



City of New Berlin

Meeting Agenda

Board of Public Works

New Berlin City Hall
3805 S. Casper Drive
New Berlin, WI 53151

(262) 786-8610
www.NewBerlin.org

Monday, September 19, 2022

4:30 PM

Zoom Meeting

The Council has satisfied the requirements as directed by the Common Council on June 22, 2021 and Ordinance No. 2651 to hold this meeting via electronic means. The full text of this ordinance and the minutes from the above mentioned meeting can be viewed at www.newberlin.org

Any comments that the public wishes to make may be communicated to the city via email at citizencomments@newberlin.org and will be forwarded to the Mayor and City Council.

Interested parties may also participate by:

- Downloading the ZOOM app located at <https://zoom.us/> and utilize this unique ID to join: 823 6301 3078
- Following this direct link to the meeting: <https://us02web.zoom.us/j/82363013078>
- Dial by phone: (312) 626-6799 and use Meeting ID: 823 6301 3078

AGENDA

PRIVILEGE OF THE FLOOR

CALL TO ORDER

ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

APPROVAL OF MINUTES

June 20th, 2022 Draft Minutes

OLD BUSINESS

NEW BUSINESS

ITEM 11-22 Recommend to the Common Council the approval of the Two-Party Construction Agreement for Reconstruction of CTH O (Moorland Road) from CTH I (Beloit Road) to CTH ES (National Avenue)

ITEM 12-22 Recommend to the Common Council the transfer of funds from the Calhoun Road Reconstruction CIP Account to the Coffee Road Resurfacing CIP Account.

ITEM 13-22 Recommend to the Common Council the approval of the Two-Party Agreement for the resurfacing of Coffee Road from CTH Y (Racine Avenue) to CTH ES (National Avenue)

UPDATES

2022 Roadway Maintenance Contract

2022 Roadway Rehabilitation Contract

2022 Pedestrian Lighting Contract

ADJOURN

PLEASE NOTE:

Any comments that the public wishes to make may be communicated to the city via email at citizencomments@newberlin.org and will be forwarded to the Mayor and Board of Public Works.

It is possible that action will be taken on any of the items on the agenda and that the agenda may be discussed in any order. It is also possible that members of and a possible quorum of other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.

Also, upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, contact City Clerk Rubina R. Medina (262) 786-8610.



**CITY OF NEW BERLIN
BOARD OF PUBLIC WORKS - MINUTES
Monday, June 20, 2022**

Regular Meeting

Council Chambers

4:30 PM

Please note: Minutes are unofficial until approved by the Board of Public Works at the next regularly scheduled meeting.

The Board of Public Works has satisfied the requirements as directed by the Common Council on June 22, 2021 and Ordinance No. 2651 to hold this meeting via electronic means. The full text of this ordinance and the minutes from the above mentioned meeting can be viewed at www.newberlin.org

To participate in the meeting, view the meeting, and/or ask questions, the public was able to do so by downloading the ZOOM app located at <https://zoom.us/> and utilize Meeting ID # 811 6206 6435: to join.

All votes were taken via a voice roll call vote.

PRIVILEGE OF THE FLOOR

CALL TO ORDER

ITEM: Meeting was called to order at 4:37pm

ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

Board Members Present: Mayor David Ament, Alderman Chuck Garrigues, Alderman Dennis Horbinski, Alderman Dave Maxey.

Excused: Commissioner Siedl

City Staff Present: City Clerk Administrative Specialist Megan Roche, City Engineer Tammy Simonson and City Engineer Lucas Pichler.

Megan stated that a quorum was established and the meeting was properly noticed.

APPROVAL OF MINUTES

ITEM: June 20th, 2022 Draft Minutes

MOTION: Motion to approve the June 20th, 2022 Draft Minutes

VOTE: Motion by: Alderman Maxey
Seconded by: Alderman Garrigues
MOTION APPROVED 4-0

OLD BUSINESS

NEW BUSINESS

ITEM: ITEM 07-22 Recommend to the Common Council the transfer of funds from the Sunny Slope and Grange Intersection CIP Account to the 124th Street CIP Account.

MOTION: Motion to approve the recommendation.

VOTE: Motion by: Alderman Horbinski
Seconded by: Alderman Maxey
MOTION APPROVED 4-0

ITEM: ITEM 08-22 Recommend to the Common Council the transfer of funds from the Sunny Slope and Grange Intersection CIP Account to the Lighting & Improvements CIP Account.

MOTION: Motion to approve the recommendations.

VOTE: Motion by: Alderman Garrigues
Seconded by: Alderman Maxey
MOTION PASSED 4-0

ITEM: ITEM 09-22 Recommend to the Common Council the approval of an Amendment to and existing WE Energies Easement on the New Berlin Fire station #3 property.

There are two vacant lots to the east of fire station 3, one of which a residential location is being built. We Energies is looking to provide electricity from Racine Ave to that property due to an existing electric easement on the fire station 3's property.

MOTION: Motion to approve the recommendation.

VOTE: Motion by: Alderman Maxey
Seconded by: Alderman Horbinski
MOTION PASSED 4-0

ITEM: ITEM 10-22 Recommend to the Common Council the awarding of a construction contract for the 2022 Pedestrian Lighting Project.

The lighting project was broken down into two phases. Cost of materials went up by 40%, additional funds needed to be reallocated. The project is slated to be finished by the end of October of 2022.

MOTION: Motion to approve the recommendations

VOTE: Motion by: Alderman Horbinski
Seconded by: Alderman Garrigues
MOTION APPROVED 4-0

UPDATES

ITEM: 2022 Roadway Maintenance Contract:

Materials were to be dropped off at the Department of Public Works building this

week. There is a 48-Hour advanced notice that will go out before work is conducted. No action taken.

ITEM: 2022 Roadway Rehabilitation Contract:

Stark has started the road reconstruction project. They are almost finished with the curb and gutter replacement and are moving on to replacing the storm/sewer inlets on Edergton and 124th.

They'll move over to Paddock parkway, then the Recycling Center and Casper Drive after July 4th and Top-O-Hill and Vogel area in September. There will be signs and social media notifications to warn people of route changes. The recycling center will be closed during the week day between July 12th - 25th. Changes may occur but will be notified. No action taken.

ADJOURN

MOTION: Motion to Adjourn at 4:57PM

VOTE: Motion by: Alderman Horbinski
Seconded by: Alderman Garrigues
MOTION PASSED 4-0

Respectfully Submitted,

*Megan Roche
City Clerk Administrative Specialist*



September 19th, 2022

TO: Common Council
Mayor Ament
Alderman Horbinski
Alderman Harenda
Alderman Garrigues

FROM: Board of Public Works

RE: Items from the Board of Public Works Meeting from September 19th, 2022 requiring Common Council action.

Recommend to the Common Council the approval of the Two-Party Construction Agreement for Reconstruction of CTH O (Moorland Road) from CTH I (Beloit Road) to CTH ES (National Avenue)

Council Motion:

This item was considered at the Board of Public Works meeting on September 19th, 2022. It was recommended to the Common Council on a vote of 3-0 to approve the Two-Party Construction Agreement for Reconstruction of CTH O (Moorland Road) from CTH I (Beloit Road) to CTH ES (National Avenue).

Recommend to the Common Council the transfer of funds from the Calhoun Road Reconstruction CIP Account to the Coffee Road Resurfacing CIP Account.

Council Motion:

This item was considered at the Board of Public Works meeting on September 19th, 2022. It was recommended to the Common Council on a vote of 3-0 approval of the transfer of funds from the Calhoun Road Reconstruction CIP Account to the Coffee Road Resurfacing CIP Account.

Recommend to the Common Council the approval of the Two-Party Agreement for the resurfacing of Coffee Road from CTH Y (Racine Avenue) to CTH ES (National Avenue)

Council Motion:

This item was considered at the Board of Public Works meeting on September 19th, 2022. It was recommended to the Common Council on a vote of 3-0 approval of the the Two-Party Agreement for the resurfacing of Coffee Road from CTH Y (Racine Avenue) to CTH ES (National Avenue)

STAFF REPORT EXECUTIVE SUMMARY

APPLICANT/PROJECT: Waukesha County/City of New Berlin/CTH O (Moorland Road) Reconstruction

LOCATION: From CTH I (Beloit Road) to CTH ES (National Avenue)

REQUEST: Approval of a Two-Party Construction Agreement for the CTH O (Moorland Road) Reconstruction Project

DCD RECOMMENDATION: Approval of the Two-Party Construction Agreement for Reconstruction of CTH O (Moorland Road) from CTH I (Beloit Road) to CTH ES (National Avenue) subject to final review as to form by the City Attorney and final plans on file.

1. General:

- a. Waukesha County will be reconstructing CTH O (Moorland Road) from CTH I (Beloit Road) to CTH ES (National Avenue) in 2023. As part of the reconstruction process, the City of New Berlin is responsible for the relocation of any City owned facilities within the County Right-of-Way.
- b. City owned public infrastructure relocations and improvements include the Emergency Vehicle Preemption (EVP) equipment on the traffic signals, the decorative pedestrian lights located in the terrace areas, the brick terraces, and utility structure adjustments.
- c. Funding for this agreement will be accounted for in the 2023 CIP Budget.

DETAILS IN ATTACHED STAFF REPORT

**CITY OF NEW BERLIN
DEPARTMENT OF COMMUNITY DEVELOPMENT
BOARD OF PUBLIC WORKS STAFF REPORT**

Meeting of September 16, 2022

**Waukesha County / City of New Berlin
CTH O Reconstruction – CTH I to CTH ES**

DATE STAFF REPORT CREATED: September 16, 2022

PROJECT NAME: Allison Bussler / Waukesha County

NAME OF PROJECT: CTH O (Moorland Road) Reconstruction

PROJECT LIMITS: CTH I (Beloit Road) to CTH ES (National Avenue)

TYPE OF PROJECT: Reconstruction

CONSTRUCTION DATE: 2023

SUMMARY OF CITY INFRASTRUCTURE COSTS:

Sanitary Sewer:	37 Manhole Adjustments
Water Main:	35 Water Valve Box Adjustments
EVP:	4 Intersection EVP Equipment Removals & Reinstalls
Terrace Areas	162 CY
Street Lighting:	16 Light pole Relocates and 13 new pole Installations

ESTIMATED AMOUNT OF COST SHARE: \$364,907.47

DCD RECOMMENDATION: Approval of the Two-Party Construction Agreement for Reconstruction of CTH O (Moorland Road) from CTH I (Beloit Road) to CTH ES (National Avenue) subject to final review as to form by the City Attorney and final plans on file. **SEE EXECUTIVE SUMMARY.**

Attachments:

Location Map & Info
Two-Party Construction Agreement
Cost Estimate

Plans on file with the City Engineering Department



Moorland Road Pavement Replacement **SELECTION OF PREFERRED ALTERNATIVE**



West Beloit Road to
West National Avenue
Pavement Replacement | Waukesha County

www.WaukeshaCounty.gov/MoorlandtoES



Project Contacts

Ed Hinrichs, P.E.
Project Manager
Waukesha County
EHinrichs@WaukeshaCounty.gov
262 / 548-7745

Rachel DeSombre, P.E.
Consultant Project Manager
raSmith, Inc.
Rachel.DeSombre@raSmith.com
262 / 317-3311

Mary Beth Pettit, P.E.
Public Involvement Lead
GRAEF
marybeth.pettit@graef-usa.com
414 / 467-8912

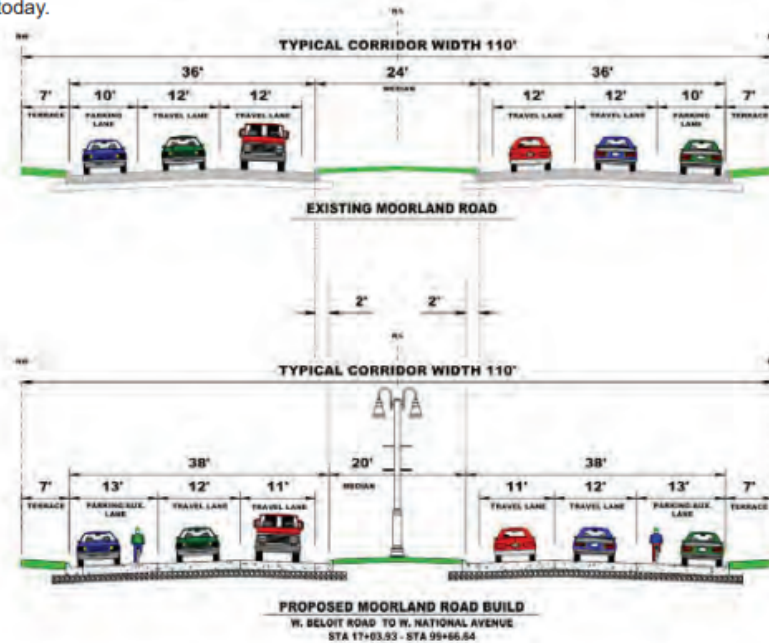
Project Background

The Waukesha County Department of Public Works is in the design phase for the pavement replacement of 1.4-miles of County O (Moorland Road) to improve ride quality and safety along the corridor. Improvements will include: replacing the existing concrete pavement, reconfiguring intersections to improve safety, replacing traffic signals, minor grading, and storm water improvements.

The first public involvement meeting was held virtually on November 11, 2020. Three alternatives were presented at the meeting that accommodated a sidewalk within the Waukesha County ultimate right-of-way plan width of 130'.

Selection of Preferred Alternative

In collaboration with the City of New Berlin, a decision has been made NOT to include sidewalk as part of the recommended improvement. The median curb lines will move inward 2' to accommodate parking and bicycles within the revised pavement footprint. The outside curb line will generally be replaced in the same location that it exists today.



Real Estate Impacts

Temporary easements to accommodate grading and driveway replacement will be needed along the corridor, fee acquisition is limited to intersection improvement locations and where the existing right-of-way is narrower than the typical corridor width and is shown on the exhibits and displays at this meeting.

[illegible]

TWO-PARTY CONSTRUCTION AGREEMENT
Between
WAUKESHA COUNTY by the DEPARTMENT OF PUBLIC WORKS
And
The CITY OF NEW BERLIN

This Agreement is made and entered into between Waukesha County by the Department of Public Works (hereinafter called the "DEPARTMENT") and the City of New Berlin (hereinafter called the "CITY") to designate the responsibility for design, construction, maintenance and payment of certain costs associated with improvements and other items to be designed and constructed in conjunction with the DEPARTMENT'S pavement replacement of Moorland Road (CTH O), West Beloit Road (CTH I) to West National Avenue (CTH ES) under Project Number 2722-07-02/72 (hereinafter called the "Project").

WHEREAS, the DEPARTMENT is planning for the pavement replacement of Moorland Road (CTH O) within the City of New Berlin in 2023, and

WHEREAS, the Project will include various road and infrastructure improvements that will be funded by the CITY and the DEPARTMENT, and

WHEREAS, the DEPARTMENT and the CITY agree to enter into this mutually beneficial agreement to construct and maintain improvements and other items concurrent with and under the same contracts as the Project, and

WHEREAS, the CITY agrees to pay the costs associated with the actual construction costs of Non-Participating Items listed in the cost estimate attached hereto as Attachment 1 and incorporated by reference, including the actual construction costs and construction engineering necessary to incorporate those Non-Participating Items into the Project, and

NOW, THEREFORE, BE IT RESOLVED, that the parties do mutually agree to the responsibilities related to the design and construction of the Non-Participating Items and to the funding of said construction as described below:

RESPONSIBILITIES:

The DEPARTMENT shall:

1. Through WDOT, finance and pay for the Municipal costs share of design and construction of the Project and subject to the terms of this Agreement.
2. Make the necessary changes to the contract plans, specifications and estimates in order to include the Non-Participating Items requested by the CITY, which are described in Attachment 1.
3. Through WDOT, publically bid said roadway improvement under Project Number 2722-07-72 in accordance with all applicable state and local laws.

4. Through WDOT's construction management, keep accurate accounts of all construction activities, changes in work, construction costs, and any delays or additional work necessary to complete the Project and accurately assess any incremental increases or decreases in quantities or costs.
5. Make available to the City, with reasonable notice, bidding documents, bid results, notice of award, and copies of all records recommendations of awards, reports, engineer findings, and correspondence regarding said roadway improvements.
6. Duly execute, award, and administer all such construction contracts necessary to complete the Project, including the Non-Participating Items, in an expeditious fashion in accordance with generally approved engineering and construction standards.
7. Issue work change directives, change orders, or other appropriate documents to the contractor, as contract or construction changes dictate, to expedite the progress of the construction work. Any document that would increase the CITY's costs shall be provided before execution by the DEPARTMENT, via email, to the CITY'S Representative for review, and the DEPARTMENT shall consider CITY'S comments thereon if received by the DEPARTMENT within two business days of the time the document was emailed to the CITY'S Representative.
8. Upon completion of the Project, furnish to the CITY a detailed breakdown of all actual construction costs incurred for the Non-Participating Items, including all change orders, work change directives and construction management services.
9. Invoice the CITY for construction costs on completion of Project.

The CITY shall:

1. Pay the actual costs associated for the Non-Participating Items listed in Attachment 1, including the actual construction engineering costs for such items (10% of construction cost). It is understood that Non-Participating Items listed in Attachment 1 are the **estimated bid costs** for such items (\$331,734.06) and **estimated construction engineering costs** (\$33,173.41), for a **total estimated cost of** (\$364,907.47). The CITY shall pay the total actual as-bid and as-built costs for these items when they are invoiced by the DEPARTMENT.
2. Within 30 days of receipt of an invoice from the DEPARTMENT, pay the entire actual design/construction invoice costs for the items that are the responsibility of the CITY.
3. Upon completion of the Project, accept ownership and all future maintenance responsibilities for all Non-Participating Items.
4. Designate a representative to act for the CITY under this Agreement. The representative shall be:

Tamara M. Simonson, P.E.

City Engineer, City of New Berlin
3805 S. Casper Drive
New Berlin, WI 53151
262.797.2445
tsimonson@newberlin.org

OTHER TERMS

1. Assignment: The parties agree that there shall be no assignment or transfer of this Agreement nor of any interests, rights or responsibilities contained herein without a written amendment agreed to by both parties.
2. Amendment: The parties, by mutual consent, may amend this Agreement in writing at any time.
3. Severability: If any provision of this Agreement is held invalid under any applicable law, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision and, to this end, the provisions hereof are severable.

Attachment 1: Item Description and Estimated Cost

APPROVAL

This Agreement will be effective on the date of the DEPARTMENT'S signature.

CITY:

By: _____

Date: _____

By: _____

Date: _____

COUNTERSIGNED: funds necessary to pay the liabilities of this contract have been provided.
§62.09(10)(f), Wis. Stats.

By: _____

Date: _____

DEPARTMENT:

By: _____

Date: _____

Allison Bussler
Director of Public Works

Address for CITY:

City of New Berlin
3805 S Casper Dr
New Berlin WI 53151

Address for DEPARTMENT:

Waukesha County Department of
Public Works
515 W. Moreland Blvd. Room AC 210
Waukesha, WI 53188

60% ESTIMATED CONSTRUCTION COSTS

Moorland Road, I-94 to Bluemound Road

Project Number 2722-07-71

Waukesha County

Attachment 1 City of Brookfield Costs

Non Participating

March 31, 2021

Item Number	Description	Unit	Actual Quantity	Bid Price	Extension
SPV.0105	.XX TEMPORARY EMERGENCY VEHICLE PREEMPTION (EVP) SYSTEM MOORLAND RD & BROOKFIELD SQUARE DRIVE	LS	1	\$8,000.00	\$8,000.00
SPV.0105	.XX TEMPORARY EMERGENCY VEHICLE PREEMPTION (EVP) SYSTEM MOORLAND RD & MALL NORTH DRIVEWAY	LS	1	\$8,000.00	\$8,000.00
SPV.0105	.XX TEMPORARY EMERGENCY VEHICLE PREEMPTION (EVP) SYSTEM MOORLAND RD & IH 94 WB RAMPS	LS	1	\$8,000.00	\$8,000.00
SPV.0105	.XX EMERGENCY VEHICLE PREEMPTION SYSTEM MOORLAND ROAD & BROOKFIELD SQUARE DRIVE	LS	1	\$15,000.00	\$15,000.00
SPV.0105	.XX EMERGENCY VEHICLE PREEMPTION SYSTEM MOORLAND ROAD & BROOKFIELD MALL ENTRANCE	LS	1	\$15,000.00	\$15,000.00
					\$0.00
					\$0.00
CITY OF BROOKFIELD SUBTOTAL					\$54,000.00
CONSTRUCTION ENGINEERING (10%)					\$5,400.00
ESTIMATED CITY OF BROOKFIELD COST					\$59,400.00

Attachment 1

ESTIMATE OF QUANTITIES

Project ID 2722-07-02/72
 Title Moorland Road (CTH O)
 Limits West Beloit Road to West National Avenue
 County Waukesha County

Item Number	Description	Unit	Est. Quantity	Bid Price	Extension
204.0195	Removing Concrete Bases	EACH	16	\$200.00	\$3,200.00
405.1000	Stamping Colored Concrete	CY	162	\$115.00	\$18,630.00
612.0902.S	Insulation Board Polystyrene (2-Inch)	SY	40	\$43.00	\$1,720.00
652.0225	Conduit Rigid Nonmetallic Schedule 40 2-Inch	LF	3,877	\$6.00	\$23,262.00
653.0135	Pull Boxes Steel 24x36-Inch	EACH	4	\$780.00	\$3,120.00
655.0610	Electrical Wire Lighting 12 AWG	LF	3,155	\$1.00	\$3,155.00
655.0625	Electric Wire Lighting 6 AWG	LF	20,885	\$2.00	\$41,770.00
SPV.0060	Special 202. Reinstall Temporary EVP Equipment Moorland Rd (CTH O) and Target Driveway	EACH	1	\$1,800.00	\$1,800.00
SPV.0060	Special 203. Reinstall Temporary EVP Equipment Moorland Rd (CTH O) and Mayflower Drive	EACH	1	\$2,000.00	\$2,000.00
SPV.0060	Special 204. Reinstall Temporary EVP Equipment Moorland Rd (CTH O) and Howard Avenue	EACH	1	\$2,000.00	\$2,000.00
SPV.0060	Special 205. Reinstall Temporary EVP Equipment Moorland Rd (CTH O) and National Avenue (CTH ES)	EACH	1	\$2,500.00	\$2,500.00
SPV.0060	Special 210. Remove and Reinstall EVP Equipment Moorland Rd (CTH O) and Target Driveway	EACH	1	\$1,800.00	\$1,800.00
SPV.0060	Special 211. Remove and Reinstall EVP Equipment Moorland Rd (CTH O) and Mayflower Drive	EACH	1	\$2,000.00	\$2,000.00
SPV.0060	Special 212. Remove and Reinstall EVP Equipment Moorland Rd (CTH O) and Howard Avenue	EACH	1	\$2,000.00	\$2,000.00
SPV.0060	Special 213. Remove and Reinstall EVP Equipment Moorland Rd (CTH O) and National Avenue (CTH ES)	EACH	1	\$2,500.00	\$2,500.00
SPV.0060	Special 300. Removing, Salvaging, and Reinstalling Light Poles, Luminares, and Arms	EACH	16	\$1,100.00	\$17,600.00
SPV.0060	Special 301. 15-foot Decorative Light Pole	EACH	13	\$10,000.00	\$130,000.00
SPV.0060	Special 302. Decorative Luminaire Arm	EACH	13	\$1,000.00	\$13,000.00
SPV.0060	Special 303. Decorative LED Luminaire	EACH	13	\$300.00	\$3,900.00
SPV.0060	Special 304. Concrete Bases Type 2 Special	EACH	2	\$1,500.00	\$3,000.00
SPV.0060	Special 305. Concrete Bases Type 5 Modified	EACH	27	\$1,000.00	\$27,000.00
SPV.0060	Special 306. Decorative Banner Arm	EACH	13	\$1,000.00	\$13,000.00
SPV.0060	Special 400. Adjusting Sanitary Manholes	EACH	37	\$500.00	\$18,500.00
SPV.0060	Special 401. Adjusting Water Valve Boxes	EACH	33	\$100.00	\$3,300.00
SPV.0060	Special 402. Adjusting Water Manholes	EACH	2	\$500.00	\$1,000.00
	Credit for equivalent 5-Inch sidewalk	CY	162	(\$61.87)	(\$10,022.94)
					\$0.00
CITY OF NEW BERLIN SUBTOTAL				\$331,734.06	
CONSTRUCTION ENGINEERING (10%)				\$33,173.41	
ESTIMATED CITY OF NEW BERLIN COST				\$364,907.47	

STAFF REPORT EXECUTIVE SUMMARY

APPLICANT: City of New Berlin

PROJECT: Resolution to Reallocate CIP Funds

LOCATION: Coffee Road Resurfacing Project

REQUEST: Recommendation to the Common Council approval of a Resolution to Reallocate Funds from the Calhoun Road Reconstruction CIP Account to the Coffee Road Resurfacing CIP Account.

D.C.D. RECOMMENDATION: Recommendation to the Common Council approval of a Resolution to Reallocate Funds from the Calhoun Road Reconstruction CIP Account 04251100 63011 C2021 to the Coffee Road Resurfacing CIP Account 04251100 63019 C2021.

1. The Calhoun Road Reconstruction project was completed in the summer of 2022. This request is to reallocate \$60,000 of the remaining balance.
2. The City of Waukesha is resurfacing Coffee Road from Racine Avenue to National Avenue in 2022. As part of the Waukesha Water main project.
3. As part of the March 11, 2020 Intergovernmental Agreement between the City of New Berlin and City of Waukesha, New Berlin is responsible for half of the cost of resurfacing Coffee Road.
4. As part of the 2022 CIP Budget, the City of New Berlin estimated the cost for the City's portion of the resurfacing to be \$580,000. Due to higher asphalt and trucking prices this construction season, additional funds are required.
5. To keep the 2021 CIP Budget in balance with other City needs, residual funds from the Calhoun Road Reconstruction project are available to cover the New Berlin portion of the cost share.
6. Enclosed is Resolution 22-22 for the transfer of funds.

ATTACHMENT:

Resolution 22-22

Intergovernmental Agreement- approved 3/11/20

Two-Party Agreement

RESOLUTION 22-22
A RESOLUTION AMENDING THE 2021 CAPITAL PROJECTS BUDGET

WHEREAS, the City of New Berlin and the City of Waukesha are party to an Intergovernmental Agreement dated March 11, 2020 in which each municipality is responsible for resurfacing half of Coffee Road from Racine Avenue to National Avenue pending completion of the Waukesha Water main project, and;

WHEREAS, DCD staff requests that \$60,000 be transferred from the 2021 Calhoun Road Reconstruction Account to the 2021 Coffee Road Resurfacing Account to accomplish this goal, and;

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of New Berlin that the Capital Projects Fund Budget be amended as follows:

TRANSFER FROM

Calhoun Road – National to Beloit	04251100 63011 C2021	\$60,000
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TRANSFER TO

Coffee Road Resurfacing	04251100 63019 C2021	\$60,000
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BE IT FURTHER RESOLVED that the City Clerk is hereby directed to publish this resolution in the Waukesha County NOW within 10 days of adoption by the Common Council.

RESOLUTION ADOPTED by the New Berlin Common Council this 27th day of September 2022.

David Ament, Mayor

Countersigned:

Rubina Medina, City Clerk

TWO-PARTY AGREEMENT

Between

The CITY OF NEW BERLIN

And

The CITY OF WAUKESHA

This agreement (hereinafter called "AGREEMENT") is made and entered into between the City of New Berlin through its Department of Community Development (hereinafter called the "CITY") and the City of Waukesha through its Water Utility (hereinafter called the "UTILITY") to designate the responsibility for construction, inspection, and payment of certain costs associated with resurfacing Coffee Road in the City of New Berlin.

WHEREAS, the CITY and the UTILITY have entered into an Intergovernmental Agreement (IGA) for the Great Water Alliance Return Flow Mains, Supply Flow Mains through the City of New Berlin dated March 11, 2020; and

WHEREAS, per section 6.c. of the IGA, "The City of Waukesha agrees to mill and repave the half of Coffee Road closest to the pipeline installation, unless the City of New Berlin requests that the entire width of Coffee Road be milled and repaved, in which case the City of New Berlin shall pay for the costs for the other half of Coffee Road."; and

WHEREAS, the CITY has requested to mill and repave the other half of Coffee Road and the work being performed shall be done in accordance with the standards set forth in section 6 of the IGA; and

WHEREAS, the CITY and the UTILITY agree that costs associated with the construction necessary to mill and repave Coffee Road shall be a shared cost split as defined in Attachment 1 to be reimbursed by the CITY with a total not to exceed cost of \$1,268,307.77; and

WHEREAS, the resurfacing is anticipated in 2022 from Swartz Road to National Ave. and in 2023 from Racine Ave. to Swartz Road; and

NOW, both parties agree that the CITY and the UTILITY do mutually consent to the responsibilities related to the construction as described below:

RESPONSIBILITIES:

The UTILITY shall:

1. Execute a contract change order with the contractor to complete the construction work associated with the resurfacing of Coffee Road.
2. Upon completion of the project, furnish the CITY with a detailed breakdown of all actual construction costs incurred by the contractor, including all change orders and work change directives.
3. Pay the actual costs associated with the construction work and invoice the CITY based upon and agreed upon percentage of the total cost.
4. Provide inspection services and reports for the construction work.

The CITY Shall:

1. Within 45 days of receipt of an invoice from the UTILITY, pay the invoice for the items that are completed and accepted.

OTHER TERMS

1. Assignment: The parties agree that there shall be no assignment or transfer of this agreement nor of any interests, rights, or responsibilities contained herein without a written amendment agreed to by both parties.
2. Amendment: The parties, by mutual consent, may amend this agreement in writing at any time.
3. Severability: If any provision of this agreement is held invalid under any applicable law, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision and, to this end, the provisions hereof are severable.
4. Insurance: The City of New Berlin shall be listed as an additional insured on a primary and non-contributory basis on the contractor's liability policy and New Berlin shall be listed as an indemnified party under the construction contract with the contractor.

ATTACHMENT 1: UTILITY Cost Estimate and Item Description

ATTACHMENT 2: Intergovernmental Agreement

APPROVAL

This Agreement will be effective on the date of the final signature.

CITY:

By: _____

Date: _____

UTILITY:

By: _____

Date: _____

Address for CITY:

City of New Berlin

3805 S. Casper Dr.

New Berlin, WI 53151

Address for UTILITY:

City of Waukesha - Water Utility

115 Delafield St.

Waukesha, WI 53187-1648

ATTACHMENT 1

GWA Additional Quantities

CP2A-2-WS-I	Maintenance of Traffic	0.67 LS	\$	43,603.00	\$	29,068.67
CP2A-11-WS-I-D	Mill and Overlay - 2-in (CP2A)	19,368 SY	\$	12.80	\$	247,914.24
CP2B-10-WS-C	Mill and Overlay - 2-in (CP2B)	8,698 SY	\$	12.80	\$	111,336.96
NA	Shouldering - 2-in Refresh (CP2A)	287 Ton	\$	37.00	\$	10,606.14
NA	Shouldering - 2-in Refresh (CP2B)	83 Ton	\$	37.00	\$	3,055.38
CP2A-12-WS-I	Pavement Markings	0.67 LS	\$	47,224.00	\$	31,482.67
						\$ 433,860.06

New Berlin Quantities

1	Maintenance of Traffic	0.33 LS	\$	43,603.00	\$	14,534.33
2	Mill and Overlay - 2-in	46,177 SY	\$	12.80	\$	591,064.32
3	Shouldering - 2-in Refresh	401 SY	\$	37.00	\$	14,849.78
4	Pavement Markings	0.33 LS	\$	47,224.00	\$	15,741.33
						\$ 636,189.76

GWA Contribution (Base Contract):	\$ 198,257.95	15.63%
GWA Contribution (Additional Cost):	\$ 433,860.06	34.21%
New Berlin Contribution:	\$ 636,189.76	50.16%

City of Waukesha and City of New Berlin
Intergovernmental Agreement
Great Water Alliance Return Flow Mains, Supply Flow Mains through the City of New Berlin

Recitals

- A. This intergovernmental Cooperation Agreement, referred to herein as the Agreement, is entered into pursuant to Wis. Stats. §66.0301 by and between the City of New Berlin and the City of Waukesha; together, the City of New Berlin and the City of Waukesha are referred to herein as Parties.
- B. The City of Waukesha intends to install Water Supply and Return Flow Mains, referred to herein as Mains. The Mains range from 30- to 36-inch nominal diameter. The Return Flow Main will be installed between the City of Waukesha Clean Water Plant and a parcel located at 60th and Oakwood Road in the City of Franklin. The Water Supply Main will be installed between a new Water Supply Pumping Station in the City of Milwaukee located at the intersection of Oklahoma Avenue and 76th Street and the connection to the Waukesha Water Utility's distribution system.
- C. Within the jurisdictional boundaries of the City of New Berlin, the Mains will have an impact on state, county and local rights-of-way (ROW). Permission to work in each right-of-way shall be granted by each governing jurisdiction (State, County and City) per applicable State Statutes. A Road Cut Permit is required before construction may begin. The Water Supply Main will be installed beneath National Avenue (CTH ES), Coffee Road, and Racine Avenue (CTH Y). The Return Flow Main will be installed beneath Racine Avenue (CTH Y), Racine Court, I-43, Martin Road, Calhoun Road, Small Road, Westridge Drive, and Moorland Road (CTH O). See Figure 1 that is attached to this Agreement.
- D. On March 9, 2020, the Wisconsin Public Service Commission has issued an order in Docket No. 6240-CW-117 approving the construction of the Water Supply Main, and approving a booster pump station and water storage reservoirs (collectively BPS) within a portion of Minooka Park, in the City of New Berlin. On December 3, 2019, the City of New Berlin denied the City of Waukesha's request for a conditional use permit at that site, and that determination has been challenged by the City of Waukesha in *City of Waukesha v. City of New Berlin Plan Commission*, Waukesha Circuit Court Case No. 19-CV-2193.
- E. At the request of the City of New Berlin and in an attempt to resolve the dispute over the location of the BPS, Waukesha reviewed possible new alternative sites that were not available when the initial site screening was done in 2017 and shared with New Berlin. As part of that process, one site was located within the City of Waukesha that could be a feasible alternative location for the BPS. Waukesha is willing to seek a modification of the PSC order to accommodate the alternative location subject to the terms and conditions of this Agreement.

- F. The resulting relocation will accommodate City of New Berlin interests in land use, historic preservation and parkland, but will increase the costs of the project to the City of Waukesha. In consideration of those factors, as well as the City of Waukesha's agreement to pave portions of Coffee Road, allow for the City of New Berlin to connect with the City of Waukesha's fiber optic line being constructed as part of this project, as well as the agreement by the City of Waukesha to construct a T-connection in its water transmission line to facilitate a potential future inter-connection with the City of New Berlin water system to provide redundancy for that system, the City of New Berlin is willing to make a payment to the City of Waukesha in accordance with the provisions set forth in this agreement.

Terms and Conditions

Now, therefore, in consideration of mutual promises of the Parties stated herein and pursuant to the authority granted by Wis. Stats. §66.0301, the Parties agree and contract as follows:

1. Installation, Maintenance, Repair, and Replacement of Mains.

- a. The City of Waukesha shall install, maintain, repair and replace the Mains within the City of New Berlin's ROW boundaries in Coffee Road, Racine Court, Westridge Drive, Small Road, Martin Road, and Calhoun Road at the City of Waukesha's sole expense. As part of this project the City of Waukesha and its contractors intend to occupy the ROW and place traffic control equipment to divert traffic while such work is being done.
- b. The City of Waukesha shall ensure that all work will be done according to accepted practices and any applicable Federal, State, County and/or City of New Berlin regulations.
- c. A traffic control map and plan – that is acceptable to the City of New Berlin and Waukesha County shall be approved and on file prior to construction.
- d. The City of Waukesha shall acquire and adhere to all requirements and conditions of the City of New Berlin Road Cut Permit(s).

2. City of New Berlin – Responsibilities, Rights and Duties with Respect to Third Parties.

- a. The City of New Berlin shall not pay for or have any responsibility for the work or the expense of the City of Waukesha's installation, maintenance, repair, or replacement of the Mains, but shall take all reasonable steps to avoid interfering with or damaging the Mains.
- b. The City of New Berlin shall not excavate within the areas depicted in Figure 1 or allow any third party to excavate within the areas depicted in Figure 1, without notice to the City of Waukesha unless excavation is immediately necessary to protect life or property and the public health, safety and welfare of the residents. The City of New Berlin does agree to notify the City of Waukesha within 24 hours of said emergency. Notice to the City of Waukesha shall be accompanied by a description of the proposed excavation and plans for the proposed work. The City of Waukesha shall respond to the City of New Berlin within 7 days with any comments and/or concerns.

- c. Notwithstanding the foregoing, nothing shall limit the City of New Berlin's ability to maintain, repair, or reconstruct its facilities (including but not limited to roadways, water, sanitary, storm, side paths, street lighting, trees, landscaping, signage, and related appurtenances) within its right-of-ways. If the City of Waukesha is required to relocate any of its mains as a result of this work, that relocation shall be at the expense of the City of New Berlin.

3. Ownership of Mains. The Mains shall at all times remain the City of Waukesha's property.

4. Flushing and Sanitizing of Main.

- a. Flushing and sanitizing of mains shall be done in accordance with Specification Section 33 13 00, attached to this Agreement.
- b. The City of Waukesha shall receive written approval from the City of New Berlin before any flushing and/or sanitizing of mains begins if the flushing and/or sanitizing requires the use of the City of New Berlin water and infrastructure. The City of New Berlin will work with the City of Waukesha to provide approval for the use of City of New Berlin water and infrastructure within 15 days which shall not be unreasonably withheld.
- c. The City of Waukesha will be responsible for the ordinary and reasonable operational costs associated with utilizing that infrastructure as well as obtaining the approval of other governmental bodies with jurisdiction.

5. Water Service to City of New Berlin Residents. City of New Berlin properties that abut the right-of-ways in which the Mains will be installed already have either private on-site wells on the west side of New Berlin, land generally west of Calhoun Road, or are serviced by the City of New Berlin Water Utility. Therefore, the Mains will not be used to provide water utility service to those properties and nothing in this Agreement shall be deemed to allow connection to the Mains by City of New Berlin residents, landowners, developers or businesses.

6. Restoration of Streets.

- a. Where the City of Waukesha excavates in the roadway, shoulder and/or ditch the City of Waukesha agrees to pay for the temporary and final restoration of those areas after excavation. The City of Waukesha will undertake the restoration in accordance with written specifications provided by the City of New Berlin as of the date of the agreement and the terms of the plans on file with the City of New Berlin for the pre-construction improvements.
- b. Unless otherwise agreed to in writing, the City of Waukesha will use the following in undertaking restoration of streets and ROW:
 - i. All temporary patches shall be repaired within 15 days. The roads shall be restored and rehabilitated to pre-excavation conditions within 12 months of substantial completion of the Waukesha Water Project, but no later than October 1st of each construction year.

- ii. All road work shall meet the City of New Berlin Development Handbook specifications. A copy of the Development Handbook can be located on the City's website at: www.newberlin.org/773/Development-Handbook.
 - iii. Where the City of Waukesha excavates beyond the edge of pavement (typically to mean shoulder/terrace areas and/or ditches) all turf areas shall be restored to the cross-section that existed prior to the start of construction. All turf restoration shall be completed within 15 days of trench backfill. The turf shall be watered as needed to establish germination.
 - iv. All fill under roadways shall be placed and compacted in 12-inch lifts
 - v. Suitable material shall conform to WisDOT Specification 210 and can include structural backfill, except that the City of New Berlin does not allow the use of Crushed Concrete within the right of way.
 - vi. The typical pavement cross section shall be established in both thickness and kind.
 - vii. Recertification of the grades of the ditches post construction to match the stamped approved construction plans from the city of New Berlin's last rehabilitation of the roadway.
- c. Work in the Coffee Road ROW was designed to be outside the pavement. The City of Waukesha agrees to mill and repave the half of Coffee Road closest to the pipeline installation, unless the City of New Berlin requests that the entire width of Coffee Road be milled and repaved, in which case the City of New Berlin shall pay for the costs for the other half of Coffee Road.

7. Woods Edge Road Future Intersection.

- a. The City of Waukesha Return Flow Main is contemplated to be located within the Waukesha County ROW along South Moorland Road adjacent to the newly constructed Woods Edge Road in Section 35. It is anticipated that the County will require a fully operational signal and intersection improvements in that location. The City of Waukesha's Return Flow Main shall be designed so as to minimize foreseeable interference with any future expansion and transition to a fully operational intersection or cause Waukesha County to materially change the ultimate design of that intersection or roadway profile.
- b. The City of Waukesha shall be responsible for any future modifications to their Return Flow Main if Waukesha County requires modifications to the intersection design that requires that this line be relocated, moved, extended and/or modified in any way.

8. Special Events and Emergency Access. Contractor shall not perform work on legal holidays as defined in Specification Section 00 73 00, attached to this agreement. The City of Waukesha agrees, to the extent practicable, to direct their contractors to not to perform any construction work or engage in road closures or detours in areas that would adversely impact special events local to the City of New Berlin. At no time may the City of Waukesha close or detour any road that prohibits emergency vehicular access.

9. **Work Hours.** Contractor work hours are defined in Specification Section 00 73 00, attached to this agreement. No work in the City of New Berlin will be performed outside of these hours unless prior written approval is received by the City of Waukesha and/or its contractor from the City of New Berlin.

10. **Public Infrastructure.** The City of Waukesha agrees to require its contractor(s) to replace any street trees, pedestrian lighting, side paths, landscaping or any other items of public infrastructure within the right-of-way that has been damaged by this work. It is understood that weather and product ordering lead time may impact repair and/or replacement schedules.

11. Inspection of Street Restoration.

- a. Inspectors hired by the City of Waukesha will be responsible for the inspection of street restoration in accordance with the City of New Berlin specifications provided by the Director of Community Development or designee. The inspection work shall meet the specifications of the City of New Berlin Development Handbook. A copy of the Development Handbook can be located on the City's website at:
www.newberlin.org/773/Development-Handbook.
- b. Written reports of the inspections shall be provided to the City of New Berlin biweekly.

12. **Warranty.** The City of Waukesha shall ensure that Contractors hired by the City of Waukesha to restore the right-of-ways after any installation, maintenance, repair, or replacement work shall warranty the workmanship of the street restoration for a period of one year following acceptance of the work by both Parties pursuant to the City of New Berlin's Municipal Code Section 230-4. New Berlin retains the right to request contractors provide up to a three year warranty as a condition of issuance of its street opening permit.

13. Dewatering and Well Protection.

- a. Dewatering associated with the Water Supply and Return Flow Mains is to be performed in accordance with Specification Section 31 23 19, attached to this agreement.
- b. For the Water Supply and Return Flow Mains, the typical excavation identified in the July 2019 Dewatering Technical Memorandum is anticipated to be 10-feet below grade but may exceed 15-feet in some areas to avoid utility and/or roadway conflicts. In those areas where dewatering is required as part of the Main work, the City of Waukesha is required to work with the Wisconsin DNR to approve a dewatering plan and obtain necessary dewatering permits. In those areas where the depth of excavation is greater than 15-feet and dewatering of the trench may be required, the dewatering plan will identify the areas where there are wells. If dewatering is to occur, the City of Waukesha shall notify the City of New Berlin of such activities along with location, anticipated duration and depth.

- c. Protection for Adjacent Landowner's Wells. Dewatering is not anticipated to affect residential wells. However, for residential wells within 200 feet of a trench excavation, the City of Waukesha makes the following process available to those residents that believe there is an adverse impact from the dewatering to the functionality of the well:
 - i. The City of New Berlin shall work with the City of Waukesha to identify the address and owners of residential wells within 200 feet of trench excavations.
 - ii. The City of Waukesha shall notify such landowners that if they want to be included in a well protection plan, they need to allow the City of Waukesha and their experts to test the quantity and quality of water at least 30 days prior to the trench excavation at the City of Waukesha's expense. Such information shall be shared with the landowner.
 - iii. If subsequent to the trench excavation, the landowner believes that their well is adversely affected by the trench excavation, they shall immediately notify the City of New Berlin and the City of Waukesha. The City of Waukesha shall upon notification, provide the property owner with an ample supply of potable and useable water by providing bottled water until the cause is verified and resolved by the process set forth below.
 - iv. The landowner shall allow the City of Waukesha and their experts to inspect the property of well to examine the claimed damages. If the landowner refuses access, the City of Waukesha's obligation to provide bottled water ends.
 - v. If the City of Waukesha determines that the landowner's well has been impacted by the trench excavation, it shall continue to provide bottled water until the adverse condition has ceased or the well has been repaired.
 - vi. If the City of Waukesha determines that the land owner's well has not been impacted by the trench excavation, the obligation to provide water ends, unless the landowner disputes the City's conclusion.
 - vii. If a justifiable dispute arises, the City of New Berlin will hire a qualified neutral engineering firm to determine the cause of the damage and to make a binding determination as to the responsibility of the City of Waukesha to fix the well under the terms of this Agreement. Determination by the neutral party engineering firm of whether the City of Waukesha's dewatering activities is responsible for the well problems will be done within 15 working days after the inspection and all testing or required monitoring is completed by the neutral firm. The decision by the neutral engineering firm will be final and binding upon all parties.
 - viii. The City of Waukesha shall pay the costs of the neutral party engineer, but each party is responsible for their own legal fees, if any, incurred as a result of this process.

14. Cultural Resource Protection.

- a. Three cemeteries exist along the project route in the City of New Berlin. The City of New Berlin is aware of the Great Water Alliance Cultural Resources Survey Results

Report which indicates that appropriate measures have been taken by the City of Waukesha and their consultants to survey the locations of each cemetery to ensure all work on the Main will avoid any impacts to these locations.

- b. Should any burial sites and/or remains be encountered during construction activities, construction will immediately cease and follow the requirements of Specification Section 01 41 00, attached to this agreement.

15. City of New Berlin Permits.

- a. The following permits associated with construction activities in the City of New Berlin are: road opening permit
- b. The City of New Berlin agrees to review and issue permits within 15 days.
- c. The required permits of other governmental bodies or agencies with jurisdiction.

16. Fiber Optic Connection. The parties agree to cooperate in providing for a mutually accessible fiber optic cable connection adjacent to the Mains if a fiber optic cable package is installed with the Program within the City of New Berlin. The Parties will execute an agreement for the use, maintenance and repair of fiber according to the City of Waukesha's usual and customary terms.

17. Water Interconnection. The parties agree to provide a connection point to the Water Supply Main at a mutually beneficial point for an interconnection between the Water Supply Main and the City of New Berlin distribution system. This connection point may not be physically connected to without prior written consent from all parties including the City of Milwaukee. It will be the responsibility of the City of New Berlin to receive such approval and pay any fees or costs associated with making the connection.

18. Intergovernmental Payment. In consideration of the terms and conditions set forth in this agreement, the City of New Berlin agrees to pay the Waukesha Water Utility \$2.0 million which shall be paid in approximately equal installments on or before September 1 of 2021, 2022 and 2023. Should the City of New Berlin obtain funding that would allow it to undertake road restoration activities that are required of the City of Waukesha by this Agreement, the City of New Berlin shall meet with the City of Waukesha to determine the value of such activities, and upon agreement of the parties as to the amount, such costs can be subtracted from any installment payment otherwise required under this paragraph.

19. Landowner Notifications and Property Access.

- a. The City of Waukesha agrees to provide written notice to property owners, business owners, residents or building occupants of any limitations of access to their property that may arise from the construction of the Mains provided for hereunder not less than 7 days prior to that occurring with copies to the City of New Berlin Department of Community Development.
- b. To the maximum extent practicable, access to private property and also utility access shall be maintained throughout the project to New Berlin residents and businesses.

c. Access by any emergency services must be provided at all times.

20. Overall General Construction Standards. The Mains shall be constructed in accordance with the standards and specifications and construction practices established by all governmental agencies with jurisdiction, including where applicable, the City of New Berlin's ordinances and Development Handbook, as well as its Road Cut Permit.

21. Contact Persons. The Parties shall each designate a primary contact person as to all matters related to the operation of this Agreement or the construction of this project. The City of New Berlin shall hereby designate the Director of Community Development as its primary contact. The City of Waukesha shall hereby designate the General Manager of the Waukesha Water Utility as its primary contact.

22. Consultant, Contractor and Subcontractor Insurance. The City of Waukesha agrees to require that any consultants, contractors or subcontractors carry insurance coverage following the requirements of Specification Section 00 73 00, attached to this agreement. The liability coverage shall list the City of New Berlin as additional insured on a primary and noncontributory basis for work within the City of New Berlin. Said coverage shall provide that the City of New Berlin shall receive not less than 30 days' notice of the termination or material modification of said insurance coverage. In the event that the cancellation arises from the nonpayment of premium the notice of termination shall not be less than ten days. Evidence of such coverages shall be in a form acceptable to the City of New Berlin.

23. Requirement of PSC Approval; Condition Precedent. The Parties understand and agree that Waukesha cannot proceed to relocate the BPS to a location within the City of Waukesha, without approval of the PSC. The Parties agree that PSC approval for the new BPS location is a condition precedent to this Agreement. The terms of this agreement, other than those in paragraph 24, shall not be binding nor enforceable upon either party until the PSC has granted approval for Waukesha's proposed location for the BPS. If the PSC grants approval for the new BPS location, this agreement shall become effective on the date of issuance of a final PSC order approving the BPS. If the PSC has not granted approval and construction authorization of the new BPS location by December 1, 2020, this agreement shall be null and void.

24. New Berlin Cooperation in PSC Approvals.

- a. New Berlin agrees that it will fully cooperate with Waukesha to support Waukesha's application before the PSC to modify the Order in PSC Docket No. 6240-CW-117 to authorize construction of the BPS in the City of Waukesha.
- b. Except as provided in paragraphs a and d, New Berlin expressly waives its rights to contest or oppose any component of the PSC's Order in PSC Docket No. 6240-CW-117 before the PSC, seek judicial review of such Order or otherwise seek to prevent the Waukesha from proceeding to construct facilities authorized by the Order in any court having jurisdiction over the matter.

- c. Except as provided in Paragraph d, New Berlin waives its rights to contest or oppose before the PSC any component of the City of Milwaukee's application for Authority to Construct a Water Supply Pumping Station and Pipeline in PSC Docket No. 3720-WR-135, or any final order issued by the PSC in that case in any court having jurisdiction over the matter. *SW* *MR*
- d. New Berlin retains the right to contest or appeal wholesale rates associated with any of the facilities related to PSC Docket No. 6240-CW-117 or PSC Docket No. 3720-WR-135. It also retains its rights to defend its decision to deny the CUP as part of the litigation in *City of Waukesha v. City of New Berlin Plan Commission*, Waukesha Circuit Court Case No. 19-CV-2193. *SW* *MR*

25. Resolution of Litigation. Upon the effective date of this Agreement after PSC approval in paragraph 23, the Parties agree that the complaint captioned, *City of Waukesha v. City of New Berlin Plan Commission*, Waukesha Circuit Court Case No. 19-CV-2193, shall be dismissed without prejudice and without costs to either party.

26. Local approval outside of right of way. The City of Waukesha agrees that it will not construct any public work or utility infrastructure within the City of New Berlin, except pipelines within the public rights of way or private easements, without the written approval of the City of New Berlin, subject to the requirements of applicable law.

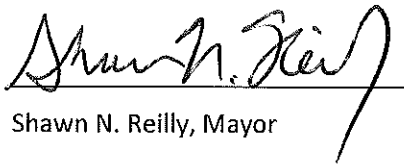
27. Other Terms and Conditions.

- a. **Authorization by Governing Bodies.** The Parties hereby represent and warrant to each other that the governing bodies of their own municipalities have taken all actions necessary to approve this Agreement and to authorize the persons signing below to sign this Agreement on behalf of that municipality and that upon full execution of this Agreement and authorization by the PSC set forth in paragraph 23, it shall be binding on each Party.
- b. **No Waiver of Immunities.** Nothing in this Agreement shall be construed as a waiver of any governmental immunities, limitations of liabilities, or notice requirements granted or imposed by law.
- c. **Severability.** If any provision of this Agreement is declared invalid by any Court of competent jurisdiction, then to the extent that invalid term can be severed from the remainder of this Agreement without affecting the enforceability of the remainder of this Agreement or substantially frustrating its purpose, it will be severed, and the remainder of this Agreement will remain in effect and enforceable.
- d. **Force Majeure.** Neither Party shall be in breach of this Agreement for acts or failures to act caused by unforeseeable causes beyond the Party's control, including unusual weather, floods, fire, seismic events, war, strikes, and civil unrest.
- e. **Integration.** This Agreement embodies the entire agreement of the Parties with respect to the subject matter expressed herein. All other inconsistent agreements and understandings of the Parties with respect only to the subject matter expressed herein are superseded and are unenforceable.

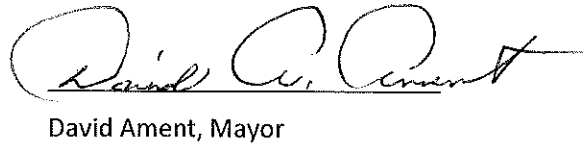
- f. **Amendments.** No amendments, additions, or changes of any kind to this Agreement will be valid unless in writing, signed by all of the Parties to this Agreement, and attached to this Agreement.
- g. **Survival.** Unless specifically limited in this Agreement, any term, condition or provision of this Agreement will survive the execution of this Agreement or any stated time periods, to the extent necessary for their performance. This Agreement is binding upon, and inures to the benefit of, the Parties' successors and assigns.
- h. **Governing Law and Jurisdiction.** This Agreement will be construed and enforced according to the laws of Wisconsin. The Parties agree that if legal action is necessary in any way with respect to this Agreement, it will be filed in the Circuit Court for Waukesha County, Wisconsin.

Dated the 11 day of March, 2020.

City of Waukesha:

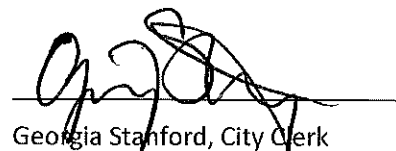

Shawn N. Reilly, Mayor

City of New Berlin:


David Ament, Mayor

Attested by:


Gina L. Kozlik, City Clerk


Georgia Stanford, City Clerk

STAFF REPORT EXECUTIVE SUMMARY

APPLICANT/PROJECT: City of Waukesha/City of New Berlin/Coffee Road Resurfacing

LOCATION: From CTH Y (Racine Avenue) to CTH ES (National Avenue)

REQUEST: Approval of a Two-Party Agreement for the Coffee Road Resurfacing Project

DCD RECOMMENDATION: Approval of the Two-Party Agreement for Resurfacing of Coffee Road from CTH Y (Racine Avenue) to CTH ES (National Avenue) subject to final review as to form by the City Attorney.

1. General:

- a. The City of Waukesha will be resurfacing Coffee Road from CTH Y (Racine Avenue) to CTH ES (National Avenue) in 2022 as part of the Intergovernmental Agreement dated March 11, 2020. The City of New Berlin is responsible for half of cost to resurface the roadway.
- b. Funding for this agreement includes \$580,000 which was allocated in 2022 CIP budget and \$60,000 reallocated to this project per Resolution 22-22 which amended the 2021 CIP Budget.

DETAILS IN ATTACHED STAFF REPORT

CITY OF NEW BERLIN
DEPARTMENT OF COMMUNITY DEVELOPMENT
BOARD OF PUBLIC WORKS STAFF REPORT

Meeting of September 19, 2022

City of Waukesha / City of New Berlin
Coffee Road – CTH Y to CTH ES

DATE STAFF REPORT CREATED: September 16, 2022

NAME OF PROJECT: Coffee Road Resurfacing

PROJECT LIMITS: CTH Y (Racine Avenue) to CTH ES (National Avenue)

TYPE OF PROJECT: Resurfacing

CONSTRUCTION DATE: 2022

SUMMARY OF CITY INFRASTRUCTURE COSTS:

Roadway: 2" Mill and overlay, shouldering, and pavement marking.

ESTIMATED AMOUNT OF COST SHARE: \$636,189.76

DCD RECOMMENDATION:

Approval of the Two-Party Agreement for Resurfacing of Coffee Road from CTH Y (Racine Avenue) to CTH ES (National Avenue) subject to final review as to form by the City Attorney. SEE EXECUTIVE SUMMARY.

Attachments:

Two-Party Agreement
Cost Estimate

TWO-PARTY AGREEMENT

Between

The CITY OF NEW BERLIN

And

The CITY OF WAUKESHA

This agreement (hereinafter called "AGREEMENT") is made and entered into between the City of New Berlin through its Department of Community Development (hereinafter called the "CITY") and the City of Waukesha through its Water Utility (hereinafter called the "UTILITY") to designate the responsibility for construction, inspection, and payment of certain costs associated with resurfacing Coffee Road in the City of New Berlin.

WHEREAS, the CITY and the UTILITY have entered into an Intergovernmental Agreement (IGA) for the Great Water Alliance Return Flow Mains, Supply Flow Mains through the City of New Berlin dated March 11, 2020; and

WHEREAS, per section 6.c. of the IGA, "The City of Waukesha agrees to mill and repave the half of Coffee Road closest to the pipeline installation, unless the City of New Berlin requests that the entire width of Coffee Road be milled and repaved, in which case the City of New Berlin shall pay for the costs for the other half of Coffee Road."; and

WHEREAS, the CITY has requested to mill and repave the other half of Coffee Road and the work being performed shall be done in accordance with the standards set forth in section 6 of the IGA; and

WHEREAS, the CITY and the UTILITY agree that costs associated with the construction necessary to mill and repave Coffee Road shall be a shared cost split as defined in Attachment 1 to be reimbursed by the CITY with a total not to exceed cost of \$1,268,307.77; and

WHEREAS, the resurfacing is anticipated in 2022 from Swartz Road to National Ave. and in 2023 from Racine Ave. to Swartz Road; and

NOW, both parties agree that the CITY and the UTILITY do mutually consent to the responsibilities related to the construction as described below:

RESPONSIBILITIES:

The UTILITY shall:

1. Execute a contract change order with the contractor to complete the construction work associated with the resurfacing of Coffee Road.
2. Upon completion of the project, furnish the CITY with a detailed breakdown of all actual construction costs incurred by the contractor, including all change orders and work change directives.
3. Pay the actual costs associated with the construction work and invoice the CITY based upon and agreed upon percentage of the total cost.
4. Provide inspection services and reports for the construction work.

The CITY Shall:

1. Within 45 days of receipt of an invoice from the UTILITY, pay the invoice for the items that are completed and accepted.

OTHER TERMS

1. Assignment: The parties agree that there shall be no assignment or transfer of this agreement nor of any interests, rights, or responsibilities contained herein without a written amendment agreed to by both parties.
2. Amendment: The parties, by mutual consent, may amend this agreement in writing at any time.
3. Severability: If any provision of this agreement is held invalid under any applicable law, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision and, to this end, the provisions hereof are severable.
4. Insurance: The City of New Berlin shall be listed as an additional insured on a primary and non-contributory basis on the contractor's liability policy and New Berlin shall be listed as an indemnified party under the construction contract with the contractor.

ATTACHMENT 1: UTILITY Cost Estimate and Item Description

ATTACHMENT 2: Intergovernmental Agreement

APPROVAL

This Agreement will be effective on the date of the final signature.

CITY:

By: _____

Date: _____

UTILITY:

By: _____

Date: _____

Address for CITY:

City of New Berlin

3805 S. Casper Dr.

New Berlin, WI 53151

Address for UTILITY:

City of Waukesha - Water Utility

115 Delafield St.

Waukesha, WI 53187-1648

ATTACHMENT 1

GWA Additional Quantities

CP2A-2-WS-I	Maintenance of Traffic	0.67 LS	\$	43,603.00	\$	29,068.67
CP2A-11-WS-I-D	Mill and Overlay - 2-in (CP2A)	19,368 SY	\$	12.80	\$	247,914.24
CP2B-10-WS-C	Mill and Overlay - 2-in (CP2B)	8,698 SY	\$	12.80	\$	111,336.96
NA	Shouldering - 2-in Refresh (CP2A)	287 Ton	\$	37.00	\$	10,606.14
NA	Shouldering - 2-in Refresh (CP2B)	83 Ton	\$	37.00	\$	3,055.38
CP2A-12-WS-I	Pavement Markings	0.67 LS	\$	47,224.00	\$	31,482.67
						\$ 433,860.06

New Berlin Quantities

1	Maintenance of Traffic	0.33 LS	\$	43,603.00	\$	14,534.33
2	Mill and Overlay - 2-in	46,177 SY	\$	12.80	\$	591,064.32
3	Shouldering - 2-in Refresh	401 SY	\$	37.00	\$	14,849.78
4	Pavement Markings	0.33 LS	\$	47,224.00	\$	15,741.33
						\$ 636,189.76

GWA Contribution (Base Contract):	\$ 198,257.95	15.63%
GWA Contribution (Additional Cost):	\$ 433,860.06	34.21%
New Berlin Contribution:	\$ 636,189.76	50.16%