. for the bid amount of \$179,250.12. Change Order Number One was approved September 6, 2011, increasing the contract total to \$186,712.06.

The project has been completed and all actual quantities have been determined. The cost created by difference between estimated and actual quantities is presented in the attached Change Order. Change Order Number Two shows an increase for extra work for the White River restoration for the addition of field stone, but this cost is a three-way share with the City, Kapur and Assoc. and R. R. Walton & Co. The net result of this Change Order still decreases the amount of the contract by \$5,237.15 bringing the contract total to \$181,474.91.

Approving Change Order Number Two will equate Common Council approval of \$7,556.24 which will be requested for final payment to close contract.

Options & Alternatives: If the change order is not approved, the contract would not be reduced in price.

Financial Remarks:

Funding will be split between the General Fund, Water Utility and Park Development Funds (with a partial reimbursement grant of \$12,000).

Executive Action:

This item is for discussion at the January 17, 2011 Committee of the Whole meeting and due to the timeliness in payment of 2011 invoices, at the request of the City Treasurer, it is placed on tonight's January 17, 2011 Common Council meeting for consideration.

Resolution No. 4519(44)
Introduced by: Committee of the Whole

**A RESOLUTION APPROVING CONTRACT CHANGE ORDER NUMBER TWO WITH
R.R. WALTON & COMPANY, LTD FOR THE 2011 STREET AND SIDEWALK
IMPROVEMENT PROGRAM FOR A CREDIT IN THE AMOUNT OF \$5,237.15**

WHEREAS, Resolution 4474(58) approved the award of the bid to the R. R. Walton & Company, LTD for the 2011 Street and Sidewalk Improvement Project for the not to exceed total base bid of \$162,261.32, and Alt. bid of \$16,988.80, for an original contract total of \$179,250.12; and,

WHEREAS, the City of Burlington entered into a contract with R. R. Walton & Company, LTD for said improvements on April 6, 2011; and,

WHEREAS, during the course of work it was determined that a change was necessary and additional work (concrete, storm pipe, asphalt, etc.) was required and resulted in Change Order One increasing the contract by \$7,461.94, bringing the contract total to \$186,712.06, that was approved by Resolution No. 4493(18) on August 17, 2011; and

WHEREAS, final quantities were calculated after work was completed revealing a reduction in the contract, which has resulted in a Change Order Two for a credit in the amount of \$5,237.15, a copy of which is attached hereto as "Exhibit A" and made a part hereof; and,

WHEREAS, said Change Order Two for a credit in the amount of \$5,237.15 has been recommended for approval by the City Engineer; and,

WHEREAS, the new contract price including Change Order Number Two is for the not-to- exceed amount of \$181,474.91.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Burlington that Change Order Two is hereby approved for credit in the amount of \$5,237.15.

BE IT FURTHER RESOLVED that the City Administrator is hereby authorized and directed to execute Change Order Two on behalf of the City.

Introduced: January 17, 2012
Adopted:

Robert Miller, Mayor

Attest:

Beverly R. Gill, City Clerk

2011 STREET & SIDEWALK IMPROVEMENT PROGRAM
Justification of Price for Contract Change Order #2

I. FINAL asbuilt quantities and contract cost:

Description: This contract change order was added to the project to adjust the contract to match FINAL asbuilt quantities and FINAL contract cost, as requested by the Owner. The attached spreadsheet (Balance Sheet) shows the final quantities placed and the final cost of the project.

II. White River Restoration – Extra Work:

Description: This contract change order also includes work added to the White River restoration project for additional costs associated with the placement of a field stone overlay in the area of the stone rip-rap along the riverbank in Echo Park near the Veteran’s Terrace Building. This work was requested by the Owner and the Wisconsin Department of Natural Resources.

Item #2.1 – Extra work for addition of Field Stone

A. Description: This work shall consist of, but is not limited to, the costs associated with all of the labor, equipment, and materials necessary to remove from the site & dispose of some of the existing stone rip-rap; remove, handle, and replace some of the existing stone rip-rap along the riverbank; furnish and place field stone overlaying some of the existing rip-rap; place geotextile fabric beneath field stone, as needed; place topsoil, seed, fertilizer, and erosion mat in the disturbed areas due to this work, as requested by the Owner and the Wisconsin Department of Natural Resources. This work shall be in accordance with the project specifications (including all state specifications that apply), per Special Provisions of the Contract, project plans, and as hereinafter provided.

B. Method of Measurement: The *Extra work for addition of Field Stone* item shall be measured as a lump sum (LS) item for work completed and accepted in accordance with the contract.

C. Basis of Payment: The work under this item, measured as provided above, will be paid for at the contract unit lump sum price as stated in the below attached table, which price shall be full compensation for all work herein specified and for all labor, materials, equipment, cleanup, and incidentals necessary to complete the work in accordance with the Contract and all specifications that apply. The cost of this work added to this contract, as shown in the below attached table, is \$3,075 (total cost is \$9,399.81, which is to be a shared cost: \$3,075 to be paid under this contract and the remaining \$6,324.81 to be a shared cost between Kapur & Associates, Inc. and R.R. Walton & Company, Ltd).

The following is a summary spreadsheet for the mentioned above items:

Contract Change Order #2

White River Restoration - Extra Work					
Item No.	Item Description	Unit	Bid Qty.	Bid Unit \$	Bid Total \$
2.1	Extra Work for addition of Field Stone	LS	1	\$ 3,075.00	\$ 3,075.00
TOTAL – CCO #2					\$ 3,075.00



KAPUR & ASSOCIATES, INC.

BALANCE SHEET

City of Burlington, Wisconsin
2011 Street & Sidewalk Improvement Program
KENDRICK AVENUE - Street Repairs

Table with columns: Item No., Item Description, Unit, Asbuilt Qty., Bid Qty., Bid Unit \$, Bid Total \$ w/ Asbuilt Qty., Oct. to Date, #1-#5, \$ Paid to Date, % Complete. Includes items like Removing Asphaltic Surface, Concrete Curb & Gutter, etc.

ECHO LAKE - Bike Path

Table with columns: Item No., Item Description, Unit, Asbuilt Qty., Bid Qty., Bid Unit \$, Bid Total \$ w/ Asbuilt Qty., Oct. to Date, #1-#5, \$ Paid to Date, % Complete. Includes items like Removing Pavement, Excavation Common, etc.

WHITE RIVER RESTORATION

Table with columns: Item No., Item Description, Unit, Asbuilt Qty., Bid Qty., Bid Unit \$, Bid Total \$ w/ Asbuilt Qty., Oct. to Date, #1-#5, \$ Paid to Date, % Complete. Includes items like Removing Asphaltic Surface, Excavation Common, etc.

0%
100%
100%
100%
100%
100%

Item No.	Item Description	Unit	Asphalt Qty.	Bid Qty.	Bid Unit \$	Bid Total \$ w/ Asphalt Qty.	#1	#2	#3	#4	#5	Qty. to Date	\$ Paid to Date	% Complete
657.0302	Signs Non-Reflective Type II	SF	0.00	4	\$ 30.00	\$ -						0.00	\$ -	0%
645.0120	Geotextile Fabric Type HR	SY	320.00	320	\$ 3.75	\$ 1,200.00		250.00	70.00			320.00	\$ 1,200.00	100%
SPV.0060.01	3x3 Limestone Boulder w/ Flat Surface	EACH	4.00	4	\$ 375.00	\$ 1,500.00		4.00				4.00	\$ 1,500.00	100%
	Restore Disturbed Areas - Includes Topsoil (625.0100), Mulching (627.0200), Fertilizer Type A (629.0205), Seeding (629.0205)													
SPV.0180.01	Mix No. 40 (630.0140)	SY	250.00	390	\$ 3.50	\$ 875.00		250.00				250.00	\$ 875.00	100%
SUBTOTAL - White River Restoration														
SUBTOTAL - Paid to Date														

STATE STREET CROSSWALK

% Complete
100%
100%
100%
0%
100%
100%
100%

Item No.	Item Description	Unit	Asphalt Qty.	Bid Qty.	Bid Unit \$	Bid Total \$ w/ Asphalt Qty.	#1	#2	#3	#4	#5	Qty. to Date	\$ Paid to Date	% Complete
657.0202	Signs Reflective Type II	SF	112.33	46.5	\$ 18.96	\$ 2,129.78		38.50	73.83			112.33	\$ 2,129.78	100%
638.2602	Removing Signs Type II	EACH	41.00	20	\$ 25.00	\$ 1,025.00		20.00	21.00			41.00	\$ 1,025.00	100%
	Remove Small Sign Supports	EACH	1.00	1	\$ 25.00	\$ 25.00		1.00				1.00	\$ 25.00	100%
646.0106	Pavement Marking Epoxy 4-Inch	LF	0.00	832	\$ 2.17	\$ -						0.00	\$ -	0%
646.0600	Removing Pavement Markings	LF	400.00	400	\$ 1.90	\$ 760.00						400.00	\$ 760.00	100%
647.0766	Pavement Marking Crosswalk Epoxy 6-Inch	LF	943.50	702	\$ 6.50	\$ 6,132.75						943.50	\$ 6,132.75	100%
SPV.0060.02	Sign Post V-LOC Sign Support & Square Post	EACH	6.00	5	\$ 170.80	\$ 1,024.80		5.00	1.00			6.00	\$ 1,024.80	100%
SUBTOTAL - State Street Crosswalk														
SUBTOTAL - Paid to Date														

MILWAUKEE AVE/ECHO PARK CROSSWALK

% Complete
100%
100%
100%
0%
100%
100%
100%
100%
100%
100%
100%
100%
100%
100%

Item No.	Item Description	Unit	Asphalt Qty.	Bid Qty.	Bid Unit \$	Bid Total \$ w/ Asphalt Qty.	#1	#2	#3	#4	#5	Qty. to Date	\$ Paid to Date	% Complete
204.0150	Removing Curb & Gutter	LF	33.00	24	\$ 10.42	\$ 343.86		33.00				33.00	\$ 343.86	100%
204.0155	Removing Concrete Sidewalk	SY	20.80	34	\$ 10.50	\$ 214.24		20.80				20.80	\$ 214.24	100%
460.1101	HMA Pavement Type E-1, Item also includes asphaltic material PG 64-22 (455.0215) and asphaltic material for tack coat (455.0605)	TON	0.00	5	\$ 170.90	\$ -						0.00	\$ -	0%
601.0411	Concrete Curb & Gutter 30-Inch Type D	LF	33.00	24	\$ 32.00	\$ 1,056.00		33.00				33.00	\$ 1,056.00	100%
601.0600	Concrete Curb Pedestrian	LF	29.00	30	\$ 32.00	\$ 928.00		29.00				29.00	\$ 928.00	100%
602.0410	Concrete Sidewalk 5-Inch	SF	232.50	300	\$ 5.00	\$ 1,162.50		232.50				232.50	\$ 1,162.50	100%
602.0505	Curb Ramp Detachable Warning Field Yellow	SF	16.00	16	\$ 42.00	\$ 672.00		16.00				16.00	\$ 672.00	100%
657.0202	Signs Reflective Type II	SF	62.50	30	\$ 25.00	\$ 1,562.50		30.00	32.50			62.50	\$ 1,562.50	100%
646.0600	Removing Pavement Markings	LF	97.00	40	\$ 1.90	\$ 184.30						97.00	\$ 184.30	100%
647.0526	Pavement Marking Yield Line Epoxy 18-Inch	EACH	14.00	22	\$ 23.00	\$ 350.00						14.00	\$ 350.00	100%
647.0766	Pavement Marking Crosswalk Epoxy 6-Inch	LF	136.00	88	\$ 6.50	\$ 884.00						136.00	\$ 884.00	100%
654.0101	Concrete Bases Type 1	EACH	2.00	2	\$ 400.00	\$ 800.00		2.00				2.00	\$ 800.00	100%
657.0100	Pedestrian Bases	EACH	2.00	2	\$ 200.00	\$ 400.00		2.00				2.00	\$ 400.00	100%
657.0420	Traffic Signal Standards Aluminum 19-FT	EACH	2.00	2	\$ 300.00	\$ 600.00		2.00				2.00	\$ 600.00	100%
SPV.0060.02	Sign Post V-LOC Sign Support & Square Post	EACH	2.00	2	\$ 170.80	\$ 341.60		2.00				2.00	\$ 341.60	100%
SPV.0105.03	Traffic Control (Milwaukee Ave)	LS	1.00	1	\$ 500.00	\$ 500.00		1.00				1.00	\$ 500.00	100%
SPV.0105.04	Rectangular Rapid Flashing Beacon (RRFB) Assembly	LS	1.00	1	\$ 8,200.00	\$ 8,200.00		1.00				1.00	\$ 8,200.00	100%
	Restore Disturbed Areas - Includes Topsoil (625.0100), Mulching (627.0200), Fertilizer Type A (629.0205), Seeding (629.0205)													
SPV.0180.01	Mix No. 40 (630.0140)	SY	14.70	10	\$ 10.00	\$ 147.00		14.70				14.70	\$ 147.00	100%
SUBTOTAL - Milwaukee Ave/Echo Park Crosswalk														
SUBTOTAL - Paid to Date														

2011 SIDEWALK IMPROVEMENTS

% Complete
100%
100%
100%
100%
100%
100%
100%
100%

Item No.	Item Description	Unit	Asphalt Qty.	Bid Qty.	Bid Unit \$	Bid Total \$ w/ Asphalt Qty.	#1	#2	#3	#4	#5	Qty. to Date	\$ Paid to Date	% Complete
204.0155	Removing Concrete Sidewalk	SY	676.30	625	\$ 9.00	\$ 6,086.70	676.3	40.80				676.30	\$ 6,086.70	100%
205.0100	Excavation Common	CY	40.80	50	\$ 20.00	\$ 816.00		40.80				40.80	\$ 816.00	100%
305.0120	Base Aggregate Dense 1 1/4-Inch	TON	94.55	100	\$ 15.00	\$ 1,418.25		94.55				94.55	\$ 1,418.25	100%
416.0160	Concrete Driveway 6-Inch	SY	49.60	31	\$ 45.90	\$ 2,276.64	49.6					49.60	\$ 2,276.64	100%
465.0120	Asphaltic Surface Driveways & Field Entrances	TON	4.00	4	\$ 201.00	\$ 804.00						4.00	\$ 804.00	100%
602.0405	Concrete Sidewalk 4-Inch	SF	7262.00	9005	\$ 4.55	\$ 33,042.10	6587.7	694.30				7262.00	\$ 33,042.10	100%
SUBTOTAL - 2011 Sidewalk Improvements														
SUBTOTAL - Paid to Date														

SPV.0180.01	Restore Disturbed Areas - Includes Topsoil (625.0100), Mulching (627.0200), Fertilizer Type A (629.0205), Seeding (630.0140) Mx. No. 40 (650.0140).	SY	681.70	600	\$	3.50	\$	2,385.95	247.4	434.30	681.70	\$	2,385.95	100%
SUBTOTAL - 2011 Sidewalk Improvements														
SUBTOTAL - Base Bid														
SUBTOTAL - Original Contract Paid to Date														
SUBTOTAL - Base Bid Paid to Date														
SUBTOTAL - Paid to Date														

Quantities per Estimate														
Item No.	Item Description	Unit	Asphalt Qty.	Bid Qty.	Bid Unit \$	Bid Total \$ w/ Asphalt Qty.	#1	#2	#3	#4	#5	Qty. to Date	\$ Paid to Date	% Complete

205.0100	Excavation Common	CY	20.00	50	\$ 12.00	\$ 240.00		20.00				20.00	\$ 240.00	100%
211.0100	Prepare Foundation for Asphalt Paving	LS	1.00	1	\$ 1,500.00	\$ 1,500.00	1					1.00	\$ 1,500.00	100%
305.0120	Base Aggregate Dense 1 1/4-Inch	TON	34.71	100	\$ 15.00	\$ 520.65		34.71				34.71	\$ 520.65	100%
460.1101	HMA Pavement Type E-1, Item also includes asphaltic material PG 64-22 (455.0215) and asphaltic material for tack coat (455.0602).	TON	190.00	180	\$ 65.50	\$ 12,065.00	190					190.00	\$ 12,065.00	100%
637.0202	Signs Reflective Type II	SF	2.00	2	\$ 75.00	\$ 150.00		2.00				2.00	\$ 150.00	100%
646.0106	Pavement Marking Epoxy 4-Inch	LF	324.00	320	\$ 4.65	\$ 1,506.60		324.00				324.00	\$ 1,506.60	100%
647.0256	Pavement Marking Symbols Epoxy	EACH	1.00	1	\$ 150.00	\$ 150.00		1.00				1.00	\$ 150.00	100%
SPV.0060.02	Sign Post V-LOC Sign Support & Square Post	EACH	1.00	1	\$ 170.80	\$ 170.80		1.00				1.00	\$ 170.80	100%
SUBTOTAL - Alternate Bid														
SUBTOTAL - Original Contract Paid to Date														
SUBTOTAL - Base Bid & Alternate Bid														

WEHMHOF PARKING LOT - ALTERNATE BID

ALTERNATE BID

Contract Change Order #1

Alley at 456 Milwaukee Ave - Extra Work

Item No.	Item Description	Unit	Asphalt Qty.	Bid Qty.	Bid Unit \$	Bid Total \$ w/ Asphalt Qty.	#1	#2	#3	#4	#5	Qty. to Date	\$ Paid to Date	% Complete
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1.1	Alley (456 Milwaukee Ave) - Concrete Alley 9-Inch	SF	759.20	759.2	\$ 10.25	\$ 7,781.80		759.20				759.20	\$ 7,781.80	100%
1.2	Alley (456 Milwaukee Ave) - Pavement Tiles	EACH	48.00	48	\$ 2.50	\$ 120.00		48.00				48.00	\$ 120.00	100%
1.3	Alley (456 Milwaukee Ave) - Excavation Common	CY	24.00	24	\$ 20.00	\$ 480.00		24.00				24.00	\$ 480.00	100%
1.4	Alley (456 Milwaukee Ave) - Sawing Concrete	LF	102.90	102.9	\$ 2.57	\$ 257.25		102.90				102.90	\$ 257.25	100%
SUBTOTAL of Alley Extras - CCO #1														
SUBTOTAL of Alley Extras - CCO #1 Paid to Date														

Kendrick Ave at Walnut St - Extra Work

Item No.	Item Description	Unit	Asphalt Qty.	Bid Qty.	Bid Unit \$	Bid Total \$ w/ Asphalt Qty.	#1	#2	#3	#4	#5	Qty. to Date	\$ Paid to Date	% Complete
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1.5	Kendrick Ave - Storm Sewer 12-Inch RCP	LF	109.00	109	\$ 70.00	\$ 7,630.00			109.00			109.00	\$ 7,630.00	100%
1.6	Kendrick Ave - Storm Sewer 15-Inch RCP	LF	8.00	8	\$ 70.00	\$ 560.00			8.00			8.00	\$ 560.00	100%
SUBTOTAL of Kendrick Extras - CCO #1														
SUBTOTAL of Kendrick Extras - CCO #1 Paid to Date														

White River Restoration - Extra Work

Item No.	Item Description	Unit	Asphalt Qty.	Bid Qty.	Bid Unit \$	Bid Total \$ w/ Asphalt Qty.	#1	#2	#3	#4	#5	Qty. to Date	\$ Paid to Date	% Complete
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1.7	White River Restoration - Erosion Eel & Install	LF	20.00	20	\$ 17.40	\$ 348.00			20.00			20.00	\$ 348.00	100%
1.8	White River Restoration - Erosion Mat & Install	SY	720.00	720	\$ 1.15	\$ 828.00			720.00			720.00	\$ 828.00	100%
SUBTOTAL of White River Extras - CCO #1														
SUBTOTAL of White River Extras - CCO #1 Paid to Date														

Sidewalk Improvements - Extra Work

Item No.	Item Description	Unit	Asphalt Qty.	Bid Qty.	Bid Unit \$	Bid Total \$ w/ Asphalt Qty.	#1	#2	#3	#4	#5	Qty. to Date	\$ Paid to Date	% Complete
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1.9	Kane Street (149 S. Kane) - Backfill & Compact unknown Well below sidewalk	LS	1.00	1	\$ 196.39	\$ 196.39			1.00			1.00	\$ 196.39	100%
1.10	Sidewalk Improvements - Remove Tree Roots obstructing new sidewalk	LS	1.00	1	\$ 390.00	\$ 390.00			1.00			1.00	\$ 390.00	100%
SUBTOTAL of Sidewalk Extras - CCO #1														
SUBTOTAL of Sidewalk Extras - CCO #1 Paid to Date														

SUBTOTAL of Sidewalk Extras - CCO #1										\$	586.39	SUBTOTAL of Sidewalk Extras - CCO #1 Paid to Date			\$	586.39	100%
Riverside Park Restoration - Extra Work										Quantities per Estimate							
Item No.	Item Description	Unit	Asphalt Qty.	Bid Qty.	Bid Unit \$	Bid Total \$ w/ Asphalt Qty.	#1	#2	#3	#4	#5	Qty. to Date	\$ Paid to Date	% Complete			
1.11	Riverside Park Asphalt Path - Excavation Common	CY	365.60	280	\$ 12.00	\$ 4,387.20				365.60		365.60	\$ 4,387.20	100%			
1.12	Riverside Park Asphalt Path - Base Agg Dense 1 1/4-Inch	TON	452.42	340	\$ 15.00	\$ 6,786.30				452.42		452.42	\$ 6,786.30	100%			
1.13	Riverside Park Asphalt Path - Asphaltic Surface (12.5mm)	TON	144.00	140	\$ 66.50	\$ 9,576.00				144.00		144.00	\$ 9,576.00	100%			
1.14	Riverside Park Asphalt Path - Sawing Asphalt	LF	25.00	50	\$ 2.50	\$ 62.50				25.00		25.00	\$ 62.50	100%			
SUBTOTAL of Riverside Extras - CCO #1										\$	20,812.00	SUBTOTAL of Riverside Extras - CCO #1 Paid to Date			\$	20,812.00	100%

Echo Lake Bike Path - Work										Quantities per Estimate							
Item No.	Item Description	Unit	Asphalt Qty.	Bid Qty.	Bid Unit \$	Bid Total \$ w/ Asphalt Qty.	#1	#2	#3	#4	#5	Qty. to Date	\$ Paid to Date	% Complete			
1.15	Echo Lake Bike Path - Remove work from Contract and add Riverside Path	LS	0.00	1	\$ (29,524.50)	\$ -						0.00	\$ -	0%			
1.16	White River Restoration - Mobilize Dozer for Echo Lake Bike Path work	LS	1.00	1	\$ 500.00	\$ 500.00			1.00			1.00	\$ 500.00	100%			
SUBTOTAL of Echo Lake Removed Work - CCO #1										\$	500.00	SUBTOTAL of Echo Lake Removed Work - CCO #1 Paid to Date			\$	500.00	100%
SUBTOTAL - CCO #1										\$	39,903.44	SUBTOTAL - CCO #1 Paid to Date			\$	39,903.44	100%

Contract Change Order #2										Quantities per Estimate							
Item No.	Item Description	Unit	Asphalt Qty.	Bid Qty.	Bid Unit \$	Bid Total \$ w/ Asphalt Qty.	#1	#2	#3	#4	#5	Qty. to Date	\$ Paid to Date	% Complete			
2.1	Extra work for addition of Field Stone	LS	1.00	1	\$ 3,075.00	\$ 3,075.00						0.00	\$ -	0%			
SUBTOTAL of White River Extras - CCO #2										\$	3,075.00	SUBTOTAL of White River Extras - CCO #2 Paid to Date			\$	-	0%
TOTAL - Base Bid, Alternate Bid, & CCO's										\$	181,474.91	SUBTOTAL Paid to Date - Base, Alternate, & CCO's			\$	178,599.91	98%
												Retainage held to Date			\$	(4,481.25)	
TOTAL Paid to Date - Base, Alternate, & CCO's															\$	173,918.66	



CITY OF BURLINGTON

Police Department

224 E. Jefferson Street, Burlington, WI, 53105
(262) 342-1100 – (262) 763-5158 fax
www.burlington-wi.gov

Committee of the Whole Item Number: 10	Date: January 17, 2012
Submitted By: Peter A. Nimmer, Chief of Police	Subject: Resolution 4521(46) approving the purchase of Intercom/Recording System from General Communications not- to- exceed amount of \$14,990.

Details:

The current Intercom/recording system was originally installed in 1983 when the building was built. It is not completely compatible with the upgraded video/radio/911 system we have installed in the dispatch center. It is not fully functional and is not performing as we need it. In addition it cannot be repaired because they no longer make parts for the intercom.

The intercom system is a very important piece of equipment for our police department. It allows us to communicate throughout the building but more importantly it allows us to monitor our jail cells, booking room, and interview rooms. We must be able to monitor and record our jail cells and booking room. The new intercom will also allow us to communicate throughout the building, use the door buzzers to obtain access to the jail, and most importantly record the sound from the jail and booking room. This is the last piece of equipment that needs to be upgraded in the dispatch center. The new intercom will be completely integrated into our new system and will be integrated into the touch screen currently in dispatch.

I recommend the City Council approve the purchase of the Intercom/Recording System from General Communications for \$14,990. General Communications is the company that installed our new base radios, digital repeater, and radio system.

This item is time sensitive please see the Financial Remarks.

Options & Alternatives:

The City Council could choose not to replace our current intercom system and continue with the current intercom. However, as indicated the intercom is not completely functional, cannot be integrated, and repairs are not possible.

Financial Remarks:

This item was included in the 2012 Police Department Equipment Replacement Fund and is \$3560 under budget primarily because General Communications is still in the process of installing some radio equipment and will be able to offset some of the costs of this project because they will already be here. However, if we decide to wait on this project the cost will go up due to extra labor costs.

Executive Action:

This item is set for discussion at the January 17, 2012 Committee of the Whole meeting and scheduled for tonight's Common Council meeting for consideration.

Resolution No. 4521(46)
Introduced by: Committee of the Whole

**A RESOLUTION APPROVING THE PURCHASE OF AN INTERCOM SYSTEM FOR
THE POLICE DEPARTMENT IN THE AMOUNT OF \$14,990**

WHEREAS, on June 1, 2004 the Common Council did approve Resolution 3812(18) a Resolution Adopting a Purchasing Policy for the City of Burlington; and,

WHEREAS, the Purchasing Policy requires that all non-construction related Budget Items requiring expenditures of \$15,000 or more to be reviewed and pre-approved by the Common Council; and,

WHEREAS, the City of Burlington Police Department will be upgrading and replacing the current intercom system that was installed in 1983 and is not completely functional or repairable; and,

WHEREAS, the upgrade of the intercom system is necessary for the Police Department to maintain the efficiency and ability to monitor and record audio in the police department's municipal lock up; and,

WHEREAS, the purchase of the Telex Intercom System from General Communications for the not-to-exceed price of \$14,990 has been recommended by the Chief of Police.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Burlington that purchase of the aforementioned mobile radios is hereby approved for the amount not-to-exceed \$14,990.

Introduced: January 17, 2012
Adopted:

Robert Miller, Mayor

Attest:

Beverly R. Gill, City Clerk



GENERAL COMMUNICATIONS

your safety is our business

Customer: Burlington Police
224 E. Jefferson Street
Burlington, WI 53105

Attn: Chief Pete Nimmer

Date: 01/09/12
Phone: 342-1102
Fax: 763-5158
Cell: (414) 559-1990
Email: pnimmer@
burlington-wi.gov

Valid For: 30 Days

Sales Rep: Bob Cluka
rcluka@gencomm.com

<u>Qty.</u>	<u>Model #</u>	<u>Description</u>	<u>Each</u>	<u>Total</u>
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NEW INTERCOM SYSTEM

1	F.01U.117.303	TELEX 24 line intercom upgrade for new console.		
	F.01U.117.291	5 IP-223 interfaces, 3 19" rack mount brackets,		
	F.01U.120.330	Network I/O unit with 24 relays, programming		
	F.01U.117.294	and installation.		\$ 14,990.00

Madison
5157 Anton Drive
Madison, WI 53719
(608) 271-4848 / (800) 356-3200

rcluka@gencomm.com
www.gencomm.com

Milwaukee
N57 W13466 Reichert Avenue
Menomonee Falls, WI 53051
(262) 439-2121 / (800) 546-9468



CITY OF BURLINGTON

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

Common Council Item Number: 12	Date: January 17, 2012
Submitted By: Kevin Lahner, City Administrator	Subject: Resolution 4523(48) to consider approving a lease with RJC Distributing for property at 508 Sheldon St.

Details:

The enclosed lease with RJC Distributing is for the old Water property located at 508 Sheldon Street. As previously discussed, the three-year lease is for \$17,150 in year one, \$18,375 in year two and \$19,600 in year three. The lease also includes an option to purchase within the first two years for a price of \$275,000. The Common Council previously approved moving forward with the lease agreement. The attached agreement has been reviewed by the City and RJC Distributing and was drafted by City Attorney John Bjelejac.

Options & Alternatives:

The Common Council could deny this lease and continue to market the property for sale. The Common Council could also take the property off the market and use it for a different municipal use.

Financial Remarks:

The lease is for \$17,150 in year one, \$18,375 in year two and \$19,600 in year three. The option to purchase the property is for \$275,000.

Executive Action:

This item is for discussion at the January 17, 2012 Committee of the Whole meeting and is scheduled for the February 7, 2012 Common Council meeting for consideration.

**A RESOLUTION AUTHORIZING THE LEASE OF PROPERTY AT 508 SHELDON STREET TO
RJC DISTRIBUTION, LLC FOR A TERM NOT TO EXCEED THREE YEARS**

WHEREAS, the City owns property located at 508 Sheldon Street; and,

WHEREAS, RJC Distribution, LLC seeks to use building located at 508 Sheldon Street for operating and conducting a printed media distribution business; and,

WHEREAS, the City of Burlington has desire to lease property at 508 Sheldon Street to RJC Distribution, LLC; and,

WHEREAS, the term of this lease is for three (3) years commencing February 1, 2012 and terminating at midnight on January 31, 2015 at \$17,150/year in year one, \$18,375/year in year two and \$19,600/year in year three, with an option to purchase the property for \$275,000; and,

WHEREAS, a copy of said lease is attached hereto, made a part hereof as if more fully set out therein.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Burlington that the lease on said property on the terms and conditions set out in the lease by and is hereby approved.

BE IT FURTHER RESOLVED that the Mayor and City Clerk be and are hereby authorized and directed to execute such documents.

BE IT FURTHER RESOLVED that the City Attorney be and is hereby authorized and directed to prepare and complete such necessary documents as are required by the City of Burlington to close the transaction.

Introduced: January 3, 2012
Approved:

Robert Miller, Mayor

Attest:

Beverly R. Gill, City Clerk

Please note:

Staff has not received the final draft of the lease for 508 Sheldon Street from the perspective tenant. Revisions are currently being made and a final draft will be distributed to you at Tuesday's meeting.

(Draft: 12/12/11)

LEASE AGREEMENT FOR
508 SHELDON STREET,
BURLINGTON, WISCONSIN

This agreement ("Lease" and/or "Agreement") is made and entered into this _____ day of _____, 20_____, by and between the following parties:

- a) The CITY OF BURLINGTON, WISCONSIN, being a municipal corporation organized under the laws of the State of Wisconsin, with its City Hall located at 300 North Pine Street, Burlington, Wisconsin 53105 (hereinafter referred to as the "Landlord"); and
- b) RJC DISTRIBUTION, LLC, being a Wisconsin limited liability company, with offices located at W327 S7572 Squire Lane, Mukwonago, Wisconsin 53149 (hereinafter referred to as "Tenant").

Introduction

Tenant owns and operates a printed media distribution business (the "Business"), and wishes to lease from Landlord the real property (the "Leased Premises") located at 508 Sheldon Street, Burlington, Wisconsin, and further described as follows:

- a) Tax Parcel No.: 206 021905061090
- b) Legal Description:
[To Be Inserted]
- c) Site Location: See attached Exhibit A

The Leased Premises are improved with a building (the "Building") that is shown on attached Exhibit A.

Landlord is willing to lease to Tenant the Leased Premises under the terms and conditions contained in this Agreement, and the parties are entering into this Agreement for such purposes.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, THE ABOVE-NAMED PARTIES HEREBY AGREE AS FOLLOWS:

1. Introduction is Correct. The foregoing "Introduction" is true and correct, and is hereby incorporated into this Agreement by reference.

2. Lease of Property. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Premises.

3. Term. The term ("Term") of this Lease shall be for a period of Three (3) Years, commencing on the date of February 1, 2012, and terminating at midnight on the date of January 31, 2015, unless sooner terminated under other provisions contained in this Lease.

4. Rent and Security Deposit. For and as money rent for the Leased Premises, Tenant shall pay to Landlord the sum of (i) _____ Dollars (\$_____) for each month during months One (1) through Twelve (12) of the Term of the Lease, (ii) _____, Dollars (\$_____) for each month during months Thirteen (13) through Twenty-four (24) of the Term of the Lease, and (iii) _____ Dollars (\$_____) for each month during months Twenty-five (25) through Thirty-six (36) of the Term of the Lease. Such rent shall be paid by Tenant to Landlord on or before the First (1st) day of each month for each such month during the Term of

the Lease. For and as a security deposit, Tenant shall, with its first monthly rent payment, pay to Landlord the sum of _____ Dollars (\$_____). Such security deposit shall not bear interest, may be commingled with Landlord's other monies, and may be used by Landlord for its own purposes. Upon the expiration of the Term of this Lease, and provided that Tenant is not then in default under this Lease, Landlord shall return the security deposit to Tenant under the circumstances and in the manner required by law.

5. Use of Leased Premises. The Leased Premises shall be used by Tenant only for the purpose of operating and conducting its printed media distribution Business. Tenant shall conduct such Business on the Leased Premises:

- a) In full compliance with all applicable laws; and
- b) In a manner so that no illegal activities are conducted on the Leased Premises by Tenant, and/or its employees or agents, and/or by Tenant's patrons or customers; and
- c) In a manner that does not cause unreasonably loud noise and/or offensive odors, and/or any nuisance; and
- d) In full compliance with its conditional use permit and related site plan approved and issued by Landlord for the Business on the Leased Premises.

6. Signs. Tenant may, at its own cost and expense, install and maintain signs upon the Leased Premises for the advertisement of Tenant's Business. Any such signs, however, shall:

- a) Be in full conformance with any applicable governmental laws and regulation; and

- b) Be approved by Landlord (prior to installation) as to the nature, type, and location of each such sign.

Any such sign(s) so installed by Tenant shall, at Tenant's own cost and expense, (i) be kept and maintained by Tenant in a good and aesthetically-pleasing manner, and (ii) be immediately removed by Tenant at the time of the termination of this Lease, with any damage to the Leased Premises caused by such removal to be immediately repaired by Tenant.

7. Alterations and Improvements. Tenant may, at its own cost and expense, remodel, alter, and improve the Leased Premises. Prior to taking any such steps, however, Tenant shall first obtain Landlord's written approval of any such remodeling, alterations, or improvements being proposed by Tenant. Any such remodeling, alterations, or improvements shall (i) be done in a good workmanlike manner, in full compliance with all applicable governmental laws, rules, and regulations, and (ii) be fully and timely paid for by Tenant so that no construction liens (or any other type of encumbrance) attaches to the Leased Premises. All such remodeling, alterations, or improvements so made by Tenant (except for Tenant's business fixtures, as hereinafter described) shall be the property of and owned by Landlord. Landlord does hereby approve Tenant's proposed remodeling, alterations, and improvements to the Leased Premises described in the Exhibit B attached to this Lease.

8. Repairs. Tenant shall, at Tenant's own cost and expense, promptly make all repairs and/or replacements reasonably required to maintain the Leased Premises (including, but not limited to, the Building and its mechanical systems) in a good and tenantable condition. All such repairs and/or replacements shall (i) be done in a good workmanlike manner, in full compliance with all applicable governmental laws, rules, and regulations, and (ii) be fully and timely paid for

by Tenant so that no construction liens (or any other type of an encumbrance) attaches to the Leased Premises.

9. Maintenance. Tenant shall, at Tenant's own cost and expense:

- a) Maintain the interior and the exterior of the Building and the Leased Premises in a clean, neat, and sanitary manner, and with an attractive and aesthetically pleasing appearance.
- b) Cut, trim, and keep in a neat fashion the grass, shrubs, trees, and vegetation on the Leased Premises.
- c) Keep the outside grounds of the Leased Premises free and clear of all debris, litter, garbage, and foreign substances, materials, or objects.
- d) Prohibit any outside storage of any vehicles, materials, or other objects on the Leased Premises unless otherwise expressly authorized in the conditional use permit and site plan approved and issued by Landlord for Tenant's Business on the Leased Premises.

10. No Known Prior Contamination. To the best of Landlord's notice and knowledge, the Leased Premises are not in violation of any environmental laws and/or subject to any governmental orders for environmental remediation. Landlord has delivered to Tenant any and all written reports in Landlord's possession regarding any environmental assessment or inspection of the Leased Premises.

11. No Contamination by Tenant. Tenant shall not undertake, and/or allow any other person or entity to undertake, any activity on the Leased Premises that results in (i) any violation

of any environmental laws and/or (ii) causes any environmental contamination of the Leased Premises as defined in any applicable environmental laws.

12. Personal Property Taxes. Tenant, at its own cost and expense, shall be responsible for the timely payment of any personal property taxes due any governmental body during the lease Term attributable to the conducting of Tenant's Business in the Leased Premises.

13. Real Estate Taxes. Landlord, at its own cost and expense, shall be responsible for the payment of any real estate taxes and/or special assessments due any governmental body for the Leased Premises during the lease Term.

14. Utilities. The Tenant shall timely and fully pay the cost of all utility charges incurred during the lease Term for the Leased Premises. Such charges shall include, but not be limited to, the costs pertaining to providing water, gas, electricity, heat, telephone service, and sanitary sewer service for such Leased Premises.

15. Liability Insurance. Tenant shall, at its own cost and expense, procure and maintain with an insurance company licensed to do business in the State of Wisconsin a policy of public liability insurance providing coverage for any liability to any third persons for any property damage and any bodily injury, including death, arising out of the conducting of the Business being conducted by Tenant. Such policy of liability insurance shall have a minimum policy limit for such coverage of One Million Dollars (\$1,000,000.00), and Landlord shall be named as an additional insured under such policy. During the term of this Lease Agreement, Tenant shall provide to Landlord a certificate of the insurer showing such coverage to be in effect.

16. Other Insurance. Landlord and Tenant shall, at their own respective cost and expense, procure and maintain such additional policies of insurance providing coverage for the

Leased Premises and Business operations as their own respective interests may appear. Landlord shall, at its own cost and expense, procure and maintain a policy of insurance, in an amount equal to or exceeding the fair market value of the Leased Premises, providing coverage against fire and all other similar perils and risks that may cause damage to the Leased Premises. Tenant shall, at its own cost and expense, procure and maintain a policy of insurance, in an amount equal to or exceeding the fair market value of the same, providing coverage against damage or loss to (i) any equipment, furniture, and other contents and personal property used by Tenant in its Business conducted on the Leased Premises, and (ii) any damage or breakage to any glass windows/glass doors and/or advertising signs in or on the Leased Premises.

17. Waiver of Subrogation Rights. To the extent the same is required to effect a mutual waiver of any subrogation rights by an insurance carrier of either party, each of the undersigned parties releases the other party from all liability, whether for negligence or otherwise, in connection with loss covered by any insurance policies which the releaser carries with respect to the Leased Premises or any interest or property therein or thereon (whether or not such insurance is required to be carried under this Lease), but only to the extent that such loss is collected under said insurance policies. Such release is also conditioned upon the inclusion in the policy or policies of a provision whereby any such release shall not adversely affect said policies or prejudice any right of the releaser to recover thereunder. Each party agrees that its insurance policies will include such a provision so long as the same shall be obtainable without extra cost, or if extra cost shall be charged therefore, so long as the party for whose benefit the clause or endorsement is obtained shall pay such extra cost. If extra cost shall be chargeable therefore,

each party shall advise the other thereof of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so.

18. Damage by Fire or Other Casualty. In the event the Leased Premises are partially and/or wholly destroyed by fire or other casualty, then either party may, at their option, elect to immediately terminate this Lease Agreement.

19. Assignment and Sublease. Tenant shall not assign this Lease Agreement or sublease the Leased Premises without the Landlord's prior written consent, which consent Landlord may or may not, at Landlord's sole discretion, grant or withhold. In the event of such an assignment or subleasing with the consent of Landlord, however, Tenant shall still be liable to Landlord for Tenant's obligations under this Lease Agreement.

20. Insolvency. To the extent permitted by law, if any proceedings in bankruptcy or insolvency or for receivership are filed against Tenant, or if any sale of the leasehold interest hereby created, or any part thereof, should be made under any execution or other judicial process, or if the Tenant shall make any assignment for the benefit of creditors or shall voluntarily institute bankruptcy or insolvency proceedings, the Landlord may, at Landlord's option, terminate this Lease Agreement.

21. Surrender of Premises. Upon termination of this Lease, Tenant shall return the Leased Premises to Landlord in as good condition and repair as when the repairs to the Leased Premises required of Tenant under this Lease are completed by Tenant, except for ordinary wear and tear. All alterations, additions, and improvements made to the Leased Premises shall remain and be the property of Landlord. All trade and decorative fixtures and other equipment and personal property owned by Tenant shall be removed from the Leased Premises by Tenant no

later than the termination date. Tenant shall repair any and all damage to the Leased Premises caused by removal of the equipment and property. Any trade and decorative fixtures, equipment, and personal property not removed by Tenant prior to the termination date shall be considered abandoned and shall become the property of Landlord, at the option of Landlord.

22. Inspection and Access. Landlord shall have the right during ordinary business hours, or at any time in case of an emergency, to enter the Leased Premises for the purposes of:

- (i) inspecting the Leased Premises;
- (ii) showing the Leased Premises to prospective tenants, purchasers, or others;
- (iii) performing any of its duties under this Agreement.

23. Covenant of Quiet Enjoyment. So long as Tenant fulfils its obligations under this Lease Agreement, Landlord warrants to Tenant that Tenant shall have full and quiet enjoyment of the Leased Premises, free from hindrance by Landlord or any person claiming through Landlord, during the term of this Agreement.

24. Breach of Lease Agreement. If a party defaults in the payment of rent, or defaults in the performance of any of the terms, covenants, or conditions of this Lease Agreement, such other party may give to the defaulting party written notice of such default, and if the defaulting party does not cure such default within Ten (10) Days after the giving of such written notice (or, if such default, other than the failure to pay rent, is of such a nature that it cannot be completely cured within such Ten (10) Days, if the defaulting party does not commence such curing within such Ten (10) Days and thereafter proceed with reasonable diligence and in good faith to cure such default), then such other party may terminate this Lease Agreement by giving at least Five (5) Days written notice to the defaulting party of its intention to do so, in which event this Lease

Agreement shall terminate upon the date specified in such written notice. Such right of termination shall be in addition to any other remedy allowed by law, including, but not limited to, the bringing of any claims for damages, delinquent rent, and loss of future rent. In addition to any such other remedies allowed by law, the defaulting party shall be liable to the other party for all costs incurred by such other party in enforcing its rights under the Lease Agreement, including reimbursement for actual and reasonable attorneys fees.

25. Notice. Any notice required to be given by either party to the other party shall be in writing, and shall be delivered to such other party either by (i) personal service, or by (ii) certified mail in a postpaid envelope addressed to such party at the address specified above in this Lease, or to such other address as may from time to time be designated in writing by such other party. Delivery by certified mail shall be deemed made and completed upon depositing the said postpaid envelope in the United States mail.

26. Governing Law. This Lease Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Wisconsin. Venue for any legal action or proceeding arising under or pertaining to this Lease shall solely and exclusively be Racine County Circuit Court in Racine County, Wisconsin.

27. Parties Bound. The covenants, terms, conditions, and provisions of this Lease Agreement shall extend to and be binding upon the successors and assigns of the respective parties hereto, except that any assignment of this Lease Agreement or subleasing of the Leased Premises by the Tenant shall require the prior written consent of the Landlord as elsewhere provided in this Lease Agreement.

28. Entire Agreement. This Agreement contains the entire agreement between the parties. Any prior agreements, promises, representations, or understandings made by or between the parties are not a part of this Agreement unless expressly stated in this Agreement.

SPECIAL PROVISIONS

29. Contingency: Tenant. This Agreement is contingent upon Tenant, at its own cost and expense, obtaining all governmental approvals and permits, of any nature whatsoever, required to lawfully operate the printed media distribution Business being proposed by Tenant on the Leased Premises, all under terms and conditions satisfactory to Tenant.

30. Advance Access by Tenant. Upon the execution of this Lease by all parties, the Tenant shall have immediate access to the Leased Premises (prior to February 1, 2012) so that it can start taking steps desired by Tenant and allowed under this Lease regarding the Leased Premises.

31. Realtor Commission Payable by Landlord.

[To Be Determined]

32. Option to Purchase. Provided that Tenant is not then in default under this Lease, Tenant may during the Term of this Lease exercise the "Option to Purchase" attached hereto as Exhibit C for the purpose of purchasing the Leased Premises under the terms and conditions contained in the said Option to Purchase.

33. Initial Condition of Leased Premises. Tenant has inspected the condition of the Leased Premises and accepts the Leased Premises in AS-IS condition. The future condition of the Leased Premises is the responsibility of the Tenant, as provided in this Lease.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals as of
the date first written above.

LANDLORD:
City of Burlington, Wisconsin

TENANT:
RJC Distribution, LLC

By: _____
Robert Miller
Mayor

By: _____
Ron J. Conners
Member

Attest: _____
Beverly Gill
Clerk

EXHIBIT A

Site Location

[To Be Inserted]

EXHIBIT B

Proposed Remodeling, Alterations, and Improvements

[To Be Inserted]

59 Seller agrees to notify Buyer of any condition affecting the Property or transaction which is materially inconsistent with the above
 60 representations, which arises after this Option is granted, but prior to exercise of this Option. Buyer shall have reasonable access to the
 61 Property, upon reasonable notice, from the time this Option is granted until the time for closing, for the purpose of inspecting and testing
 62 the Property to the extent reasonably necessary to fulfill the inspection and testing provisions of this Option. (See lines 110-124).

63 A "condition affecting the Property or transaction" is defined as follows:

- 64 a) planned or commenced public improvements which may result in special assessments or otherwise materially affect the
 65 Property or the present use of the Property;
 66 b) completed or pending reassessment of the Property for property tax purposes;
 67 c) government agency or court order requiring repair, alteration or correction of any existing condition;
 68 d) any land division involving the subject Property, for which required state or local approvals had not been obtained;
 69 e) any portion of the Property being in a 100-year floodplain, a wetland or a shoreland zoning area under local, state or federal laws;
 70 f) conditions constituting a significant health or safety hazard for occupants of Property; **Note: Possible LBP Disclosure Requirement.**
 71 g) underground or aboveground storage tanks on the Property for storage of flammable or combustible liquids including but not
 72 limited to gasoline and heating oil which are currently or which were previously located on the Property; **NOTE: Wis. Adm.**
 73 **Code, Chapter Comm 10 contains registration and operation rules for such underground and aboveground storage tanks.**
 74 h) material violations of environmental laws or other laws or agreements regulating the use of the Property;
 75 i) high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property;
 76 j) any portion of the Property being subject to, or in violation of, a Farmland Preservation Agreement under a County Farmland Preservation
 77 Plan or enrolled in, or in violation of, a Forest Crop, Woodland Tax, Managed Forest, Conservation Reserve or comparable program;
 78 k) boundary disputes or material violation of fence laws (Wis. Stats. Chapter 90) which require the erection and maintenance of legal
 79 fences between adjoining properties where one or both of the properties is used and occupied for farming or grazing purposes;
 80 l) wells on the Property required to be abandoned under state regulations (Wis. Adm. Code NR 142.26) but which are not abandoned;
 81 m) cisterns or septic tanks on the Property which are currently not servicing the Property;
 82 n) subsurface conditions which would significantly increase the cost of building on the property including, but not limited to, subsurface
 83 foundations, organic or non-organic fill, dumpsites or containers on Property which contained or currently contain toxic or hazardous
 84 materials, high groundwater, soil conditions (e.g. low load bearing capacity) or excessive rocks or rock formations on the Property;
 85 o) a lack of legal vehicular access to the Property from public roads;
 86 p) prior reimbursement for corrective action costs under the Agricultural Chemical Cleanup Program (Wis. Stats. §94.73.);
 87 q) other conditions or occurrences which would reduce the value of the Property to a reasonable person with knowledge of the
 88 nature and scope of the condition or occurrence

89 **PROPERTY DIMENSIONS AND SURVEYS:** Buyer acknowledges that any land dimensions, total square footage/acreage
 90 figures, or allocation of acreage information, provided to Buyer by Seller or by a broker, may be approximate because of
 91 rounding or other reasons, unless verified by survey or other means. **CAUTION: Buyer should verify land dimensions, total**
 92 **square footage/acreage figures or allocation of acreage information if material to Buyer's decision to purchase.**

93 **PROPERTY DAMAGE BETWEEN EXERCISE OF OPTION AND CLOSING:** Seller shall maintain the Property until the earlier of
 94 closing or occupancy of Buyer in materially the same condition as of the date Buyer exercises this Option, except for ordinary wear and
 95 tear. If, prior to closing, the Property is damaged in an amount of not more than five per cent (5%) of the purchase price, Seller shall be
 96 obligated to repair the Property and restore it to the same condition that it was on the day this Option is exercised. If the damage is greater
 97 than 5% of the purchase price, Seller shall promptly notify Buyer in writing of the damage and this Option may be rescinded by Buyer and
 98 all Option fees paid by Buyer shall be immediately returned to Buyer. Should Buyer elect to exercise this Option despite such damage,
 99 Seller shall either repair the Property and restore it to the same condition that it was on the day of exercise of this Option, except for
 100 ordinary wear and tear or Buyer shall be entitled to the insurance proceeds relating to the damage to the Property, plus a credit
 101 towards the purchase price equal to the amount of Seller's deductible on such policy.

102 **BUYER DUE DILIGENCE:** Prior to exercising this Option Buyer may need to perform certain inspections, investigations and testing.
 103 Buyer is only authorized to do those inspections, investigations and tests which are authorized at lines 196-200 or lines 218-225. In
 104 addition to these inspections, investigations and tests, Buyer may need to obtain financing, approvals or other information, including
 105 but not limited to building permits, zoning variances, Architectural Control Committee approvals, review of condominium documents,
 106 review of business records, estimates for utility hook-up expenses, special assessments, charges for installation of roads or utilities, etc.
 107 **WARNING:** If Buyer contemplates developing Property or a use other than the current use, there are a variety of issues which should
 108 be addressed in order to determine the feasibility of development of, or a particular use for, a property. Buyer is solely
 109 responsible for all expenses relating to financing, inspections, investigations, testing, approvals, permits, estimates, etc.

110 **INSPECTIONS:** An "inspection" is defined as an observation of the Property which does not include testing of the Property, other than
 111 testing for leaking LP gas or natural gas used as a fuel source, which are hereby authorized. Seller agrees to allow Buyer's Inspectors
 112 reasonable access to the Property upon reasonable notice for those inspections authorized at lines 197-198. Buyer agrees to
 113 promptly restore the Property to its original condition after Buyer's inspections are completed, unless otherwise agreed in this Option.

114 **TESTING:** Except as otherwise provided, Seller's authorization for inspections does not authorize Buyer to conduct testing of the
 115 Property. A "test" is defined as the taking of samples of materials such as soils, water, air or building materials from the Property and
 116 the laboratory or other analysis of these materials. Seller agrees to allow Buyer's testers reasonable access to the Property upon
 117 reasonable notice for those tests authorized at lines 199-200. Note: The authorization for testing should specify the areas of the
 118 Property to be tested, the purpose of the test, (e.g., to determine if environmental contamination is present), any limitations on Buyer's
 119 testing and any other material terms of the authorization. Unless otherwise agreed, Buyer shall return the Property to its original
 120 condition following testing. **Seller acknowledges that certain inspections or tests may detect environmental pollution**
 121 **which may be required to be reported to the Wisconsin Department of Natural Resources.**

122 **PRE-CLOSING INSPECTION:** At a reasonable time, pre-approved by Seller or Seller's agent, within 3 days before closing, Buyer
 123 shall have the right to inspect the Property to determine that there has been no significant change in the condition of the Property,
 124 except for changes approved by Buyer.

125 **CONDOMINIUM DISCLOSURES:** If the Property is a Condominium, Seller agrees to provide Buyer, at Seller's cost (see
 126 Wisconsin Statutes §703.20(2)), complete, current copies of the disclosure materials (organization and operational documents, plans, financial

127 statements, and in the case of a conversion condominium property information) as required by Wisconsin Statutes §703.33 no later than 15
 128 days prior to closing and any amendment to these materials promptly after its adoption (except as limited for small residential
 129 condominiums per Wisconsin Statutes §703.365). These materials are available at cost from the condominium association. As provided in
 130 Wisconsin Statutes §703.33(4), Buyer may, within five business days after receipt of these documents, including any material modification
 131 thereto, rescind this Option by written notice mailed or delivered to Seller, the date of mailing or actual delivery being the effective date of notice.

132 **TITLE EVIDENCE**

133 ■ **FORM OF TITLE EVIDENCE:** Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of the
 134 purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. **CAUTION: IF TITLE**
 135 **EVIDENCE WILL BE GIVEN BY ABSTRACT, STRIKE TITLE INSURANCE PROVISIONS AND INSERT ABSTRACT PROVISIONS.**
 136 ■ **PROVISION OF MERCHANTABLE TITLE:** Seller shall pay all costs of providing title evidence. For purposes of closing, title evidence shall
 137 be acceptable if the commitment for the required title insurance is delivered to Buyer's attorney or Buyer not less than 3 business days
 138 before closing, showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable, subject
 139 only to liens which will be paid out of the proceeds of closing and standard title insurance requirements and exceptions, as
 140 appropriate. **CAUTION: BUYER SHOULD CONSIDER UPDATING THE EFFECTIVE DATE OF THE TITLE COMMITMENT PRIOR**
 141 **TO CLOSING OR A "GAP ENDORSEMENT" WHICH WOULD INSURE OVER LIENS FILED BETWEEN THE EFFECTIVE DATE**
 142 **OF THE COMMITMENT AND THE DATE THE DEED IS RECORDED.**

143 ■ **TITLE ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title by
 144 the time set for closing. In such event, Seller shall have a reasonable time, but not exceeding 15 days, to remove the objections, and
 145 the time for closing shall be extended as necessary for this purpose. In the event that Seller is unable to remove said objections, Buyer
 146 shall have 6 days from receipt of notice thereof, to deliver written notice waiving the objections, and the time for closing shall be
 147 extended accordingly. If Buyer does not waive the objections, this Option shall be null and void. Providing title evidence acceptable for
 148 closing does not extinguish Seller's obligations to give merchantable title to Buyer.

149 ■ **SPECIAL ASSESSMENTS:** Special assessments, if any, for work actually commenced or levied prior to date this Option is exercised
 150 shall be paid by Seller no later than closing. All other special assessments shall be paid by Buyer. **CAUTION: Consider a special**
 151 **agreement if area assessments, property owner's association assessments or other expenses are contemplated. "Other expenses"**
 152 **are one-time charges or ongoing use fees for public improvements (other than those resulting in special assessments) relating to**
 153 **curb, gutter, street, sidewalk, sanitary and stormwater and storm sewer (including all sewer mains and hook-up and interceptor**
 154 **charges), parks, street lighting and street trees, and impact fees for other public facilities, as defined in Wis. Stat. §66.55(1)(c) & (f).**

155 **DELIVERY/RECEIPT**

156 Unless otherwise stated in this Option, any signed document transmitted by facsimile machine (fax) shall be treated in all manner and respects
 157 as an original document and the signature of any Party upon a document transmitted by fax shall be considered an original signature. Personal
 158 delivery to, or actual receipt by, any named Buyer or Seller constitutes personal delivery to, or actual receipt by Buyer or Seller. Once
 159 received, a notice cannot be withdrawn by the Party delivering the notice without the consent of the Party receiving the notice. A Party may
 160 not unilaterally reinstate a contingency after a notice of a contingency waiver has been received by the other Party. **The delivery**
 161 **provisions in this Option may be modified when appropriate (e.g., when mail delivery is not desirable (see lines 203-209). Buyer**
 162 **and Seller authorize the agents of Buyer and Seller to distribute copies of the Option to Buyer's lender, appraisers, title insurance companies**
 163 **and any other settlement service providers for the transaction as defined by the Real Estate Settlement Procedures Act (RESPA).**

164 **DATES AND DEADLINES**

165 Deadlines expressed as a number of "days" from an event, such as exercise of this Option, are calculated by excluding the day the
 166 event occurred and by counting subsequent calendar days. The deadline expires at midnight on the last day. Deadlines expressed as
 167 a specific number of "business days" exclude Saturdays, Sundays, any legal public holiday under Wisconsin or Federal law, and other
 168 day designated by the President such that the postal service does not receive registered mail or make regular deliveries on that day.
 169 Deadlines expressed as a specific number of "hours" from the occurrence of an event, such as receipt of a notice, are calculated from
 170 the exact time of the event, and by counting 24 hours per calendar day. Deadlines expressed as a specific day of the calendar year or
 171 as the day of a specific event, such as closing, expire at midnight of that day.

172 **FIXTURES**

172 A "fixture" is defined as an item of property which is physically attached to or so closely associated with land
 173 or improvements so as to be treated as part of the real estate, including, without limitation, physically attached items
 174 not easily removable without damage to the Property, items specifically adapted to the Property, and items customarily
 175 treated as fixtures.

176 **ENTIRE CONTRACT**

176 This Option, including any amendments to it, contains the entire agreement of the Buyer and Seller regarding
 177 the transaction. All prior negotiations and discussions have been merged into this Option. This agreement binds and inures to the
 178 benefit of the Parties to this Option and their successors in interest.

179 **DEFAULT**

179 Seller and Buyer each have the legal duty to use good faith and due diligence in completing the terms and conditions
 180 of the terms of purchase after exercise of this Option. A material failure to perform any obligation under the terms of purchase after
 181 exercise of this Option is a default which may subject the defaulting party to liability for damages or other legal remedies.

182 If **Buyer defaults** under the terms of purchase after exercise of this Option, Seller may:

- 183 (1) sue for specific performance and request the earnest money as partial payment of the purchase price; or
- 184 (2) terminate the purchase agreement and have the option to sue for actual damages.

185 If **Seller defaults** under the terms of purchase after exercise of this Option, Buyer may:

- 186 (1) sue for specific performance; or
- 187 (2) terminate the purchase agreement and sue for actual damages.

188 In addition, the Parties may seek any other remedies available in law or equity.

189 The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and
 190 discretion of the courts. If either Party defaults, the Parties may renegotiate the terms of purchase or seek nonjudicial dispute resolution
 191 instead of the remedies outlined above. By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those
 192 disputes covered by the arbitration agreement.

193 **RENTAL WEATHERIZATION**

193 Unless otherwise agreed buyer shall be responsible for compliance with Rental Weatherization Standards
 194 (Wis. Adm. Code Comm. 67), if applicable.

195 PROPERTY ADDRESS: 508 Sheldon Street, Burlington, Wisconsin [Page 4 of 4, WB-24]

196 ~~AUTHORIZATION FOR INSPECTIONS AND TESTS~~ Buyer is authorized to conduct the following inspections and tests (see lines 118-121):

197 ~~INSPECTIONS:~~ Buyer is a tenant on the Property and is familiar with the condition of the Property.

198

199 TESTS: _____

200

201 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Option, delivery of documents and written
202 notices to a Party shall be effective only when accomplished by one of the methods specified at lines 203-212.

203 (1) By depositing the document or written notice postage or fees prepaid in the U.S. Mail or fees prepaid or charged to an account
204 with a commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery designated at lines 206 or 208
205 (if any), for delivery to the Party's delivery address at lines 207 or 209.

206 Seller's recipient for delivery (optional): City Administrator Kevin Lahner

207 Seller's delivery address: 300 North Pina Street, Burlington, Wisconsin 53105

208 Buyer's recipient for delivery (optional): Ron J. Conners

209 Buyer's delivery address: W327 S7672 Squire Lane, Mukwonago, Wisconsin 53149

210 (2) By giving the document or written notice personally to the Party or the Party's recipient for delivery if an individual is designated at lines 206 or 208.

211 (3) By fax transmission of the document or written notice to the following telephone number:

212 Buyer: () FAX of Buyer Seller: () FAX of Seller

213 **TIME IS OF THE ESSENCE** "Time is of the Essence" as to ~~payment of purchase price and other obligations and all other~~ dates and
214 deadlines in this Option except: _____ . If "Time is of the Essence"

215 applies to a date or deadline, failure to perform by the exact date or deadline is a breach of contract. If "Time is of the Essence" does not
216 apply to a date or deadline, then performance within a reasonable time of the date or deadline is allowed before a breach occurs.

217 This Option ~~(is)~~ (is not) **STRIKE ONE** assignable. This Property ~~(is)~~ (is not) **STRIKE ONE** homestead property.

218 **ADDITIONAL PROVISIONS**

219 _____

220 See attached Addendum X.

221 _____

222 _____

223 _____

224 _____

225 **ADDENDA** The attached Addendum X _____ is/are made part of this Option.

226 **IF GRANTED, THIS OPTION CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD READ THIS**
227 **OPTION AND ALL ATTACHMENTS CAREFULLY. BROKERS MAY PROVIDE A GENERAL EXPLANATION OF THE**
228 **PROVISIONS OF THE OPTION BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS CONCERNING**
229 **YOUR LEGAL RIGHTS UNDER THIS OPTION OR HOW TITLE SHOULD BE TAKEN AT CLOSING IF THE OPTION**
230 **IS EXERCISED. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.**

231 This Option was drafted on, [TBD] [date] by [Licensee and firm] Attorney John M. Bjelajac, Seller's Attorney

232 (X) RJC Distribution, LLC
233 Buyer's Signature ▲ Print Name Here: ▶ Social Security No. or FEIN (Optional) ▲ Date ▲

234 (X) By:
235 Buyer's Signature ▲ Print Name Here: ▶ Ron J. Conners, Member Social Security No. or FEIN (Optional) ▲ Date ▲

236 **SELLER GRANTS THIS OPTION. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS**
237 **OPTION SURVIVE CLOSING AND THE CONVEYANCE OF THE PROPERTY. THE UNDERSIGNED HEREBY AGREES TO**
238 **CONVEY THE ABOVE-MENTIONED PROPERTY ON THE TERMS AND CONDITIONS AS SET FORTH HEREIN AND**
239 **ACKNOWLEDGES RECEIPT OF A COPY OF THIS OPTION.**

240 (X) City of Burlington, Wisconsin
241 Seller's Signature ▲ Print Name Here: ▶ Social Security No. or FEIN (Optional) ▲ Date ▲

242 (X) By:
243 Seller's Signature ▲ Print Name Here: ▶ Kevin Lahner, City Administrator Social Security No. or FEIN (Optional) ▲ Date ▲

244 ~~THIS OPTION IS NOT BEING EXERCISED~~ _____

245 ~~THIS OPTION IS NOT BEING EXERCISED~~ _____

247 **NOTICE OF EXERCISE OF OPTION** By signing below and delivering this notice (see lines 201-212) Buyer exercises the Option to Purchase.

248 (X) _____ (X) _____
249 Buyer's Signature ▲ Date ▲ Buyer's Signature ▲ Date ▲

ADDENDUM X

The following terms and provisions are hereby incorporated into and made a part of the 'Option to Purchase' to which this addendum is attached, wherein the City of Burlington, Wisconsin, is the Seller and RJC Distribution, LLC is the Buyer, of 508 Sheldon Street, Burlington, Wisconsin:

1. AS-IS Sale. The parties agree that the Property being conveyed herein has been occupied by Buyer as a Tenant and is being sold to Buyer in "AS-IS" condition, and neither Seller nor any of its officials, employees, or agents are making any warranties or representations to Buyer regarding such Property or its condition. Any information sheet, property condition report, and/or statements given or made by the Seller and/or its officials, employees, or agents (whether previously or in the future) regarding the said Property are not being relied upon by Buyer, and Buyer is solely relying on its own inspections and investigations of the Property in entering into and closing this transaction. Any warranties and/or representations contained in this Option to Purchase and/or other transaction documents regarding the nature or condition of the Property are hereby deleted. In consideration for Buyer purchasing the Property in AS-IS condition, Seller has agreed to terms and provisions in this transaction that are more favorable to Buyer than terms and conditions under which Seller would otherwise sell the Property, including the granting of this Option to Purchase.

2. Financing. This transaction is contingent upon Buyer obtaining a purchase money loan, in an amount, under terms and conditions, and from a lender satisfactory to Buyer, in Buyer's sole discretion.

3. Earnest Money Deposit. Buyer shall, at the time that Buyer delivers to Seller the written notice of Buyer's exercise of its option rights under this Option to Purchase, also deliver to Seller an earnest money deposit in the amount of Ten Thousand Dollars (\$10,000.00). Upon the closing of the transaction, such earnest money deposit shall be credited toward the purchase price payable by Buyer for the Property. If this Property fails to close, however, through no fault of Seller, then Seller may keep and retain the said \$10,000.00 earnest money deposit and use such funds for its own other purposes. Until disbursed at closing or paid to Seller as described above, the said earnest money deposit shall be held in the trust account of the title insurance agency selected by Seller for this transaction.

