

# Committee of the Whole Meeting Agenda

---



June 10, 2025 - 6:00 PM  
Council Chambers  
3805 S. Casper Drive

Amended: 6/9/2025 @ 10:00 AM  
Published: 6/6/2025

## AGENDA

1. **CALL MEETING TO ORDER**
2. **ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE**
3. **APPROVAL OF MINUTES**
  - A. May 27, 2025 Meeting Minutes
4. **UTILITY & FINANCE**
  - A. Discussion and possible action to recommend to the Common Council approval of the June 11th, 2025, Water Utility claims in the amount of \$132,239.61. Sewer Utility claims in the amount of \$4,847.18 and General City claims in the amount of \$489,275.69. US Bank VISA EFT of \$24,892.52
5. **LICENSES & PERMITS**
  - A. Discussion and possible action to approve the renewal of alcohol licenses, designated agents, and corresponding premise descriptions as outlined in the attached list, for the license year July 1, 2025, through June 30, 2026, contingent upon the satisfaction of all City requirements, including but not limited to the completion of all required inspections and full payment of applicable fees
6. **MISCELLANEOUS**
  - A. Human Resources Department Update
  - B. Discussion and possible action to recommend approval to the Common Council of a Memorandum of Understanding between the City of New Berlin and the New Berlin School District, establishing the Activity and Recreation Center (ARC) as a designated student reunification site and outlining the terms of its use, as detailed in the Requested Action Statement
  - C. Discussion and possible action to recommend that the Common Council authorize the New Berlin Fire Department to enter into a revised contract with its ambulance billing provider, EMS Management Consultants (EMS|MC), as outlined in the Requested Action Statement and reviewed by the City Attorney
  - D. Discussion and possible action to recommend that the Common Council approve Ordinance No. 2712, an ordinance repealing Section 6-26 of the City of New Berlin Municipal Code relating to the Communications Committee
  - E. Update on the code compliance matter regarding the clear-cutting of trees within the C-1 district on the property located at 6035 S Karrington Ln

## 7. ADJOURN

### Additional Information

- The agenda packet, including supplemental information related to agenda items, is available online at [www.NewBerlinWI.gov](http://www.NewBerlinWI.gov). Once finalized by the governing body, approved meeting minutes will also be posted online.
- Agenda items may be taken out of order at the governing body's discretion.
- Members, and possibly a quorum, of other municipal governmental bodies may attend this meeting to gather information. However, no action will be taken by any governmental body other than the one referenced in this notice.
- Accommodations will be provided under the Americans with Disabilities Act (ADA) to meet the needs of individuals with disabilities. If you require assistance or appropriate aids and services, please contact the Office of the City Clerk at (262) 786-8610 with reasonable notice.

# Committee of the Whole MEETING MINUTES



May 27, 2025 - 6:00 PM  
Council Chambers  
3805 S. Casper Drive

## 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 La Fever, Alderperson Maxey, Alderperson Harenda, Alderperson Stribl, Alderperson Horbinski, Alderperson Kroupa

Excused: None

Staff Present: Mayor Dave Ament, City Attorney Thomas Schmitzer, City Clerk Rubina R. Medina

The City Clerk confirmed that a quorum was present and that the meeting was properly posted in compliance with open meetings law.

### 3. APPROVAL OF MINUTES

#### A. May 13th, 2025 Committee of the Whole Meeting

**MOTION:** Motion to approve

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

### 4. UTILITY & FINANCE

**A.** Discussion and possible action to recommend to the Common Council approval of the May 28th, 2025, Water Utility claims in the amount of \$14,279.78. Sewer Utility claims in the amount of \$3,634.71 and General City claims in the amount of \$1,524,725.94. We Energies EFT of \$71,339.23.

**MOTION:** Motion to approve

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

## 5. LICENSES & PERMITS

- A.** Discussion and possible action to approve a "Class B" Combination Alcohol License for Tail Spin, LLC, doing business as Tail Spin, located at 6290 S. Martin Rd (formerly Rainbow Restaurant), with Jennifer Halverson as agent, for the current license year ending June 30, 2025, contingent upon the applicant meeting all City requirements, including, but not limited to, completion of all required inspections and full payment of all applicable fees

**MOTION:** Motion to approve

**VOTE:** Motion by: Hopkins  
Second by: Maxey  
Motion Passed 7-0

- B.** Discussion and possible action to recommend Common Council approval of Mary's Caddyshack's Extension of Premise application for the annual Shackfest event, to be held on June 28, 2025, from 12:00 p.m. to 10:00 p.m., extending into the establishment's parking lot as outlined in the application on file

**MOTION:** Motion to approve

**VOTE:** Motion by: Hopkins  
Second by: Stribl  
Motion Passed 7-0

- C.** Discussion and possible action to approve the renewal of alcohol licenses, designated agents, and corresponding premise descriptions as outlined in the attached list, for the license year July 1, 2025, through June 30, 2026, contingent upon the satisfaction of all City requirements, including but not limited to the completion of all required inspections and full payment of applicable fees

**MOTION:** Motion to approve

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

## 6. MISCELLANEOUS

- A. Discussion regarding goals and directives for the development of the 2026 budget, including a potential tax levy target

No Motion

- B. Discussion and possible action to recommend to Common Council approval of Ordinance 2711 to amend Chapter 238 of the Municipal Code, Swimming Pools.

**MOTION:** Motion to approve

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

- C. Discussion and possible action to recommend Common Council approval of a contract with Trees On The Move in the amount of \$84,222.79 for landscape material and installation at the New Berlin Community Center at Hickory Grove, per the attached Requested Action Statement

**MOTION:** Motion to approve

**VOTE:** Motion by: Stribl  
Second by: Hopkins  
Motion Passed 7-0

- D. Discussion and possible action to recommend Common Council approval of Resolution 2025-13, authorizing the transfer of \$196,254.52 from the accounts listed in the Requested Action Statement to the Hickory Grove CIP account for Phase 3 of the project

**MOTION:** Motion to approve

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

- E. Discussion and possible action to recommend Common Council approval of a request to authorize the pre-hiring of one sworn police officer in June 2025, in anticipation of at least one expected retirement in 2026, per the attached Requested Action Statement

**MOTION:** Motion to approve

**VOTE:** Motion by: Hopkins

Second by: Maxey  
Motion Passed 7-0

**7. ADJOURN**

**MOTION:** Motion to adjourn at 6:16 PM

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

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

## RENEWAL ALCOHOL LICENSE APPLICANTS

The establishments listed below hereby submit their application to the Common Council of the City of New Berlin for an alcohol license, as described herein and in their accompanying application materials, pursuant to the applicable provisions of the Wisconsin Statutes and the Ordinances of the City of New Berlin, for the licensing period ending June 30, 2026. Licenses shall be issued by the City Clerk contingent upon the fulfillment of all statutory and municipal requirements, such as, but not limited to, the successful completion of all required inspections and the payment of all applicable fees.

Page: 1

Trade Name	Agent Name	Applying for License
1. Buffalo Wild Wings 15306 W. Beloit Rd New Berlin, WI 53151  Location:	Ben P. Sanchez 4253 W. Rivers Edge Circle #3 Milwaukee, WI 53209  PREMISE DESCRIPTION: SINGLE STORY BLDG W/ ATTACHED PATIO	RESERVE "Class B" - Combo
2. New Berlin Liquor 12940 W. National Av. New Berlin, WI 53151  Location:	Dalip Singh N56 W15743 Scott Ln. Menomonee Falls, WI 53051  PREMISE DESCRIPTION: SALE IN STORE ON SHELVES, IN COOLER, WALK-IN COOLER. STORE BASEMENT.	"Class A" Retail - Combo
3. Senor Luna 1901 S. Calhoun Rd. New Berlin, WI 53151  Location:	Kevin E. Larson 1901 S. Calhoun Rd. New Berlin, WI 53151  PREMISE DESCRIPTION: 1ST FLOOR, OUTDOOR DECK & BASEMENT	"Class B" - Combo
4. Sunnyslope Golf Course 4285 S Sunnyslope Rd New Berlin, WI 53151  Location:	Stu Bloom 301 Glacier Ct Waukesha, WI 53188  PREMISE DESCRIPTION: CLUBHOUSE AND PRO-SHOP OFFICES, BAR, PATIO, RANGE, GOLF COURSE.	"Class B" - Combo
5. Tail Spin 6290 S MARTIN RD New Berlin, WI 53151  Location:	Jennifer Halverson W174 S6986 Hiawatha Drive Muskego, WI 53150  PREMISE DESCRIPTION: DINING ROOM, BEHIND BAR, KITCHEN, BACKROOM IN KITCHEN, PATIO AREA.	"Class B" - Combo
6. Target Store T-1311 4798 S. Moorland Rd. New Berlin, WI 53151  Location:	Justin Wallschlager 926 5th Ave Grafton, WI 53024  PREMISE DESCRIPTION: ONE STORY BUILDING; STORED IN GROCERY DEPARTMENT AISLES AND COOLERS; SOLD AT FRONT CHECKLANES AND DEDICATED CURBSIDE PICKUP PARKING SPACES IN FRONT OF LOT.	"Class A" Retail - Combo

## RENEWAL ALCOHOL LICENSE APPLICANTS

The establishments listed below hereby submit their application to the Common Council of the City of New Berlin for an alcohol license, as described herein and in their accompanying application materials, pursuant to the applicable provisions of the Wisconsin Statutes and the Ordinances of the City of New Berlin, for the licensing period ending June 30, 2026. Licenses shall be issued by the City Clerk contingent upon the fulfillment of all statutory and municipal requirements, such as, but not limited to, the successful completion of all required inspections and the payment of all applicable fees.

Page: 2

Trade Name	Agent Name	Applying for License
<p>7. Walgreens #07259 3855 S. Moorland Rd. New Berlin, WI 53151</p> <p>Location:</p>	<p>Linda M. Wasiak W158 S7286 Martin Rd Muskego, WI 53150</p>	<p>"Class A" Retail - Combo</p>
<p>PREMISE DESCRIPTION: RETAIL DRUG STORE WITH SUNDRIES IN A ONE-STORY BUILDING OF 14,491 SQUARE FEET. LIQUOR IS SOLD ON SALES FLOOR AND COOLERS. OVERSTOCK IS STORED IN LOCKED STORAGE ROOM. INVOICES ARE KEPT IN A FILING CABINET IN THE MANAGERS OFFICE.</p>		
<p>8. Walmart #5438 15205 W Greenfield Ave New Berlin, WI 53151</p> <p>Location:</p>	<p>Michelle Michek 2009 N. 56th St. Milwaukee, WI 53208</p>	<p>"Class A" Retail - Combo</p>
<p>PREMISE DESCRIPTION: One-room, one-story building approximately 152,298 square feet including stalls in parking lot specifically designated for online grocery pickup and Grab n Go area of store. Product is located in coolers and on shelves in Grocery Department and displayed in seasonal aisles. Overstock product is located in Receiving area.</p>		
<p>9. Welcome Mart 15551 W. Cleveland Ave New Berlin, WI 53151</p> <p>Location:</p>	<p>Harjeet Walia 9519 S. River Bend Ct. Milwaukee, WI 53217</p>	<p>"Class A" Retail - Combo</p>
<p>PREMISE DESCRIPTION: INSIDE COOLER &amp; SHELVES &amp; STORAGE IN BASEMENT.</p>		
<p>10. Welcome Mart 17200 W. Cleveland Ave. New Berlin, WI 53146</p> <p>Location:</p>	<p>Harjeet Walia 9519 S. River Bend Ct. Milwaukee, WI 53217</p>	<p>"Class A" Retail - Combo</p>
<p>PREMISE DESCRIPTION: INSIDE CONVENIENCE STORE &amp; STORAGE</p>		
<p>11. West Side Pub 20385 W. National Ave. New Berlin, WI 53146</p> <p>Location:</p>	<p>Michael J. Jost 1613 Grey Fox Trail, Unit D Mukwonago, WI 53149</p>	<p>"Class B" - Combo</p>
<p>PREMISE DESCRIPTION: MAIN LEVEL BAR, BACK PATIO, BASEMENT STORAGE, ATTIC.</p>		

# Human Resource Department

Common Council Update  
Tuesday, June 10, 2025



# The Team



- Rebecca Freisleben
  - Benefit & Leave Specialist
  - Main focus: benefit administration and leave processing
  
- Adam Loose
  - Human Resource Coordinator
  - Main focus: Hiring and onboarding
  
- Melissa Beck
  - Human Resource Director
  - Main focus: Overall HR strategy to improve employee performance, employee engagement and employee retention

# Department Vision



- Improve employee engagement through effective communication and education for all employees.
- Cultivate trust and respect to maintain positive interactions with employees.
- Fulfill statutory duties and maintain the highest standards of ethics and integrity.
- Position the Human Resource Department as a Center of Excellence with a focus on initiatives to improve performance, growth and employee satisfaction.

# Hiring Update



- We have hired on 23 regular PT/FT employees so far to date in comparison to 46 new hires for all of 2024
- We have had 13 employees resign to date in comparison to 45 employees for all of 2024
- We have had 1 retirement to date in 2025 in comparison to 12 in 2024
- In addition to our regular hiring, we onboarded 79 Seasonal Staff so far this year

# Hiring Update



Department	2024	2024	In Process
Assessors	1	0	0
City Clerk	1	0	0
DPW	9	5	2
DCD	0	1	1
Finance	1	0	0
Fire	7	6	0
IT	0	0	0
PD	4	5	3
HR	2	1	0
Library	9	4	0
Recreation	9	0	2
Utilities	3	1	0

# HR Update



- The HR Team updated our applicant tracking system (ATS)
  - Created efficiency for HR and Hiring Managers
  - Created a seamless process for our candidates with onboarding
  
- The HR Team has been updating our training portal
  - Creates online tracking for trainings for staff
  - Supervisors can manage their staff and trainings as needed
  - We are working on creating training schedules based on departments and positions
  
- The HR Team revived wellness
  - Formed a wellness committee
  - Wellness logo, wellness challenges, national fun days, newsletter
    - Our first challenge was a step challenge in April for 4 weeks; 38 employees participate, and the top winner had 785,126 steps



# HR Update



- Safety Committee
  - Updated the Emergency Response Plan
  - Created SRP Posters for all city buildings/departments
  - Worked with Fire to offer 3 CPR/AED trainings for staff in 2025
  
- Policy updates
  - Handbook was updated this year; this is reviewed every year and updated as needed
  - HR Law boards have all been updated
  
- Anti-Harassment Training for all staff will be held this year
  - This is required every two-years
  - We will be adding additional trainings
  
- Compensation Study
  - The adjustments from the compensation study will take effect the first full payroll in July
  - Employees will receive notification of adjustments at the end of June

# Upcoming Items



- Finance and HR are just starting the implementation for a time and attendance system for the Fire Department union personnel; after this is complete, we will be working with PD to move forward with the implementation for time and attendance for their union staff
- Finance, DPW, Clerks and HR are working on streamlining the City's processes for tracking, reporting, and filing claims on insurable assets for the City
- Facilities, PD, IT and DPW are working through setting up door access procedures and assigning door access groupings to positions
- Finance and HR are evaluating moving the city's health insurance to a self-funded platform; this decision would need to be made by the end of August for the City to meet the implementation deadlines for a 1/1/2026 effective date

# Why Are We Looking at Self-Insurance?

## CNB Loss UHC Ratio

	WEA 2021	WEA 2022	UHC 2023	UHC 2024	UHC Estimated 2025*	UHC Anticipated 2026 Renewal
Medical Claims	\$2,748,620	\$2,678,096	\$1,656,487	\$2,956,624		
Rx Claims	\$679,886	\$727,187	\$842,627	\$817,522		
<b>Total Claims</b>	<b>\$3,428,506</b>	<b>\$3,405,283</b>	<b>\$2,499,114</b>	<b>\$3,774,146</b>	<b>\$3,415,319</b>	<b>\$3,616,498</b>
% Increase		-0.7%	-26.6%	51.0%	-9.5%	5.9%
<b>Fully Insured Premium</b>	<b>\$3,319,032</b>	<b>\$3,322,736</b>	<b>\$3,036,866</b>	<b>\$3,151,097</b>	<b>\$3,426,117*</b>	<b>\$4,520,622</b>
% Increase		0.1%	-8.6%	3.8%	8.7%	31.9%
<b>Loss Ratio</b>	<b>103.3%</b>	<b>102.5%</b>	<b>82.3%</b>	<b>119.8%</b>	<b>99.7%</b>	<b>80.0%</b>
Target Loss Ratio Claims	\$2,655,226	\$2,658,189	\$2,429,493	\$2,520,878	\$2,740,894	\$3,616,498
Difference to Target	\$773,280	\$747,094	\$69,621	\$1,253,268	\$674,425	\$0

\*Does not backout the \$285k of monthly premium credit

- Estimated 2025 claims are projected to be lower than 2024 claims, but equal to the projected fully insured premium.
- Anticipated 2026 UHC renewal is projected at their target loss ratio of 80%. CNB has exceeded that all three years with UHC, as well as the two years prior with WEA.
- Premium reconciliation is coming, and the UHC renewal could be as high as 32% for 2026.
- 2025 One Month Premium credit estimated at \$285k

*\*This illustration is only fully-insured premium. HRA and HSA expenses not included.*

# How Does CNB Compare?

## How does CNB compare to Acrisure Book of Business in key metrics on a per member basis?

- 2024 total claims were \$3.7M which is about \$230k more than the Acrisure norm based on enrollment. (Not inclusive of HRA)
- High-cost claimants (>\$50k) drove the spend increase for 2024 accounting for an additional \$1.2M and are 53% higher than the Acrisure norm.
  - 20 claimants vs an expected 12.
  - 9 are likely reoccurring
  - 6 members accounting for \$634k in high-cost prescription drugs.
  - Driven primarily by employees. 12 compared an expected 5.
- Underlying claims are 26% under the Acrisure the norm pointing to a relatively health population.
- Higher than average membership. Not uncommon for public sector employers.
  - Can provide a better spread of risk
  - Generally, results in lower unit cost, but higher than average on a total cost basis.

2024 Key Metrics	% Variance
Total Plan Paid PMPY	7%
Medical Claims PMPY	5%
Rx Claims PMPY	13%
HCC > \$50k PMPY	53%
Underlying Claims PMPY	-26%
Excess Membership	25%

Self-insurance allows you to directly manage pharmacy contracts, capture rebates, control specialty drug costs, and build proactive strategies around high-risk members instead of being locked into fully insured rates.

## Advantages of Self-Insurance?

- **Data Ownership and Accessibility:** Access to robust claims data. Fully insured data is limited and months only. Without real-time data, CNB is “flying blind”.
- **Plan Design Flexibility:** The HRA can be absorbed into the plan design.
- **CNB is running out of “moves”**
  - The Claims vs. Premium cliff is inevitable and CNB needs to get ahead of it.
  - CNB needs to squeeze the waste from the health care delivery supply chain and is limited by the fully-insured construct.
  - Self-insured allows CNB to deploy strategies to address segments like high-cost prescription drugs, stop loss levels, meaningful wellness programs, sites of care, etc.
  - Other fully insured options have been exhausted.
  - Employers with enough plan participation generally “win” in the long-term.

# Risks of Self-Insurance?

## Catastrophic Claims Risk

- One or two very high-cost claimants (such as cancer, NICU, transplants) can heavily impact the current and future plan years.
- **Specific stop-loss:** Caps risk for each individual on the plan with a deductible and reimburses the plan for claims that exceed a set threshold. For CNB, the likely level will be around \$100k-\$125k.
- **Aggregate Stop-Loss:** Protects against unusually high total claims across the entire group.
- Stop loss carriers insure for “unknown” risk.

## Assessment of a laser

- Stop loss insures unknown risk. When a large individual risk is known, the stop loss carrier can shift the cost back to the city for that individual risk by raising the deductible higher than the standard level in the following contract year. The level is dependent upon the expected claims.

## • Cash Flow Risk

- Monthly claims variability
- Claims lag and maturity
- Timing of large claims and stop-loss reimbursements
- Reserve build-up
- Year-end accruals and IBNR

# HR Team Considerations

The CNB team will need to manage cash flow, build reserves, monitor claims activity, and oversee stop-loss protection to control risk and ensure plan stability.

Category	Fully Insured	Self-Insured
<b>Vendor Management</b>	One carrier relationship	Multiple vendors (TPA, PBM, stop-loss, wellness vendor, etc.) — Acrisure partners with CNB to coordinate
<b>Plan Design Flexibility</b>	Limited — pick from carrier options	High — Acrisure advises CNB on customizing plans to workforce needs
<b>Plan Document Involvement</b>	Carrier provides boilerplate documents	CNB owns the plan document (SPD)
<b>Implementation Process</b>	Carrier-driven, simple rollout	More active HR involvement — Acrisure drives and project-manages implementation alongside HR
<b>Eligibility Management</b>	Carrier processes eligibility changes	CNB sends eligibility feeds
<b>Meeting Cadence with Acrisure</b>	Annual or semi-annual renewal meetings	Ongoing monthly meetings to review performance and trends
<b>Compliance Responsibility</b>	Carrier handles most compliance	HR and Finance share responsibility — Acrisure provides compliance checklist tracking and audit support
<b>Cash Flow and Funding</b>	Fixed premium paid monthly	HR and Finance oversee funding — Acrisure helps forecast and monitor funding needs
<b>Claims Decision Involvement</b>	Carrier makes final decision on disputed or appealed claims	Employer (Plan Sponsor) has authority to review and approve/deny appealed claims — Acrisure supports with guidance and best practice recommendations
<b>Fiduciary Role</b>	Limited employer responsibility	Employer becomes fiduciary — Acrisure supports documentation, ERISA best practices, and plan governance

## What Changes Will Employees See?

**For most employees, the network stays the same, costs feel familiar, and the experience is largely seamless — with better access to savings programs and smarter support. The biggest differences are behind the scenes — not at the doctor's office.**

- Provider networks will likely remain the same
- ID cards and phone numbers may stay the same or look slightly different if a third-party administrator (TPA) is used, but access to care will not change.
- Copays, deductibles, and out-of-pocket maximums can also remain very similar if the employer designs the plan that way.
- Employees may see a different carrier logo on their ID card
- Customer service may change depending on a TPA change.
- Claims payments may process slightly differently behind the scenes, although most employees will not notice a difference unless an issue arises.
- Employees may gain access to new or enhanced programs such as wellness incentives, second opinion services, or specialty drug funding options.
- If a specialty medication program is introduced, employees requiring high-cost medications may work with an advocate to access their treatments at no cost.
- Overall, for most employees, the network stays the same, costs feel familiar, and the care experience remains smooth — with some new opportunities for smarter support and greater savings.

# How a Self-Insured Program Works

## The Key Differences between Fully-Insured and Self-Insured

Feature	Fully Insured Model	Self-Funded Model
<b>Cost Structure</b>	Fixed monthly premium based on carrier projections	Pay actual claims + fixed costs (TPA, stop-loss)
<b>Risk Exposure</b>	Carrier takes the risk (within renewal rates)	Employer retains risk, capped by stop-loss
<b>Data Access</b>	Limited and delayed	Full real-time access to claims and trends
<b>Plan Design Flexibility</b>	Limited to carrier templates	Fully customizable based on employee needs. No state mandated benefits.
<b>Vendor Control</b>	Bundled with carrier	Employer selects TPA, PBM, wellness partners
<b>Savings Opportunity</b>	Carrier retains surplus as profit	Employer keeps any savings from better plan performance
<b>Renewal Volatility</b>	Renewal rates based on pooled risk with limited justification.	Renewal based on actual plan experience + trend
<b>Cash Flow Impact</b>	Predictable monthly payments	Variable claims funding (but can be smoothed)
<b>Wellness ROI</b>	Carrier retains most financial upside	Employer captures savings from improved outcomes
<b>Stop-Loss Protection</b>	Not applicable (carrier assumes total risk)	Specific and Aggregate Stop-Loss limit employer exposure
<b>Trend Management Ability</b>	Limited — wait for carrier renewal	Active — intervene mid-year based on claims data
<b>Renewal Timing</b>	Often 60-90 days in advance of the renewal	Can be projected well in advance




**Thank you for all that you do!**

**QUESTIONS?**



**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 Memorandum of Understanding between the City of New Berlin and the New Berlin School District establishing a student reunification site and terms of use for the Activity and Recreation Center (ARC).

**DATE:** May 29, 2025

**REQUESTED ACTION:** Requested Action Statement for the approval of a Memorandum of Understanding between the City of New Berlin and the New Berlin School District establishing a student reunification site and terms of use for the Activity and Recreation Center (ARC).

**FISCAL IMPACT:** Not Applicable

**SOURCE OF FUNDS:** Not Applicable

**RATIONALE / BACKGROUND:** This Memorandum of Understanding (MOU) establishes the City of New Berlin’s Activity and Recreation Center (ARC) as a potential student reunification location should the New Berlin School District need a location adequate in size for students and staff to evacuate to during emergency situations.

The terms of notification and use of the ARC are outlined within the MOU. Having an identified and agreed upon reunification site is an essential component in a response to a school crisis of a larger scale to reunify students with their parents and/or families.

The ARC is ideally suited to serve in this capacity as it has several larger rooms and a gymnasium so that students can be divided up by grade level which makes for more efficient reunification operations and supervision.

The MOU calls out that the school district shall be financially responsible for replacing, restoring or repairing any damage that may occur by their use of this facility for this purpose, and they agree to reimburse the city for those expenditures of personnel required to maintain and make the facility available to the school district, including overtime costs.

This MOU has been reviewed by the City Attorney and those edits have been reflected in this final version and the New Berlin School District approved this MOU in April 2025.

**School District of New Berlin  
Memorandum of Understanding  
Regarding student reunification Facilities**

This agreement is made and entered into between the School District of New Berlin and The City of New Berlin to establish student reunification site locations and terms of use in the event of an evacuation and reunification of students and staff of the School District of New Berlin at the City of New Berlin Activity & Recreation Center (ARC)

The School District of New Berlin will immediately and directly notify The City of New Berlin officials and staff as identified on the attached Exhibit A of the desire to make use of space at the city Activity & Recreation Center for student reunification via email or telephone call. Notification shall not be deemed to have been made until a City Official from the list on Exhibit A has acknowledged the request via responsive email or telephone call and the availability of the Activity & Recreation Center. The notification shall include the number of students and staff involved and the timeline for their projected arrival at the Activity & Recreation Center, as well as the identity of the onsite supervisor on behalf of the school district and that person's contact information. The ability and timing for the city to make space available at the Activity & Recreation Center will be directly related to the amount of space needed and the timing necessary to terminate existing programming and to release minor participants to their guardians. The City will make its best efforts to make adequate space available but that availability will be limited by the needs of existing programming. The City will advise the School District of New Berlin of the projected timeline for the availability of the space within a reasonable time following the notice of the School District of New Berlin's desire to make use of space at the Activity & Recreation Center. Contact information between the two parties shall be referenced in the attached Exhibit A.

Subject to the terms of this agreement the City of New Berlin agrees to open the City of New Berlin Activity and Recreation Center located at 15321 W National Ave, New Berlin, WI 53151, to provide a location for reunification for students and staff evacuated during emergency situations when the students and staff have a need to be moved from their existing school environment. The City of New Berlin Activity & Recreation Center has a capacity to accommodate approximately 1,000 people in the main level of its phase two gymnasium area, which may vary based on programming which may be occurring at the time of the request. Additional space to be used for staging and reunification logistics.

The City of New Berlin understands that their organization will be responsible for opening the building (or providing access to a School District of New Berlin Administrator, or local law enforcement assisting with the reunification efforts) and developing procedures for making the building accessible, including rest rooms and an area with phone and internet connection (if available) for School District of New Berlin administrative personnel. Furthermore, School District of New Berlin will provide supervision for all students and staff during the time that the facility is used as an emergency reunification site. The School District of New Berlin agrees that it will manage its use of City of New Berlin facilities for this reunification in accordance with national student reunification best practices, for example the standards recommended by the "I Love You Guys Foundation."

The School District of New Berlin agrees that it shall exercise reasonable care in the conduct of its activities in said facilities and further agrees to replace or reimburse The City of New Berlin

Activity & Recreation Center for any items, materials, equipment or supplies that may be used by the district in the conduct of its sheltering activities in said facilities. The School District of New Berlin will maintain supervision of students at the facility and will ensure that they only will be present in those portions of the building authorized by the City of New Berlin.

The School District of New Berlin will provide proof of liability insurance coverage which includes the City of New Berlin Activity & Recreation Center as an additional insured on a primary and noncontributory basis. The School District of New Berlin further agrees to indemnify and hold harmless the City of New Berlin its officers, elected officials, employees and assigns as and against any claims, demands, costs, actions or causes of action, including attorney fees, which may be made against the aforementioned indemnified parties arising from the use by the New Berlin School District its employees, students and staff of the City of New Berlin Activity & Recreation Center as a student reunification facility pursuant to this agreement except to the extent any such claims, demands, costs, actions or causes of action arise as a result of the negligent or intentional conduct of the City of New Berlin. Notwithstanding the foregoing, nothing contained within this agreement is intended to be a waiver or estoppel of the School District of New Berlin or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including those contained within Wisconsin Statutes 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, the School District of New Berlin or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for governmental claims established by Wisconsin Law.

The School District of New Berlin will be responsible for replacing, restoring or repairing damage occasioned by the use of any building, facilities or equipment belonging to The City of New Berlin as part of any reunification event unless such damage is caused by the negligent or intentional acts of the City of New Berlin.

The School District of New Berlin will reimburse The City of New Berlin for any bona fide expenditure of personnel required to maintain and make the facility available to the School District of New Berlin, including overtime costs, upon production of receipts or time sheets. Notwithstanding the foregoing the School District of New Berlin will not pay any operational or administrative fees to The City of New Berlin.

The City of New Berlin and The School District of New Berlin shall provide any and all releases of information to the press and media through a Joint Information Center (JIC). Requests for interviews or information submitted to The City of New Berlin and the School District of New Berlin shall be directed to the JIC comprised of the School District of New Berlin's Public Information Officer (PIO) and the City of New Berlin's Public Information Officer (PIO) for a response.

The School District of New Berlin will make every effort to recognize the hospitality of The City of New Berlin Activity & Recreation Center in any press or media releases pertaining to the relocation and sheltering of students and staff.

Nothing in this MOU is intended to conflict with current laws or regulations of the United States of America, the State of Wisconsin, County of Waukesha, or the City of New Berlin. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect.

This agreement shall become effective on May 01, 2025 and may be modified upon the mutual written consent of the parties.

The terms of this agreement, as modified with the consent of both parties, shall be self-renewable for a period of five (5) years from the end date of the agreement unless written termination is given by either party. Either party, upon sixty (60) days written notice to the other party, may terminate this agreement.

The terms of this agreement, may only be modified with the written consent of both parties,

AND NOW, this \_\_\_\_ day of \_\_\_\_ 2025, the parties hereby acknowledge the foregoing as the terms and conditions of their understanding.



Patrick L. Miller – CFO/COO,  
School District of New Berlin

08 April 2025

Date

The City of New Berlin

\_\_\_\_\_  
David A. Ament, Mayor

\_\_\_\_\_

Date



## REQUESTED ACTION STATEMENT

May 22, 2025

**TO:** Mayor Ament  
Common Council

**FROM:** Chief Mark Polzin, Fire Department

**ISSUE:** The Fire Department is preparing to transition its Electronic Patient Care Reporting (ePCR) system from ESO to First Due in alignment with changes to the department's Records Management System. The current contract with EMS Management Consultants (EMS|MC), which includes coverage of ePCR software costs, references ESO as the software provider. To accurately reflect the department's upcoming transition and ensure continued billing and reporting services, EMS|MC has issued a revised contract identifying First Due as the new ePCR software provider.

### REQUESTED:

Recommend that the City Council authorize the New Berlin Fire Department (NBFD) to enter into a revised contract with its ambulance billing provider, EMS Management Consultants (EMS|MC). The revised contract will allow EMS|MC to contribute toward a portion of the total cost of the NBFD's Records Management System license fee, reflecting the department's transition to the First Due platform for electronic patient care reporting.

### FISCAL IMPACT:

There is no fiscal impact to the City. The ambulance collection rate will remain unchanged at 4.85%. Under the current agreement, EMS Management Consultants (EMS|MC) pays \$11,062.48 annually for the NBFD's ePCR software, ESO. Under the revised contract, EMS|MC will instead pay \$11,200 annually to First Due for maintenance of the new ePCR software, reflecting a minimal increase that remains fully covered by EMS|MC.

### RATIONALE:

The New Berlin Fire Department (NBFD) conducted a thorough evaluation of multiple ePCR systems and determined that First Due provides the most comprehensive, user-friendly, and cost-effective solution. Transitioning to First Due aligns with the department's broader upgrade to its Records Management System and will enhance operational efficiency, data integration, and overall service delivery.

## **BILLING SERVICES AGREEMENT**

THIS BILLING SERVICES AGREEMENT (hereinafter "Agreement"), is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2025, between EMS MANAGEMENT & CONSULTANTS, INC. (hereinafter "EMS|MC") and the CITY OF NEW BERLIN , (hereinafter "Client").

### **WITNESSETH:**

WHEREAS, EMS|MC is an ambulance billing service company with experience in providing medical billing and collection services to medical transport providers, including fire and rescue and emergency medical service (EMS) providers; and

WHEREAS, Client, through the City of New Berlin Fire Department, is normally engaged in the business of providing emergency medical services, and billable medical transportation services; and

WHEREAS, Client wishes to retain EMS|MC to provide medical billing, collection and related services as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements described below and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

### **1. ENGAGEMENT.**

a. During the term of this Agreement, EMS|MC shall provide routine billing, bill processing and fee collection services reasonably required and customary for service providers of similar size and situation to Client (the "Revenue Cycle Management Services" or "RCM Services"). The RCM Services shall include: (1) preparing and submitting initial and secondary claims and bills for Client to insurers and others responsible for payment; (2) performing reasonable and diligent routine collection efforts to secure payments from primary and secondary payers and patients or other entities, (as EMS|MC, in its sole discretion deems appropriate); (3) issuing up to three patient statements for all unpaid balances; and (4) referring accounts which have not been collected during EMS|MC normal billing cycle to an outside collection agency if so directed by Client.

b. EMS|MC shall also provide to Client software in accordance with Exhibit A (the "Software").

c. Collectively, the RCM Services, the Software and any other services that EMS|MC provides to Client shall be referred to as the “Services”.

## **2. EMS|MC Responsibilities.**

a. EMS|MC will provide the RCM Services in material compliance with all applicable state and federal laws and regulations.

b. EMS|MC will submit all “Completed Claims” to the applicable third-party payer. A “Completed Claim” is a claim for emergency medical services and billable medical transportation services that (i) is received by EMS|MC and supported by an ePCR record that contains all necessary and accurate information; (ii) has been reviewed and any identified issues sent to Client for remediation have been rectified; (iii) is for a patient encounter that has been electronically signed off by Client in the ePCR; (iv) has been reviewed by Client and deemed ready for billing; and (v) is not subject to a billing hold. EMS|MC will not have any responsibility for any adverse impact to Client that may result from any delay of Client in completing claims.

c. Accounts with outstanding balances after the insurance and/or third-party payer has determined benefits due will be billed by EMS|MC to the patient. EMS|MC will send up to three patient statements to the patient or responsible party, except as to those accounts on which an insurance carrier or third-party payer has accepted responsibility to pay. Once Client has submitted all necessary information, EMS|MC will bill all uninsured patients directly.

d. Within ten (10) business days of the last business day of the month, EMS|MC will provide to Client a month end report, which shall include an account analysis report, aging report and accounts receivables reconciliation report for the previous month. Deposit reports will be provided daily.

e. During the term of this Agreement, EMS|MC shall maintain, provide appropriate storage and data back-up for all billing records pertaining to the RCM Services provided by EMS|MC hereunder. Upon at least five (5) business days’ prior written notice, EMS|MC shall make such records accessible to Client during EMS|MC business hours. Upon termination of this Agreement, trip data pertaining to the RCM Services shall be returned to Client. Notwithstanding anything to the contrary herein, Client acknowledges and agrees that EMS|MC is not a custodian of clinical records nor a clinical records repository. Client is responsible for maintaining all clinical records in accordance with Section 3(d).

f. EMS|MC shall notify Client of (i) all patient complaints about clinical services within five (5) business days of receipt; (ii) all patient complaints about billing within ten

(10) business days of receipt; and (iii) all notices of audit, requests for medical records or other contacts or inquiries out of the normal course of business from representatives of Medicare, Medicaid or private payers with which Client contracts or any law enforcement or government agency ("Payer Inquiries") within ten (10) business days of receipt, unless such agency prohibits EMS|MC from disclosing its inquiry to Client.

g. EMS|MC will reasonably assist Client in responding to Payer Inquiries which occur in the normal course of Client's business and arise from EMS|MC's provision of the Services. If EMS|MC, in its sole discretion, determines that (i) Client is excessively utilizing EMS|MC's assistance in responding to Payer Inquiries, (ii) a Payer Inquiry is outside the normal course of Client's business; or (iii) a Payer Inquiry does not arise from the Services provided by EMS|MC, EMS|MC may charge Client, and Client shall pay, for any assistance provided by EMS|MC at EMS|MC's then current hourly rates.

h. EMS|MC is appointed as the agent of Client under this Agreement solely for the express purposes of this Agreement relating to billing and receiving payments and mail, receiving and storing documents, and communicating with hospitals and other entities to facilitate its duties. EMS|MC will have no authority to pledge credit, contract, or otherwise act on behalf of Client except as expressly set forth herein.

i. As to all payments received from Medicare, Medicaid and other government funded programs, the parties specifically acknowledge that EMS|MC will only prepare claims for Client and will not negotiate checks payable or divert electronic fund transfers to Client from Medicare, Medicaid or any other government funded program. All Medicare, Medicaid and any other government funded program payments, including all electronic fund transfers, will be deposited directly into a bank account designated by Client to receive such payments and as to such account only Client, through its officers and directors, shall have access.

j. The Services provided by EMS|MC to Client under this Agreement are conditioned on Client's fulfillment of the responsibilities set forth in this Agreement.

k. EMS|MC shall have no responsibility to provide any of the following services:

- i. Determining the accuracy or truthfulness of documentation and information provided by Client;
- ii. Providing services outside the EMS|MC billing system;
- iii. Submitting any claim that EMS|MC believes to be inaccurate or fraudulent; or

- iv. Providing any service not expressly required of EMS|MC by this Agreement.

I. For Client's service dates that occurred prior to the mutually agreed go live date for the Services, Client agrees and understands that EMS|MC is not responsible for any services including, but not limited to, submitting claims or managing any denials, refunds or patient calls. As between Client and EMS|MC, Client is fully responsible for the proper billing and accounting of any remaining balances related to service dates that occurred prior to such go live date.

**3. RESPONSIBILITIES OF CLIENT.** The following responsibilities of Client are a condition of EMS|MC's services under this Agreement, and EMS|MC shall have no obligation to provide the Services to the extent that Client has not fulfilled these responsibilities:

- a. Client will pay all amounts owed to EMS|MC under this Agreement.
- b. Client will implement standard commercially reasonable actions and processes as may be requested by EMS|MC from time-to-time to allow EMS|MC to properly and efficiently provide the RCM Services. These actions and processes include, but are not limited to, the following:
  - i. Providing EMS|MC with complete and accurate demographic and charge information necessary for the processing of professional and/or technical component billing to third parties and/or patients including, without limitation, the following: patient identification (name, address, phone number, birth date, gender); guarantor identification and address; insurance information; report of services; special claim forms; pre-authorization numbers; and such additional information as is requested by EMS|MC;
  - ii. Providing EMS|MC with complete and accurate medical record documentation for each incident or patient service rendered for reimbursement, which is necessary to ensure proper billing and secure claim payment;
  - iii. Providing EMS|MC, in a timely manner, with Patient Care Reports (PCRs) that thoroughly detail the patient's full medical condition at the time of service and include a chronological narrative of all services and treatment rendered;

- iv. Obtaining authorizations and signatures on all required forms, including consent to treat, assignment of benefits, release of information and claims;
- v. Obtaining physician certification statements (PCS) forms for all non-emergency transports and other similar medical necessity forms or prior authorization statements as deemed necessary by the payer;
- vi. Obtaining or executing all forms or documentation required by Medicare, Medicaid, CHAMPUS, and any other payer or insurance carriers to allow EMS|MC to carry out its billing and other duties under this Agreement; and
- vii. Implementing reasonable and customary charges for complete, compliant billing.

c. Client represents and warrants that the PCR and any and all associated medical records, forms and certification statements provided to EMS|MC are true and accurate and contain only factual information observed and documented by the attending field technician during the course of the treatment and transport.

d. Client shall maintain Client's own files with all original or source documents, as required by law, and only provide to EMS|MC copies of such documents. Client acknowledges that EMS|MC is not the agent of Client for storage of source documentation.

e. Client will provide EMS|MC with a copy of any existing billing policy manuals or guidelines, Medicare or Medicaid reports, or any other record or document related to services or billing of Client's accounts.

f. Client will report to EMS|MC within ten (10) business days of payments received directly by Client, and promptly notify EMS|MC of any cases requiring special handling or billing. Client shall advise EMS|MC of any Payer Inquiries within ten (10) business days of receipt.

g. Client shall ensure that any refunds posted by EMS|MC are actually issued and paid to the patient, insurer, or other payer as appropriate.

h. Client agrees to provide EMS|MC with administrative access to the ePCR system or similar access in order to run reports and review documents and attachments to better service Client's account.

i. Client shall provide EMS|MC with access to its facilities and personnel for the purpose of providing on-site and/or online training to such personnel. Client shall cooperate with EMS|MC and facilitate any training that EMS|MC wishes to provide.

j. Client shall complete EMS|MC's online training course within 90 days of the contract start date and all new hires will complete EMS|MC's online documentation training within 90 days of hire date. Newly developed training materials by EMS|MC should be mutually agreed upon by the parties to be required training.

k. Client shall comply with all applicable federal, state, and local laws, rules, regulations, and other legal requirements that in any way affect this Agreement or the duties and responsibilities of the parties hereunder.

#### **4. EMS|MC WEB PORTALS.**

a. EMS|MC shall provide Client and those individuals appointed by Client ("Users") with access to EMS|MC Web Portals (the "Portals"), which shall be subject to the applicable Terms of Use found on the Portals. To be appointed as a User, the individual must be an employee of Client or otherwise approved by Client and EMS|MC. Client is responsible for all activity of Users and others accessing or using the Portals through or on behalf of Client including, but not limited to, ensuring that Users do not share credentials for accessing the Portals. Client is also responsible for (i) identifying individuals who Client determines should be Users; (ii) determining and notifying EMS|MC of each User's rights; (iii) monitoring Users' access to and use of the Portals; (iv) acting upon any suspected or unauthorized access of information through the Portals; (v) ensuring each User's compliance with this Agreement and the Terms of Use governing the use of the Portals; and (vi) notifying EMS|MC to deactivate a User account whenever a User's employment, contract or affiliation with Client is terminated or Client otherwise desires to suspend or curtail a User's access to and use of the Portals. Client agrees to follow best practices to ensure compliance with this provision.

b. Client acknowledges that EMS|MC may suspend or terminate any User's access to the Portals (i) for noncompliance with this Agreement or the applicable Terms of Use; (ii) if such User poses a threat to the security or integrity of the Portals or information available therein; (iii) upon termination of Client; or (iv) upon notice of suspension or termination of such User by Client. Client may suspend or terminate a User's access to the Portals at any time.

#### **5. COMPENSATION OF EMS|MC.**

a. Client shall pay a fee for the Services of EMS|MC hereunder, on a monthly basis, in an amount equal to 4.85% percent of "Net Collections" as defined below (the

“RCM Fee”). Net Collections shall mean all cash and check amounts including electronic fund transfers (EFTs) received by EMS|MC from payers, patients, attorney’s offices, court settlements, collection agencies, government institutions, debt set-off programs, group health insurance plans, private payments, credit cards, healthcare facilities or any person or entity submitting funds on a patient’s account, or any amounts paid directly to Client with or without the knowledge of EMS|MC that are paid, tendered, received or collected each month for Client’s transports, less refunds processed or any other necessary adjustments to those amounts. Price adjustments for such services shall be allowed at the completion of each contract year. Price adjustments shall not exceed the change in the average of the Consumer Price Index (CPI) for all Urban Consumers, Not Seasonally Adjusted, Area: U.S. city average, Item: All item, Base Period: 1982-84=100 over the twelve months prior.

b. Client shall pay any fees associated with the Software as set forth in Exhibit A (the “Software Fee”).

c. Client shall also pay 2% of the credit card convenience fees charged by Virtual Credit Card Payors; provided, however, Contractor will continue to try to convert payers from credit card to ACH, as it is the preferred method of payment. Together, the RCM Fee, the credit card convenience fee and the Software Fee, are referred to as the "Compensation".

d. EMS|MC shall submit an invoice to Client by the tenth (10<sup>th</sup>) day of each month for the Compensation due to EMS|MC for the previous calendar month. The Compensation amount reflected on the invoice shall be paid in full by the 20<sup>th</sup> day of the month in which the invoice is first presented to Client (the “Payment Date”). Such amount shall be paid without offset unless the calculation of the amount is disputed in good faith, in which case Client shall pay the undisputed amount and shall provide EMS|MC with detailed written notice of the basis for the disputed portion no later than the Payment Date. Any invoices not disputed in writing by the Payment Date shall be deemed “undisputed” for all purposes of the Agreement. All invoices are to be paid directly from Client’s banking institution to EMS|MC via paper check, direct deposit or ACH draft initiated by EMS|MC into EMS|MC’s bank account.

e. A one-time late fee of 5% shall be added to any invoices that remain unpaid by the 5th day of the calendar month following the Payment Date. Interest shall begin to accrue on all unpaid balances starting thirty (30) days after the presentment of said invoice for any unpaid balances at the rate of 1½% per month or the highest rate allowed under applicable law, whichever is lower. Client shall be responsible for all costs of

collection incurred by EMS|MC or others in attempting to collect any amounts due from Client under this Agreement, including, but not limited to, reasonable attorney fees.

f. In the event of a material change to applicable law, the billing process and/or scope of Services provided in this Agreement or a material difference in any of the patient demographics provided by the Client and set forth in Exhibit B, EMS|MC reserves the right to negotiate a fee change with Client and amend this Agreement accordingly or terminate this Agreement.

g. EMS|MC may, in its sole discretion, immediately cease to provide Services for Client should the outstanding balance owed to EMS|MC become in arrears. Claims processing will not resume until all outstanding balances are paid in full or arrangements approved by EMS|MC have been made to wholly resolve any outstanding balances.

## **6. TERM OF AGREEMENT.**

a. This Agreement shall be effective commencing on June 1, 2025, and shall thereafter continue through May 31, 2028, ("Initial Term"). This Agreement shall be binding upon the parties hereto and their respective successors, assigns, and transferees. The Agreement shall automatically renew on the same terms and conditions as stated herein, for successive one (1) year terms (each a "Renewal Term"), unless either party gives written notice of intent not to renew at least 60 days before expiration of any term. Notwithstanding anything herein to the contrary, this Agreement may be terminated under the provisions provided below. (The Initial Term and any Renewal Terms are referred to as the "Term".)

b. **Termination for Cause.** Notwithstanding Section 6(a), either party may terminate this Agreement if the other party materially breaches this Agreement, unless (i) the breaching party cures the breach within 10 days following receipt of notice describing the breach in reasonable detail, or (ii) with respect to a breach which may not reasonably be cured within a 10-day period, the breaching party commences, is diligently pursuing cure of, and cures the breach as soon as practical following receipt of notice describing the breach in reasonable detail.

c. **Immediate Termination.** Either party may terminate this Agreement immediately as a result of the following:

- i. Failure of Client to make timely payments due under this Agreement;
- ii. Injury to any customer, independent contractor, employee or agent of the other party hereto arising from the gross negligence or willful misconduct of a party;

- iii. Harassment of any employee or contractor of a party or commitment of any act by a party which creates an offensive work environment; or
- iv. Commitment of any unethical or immoral act which harms the other party or could have the effect of harming the other party.

## **7. RESPONSIBILITIES UPON TERMINATION.**

a. Subject to Client's payment of all amounts due hereunder, upon any termination of this Agreement, and during the period of any notice of termination, EMS|MC will make available to Client or its authorized representatives data from the billing system regarding open accounts in an electronic format, and will otherwise reasonably cooperate and assist in any transition of the Services to Client, or its successor billing agent. Upon request, EMS|MC will provide to Client trip data associated with the claims submitted by EMS|MC on behalf of Client pursuant to this Agreement. EMS|MC shall retain financial and billing records not tendered or returned to Client on termination hereof for at least ten (10) years following the date of service.

b. Following termination of this Agreement, for a period of ninety (90) days (the "Wind Down"), EMS|MC will continue its billing and collection efforts as to those accounts with dates of services prior to termination, subject to the terms and conditions of this Agreement including, but not limited to, Section 5. Client will continue to provide EMS|MC with copies of checks and payments on those accounts which were filed by EMS|MC under this Agreement. EMS|MC shall have no further responsibilities as to such accounts after the Wind Down; however, EMS|MC shall be entitled to compensation as provided in Section 5(a) for such amounts filed by EMS|MC, regardless of whether such amounts are collected by Client during or after the Wind Down period. During the Wind Down and for up to twelve months following termination of this Agreement, EMS|MC shall continue to make the Portals available to Client, subject the applicable Terms of Use. Notwithstanding the foregoing, in the event EMS|MC terminated this Agreement pursuant to Sections 6(b) or 6(c), EMS|MC shall have no obligation to provide any Services after the date of termination.

## **8. EXCLUSIVITY AND MISCELLANEOUS BILLING POLICIES.**

a. During the term of this Agreement, EMS|MC shall be Client's exclusive provider of the RCM Services. Client may not directly file, submit or invoice for any medical or medical transportation services rendered while this Agreement is in effect.

b. In addition, Client agrees not to collect or accept payment for services from any patient unless the service requested does not meet coverage requirements under any insurance program in which the patient is enrolled or the patient is uninsured.

Payments received directly by Client for these services must be reported to EMS|MC as provided in Section 3(f) hereof and shall be treated as Net Collections for purposes of Section 5(a) hereof.

c. In compliance with CMS regulations, Medicare patients will not be charged by Client a higher rate or amount for identical covered services charged to other insurers or patients. Accordingly, only one fee schedule shall exist and be used in determining charges for all patients regardless of insurance coverage.

d. EMS|MC reserves the right not to submit a claim for reimbursement on any patient in which the PCR and/or associated medical records are incomplete or appear to be inaccurate or do not contain enough information to substantiate or justify reimbursement. This includes missing patient demographic information, insurance information, Physician Certification Statements (PCS) or any required crew and/or patient signatures, or otherwise contradictory medical information.

e. Client shall implement and maintain a working compliance plan ("Compliance Plan") in accordance with the most current guidelines of the U.S. Department of Health and Human Services ("HHS"). The Compliance Plan must include, but not be limited to, formal written policies and procedures and standards of conduct, designation of a compliance officer, quality assurance policy and effective training and education programs.

f. In accordance with the HHS Office of Inspector General ("OIG") Compliance Program Guidance for Third-Party Medical Billing Companies, EMS|MC is obligated to report misconduct to the government, if EMS|MC discovers credible evidence of Client's continued misconduct or flagrant, fraudulent or abusive conduct. In the event of such evidence, EMS|MC has the right to (a) refrain from submitting any false or inappropriate claims, (b) terminate this Agreement and/or (c) report the misconduct to the appropriate authorities.

**9. COOPERATIVE PROCUREMENT.** "The Contractor shall extend the same pricing and terms of this contract to any other eligible public agency that wishes to participate in this cooperative agreement."

**10. NON-INTERFERENCE/NON-SOLICITATION OF EMS|MC EMPLOYEES.** Client understands and agrees that the relationship between EMS|MC and each of its employees constitutes a valuable asset of EMS|MC. Accordingly, Client agrees that both during the term of this Agreement and for a period beginning on the date of termination of this Agreement, whatever the reason, and ending three (3) years after the date of termination of this Agreement (the "Restricted Period"), Client shall not, without EMS|MC's prior written consent, directly or indirectly, solicit or recruit for employment;

attempt to solicit or recruit for employment; or attempt to hire or accept as an employee, consultant, contractor, or otherwise, or accept any work from EMS|MC's employees with whom Client had material contact during the term of this Agreement, in any position where Client would receive from such employees the same or similar services that EMS|MC performed for Client during the term of this Agreement. Client also agrees during the Restricted Period not to unlawfully urge, encourage, induce, or attempt to urge, encourage, or induce any employee of EMS|MC to terminate his or her employment with EMS|MC. Client has carefully read and considered the provisions of Section 10 hereof, and having done so, agrees that the restrictions set forth in such section (including, but not limited to, the time period) are fair and reasonable and are reasonably required for the protection of the legitimate interests of EMS|MC, its officers, directors, shareholders, and employees.

## **11. PRIVACY.**

a. *Confidentiality.* The Parties acknowledge that they will each provide to the other Confidential Information as part of carrying out the terms of this Agreement. EMS|MC and Client will be both a Receiving Party and a Disclosing Party at different times. The Receiving Party agrees that it will not (i) use any such Confidential Information in any way, except for the exercise of its rights and performance of its obligations under this Agreement, or (ii) disclose any such Confidential Information to any third party, other than furnishing such Confidential Information to its employees, consultants, and subcontractors, who are subject to the safeguards and confidentiality obligations contained in this Agreement and who require access to the Confidential Information in the performance of the obligations under this Agreement. In the event that the Receiving Party is required by applicable law to make any disclosure of any of the Disclosing Party's Confidential Information, by subpoena, judicial or administrative order or otherwise, the Receiving Party will first give written notice of such requirement to the Disclosing Party, and will permit the Disclosing Party to intervene in any relevant proceedings to protect its interests in the Confidential Information, and provide full cooperation and assistance to the Disclosing Party in seeking to obtain such protection, at the Disclosing Party's sole expense. "Confidential Information" means the provisions of the Agreement (including, but not limited to, the financial terms herein) and any information disclosed by a Party (the "Disclosing Party") to the other Party (the "Receiving Party"). Information will not be deemed Confidential Information hereunder if the Receiving Party can prove by documentary evidence that such information: (a) was known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or

indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; or (d) is independently developed by the Receiving Party without the use of any Confidential Information of the Disclosing Party. The foregoing notwithstanding, the City of New Berlin is a municipal entity and as such, has responsibilities for disclosure of public records under the terms of the Wisconsin Public Records Law and such obligations may supersede the confidentiality obligations under this Agreement.

b. *HIPAA Compliance.* The parties agree to comply with the Business Associate Addendum, attached hereto and incorporated by reference herein as Attachment 1, documenting the assurances and other requirements respecting the use and disclosure of Protected Health Information. It is Client's responsibility to ensure that it obtains all appropriate and necessary authorizations and consents to use or disclose any individually identifiable health information in compliance with all federal and state privacy laws, rules and regulations, including but not limited to the Health Insurance Portability and Accountability Act. In the event that this Agreement is, or activities permitted or required by this Agreement are, inconsistent with or do not satisfy the requirements of any applicable privacy or security law, rule or regulation, the parties shall take any reasonably necessary action to remedy such inconsistency.

## **12. DISCLAIMERS, LIMITATIONS OF LIABILITY AND DISPUTE RESOLUTION**

a. Each Party acknowledges that the liability limitations and warranty disclaimers in the Agreement are independent of any remedies hereunder and shall apply regardless of whether any remedy fails of its essential purpose. Client acknowledges that the limitations of liability set forth in this Agreement are integral to the amount of consideration offered and charged in connection with the Services and that, were EMS|MC to assume any further liability other than as provided in the Agreement, such consideration would of necessity be set substantially higher.

b. EMS|MC and Client acknowledge and agree that despite their best efforts, billing errors may occur from time to time. Each party will promptly notify the other party of the discovery of a billing error. EMS|MC's sole obligation in the event of a billing error will be to correct the error by making appropriate changes to the information in its system, posting a refund if appropriate, and re-billing the underlying claim if permissible.

c. Except for any express warranty provided herein or in the applicable exhibit, the services are provided on an "as is," "as available" basis. Client agrees that use of the services is at client's sole risk; and, to the maximum extent permitted by law, EMS|MC expressly disclaims any and all other express or implied warranties with respect to the

services including, but not limited to, warranties of merchantability, fitness for a particular purpose, title, non-infringement or warranties alleged to arise as a result of custom and usage.

d. A “Claim” is defined as any claim or other matter in dispute between EMS|MC and Client that arises from or relates in any way to this Agreement or to the Services, hardware, software, or data provided by EMS|MC hereunder, regardless of whether such claim or matter is denominated as a contract claim, tort claim, warranty claim, indemnity claim, statutory claim, arbitration demand, or otherwise.

e. To the fullest extent allowed by law, the total liability of EMS|MC to Client regarding any and all Claims shall be capped at, and shall in no event exceed, the total fees paid by Client to EMS|MC under this Agreement in the twelve (12) months prior to the event giving rise to the Claim (the “Liability Cap”). All amounts that may be potentially awarded against EMS|MC in connection with a Claim are included in and subject to the Liability Cap and shall not cause the Liability Cap to be exceeded, including, without limitation, all direct compensatory damages, interest, costs, expenses, and attorneys’ fees. Provided, however, that nothing in the foregoing shall be construed as an admission of liability by EMS|MC in any amount or as a waiver or compromise of any other defense that may be available to EMS|MC regarding any Claim.

f. To the fullest extent allowed by law, and notwithstanding any statute of limitations, statute of repose, or other legal time limit to the contrary, no Claim shall be brought by Client against EMS|MC after the earlier of the following to occur (the “Claim Time Limit”): (i) the time period for bringing an action under any applicable state or federal statute of limitations; one (1) year after the date upon which Client discovered, or should have discovered, the facts giving rise to an alleged claim; or (ii) two (2) years after the first act or omission giving rise to an alleged claim. Any Claim not brought within the Claim Time Limit is waived. The Claim Time Limit applies, without limitation, to any Claim brought in arbitration under the arbitration clause below and shall be deemed to have been satisfied if an arbitration demand asserting such Claim is received by the American Arbitration Association (or other arbitration administrator as may be mutually agreed on by EMS|MC and Client) within the Claim Time Limit. Notwithstanding the foregoing, if a Claim has been asserted in arbitration within the Claim Time Limit, a proceeding in court to confirm, enforce, vacate, modify, correct, or amend an arbitration award resulting from such arbitration may be brought outside the Claim Time Limit as long as it is brought within the time period required by applicable law.

g. Client agrees that any Claim Client may have against EMS|MC, including EMS|MC’s past or present employees or agents, shall be brought individually and Client

shall not join such Claim with claims of any other person or entity or bring, join or participate in a class action against EMS|MC.

h. To the fullest extent allowed by law, EMS|MC and Client waive claims against each other for consequential, indirect, incidental, special, punitive, exemplary, and treble damages, and for any other damages in excess of direct, compensatory damages including, but not limited to, loss of profits, loss of data, or loss of business, regardless of whether such claim or matter is denominated as a contract claim, tort claim, warranty claim, indemnity claim, statutory claim, arbitration demand, or otherwise, even if a party has been apprised of the possibility or likelihood of such damages occurring (the “Non-Direct Damages Waiver”).

i. Subject to the Liability Cap, the Claim Time Limit and the Non-Direct Damages Waiver, EMS|MC agrees to indemnify, hold harmless, and defend Client, with reasonably acceptable counsel, from and against any fines, penalties, damages, and judgments that Client becomes legally obligated to pay to a third party proximately caused by EMS|MC’s negligence or willful misconduct. Provided, however, that this indemnity is subject to the following further conditions and limitations: (i) Client must provide prompt written notice to EMS|MC of the matter for which indemnity is or may be sought, within such time that no right of EMS|MC is prejudiced, and in no event no later than thirty (30) days after Client first becomes aware of the facts that give rise or may give rise to a right of indemnity; (ii) Client must allow EMS|MC the opportunity to direct and control the defense and handling of the matter for which indemnity is or may be sought; (iii) Client must not agree to any settlement or other voluntary resolution of a matter for which indemnity is or may be sought without EMS|MC’s express consent; and (iv) Client shall not seek or be entitled to indemnify for amounts that Client reimburses or refunds to Medicaid, Medicare, any governmental entity, any insurer, or any other payer as a result of medical services or medical transportation services for which Client should not have received payment in the first place under applicable rules, regulations, standards and policies. Client waives all rights of indemnity against EMS|MC not in accordance with this subsection.

j. All Claims between EMS|MC and Client shall be resolved by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association then in effect, except that either party may, at that party’s option, seek appropriate equitable relief in any court having jurisdiction. The hearing in such arbitration proceeding shall take place in Waukesha County, Wisconsin, or in such other location as may be mutually agreed on by EMS|MC and Client. The arbitrator in such proceeding, or if more than one arbitrator, each arbitrator, shall be an attorney with at least fifteen (15) years of experience in commercial litigation or in health care law. The arbitrator(s) shall

have no authority to enter an award against EMS|MC that: (i) exceeds the Liability Cap; (ii) is based on a Claim brought after the Claim Time Limit; (iii) includes any damages waived by the Non-Direct Damages Waiver; or (iv) is otherwise in contravention of this Agreement. An award entered by the arbitrator(s) shall be enforceable in the United States District Court for the Eastern District of Wisconsin or in any other court having jurisdiction.

k. In any arbitration proceeding or permitted court proceeding regarding any Claim, the prevailing party shall be entitled to recover from the non-prevailing party the reasonable costs and expenses incurred by the prevailing party in connection with such proceeding, including, without limitation, the reasonable attorneys' fees, arbitration or court filing fees, arbitrator compensation, expert witness charges, court reporter charges, and document reproduction charges incurred by the prevailing party. Which party is the prevailing party shall be determined in light of the surrounding circumstances, such as comparing the relief requested with that awarded, and shall not be determined simply by whether one party or the other receives a net monetary recovery in its favor.

l. Notwithstanding the foregoing, nothing contained within this Agreement is intended to be a waiver or estoppel of the City of New Berlin or its insurer's ability to rely upon the limitations, defenses and immunities contained within Wisconsin law, including, but not limited to, those contained within Wisconsin Statutes Sections 893.80, 895.52 and 345.05. To the extent that the City of New Berlin may be found liable pursuant to a contract claim, tort claim, warranty claim, indemnity claim, statutory claim, arbitration demand, or otherwise, the City of New Berlin or its insurer shall not be liable for an amount greater than the limits of liability for municipal claims established by Wisconsin law.

### **13. GENERAL.**

a. Status of Parties. Nothing contained in this Agreement shall be construed as establishing a partnership or joint venture relationship between EMS|MC and Client, or as establishing an agency relationship beyond EMS|MC's service as a billing and collection agent of Client under the express terms of this Agreement. EMS|MC and its employees and representatives shall have no legal authority to bind Client.

b. Assignment. Neither this Agreement nor any rights or obligations hereunder shall be assigned by either party without prior written consent of the other party. Any purported assignment in violation of this Section 12(b) shall be null and void.

c. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors, assigns (where permitted), and transferees.

d. Notices. All notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given: (i) on the day received, if personally delivered; (ii) on the day received if sent by a recognized overnight delivery service, according to the courier's record of delivery; and (iii) on the 5th (fifth) calendar day after the date mailed by certified or registered mail. Such notices shall be addressed as follows:

Client:

City of New Berlin Fire Department  
16300 W National Avenue  
New Berlin, WI 53151

EMS|MC:

EMS Management & Consultants, Inc.  
Chief Executive Officer  
2540 Empire Drive  
Suite 100  
Winston-Salem, NC 27103

Either party may change its address for notices under this Agreement by giving written notice of such change to the other party in accordance with the terms of this section.

e. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the laws of the State of Wisconsin, notwithstanding any conflicts of law rules to the contrary.

f. Integration of Terms. This instrument together with all attachments, exhibits and schedules constitutes the entire agreement between the parties, and supersedes all prior negotiations, commitments, representations and undertakings of the parties with respect to its subject matter. Without limiting the foregoing, this Agreement supersedes and takes precedence over any inconsistent terms contained in any Request for Proposal ("RFP") from Client and any response to that RFP from EMS|MC.

g. Amendment and Waiver. This Agreement may be amended or modified only by an instrument signed by all of the parties. A waiver of any provision of this Agreement must be in writing, designated as such, and signed by the party against whom enforcement of the waiver is sought. The waiver of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other breach thereof.

h. Severability. If any provision of this Agreement shall not be valid for any reason, such provision shall be entirely severable from, and shall have no effect upon, the remainder of this Agreement. Any such invalid provision shall be subject to partial enforcement to the extent necessary to protect the interest of the parties hereto.

i. Force Majeure. With the exception of Client's payment obligation, a Party will not be in breach or liable for any delay of its performance of this Agreement caused by natural disasters or other unexpected or unusual circumstances reasonably beyond its control.

j. Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

k. Counterparts. This Agreement may be executed in multiple counterparts by a duly authorized representative of each party.

l. Survival. All terms which by their nature survive termination shall survive termination or expiration of the Agreement including, but not limited to, Sections 3(c), 3(f) – (h), 5(a), 5(c), 7, 9 – 12.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed on the later of the dates set forth below.

Each person whose signature appears hereon represents, warrants and guarantees that he/she has been duly authorized and has full authority to execute this Agreement on behalf of the party on whose behalf this Agreement is executed.

EMS|MC:

CLIENT:

EMS Management & Consultants, Inc.

City of New Berlin

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

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

Print Name: \_\_\_\_\_

Print Name: David Ament

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

Title: Mayor

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

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

## **Exhibit A Software**

1. **Software.** Client will use the following ePCR software: First Due, (“Vendor”).
2. **Software Fees.** EMS|MC will pay the Software vendor for the full annual cost of the Software in the amount pursuant to the agreement between EMS|MC and the Software Vendor. Future increases in the monthly base package software cost will be borne by Client unless EMS|MC specifically agrees to pay for such increase. EMS|MC shall stop paying any software costs upon the expiration or termination of this Agreement. Client is responsible for ensuring that it has a copy of all data maintained in the Software prior to termination of this Agreement or paying for continued use of and access to the data maintained in the Software.
3. If required by the Vendor, Client will enter into an agreement with the Vendor for use of the Software and comply with all terms and conditions of such agreement.
4. Client agrees to provide EMS|MC with administrative access to the ePCR system or similar access in order to run reports and review documents and attachments.
5. **No EMS|MC Warranty.** EMS|MC DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE ePCR SOFTWARE.
6. **First Due Modules to Include:**
  - Incident Reporting - ePCR
  - Scheduling
  - Assets & Inventory
  - Hexagon Integraph CAD Integration

**Attachment 1**  
**Business Associate Addendum**

This Business Associate Addendum (the “Addendum”) is made effective the \_\_\_\_\_ day of \_\_\_\_\_ 2025, by and between the City of New Berlin , hereinafter referred to as “Covered Entity,” and EMS Management & Consultants, Inc., hereinafter referred to as “Business Associate” (individually, a “Party” and collectively, the “Parties”).

WITNESSETH:

WHEREAS, the Parties wish to enter into a Business Associate Addendum to ensure compliance with the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA Privacy and Security Rules”) (45 C.F.R. Parts 160 and 164); and

WHEREAS, the Health Information Technology for Economic and Clinical Health (“HITECH”) Act of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, modified the HIPAA Privacy and Security Rules (hereinafter, all references to the “HIPAA Privacy and Security Rules” include all amendments thereto set forth in the HITECH Act and any accompanying regulations); and

WHEREAS, the Parties have entered into a Billing Services Agreement (the “Agreement”) whereby Business Associate will provide certain services to Covered Entity and, pursuant to such Agreement, Business Associate may be considered a “business associate” of Covered Entity as defined in the HIPAA Privacy and Security Rules; and

WHEREAS, Business Associate may have access to Protected Health Information or Electronic Protected Health Information (as defined below) in fulfilling its responsibilities under the Agreement; and

WHEREAS, Covered Entity wishes to comply with the HIPAA Privacy and Security Rules, and Business Associate wishes to honor its obligations as a Business Associate to Covered Entity.

THEREFORE, in consideration of the Parties’ continuing obligations under the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Addendum.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Addendum shall have the definitions set forth in the HIPAA Privacy and Security Rules. In the event of an inconsistency between the provisions of this Addendum and mandatory provisions of the HIPAA Privacy and Security Rules, as amended, the HIPAA Privacy and Security Rules in effect at the time shall control. Where provisions of this Addendum are different than those mandated by the HIPAA Privacy and Security Rules but are nonetheless permitted by the HIPAA Privacy and Security Rules, the provisions of this Addendum shall control.

The term “Breach” means the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. The term “Breach” does **not** include: (1) any unintentional acquisition, access, or use of protected health information by any employee or individual acting under the authority of a covered entity

or business associate if (a) such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate, and (b) such information is not further acquired, accessed, used, or disclosed by any person; or (2) any inadvertent disclosure from an individual who is otherwise authorized to access protected health information at a facility operated by a covered entity or business associate to another similarly situated individual at same facility; and (3) any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed without authorization by any person.

The term “Electronic Health Record” means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

The term “HIPAA Privacy and Security Rules” refers to 45 C.F.R. Parts 160 and 164 as currently in effect or hereafter amended.

The term “Protected Health Information” means individually identifiable health information as defined in 45 C.F.R § 160.103, limited to the information Business Associate receives from, or creates, maintains, transmits, or receives on behalf of, Covered Entity.

The term “Electronic Protected Health Information” means Protected Health Information which is transmitted by or maintained in Electronic Media (as now or hereafter defined in the HIPAA Privacy and Security Rules).

The term “Secretary” means the Secretary of the Department of Health and Human Services.

The term “Unsecured Protected Health Information” means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in guidance published in the Federal Register at 74 Fed. Reg. 19006 on April 27, 2009 and in annual guidance published thereafter.

## II. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

a. Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement or this Addendum, provided that such use or disclosure would not violate the HIPAA Privacy and Security Rules if done by Covered Entity. Until such time as the Secretary issues regulations pursuant to the HITECH Act specifying what constitutes “minimum necessary” for purposes of the HIPAA Privacy and Security Rules, Business Associate shall, to the extent practicable, disclose only Protected Health Information that is contained in a limited data set (as defined in Section 164.514(e)(2) of the HIPAA Privacy and Security Rules), unless the person or entity to whom Business Associate is making the disclosure requires certain direct identifiers in order to accomplish the intended purpose of the disclosure, in which event Business Associate may disclose only the minimum necessary amount of Protected Health Information to accomplish the intended purpose of the disclosure.

b. Business Associate may use Protected Health Information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate, provided that such uses are permitted under state and federal confidentiality laws.

c. Business Associate may disclose Protected Health Information in its possession to third parties for the purposes of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that:

1. the disclosures are required by law; or

2. Business Associate obtains reasonable assurances from the third parties to whom the Protected Health Information is disclosed that the information will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and that such third parties will notify Business Associate of any instances of which they are aware in which the confidentiality of the information has been breached.

d. Until such time as the Secretary issues regulations pursuant to the HITECH Act specifying what constitutes “minimum necessary” for purposes of the HIPAA Privacy and Security Rules, Business Associate shall, to the extent practicable, access, use, and request only Protected Health Information that is contained in a limited data set (as defined in Section 164.514(e)(2) of the HIPAA Privacy and Security Rules), unless Business Associate requires certain direct identifiers in order to accomplish the intended purpose of the access, use, or request, in which event Business Associate may access, use, or request only the minimum necessary amount of Protected Health Information to accomplish the intended purpose of the access, use, or request. Covered Entity shall determine what quantum of information constitutes the “minimum necessary” amount for Business Associate to accomplish its intended purposes.

e. Business Associate may use Protected Health Information to de-identify such information in accordance with 45 C.F.R. § 164.514(b) for Business Associate’s own business purposes or in connection with the services provided pursuant to the Agreement or to provide Data Aggregation services to Customer as permitted by 45 C.F.R. 164.504(e)(2)(i)(b). Once the Protected Health Information has been de-identified or aggregated, it is no longer considered Protected Health Information governed by this Addendum.

### III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

a. Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity’s behalf shall be subject to this Addendum.

b. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement, this Addendum or as required by law.

c. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Addendum. Specifically, Business Associate will:

1. implement the administrative, physical, and technical safeguards set forth in Sections 164.308, 164.310, and 164.312 of the HIPAA Privacy and Security Rules that reasonably and appropriately protect the confidentiality, integrity, and availability of any Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity, and, in accordance with Section 164.316 of the HIPAA Privacy and Security Rules, implement and maintain reasonable and appropriate policies and procedures to enable it to comply with the requirements outlined in Sections 164.308, 164.310, and 164.312; and

2. report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Addendum of which Business Associate becomes aware. Business Associate shall report to Covered Entity any Security Incident of which it becomes aware. Notice is deemed to have been

given for unsuccessful Security Incidents, such as (i) “pings” on an information system firewall; (ii) port scans; (iii) attempts to log on to an information system or enter a database with an invalid password or user name; (iv) denial-of-service attacks that do not result in a server being taken offline; or (v) malware (e.g., a worms or a virus) that does not result in unauthorized access, use, disclosure, modification or destruction of Protected Health Information.

d. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information.

e. Business Associate agrees to comply with any requests for restrictions on certain disclosures of Protected Health Information to which Covered Entity has agreed in accordance with Section 164.522 of the HIPAA Privacy and Security Rules and of which Business Associate has been notified by Covered Entity. In addition, and notwithstanding the provisions of Section 164.522 (a)(1)(ii), Business Associate agrees to comply with an individual’s request to restrict disclosure of Protected Health Information to a health plan for purposes of carrying out payment or health care operations if the Protected Health Information pertains solely to a health care item or service for which Covered Entity has been paid by in full by the individual or the individual’s representative.

f. At the request of the Covered Entity and in a reasonable time and manner, not to extend ten (10) business days, Business Associate agrees to make available Protected Health Information required for Covered Entity to respond to an individual’s request for access to his or her Protected Health Information in accordance with Section 164.524 of the HIPAA Privacy and Security Rules. If Business Associate maintains Protected Health Information electronically, it agrees to make such Protected Health Information available electronically to the applicable individual or to a person or entity specifically designated by such individual, upon such individual’s request.

g. At the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make available Protected Health Information required for amendment by Covered Entity in accordance with the requirements of Section 164.526 of the HIPAA Privacy and Security Rules.

h. Business Associate agrees to document any disclosures of and make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy and Security Rules.

i. Business Associate agrees that it will make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Secretary for the purpose of determining Covered Entity’s compliance with the HIPAA Privacy and Security Rules, in a time and manner designated by the Secretary, subject to attorney-client and other applicable privileges.

j. Business Associate agrees that, while present at any Covered Entity facility and/or when accessing Covered Entity’s computer network(s), it and all of its employees, agents, representatives and subcontractors will at all times comply with any network access and other security practices, procedures and/or policies established by Covered Entity including, without limitation, those established pursuant to the HIPAA Privacy and Security Rules.

k. Business Associate agrees that it will not directly or indirectly receive remuneration in exchange for any Protected Health Information of an individual without the written authorization of the individual or the individual’s representative, except where the purpose of the exchange is:

1. for public health activities as described in Section 164.512(b) of the Privacy and Security Rules;

2. for research as described in Sections 164.501 and 164.512(i) of the Privacy and Security Rules, and the price charged reflects the costs of preparation and transmittal of the data for such purpose;

3. for treatment of the individual, subject to any further regulation promulgated by the Secretary to prevent inappropriate access, use, or disclosure of Protected Health Information;

4. for the sale, transfer, merger, or consolidation of all or part of Business Associate and due diligence related to that activity;

5. for an activity that Business Associate undertakes on behalf of and at the specific request of Covered Entity;

6. to provide an individual with a copy of the individual's Protected Health Information pursuant to Section 164.524 of the Privacy and Security Rules; or

7. other exchanges that the Secretary determines in regulations to be similarly necessary and appropriate as those described in this Section III.k.

l. Business Associate agrees that it will not directly or indirectly receive remuneration for any written communication that encourages an individual to purchase or use a product or service without first obtaining the written authorization of the individual or the individual's representative, unless:

1. such payment is for a communication regarding a drug or biologic currently prescribed for the individual and is reasonable in amount (as defined by the Secretary); or

2. the communication is made on behalf of Covered Entity and is consistent with the terms of this Addendum.

m. Business Associate agrees that if it uses or discloses patients' Protected Health Information for marketing purposes, it will obtain such patients' authorization before making any such use or disclosure.

n. Business Associate agrees to implement a reasonable system for discovery of breaches and method of risk analysis of breaches to meet the requirements of HIPAA, The HITECH Act, and the HIPAA Regulations, and shall be solely responsible for the methodology, policies, and procedures implemented by Business Associate.

o. State Privacy Laws. Business Associate shall understand and comply with state privacy laws to the extent that state privacy laws are not preempted by HIPAA or The HITECH Act.

#### IV. BUSINESS ASSOCIATE'S MITIGATION AND BREACH NOTIFICATION OBLIGATIONS

a. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Addendum.

b. Following the discovery of a Breach of Unsecured Protected Health Information, Business Associate shall notify Covered Entity of such Breach without unreasonable delay and in no case later than forty-five (45) calendar days after discovery of the Breach. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate.

c. Notwithstanding the provisions of Section IV.b., above, if a law enforcement official states to Business Associate that notification of a Breach would impede a criminal investigation or cause damage to national security, then:

1. if the statement is in writing and specifies the time for which a delay is required, Business Associate shall delay such notification for the time period specified by the official; or

2. if the statement is made orally, Business Associate shall document the statement, including the identity of the official making it, and delay such notification for no longer than thirty (30) days from the date of the oral statement unless the official submits a written statement during that time.

Following the period of time specified by the official, Business Associate shall promptly deliver a copy of the official's statement to Covered Entity.

d. The Breach notification provided shall include, to the extent possible:

1. the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach;

2. a brief description of what happened, including the date of the Breach and the date of discovery of the Breach, if known;

3. a description of the types of Unsecured Protected Health Information that were involved in the Breach, if known (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

4. any steps individuals should take to protect themselves from potential harm resulting from the Breach; and

5. a brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches.

e. Business Associate shall provide the information specified in Section IV.d., above, to Covered Entity at the time of the Breach notification if possible or promptly thereafter as information becomes available. Business Associate shall not delay notification to Covered Entity that a Breach has occurred in order to collect the information described in Section IV.d. and shall provide such information to Covered Entity even if the information becomes available after the forty-five (45)-day period provided for initial Breach notification.

## V. OBLIGATIONS OF COVERED ENTITY

a. Upon request of Business Associate, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520 of the HIPAA Privacy and Security Rules.

b. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information to which Covered Entity has agreed in accordance with Section 164.522 of the HIPAA Privacy and Security Rules, and Covered Entity shall inform Business Associate of the termination of any such restriction, and the effect that such termination shall have, if any, upon Business Associate's use and disclosure of such Protected Health Information.

## VI. TERM AND TERMINATION

a. Term. The Term of this Addendum shall be effective as of the date first written above, and shall terminate upon the later of the following events: (i) in accordance with Section VII.c., when all of the Protected Health Information provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity or, if such return or destruction is infeasible, when protections are extended to such information; or (ii) upon the expiration or termination of the Agreement.

b. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Addendum by Business Associate and Business Associate's failure to cure such breach within thirty (30) days of receiving notice of same from Covered Entity, Covered Entity shall have the right to terminate this Addendum and the Agreement.

c. Effect of Termination.

1. Except as provided in paragraph 2. of this subsection, upon termination of this Addendum, the Agreement or upon request of Covered Entity, whichever occurs first, Business Associate shall return or destroy all Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Neither Business Associate nor its subcontractors or agents shall retain copies of the Protected Health Information.

2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible and shall extend the protections of this Addendum to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## VII. MISCELLANEOUS

a. **No Rights in Third Parties.** Except as expressly stated herein, the Parties to this Addendum do not intend to create any rights in any third parties.

b. **Survival.** The obligations of Business Associate under Section VII(c) of this Addendum shall survive the expiration, termination, or cancellation of this Addendum, the Agreement, and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

c. **Amendment.** This Addendum may be amended or modified only in a writing signed by the Parties. The Parties agree that they will negotiate amendments to this Addendum to conform to any changes in the HIPAA Privacy and Security Rules as are necessary for Covered Entity to comply with the current requirements of the HIPAA Privacy and Security Rules. In addition, in the event that either Party believes in good faith that any provision of this Addendum fails to comply with the then-current requirements of the HIPAA Privacy and Security Rules or any other applicable legislation, then such Party shall notify the other Party of its belief in writing. For a period of up to thirty (30) days, the Parties shall address in good faith such concern and amend the terms of this Addendum, if necessary to bring it into compliance. If, after such thirty (30)-day period, the Addendum fails to comply with the HIPAA Privacy and Security Rules or any other applicable legislation, then either Party has the right to terminate this Addendum and the Agreement upon written notice to the other party.

d. **Independent Contractor.** None of the provisions of this Addendum are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Addendum and any other agreements between the Parties evidencing their business relationship.

e. **Interpretation.** Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Privacy and Security Rules.

f. **Certain Provisions Not Effective in Certain Circumstances.** The provisions of this Addendum relating to the HIPAA Security Rule shall not apply to Business Associate if Business Associate does not receive any Electronic Protected Health Information from or on behalf of Covered Entity.

g. **Ownership of Information.** Covered Entity holds all right, title, and interest in and to the PHI and Business Associate does not hold and will not acquire by virtue of this Addendum or by virtue of providing goods or services to Covered Entity, any right, title, or interest in or to the PHI or any portion thereof.

h. **Entire Agreement.** This Addendum is incorporated into, modifies and amends the Agreement, inclusive of all other prior amendments or modifications to such Agreement. The terms and provisions of this Addendum shall control to the extent they are contrary, contradictory or inconsistent with the terms of the Agreement. Otherwise, the terms and provisions of the Agreement shall remain in full force and effect and apply to this Addendum.

IN WITNESS WHEREOF, the Parties have executed this Addendum as of the day and year written above.

Each person whose signature appears hereon represents, warrants and guarantees that he/she has been duly authorized and has full authority to execute this Agreement on behalf of the party on whose behalf this Agreement is executed.

**Business Associate:**

**Covered Entity:**

**EMS Management & Consultants, Inc.**

**City of New Berlin**

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

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

Print: \_\_\_\_\_

Print: David Ament

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

Title: Mayor

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

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



## REQUESTED ACTION STATEMENT

**DATE:** June 5, 2025  
**TO:** Mayor Ament and Common Council  
**FROM:** City Clerk Rubina R. Medina

### **Agenda Item:**

- *Discussion and possible action to recommend that the Common Council approve Ordinance No. 2712, an ordinance repealing Section 6-26 of the City of New Berlin Municipal Code relating to the Communications Committee.*

### **ISSUE:**

Section 6-26 of the City of New Berlin Municipal Code establishes a Communications Committee charged with oversight of the City's communications systems, including cable services and the municipal website. In practice, these responsibilities have consistently been carried out by City staff under the direction of the Mayor and with oversight by the Common Council when necessary. The committee has not held regular meetings in recent years due to a lack of actionable matters, rendering it inactive and unnecessary under the City's current administrative structure.

### **REQUESTED:**

I respectfully request that the Common Council approve Ordinance No. 2712, which repeals Section 6-26 of the Municipal Code and formally dissolves the Communications Committee.

### **FISCAL IMPACT:**

There are no anticipated budget impacts. The committee has not been meeting, and communications responsibilities are already handled within existing staff duties and departmental resources.

### **ATTACHMENTS:**

1. **Ordinance 2712** – drafted by Rubina R. Medina, City Clerk

**ORDINANCE NO. 2712**

**ORDINANCE TO REPEAL SECTION 6-26 OF THE MUNICIPAL CODE OF THE CITY OF NEW BERLIN RELATING TO THE COMMUNICATIONS COMMITTEE**

**WHEREAS**, Section 6-26 of the City of New Berlin Municipal Code establishes a Communications Committee responsible for oversight of the City’s communications systems, including cable and the City’s website; and

**WHEREAS**, the Communications Committee has not held regular meetings for an extended period due to a lack of actionable items; and

**WHEREAS**, communications oversight and related responsibilities have increasingly been handled by City staff, under the direction of the Mayor and with appropriate oversight from the Common Council when necessary; and

**WHEREAS**, the Mayor and City staff recommend eliminating the inactive committee to streamline operations and align with current administrative practices;

**NOW, THEREFORE**, the Common Council of the City of New Berlin, Wisconsin, do ordain as follows:

**SECTION I**

Section 6-26 of the City of New Berlin Municipal Code entitled “Communications Committee” is hereby repealed in its entirety.

**SECTION II**

This ordinance shall take effect upon passage and publication as approved by law, and the City Clerk shall so amend the Code of Ordinances of the City of New Berlin and shall indicate the date and number of this amending ordinance therein.

**PASSED AND ADOPTED** by the Common Council this 10<sup>th</sup> day of June 2025.

APPROVED:

\_\_\_\_\_  
David Ament, Mayor

Countersigned:

\_\_\_\_\_  
Rubina R. Medina, City Clerk