

Common Council MEETING AGENDA



June 18, 2024 - 6:05 PM
(Following the Committee of the Whole Meeting)
City Hall Council Chambers
3805 S. Casper Drive

Amended: 6/17/2024 @ 2:08 PM

Published: 6/14/2024

AGENDA

1. PRIVILEGE OF THE FLOOR

Each speaker is limited to 3 minutes. The session will conclude at 6:30 pm

2. CALL TO ORDER, PLEDGE OF ALLEGIANCE

3. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

4. APPROVAL OF MINUTES

- A. June 11, 2024, Common Council Minutes

5. REPORTS

- A. City Clerk
- B. Council President
- C. Mayor

6. COMMUNICATIONS

- A. Mark Sailer Claim

7. SAFETY COMMISSION

- A. Discussion and recommendation to Common Council to move the "No Parking" sign that is currently on the east side of Hunter Lane, just north of the intersection of Forest Point Blvd (south intersection), north to the end of the double yellow, no passing lines.
- B. Discussion and recommendation to Common Council to install permanent "No Parking" signs on the north/west side of Forest Point Blvd, west from the intersection of Hunter Lane to the end of the shifting taper.

8. MAYORAL APPOINTMENTS

- A. Discussion and possible action to approve the Mayoral Appointments per the list as presented

9. DEFERRED, REFERRED & TABLED ITEMS

10. ITEMS REMOVED FROM CONSENT AGENDA, if any

11. **CONSENT AGENDA**-----

Items under the Consent Agenda have passed unanimously by the Committee of the Whole. Items not passed by a unanimous vote will be removed from consent agenda and will be considered separately.

12. MINUTES

A. June 11, 2024, Committee of the Whole minutes

13. MISCELLANEOUS

A. Library Department Update

B. Discussion and possible recommendation to Common Council approval of a Location Agreement between the City of New Berlin and Trivity Health Services, LLC. (i.e. Silver Sneakers)

C. Discussion and possible recommendation to Common Council approval of an agreement between the City of New Berlin and Optum Health Care Solutions, LLC

D. Discussion and possible recommendation to Common Council to approve Resolution 2024-13, a Resolution amending the 2024 Capital Projects Budget to increase that budget by \$1.3 million for the Community Center at Hickory Grove project

E. Discussion and possible recommendation to Common Council approval of Resolution No. 2024-14, a Resolution amending the 2024 Capital Projects Budget to transfer \$557,000 from the 2024 DPW Garage CIP Account to the 2024 Community Center at Hickory Grove Account

F. Discussion and possible recommendation to set a date and time for a Special Common Council meeting to be held the last week of June, along with approval for the meeting to be held electronically

14. END CONSENT AGENDA-----

15. ADJOURN

Supplemental Information:

- The meeting agenda and agenda packet are available online at www.NewBerlinWI.gov
- The minutes are published online and are approved at the next regularly scheduled meeting.
- Action may be taken on any of the agenda items, and the agenda may be discussed in any order.
- You may email comments to the City Clerk at CitizenComments@NewBerlinWI.gov. The comments will be forwarded to the mayor and Common Council members. The emailed comments are not read during the meeting.
- The City of New Berlin is committed to hosting inclusive, accessible meetings. We strive to enable all individuals to engage and participate fully regardless of their abilities. If you have a qualifying disability under the Americans with Disabilities Act that requires the meeting to be accessible, please get in touch with the Office of the City Clerk at (262) 786-8610 or via email at ClerksOffice@NewBerlinWI.gov at least 48 hours before the scheduled meeting time. We will make every effort to accommodate your needs through appropriate aids and/or services.
- It is also possible that members of and possibly a quorum of other municipal governmental bodies may attend the above-stated meeting to gather information; any governmental body will take no action at the above-stated meeting other than the governmental body specifically referred to in the above meeting notice.



Common Council MEETING MINUTES

June 11, 2024 - 6:05 PM
City Hall Council Chambers
3805 S. Casper Drive

Please note: Minutes are unofficial until approved at the next scheduled meeting.

MINUTES

1. PRIVILEGE OF THE FLOOR

Each speaker is limited to 3 minutes. The session will conclude at 6:30 pm

Mayor Ament read the rules for Privilege of the Floor.

Mike Thurston introduced himself to the Mayor and Council. He stated that he is running for District Attorney of Waukesha County.

2. CALL TO ORDER, PLEDGE OF ALLEGIANCE

Mayor Ament called the meeting to order at 7:06 pm and led the Pledge of Allegiance.

3. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

City Clerk Rubina R. Medina took the roll call as follows:

Present: Alderperson Hopkins, Alderperson Maxey, Alderperson Harenda, Alderperson Stribl, Alderperson Kroupa, Alderperson Horbinski, Alderperson La Fever

Excused: None

Staff Present: DCD Director Greg Kessler, City Attorney Mark Blum, and City Clerk Rubina R. Medina

The City Clerk stated that a quorum was established, and the meeting was properly noticed.

4. APPROVAL OF MINUTES

A. May 14, 2024 Common Council Meeting Minutes

MOTION: Motion to approve

VOTE: Motion by: Harenda
Second by: Kroupa
Motion 7-0

B. May 21, 2024 Special Common Council Meeting Minutes

MOTION: Motion to approve

VOTE: Motion by: Horbinski
Second by: Maxey
Motion 7-0

5. REPORTS

A. City Clerk

No report.

B. Council President

No report.

C. Mayor

The Mayor gave his report which is attached to the agenda packet.

6. COMMUNICATIONS

None.

7. PLAN COMMISSION

- A.** Discussion and possible action to recommend to Common Council approval of (1) KH CP-2400415 Yonatan Zvi - 15201 W. Greenfield Avenue (Tax Key #: 1158.998) and adoption of Resolution 2024-10 and Ordinance 2694 to amend the Future Land Use Map within the City's Comprehensive Plan (Chapter 10). (Public Hearing 5/6/2024)

MOTION: Motion to approve

VOTE: Motion by: Stribl
Second by: Harenda
Motion 7-0

- B.** Discussion and possible action to recommend to Common Council approval of (1) KH RZ-2400416 Yonatan Zvi - 15201 W. Greenfield Avenue (Tax Key #: 1158.998) & 15205 W. Greenfield Avenue (Tax Key #: 1158.999.001) and adoption of Ordinance 2695 that approves the rezoning. (Public Hearing 5/6/2024)

MOTION: Motion to approve

VOTE: Motion by: Stribl
Second by: Maxey
Motion 7-0

- C.** Discussion and possible action to recommend to Common Council approval of (1) KH LD-2400417 Yonatan Zvi - 15201 W. Greenfield Avenue (Tax Key #: 1158.998) & 15205 W. Greenfield Avenue (Tax Key #: 1158.999.001) - 2-lot Certified Survey Map.

MOTION: Motion to approve

VOTE: Motion by: Stribl
Second by: Maxey
Motion 7-0

- D.** Discussion and possible action to recommend to Common Council approval of (5) NJ RZ-2202317 Austin Workman with Workman Enterprises LLC - 19000 W. Lincoln Avenue (Tax Key #'s: 1172-994, 1172-998-003, 1172-998 and 1167-996-001) and adoption of Ordinance 2692 that approves the rezoning from C-1 and C-2 to M-1. (Public Hearing 5/6/2024)

MOTION: Motion to Approve

VOTE: Motion by: Stribl
Second by: Maxey
Motion 7-0

8. BOARD OF PUBLIC WORKS

- A.** ITEM 09-24 Discussion and possible action to recommend to Common Council approval of the Development Agreement for the property located at 5715 S. Sunny Slope Road (Tax Key NBC 1289.994.002) as Theofila Estates Subdivision.

MOTION: Motion to approve

VOTE: Motion by: Horbinski
Second by: Kroupa
Motion 7-0

9. FOURTH OF JULY COMMISSOIN

- A. Recommend to the Common Council approval of a contract with BCI Entertainment LLC in the amount of \$20,000 for 4th of July Festival Drone show on July 5th 2024

MOTION: Motion to approve

VOTE: Motion by: Stribl
Second by: Harenda
Motion 7-0

10. PARKS, BUILDINGS & GROUNDS COMMISSION

- A. Recommend to Common Council to award the New Berlin Hills Clubhouse Building Envelope Project to the most responsive and responsible bidder, The Gardner Company, Inc. in the amount of \$108,369.00, and to reject the non-conforming bid from Roberts Restoration, Inc. and all Alternate bids.

MOTION: Motion to approve

VOTE: Motion by: La Fever
Second by: Hopkins
Motion 7-0

11. MAYORAL APPOINTMENTS

- A. Discussion and Possible Action to approve the Mayoral Appointments per the list as presented

MOTION: Motion to approve

VOTE: Motion by: Harenda
Second by: Kroupa
Motion

12. DEFERRED, REFERRED & TABLED ITEMS

- A. Discussion and possible action to recommend to Common Council approval of Ordinance 2689 to amend Chapter 152 of the Municipal Code, Licenses and Permits (*Deferred by Council on 5/14/24*)

MOTION: Motion to refer item to the Code Committee

VOTE: Motion by: Stribl
Second by: Maxey
Motion 7-0

13. ITEMS REMOVED FROM CONSENT AGENDA, if any

None

14. CONSENT AGENDA-----

Items under the Consent Agenda have passed unanimously by the Committee of the Whole. Items not passed by a unanimous vote will be removed from consent agenda and will be considered separately.

MOTION: Motion to approve consent agenda

VOTE: Motion by: Horbinski
Second by: Maxey
Motion 7-0

15. MINUTES

- A. Discussion and recommendation to Common Council approval of May 14, 2024, Committee of the Whole Meeting Minutes

16. UTILITY & FINANCE

- A.** Discussion and recommendation to Common Council approval of the May 29th, 2024, Water Utility claims in the amount of \$138,348.64, Sewer Utility claims in the amount of \$11,888.61 and General City claims in the amount of \$377,153.29
- B.** Discussion and recommendation to Common Council approval of the June 12th, 2024, Water Utility claims in the amount of \$11,689.59, Sewer Utility claims in the amount of \$70.55, and General City claims in the amount of \$364,993.56. US Bank VISA EFT of \$39,884.19 and WE Energies EFT of \$66,720.01

17. LICENSES & PERMITS

- A.** Discussion and recommendation to Common Council approval of the renewal alcohol license applications for the licensing year of July 1st, 2024, to June 30, 2025, per the applications on file and subject to meeting all requirements
- B.** Discussion and possible action to recommend to Common Council approval of a Producer Full-Service Retail Sales Application to Kowalske Brewing, dba Component Brewing for the Father's Day Open House event to be held at the New Berlin Historical Society on June 16, 2024
- C.** Discussion and possible action to recommend to Common Council approval of a Producer Full-Service Retail Sales Application to Kowalske Brewing, dba Component Brewing for the Ice Cream Social event to be held at the New Berlin Historical Society on July 14, 2024

18. MISCELLANEOUS

- A.** Finance Department Update
- B.** Set goals and directives for the 2025 budget, including tax levy target
- C.** Discussion and possible action to recommend to Common Council approval of an RAS for the renewal of a lease agreement with Brueggemann Farms to farm 20 acres of city-owned land for the 2024 and 2025 growing seasons for the property located approximately at 5851 S. Sunny Slope Road (Tax Key #: 1289.997.001).
- D.** Discussion and possible action to recommend to Common Council approval of an Requested Action Statement for the approval of a Land Rental Agreement between the City of New Berlin and the University of Wisconsin-Madison for installation of a weather station.

- E. Discussion and possible recommendation to Common Council approval of the agreement between the City of New Berlin and the Professional Firefighters of Wisconsin Charitable Foundation, Inc. (PFFWCF) to utilize the area adjacent to Fire Station No. 1 and the Streets building parking lot for the 2024 Ride to Burn Camp, to be held on August 13, 2024, from 5 pm to 5:45 pm. This approval is contingent upon PFFWCF providing the City with an approved Certificate of Insurance and Liability Policy Endorsement document, both of which must be approved by the City Attorney
- F. Discussion and possible recommendation to Common Council approval of the "Intergovernmental Agreement for Law Enforcement Services for the 2024 Republican National Convention in Milwaukee, Wisconsin" as submitted by the City of Milwaukee and contingent on the Chief of Police executing/submitting the Agreement to the City of Milwaukee
- G. Discussion and recommendation to Common Council approval of Mathew Newman as the New Berlin School District representative on the Safety Commission

19. END CONSENT AGENDA-----

20. CLOSED SESSION

The basis for the items to be discussed in Closed Session are as enumerated in Section 19.85(1)(g) of the Wisconsin State Statutes. (g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved, more specifically:

The City Clerk read the basis for entering into Closed Session.

MOTION: Motion to enter into closed session 7:40 pm

VOTE: Motion by: Maxey
Second by: Harenda
Motion 7-0

A. Waukesha County Claim

21. RECONVENE TO OPEN SESSION

MOTION: Motion to return to open session at 7:47 pm

VOTE: Motion by: Stribl
Second by: Harenda
Motion 7-0

A. Discussion and possible action re: Waukesha County Claim
No Motion

22. ADJOURN

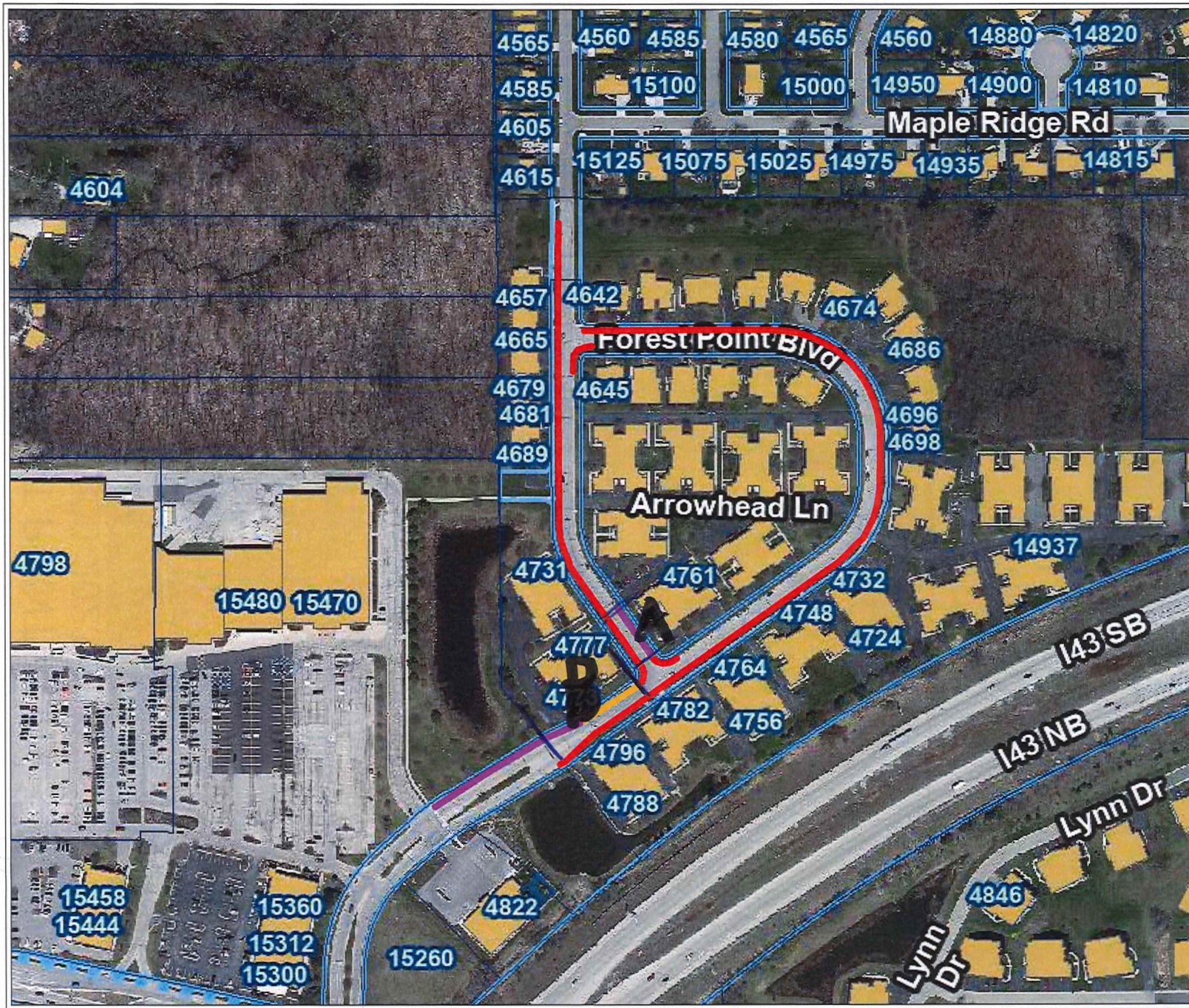
MOTION: Motion to adjourn at 7:48 pm

VOTE: Motion by: Kroupa
Second by: La Fever
Motion 7-0

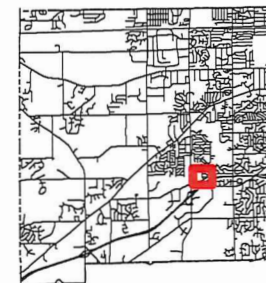
***Respectfully Submitted,
Rubina R. Medina, City Clerk***

Mayor's Report 6/18/24 CC Meeting

- I would like to invite everyone to attend our **56th Annual 4th of July Festivities**. The fun starts on Wednesday July 3rd and lasts through Friday July 5th. The Fireworks will begin at 10 pm on July 4th. You can visit the City's website for a full schedule of events including the Annual Cornhole Tournament, the Pie Contest, the Flashlight Candy Hunt, the Mini Parade and more.
- The **New Berlin Fire Department** is collecting peanut butter to support the New Berlin Food Pantry now through the 4th of July. Drop-off bins are located at City Hall, New Berlin Public Library, and the New Berlin Activity and Recreation Center.
- The **New Berlin Historical Society** will be hosting an **Ice Cream Social on Sunday July 14th** 1 pm – 4 pm at the Historical Park located at 19765 National Avenue. Please join us for corn hole, riding the barrel train, beer garden, and of course, ice cream!
- This City of New Berlin **Community Blood Drive** will be held on **Wednesday July 10th 7:00 am – 11 am** here in the Council Chambers of City Hall. Appointments may be made online or contact Maya in the Mayor's office. Walk-ins are always welcome – but remember to bring photo ID.
- Finally, a reminder that our **Tuesday July 9th Council meeting has been cancelled**. Our next regularly scheduled COW/Council meeting will be July 23rd.



Overview Map



Legend

- Parcels
- Road Right-of-Way
- Road ROW Ultimate
- Temp No Parking
- Requested Area
- No Parking



0 150 300 Feet
1 in = 290 ft

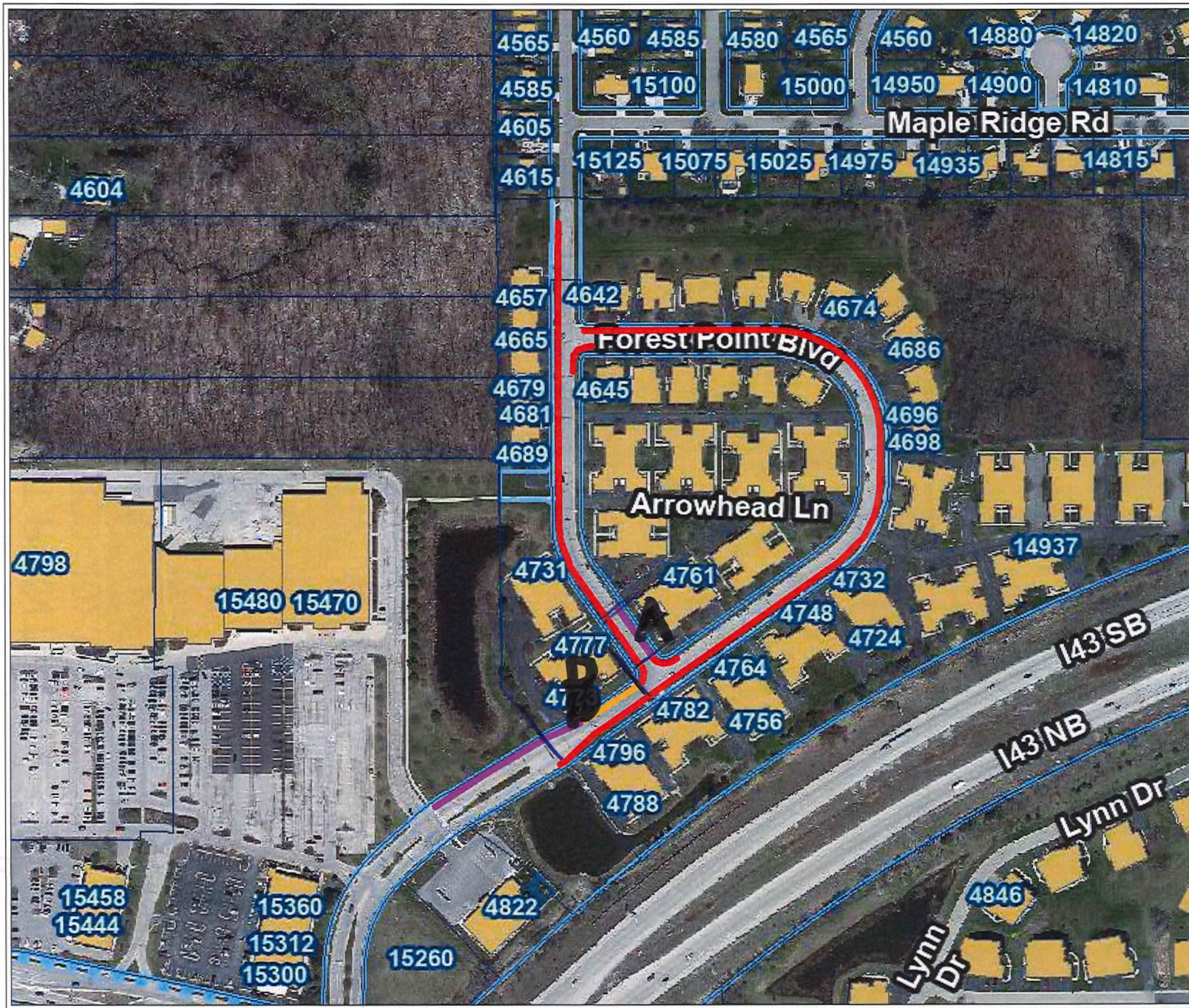
24-3



City of New Berlin
Department of Community Development
3805 S Casper Drive, New Berlin WI 53151
(262) 797-2445 www.newberlin.org

The information and depictions herein have been produced using data available through photogrammetric means by the City of New Berlin. The informations and depictions herein are for informational purposes and the City of New Berlin specifically disclaims accuracy in this reproduction and specifically admonishes and advises that any and all depiction, measurements, distances depicted herein and as to which specific or precise accuracy is required should be determined by procurement of certified maps, surveys, plats, Flood Insurance Studies, or other official means.

Map Printed: 5/7/2024 8:04:17 AM



Overview Map



Legend

- Parcels
- Road Right-of-Way
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Map Printed: 5/7/2024 8:04:17 AM



DATE: June 14, 2024

TO: Rubina Medina
City Clerk

FR: Mayor Dave Ament

RE: Mayoral Appointments for the June 18, 2024 Common Council Mtg

Board of Review

Bill Ray
14415 Redwood Drive
New Berlin, WI 53151
414-262-784-0637
billray784@yahoo.com
(Currently Alternate Member #3)
(Taking over Term of Citizen Member
Raymond West who stepped down)

Expiration Date

5/31/2026

For Office Purposes Only						
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Committee of the Whole MEETING MINUTES

June 11, 2024 - 6:00 PM
Council Chambers
3805 S. Casper Drive

Please note: Minutes are unofficial until approved at the next scheduled meeting.

MINUTES

1. CALL MEETING TO ORDER

Mayor Ament called the meeting to order at 6:00 pm

2. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

City Clerk Rubina R. Medina took the roll call as follows:

Present: Alderperson Hopkins, Alderperson Maxey, Alderperson Harenda, Alderperson Stribl, Alderperson Kroupa, Alderperson Horbinski, Alderperson La Fever

Excused: None

Staff Present: DCD Director Greg Kessler, Finance Director Ralph Chipman, City Attorney Mark Blum, City Clerk Rubina R. Medina, Police Chief Jeff Hingiss, City Engineer Tammy Simonson, and Interim DPW Director Lucas Pichler

The City Clerk stated that a quorum was established and the meeting was properly noticed.

3. APPROVAL OF MINUTES

A. Discussion and recommendation to Common Council approval of May 14, 2024, Committee of the Whole Meeting Minutes

MOTION: Motion to approve

VOTE: Motion by: Horbinski
Second by: Kroupa
Motion 7-0

4. UTILITY & FINANCE

A. Discussion and recommendation to Common Council approval of the May 29th, 2024, Water Utility claims in the amount of \$138,348.64, Sewer Utility claims in the amount of \$11,888.61 and General City claims in the amount of \$377,153.29

MOTION: Motion to approve

VOTE: Motion by: Kroupa
Second by: Stribl
Motion 7-0

B. Discussion and recommendation to Common Council approval of the June 12th, 2024, Water Utility claims in the amount of \$11,689.59, Sewer Utility claims in the amount of \$70.55, and General City claims in the amount of \$364,993.56. US Bank VISA EFT of \$39,884.19 and WE Energies EFT of \$66,720.01

MOTION: Motion to approve

VOTE: Motion by: Stribl
Second by: Maxey
Motion 7-0

5. LICENSES & PERMITS

- A.** Discussion and recommendation to Common Council approval of the renewal alcohol license applications for the licensing year of July 1st, 2024, to June 30, 2025, per the applications on file and subject to meeting all requirements

MOTION: Motion to approve

VOTE: Motion by: Harenda
Second by: Horbinski
Motion 7-0

- B.** Discussion and possible action to recommend to Common Council approval of a Producer Full-Service Retail Sales Application to Kowalske Brewing, dba Component Brewing for the Father's Day Open House event to be held at the New Berlin Historical Society on June 16, 2024

MOTION: Motion to approve

VOTE: Motion by: Kroupa
Second by: Maxey
Motion 7-0

- C.** Discussion and possible action to recommend to Common Council approval of a Producer Full-Service Retail Sales Application to Kowalske Brewing, dba Component Brewing for the Ice Cream Social event to be held at the New Berlin Historical Society on July 14, 2024

MOTION: Motion to approve

VOTE: Motion by: Kroupa
Second by: Maxey
Motion 7-0

6. MISCELLANEOUS

- A.** Finance Department Update

Finance Director Ralph Chipman provided a department update to the Council, staff and guests in attendance.

- B.** Set goals and directives for the 2025 budget, including tax levy target

Finance Director Ralph Chipman provided an overview of the anticipated budget shortfall. He presented three options for meeting schedules to ensure tax bills could be sent out on time. The Common Council liked option 3.

The Council engaged in a brief discussion about the financial situation. They expressed their concerns about the potential tax increase but acknowledged the reality of rising costs. Council members and the Mayor emphasized their commitment to fiscal responsibility and the importance of maintaining essential city services. Council members and the Mayor recognized that certain costs, such as those for public safety and infrastructure, are unavoidable and have been steadily increasing. They discussed the necessity of balancing the budget while ensuring the city's needs are met.

- C.** Discussion and possible action to recommend to Common Council approval of an RAS for the renewal of a lease agreement with Brueggemann Farms to farm 20 acres of city-

owned land for the 2024 and 2025 growing seasons for the property located approximately at 5851 S. Sunny Slope Road (Tax Key #: 1289.997.001).

MOTION: Motion to approve

VOTE: Motion by: Maxey
Second by: Stribl
Motion 7-0

- D.** Discussion and possible action to recommend to Common Council approval of an Requested Action Statement for the approval of a Land Rental Agreement between the City of New Berlin and the University of Wisconsin-Madison for installation of a weather station.

MOTION: Motion to approve

VOTE: Motion by: Harenda
Second by: Hopkins
Motion 7-0

- E.** Discussion and possible recommendation to Common Council approval of the agreement between the City of New Berlin and the Professional Firefighters of Wisconsin Charitable Foundation, Inc. (PFFWCF) to utilize the area adjacent to Fire Station No. 1 and the Streets building parking lot for the 2024 Ride to Burn Camp, to be held on August 13, 2024, from 5 pm to 5:45 pm. This approval is contingent upon PFFWCF providing the City with an approved Certificate of Insurance and Liability Policy Endorsement document, both of which must be approved by the City Attorney

MOTION: Motion to approve

VOTE: Motion by: Hopkins
Second by: La Fever
Motion 7-0

- F.** Discussion and possible recommendation to Common Council approval of the "Intergovernmental Agreement for Law Enforcement Services for the 2024 Republican National Convention in Milwaukee, Wisconsin" as submitted by the City of Milwaukee and contingent on the Chief of Police executing/submitting the Agreement to the City of Milwaukee

MOTION: Motion to approve

VOTE: Motion by: Stribl
Second by: Maxey
Motion 7-0

- G.** Discussion and recommendation to Common Council approval of Mathew Newman as the New Berlin School District representative on the Safety Commission

MOTION: Motion to approve

VOTE: Motion by: Kroupa
Second by: Maxey
Motion 7-0

7. ADJOURN

MOTION: Motion to adjourn at 7:01 pm

VOTE: Motion by: Stribl
Second by: Horbinski
Motion 7-0

***Respectfully Submitted,
Rubina R. Medina, City Clerk***

STRATEGIC PLAN

VISION The New Berlin Public Library is a vital community destination open to everyone.

MISSION Provide a welcoming space for community connections with access to materials and services that enhance education, entertainment, culture, creativity, and curiosity.

The New Berlin Public Library's mission and vision statements provide a framework for the Library Director and staff as we make decisions for the Library's future.

Together, as we define a strategic direction for the next two years, we are inspired to continue with our work through the lens of broadened access to the Library and have identified strategic priorities which enhance Library services, resources, community connections and spaces.

-The New Berlin Public Library Strategic Planning Committee

STRATEGIC PRIORITIES

ENHANCED SERVICES

We will continue to develop services and programs that broaden the community's experience and perspective.

ENHANCED COMMUNITY CONNECTIONS

We will seek an active network of local partnerships to support common goals and achieve greater impact within the New Berlin community and promote the library as a destination within the City Center.

ENHANCED SPACE

We will evaluate spaces for enhancements that encourage collaboration, foster connections, develop creativity, and support the free exchange of ideas.

ENHANCED RESOURCES

We will review and curate resources that are inclusive and allow all patrons to be informed, connected, and inspired.

With the support of the New Berlin Public Library Board of Trustees, the New Berlin Public Library Director and Staff look forward to the next two years with strategic focus on the following goals and tasks:

A. ENHANCED SERVICES

Achievement through the following tasks:

- 1) Develop marketing plans and invest in programming to reach target audiences.
- 2) Establish opportunities for community gathering and discourse.
- 3) Enhance MakerStudio to incorporate new technologies which prove relevant for all ages.

B. ENHANCED RESOURCES

Achievement through the following tasks:

- 1) Improve collection organization to encourage discovery and relevance of library's core collections.
- 2) Ensure databases and digital media are available to users and easy to navigate.
- 3) Assess our materials to ensure strong, accessible, relevant, and diverse collections.

C. ENHANCED COMMUNITY CONNECTIONS

Achievement through the following tasks:

- 1) Expand the library's presence at City-wide events, local activities and Chamber of Commerce meetings.
- 2) Outline library offerings, collections and services available to partnering organizations.
- 3) Take steps to ensure that the library retains current patrons and invites back infrequent users.

D. ENHANCED SPACES

Achievement through the following tasks:

- 1) Development of dynamic, collaborative spaces such as interactive reading areas, group study zones, and an early literacy learning environment that encourages pretend play and social interaction.
- 2) Utilize outdoor garden, green space and City Center for Library engagement.
- 3) Continue to consider exterior optimization for WiFi connectivity and facility initiatives for solar power and green operation.

Community Assessment:

Regular assessment of residents, patrons, Library and City Staff, and local community stakeholders will occur throughout the year to measure the Library's impact and value to the community.

Strategic Goal and Task Updates:

The Monthly Director's Report, for the two-year duration of this Strategic Plan, will identify updates on the progress towards the Library's Strategic Priorities.

Approved by the Library Board 4/17/2022

REQUESTED ACTION STATEMENT

TO: Common Council
Mayor Dave Ament

FROM: Gregory Kessler, AICP – Director of Community Development 

RE: Requested Action Statement for the approval of a Location Agreement between the City of New Berlin and Tivity Health Services, LLC (i.e. Silver Sneakers).

DATE: May 28, 2024

REQUESTED ACTION: Requested Action Statement for the approval of a Location Agreement between the City of New Berlin and Tivity Health Services, LLC (i.e. Silver Sneakers).

FISCAL IMPACT: There are no direct costs by allowing Tivity Health (Silver Sneakers) to use the City's new Activity and Recreation Center (ARC) as an "in-network" facility for their participants. It is difficult to determine at this point what the City's total reimbursement amount will be for participation in the Silver Sneaker Program.

SOURCE OF FUNDS: Not applicable

RATIONALE / BACKGROUND:

The Silver Sneaker Program provides eligible Members pre-determined program visit and/or monthly membership rates to participating locations when they enroll in the Program. Tivity Health will compensate the City based upon Program Participant Visits with a maximum cap payment per Program Participant per month. Refer to Attachment A of the Agreement to view those reimbursement rates.

TIVITY HEALTH PARTNER LOCATION AGREEMENT

This Tivity Health Partner Location Agreement (this “**Agreement**”) is between **TIVITY HEALTH SERVICES, LLC** (“**Tivity Health**”), and the (“**Facility**”) named below. This Agreement is effective as of the date of the signature by the Facility below (“**Effective Date**”). Facility desires that it and its other locations listed on **Exhibit A-1** be included as a member of Tivity Health’s network of locations for the purposes of fitness memberships and/or offering Tivity Health’s programs, and Tivity Health desires Facility to be a member of Tivity Health’s network.

Facility. The undersigned Facility and any additional participating locations of Facility as mutually agreed to and set forth in **Exhibit A-1**, which have entered into this Agreement with Tivity Health to be part of its Tivity Health Network.

Facility Contact. Facility has designated the person named on **Exhibit A-2** as authorized to represent Facility in communicating with Tivity Health about this Agreement.

Pricing. Tivity Health will pay Facility the selected program fees in **Attachment A**.

Programs. Facility will offer each Tivity Health program marked in **Attachment A**.

Term. The term of this Agreement runs from the Effective Date through April 30, 2026 (“**Initial Term**”) and thereafter will automatically renew for successive one (1) year terms from May 1 to April 30 (“**Renewal Term**”), provided that after the Initial Term, either party may terminate this Agreement upon 120 days’ prior written notice of the expiration of the Renewal Term.

Terms & Conditions. This Agreement will be governed by the Standard Terms and Conditions attached hereto and incorporated by reference herein.

The Tivity Health materials on the Fitness Provider Portal (the “**Portal**”) are incorporated by reference as an integral part of this Agreement.

This Agreement supersedes any prior agreements and represents the entire understanding and agreement between the parties regarding the subject matter of this Agreement.

Tivity Health and Facility each sign below to agree to be bound to the terms of this Agreement as of the Effective Date.

TIVITY HEALTH SERVICES, LLC

Name of Facility

Signature

Signature

Tivity Health Printed Name

Printed Name

Tivity Health Title

Title

Date

Date

ATTACHMENT A

Notices, Utilization Payment, Programs and Pricing

1. Notices to Facility and Tivity Health.

Facility Contact: Attached Exhibit A-2

Tivity Health Contact: Tivity Health PL Contracting Department
4031 Aspen Grove Drive, Suite 250
Franklin, TN 37067
Email: PLContracting@tivityhealth.com

2. Program Utilization Payment.

- a) Program Utilization Payment for Selected Tivity Health Programs. Tivity Health shall compensate Facility based on Program Participant Visits, with a maximum cap payment per Program Participant per month. As used herein, the term (“**Program Visit**”) shall mean one distinct occasion, recorded and reported by Facility in accordance with procedures specified in the Reference Guide, during which a Program Participant enters Facility to enroll in or use the Program. Tivity Health shall not compensate Facility for more than one Program Visit per day. (“**Program Participant**”) shall mean a Program Participant, who, after completing the Program enrollment, has used the Program at a facility in the Tivity Health Network at least once in a given month.
- b) Payment Schedule. Payment shall be processed for direct deposit by Tivity Health by the last day of the month following the month in which Program Visits occurred (the “**Following Month**”), provided Tivity Health receives Facility’s monthly utilization data by the fifth (5th) day of the Following Month. In the event utilization data is not received in a timely manner, payment may be delayed. Payment for monthly utilization received after the last day of the Following Month will be denied for non-timely filing and will not be eligible for reimbursement or appeal. Appeals must be brought to the attention of Tivity Health within thirty (30) days of receipt of payment; appeals brought at a later date will not be eligible for review.

3. Programs and Pricing. A description of each Program appears on the Portal: <https://fitness.tivityhealth.com>

- ☒ SilverSneakers® Fitness Program Offering Basic Program Participant Access
\$3.00 per Program Visit up to \$24.00 per Program Participant per month.
- ☒ Prime® (Fully Subsidized for Members 18+)
\$3.50 per Program Visit up to \$30.00 per Program Participant per month.
- ☒ Prime Private Brand® (Commercial Member Pay Program)
\$3.50 per Program Participant Visit up to \$30.00 per Program Participant per month.

STANDARD TERMS AND CONDITIONS

1. **Definitions.** All terms not defined herein will have the meanings given to them in the Partner Location Agreement between Tivity Health and Facility (the “**Agreement**”).

a) “**Confidential Information**” means this Agreement, the identity of any Tivity Health customer, Participant information and information a recipient should reasonably understand to be confidential given the nature of such information, including, without limitation, any Tivity Health IP.

b) “**Sponsoring Organization**” means any organization, employer group, health plan or subset thereof that is contracted with Tivity Health to provide the Program to its members and whose members may therefore utilize Facility in accordance with the terms of this Agreement. Facility shall provide the Program to eligible Members of all Sponsoring Organizations. Sponsoring Organization information shall be available to Facility, and such Sponsoring Organization information shall be incorporated herein by reference.

c) “**Participant**” means a Sponsoring Organization Program Participant, employee, dependent or other person eligible for the Program, determined by the Participant verification process outlined in the Reference Guide.

d) “**Program**” means each Tivity Health program elected in the Agreement and as described on the Portal.

e) “**Reference Guide**” means the procedures and guidelines set forth on the Portal for participation in the Tivity Health network.

f) “**Tivity Health IP**” means any and all intellectual property associated with the Program and tangible embodiments thereof, including, without limitation: the Portal, the Reference Guide; Program descriptions, processes and know-how; Tivity Health content on the Portal; and all data regarding activity at the Facility, such as utilization reports.

2. **Facility Responsibilities.** In exchange for the compensation to be paid by Tivity Health, Facility shall perform the following services:

a. **Program Implementation Process.** To prepare for Program commencement, Facility agrees to participate in the following 1) coordination with Tivity Health of electronic reporting containing the required data elements; 2) Tivity Health-scheduled and led training; and 3) Tivity Health’s evaluation of Facility to certify Facility’s preparedness to provide Program (the date by which each of these has been completed, the Ready Date.”)

b. **Staffed Hours.** Facility shall be appropriately staffed in accordance with professionally recognized standards of fitness programs a minimum of six (6) hours per day, Monday through Friday.

c. **Program Enrollment.** Facility shall enroll Participants in the Program in accordance with the protocol defined in the Reference Guide or other protocol mutually agreed between the Parties.

d. **Reporting Obligations of Facility.** Facility shall report Program utilization to Tivity Health on a monthly basis. Program utilization reporting shall consist of all 1) Program forms completed during the previous month as applicable; and 2) visits for the month. Facility shall prepare a report of daily visits and utilization from the month summarizing activity and containing the required data elements and submit it electronically to Tivity Health no later than the fifth (5th) day of the following month. The required file format, data elements and submission options are defined in the Reference Guide. The Parties to this Agreement shall work cooperatively to establish correct and acceptable electronic monthly utilization data reporting; Tivity Health may provide technical support to Facility if necessary.

e. **SilverSneakers® Program Advisor.** Facility shall designate one staff member as the SilverSneakers Program Advisor, who shall serve as a liaison to Tivity Health and as a resource person for SilverSneakers Participants utilizing the Tivity Health Network and is knowledgeable concerning all services provided by Facility to Participants.

f. **Guest Pass Program.** Facility shall provide Program services to persons presenting a Tivity Health guest pass. Properly documented guest visits will be counted the same as a Participant visit for purposes of calculating Facility’s compensation.

g. **Reference Guide.** Facility must comply with the Reference Guide to remain a part of Tivity Health’s network.

h. **Access to Program at No Charge.** Facility will provide all Participants access to the Program at no charge to the Participants.

i. **Tivity Health Network Reciprocity.** Facility will ensure that all of Facility’s locations listed in the Agreement allow access to all Participants.

j. **Membership Conversion.** Upon the Effective Date, Facility will inactivate any existing gym/facility membership relationship a Participant may have with Facility, which inactivation will be for the duration of the Agreement. Facility will not collect any monthly dues, cancellation fees, or other fees during the inactivation period. Upon termination of the

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Agreement or the termination of a Participant's membership with a Tivity Health customer, Facility may re-activate that Participant's inactivated Facility membership.

k. Portal. Facility's participating locations will create and maintain user accounts on the web based Tivity Health Fitness Provider Portal. Facility shall utilize the Tivity Health Fitness Provider Portal to verify Participant eligibility and to obtain and access Tivity Health materials, including Sponsoring Organization information, training materials, Program forms, Program reports, and the Reference Guide.

l. Communications. Facility will coordinate all external communications through Tivity Health. Facility will immediately notify Tivity Health of all external inquiries regarding any Tivity Health Program, Tivity Health, or a Tivity Health customer.

m. Return of Materials. Facility will promptly return all Tivity Health Program materials upon termination of the Agreement or at Tivity Health's request.

n. Fraud, Waste and Abuse Training. Applicable Facility personnel will complete fraud, waste and abuse training as required by the Center for Medicare and Medicaid Services and provide confirmation of completion of same on the Portal.

o. Insurance. Facility will maintain commercially reasonable levels of general liability insurance in order to satisfy Facility's obligations to Tivity Health under this Agreement and as is reasonable and appropriate and industry-standard given Facility's business operations.

3. Use of Trademarks, Logos, and Copyrighted Materials. Each party grants the other a limited and non-exclusive right to use the other's trademarked or service-marked name, logo, identity, format, and materials solely for use for the purposes outlined in this Agreement (the "**Marks and Materials**"); provided, any use by Facility must be approved in advance and in writing by Tivity Health. Upon termination of the Agreement Facility will cease all use, advertising, marketing, and referencing of Tivity Health Marks and Materials. Nothing in the Agreement grants either party any right, title or interest in or to the Marks and Materials of the other party. All use by Facility of Tivity Health's Marks and Materials (including goodwill) will be for the sole benefit of Tivity Health.

4. Tivity Health IP. Tivity Health is the sole and exclusive owner of any and all Tivity Health IP, and nothing in the Agreement will alter Tivity Health's ownership rights in the Tivity Health IP whatsoever. Facility may not sell, license or otherwise transfer the Tivity Health IP.

5. Disagreements. If the parties have a disagreement, they will work in good faith to resolve it. Neither party will sue the other in front of a judge or jury; rather, all unresolved disagreements will be resolved exclusively by binding arbitration. Neither party will initiate, support, or otherwise participate in class action lawsuits, class-wide arbitrations, private attorney-general actions or the like against the other party.

6. Research Studies. Facility must seek prior written approval (which Tivity Health may decline in its sole discretion) from Tivity Health before undertaking any research or clinical study of Participants or Programs. Facility will provide study findings and results to Tivity Health prior to any publication or presentation of same. Tivity Health may withhold approvals hereunder in its sole discretion.

7. Compensation. Tivity Health will pay Facility the fees and rates set forth in the Agreement. Facility will be responsible to pay its own taxes on any payment received from Tivity Health.

8. Termination.

a. Early Termination. Notwithstanding any other provision of this Agreement, Tivity Health may terminate this Agreement at any time upon notice to Facility due to 1) closure of Facility, resulting in denial of Program services to Participants, without thirty (30) days' prior written notice to Tivity Health; 2) fraudulent Program utilization reporting by Facility; or 3) Tivity Health's reasonable determination that the health or safety of Participants may be in jeopardy if this Agreement is not terminated.

b. Bankruptcy. If at any time there is filed by or against a party to the Agreement a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver, trustee, or conservator of all or a portion of the party's property, or if a party makes an assignment for the benefit of creditors, and if such action is not dismissed after 90 calendar days, the Agreement may be immediately terminated by the other party.

c. Material Breach. If either party breaches a material term or condition of the Agreement, the non-breaching party may terminate the Agreement on notice to the other party specifying the nature of the breach as long as the breach is not cured within 30 days after such notice.

d. Default. Tivity Health may at its sole discretion and without limiting its other remedies withhold payment of any amounts otherwise due to Facility if Facility commits an act of fraud or commits a material breach of the Agreement.

e. Immediate Termination. Tivity Health may immediately terminate the Agreement upon notice to Facility in the event of (i) Facility closure; (ii) fraudulent reporting of Program utilization by Facility; (iii) Tivity Health's determination that a Participant's health or safety may be at risk; or (iv) Facility or any of its owners, employees, agents, or affiliates have been convicted of Medicare fraud or appear on any state or federal government exclusion list, including, without limitation, the System for Award Management or the Office of Inspector General's List of Excluded Individuals and Entities.

f. Termination for Convenience. Tivity Health may terminate the Agreement for convenience with 30 days prior written notice to Facility. In such case, Tivity Health shall have no further obligation or liability to Facility apart from the payment of fees owed.

9. Confidentiality. During the Term and at all times thereafter, Facility may not divulge to anyone or use in any way any Confidential Information. Notwithstanding the foregoing the Facility may divulge confidential information as may be required under the Wisconsin Public Records law or the federal freedom of information act. In such an event, Facility will inform Tivity Health of such requested document(s) (if permitted by law) in order for Tivity Health to protect its interests.

10. Participant Contact. Facility agrees not to contact Participants during the Term of this Agreement regarding business matters of the Program, including, without limitation, switching health plans, disenrolling, enrolling with other health plans or similar entities, or contracting directly with Facility. Facility will not dissuade Participants from engaging in any Tivity Health Program.

11. Notices. All notices and other communications under this Agreement must be in writing, sent to the applicable contact listed in the Agreement, and will be deemed to have been duly given, made and received when sent by (a) electronic mail or (b) hand delivery, including by a recognized courier service.

12. Waiver of Claims. Unless caused by the gross negligence or intentional wrongdoing of Tivity Health, Tivity Health's customers, or any applicable government agency, Facility hereby waives and releases all claims (known and unknown) against Tivity Health, Tivity Health's customers, and applicable government agencies, and/or any of their respective officers, directors, shareholders, employees, affiliates or representatives (collectively, "Tivity Health Affiliates") sustained by Participants as a result of the Participant's engagement in the Program or any other activities undertaken in or sponsored by Facility. Notwithstanding the foregoing the facility shall have the right to bring claims for

contribution and or indemnity against Tivity Health for matters related to claims made against the Facility arising in whole or in part from the negligence of Tivity Health its employees or agents. In no event shall Tivity Health, or any affiliates of Tivity Health or Sponsoring Organizations, be liable for i) injuries sustained by Participants as a result of the Participant's engagement in the Program or any other activities undertaken in or sponsored by Facility or ii) the Facilities failure to comply with applicable laws.

13. Indemnification. Facility will indemnify, defend, and hold harmless Tivity Health and all Tivity Health Affiliates and their respective officers, directors, shareholders, employees, and representatives from any and all Losses. For purposes of this Section 13, "Losses" means all claims, demands, suits, liabilities, damages, obligations, and expenses (including without limitation reasonable attorneys' fees) incurred by Tivity Health related to negligence or willful misconduct of Facility or its officers, directors, employees, agents or affiliates. Notwithstanding the foregoing nothing contained within this agreement is intended to be a waiver or estoppel of the contracting municipality or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including those set forth within Wisconsin Statutes 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, the municipality or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin Law.

14. Tivity Health agrees to indemnify and hold harmless the Facility its officers, employees, agents and assign as and against any and all claims demands, actions, and causes of action including actual attorney fees arising from Tivity Health's performance of their responsibilities under this Agreement, including the acts or omissions of its employees, officers and agents.

~~13.~~

~~14.15.~~ Cooperation in Defense. Tivity Health and Facility agree that, to the extent permitted by law, they will cooperate with one another in the defense of any claim arising from any acts of their respective officers, shareholders, employees, or agents and will give one another written notice of any claims arising in relation to the Agreement.

~~15.16.~~ Miscellaneous.

a. Compliance with Federal and State Rules and Regulations. Facility will comply with all applicable

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federal and state rules and regulations regarding services provided to Participants.

b. Business License and Regulatory Standards. Facility will hold an active and unrestricted business license as required by law and meet occupational health and safety requirements and regulatory standards in the state and jurisdiction in which Facility operates.

c. Severability. Should any provision of the Agreement be determined by any court of competent jurisdiction to be illegal, invalid or unenforceable in any respect, in whole or in part, the offending provisions will not affect the enforceability of the other provisions.

d. Amendment of Agreement to Comply with Law. Tivity Health may amend this Agreement to comply

with applicable law upon 60 days' prior written notice to Facility, and Facility may terminate this Agreement during such period if the amendment would have a demonstrable material adverse effect on Facility.

e. Applicable Law. The Agreement is governed by the laws of the State of ~~Wisconsin~~ Delaware, without giving effect to its conflicts of law's provisions, and each party submits to the exclusive jurisdiction of the courts of the State of Delaware.

f. Sale of Business/Transfer of Assets. Facility will notify Tivity Health in writing at least 90 days before it sells or transfers all or substantially all of its assets or business.

g. Survival. Sections 12 through 15 will survive termination of the Agreement, regardless of the reason for termination.

EXHIBIT A-1

FACILITY INFORMATION

The information in the box below is intended for marketing purposes. Please confirm that it is accurate.

Facility Name: _____

Physical Address: _____

Mailing Address: _____
(if different from Physical Address)

General Email: _____

Phone Number: _____

Web Site Address: _____

****To enable marketing of amenities and services are marketed, please designate your basic amenities below and all amenities upon initial log in to the Fitness Provider Portal.***

Amenity/Program	Offered as part of basic membership at no additional cost to Members
Cardiovascular Equipment	
Group Exercise/Aerobics Area	
Hot Tub/Whirlpool	
Resistance Training Equipment	
Steam and/or Sauna	
Swimming Pool – Seasonal (not available throughout the year)	
Swimming Pool – Year-Round	
Other (Please Specify)	

TIVITY HEALTH PROGRAM ADVISOR: This individual shall be responsible for scheduling training, coordinating with the Account Executive, and will need access to Program Participant records.

Name: _____

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Title: _____
Phone: _____
Email: _____

TECHNICAL COORDINATOR: This individual shall be responsible all technical aspects of monthly Program Participant utilization tracking and data reporting. The Technical Coordinator shall obtain management approval for establishing a reporting method for all Facilities in Exhibit A-1 to this Agreement.

Name: _____
Title: _____
Phone: _____
Email: _____

EXHIBIT A-2

CONTRACT ADMINISTRATOR

The Contract Administrator is an authorized signer on behalf of the company/organization and shall: be responsible for all legal correspondence and Notices regarding the Agreement, have access to payment information for all Facilities in Exhibit A-1 to this Agreement, and be responsible for setting up Tivity Health Fitness Provider Portal accounts for Facility staff.

Name: _____
Title: _____
Mailing Address: _____
Phone: _____
Email: _____

PROGRAM DESCRIPTIONS

SilverSneakers® Fitness Program – Basic Participant Access Program Description:

In exchange for the compensation to be paid by Tivity Health, Facility shall offer the Program to Participants of the Sponsoring Organization as a fully subsidized program for Medicare, Group Retirees and Older Adults that includes a basic fitness membership, which may include other Tivity Health services, for Participants provided through a network of facilities; also included in the Program are all facets presented in the Terms and Conditions section of the Partner Location Agreement. Program brands include SilverSneakers® Fitness program, Tivity Health ACCESS, and other brand names for the Mature Market Fully Subsidized Program communicated to Facility by Tivity Health from time to time.

Prime® (Fully Subsidized for Participant) Program Description:

In exchange for the compensation to be paid by Tivity Health, Facility shall offer the Program to Participants of the Sponsoring Organization as a Commercial Fully Subsidized Program; The Program includes basic fitness membership services for Participants provided through a network of facilities; also included in the Program are all facets presented in the Terms and Conditions section of the Partner Location Agreement. Program Brands include Prime®, Prime MCA, and other brand names for the Commercial Fully Subsidized Program communicated to Facility by Tivity Health from time to time.

- a) Introductory Orientation for Prime Participants. Facility shall offer the Program to all Participants identified by Tivity Health as eligible for the Program. In addition to a basic fitness membership at no cost to the Participant, Facility shall provide Participants with an added value program component (i.e., a thirty (30) minute personalized orientation session or personal training session).

Prime Private Brand® (Participant Pay Program) Program Description:

In exchange for the compensation to be paid by Tivity Health, Facility shall offer the Program to Participants of the Sponsoring Organization a Commercial Participant Pay Program; also included in the Program are all facets presented in the Terms and Conditions section of the Partner Location Agreement. For purposes of this Program, Participant Pay is defined as a monthly payment made by Participant to Tivity Health to participate in the Program. Program brands include Prime PB and other brand names for the Commercial Participant Pay Program communicated to Facility by Tivity Health from time to time.

- a) Introductory Orientation for Prime Participants. Facility shall offer the Program to all Participants identified by Tivity Health as eligible for the Program. In addition to a basic fitness membership at no cost to the Participant,

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Facility shall provide Participants with an added value program component (i.e., a thirty (30) minute personalized orientation session or personal training session).

UNDER REVIEW

SILVERSNEAKERS

Finding community through health and fitness

Seniors who adopt a physically active lifestyle may improve their well-being, longevity and independence while reducing their health risks. SilverSneakers® by Tivity Health® is the nation's leading community fitness program available to more than 18 million eligible Medicare seniors. SilverSneakers empowers members and drives sustainable behavior change through convenient access to our nationwide fitness network, a variety of programming options and activities that incorporate physical well-being and social interaction.

Our engaging and effective programming generates strong return on investment for our clients, making SilverSneakers the smart choice for Medicare Advantage plans, Medicare Supplement insurers and plans with group retirees.

Proven results

30

Years of evidence-based programming



SilverSneakers is their first fitness membership



Members satisfaction with SilverSneakers

A comprehensive approach

For qualified health plan members, SilverSneakers provides:

- A basic fitness membership²
- Signature SilverSneakers group fitness classes²
- Health education workshops
- Nationwide access to thousands of fitness locations¹
- Fun social activities and networking
- SilverSneakers LIVE online classes and workshops
- SilverSneakers On-Demand™ online workout videos that feature tips on fitness and nutrition
- SilverSneakers GO™ mobile app with workout programs, location finder and more

The benefits of SilverSneakers



Lower Healthcare Costs

According to a 2021 comprehensive scientific study, total average healthcare expenses including medical and pharmacy, was significantly reduced by 16% for SilverSneakers participants compared to non-participating Medicare Advantage members. Medical component of costs was decreased by 26%, driven primarily by reductions in hospitalization costs. Use of outpatient care was higher for SilverSneakers members combined with less acute care, indicating better health management among participants compared to non-participants.³



Manage Risk

95% of SilverSneakers participants report “Excellent,” “Very Good,” or “Good” health compared to a National Benchmark of 75%.⁴



Improve Acquisition

65% of participants said SilverSneakers was important in their decision to join their health plan.⁴



Improve Retention

58% of respondents said that if SilverSneakers were no longer available through their health plan, they would likely switch to another plan.⁴



1. Participating locations ("PL") are not owned or operated by Tivity Health, Inc. or its affiliates. Use of PL facilities and amenities is limited to terms and conditions of PL basic membership. Facilities and amenities vary by PL.
2. Membership includes SilverSneakers instructor-led group fitness classes. Some locations offer members additional classes. Classes vary by location.
3. Evaluating a Healthy Aging Program's Impact on Health Outcomes in Medicare Advantage Beneficiaries Christie Teigland, PhD, Scott Bilder, PhD, Dayne Slay, BS Published online 2021 September 21.
<https://avalere.com/wp-content/uploads/2021/09/SilverSneakers-Phase-3-Whitepaper.pdf> 2248797/
4. Benchmark Source: CMS Health Outcomes Survey 2020

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REQUESTED ACTION STATEMENT

TO: Common Council
Mayor Dave Ament

FROM: Gregory Kessler, AICP – Director of Community Development 

RE: Requested Action Statement for the approval of an agreement between the City of New Berlin and Optum Health Care Solutions, LLC.

DATE: May 28, 2024

REQUESTED ACTION: Requested Action Statement for the approval of an agreement between the City of New Berlin and Optum Health Care Solutions, LLC.

FISCAL IMPACT: There are no direct costs by allowing Optum to use the City's new Activity and Recreation Center (ARC) as an "in-network" facility for their participants. It is difficult to determine at this point what the City's total reimbursement amount will be for participation in the Optum Fitness Passport Program. Based upon data provided to the City at the end of 2023 below are the number of "eligible" Members within various radii of the ARC's zip code:

Using the 53151 Area Code:

~ Within the 53151 Area Code:	4,111
~ Within Three (3) Miles:	6,153
~ Within Five (5) Miles:	10,133
~ Within Ten (10) Miles:	63,474
~ Within Twenty (20) Miles:	127,069
~ Within Thirty (30) Miles:	164,404

SOURCE OF FUNDS: Not applicable

RATIONALE / BACKGROUND:

The Optum Fitness Passport Program provides eligible Members with pre-determined monthly membership rates to Participating Networks when they enroll in the Fitness Passport Program. The Optum Fitness Passport Program also reimburses Participating Networks a pre-determined amount when Members meet the established program criteria as defined by Optum. Refer to Appendix A of the Agreement to view those reimbursement rates.



Optum Fitness Programs

Renew Active
by  UnitedHealthcare®

One Pass™



Program Overview



Renew Active, One Pass & Aaptiv

Fitness Facility: Provides program participants with general access to all standard membership services or designated number of classes, waiving enrollment annual fees, and monthly dues.

Marketing: Participating locations are marketed on the Renew Active, One Pass & Aaptiv websites. Facilities can market their participation using the Renew Active, One Pass & Aaptiv marketing toolkits.

Contract: Does not require an exclusive agreement between Optum and participating facilities.

Usage Reporting: Member visits are submitted through vendors: Healthy Contributions, Concierge Health or Wellb Health.

No Fees: No fees to participate in our fitness networks.

Program Overview

Members can visit any participating location nationwide within their tier.



Members can join multiple facilities.

Medicare/Medicaid Network

Program Names

- Renew Active by UnitedHealthcare
- One Pass Medicare/Medicaid
- Aaptiv Advantage

Eligibility

- Members are eligible through their Medicare plan (typically ages 65+) or Medicaid plan (ages 18-64)
- Codes begin with A, S, or G followed by 9 numbers

Enrollment

- Members are eligible to utilize their offering beginning on the effective date of their plan
- Tier is determined by the Health Plan and member cannot change tiers

Commercial Network

Program Name

- One Pass Select
- Aaptiv Access

Eligibility

- Members are eligible through their qualified employer or Health Plan
- Typical ages 18-64
- Codes begin with B or P followed by 9 numbers

Enrollment

- Members must opt-in to the program and will choose among tiers
- Member can change their tier to begin the first day of the following month

Optum Fitness Networks

Government Networks



- For UnitedHealthcare only
- Medicare Advantage, Medicare Supplement, Group Retiree, DNSP
- Majority of members ages 65+
- Fully subsidized fitness benefit
- 12M eligible lives
- 25K fitness locations



- For non-UnitedHealthcare payers
- Medicare Advantage, Medicare Supplement, Group Retiree, DNSP, Medicaid
- Majority of Members Ages 65+
- Fully subsidized fitness benefit
- 2M eligible lives
- 25K fitness locations

Commercial Network



- Available to UHC, Optum clients
- Commercial Fitness Program through employers or health plans
- Members ages 18-64
- 8M eligible lives
- 16K fitness locations

Program Overview

Payment Processor Options



Choose which payment processor will work best for your facility and members.

Healthy Contributions

Usage Submission

- Facility submits usage from the 1-5th each month on Healthy Contributions portal
- Usage added via file upload or by manually adding in total visit count
- All fees paid by Optum

Members

- Members check-in as any standard member

Concierge Health

Usage Submission

- Usage captured real-time via VeriTap device
- Concierge Health sends Optum utilization between the 1st – 5th each month
- All fees paid by Optum

Members

- Members obtain their code and enroll via Concierge Health website/app on smart phone at check-in or before arrival
- Eligibility is validated during member enrollment
- Upon entry to facility, member checks-in via Veritap device

Welld Health

Usage Submission

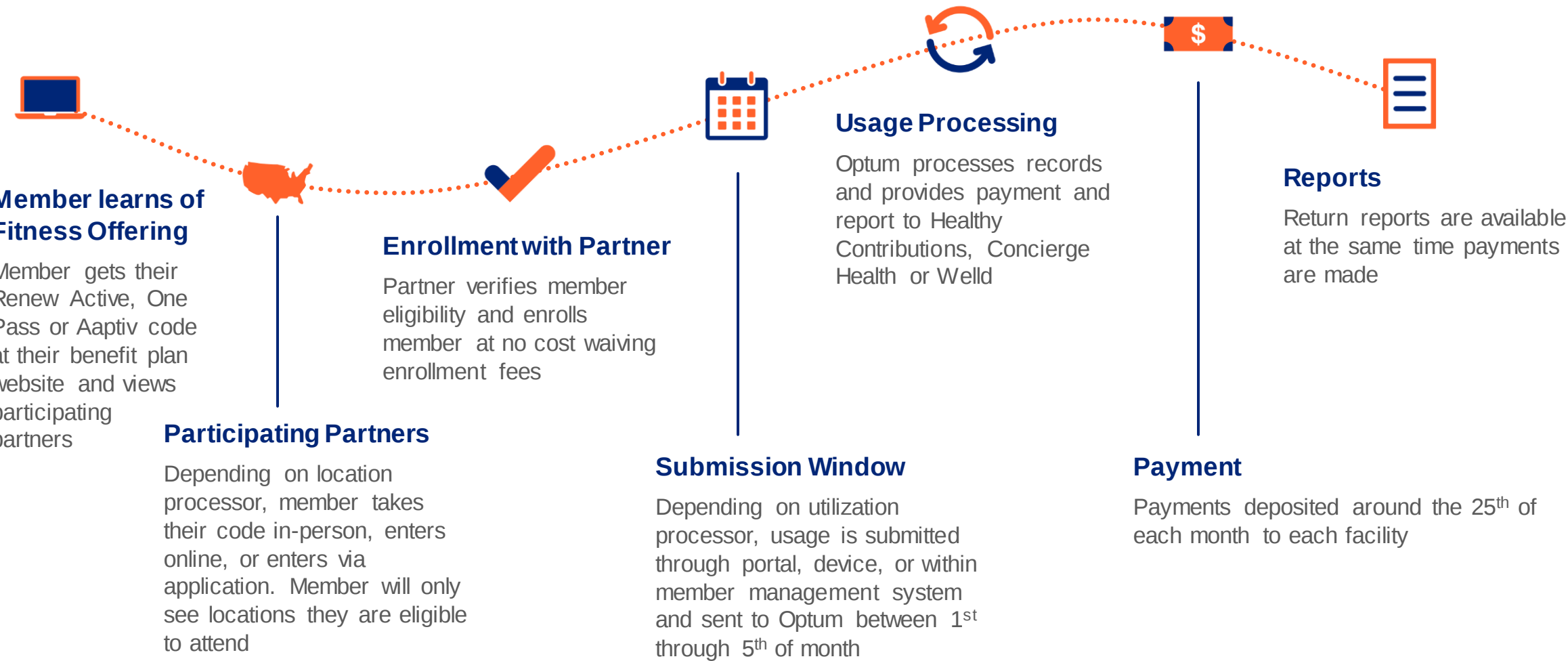
- Usage captured within Welld, which is integrated with member management system
- Welld sends Optum utilization between the 1st – 5th each month
- All fees paid by Optum except for start-up fee of \$100 per location
- Implementation 2-4 weeks

Members

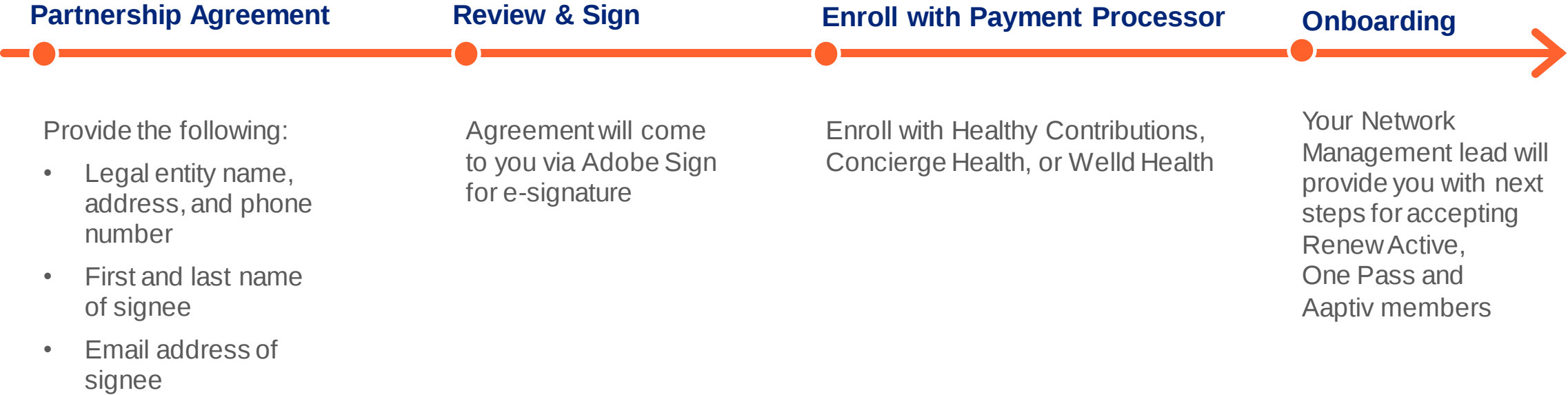
- Members obtain their code and register on Welld/club specific URL or in-person
- Eligibility is validated during member enrollment
- Members receive confirmation email from facility once enrolled online

Program Overview

Partner Experience



Next Steps



Contact Us

For more information, contact us at:

Nathan Radke

Optum Business Development Specialist

952-251-0922

nathan.radke@optum.com



FITNESS PASSPORT SERVICE AGREEMENT

This Fitness Passport Service Agreement (this "Agreement") is entered into on February 1, 2024 (the "Effective Date"), by and between OptumHealth Care Solutions, LLC, including its affiliates ("Optum") and City Of New Berlin, including its Participating Facilities ("Network" or the "City of Berlin"). For purposes of this Agreement, Network and Optum shall collectively be referred to herein as the "Parties" and individually as a "Party".

WHEREAS, Network wishes to become part of the Optum Fitness Passport network comprised of facilities that provide services to support the Fitness Passport Program to Optum's clients; and

WHEREAS, Optum provides its client's Members access to the Fitness Passport Program (as further described in Appendix A attached hereto and incorporated by reference); and

WHEREAS, Optum desires to include Network as part of its Fitness Passport Program offering so that Optum's client's Members may access the Fitness Passport Program.

NOW THEREFORE, for and in consideration of the above recitals, and the mutual covenants and agreements set forth below, and in exchange for other valuable and adequate consideration which the Parties agree is sufficient to enter into this Agreement, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

Except as otherwise specifically indicated, the following terms shall have the following meanings in this Agreement (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

Activation ID: A unique system-generated number assigned by Optum and used by both Parties to identify a Member who enrolls in the Fitness Passport Program.

Activation Letter: A letter, which displays the Activation ID that Members print off and present to a Participating Facility to enroll in the Fitness Passport Program.

Fitness Passport Program: A program sponsored by Optum as described in Appendix A herein.

Eligible Member: A benefit holder enrolled in a qualifying health plan or individual covered by a qualifying employer that may or may not be a member of a Participating Facility and is not enrolled in the Fitness Passport Program.

Member: A benefit holder enrolled in a qualifying health plan or individual covered by a qualifying employer that is enrolled in the Fitness Passport Program and is a member of a Participating Facility.

Participating Facility: Each Network facility location, unless otherwise excluded as expressly stated in Appendix A herein that is obligated by this Agreement to participate in the Fitness Passport Program.

Network Facility Reimbursement: The amount of reimbursement Optum has agreed to remit to Network toward a Member's monthly membership rate that Network represents has met the established Fitness Passport Program visit criteria as defined by Optum in Appendix A.

ARTICLE 2 TERM AND TERMINATION

2.1 Term. The initial term of this Agreement shall begin on the Effective Date and shall continue through December 31, 2025 ("Initial Term"). Thereafter, this Agreement shall automatically renew on the same terms and conditions on January 1st of each calendar year after the Initial Term for successive twelve (12) month terms (each a "Renewal Term"), unless otherwise agreed to in writing prior to September 1st of each calendar year or otherwise terminated in accordance with Section 2.2 of this

Agreement. The Initial Term and each subsequent Renewal Term may be referred to collectively or separately as "Term."

2.2 Termination. This Agreement may be terminated by any of the following:

- a) If either party provides written notice of non-renewal for the next Renewal Term no later than September 1st of the current Term. Following proper notice of non-renewal the current Term will effectively terminate as of midnight local time of Network on December 31; or
- b) By either Party upon mutual written agreement; or
- c) If either Party breaches any material provision of this Agreement and fails to cure such breach within thirty (30) days after written notice is given by the non-breaching Party, the Agreement shall terminate at the end of the thirty (30) day period. Any failure to use good faith efforts to cure the breach will be considered an early termination under section (d) below.
- d) Network may, at Optum's sole discretion and subject to the early termination fee described below, terminate the Agreement early at the end of any calendar month for an early termination fee that is due in full and payable upon the effective termination date, pursuant to the following fee schedule. Should Network fail to remit timely payment in full as of the effective early termination date, Network will be liable for interest at the rate of one and half percent (1.5%) or the maximum permitted by law, whichever is less, for each thirty (30) day period on a prorated basis that Network has not remitted the full balance due and payable to Optum. Further, Network shall be liable for any collection/legal/court fees Optum incurs to collect such fee and interest.

Early Termination Fee. For each month of the Term remaining as of the effective termination date, Network will pay Optum a lump sum early termination fee upon the effective date of termination equal to fifty percent (50%) of the average Network Reimbursement Fees that Optum paid Network during the current Term (e.g. January – May Optum average fees for these five months equaled \$2,000.00, therefore Network would pay Optum to terminate June 1 an amount equal to \$1,000.00 per month (calculated as 50% of the \$2,000.00 monthly average) for the remaining 7 months of the Term or \$7,000.00).

- e) This Agreement shall terminate immediately and automatically upon delivery to the other Party of written notice of termination on the occurrence of one of the following:
 - i. Bankruptcy, insolvency or the dissolution of either Party;
 - ii. Unauthorized assignment of this Agreement, whereby such assignment will be subject to the early termination fee in (d) above of this Agreement; or
 - iii. The loss of any license, qualification, authorization, accreditation or certification required for a Party to perform its duties under this Agreement that was not the result of such Party's willful or negligent act or omission (which such act or omission will be subject to the early termination fee in section (d) above).

Each Party agrees to notify the other Party in writing not later than five (5) business days after the occurrence of any of the events referred to immediately above.

2.3 Effect of Termination: Upon termination of this Agreement, each Party shall immediately cease using the other Party's name, symbol or logo ("Mark"), including but not limited to uses of the Mark authorized by this Agreement. Notwithstanding, the obligation to pay Network Facility Reimbursement to Network by Optum shall survive Termination for 120 days after the termination date.

2.4 Ongoing Obligations. Termination shall not affect either Party's liability for any obligations incurred by such Party prior to the effective date of termination.

ARTICLE 3

OBLIGATIONS OF NETWORK

3.1 Access to, Fulfillment of, and Membership Fees for the Fitness Passport Program. Each Participating Facility shall provide all Members with unlimited visits to the Participating Facility and all standard Network services, during the hours of operation as advertised by the Participating Facility to include, if applicable, an initial orientation to a Participating Facility and the equipment. In connection with participating in the Fitness Passport Program, each Participating Facility will provide Members with unlimited visits to Participating Facility at the rate set forth in Appendix A.

3.2 Acknowledgement. Network acknowledges that Optum is not a payer of services nor an insurer with respect to any services provided by the Network as part of this Agreement.

3.3 Compliance with Applicable Laws. Both Parties shall comply with all applicable local, state and federal laws. Network shall also obtain and maintain any and all licenses required to fulfill its duties and obligations under this Agreement.

3.4 Cooperation with Optum. Both Parties agree Network shall be the first point of contact for Members and Eligible Members and shall assume all service responsibility with respect to Member participation in the Fitness Passport Program, unless the Member contacts Optum first, in which case that Member will be re-directed to the Network. In the event of an escalated issue whereby Optum's assistance is required for resolution, Optum agrees to cooperate with Network in handling any complaints or inquiries from Members or Eligible Members regarding the Fitness Passport Program.

3.5 Account Management. Network will assign an account management individual or team to support Optum with implementation of the Fitness Passport Program.

ARTICLE 4

OBLIGATIONS OF OPTUM

4.1 Payment to Network. Optum shall pay Network the Network Facility Reimbursement set forth in Appendix A for each eligible Member that meets the Fitness Passport Program's monthly visit requirement. Payment details for the Network Facility Reimbursement are set forth in Appendix A.

4.2 Hold Harmless. Network agrees that the only payment Optum is responsible for is in accordance with its obligation described in Section 4.1. The Member is responsible for all other costs, fees and charges related to services not included in the Network standard membership services. Network will not seek and will hold Optum harmless for any charges, fees, costs or expenses a Member may incur that are not part of the obligation of Optum under Section 4.1.

4.3 Promotion of Services. Optum shall promote the Fitness Passport Program to Eligible Members through the Optum Web site, marketing and sales brochures, and other distribution channels designated by Optum, including but not limited to telephone and email communications. Optum shall be responsible for the design and production of any such materials and the design and maintenance of the Optum Web site.

ARTICLE 5

CONFIDENTIALITY

5.1 Information. Each Party acknowledges that in the course of performing under this Agreement, it may learn confidential, trade secret, or proprietary information concerning the other Party or third parties to whom the other Party has an obligation of confidentiality. Each Party shall protect and shall not disclose the other's proprietary information, including but not limited to, trade secrets, lists of Activation IDs and Participating Facilities, Member information, reimbursement amounts, and patented, trademarked, trade-named, service-marked, and copyrighted material or other property belonging to it or to a third party to whom it has an obligation of confidentiality ("Confidential Information"). Notwithstanding the foregoing, Optum acknowledges that Customer is a municipal entity and that records in its possession, custody or control are subject to the Wisconsin Public Records Law.

5.2 Protection of Confidential Information. Each Party agrees that during the term of this Agreement:

(a) it will use such Confidential Information only as permitted by this Agreement or as otherwise permitted in writing, (b) it

will not disclose such Confidential Information orally or in writing to any third party without the prior written consent of the other Party, (c) it will take at least those precautions to protect the other's Confidential Information as it takes to protect its own similar information, and (d) it will not otherwise use such Confidential Information for its own purposes or that of any other person or entity. A Party may disclose Confidential Information if required by law, legal process, or court order, in which case the disclosing Party shall notify the other Party sufficiently in advance of the disclosure, as allowed by law, to permit intervention at its option. The obligations stated in this Section shall survive termination of this Agreement for so long either Party has access to the other's Confidential Information.

5.3 Privacy. Each Party agrees to be bound by any applicable state and federal rules and regulations concerning the privacy and security of Member information.

5.4 Trademarks, Logos and Copyrighted Materials. Network hereby acknowledges that Optum and its affiliates may, from time to time during the term of this Agreement, provide Network with marketing, promotional or other advertising materials intended for use in connection with the promotion of the Program (such materials together with all content, trademarks, trade names, and/or logos of Optum and its affiliates, the "Optum Marketing Materials"). Optum hereby grants to Network a revocable, nonexclusive, non-assignable and non-transferable right and license to use and display the Optum Marketing Materials during the term of this Agreement without modification solely in connection with the promotion of the Program. Upon expiration or the earlier termination of this Agreement, the foregoing license shall automatically terminate and be of no further force and effect and Network shall immediately cease its use and display of the Optum Marketing Materials. All uses of the Optum Marketing Materials shall be subject to Optum's prior approval. Optum hereby represents and warrants to Network that it has the right to grant the license as set forth in this paragraph. Except as expressly set forth in this Agreement, Network obtains no other rights in or to the Optum Marketing Materials and Optum and its respective affiliates reserve all rights

~~Network hereby grants to Optum and its affiliates a revocable, nonexclusive, non-assignable and non-transferable right and license to use and display all names, trademarks, trade names, service marks and logos of Network and its affiliates (collectively, the "Network Marks") during the term of this Agreement solely in connection with the administration and promotion of the Program. Upon expiration or the earlier termination of this Agreement, the foregoing license shall automatically terminate and be of no further force and effect. Network hereby represents and warrants to Optum that it has the right to grant the license as set forth in this paragraph.~~

Commented [RN1]: Optum does not approve. We will need to list your facility name on our website. You can choose to have your logo displayed if you wish.

ARTICLE 6 DISPUTE RESOLUTION

In the event that any dispute, claim, or controversy of any kind or nature relating to this Agreement arises between the Parties, the Parties agree to meet and make a good faith effort to resolve the dispute. If the dispute is not resolved within thirty (30) days after the Parties first met to discuss it, and either Party wishes to further pursue resolution of the dispute, that Party shall refer the dispute to non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association ("AAA"). In no event may the mediation be initiated more than one (1) year after the date one Party first gave written notice of the dispute to the other Party. A single mediator engaged in the practice of law, who is knowledgeable as to the subject matter relevant to the dispute, shall conduct the mediation under the then current rules of the AAA. The mediation shall be held in a mutually agreeable site. Nothing herein is included to prevent either Party from seeking any other remedy available at law including seeking redress in a court of competent jurisdiction.

ARTICLE 7 RESPONSIBILITY FOR DAMAGES AND INDEMNIFICATION

7.1 Responsibility for Damages. Each Party shall be responsible for any and all damages, claims, liabilities, or judgments it incurs that arise as a result of its own acts or omissions. Any costs for damages, claims, liabilities, or judgments incurred at any time by one Party as a result of the other Party's negligence or intentional wrongdoing shall be paid for or reimbursed by the other Party.

Except for claims indemnified hereunder, or breaches of provisions related to confidentiality of information provided, in no event shall either Party be liable to the other for incidental, consequential, economic, special, or lost profit damages, even if such Party has been advised of the possibility of such damages. Consequential damages include, but are not limited to, lost

profits, lost revenues, and lost business opportunities, whether or not the other Party was or should have been aware of the possibility of these damages.

7.2 Indemnification. The Parties shall each indemnify and hold the other harmless against any and all losses, liabilities, penalties, fines, costs, damages, and expenses the other incurs, including reasonable attorneys' fees ("Damages"), which arise out of a third party claim and to the extent such Damages directly arise from or are the result of the indemnifying Party's: (i) breach of this Agreement; or (ii) negligence or willful misconduct. Network shall also indemnify Optum for any claim brought by a Member for the failure to deliver services by Participating Facility, or membership dues and/or associated fee disputes. Notwithstanding the foregoing, nothing contained in this Agreement is intended to be a waiver or estoppel of the ability of the City of New Berlin or its insurer to rely upon the limitations, defenses and immunities set forth under Wisconsin Law, including, but not limited to those set forth in Wisconsin Statute Secs. 893.80, 8952.52 and 345.05. To the extent that indemnification is available and enforceable, the City of New Berlin or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established under Wisconsin Law. The City's obligation to indemnify hereunder is subject to the availability and limits of applicable insurance coverage. Under no circumstances shall the City of New Berlin be required to indemnify Optum, its officers, employees, agents or assigns for its own negligent or intentional conduct.

7.3 Indemnification Procedures. Promptly, upon becoming aware of any matter which is subject to the provisions of Article 7 (a "Claim"), the Party seeking indemnification (the "Indemnified Party") must give notice of the Claim to the other Party (the "Indemnifying Party"), accompanied by a copy of any written documentation regarding the Claim received by the Indemnified Party.

The Indemnifying Party will, at its option, settle or defend, at its own expense and with its own counsel, the Claim. The Indemnified Party will have the right, at its option, to participate in the settlement or defense of the Claim, with its own counsel and at its own expense; but the Indemnifying Party will have the right to control the settlement or defense. The Indemnifying Party will not enter into any settlement that imposes any liability or obligation on the Indemnified Party without the Indemnified Party's prior written consent. The Parties will cooperate in the settlement or defense and give each other full access to all relevant information.

If the Indemnifying Party: (i) fails to notify the Indemnified Party of the Indemnifying Party's intent to take any action within 30 days after receipt of a notice of a Claim; or (ii) fails to proceed in good faith with the prompt resolution of the Claim, the Indemnified Party, with prior written notice to the Indemnifying Party and without waiving any rights to indemnification, including reimbursement of reasonable attorney's fees and legal costs, may defend or settle the Claim without the prior written consent of the Indemnifying Party. The Indemnifying Party will reimburse the Indemnified Party on demand for all Damages incurred by the Indemnified Party in defending or settling the Claim.

ARTICLE 8 MISCELLANEOUS

8.1 Entire Agreement. This Agreement, exhibits and attachments constitute the entire understanding between the Parties and supersedes all proposals, communications and agreements between the Parties relating to its subject matter.

8.2 Independent Contractors. The Parties' relationship to each other is that of independent contractors. No Party shall be deemed to be, or hold itself out as, a partner, agent, employee or joint venture partner of any other Party. No Party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other Party, or to represent any other Party as an agent, employee or in any other capacity.

8.3 Insurance. Each Party, at its sole cost and expense, shall procure and maintain in full force and effect for the term of this Agreement and after its termination for so long as the services are provided to Members pursuant to this Agreement, adequate commercial general liability insurance coverage, including but not limited to contractual liability insurance coverage, with limits that are reasonable and customary for its business to cover liabilities and claims which may arise in relation to or in connection with providing such Party's respective services under this Agreement, but in no event less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Each Party agrees to include the other as an Additional Insured on their commercial general liability policy on a primary and non-contributory basis.

8.4 Certificate of Insurance. Network and Optum agree to 1) provide the other, within ten (10) business days of a written request, with a Certificate of Insurance with respect to all liability insurance required under this Agreement, and 2) maintain the foregoing policy or policies of insurance without material change or cancellation except upon thirty (30) days written notice to the other Party.

8.5 Right to Audit. Optum shall have the right to review or to appoint an independent third-party auditor to review the files and materials used by Network for the purpose of auditing compliance by Network related to Network's obligations under this Agreement. Optum may exercise such right of audit during normal business hours upon five (5) business days prior written notice to Network. Network shall cooperate with Optum's auditor in the performance of any audit. Optum shall be solely responsible for the cost of the audit, providing however, if such audit reveals reporting discrepancies to Optum, Network shall bear the costs of such audit.

8.6 Fitness Passport Program Performance Standards. The Fitness Passport Program Performance Standards are attached hereto and incorporated herein by reference as Appendix B.

8.7 Assignment. Except as provided in this Section, neither party may assign any of its rights and responsibilities under this Agreement to any person or entity without the prior written consent of the other party, which shall not be unreasonably withheld. Network and Optum acknowledge that persons and entities under contract with or affiliated with them may perform certain services under this Agreement. Network acknowledges that assignment by Optum of all or any of its rights and responsibilities under this Agreement to any affiliate shall not require Network's prior written consent.

8.8 Successors. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heir(s), personal representatives, executors, administrators, successors, and assigns.

8.9 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of ~~Wisconsin~~Minnesota.

8.10 Amendments. No amendments, modifications, or additions to this Agreement shall be valid unless made in writing and signed by both the Network and Optum.

8.11 Invalidity of Sections of Agreement. If any portions of this Agreement shall, for any reason, be invalid or unenforceable such portions shall be ineffective only to the extent of such invalidity or unenforceability and the remaining portion or portions shall nevertheless be valid, enforceable and of full force and effect.

8.12 Survival. The terms and conditions of this Agreement, which by their express or implied terms, survive the termination of this Agreement, shall survive the termination of this Agreement.

8.13 Notices. Any notice, demand, or communication required under this Agreement shall be hand delivered or sent by commercial overnight delivery service, or if mailed, by pre-paid, first class mail to the addresses below. The addresses to which notices are sent may be changed by proper notice.

Notice to Optum:
Optum
11000 Optum Circle
Eden Prairie, MN 55344
Attn: Contracts Administration MN101-W013

Notice to Network:
City Of New Berlin
3805 S Casper Dr.
New Berlin, WI 53151

8.14 Counterparts. This Agreement may be executed by electronic signatures or in one or more counterparts, each of

which shall be deemed an original, but all of which, together, shall constitute one agreement.

IN WITNESS WHEREOF, this Agreement is executed by the parties’ authorized officers or representatives and shall be effective as of the Effective Date.

OptumHealth Care Solutions, LLC
11000 Optum Circle
Eden Prairie, MN 55344

City Of New Berlin
3805 S Casper Dr.
New Berlin, WI, 53151

Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____
Agreement Number: 01315463.0	

Appendix A

Fitness Passport Program Fees and Description of Services

- I. **Fitness Passport Program Description:** The Optum Fitness Passport Program provides eligible Members with pre-determined monthly membership rates to Participating Networks when they enroll in the Fitness Passport Program. The Optum Fitness Passport Program also reimburses Participating Networks a pre-determined amount when Members meet the established program criteria as defined by Optum.
- II. **Network Reimbursement Fees:** In connection with participating in the Fitness Passport Program, Optum will reimburse Network a pre-determined amount each calendar month for each participating Member, following Network's validation and representation that the Member has met the program criteria as defined by Optum below. The Network Facility Reimbursement payment is associated with a Member's cumulative number of monthly visits to any Participating Facility. For the avoidance of doubt, the Network Facility Reimbursement payment is not applicable to each Participating Facility individually.

Medicare/Medicaid Member Participation Requirement	Network Reimbursement amount paid by Optum
Medicare/Medicaid Member visits any Participating Facility during calendar month	\$1.80 per visit to Participating Facility with a maximum monthly payment of \$18.00 (10 visits)
Commercial Member Participation Requirement	Network Reimbursement amount paid by Optum
Commercial Member visits any Participating Facility during calendar month	\$2.50 per visit to Participating Facility with a maximum monthly payment of \$25.00 (10 visits)

Unless Network has notified Optum in writing no later than August 1st of the current Term the Network Reimbursement Fee will not be negotiable and will continue for the next Renewal Term.

1. **Most Favored Reimbursement.** Network represents and warrants that the Network Facility Reimbursement as outlined in this Agreement is equal to or lower than the reimbursement per-visit rates and maximum monthly fees being offered by Network to any other customer for the same or similar services. If during the term of this Agreement Network enters into an agreement or arrangements with any other customer contracting with Network for the benefit of its members which includes lower reimbursement per-visit rates or maximum monthly fees for the same or similar services as stated in this Agreement, Network shall promptly identify such lower per-visit rates and/or maximum monthly fees to Optum, and the Parties shall execute an amendment to this Agreement to incorporate the change in Network Facility Reimbursement effective as of the date that the Network made such lower rates available to such customer.

III. **Description of Services:**

1. **Network Responsibilities.**

Network shall be responsible for:

- a) Participating Facility Membership Fees: In connection with participating in the Fitness Passport Program, Network shall waive any and all enrollment and membership fees for those Members that enroll in the Fitness Passport Program. Network will need to enroll the eligible Member in the Fitness Passport Program in order to be eligible for reimbursement.
- b) Network will reasonably cooperate with Optum to create Fitness Passport Program communication and promotional materials for Optum to send to Optum's clients, Members or Eligible Members.
- c) Maintaining a Web site that provides Participating Facilities locations including Network branches by zip code as well as a list of amenities and services, hours of operation and other information for each Participating Facility. Network shall allow Optum to link to this site for purposes of providing information to Eligible Members and Members.
- d) By the seventh day of each month or the next business day if the seventh day of the month falls on a weekend or holiday, the Network or Optum's designated third party will deliver to Optum, in a file format specified by Optum, a file containing the usage data for the prior month for every Member in the Fitness Passport Program, regardless of how many times they visited the Network each month. Network will report a Member's cumulative number of visits to any Participating Facility in the file containing usage data. Network is responsible for ensuring the submitted usage data is accurate. A maximum of one (1) visit per calendar day can be counted towards a Member's monthly visit total to Network. Network will be responsible for accurate reporting monthly and correct any errors in reporting. For purposes of this Agreement, Optum will only be responsible for those records that have been reported within two (2) months from the end of the reported month will be evaluated for possible Network Facility Reimbursement. For example, at the conclusion of the month of April, the Network has two calendar months to report a Member's April visit count for purposes of calculating a possible Network Facility Reimbursement. Upon identifying any processing errors Network will promptly notify Optum of these errors and the errors will be corrected in the next month's payment cycle.
- e) Assisting to resolve questions, complaints or grievances related to a Member's participation in the Fitness Passport Program and to notify Optum via e-mail correspondence of all unresolved Member disputes and/or grievances that require the involvement of Optum.
- f) Completing all enrollment paperwork, program training and staff training necessary to begin accepting Members within thirty (30) business days of the Agreement Effective Date. Network will be listed as a Participating Facility on Fitness Passport Program website within thirty (30) days of the Agreement Effective Date.
- g) Between August 15th and September 1st of each calendar year, Network shall report to Optum by email to the following email address fitnessnetwork@optum.com whether or not Network has executed a contract for the next calendar year with any other customer for the same or similar services.
- h) Additional administrative and support services as described herein.

2. Optum Responsibilities.

Optum shall be responsible for:

- a) Communicating program overview to Members pursuant to Section 4.3 of the Agreement.
- b) Making reasonable efforts to notify Optum's Eligible Members of Fitness Passport Program enrollment guidelines and processes.
- c) Posting updated facilities as a Participating Facility directory on the Optum Web site pursuant to Section 4.3 of the Agreement when available.

- d) Upon receipt of Member Fitness Passport Program utilization information on a monthly basis from Network or Optum's designed third party, Optum will verify the eligibility of Members listed on the monthly Member usage file and indicate which Activation IDs meet eligibility requirements for Network Facility Reimbursement to Network. Optum will designate with an error code any records which are ineligible for any such payments.
- e) By the twenty-third day of each month or the next business day if the twenty-third day of the month falls on a weekend or holiday, Optum will provide the eligibility verification file containing the payment amount of Network Facility Reimbursement to be reimbursed to Network. In addition, by the twenty-third day of the month Optum will send a payment via electronic funds transfer ("EFT") to Optum's designated third party equal to the total amount of Network Facility Reimbursement to Network for the prior month.
- f) Additional administrative and support services as described herein.

3. Additional Fitness Passport Program Guidelines.

- a) The Network Facility Reimbursement period for Network is calculated based on each calendar month only, regardless of the date of enrollment by the Member. A Member who signs up for the Fitness Passport Program will enable Network to be eligible to earn an Network Facility Reimbursement payment from Optum commencing as of the month the Member enrolls. For example, if the Member enrolls in the Fitness Passport Program on January 5, Network may earn the Network Facility Reimbursement if the Member meets their monthly attendance requirement at a Network on or after January 1 through the end of January.

Appendix B

Fitness Passport Program Performance Standards

Network and Optum accept the minimum performance standards set forth below.

Section 1 Minimum Standards

1.1 Customer Service: Participating Facilities and Optum shall work together to resolve all Member complaints and grievances in a timely manner. Network will make best efforts to achieve the Customer Service Deliverables listed in Table 1 below:

TABLE 1 - Customer Service	
Service Level Deliverables	Timeframe
E-mails and written inquiries to Participating Facilities from Optum	Network will respond within two (2) business days
Member complaint and/or grievance resolution	Network must notify Optum in a timely manner of any disputes or other grievances involving Members and Network will work to resolve ninety-five percent (95%) of such disputes within seven (7) business days.

1.2 Data and Payment Processing Schedule: Network, Optum and Optum's designated third parties, if applicable will use the following schedule set forth in Table 2 below for processing data and sending payment:

TABLE 2 - Data and Payment Processing (per Appendix A)		
Network to provide Member usage file to Optum or Optum's designated third party*	Optum to provide eligibility verification file to Optum's third party	Optum or Optum's designated third party to transmit the Network Facility Reimbursement to Network's designated account
By the seventh day of the month or the next business day if the seventh day of the month falls on a weekend or holiday, following the month of usage	By the twenty-third day of the month or the next business day if the twenty-third day of the month falls on a weekend or holiday, following the month of usage**	By the first day of the month or the next business day if the first day of the month falls on a weekend or holiday, following the exchange of data**
Example: February 7 for January usage	Example: February 23 for January usage	Example: March 1 for January usage received in February

* If Optum notifies Network that Optum utilizes a third party to collect Member usage from Network, Network will provide Member's monthly usage reports to Optum's designated third party no later than by the fifth day of the month.

** Subject to timely receipt of usage data received by Network

Eligibility Radius Details

Geo Zip	County	State	Zip Home	Zip 1	Zip 3	Zip 5	Zip 10	Zip 20	Zip 30
53151	Waukesha County	WI	4,111	4,111	6,153	10,133	63,474	127,069	164,404

REQUESTED ACTION STATEMENT

TO: Common Council
Mayor Dave Ament

FROM: Gregory Kessler, AICP – Director of Community Development

RE: Requested Action Statement To increase funding for the Community Center at Hickory Grove renovation project.

DATE: June 18, 2024

REQUESTED ACTION: To amend and increase the 2024 CIP budget in the amount of \$1,300,000.00 and to transfer \$557,000.00 from the existing 2024 DPW Garage CIP account.

FISCAL IMPACT: The funds will be transferred to the Community Center at Hickory Grove CIP account, 0425290061103 C2024

SOURCE OF FUNDS: 2024 CIP Budget

RATIONALE/BACKGROUND: The City of New Berlin has been in the design phase for the renovation of the Community Center at Hickory Grove since fall of 2023 and recently held the construction bid opening for the project. Due to various factors, such as inflation and an increase in product costs, the overall bids for the project came in much higher than anticipated. In order to keep the project on track for a Summer 2024 construction start, additional funds are necessary to complete the project.

Staff along with our architect, Perspective Design and construction manager, Moore Construction Services have looked at various options and scenarios to decrease the amount of overage. We have determined that removing significant portions

of the project scope will require rebidding of the project and will not guarantee a cost reduction in today's construction climate. Phasing the project was also considered but it was determined that this will lead to increased costs to complete the buildout and delay the decommissioning and razing of the current Community Center.

The current Community Center has severe deficiencies and needs an estimated \$2-3 million for maintenance to return the building to modern day standards. The site also has many limitations regarding expansion due to surrounding easements and Lawcon designation which was one of the main reasons for choosing to invest in the Hickory Grove site.

This project facilitates the transfer of two polling locations, the food pantry, senior center, and additional recreation programming from the current Community Center. The design reflects the infrastructure and finishes needed to accommodate these programs and ensure that they operate safely, efficiently, and effectively.

RESOLUTION NUMBER 2024-13

A RESOLUTION AMENDING THE 2024 CAPITAL PROJECTS BUDGET

WHEREAS, the bids for Community Center at Hickory Grove project came in over the initial budgeted project estimate. It was determined that to avoid additional price increases, material availability delays and to stay on schedule with the previous plan discussed with the Mayor and Common Council in early 2024 it is critical that this project be done this year. To this end, the 2024 CIP Budget would need to be amended accordingly (which is the purpose of this resolution) and funds from the DPW Design account reallocated to the Community Center at Hickory Grove account. Reallocation of this transfer to be completed via Resolution 2024-14.

WHEREAS, It was determined that the Capital Projects Budget had to be amended to accomplish these goals.

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:

REVENUES - Increase

Account Number (to be established by Director of Finance) BOND PROCEEDS \$1,300,000

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 18th day of June 2024.

David Ament, Mayor

Countersigned:

Rubina R. Medina, City Clerk

RESOLUTION 2024-14
A RESOLUTION AMENDING THE 2024 CAPITAL PROJECTS BUDGET

WHEREAS, The City of New Berlin intends to renovate the Hickory Grove School into the Community Center at Hickory Grove

WHEREAS, DCD staff requests that \$557,000.00 be transferred from the 2024 DPW Garage CIP Account to the 2024 Community Center at Hickory Grove Account.

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

DPW Garage	0422900 61606 C2024	\$557,000.00
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TRANSFER TO

Hickory Grove	04252900 61103 C2024	\$557,00.00
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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 18th day of June 2024.

David Ament, Mayor

Countersigned:

Rubina R. Medina, City Clerk



Office of the City Clerk

City of New Berlin ▪ 3805 S. Casper Drive ▪ New Berlin, Wisconsin 53151-0921 ▪ (262)786-8610 ▪ www.NewBerlinWI.gov

REQUESTED ACTION STATEMENT

DATE: June 14, 2024
TO: Mayor Ament
Council
FROM: Rubina R. Medina, City Clerk

ITEM 4F:

Discussion and possible recommendation to set a date and time for a Special Common Council meeting during the last week of June, with approval for the meeting to be held electronically.

ISSUE:

The Office of the City Clerk has a final batch of liquor license renewal applications that must be acted upon by the Council before the current licenses expire at 11:59 PM on June 30, 2024. These applications were originally scheduled for the Committee of the Whole and Common Council agenda on June 25, 2024.

However, due to the rescheduling of the Committee of the Whole and Common Council meetings from June 25, 2024, to June 18, 2024, a Special Common Council meeting is necessary. This is required to comply with the regulation that liquor license applications must be received by the City Clerk at least 15 days before being acted on by the governing body.

REQUEST:

It is crucial to schedule a special Council meeting to ensure there is no lapse in liquor licenses. I propose that the meeting be held on either June 26, 27, or 28, 2024, at a time to be determined by the Council. Additionally, I respectfully request that this meeting be conducted electronically.