

MEMORANDUM OF UNDERSTANDING
CITY OF APPLETON TRANSIT FACILITY DESIGN

This memorandum of understanding governing initial design of a bus transit facility (the “MOU”) is dated as of the ____ day of, _____ 2025, by and among CS Appleton, LLC, a Wisconsin limited liability company (“Developer”) and the City of Appleton, a Wisconsin municipal corporation (the “City”).

Recitals

- A. The City and Developer intend to construct a joint development project located at 100 E. Washington Street in the City of Appleton that includes a regional bus transit facility (“Transit Facility”) owned and operated by the City and a multi-family residential development above the Transit Facility (“Private Development”) owned and operated by the Developer (collectively the “Project”).
- B. The City has been awarded a \$25 million Rebuilding American Infrastructure with Sustainability and Equity grant, also referred to as a Better Utilizing Infrastructure to Leverage Development (BUILD) grant (“Grant”) to develop the Transit Facility.
- C. While the City has been awarded the Grant, it has not received the Grant award, and therefore any expenses towards the Transit Facility will not be reimbursed by the Grant.
- D. The City and Developer desire to begin initial design work on the Transit Facility to better determine how to allocate Project costs and to facilitate Developer’s design of the Private Development (“Initial Design Work”).
- E. The City previously selected Developer and Developer’s design team in a competitive selection process and determined Developer and Developer’s design team were the most qualified to design the Transit Facility and construct the Private Development.
- F. The parties wish to enter into this MOU regarding their respective responsibilities, rights, and obligations pertaining to design of the Transit Facility.

MOU

NOW, THEREFORE, in consideration of the Recitals and the promises and undertakings set forth herein, the parties mutually agree and covenant as follows:

1. Developer Obligations.

- a. Developer shall cause the relevant members of its design team originally identified in Developer’s response to the City’s original requests for proposals, including, Plunkett Raysich Architects, LLP, McMahon Engineers, Kimley Horn, IMEG, and Pierce Engineers (“Architect and Engineers”) to provide additional services for the Initial Design Work for the Transit Facility. To the extent applicable, Developer shall enter into an agreement with the Architect and Engineers in a form

substantially similar to AIA B107, and include standard and customary terms and conditions for Wisconsin architectural and engineering design work. Developer shall not enter into the agreement until the form is approved by the City. Design services shall include usual and customary structural, mechanical, and electrical engineering services, as and to the extent applicable to perform the Initial Design Work. If requested by the City, Developer shall assign the agreement with the Architect and Engineer to the City. Notwithstanding the foregoing, Developer shall not be obligated to authorize any work or incur any costs in excess of the City's reimbursement obligations hereunder. Developer makes no representation or warranty that the amount of City's reimbursement obligations hereunder is sufficient to fully complete the Initial Design Work.

b. Developer shall direct the Architect and Engineers design the Transit Facility in conformance with all applicable, state, federal, and local laws, regulations, and requirements.

c. Developer shall work with the City during the design process to incorporate City requirements for the Transit Facility into the design. The parties will work in good faith to address any disagreements regarding Transit Facility designs.

d. The City and Developer shall negotiate in good faith to determine what areas of the Transit Facility and Project will be common areas or areas attributable to the Transit Facility or the Private Development for purposes of establishing Grant eligible Transit Facility construction costs and non-Grant eligible Private Development construction costs.

e. The City shall own and have all rights associated with the Transit Facility designs. Developer shall not have any ownership interest in the Transit Facility design.

f. The City utilized a competitive process to select Developer to develop the Private Development and for the Developer and Developer's Architect and Engineer to design the Transit Facility and create Transit Facility plans and specifications. Developer and City will cooperate to design the Transit Facility in conjunction with the Private Development, except that the City shall have final approval of any design choices for the Transit Facility, and City decisions regarding design of the Transit Facility shall control. Developer's design of the Private Development shall accommodate City design choices of the Transit Facility, provided, however, that nothing contained herein shall obligate Developer to construct such Private Development if the same is not economically viable as determined by Developer in its sole discretion. No Transit Facility design work may be completed by any firm that is not the chosen Architect and Engineer. Developer shall not subcontract for any architecture or engineering services related to design of the Transit Facility without the City's express written consent, and any subcontracting must be in compliance with

2 CFR § 200.320(b)(2). Developer shall not subcontract for any construction services to be completed for the Transit Facility without a written modification to this MOU.

2. City Obligations.

a. The City shall reimburse the Developer for design costs incurred by Developer related to the Transit Facility. However, in no event shall the City be required to reimburse the Developer for a cumulative amount of design costs exceeding \$100,000. Developer shall be solely responsible for paying any design costs related to the Transit Facility in excess of \$100,000, unless the parties modify this MOU in writing or enter into a separate written agreement governing Transit Facility design costs. The City shall not reimburse Developer for any design expenses related to the Private Development.

- i. Developer shall provide the City with Architecture and Engineer design invoices on a monthly basis. The City shall pay the invoice, either directly to the Architect and Engineer or the Developer, within 30 days of the City's receipt.
- ii. If the City reimburses the Developer for payments made to the Architect and Engineer, Developer shall ensure all payments to the Architect and Engineer are timely made.
- iii. City payments to the Developer under this MOU shall only be used for paying Transit Facility design costs, and shall not be used for any other purpose.

3. Miscellaneous Provisions.

a. Binding Effect / Assignment. The obligations of Developer and the City under this MOU shall be binding on their respective successors and assigns. Developer may not assign its benefits or obligations under this MOU without the express prior written approval of the City, and any unapproved assignment is void. No assignment of Developer's benefits consented to by the City in this subsection shall constitute a release of Developer from the obligations and liabilities under this MOU. Developer may, in its discretion, require by contract that any subsequent owner of all or part of the Private Development Property assume all or part of Developer's obligations. No such assumption, however, and no act of the City, shall release Developer from any obligation or liability under this MOU, unless and to the extent that the City expressly agrees in writing to release Developer. The City shall have the sole discretion to release or not release Developer from the obligations and liabilities under this MOU.

b. No Waiver. No waiver of any provision of this MOU shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a

continuing waiver unless expressly provided for by a written amendment to this MOU signed by both the City and Developer, nor shall the waiver of any default under this MOU be deemed a waiver of any subsequent default or defaults. Either party's failure to exercise any right under this MOU shall not constitute the approval of any wrongful act by the other party hereto.

c. Amendment/Modification. This MOU may be amended or modified only by a written amendment approved and executed by the City and Developer.

d. Entire MOU/Attachments Incorporated. This written MOU and all attachments hereto, shall constitute the entire MOU between Developer and the City as of the date hereof.

e. Severability. If any part, term, or provision of this MOU is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the invalid part, term, or provision was never part of the MOU.

f. Immunity. Nothing contained in this MOU constitutes a waiver of the City's sovereign immunity under applicable law.

g. Notice. Any notice required or permitted by this MOU shall be deemed effective given in writing and personally delivered or mailed by U.S. Mail, return receipt requested, as follows:

To Developer: CS Appleton, LLC
Attn: Scott Yauck
400 North Broadway, Suite 100
Milwaukee, WI 53202

To the City: Valley Transit / City of Appleton
801 S. Whitman Ave.
Appleton, WI 54914
Attn: General Manager

With a copy to: City of Appleton
City Attorney's Office
100 North Appleton Street
Appleton, WI 54911-4799
Attn: City Attorney

h. Personal Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party arising out of this MOU shall be deemed to be proper only if such action is commenced in Circuit Court for Outagamie County unless

it is determined that such Court lacks jurisdiction. Developer hereby consents to personal jurisdiction in Outagamie County. Developer also expressly waives the right to bring such action in, or to remove such action to, any other court whether state or federal, unless it is determined that the Circuit Court for Outagamie County lacks jurisdiction.

i. Ratification. Developer hereby approves and ratifies all actions taken to date by the City, its officers, employees and agents in connection with the Tax Increment District, and in connection with the zoning and other approvals relating to the Project.

j. No Partnership. Under this MOU, the City does not, in any way or for any purpose, become a partner, employer, principal, agent, or joint venturer of or with Developer.

k. Good Faith. All parties to this MOU shall exercise good faith in performing any obligation that party has assumed under the terms of this MOU including, but not limited to, the performance of obligations that require the exercise of discretion and judgment.

l. Applicable Law. This MOU shall be construed under the laws of the state of Wisconsin.

m. No Private Right or Cause of Action. Nothing in this MOU shall be interpreted or construed to create any private right or any private cause of action by or on behalf of any person not a party hereto.

n. Effective Date. This MOU shall be effective as of the date and year first written above.

o. Term. This MOU shall be in full force and effect until the Transit Facility design has been completed and all Developer Transit Facility design expenses are reimbursed. Either party may terminate this MOU by providing the other party thirty days written notice. The City shall reimburse Developer for any Transit Facility design costs incurred up to the date written notice is provided. Upon termination, Developer shall provide the City with any and all Transit Facility designs.

p. Construction of MOU. Each party participated fully in the drafting of each and every part of this MOU. This MOU shall not be construed in favor of or against either party. It shall be construed simply and fairly to each party.

q. Authorization. Developer warrants that Developer's execution, delivery and performance of this MOU have been duly authorized and do not conflict with, result in a violation of, or constitute a default under any provision of Developer's articles of organization or membership agreements, or any agreement or other instrument binding upon Developer, or any law, governmental regulation, court decree, or order applicable to Developer or to the Private Development Property.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the year and date first set forth above, and by so signing this MOU, certify that they have been duly authorized by their respective entities to execute this MOU on their behalf.

CITY:

By: _____
Jacob A. Woodford, Mayor

By: _____
Amy Molitor, City Clerk

Approved as to form:

Provision has been made to pay the liability that will accrue under this contract:

Christopher R. Behrens, City Attorney

Jeri A. Ohman, Finance Director

DEVELOPER:

CS APPLETON, LLC

By: _____
Scott Yauck, Authorized Representative