Town of Berry Board Meeting
March 17, 2025, 7:00 p.m., at the Town Hall, 9046 State Road 19, Mazomanie, WI 53560
Agenda

1. Call to order
2. Confirmation of Compliance with Open Meetings Law
3. Approve minutes of February 17, 2025
4. Public Comments: You may address the Board on any item not on the agenda. A discussion item may be placed on a future agenda. Public comment may be heard on any agenda item either now, or at the time the agenda item is to be discussed, or at the discretion of the Town Chair at any other time the agenda item is discussed. Comments are generally limited to three minutes.
5. Discussion/action re: 2024 Audit
6. Jodi Hager, Dane County Community Deputy
7. Patrolman Report
8. Discussion/action re: CARPC Comprehensive Plan revision assistance proposal
9. Discussion/action re: Award bids for chip sealing, excavation/culverts and paving on various roads
10. Discussion/action re: Court order for 8785 Highway 19
11. Discussion/action re: Puppy Mills Ordinance
12. Discussion/action re: Assessor contract for 2026-2030
13. Discussion/action re: MSA Professional Services Agreement for Whippoorwill Road reconstruction
14. Discussion/action re: Revising Ordinance 103.1, Appointing Alternate Members of Board of Review
15. Discussion/action re: Sunning Hill Cemetery stone markers restoration
16. Discussion/action re: Increasing the per hour wage for the election inspectors
17. Discussion/action re: Purchasing a new ditch mower
18. Budgetary Matters
    A. Discussion/action re: Payment of bills
    B. Discussion/action re: Proposal for replacing the two toilets at the town hall
    C. Discussion/action re: Renting Lucas Danz's trailer
19. Discussion/action re: Committee reports/Correspondence/Communications
    A. Fire Districts
    B. EMS Districts
    C. Other
20. Discussion of future agenda items
21. Adjourn

Persons requiring additional services to participate in a public meeting should contact the Town Clerk at the Town Hall, 9046 Hwy 19, Mazomanie, WI 53560. 767-4152 twnberry@chorus.net
Posted: 3/10/25 Brenda Kahl, Clerk/Treasurer

TITLE: Town of Berry Town Board Meeting Minutes
DATE: February 17, 2025
TIME: 7:00 – 9:15 p.m.
PLACE: Town Hall, 9046 State Road 19, Mazomanie, WI 53560
POSTINGS: Town Hall and Town of Berry website

I. CALL TO ORDER – ROLL CALL: The meeting was called to order at 7:00 p.m. Board members present: Duane Haag, David Evert, Michael Statz, Nichole Schwoerer and Derek Statz. Also present Clerk, Brenda Kahl and Patrolman, Lucas Danz.

II. CONFIRMATION OF COMPLIANCE WITH OPEN MEETING LAWS
The Clerk confirmed that the agenda was posted at the town hall and on the town website.

III. APPROVE MINUTES OF JANUARY 21, 2025
Motion Evert/Schwoerer to approve the minutes of January 21, 2025. Motion carried. Vote 5-0

IV. PUBLIC COMMENTS: You may address the Board on any item not on the agenda. A discussion item may be placed on a future agenda. Public comment may be heard on any agenda item either now, or at the time the agenda item is to be discussed, or at the discretion of the Town Chair at any other time the agenda item is discussed.

V. PATROLMAN REPORT
Had a busy weekend plowing snow and Ben and Jaeger are doing an excellent job plowing. Continuing to clear and cut wood on Indian Trail along with burning the brush piles.

VI. DISCUSSION/ACTION RE:
A. (R-2024-13) Mary Skupniewitz Living Tr, Turkey Road, rezone of 28.69 acres from A-1Ex to AG and 4.73 acres from A-1Ex to SFR and approval of final certified survey map
Motion Evert/M Statz to approve Mary Skupniewitz Living Trust's rezone of 28.69 acres from A-1Ex to AG and 4.73 acres from A-1Ex to SFR and approve the final certified survey map. Motion carried. Vote 5-0

B. (R-2024-17)(CUP-2024-6) Koos Family Farm LLC, 5054 County Road P, rezone 39.9 acres from A-1Ex to EA and a conditional use permit for a mobile service support structure and facilities
Motion Evert/D Statz to approve Koos Family Farm LLC's rezone of 39.9 acres from A-1Ex to EA and a conditional use permit for a mobile service support structure and facilities including the document titled Findings Concerning Rezoning and Conditional Use Permit. Motion carried. Vote 5-0

C. (R-2025-1)(CUP-2025-1) Kendall & Kay Kahl, Agent Korey Kahl, 9336 Spring Valley Road, rezone 29.14 acres from A-2 to AG and a conditional use permit for plumbing fixtures in accessory building
Motion Evert/M Statz to approve Kendall & Kay Kahl's rezone of 29.14 acres from A-2 to AG and a conditional use permit for plumbing fixtures in an accessory building. Motion carried. Vote 5-0

D. (D-2025-1) Korey Kahl, 9336 Spring Valley Road, driveway permit application
Motion Evert/D Statz to approve Korey Kahl's driveway permit application. Motion carried. Vote 5-0

VII. DISCUSSION/ACTION RE: CARPC COMPREHENSIVE PLAN REVISION ASSISTANCE PROPOSAL
Motion M Statz/Schwoerer to table to the next month's meeting. Motion carried. Vote 5-0

VIII. DISCUSSION/ACTION RE: FUTURE OF PARK COMMITTEE
Motion Evert/M Statz that the Park Committee present to the Town Board their wishes in regards to the future of the committee including revisions to the current policy. Motion carried. Vote 5-0

IX. DISCUSSION/ACTION RE: ENDORSEMENT OF BERTRAM COMMUNICATION APPLICATION FOR BEAD FUNDING
Motion Evert/M Statz to endorse Bertram Communication's application for BEAD funding. Motion carried. Vote 5-0

X. DISCUSSION/ACTION RE: ASSESSOR CONTRACT FOR 2026-2030
Motion Haag/M Statz to table to the next month's meeting. Motion carried. Vote 5-0

XI. DISCUSSION/ACTION RE: CONFIRMING OPEN BOOK AND BOARD OF REVIEW DATES
Motion Haag/Evert to hold Open Book on April 10 from 1:00 – 3:00 pm and Board of Review on April 29 from 6:00 – 8:00 pm. Motion carried. Vote 5-0

XII. DISCUSSION/ACTION RE: PUPPY MILLS ORDINANCE
Motion Haag/M Statz to table to the next month's meeting. Motion carried. Vote 5-0

XIII. BUDGETARY MATTERS
A. Discussion/action re: Payment of bills
Motion Haag/M Statz to approve the payment of bills. Motion carried. Vote 5-0. Check numbers 4568-4570 and 19604-19645

XIV. COMMITTEE REPORTS/CORRESPONDENCE/COMMUNICATIONS
*Cross Plains EMS District: The new ambulance will be arriving soon. Plan to keep the current ambulance to use when the new one is unavailable and to rent to other districts as needed.
*Cross Plains Fire District: The tanker truck is being replaced.
*Black Earth Fire District: The Village of Mazomanie is researching combining with the Black Earth Fire District and District 1 EMS.

XV. DISCUSSION OF FUTURE AGENDA ITEMS

XVI. ADJOURN

Motion Haag/M Statz to adjourn until the next regular meeting or the call of the chair. Motion carried. Vote 5-0

Brenda Kahl, Clerk/Treasurer

Duane Haag, Chair

Town of Berry
Comprehensive Plan Update

PRELIMINARY COST PROPOSAL

Project Scope

Data & Research

- Update 12 existing **tables/charts** and associated text
- Create up to 6 additional charts or tables with data on employment, businesses, industry, workforce, traffic volumes, contaminated sites, etc.
- Incorporate **background information** and **goals/objectives/policies** for current issues such as:
    - Solar development (small, community, and utility-scale)
    - Preventing loss of park land
    - Residential subdivision development
    - Increased coordination with V-Cross Plains, Dane County
    - Mining/quarry operations
    - Broadband access
    - Short-term rentals, wedding barns, outdoor storage facilities

Outreach

- Engage residents to gauge current opinions on key planning issues
    - **Survey** (recommended)
        - Mailing costs for postcard notifications and/or paper surveys not included in preliminary cost estimate
    - **Public hearing** (required)

***Option** to add a public workshop or open house, creation of promotional materials, or other outreach activities (not included in preliminary cost estimate)*

Mapping

- Update 7 existing **maps** (jurisdictional boundaries, ag soil suitability, natural resources, septic suitability, floodplains, existing land use, future land use)
- Create up to 3 additional maps, such as road pavement ratings, crash data, groundwater, etc.

Document

- Minor **text** updates (replace outdated references, etc.), with special attention to:
    - Issues and Opportunities
    - Intergovernmental Coordination
- Review **goals, objectives, and policies** and update as needed

- Review existing **appendices** and update as needed, including:
  - Guidelines
  - Preferred site development process
  - Definitions
  - Wireless communication and facilities guidelines
- Add **zoning ordinance recommendations** to Implementation chapter and update Implementation table

» Key Deliverables

1. Public participation plan
2. Survey and survey results summary
3. Data and recommendations on current planning issues
4. Updated version of current plan (same structure with refreshed content and basic format updates)

Cost Estimate

Administration	Internal meetings and coordination Billing, contract, and general communication	$4,300
Data & Research	Data collection, analysis, and research Field work conducted to collect data	$4,800
Outreach	Meetings (up to 10) and coordination with community staff Survey preparation and analysis Public hearing	$9,200
Mapping	Spatial analysis Map drafting and updating	$1,500
Document	Drafting document sections Layout and formatting Internal draft reviews	$13,100
	TOTAL	**$32,900**

Individual Outreach Activity Costs:

Survey $4,000

Public workshop or open house $4,000

Promotional materials $2,900

Flyers, newsletter articles, social media content, etc.

About CARPC

The Capital Area Regional Planning Commission (CARPC) is one of nine regional planning commissions (RPCs) in Wisconsin established to address issues that go beyond municipal boundaries. As an independent unit of government, CARPC develops and promotes regional plans, provides objective information, and supports local planning efforts. Our primary planning region is home to roughly 600,000 people living in Dane County's cities, towns, and villages.

Our Mission

To strengthen the region by engaging communities through planning, collaboration, and assistance.

Our Vision

A region where communities create exceptional quality of life for all by working together to solve regional challenges

Who We Are

Our team of 11 full-time staff bring a wide range of education, training, and professional expertise to the challenges facing the region. CARPC's 13 Commissioners are appointed by the Mayor of Madison, the Dane County Executive, the Dane County Cities' and Villages' Association, and the Dane County Towns Association.

What We Do

- Bring communities together to collaborate on land use and water quality plans
- Advocate for the Regional Development Framework, a long-range land use guide for Dane County that describes residents' preferred outcomes over the next 20-30 years
- Administer the Dane County Water Quality Plan for the DNR
- Conduct watershed and future urban development planning
- Provide planning, mapping, and data assistance to local communities, in Dane County and occasionally in the adjoining counties not affiliated with a regional planning commission.

Key Project Staff

- **Caitlin Shanahan, Senior Planner** (certified planner, experienced with land use and comprehensive planning and community engagement processes)
- **Matthew Krempely, Community Planner** (skilled data analyst and mapping specialist, background in GIS and geography)

Contact

Caitlin Shanahan, Senior Community Planner & Outreach Coordinator
caitlins@capitalarearpc.org
(608) 474-6021
100 State St, Ste 400
Madison, WI 53703-2573

3-10-25

Agenda Item #11, Puppy Mills Ordinance

Remark from Attorney Mark Hazelbaker:

Duane asked me to prepare a "puppy mill" ordinance. I'd like some more information about what the intended scope of the ordinance is. Wisconsin has a state law requiring any facility which sells 25 or more dogs in a year to have a license. It has quite detailed standards. See attached,
https://docs.legis.wisconsin.gov/code/admin_code/atcp/010/16/18

If there is a facility which is causing problems, we should target the ordinance to the problems.

3-10-25

Agenda Item #12, Assessor contract for 2026-2030

In the surrounding area, the majority of municipalities use either Accurate or Associated. We also reached out to Magnan Assessment Services and Kleven Property Assessment. Associated and Magnan would be available to give a proposal for 2026 on, but Kleven is not available until 2028.

Since Accurate uses their own data program, it sounds like a new assessor will need to manually enter the assessment data into their system. One assessor also mentioned that they would do an exterior valuation if we switched to them, but I don't know if this is a standard procedure when an assessor picks up a new client.

The decision will be if we stay with Accurate or get proposals from other assessors.

ACCURATE APPRAISAL LLC

DATE
9/19/2024

Municipality
Town of Berry
Dane County

Accurate Appraisal LLC
1428 Midway Road
Menasha, WI 54952
920-843-6897
scottm@accurateassessor.com

Options Sheet
Town of Berry
Last Market Update 2022
3 years out of compliance

OPTION	DESCRIPTION	YEARLY PRICE	TOTAL CONTRACT
5-Year Blend	2026 Market Update 2027 - 2030 Maintenance	$22,200	$111,000
5-Year Blend Exterior Inspections	2026 Market Update 2027 - 2030 Maintenance 1/5 Exterior Inspections each year	$33,000	$165,000
5-Year Blend Interior Inspections	2026 Market Update 2027 - 2030 Maintenance 1/5 Interior Inspections each year	$48,000	$240,000

The Town of Berry had a market update in 2022 and is currently 3 years out of compliance. Accurate can perform the market update in 2026 to get the Town back into compliance. In addition, the Town has not had a full revaluation in the past 10 years, which is required by the department of revenue. Accurate has proposed an exterior and an interior inspection option if the Town chooses to have inspection.

These prices include hosting the Town's data online, all printing and postage, and any educational program the Town chooses to be on.

Professional Services Agreement

MSA Project Number: 00383018

This AGREEMENT (Agreement) is made effective March 5, 2025 by and between

MSA PROFESSIONAL SERVICES, INC (MSA)
Address: 1230 South Boulevard, Baraboo, WI 53913
Phone: (608) 355-8959
Representative: Gregg Borucki Email: gborucki@msa-ps.com

TOWN OF BERRY (OWNER)
Address: 9046 State Road 19, Mazomanie, WI 53560
Phone: (608) 798-3638
Representative: Duane Haag, Chairman Email: twnberry@chorus.net

Project Name: Whippoorwill Road Reconstruction

The scope of the work authorized is: See Attachment A: Scope of Services

The schedule to perform the work is: Approximate Start Date: March 2025
Approximate Completion Date: July 2025

The estimated fee for the work is: $44,800

All services shall be performed in accordance with the General Terms and Conditions of MSA, which is attached and made part of this Agreement. Any attachments or exhibits referenced in this Agreement are made part of this Agreement. Payment for these services will be on a time and expense basis. Attachment B: Rate Schedule is attached and made part of this Agreement

OWNER'S NAME

_____
Duane Haag
Town Chairman
Date:_____

MSA PROFESSIONAL SERVICES, INC.

_____
Gregg Borucki
Team Leader
Date: March 5, 2025

OWNER ATTEST:

_____
Brenda Kahl
Town Clerk/Treasurer
Date:_____

_____
Nick Manke
Senior Project Engineer
Date: March 5, 2025

MSA PROFESSIONAL SERVICES, INC. (MSA)
GENERAL TERMS AND CONDITIONS OF SERVICES (PUBLIC)

1. **Scope and Fee.** The scope of Owner's Project (the "Project"), scope of MSA's services (the "Work"), for those services are defined in Attachment A. The scope and fee constitute a good faith estimate of the tasks and associated fees required to perform the services defined in Attachment A. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development service or involve renovation of an existing building or structure, activities often cannot be fully defined during initial planning. As the Project progresses, facts uncovered may reveal a change in direction which may alter the Work. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required.

2. **Owner's Responsibilities.**

(a) Project Scope and Budget

The OWNER shall define the scope and budget of the Project and, when applicable, periodically update the Project budget, including that portion allocated for the cost of the Work. The Project budget shall include contingencies for design, development, and, when required by the scope of the Project, construction of the Project. The OWNER shall not significantly increase or decrease the overall Project scope or schedule, the portion of the budget allocated for the cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of MSA to a corresponding change in the Project scope, quality, schedule, and compensation of MSA.

(b) Designated Owner Representative

The OWNER shall identify a Designated Representative who shall be authorized to act on behalf of the OWNER with respect to the Project. OWNER's Designated Representative shall render related decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of MSA's services. MSA shall not be liable for any error or omission made by OWNER, OWNER's Designated Representative, or OWNER's consultant.

(c) Tests, Inspections, and Reports

When required by the scope of the Project, the OWNER shall furnish tests, inspections, and reports required by law or the Contract Documents, such as planning studies; preliminary designs; structural, mechanical, or chemical tests; tests for air, water, or soil pollution; and tests for hazardous materials.

(d) Additional Consultants

MSA's consultants shall be identified in Attachment A. The OWNER shall furnish the services of other consultants other than those designated in Attachment A, including such legal, financial, accounting, and insurance counseling services as may be required for the Project.

(e) OWNER Provided Services and Information

MSA shall be entitled to rely on the accuracy and completeness of services and information furnished by the OWNER, Designated OWNER Representative, or Consultant. MSA shall use reasonable efforts to provide prompt written notice to the OWNER if MSA becomes aware of any errors, omissions, or inconsistencies in such services or information.

3. **Billing.** MSA will bill the OWNER monthly with net payment due upon receipt. Balances due past thirty (30) days shall be subject to an interest charge at a rate of 18% per year from said thirtieth day. In addition, MSA may, after giving seven days written notice, suspend service under any agreement until the OWNER has paid in full all amounts due for services rendered and expenses incurred, including the interest charge on past due invoices.

4. **Costs and Schedules.** Costs (including MSA's fees and reimbursable expenses) and schedule commitments shall be subject to change for delays caused by the OWNER's failure to provide specified facilities or information or for delays caused by unpredictable occurrences including, without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults, by suppliers of materials or services, process shutdowns, pandemics, acts of God or the public enemy, or acts of regulations of any governmental agency. Temporary delays of services caused by any of the above which result in additional costs beyond those outlined may require renegotiation of this agreement.

5. **Access to Site.** Owner shall furnish right-of-entry on the Project site for MSA and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of

services. MSA will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

6. **Location of Utilities.** Owner shall supply MSA with the location of all pre-existent utilities and MSA has the right to reasonably rely on all Owner supplied information. In those instances where the scope of services require MSA to locate any buried utilities, MSA shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend MSA in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information of instructions which have been furnished to MSA by others.

7. **Professional Representative.** MSA intends to serve as the OWNER's professional representative for those services as defined in this agreement, and to provide advice and consultation to the OWNER as a professional. Any opinions of probable project costs, reviews and observations, and other recommendations made by MSA for the OWNER are rendered on the basis of experience and qualifications and represents the professional judgment of MSA. However, MSA cannot and does not warrant or represent that proposals, bid or actual project or construction costs will not vary from the opinion of probable cost prepared by it.

8. **Construction.** When applicable to the scope of the Project, the OWNER shall contract with a licensed and qualified Contractor for implementation of construction work utilizing a construction contract based on an EJCDC construction contract and general conditions appropriate for the scope of the Project and for the delivery method. In the construction contract, the OWNER shall use reasonable commercial efforts to require the Contractor to (1) obtain Commercial General Liability Insurance with contractual liability coverage insuring the obligation of the Contractor, and name the OWNER, MSA and its employees and consultants as additionally insureds of that policy; (2) indemnify and hold harmless the OWNER, MSA and its employees and consultants from and against any and all claims, damages, losses, and expenses ("Claims"), including but not limited to reasonable attorney's fees and economic or consequential damages arising in whole or in part out of the negligent act or omission of the contractor, and Subcontractor or anyone directly or indirectly employed by any of them. This agreement shall not be construed as giving MSA, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work, the same being the sole and exclusive responsibility of the contractors or subcontractors.

9. **Standard of Care.** In conducting the services, MSA will apply present professional, engineering and/or scientific judgment, which is known as the "standard of care". The standard of care is defined as that level of skill and care ordinarily exercised by members of the same profession practicing at the same point in time and in the same or similar locality under similar circumstances in performing the Services. The OWNER acknowledges that "current professional standards" shall mean the standard for professional services, measured as of the time those services are rendered, and not according to later standards, if such later standards purport to impose a higher degree of care upon MSA.

MSA does not make any warranty or guarantee, expressed or implied, nor have any agreement or contract for services subject to the provisions of any uniform commercial code. Similarly, MSA will not accept those terms and conditions offered by the OWNER in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt, or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

10. **Municipal Advisor**. MSA Professional Services, Inc. is not acting as a 'Municipal Advisor' to the owner pursuant to Section 15B of the Exchange Act. For financial advice related to the corresponding project, the client is encouraged to discuss their finances with internal and/or external advisors and experts before making decisions incurring debt and/or supporting those obligations. MSA desires to serve each client well by providing the best information publicly available and is providing information as part of its engineering responsibilities to inform client options. The information is not intended to provide financial advice or recommendations and is not bound by the formal Municipal Advisor fiduciary duty.

11. **Conduct Expectations.** Owner and MSA understand their respective obligations to provide a safe, respectful work environment for their employees. Both parties agree that harassment on the job (unwelcome

verbal, physical or other behavior that is related to sex, race, age, or protected class status) will not be tolerated and will be addressed timely and in compliance with anti-harassment laws.

12. **Electronic Documents and Transmittals**. Owner and MSA agree to transmit and accept project related correspondence, documents, text, data, drawings and the like in digital format in accordance with MSA's Electronic Data Transmittal policy. Each party is responsible for its own cybersecurity, and both parties waive the right to pursue liability against the other for any damages that occur as a direct result of electronic data sharing.

13. **Building Information Modelling (BIM).** For any projects, and not limited to building projects, utilizing BIM, OWNER and MSA shall agree on the appropriate level of modelling required by the project, as well as the degree to which the BIM files may be made available to any party using the Electronic Document Transmittal provisions of section 12 of this Agreement.

14. **Construction Site Visits.** If the scope of services includes services during the Construction Phase, MSA shall make visits to the site as specified in Attachment A– Scope of Services. MSA shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall MSA have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, MSA neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

15. **Termination.** This Agreement shall commence upon execution and shall remain in effect until terminated by either party, at such party's discretion, on not less than thirty (30) days' advance written notice. The effective date of the termination is the thirtieth day after the non-terminating party's receipt of the notice of termination. If MSA terminates the Agreement, the OWNER may, at its option, extend the terms of this Agreement to the extent necessary for MSA to complete any services that were ordered prior to the effective date of termination. If OWNER terminates this Agreement, OWNER shall pay MSA for all services performed prior to MSA's receipt of the notice of termination and for all work performed and/or expenses incurred by MSA in terminating Services begun after MSA's receipt of the termination notice. Termination hereunder shall operate to discharge only those obligations which are executory by either party on and after the effective date of termination. These General Terms and Conditions shall survive the completion of the services performed hereunder or the Termination of this Agreement for any cause.

This agreement cannot be changed or terminated orally. No waiver of compliance with any provision or condition hereof should be effective unless agreed in writing and duly executed by the parties hereto.

16. **Betterment.** If, due to MSA's error, any required or necessary item or component of the Project is omitted from the construction documents, MSA's liability shall be limited to the reasonable costs of correction of the construction, less what OWNER'S cost of including the omitted item or component in the original construction would have been had the item or component not been omitted. It is intended by this provision that MSA will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

17. **Hazardous Substances.** OWNER acknowledges and agrees that MSA has had no role in identifying, generating, treating, storing, or disposing of hazardous substances or materials which may be present at the Project site, and MSA has not benefited from the processes that produced such hazardous substances or materials. Any hazardous substances or materials encountered by or associated with Services provided by MSA on the Project shall at no time be or become the property of MSA. MSA shall not be deemed to possess or control any hazardous substance or material at any time; arrangements for the treatment, storage, transport, or disposal of any hazardous substances or materials, which shall be made by MSA, are made solely and exclusively on OWNER's behalf for OWNER's benefit and at OWNER's direction. Nothing contained within this Agreement shall be construed or interpreted as requiring MSA to assume the status of a generator, storer, treater, or disposal facility as defined in any federal, state, or local statute, regulation, or rule governing treatment, storage, transport, and/or disposal of hazardous substances or materials.

All samples of hazardous substances, materials or contaminants are the property and responsibility of OWNER and shall be returned to OWNER at the end of a project for proper disposal. Alternate arrangements to ship such samples directly to a licensed disposal facility may be made at OWNER's request and expense and subject to this subparagraph.

18. **Insurance.** MSA will maintain insurance coverage for: Worker's Compensation, General Liability, and Professional Liability. MSA will provide information as to specific limits upon written request. If the OWNER requires coverages or limits in addition to those in effect as of the date of the agreement, premiums for additional insurance shall be paid by the OWNER. The liability of MSA to the OWNER for any indemnity commitments, or for any damages arising in any way out of performance of this contract is limited to such insurance coverages and amount which MSA has in effect.

19. **Reuse of Documents.** Reuse of any documents and/or services pertaining to this Project by the OWNER or extensions of this Project or on any other project shall be at the OWNER's sole risk. The OWNER agrees to defend, indemnify, and hold harmless MSA for all claims, damages, and expenses including attorneys' fees and costs arising out of such reuse of the documents and/or services by the OWNER or by others acting through the OWNER.

20. **Indemnification.** To the fullest extent permitted by law, MSA shall indemnify and hold harmless, OWNER, and OWNER's officers, directors, members, partners, consultants, and employees (hereinafter "OWNER") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of MSA or MSA's officers, directors, members, partners, employees, or Consultants (hereinafter "MSA"). In no event shall this indemnity agreement apply to claims between the OWNER and MSA. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that MSA is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of MSA to defend the OWNER on any claim arising under this agreement.

To the fullest extent permitted by law, OWNER shall indemnify and hold harmless, MSA, and MSA's officers, directors, members, partners, consultants, and employees (hereinafter "MSA") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of the OWNER or the OWNER's officers, directors, members, partners, employees, or Consultants (hereinafter "OWNER"). In no event shall this indemnity agreement apply to claims between MSA and the OWNER. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that the OWNER is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of the OWNER to defend MSA on any claim arising under this agreement.

To the fullest extent permitted by law, MSA's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss or damages caused in part or by the negligence of MSA and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that MSA's negligence bears to the total negligence of OWNER, MSA, and all other negligent entities and individuals.

21. **Accrual of Claims**. To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement will be deemed to have accrued, and all statutory periods of limitation will commence, no later than the date of Substantial Completion; or, if Engineer's services do not include Construction Phase services, or the Project is not completed, then no later than the date of Owner's last payment to Engineer.

22. **Dispute Resolution.** OWNER and MSA desire to resolve any disputes or areas of disagreement involving the subject matter of this Agreement by a mechanism that facilitates resolution of disputes by negotiation rather than by litigation. OWNER and MSA also acknowledge that issues and problems may arise after execution of this Agreement which were not anticipated or are not resolved by specific provisions in this Agreement. Accordingly, both OWNER and MSA will endeavor to settle all controversies, claims, counterclaims, disputes, and other matters thru mediation with a mutually agreed upon mediator. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Neither demand for mediation nor any term of this Dispute Resolution clause shall prevent the filing of a legal action where failing to do so may bar the action because of the applicable statute of limitations. If despite the good faith efforts of OWNER and

MSA any controversy, claim, counterclaim, dispute, or other matter is not resolved through negotiation or mediation, OWNER and MSA agree and consent that such matter may be resolved through legal action in the court having jurisdiction as specified in this Agreement.

23. **Exclusion of Special, Indirect, Consequential and Liquidated Damages.** MSA shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the Project or this contract.

24. **Limitation of Liability.** Neither MSA, its Consultants (if any), nor their employees shall be jointly, severally, or individually liable to the OWNER in excess of the amount of the insurance proceeds available.

25. **Successors and Assigns**. The successors, executors, administrators, and legal representatives of Owner and Engineer are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement. Neither party may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, which shall not be unreasonable withheld, except to the extent that any assignment, subletting, or transfer is mandated by law.

26. **Notices**. Any notice required under this Agreement will be in writing, and delivered: in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line. All such notices are effective upon the date of receipt.

27. **Survival.** Subject to applicable Laws and Regulations, all express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

28. **Severability**. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and MSA.

29. **No Waiver**. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.

30. **State Law.** This agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

31. **Jurisdiction.** OWNER hereby irrevocably submits to the jurisdiction of the state courts of the State of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement. OWNER further consents that the venue for any legal proceedings related to this Agreement shall be Dane County, Wisconsin.

32. **Understanding.** This agreement contains the entire understanding between the parties on the subject matter hereof and no representations. Inducements, promises or agreements not embodied herein (unless agreed in writing duly executed) shall be of any force or effect, and this agreement supersedes any other prior understanding entered into between the parties on the subject matter hereto.

ATTACHMENT A:
SCOPE OF SERVICES

The Town of Berry is requesting engineering services for the resurfacing of approximately 1600 LF of Whippoorwill Road. The section of roadway will be from the intersection of STH 19 southward approximately 1600 feet on Wippoorwill Road.

The road resurfacing project is anticipated to be new asphalt pavement, pulverizing, base aggregate (as required), widening of shoulders, shouldering and minor sideslope grading (where required). Concrete curb and gutter may be required along one or both sides in sections to improve road width and accommodate drainage. The following is a proposed scope and estimated fee based on work completed during the design phases of the project:

1. Topographic Survey and Base Mapping: MSA will conduct a topographic survey of required locations within the project limits. The survey will collect the location of existing culverts, utilities, and above ground features along the road right-of-way within the right-of-way. MSA will try to establish the existing right-of-way along Whippoorwill Road using existing plats/certified survey maps to try and locate as many existing property irons during the topographic survey. The existing right-of-way shown on the plans will be approximate. No property surveying or monumentation, platting, easements or easement negotiations are assumed.

2. Design and Plan Preparation: MSA will complete roadway design, prepare plans and prepare specifications for bidding using an online bid. This includes the following:
    a. Final Plans
        i. Title Sheet
        ii. Typical Section
        iii. Construction Details and Notes
        iv. Erosion Control
        v. Roadway Plans

vi. Cross Sections
b. Project Specifications
c. One (1) Town Board Meeting

3. Permitting: MSA will prepare the following permit applications:
   a. DOT Work within R/W Permit: MSA will assist with DOT Coordination and submit the work with-in right-of-way permit. This will include where Whippoorwill Road connects to State Road 19 and assume pavement connection at or outside of right-of-way.
   b. Dane County Erosion Control and Stormwater Management Permit
   c. The scope assumes no impacts to wetlands and wetlands are located outside of the STH 19 road right-of-way. If wetland impacts are determined to be necessary, an additional wetland permit will be required and considered additional work.
   d. All permit application fees to be paid by the Town.
   e. Wisconsin DNR Notice of Intent (NOI) is required when disturbance exceeds one acre. This proposal assumes the proposed resurfacing project work and minimal grading for shoulders will be less than one acre. If the scope of project work dictates the need to submit a NOI, that work would be considered additional work.

4. Bidding: MSA will assist the Town in advertising for bids and will coordinate the distribution of bid documents to perspective bidders, subcontractors and suppliers via Quest Online Bidding Software. MSA will answer bidder's questions and issue addenda as appropriate to clarify or change the bidding documents. A public bid opening will be conducted and bids results will be compiled in a Bid Tabulation. Recommendations for award of contract will be prepared. MSA will assist the Owner with preparation and execution of construction contracts.

5. Geotechnical Coordination – MSA will prepare an RFP for geotechnical soil borings (if Owner elects to conduct) and coordinate the results with the Owner. Soil borings will be evaluated by MSA and included in the bidding documents and design considerations. The Owner will contract directly with the geotechnical subcontractor. It is assumed the Owner or geotechnical subcontractor will locate the borings in the field with remote assistance from MSA.

Items not included in the scope of work:

- Property surveying or Right-of-way platting and monumentation
- Easement / right-of-way documents, acquisition or negotiations
- Additional utility coordination and work associated with non-responsive utilities (one Digger's Hotline utility locate call-in assumed).
- Locating soil borings in the field prior to drilling.
- WDNR NOI application.
- Design and coordination of proposed improvements within the WisDOT right-of-way
- Design and permitting of culvert pipes greater than 24-inches in diameter.
- Construction Related Services (i.e., Construction administration, observation and staking).

Anticipated Project Schedule:

○ Topographic Survey	March 2025
○ Design	March-May 2025
○ Advertise for Bids	June 2025
○ Construction Phase (Additional)	Begin Summer 2025

ATTACHMENT B:
RATE SCHEDULE

CLASSIFICATION	LABOR RATE
Administrative	$ 85 – $154/hr.
Architects	$ 85 – $198/hr.
Community Development Specialists	$137 – $198/hr.
Digital Design	$115 – $151/hr.
Environmental Scientists/Hydrogeologists	$110 – $193/hr.
Geographic Information Systems (GIS)	$100 – $193/hr.
Housing Administration	$ 97 – $198/hr.
Inspectors/Zoning Administrators	$110 – $160/hr.
IT Support	$175 – $193/hr.
Land Surveying	$ 85 – $198/hr.
Landscape Designers & Architects	$ 85 – $220/hr.
Planners	$ 85 – $215/hr.
Principals	$225 – $314/hr.
Professional Engineers/Designers of Engineering Systems	$155 – $204/hr.
Project Managers	$120 – $248/hr.
Real Estate Professionals	$140 – $193/hr.
Staff Engineers	$ 85 – $149/hr.
Technicians	$100 – $151/hr.
Wastewater Treatment Plant Operator	$ 92 – $118/hr.

REIMBURSABLE EXPENSES	
Copies/Prints	Rate based on volume
Specs/Reports	$10
Copies	$0.14/page
Plots	$0.01/sq.in.
Flash Drive	$10
GPS Equipment	$20/hour - $10.75/hour for DOT
GPS R2 Equipment	$20/hour - $2/hour for DOT
Dini Laser Level	$85/per day
Mailing/UPS	At cost
Mileage – Reimbursement	IRS Rate – IRS Rate + $5/day
Mileage – MSA Vehicle	$0.70 mile standard/
	$0.69 mile for DOT
Nuclear Density Testing	$30/day
Organic Vapor Field Meter	$100/day
PC/CADD Machine	Included in labor rates
Robotic Survey Equipment	$20/hour - $10/hour for DOT
Stakes/Lath/Rods	At cost
Travel Expenses, Lodging, & Meals	At cost
Traffic Counting Equipment & Data Processing	At cost
Geodimeter	$30/hour
Drone Flight	$375/flight - $360/flight for DOT

Labor rates represent an average or range for a particular job classification. These rates are in effect until December 31, 2025.

103.1 Appoint Alternate Members for Board of Review Ordinance

I Purpose
II Adoption
III Appointments
IV Effective date

SECTION I – PURPOSE
Whereas, Wisconsin Statute 70.47(6m)(c) authorizes the appointment of alternate members to serve on the board of review when standing members are removed from individual cases;

SECTION II - ADOPTION
Pursuant to Wisconsin Statutes 70.47(6m) (c) and 70.46(1) the town board hereby provides for appointment of alternates to serve on the town board of review in the event a standing board member of the board of review is removed or unable to serve for any reason.

SECTION III - APPOINTMENTS
The following electors of the Town of Berry are hereby named as alternates in the order indicated to serve as an alternate board of review members:

Alternate 1: Joe Kruchten

Alternate 2: Robert Agee

SECTION IV - EFFECTIVE DATE
The appointments made in this ordinance are for the year 2025 Board of Review proceedings and shall take effect and be in force from and after the day after passage and publication as required by law.

Dated this 17th day of March, 2025

Attest: _____ _____
Brenda Kahl, Clerk/Treasurer Duane Haag, Chairperson

Posted: _____ _____
David Evert, Supervisor

_____
Michael Statz, Supervisor

_____
Nichole Schwoerer, Supervisor

_____
Derek Statz, Supervisor

3-10-25

Agenda Item #15, Sunning Hill Cemetery stone markers restoration

Prior to contacting Mike Lovell at Heritage Concrete & Cemetery Restoration I would like authorization for him to continue restoring the concrete bases and releveling the markers.

The budgeted amount in 2025 is $6,000

He is 70% finished and this is the last year we will need to budget for the project.

3-10-25

Agenda Item #16, Increasing the per hour wage for the election inspectors

It has been at least 3 years since the election inspectors received a wage increase.

They are currently paid $12.50/hour and receive either lunch or dinner depending on their shift.

Talking with Duane, we were considering raising it to $15/hour. If approved I would start with the new per hour wage for the April 1st election.

This is what neighboring towns pay their inspectors per hour:
Mazomanie - $10
Black Earth - $15
Vermont - $12
Cross Plains - $15.50
Springfield - $20
Roxbury - $17

3-10-25

Agenda Item #17, Purchasing a new ditch mower

The quotes for a 10 foot mower:

McFarlane = $15,008
Ritchie's = $18,000
John Deere = $19,550
Kalscheur = $22,900 (does not include the trade in amount)

Ritchie's also priced a 13 foot deck for $22,000

3/10/2025		List of bills to be approved at the March 17, 2025 board meeting	
Date	**Check #**	**Payee**	**Amount**
2/25/2025	19646	Benjamin Maier - plowed snow	642.62
2/25/2025	19647	Brenda Kahl	1,830.70
2/25/2025	19648	Jaeger Schoenemann - plowed snow	363.97
2/25/2025	19649	Lucas Danz	1,678.23
3/11/2025	19650	Brenda Kahl	1,830.70
3/11/2025	19651	Jaeger Schoenemann - plowed snow and tree cutting	476.56
3/11/2025	19652	Lucas Danz	1,678.23
3/17/2025	19653	Accurate Appraisal - contract	1,025.00
3/17/2025	19654	Alliant Energy	352.89
3/17/2025	19655	Auto Value - supplies	138.15
3/17/2025	19656	Black Earth Joint Fire District - payment 2 of 4	5,643.14
3/17/2025	19657	Brenda Kahl - mileage	108.08
3/17/2025	19658	CityScape Consultants - cell tower plan review	5,000.00
3/17/2025	19659	Dane County District 1 EMS - payment 2 of 4	6,181.73
3/17/2025	19660	Dane County Towns Association - dues	1,797.30
3/17/2025	19661	Dane County Treasurer - property tax bills envelopes	15.48
3/17/2025	19662	Debra Belongea - election inspector	84.38
3/17/2025	19663	Dixie Johnson - election inspector	87.50
3/17/2025	19664	Finger Publishing - election and bid notices	63.10
3/17/2025	19665	Florine Bayer - election inspector	171.88
3/17/2025	19666	GFC Leasing - printer lease	178.37
3/17/2025	19667	Gordon Flesch - fee for copies printed per month	82.96
3/17/2025	19668	Group Health Cooperative - medical insurance	2,583.00
3/17/2025	19669	Joan Paar - election inspector	87.50
3/17/2025	19670	Johnson Block & Company - audit	5,500.00
3/17/2025	19671	Kathy Bladl - election inspector	87.50
3/17/2025	19672	Kenneth Felz - election inspector	84.38
3/17/2025	19673	Lake Ridge Bank - postage and election	276.44
3/17/2025	19674	Lois Fitzsimmons - election inspector	84.38
3/17/2025	19675	Lucas Danz - cell phone	25.00
3/17/2025	19676	Lynda Ketelboeter - election inspector	87.50
3/17/2025	19677	McFarlane - chain	43.99
3/17/2025	19678	MSA Professional Services - stormwater model for new garage	7,653.75
3/17/2025	19679	Peterson Sanitation - garbage and recycling	7,360.60
3/17/2025	19680	Robert Agee - election inspector	84.38
3/17/2025	19681	TDS Telecom	207.33
3/17/2025	19682	TrollBytes - February IT services	60.00
3/17/2025	19683	U.S. Occmed Wisconsin - random drug test	106.14
3/17/2025	19684	Wingra Stone - screenings	138.97

Additional bills will be handed out at the meeting

3-10-25

Agenda Item #18 (B), Proposal for replacing the two toilets at the town hall

I am attaching a quote from Vandenbergh Plumbing, who is a resident of the Town. They are quoting toilets that are a better quality since we rent out the hall which equates to more usage.

$2,000 was budgeted for this project.

VANDENBERGH PLUMBING LLC
when quality matters

8908 Blynn Rd
Mazomanie, Wi 53560
Shop 608-813-1046
Cell 608-212-8986

Project Proposal For:

Date: 3/6/2025

Town of Berry

RE: Toilet Replacements

Men's Bathroom:

- Replace existing toilet with new Kohler pressure assisted toilet (handle on right).
- K4304-0 bowl, K4645-RA-0 tank, Pftscof2000wh open face seat.
- If closet collar is cracked or in bad shape, or water shutoff is bad, we will replace it on a T&M basis $120 per hour per guy plus material.

Woman's Bathroom:

- Replace existing toilet with new Kohler pressure assisted toilet (handle on left).
- K4304-0 bowl, K4645-0 tank, Pftscof2000wh open face seat.
- If closet collar is cracked or in bad shape, or water shutoff is bad, we will replace it on a T&M basis $120 per hour per guy plus material

Total price for both replacements: $1,400.00
Price includes: Fixers, materials, and labor.

3-10-25

Agenda Item #18 (C), Renting Lucas Danz's trailer

Starting last year Lucas has been using his personal trailer to haul the skidsteer when working on the roads. The trailer has been added to the Town's insurance policy but there has been no reimbursement for wear and tear on the trailer. What are your thoughts on reimbursing Lucas either monthly or yearly?