

**** SPECIAL MEETING ****
Please Note Change in Date

AGENDA
BOARD OF PARK COMMISSIONERS
Kenosha Municipal Building - Room 204
Monday, May 19, 2014 - 5:00 pm

Chairman: Scott N. Gordon **Vice Chairman:** Keith W. Rosenberg
Commissioner: Kurt Wicklund **Commissioner:** Rocco J. LaMacchia, Sr.
Commissioner: Jack Rose

Call to Order
Roll Call

1. Approval of the Fireworks Display Agreement By and Between the City *(of Kenosha through its Department of Public Works)* and MIAND, Inc. *(dba/ Mad Bomber Fireworks Productions)*. *(Deferred from the 5/12/14 meeting)*
2. Resolution by the Board of Park Commissioners - To Rescind Resolution BPC 01-13 that had Resolved to Site the Fully-Accessible Play Area at Kennedy Park and to Identify Petzke Park as a Suitable Location for such Play Area

DIRECTOR AND/OR SUPERINTENDENT COMMENTS
CITIZEN COMMENTS/COMMISSIONER COMMENTS/OTHER BUSINESS PERTAINING TO
PARKS COMMISSION MATTERS AS AUTHORIZED BY LAW

IF YOU ARE DISABLED AND NEED ASSISTANCE, PLEASE CALL 653-4052 BEFORE THIS MEETING

NOTICE IS HEREBY GIVEN THAT A MAJORITY OF THE MEMBERS OF THE COMMON COUNCIL MAY BE PRESENT AT THE MEETING, AND ALTHOUGH THIS MAY CONSTITUTE A QUORUM OF THE COMMON COUNCIL, THE COUNCIL WILL NOT TAKE ANY ACTION AT THIS MEETING.



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

WASTE DIVISION
ROCKY BEDNAR.
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS

MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL PUBLICWORKS@KENOSHA.ORG

May 16, 2014

To: Scott N. Gordon, Chairman, Park Commission
From: Jeff Warnock *JW*
Superintendent of Parks
Subject: Amendment to the Fireworks Agreement – July 4th

BACKGROUND/ANALYSIS

Attached you will find an amended Fireworks Display Agreement By and Between the City of Kenosha through its Department of Public Works and MIAND, Inc. dba/ Mad Bomber Fireworks Productions. The amendment now includes a 30% reimbursement instead of 40% to the Mad Bomber if the City does not have a rain date.

RECOMMENDATION

Staff recommends approval of the amended agreement.

JW/dh

FIREWORKS DISPLAY AGREEMENT

By And Between

**THE CITY OF KENOSHA, WISCONSIN,
A Wisconsin Municipal Corporation,
THROUGH ITS DEPARTMENT OF PUBLIC WORKS**

And

**MIAND, INC. DBA Mad Bomber Fireworks Productions
An Indiana Corporation,
3999 Hupp Road
Kingsbury, IN 46345**

THIS AGREEMENT made and entered into by and between **THE CITY OF KENOSHA, WISCONSIN**, with offices located at 625 – 52nd Street, Kenosha, Wisconsin ("CITY"), a Wisconsin municipal corporation, and **MIAND, INC., DBA MAD BOMBER FIREWORKS PRODUCTIONS**, an Indiana corporation, with its principal place of business located at 3999 Hupp Road, Kingsbury, IN 46345, ("**MAD BOMBER**").

WITNESSETH:

WHEREAS, MAD BOMBER is engaged in the sale, exhibition and display of fireworks;

WHEREAS, MAD BOMBER has in the past provided and wishes to continue to provide a fireworks display and exhibition ("Exhibition") for a Fourth of July celebration;

WHEREAS, CITY is interested in contracting with **MAD BOMBER** for the purpose of putting on a fireworks Exhibition.

NOW, THEREFORE, in consideration of the mutual undertakings, promises, agreements, understandings and undertakings hereinafter set forth, and good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties hereto, the undersigned agree as follows:

1. OBLIGATIONS OF MAD BOMBER. MAD BOMBER shall:

a. Provide all freight, cartage, transportation of equipment, material and tools for the Exhibition, together with all necessary qualified, trained and experienced pyrotechnic operators/technicians to set up and conduct the Exhibition. The Exhibition shall include those shells as set forth in Exhibit A attached hereto and incorporated herein. In the event of a shortage or unavailability of any shell identified in Exhibit A, MAD BOMBER has the right to substitute a shell or shells of equal or greater value. MAD BOMBER shall provide this information to CITY no later than fourteen (14) days prior to the Exhibition.

b. Establish a "Safety Zone" encompassing the area immediately surrounding the launch site and a corresponding fallout zone to which unauthorized persons will be denied access. Said Safety Zone shall have a minimum spectator set back of five hundred sixty (560') feet at all points from the discharge area. MAD BOMBER reserves the right to terminate the Exhibition in the event spectators enter the Safety Zone and CITY is unable to secure the Safety Zone within a reasonable period.

c. Provide an Exhibition with a minimum duration of 25 minutes.

d. Remove all its equipment, together with any live or unfired material from the Safety Zone.

e. Inspect the Safety Zone the following morning for the purpose of collecting any material, live or otherwise, in the Safety Zone.

2. OBLIGATIONS OF CITY. CITY shall:

a. Provide adequate security, fire and police protection, parking, traffic and crowd control during the Exhibition and for a reasonable time thereafter.

b. Provide materials and manpower to deny unauthorized persons from accessing the Safety Zone: by roping off or other suitable means. CITY shall provide adequate security to prevent spectators from entering Safety Zone.

c. Be responsible for all cleanup for the Exhibition except for the Safety Zone. Said cleanup shall include, but is not limited to, removal of debris, trash, and wood; back filling holes; repairs to grass, sod or other surfaces; and removal of all barricades.

d. Be responsible for obtaining all necessary State and local permits required for the Exhibition, as well as any costs related thereto. **MAD BOMBER** shall aid and assist **CITY** in obtaining any necessary permits for the Exhibition.

e. Name **MAD BOMBER** as the primary vendor for the Exhibition in all news/media releases, advertisements, publicity, programs and announcements.

3. DATE OF EXHIBITION. The Exhibition shall be held on the evening of July 4, 2014 ("**Display Date**"). In the event the Exhibition is postponed due to acts of nature or God, labor disputes, strikes, wars, accidents, or other reasons beyond the parties' knowledge or reasonable control, the Exhibition shall be held on July 5, 2014, or a date mutually agreed upon by both parties. In the event the alternative date is required to be postponed, the parties agree that the Exhibition shall be held at the earliest mutually convenient date for the parties. Should CITY choose not to select an alternative date for the Exhibition within six (6) months of the Display Date, CITY shall pay a cancellation fee equal to thirty percent (30%) of the contract amount. Should the Exhibition be delayed, postponed or canceled due to acts of nature or God, labor disputes, strikes, wars, accidents or other reasons beyond the parties' knowledge or reasonable control, neither party shall be responsible for any cost or damages to the other associated with such delay, postponement or cancellation.

4. **COMPENSATION.** For its services provided herein, **CITY** shall pay **MAD BOMBER** the sum of Forty-one Thousand Three Hundred (\$41,300.00) Dollars. Said sum shall be paid to **MAD BOMBER** no later than ten (10) days after the Exhibition. All checks shall be made payable to MIAND, INC. Should **MAD BOMBER** fail to utilize shells in the Exhibition, whether by inadvertence or failure to explode, **CITY** shall be entitled to a credit in an amount equal to the value of the shell, ~~as enumerated in the itemization set forth in Exhibit B attached hereto.~~ Further, should the Exhibition fail to run the minimum 25 minute duration agreed to herein, **CITY** shall be entitled to a credit as follows:

- a. 15-20 minutes – 50% of compensation
- b. 0-14 minutes – 100% of compensation

5. **INSURANCE.** **MAD BOMBER** shall procure and maintain, during this Agreement, insurance policies as hereinafter specified to insure against all risk and loss for all services provided herein by **MAD BOMBER**. The General Commercial Liability policy shall cover all claims, damages, suits, injuries or expenses incurred as a result of any negligent act or omission of any employee, independent contractor or agent of **MAD BOMBER**, as well as any defect or problem with any Fireworks supplied or displayed by **MAD BOMBER**. The policies must be issued by an insurance company or companies authorized to do business in the State of Wisconsin and licensed by the State of Wisconsin. **MAD BOMBER** shall, within fourteen (14) days of execution of this Agreement, furnish a Certificate of Insurance indicating compliance with this Section 5, including the naming of **CITY** as an “additional insured”, and proof of payment of premium to the City Clerk/Treasurer for approval. **MAD BOMBER** shall also provide a copy of the “additional insured” endorsement. The insurance policy or policies shall contain a clause that in the event that any policy issued is canceled for any reason, or any material changes are made therein, the City Clerk/Treasurer will be notified, in writing, by the insurer at least thirty (30) days before any cancellation or change takes effect. A material change shall include, but is not limited to, a change in policy amount, coverage or status of the insurer. **MAD BOMBER** shall provide a copy of the endorsement or pertinent portion of the policy providing for such notice to be given to the **CITY**.

If for any reason, the insurance coverage required herein lapses and/or **MAD BOMBER** fails to maintain insurance coverage, **CITY** may declare this Agreement null and void as of the date no valid insurance policy was in effect. Should **MAD BOMBER** fail to furnish, deliver and maintain such insurance coverage, **CITY** may obtain such insurance coverage and charge **MAD BOMBER** the cost of such insurance coverage plus all appropriate administrative charges and incidental expenses associated with the transaction. The failure of **MAD BOMBER** to take out and/or maintain the required insurance shall not relieve **MAD BOMBER** from any liability under this Agreement. The insurance requirement shall not be construed to conflict with the obligations of **MAD BOMBER** in Section 6 of this Agreement. **MAD BOMBER** shall maintain during the course of this Agreement insurance with minimum limits as follows:

- a. **General Commercial Liability**
 - 1. Bodily Injury:
 - \$5,000,000.00 Each Occurrence
 - \$5,000,000.00 Aggregate

2. Property Damage
\$2,000,000.00 Each Occurrence
\$2,000,000.00 Aggregate

b. Automobile Liability (owned, non-owned, leased)

1. Bodily Injury:
\$1,000,000.00 Each Occurrence
\$1,000,000.00 Aggregate
2. Property Damage
\$2,000,000.00 Each Occurrence

c. Worker's Compensation: Statutory Limits

6. INDEMNIFICATION. MAD BOMBER shall indemnify and hold harmless CITY, and its officers and employees from and against all suits, claims, losses, damages, liabilities or other obligations, whether in tort, contract or otherwise, resulting from MAD BOMBER'S own negligence or MAD BOMBER'S failure to perform or observe any of the terms, covenants and conditions of this Agreement.

CITY shall indemnify and hold harmless MAD BOMBER, and its officers and employees from and against all suits, claims, losses, damages, liabilities or other obligations, whether in tort, contract or otherwise, resulting from CITY'S own negligence or CITY'S failure to perform or observe any of the terms, covenants and conditions of this Agreement.

7. ASSIGNMENT. This Agreement and all obligations thereunder shall not be assigned by MAD BOMBER without the prior written consent of CITY.

8. COUNTERPARTS. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original.

9. ATTORNEY FEES. If either party commences an action, whether in Court or by arbitration, to enforce its rights pursuant to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees as determined by the Court or arbitrators as the case may be.

10. ENTIRE AGREEMENT. This Agreement (including all exhibits or attachments hereto) constitutes the entire agreement between the parties with respect to all matters, activities and obligations contemplated herein, and shall supersede and control any and all other prior or contemporaneous agreements, understandings, representations and statements, whether written or oral, which may have taken place, or been in existence at any time between the parties.

11. HEADINGS. The headings of the sections and subsections of this Agreement are for purposes of convenience only and shall in no way affect the construction of any of the terms or conditions hereof.

12. GOVERNING LAW. This Agreement shall be construed and interpreted in accordance with the

laws of the State of Wisconsin.

13. SEVERABILITY. It is mutually agreed that in case any provision of this Agreement is determined by a court of law to be unconstitutional, illegal or unenforceable, that it is the intention of the parties that all other provisions of this Agreement remain in full force and effect.

14. AMENDMENTS. This Agreement cannot be amended, changed, altered or modified, except in a writing signed by the parties.

15. CONSTRUCTION. This Agreement has been negotiated between the parties, and each party has participated in the drafting of this Agreement; consequently, the doctrine of construing an agreement against the draftsman shall not apply to this Agreement, and neither party has any rights under such doctrine.

16. AUTHORITY. Each of the undersigned hereby represents and warrants that:

- a. Such party has all requisite power and authority to execute this Agreement;
- b. The execution and delivery of this Agreement by the undersigned, and the performance of its terms thereby have been duly authorized and approved by all requisite action required by law; and,
- c. This Agreement constitutes the valid and binding agreement of the undersigned, enforceable against each of them in accordance with the terms of the Agreement.

17. WAIVER. No failure to exercise, or delay in exercising, any right, power or remedy hereunder on the part of either party shall operate as a waiver thereof, nor shall any single or partial exercise of any other right, power or remedy preclude any other further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event of default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

18. NOTICES. Any notice required or permitted to be given to either party under this Agreement shall be in writing and either by hand or certified mail, return receipt requested, postage prepaid, to the following addresses of the parties as indicated below. Notice shall be effective as of the date of delivery if by hand, or mailing if by certified mailing.

If to CITY :	Director of Public Works 625 – 52nd Street, Room 305 Kenosha, Wisconsin 53140
with copies to:	City Attorney Municipal Building, Room 201 625 - 52nd Street Kenosha, Wisconsin 53140.

and

Superintendent of Parks
3617 65th Street
Kenosha, Wisconsin 53142

If to **MAD BOMBER:**

Dan P. Miller
Sr. Vice President
MIAND, INC. DBA Mad Bomber
Fireworks Productions
3999 Hupp Road
Kingsbury, Indiana 46345

Signature pages follow

IN WITNESS WHEREOF, the parties hereto have herein executed this Agreement on the dates below given.

**THE CITY OF KENOSHA, WISCONSIN,
A Wisconsin Municipal Corporation**

BY: _____
KEITH G. BOSMAN, Mayor,
Date: _____

BY: _____
DEBRA SALAS
City Clerk/Treasurer
Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2014, **KEITH G. BOSMAN, Mayor**, and **DEBRA SALAS, City Clerk/Treasurer** of the **CITY OF KENOSHA, WISCONSIN**, a Wisconsin municipal corporation, to me known to be such Mayor and City Clerk/Treasurer of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said municipal corporation, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

EXHIBIT A

Grand Opening

<u>Quantity</u>	<u>Size</u>	<u>Type</u>	<u>Manufacturer</u>
120	3"	ASSORTED COLOR STAR SHELLS	CHINA
60	3"	RED, WHITE, BLUE PEONIES	JAPAN
60	3"	TITANIUM FLASH SALUTES	U.S.A.
36	4"	SILVER COCONUT PALMS	TAIWAN
18	4"	PURPLE STROBE TO GREEN PEONIES	JAPAN
14	5"	GLITTERING SPANGLE PATTERNS	CHINA
14	5"	BROCADE CROWN CHRYSANTHEMUMS	JAPAN
12	6"	CRACKLING DAHLIA PATTERNS	TAIWAN
12	6"	GOLD SHIMMER CHRYSANTHEMUMS	JAPAN
2	8"	RED TO GREEN COLOR PEONYS	CHINA
2	8"	MAJESTIC CROWN CHANDELIERS	U.S.A.

Ground Display: There will be no ground or low aerial displays.

Aerial Show

<u>Quantity</u>	<u>Size</u>	<u>Type</u>	<u>Manufacturer</u>
300	3"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
120	3"	ASSORTED COLOR SHELLS	JAPAN
60	3"	MULTIPLE BREAK/SALUTES	U.S.A.
240	4"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
180	4"	ASSORTED COLOR SHELLS	JAPAN
12	4"	MULTIPLE BREAK SPECIALS	U.S.A.
180	5"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
160	5"	ASSORTED COLOR SHELLS	JAPAN
24	5"	MULTIPLE BREAK/SALUTES	U.S.A.
180	6"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
144	6"	ASSORTED COLOR SHELLS	JAPAN
36	8"	ASSORTED COLOR SHELLS	CHINA
28	8"	ASSORTED COLOR SHELLS	JAPAN

Grand Finale

<u>Quantity</u>	<u>Size</u>	<u>Type</u>	<u>Manufacturer</u>
960	3"	ASSORTED COLOR STAR SHELLS	CHINA/TAIWAN
600	3"	ASSORTED COLOR STAR SHELLS	JAPAN
360	3"	SPECIAL EFFECTS/SALUTES	U.S.A.
54	4"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
54	4"	ASSORTED COLOR SHELLS	JAPAN
36	4"	SPECIAL EFFECTS/SALUTES	U.S.A.
42	5"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
28	5"	ASSORTED COLOR SHELLS	JAPAN
18	6"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
18	6"	ASSORTED COLOR SHELLS	JAPAN
3	8"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
3	8"	ASSORTED COLOR SHELLS	JAPAN
2	8"	ASSORTED COLOR SHELLS	U.S.A.

FIREWORKS DISPLAY AGREEMENT

By And Between

**THE CITY OF KENOSHA, WISCONSIN,
A Wisconsin Municipal Corporation,
THROUGH ITS DEPARTMENT OF PUBLIC WORKS**

And

**MIAND, INC. DBA Mad Bomber Fireworks Productions
An Indiana Corporation,
3999 Hupp Road
Kingsbury, IN 46345**

THIS AGREEMENT made and entered into by and between **THE CITY OF KENOSHA, WISCONSIN**, with offices located at 625 – 52nd Street, Kenosha, Wisconsin ("**CITY**"), a Wisconsin municipal corporation, and **MIAND, INC., DBA MAD BOMBER FIREWORKS PRODUCTIONS**, an Indiana corporation, with its principal place of business located at 3999 Hupp Road, Kingsbury, IN 46345, ("**MAD BOMBER**").

WITNESSETH:

WHEREAS, MAD BOMBER is engaged in the sale, exhibition and display of fireworks;

WHEREAS, MAD BOMBER has in the past provided and wishes to continue to provide a fireworks display and exhibition ("Exhibition") for a Fourth of July celebration;

WHEREAS, CITY is interested in contracting with **MAD BOMBER** for the purpose of putting on a fireworks Exhibition.

NOW, THEREFORE, in consideration of the mutual undertakings, promises, agreements, understandings and undertakings hereinafter set forth, and good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties hereto, the undersigned agree as follows:

1. OBLIGATIONS OF MAD BOMBER. MAD BOMBER shall:

a. Provide all freight, cartage, transportation of equipment, material and tools for the Exhibition, together with all necessary qualified, trained and experienced pyrotechnic operators/technicians to set up and conduct the Exhibition. The Exhibition shall include those shells as set forth in Exhibit A attached hereto and incorporated herein. In the event of a shortage or unavailability of any shell identified in Exhibit A, **MAD BOMBER** has the right to substitute a shell or shells of equal or greater value. **MAD BOMBER** shall provide this information to **CITY** no later than fourteen (14) days prior to the Exhibition.

b. Establish a "Safety Zone" encompassing the area immediately surrounding the launch site and a corresponding fallout zone to which unauthorized persons will be denied access. Said Safety Zone shall have a minimum spectator set back of five hundred sixty (560') feet at all points from the discharge area. **MAD BOMBER** reserves the right to terminate the Exhibition in the event spectators enter the Safety Zone and **CITY** is unable to secure the Safety Zone within a reasonable period.

c. Provide an Exhibition with a minimum duration of 25 minutes.

d. Remove all its equipment, together with any live or unfired material from the Safety Zone.

e. Inspect the Safety Zone the following morning for the purpose of collecting any material, live or otherwise, in the Safety Zone.

2. OBLIGATIONS OF CITY. CITY shall:

a. Provide adequate security, fire and police protection, parking, traffic and crowd control during the Exhibition and for a reasonable time thereafter.

b. Provide materials and manpower to deny unauthorized persons from accessing the Safety Zone by roping off or other suitable means. **CITY** shall provide adequate security to prevent spectators from entering Safety Zone.

c. Be responsible for all cleanup for the Exhibition except for the Safety Zone. Said cleanup shall include, but is not limited to, removal of debris, trash, and wood; back filling holes; repairs to grass, sod or other surfaces; and removal of all barricades.

d. Be responsible for obtaining all necessary State and local permits required for the Exhibition, as well as any costs related thereto. **MAD BOMBER** shall aid and assist **CITY** in obtaining any necessary permits for the Exhibition.

e. Name **MAD BOMBER** as the primary vendor for the Exhibition in all news/media releases, advertisements, publicity, programs and announcements.

3. DATE OF EXHIBITION. The Exhibition shall be held on the evening of July 4, 2014 ("Display Date"). In the event the Exhibition is postponed due to acts of nature or God, labor disputes, strikes, wars, accidents, or other reasons beyond the parties' knowledge or reasonable control, the Exhibition shall be held on July 5, 2014, or a date mutually agreed upon by both parties. In the event the alternative date is required to be postponed, the parties agree that the Exhibition shall be held at the earliest mutually convenient date for the parties. Should **CITY** choose not to select an alternative date for the Exhibition within six (6) months of the Display Date, **CITY** shall pay a cancellation fee equal to thirty percent (30%) of the contract amount.

4. COMPENSATION. For its services provided herein, **CITY** shall pay **MAD BOMBER** the sum of Forty-one Thousand Three Hundred (\$41,300.00) Dollars. Said sum shall be paid to **MAD BOMBER** no later than ten (10) days after the Exhibition. All checks shall be made payable to **MIAND, INC.** Should **MAD BOMBER** fail to utilize shells in the Exhibition,

whether by inadvertence or failure to explode, CITY shall be entitled to a credit in an amount equal to the value of the shell. Further, should the Exhibition fail to run the minimum 25 minute duration agreed to herein, CITY shall be entitled to a credit as follows:

- a. 15-20 minutes – 50% of compensation
- b. 0-14 minutes – 100% of compensation

5. INSURANCE. MAD BOMBER shall procure and maintain, during this Agreement, insurance policies as hereinafter specified to insure against all risk and loss for all services provided herein by MAD BOMBER. The General Commercial Liability policy shall cover all claims, damages, suits, injuries or expenses incurred as a result of any negligent act or omission of any employee, independent contractor or agent of MAD BOMBER, as well as any defect or problem with any Fireworks supplied or displayed by MAD BOMBER. The policies must be issued by an insurance company or companies authorized to do business in the State of Wisconsin and licensed by the State of Wisconsin. MAD BOMBER shall, within fourteen (14) days of execution of this Agreement, furnish a Certificate of Insurance indicating compliance with this Section 5, including the naming of CITY as an “additional insured”, and proof of payment of premium to the City Clerk/Treasurer for approval. MAD BOMBER shall also provide a copy of the “additional insured” endorsement. The insurance policy or policies shall contain a clause that in the event that any policy issued is canceled for any reason, or any material changes are made therein, the City Clerk/Treasurer will be notified, in writing, by the insurer at least thirty (30) days before any cancellation or change takes effect. A material change shall include, but is not limited to, a change in policy amount, coverage or status of the insurer. MAD BOMBER shall provide a copy of the endorsement or pertinent portion of the policy providing for such notice to be given to the CITY.

If for any reason, the insurance coverage required herein lapses and/or MAD BOMBER fails to maintain insurance coverage, CITY may declare this Agreement null and void as of the date no valid insurance policy was in effect. Should MAD BOMBER fail to furnish, deliver and maintain such insurance coverage, CITY may obtain such insurance coverage and charge MAD BOMBER the cost of such insurance coverage plus all appropriate administrative charges and incidental expenses associated with the transaction. The failure of MAD BOMBER to take out and/or maintain the required insurance shall not relieve MAD BOMBER from any liability under this Agreement. The insurance requirement shall not be construed to conflict with the obligations of MAD BOMBER in Section 6 of this Agreement. MAD BOMBER shall maintain during the course of this Agreement insurance with minimum limits as follows:

a. General Commercial Liability

- 1. Bodily Injury:
 - \$5,000,000.00 Each Occurrence
 - \$5,000,000.00 Aggregate

- 2. Property Damage
 - \$2,000,000.00 Each Occurrence
 - \$2,000,000.00 Aggregate

b. Automobile Liability (owned, non-owned, leased)

1. Bodily Injury:
\$1,000,000.00 Each Occurrence
\$1,000,000.00 Aggregate
2. Property Damage
\$2,000,000.00 Each Occurrence

c. Worker's Compensation: Statutory Limits

6. INDEMNIFICATION. MAD BOMBER shall indemnify and hold harmless CITY, and its officers and employees from and against all suits, claims, losses, damages, liabilities or other obligations, whether in tort, contract or otherwise, resulting from MAD BOMBER'S own negligence or MAD BOMBER'S failure to perform or observe any of the terms, covenants and conditions of this Agreement.

CITY shall indemnify and hold harmless MAD BOMBER, and its officers and employees from and against all suits, claims, losses, damages, liabilities or other obligations, whether in tort, contract or otherwise, resulting from CITY'S own negligence or CITY'S failure to perform or observe any of the terms, covenants and conditions of this Agreement.

7. ASSIGNMENT. This Agreement and all obligations thereunder shall not be assigned by MAD BOMBER without the prior written consent of CITY.

8. COUNTERPARTS. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original.

9. ATTORNEY FEES. If either party commences an action, whether in Court or by arbitration, to enforce its rights pursuant to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees as determined by the Court or arbitrators as the case may be.

10. ENTIRE AGREEMENT. This Agreement (including all exhibits or attachments hereto) constitutes the entire agreement between the parties with respect to all matters, activities and obligations contemplated herein, and shall supersede and control any and all other prior or contemporaneous agreements, understandings, representations and statements, whether written or oral, which may have taken place, or been in existence at any time between the parties.

11. HEADINGS. The headings of the sections and subsections of this Agreement are for purposes of convenience only and shall in no way affect the construction of any of the terms or conditions hereof.

12. GOVERNING LAW. This Agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

13. SEVERABILITY. It is mutually agreed that in case any provision of this Agreement is determined by a court of law to be unconstitutional, illegal or unenforceable, that it is the intention of the parties that all other provisions of this Agreement remain in full force and

effect.

14. AMENDMENTS. This Agreement cannot be amended, changed, altered or modified, except in a writing signed by the parties.

15. CONSTRUCTION. This Agreement has been negotiated between the parties, and each party has participated in the drafting of this Agreement; consequently, the doctrine of construing an agreement against the draftsman shall not apply to this Agreement, and neither party has any rights under such doctrine.

16. AUTHORITY. Each of the undersigned hereby represents and warrants that:

a. Such party has all requisite power and authority to execute this Agreement;

b. The execution and delivery of this Agreement by the undersigned, and the performance of its terms thereby have been duly authorized and approved by all requisite action required by law; and,

c. This Agreement constitutes the valid and binding agreement of the undersigned, enforceable against each of them in accordance with the terms of the Agreement.

17. WAIVER. No failure to exercise, or delay in exercising, any right, power or remedy hereunder on the part of either party shall operate as a waiver thereof, nor shall any single or partial exercise of any other right, power or remedy preclude any other further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event of default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

18. NOTICES. Any notice required or permitted to be given to either party under this Agreement shall be in writing and either by hand or certified mail, return receipt requested, postage prepaid, to the following addresses of the parties as indicated below. Notice shall be effective as of the date of delivery if by hand, or mailing if by certified mailing.

If to **CITY:**

Director of Public Works
625 – 52nd Street, Room 305
Kenosha, Wisconsin 53140

with copies to:

City Attorney
Municipal Building, Room 201
625 - 52nd Street
Kenosha, Wisconsin 53140.

and

Superintendent of Parks
3617 65th Street
Kenosha, Wisconsin 53142

If to **MAD BOMBER:**

Dan P. Miller
Sr. Vice President
MIAND, INC. DBA Mad Bomber
Fireworks Productions
3999 Hupp Road
Kingsbury, Indiana 46345

Signature pages follow

IN WITNESS WHEREOF, the parties hereto have herein executed this Agreement on the dates below given.

**THE CITY OF KENOSHA, WISCONSIN,
A Wisconsin Municipal Corporation**

BY: _____
KEITH G. BOSMAN, Mayor,
Date: _____

BY: _____
DEBRA SALAS
City Clerk/Treasurer
Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2014, **KEITH G. BOSMAN, Mayor**, and **DEBRA SALAS, City Clerk/Treasurer** of the **CITY OF KENOSHA, WISCONSIN**, a Wisconsin municipal corporation, to me known to be such Mayor and City Clerk/Treasurer of said municipal corporation, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said municipal corporation, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

**MIAND, INC. DBA MAD BOMBER
FIREWORKS PRODUCTIONS,
An Indiana Corporation**

BY: _____
DAN P. MILLER, SR. Vice President

Date: _____

STATE OF _____)
 :SS.
COUNTY OF _____)

Personally came before me this _____ day of _____, 2014, **DAN P. MILLER, SR. Vice President**, of **MIAND, INC. DBA MAD BOMBER FIREWORKS PRODUCTIONS**, an Indiana corporation, to me known to be such President of said corporation, and acknowledged to me that he executed the foregoing instrument as such officer of said corporation, by its authority.

Notary Public, _____ County, _____
My Commission expires/is: _____

Drafted By:
WILLIAM K. RICHARDSON,
Assistant City Attorney

EXHIBIT A

Grand Opening

<u>Quantity</u>	<u>Size</u>	<u>Type</u>	<u>Manufacturer</u>
120	3"	ASSORTED COLOR STAR SHELLS	CHINA
60	3"	RED, WHITE, BLUE PEONIES	JAPAN
60	3"	TITANIUM FLASH SALUTES	U.S.A.
36	4"	SILVER COCONUT PALMS	TAIWAN
18	4"	PURPLE STROBE TO GREEN PEONIES	JAPAN
14	5"	GLITTERING SPANGLE PATTERNS	CHINA
14	5"	BROCADE CROWN CHRYSANTHEMUMS	JAPAN
12	6"	CRACKLING DAHLIA PATTERNS	TAIWAN
12	6"	GOLD SHIMMER CHRYSANTHEMUMS	JAPAN
2	8"	RED TO GREEN COLOR PEONYS	CHINA
2	8"	MAJESTIC CROWN CHANDELIERS	U.S.A.

Ground Display: There will be no ground or low aerial displays.

Aerial Show

<u>Quantity</u>	<u>Size</u>	<u>Type</u>	<u>Manufacturer</u>
300	3"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
120	3"	ASSORTED COLOR SHELLS	JAPAN
60	3"	MULTIPLE BREAK/SALUTES	U.S.A.
240	4"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
180	4"	ASSORTED COLOR SHELLS	JAPAN
12	4"	MULTIPLE BREAK SPECIALS	U.S.A.
180	5"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
160	5"	ASSORTED COLOR SHELLS	JAPAN
24	5"	MULTIPLE BREAK/SALUTES	U.S.A.
180	6"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
144	6"	ASSORTED COLOR SHELLS	JAPAN
36	8"	ASSORTED COLOR SHELLS	CHINA
28	8"	ASSORTED COLOR SHELLS	JAPAN

Grand Finale

<u>Quantity</u>	<u>Size</u>	<u>Type</u>	<u>Manufacturer</u>
960	3"	ASSORTED COLOR STAR SHELLS	CHINA/TAIWAN
600	3"	ASSORTED COLOR STAR SHELLS	JAPAN
360	3"	SPECIAL EFFECTS/SALUTES	U.S.A.
54	4"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
54	4"	ASSORTED COLOR SHELLS	JAPAN
36	4"	SPECIAL EFFECTS/SALUTES	U.S.A.
42	5"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
28	5"	ASSORTED COLOR SHELLS	JAPAN
18	6"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
18	6"	ASSORTED COLOR SHELLS	JAPAN
3	8"	ASSORTED COLOR SHELLS	CHINA/TAIWAN
3	8"	ASSORTED COLOR SHELLS	JAPAN
2	8"	ASSORTED COLOR SHELLS	U.S.A.



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

WASTE DIVISION
ROCKY BEDNAR.
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS

MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL PUBLICWORKS@KENOSHA.ORG

May 16, 2014

To: Scott N. Gordon, Chairman,
Public Safety & Welfare Committee

From: Michael M. Lemens, P.E.
Director of Public Works

[Handwritten signature]
5-16-14

Subject: Resolution by the Board of Park Commissioners - To Rescind Resolution BPC 01-13 that had Resolved to Site the Fully-Accessible Play Area at Kennedy Park and to Identify Petzke Park as a Suitable Location for such Play Area

BACKGROUND INFORMATION

Staff received this request from the Legal Department for a Resolution by the Board of Park Commissioners.

RECOMMENDATION

Staff recommendation is for approval.

MML/dh

BOARD OF PARK COMMISSIONERS

RESOLUTION _____

TO RESCIND RESOLUTION BPC 01-13 THAT HAD RESOLVED TO SITE THE FULLY-ACCESSIBLE PLAY AREA AT KENNEDY PARK AND TO IDENTIFY PETZKE PARK AS A SUITABLE LOCATION FOR SUCH PLAY AREA

WHEREAS, by Resolution 146-12, the Common Council for the City of Kenosha identified the need for a playground with a fully-accessible play area design; and

WHEREAS, the Kenosha Dream Playground Project is an association that has taken a leadership role in researching the fundamentals of design for a fully-accessible play area and has been conducting fundraising in order that a fully-accessible play area may come to fruition in a City park; and,

WHEREAS, by Resolution BPC 01-13, the Board of Park Commissioners determined that the 22.54-acre Kennedy Park was a suitable location to install a fully-accessible play area, reserving nonetheless all subsequent approval decisions that would be necessary, including but not limited to approving the exact siting within Kennedy Park and approving the final plan design, and conditioned upon the existence of sufficient funds to complete the plans approved; and

WHEREAS, by Resolution 107-11 the Common Council for the City of Kenosha adopted a Comprehensive Outdoor Recreation Program (hereinafter designated "CORP") for all parks of the City, and adopted master plans for certain specific parks, including Petzke Park (the master plan for Petzke Park, hereinafter is designated with initial capitalization as "Master Plan"); and

WHEREAS, there is no adopted master plan for Kennedy Park showing a fully accessible playground area in Kennedy Park; and

WHEREAS, fully-accessible infrastructure and amenities such as restroom facility, adequate parking facilities to support a fully accessible playground area, and walkways do not currently exist at Kennedy Park and there are no approved concept plans for such infrastructure or amenities; and

WHEREAS, in December 2013, the Common Council approved the 2014 Capital

Improvement Plan, that included no funds for parking facilities, bathroom facilities, or walkways associated with a fully accessible playground area at Kennedy Park; and

WHEREAS, due to the need for amenities and improvements associated with the siting of a fully accessible playground area within Kennedy Park, and the lack of identified funds to implement the amenities and improvements associated with the siting of a fully accessible playground area within Kennedy Park, said siting is less suitable; and

WHEREAS, Petzke Park is approximately 18.79 acres, located at 1700 29th Street; and

WHEREAS, although Petzke Park is denominated a “neighborhood park” in the Master Plan, it is also designed to “offer amenities unique to this area of the city”, which unique amenities by design include a lacrosse field for use by Carthage College, botanical gardens with garden plots and fruit tree plantings, a multiuse trail system, and a splash pad; and

WHEREAS, the Master Plan design also calls for a playground; and

WHEREAS, Petzke Park has a parking lot in place that would provide parking to support a fully accessible playground area; and

WHEREAS, line item PK-11-001 of the 2014 Capital Improvement Plan adopted by the Common Council in December 2013 includes the sum of \$561,400 for Master Plan implementation, to include a shelter, restrooms, and walkways that could be designed to be fully-accessible to support the fully accessible playground area; and

WHEREAS, due to the amenities in place at and/or planned for Petzke Park, the compatibility of its Master Plan with the concept of a fully accessible playground area, and funding planned of additional amenities and improvements necessary to be associated with the siting of a fully accessible playground area, Petzke Park is a good and expedient choice for the siting of a fully accessible playground area.

NOW, THEREFORE, BE IT RESOLVED that Resolution BPC 01-13 is hereby rescinded.

BE IT FURTHER RESOLVED that the Board of Parks Commissioners hereby approves the siting of a fully accessible playground area in Petzke Park, reserving nonetheless all subsequent approval decisions that will be necessary, including but not limited to approving the exact siting within Petzke Park and approving the final plan design, and conditioned upon the existence of sufficient funds to complete the plans approved.

BE IT FURTHER RESOLVED that the placement of a sign by the City of Kenosha in Petzke Park is authorized announcing that Petzke Park is the future site of a fully accessible playground area.

BE IT FURTHER RESOLVED that the Board of Park Commissioners requests that the Mayor direct city staff to prepare any necessary and appropriate amendments to the Comprehensive Outdoor Recreation Plan and the Master Plan for Petzke Park for consideration by the Board of Parks Commissioners, the City Plan Commission, and the Common Council to proceed forth with a fully accessible playground area in Petzke Park.

BE IT FURTHER RESOLVED that the secretary of the Board of Park Commissioners is directed to forward a copy of this resolution to the Mayor of the City of Kenosha.

Adopted this _____ day of _____, 2014.

APPROVED: _____
Scott N. Gordon Chair,
Board of Park Commissioners

Date: _____

Drafted By:
EDWARD R. ANTARAMIAN,
City Attorney