



City of Appleton

100 North Appleton Street
Appleton, WI 54911-4799
www.appleton.org

Meeting Agenda Common Council

Wednesday, April 22, 2015

7:00 PM

Council Chambers

- A. CALL TO ORDER
- B. INVOCATION
- C. PLEDGE OF ALLEGIANCE TO THE FLAG
- D. ROLL CALL OF ALDERPERSONS
- E. ROLL CALL OF OFFICERS AND DEPARTMENT HEADS
- F. PUBLIC PARTICIPATION

G. APPROVAL OF PREVIOUS COUNCIL MEETING MINUTES

[15-594](#) Common Council Meeting Minutes from April 1, 2015.

Attachments: [CC Minutes 04-01-2015.pdf](#)

H. BUSINESS PRESENTED BY THE MAYOR

[15-588](#) Reappointment of Bob Buckingham to the Fox Cities Transit Commission.

Reappointment of Carol Kasimor to the Fox Cities Transit Commission.

Attachments: [CC 04-22-2015 - COMMITTEE APPT FOR INFORMATION TRANSIT COMM 0](#)

[15-564](#) Presentation of Arbor Day Proclamation.

[15-596](#) Presentation of Hmong American Day Proclamation.

I. PUBLIC HEARINGS

[15-520](#) Public Hearing - Rezoning #2-15.

Attachments: [CC 04-22-2015 - PH - RZ #2-15.pdf](#)

J. SPECIAL RESOLUTIONS

K. ESTABLISH ORDER OF THE DAY

L. COMMITTEE REPORTS

1. MINUTES OF THE SAFETY AND LICENSING COMMITTEE

[15-551](#) Operator's Licenses

Attachments: [Operator's Licenses for 04-09-2015 S&L.pdf](#)

Legislative History

4/9/15 Safety and Licensing recommended for approval
Committee

[15-525](#) Farmer's Market application of Festival Foods, Bill Roznowski, 1200 W. Northland Avenue, Wednesdays June 10, 2015 through October 21, 2015 contingent upon approval from all departments.

Legislative History

4/9/15 Safety and Licensing recommended for approval
Committee

[15-517](#) Secondhand Jewelry License application of Krieger Jewelers, Jamie L. Boyce, Person in Charge, 934 W. Northland Ave., contingent upon approvals from all departments.

Legislative History

4/9/15 Safety and Licensing recommended for approval
Committee

[15-542](#) Change of Agent for "Class A" Beer/Liquor License for Aldi Inc. Wisconsin d/b/a Aldi #69, 2310 S. Kensington Dr., contingent upon approval from the Police Department.

Legislative History

4/9/15 Safety and Licensing recommended for approval
Committee

[15-530](#) Change of Agent for Class "A" Beer License for Kwik Trip Inc., to Thomas F. Emme, 2120 E. Edgewood Drive, contingent upon approval from the Police Department.

Legislative History

4/9/15 Safety and Licensing recommended for approval
Committee

[15-449](#) Review of General Policy Statement on Beer/Liquor Licensing.

Attachments: [Review of General Policy Statement on Beer Liquor Licensing Memo.pdf](#)
[LIQUOR LICENSE POLICY - REV.pdf](#)

Legislative History

- 3/26/15 Safety and Licensing recommended for approval
Committee
Discussion took place regarding issued vs. granted where 'non-use' applies; it was recommended to leave the 12-mo timeframe available to a granted (approved) license as well as issued, providing evidence of progress.
- 4/1/15 Common Council referred to the Safety and Licensing
Committee
Referred back by Alderperson Lobner.
- 4/9/15 Safety and Licensing recommended for approval
Committee
Amend to: "All remaining fees, including outstanding obligations to the city, must be paid or subject to an agreed-upon payment arrangement prior to the issuance of the license."

2. MINUTES OF THE MUNICIPAL SERVICES COMMITTEE

3. MINUTES OF THE CITY PLAN COMMISSION

[15-446](#)

Request to approve Rezoning #2-15 to rezone the subject site located north of East Evergreen Drive and east of North Lightning Drive (Tax ID #31-1-6504-01, #31-1-6404-00, #31-1-6404-01, #31-1-6405-00, #31-1-6406-00, #31-1-6407-00, and #31-1-6408-00) from AG Agricultural District, C-O Commercial Office District, and R-1A Single-Family District to R-3 Multi-Family District and C-O Commercial Office District, including to the midpoint of the adjacent road right-of-way and as shown on the attached map

Attachments: [StaffReport_EvergreenLightning_Rezoning_For03-23-15.pdf](#)
[PetitionFromNeighbors_EvergreenLightning_Rezoning.pdf](#)

Legislative History

- 3/23/15 City Plan Commission recommended for approval
Proceeds to Council on April 22, 2015.

A signed petition against this proposed rezoning was submitted at the meeting and is attached.

4. MINUTES OF THE PARKS AND RECREATION COMMITTEE

5. MINUTES OF THE COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE

[15-539](#)

Request to approve Wisconsin Economic Development Corporation's (WEDC) Community Development Investment (CDI) Grant Application

Attachments: [CDI Grant Memo-App-Tracking Form.pdf](#)

Legislative History

- 4/6/15 Community & Economic recommended for approval
Development Committee

- [15-554](#) Request for Waiver of Repurchase Rights for Lot Five (5), Northeast Business Park No. One (1), retroactively, as described in the attached memo

Attachments: [SJ Waiver 3-30-15.pdf](#)

Legislative History

4/6/15 Community & Economic recommended for approval
Development Committee

6. MINUTES OF THE UTILITIES COMMITTEE

7. MINUTES OF THE FOX CITIES TRANSIT COMMISSION

- [15-493](#) Approval of Valley Transit Procurement Manual

Attachments: [FCTC procurement manual memo.pdf](#)

[Appleton_FY_13_TR_Closeout_Letter.pdf](#)

[Valley Transit Procurement Manual.pdf](#)

Legislative History

3/25/15 Fox Cities Transit recommended for approval
Commission
This item is being sent to the Finance Commission meeting scheduled April 8, 2015 and then forwarded to the following Common Council meeting for final approval.

- [15-600](#) Authorization to Award a Contract to Lamers Bus Lines for the Provision of a Construction Circulator Service

Attachments: [FCTC construction circulator memo.pdf](#)

8. MINUTES OF THE BOARD OF HEALTH

9. MINUTES OF THE HUMAN RESOURCES COMMITTEE

10. MINUTES OF THE FINANCE COMMITTEE

- [15-558](#) Request to award Unit Y-13 WWTP Storm Sewer Reconstruction to Advance Construction Company in the amount of \$2,411,249.75 with a 2.5% contingency of \$60,000 for a project total not to exceed \$2,471,249.75.

Attachments: [Award of Contract Y-13.pdf](#)

Legislative History

4/8/15 Finance Committee recommended for approval

[15-559](#) Request to deny claim for excessive assessment for Walgreens, Co., real estate property keys 31-4-6162-01, 31-5-1173-00, 31-6-7601-00, 31-5-4253-00, 31-5-4250-00.

Attachments: [Walgreens.pdf](#)

Legislative History

4/8/15 Finance Committee recommended for approval

[15-560](#) Request to deny claim for excessive assessment for KFC, real estate property key 31-6-0327-00.

Attachments: [KFC.pdf](#)

Legislative History

4/8/15 Finance Committee recommended for approval

[15-561](#) Request approval of the Relocation Order for the John Street Reconstruction project.

Attachments: [John Street - Relocation Order.pdf](#)

Legislative History

4/8/15 Finance Committee recommended for approval

[15-562](#) Request approval of the Valley Transit Procurement Manual.

Attachments: [Valley Transit Procurement Manual.pdf](#)

Legislative History

4/8/15 Finance Committee recommended for approval

M. CONSOLIDATED ACTION ITEMS

[15-593](#) Consolidated Action:
Item 15-562 - Finance Committee
Item 15-493 - Valley Transit

O. ITEMS HELD

P. ORDINANCES

Q. LICENSE APPLICATIONS AND COMMUNICATIONS REFERRED TO COMMITTEES OF JURISDICTION

R. RESOLUTIONS SUBMITTED BY ALDERPERSONS REFERRED TO COMMITTEES OF JURISDICTION

S. OTHER COUNCIL BUSINESS

T. ADJOURN

Dawn A. Collins, City Clerk

Reasonable accommodations for persons with disabilities will be made upon request and if feasible.



City of Appleton

100 North Appleton Street
Appleton, WI 54911-4799
www.appleton.org

Meeting Minutes Common Council

Wednesday, April 1, 2015

7:00 PM

Council Chambers

A. CALL TO ORDER

Meeting called to order at 7:00 PM.

B. INVOCATION

Offered by Alderperson Dannecker.

C. PLEDGE OF ALLEGIANCE TO THE FLAG

D. ROLL CALL OF ALDERPERSONS

Present: 15 - Alderperson Chris Croatt, Alderperson Greg Dannecker, Alderperson Sarah Garb, Alderperson Jeffrey Jirschele, Alderperson Curt Konetzke, Alderperson Kyle Lobner, Alderperson Joe Martin, Alderperson Kathleen Plank, Alderperson Cathy Spears, Alderperson Peter Stueck, Mayor Timothy Hanna, Alderperson Tim Trauger, Alderperson Polly Dalton, Alderperson Christine Williams and Alderperson Vered Meltzer

Excused: 1 - Alderperson Patti Coenen

E. ROLL CALL OF OFFICERS AND DEPARTMENT HEADS

PRESENT: City Clerk Collins, City Attorney Walsh, Deputy City Attorney Behrens, Community and Economic Development Director Harkness, Health Officer Eggebrecht, Director of Parks, Recreation and Facilities Gazza, Police Chief Thomas, Director of Public Works Vandehey, Director of Information Technology Fox, Director of Utilities Shaw, Valley Transit General Manager Wetter, Deputy Finance Director Rogers, Deputy Fire Chief Reece, Deputy Library Director Saecker.

EXCUSED: Director of Human Resources Behnke, Fire Chief Vander Wyst, Finance Director Saucerman, Library Director Rortvedt.

F. PUBLIC PARTICIPATION

Name - Address - Topic

Chris Fleischman - 1412 N. Owaissa Street - Widen Driveway

G. APPROVAL OF PREVIOUS COUNCIL MEETING MINUTES

15-509 Common Council Meeting Minutes from March 18, 2015.

Attachments: [CC Minutes 03-18-2015.pdf](#)

Alderson Konetzke moved, seconded by Alderson Meltzer, that the Meeting Minutes be approved. Roll Call. Motion carried by the following vote:

Aye: 14 - Alderson Croatt, Alderson Dannecker, Alderson Garb, Alderson Jirschele, Alderson Konetzke, Alderson Lobner, Alderson Martin, Alderson Plank, Alderson Spears, Alderson Stueck, Alderson Trauger, Alderson Dalton, Alderson Williams and Alderson Meltzer

Excused: 1 - Alderson Coenen

Abstained: 1 - Mayor Hanna

H. BUSINESS PRESENTED BY THE MAYOR

15-451 Presentation of National Library Week Proclamation.
Presentation of Library Volunteer of the Year Award.
Fox Cities Reads Author Visit.
Fox Cities Book Festival April 20-26.

I. PUBLIC HEARINGS

J. SPECIAL RESOLUTIONS

15-421 Initial Resolution for Street Vacation - North Douglas Street, Part 2.

Attachments: [CC 04-01-2015 - Initial Resolution - North Douglas St Part 2.pdf](#)

Alderson Dannecker moved, seconded by Alderson Lobner, that the Initial Resolution be approved. Roll Call. Motion carried by the following vote:

Aye: 13 - Alderson Croatt, Alderson Dannecker, Alderson Garb, Alderson Jirschele, Alderson Konetzke, Alderson Lobner, Alderson Martin, Alderson Plank, Alderson Spears, Alderson Stueck, Alderson Trauger, Alderson Dalton and Alderson Meltzer

Nay: 1 - Alderson Williams

Excused: 1 - Alderson Coenen

Abstained: 1 - Mayor Hanna

K. ESTABLISH ORDER OF THE DAY

15-449 Review of General Policy Statement on Beer/Liquor Licensing.

Attachments: [Review of General Policy Statement on Beer Liquor Licensing Memo.pdf](#)
[LIQUOR LICENSE POLICY - REV.pdf](#)

Referred back by Alderperson Lobner.

This Report Action Item was referred to the Safety and Licensing Committee

15-477 Request from Tom Purdy for a permanent street occupancy permit to install private subdivision signage in the Apple Hill Boulevard street right-of-way.

Attachments: [Applehill Blvd Private signage.pdf](#)

Referred back by Alderperson Dannecker.

This Report Action Item was referred to the Municipal Services Committee

15-482 Request from Chris Fleischman for a variance to Municipal Code, Section 19-91 Front Yard Parking, for the property at 1412 N. Owaissa Street.

Attachments: [1412 N. Owaissa St. Variance Request.pdf](#)

Alderperson Martin moved, seconded by Alderperson Croatt, that the Report Action Item be approved. Roll Call. Motion carried by the following vote:

Aye: 14 - Alderperson Croatt, Alderperson Dannecker, Alderperson Garb, Alderperson Jirschele, Alderperson Konetzke, Alderperson Lobner, Alderperson Martin, Alderperson Plank, Alderperson Spears, Alderperson Stueck, Alderperson Trauger, Alderperson Dalton, Alderperson Williams and Alderperson Meltzer

Excused: 1 - Alderperson Coenen

Abstained: 1 - Mayor Hanna

15-485 Request from Mr. Anthony Ruys, 2001 E. Glendale Avenue, for a refund of his 2013 special assessment payment for concrete pavement on Glendale Avenue in the amount of \$ 4,819.20

Attachments: [Assessment appeal - 2001 E. Glendale Avenue.pdf](#)

Moved by Alderperson Croatt, seconded by Alderperson Spears, to hold the item at Council. Voice vote taken. Motion failed. Alderperson Croatt requested a separate vote on the item.

Alderperson Croatt moved, seconded by Alderperson Spears, that the Report Action Item be denied. Roll Call. Motion carried by the following vote:

Aye: 12 - Alderperson Dannecker, Alderperson Garb, Alderperson Konetzke, Alderperson Lobner, Alderperson Martin, Alderperson Plank, Alderperson Spears, Alderperson Stueck, Alderperson Trauger, Alderperson Dalton, Alderperson Williams and Alderperson Meltzer

Nay: 2 - Alderperson Croatt and Alderperson Jirschele

Excused: 1 - Alderperson Coenen

Abstained: 1 - Mayor Hanna

15-519

Consolidated Action:

Item 15-441 - City Plan

Item 15-478 - Municipal Services

Alderperson Croatt moved, seconded by Alderperson Lobner, that the Report Action Item be approved. Roll Call. Motion carried by the following vote:

Aye: 13 - Alderperson Croatt, Alderperson Dannecker, Alderperson Garb, Alderperson Jirschele, Alderperson Konetzke, Alderperson Lobner, Alderperson Martin, Alderperson Plank, Alderperson Spears, Alderperson Stueck, Alderperson Trauger, Alderperson Dalton and Alderperson Meltzer

Nay: 1 - Alderperson Williams

Excused: 1 - Alderperson Coenen

Abstained: 1 - Mayor Hanna

L. COMMITTEE REPORTS

Balance of the action items on the agenda.

Alderperson Konetzke moved, Alderperson Martin seconded, to approve the report. The motion carried by the following vote:

Aye: 14 - Alderperson Croatt, Alderperson Dannecker, Alderperson Garb, Alderperson Jirschele, Alderperson Konetzke, Alderperson Lobner, Alderperson Martin, Alderperson Plank, Alderperson Spears, Alderperson Stueck, Alderperson Trauger, Alderperson Dalton, Alderperson Williams and Alderperson Meltzer

Excused: 1 - Alderperson Coenen

Abstained: 1 - Mayor Hanna

1. MINUTES OF THE SAFETY AND LICENSING COMMITTEE

15-433 Operator's Licenses

Attachments: [Operator's Licenses for 03-26-2015 S&L.pdf](#)

This Report Action Item was approved.

15-435 Operator's License application of Charney J. Kuusisto, 3222 N. Lawe Street.

This Report Action Item was approved.

15-434 Secondhand Article License application for Heid Music, Kristin J. Masarik, Person in Charge, 308 E. College Ave, contingent upon approvals from all departments.

This Report Action Item was approved.

15-447 Secondhand Article License application of Endless Treasures, Kathy A. Schumann, Applicant, 211 N. Richmond Street, contingent upon approvals from all departments.

This Report Action Item was approved.

15-506 Class "B" Beer License application of Pho House LLC, d/b/a Pho House, Txongpaul Xiong, Agent, 621 W. Northland Ave., Suite D, contingent upon approvals from all departments.

This Report Action Item was approved.

15-448 Request to Over Hire in the Position of Firefighter.

Attachments: [Request to Over Hire in the Position of Firefighter.pdf](#)

This Report Action Item was approved.

15-507 Fire Department Proposed Reclassification of Position.

Attachments: [Fire Department Proposed Reclassification of Position.pdf](#)

This Report Action Item was approved.

2. MINUTES OF THE MUNICIPAL SERVICES COMMITTEE

- 15-478** Approve Douglas Street Vacation between Badger Avenue and Winnebago Street.

Attachments: [Douglas Street Vacation.pdf](#)

This Report Action Item was approved.

- 15-479** Approve Inter-Governmental Agreement with Outagamie County for the John Street (CTH KK) Banta Court to Matthias Street Reconstruction Project.

Attachments: [Intergovernmental Agreement for John Street.pdf](#)

This Report Action Item was approved.

- 15-480** Approve State/Municipal Agreement for the US10/Oneida Street Interchange Project.

Attachments: [State-Municipal Agreement US10-Oneida Street Interchange Project.pdf](#)

This Report Action Item was approved.

- 15-481** Award 2015 Land Acquisition Services for John Street and Northland Avenue pond to Vogels Buckman Appraisal Group in an amount not to exceed \$12,450.

Attachments: [Award 2015 Land Acquisition Services John St & Northland Ave.pdf](#)

This Report Action Item was approved.

3. MINUTES OF THE CITY PLAN COMMISSION

- 15-441** Request to approve the street discontinuance to vacate a portion of North Douglas Street public right-of-way between N. Badger Avenue and W. Winnebago Street, as shown on the attached map and legal description, pending approval by the Municipal Services Committee, and adopt the Initial Resolution

Attachments: [N Douglas Street Vacation Part 2 Staff Review.pdf](#)

This Report Action Item was approved.

4. MINUTES OF THE PARKS AND RECREATION COMMITTEE

5. MINUTES OF THE COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE

- 15-438** Request to approve the Community Development Block Grant (CDBG) 2015 Annual Action Plan

Attachments: [Action Plan - Public Hearing Notice.pdf](#)
[AAPDraft.pdf](#)

This Report Action Item was approved.

- 15-450** Request to approve Habitat for Humanity's request for the City of Appleton's support as a collaborative partner for the Rock the Block Program

Attachments: [Rock the Block Grant Memo.pdf](#)
[Grant Tracking Form.pdf](#)

This Report Action Item was approved.

6. MINUTES OF THE UTILITIES COMMITTEE

- 15-452** Anticipated Award of Unit F-15, Sanitary and Storm Sewer Cleaning & Televising.

Attachments: [Unit F-15.pdf](#)

This Report Action Item was approved.

- 15-456** Award purchase of Chlorination/Dechlorination Chemical Feed Equipment to William/Reid LTD, LLC in the amount of \$57,700 plus a 5% contingency of \$2,885 for a total not to exceed of \$60,585.

Attachments: [Chlorination/Dechlorination Chemical Feed Equipment Purchase Award.pdf](#)

This Report Action Item was approved.

7. MINUTES OF THE FOX CITIES TRANSIT COMMISSION

8. MINUTES OF THE BOARD OF HEALTH

- 15-513** Noise Variance Request - DPW John Street Project

Attachments: [Noise Variance Request - DPW John St Project.pdf](#)

This Report Action Item was approved.

15-514 Noise Variance Request - Oneida St, Fox River Bridge Project

Attachments: [Noise Variance Request - Oneida St, Fox River Bridge Project.pdf](#)

This Report Action Item was approved.

15-515 Noise Variance Request - Fox River House

Attachments: [Noise Variance Request - Fox River House.pdf](#)

This Report Action Item was approved.

15-516 Noise Variance Request - St. Therese

Attachments: [Noise Variance Request - St. Therese.pdf](#)

This Report Action Item was approved.

15-527 Noise Variance Request - USH10/441 47 Interchange

Attachments: [Noise Variance Request - USH10-441 47 Interchange.pdf](#)

This item was previously approved by council in November 2014.

This Report Action Item was approved.

9. MINUTES OF THE HUMAN RESOURCES COMMITTEE

15-462 Request to approve table of organization changes for Public Works as follows:

- * Shift 3.0 fte Laborers to 2.0 fte Stormwater Operator I's and 1.0 fte Street Operator I
- * Shift 1.0 fte Laborer to 1.0 fte Operations Crew Leader
- * Shift 1.0 fte Water Operator II to 1.0 fte PM Shift Crew Leader
- * Shift 1.0 fte Laborer to 1.0 fte Arborist

Attachments: [Public Works TO change 3-23-15.pdf](#)

This Report Action Item was approved.

- 15-464** Request to approve Fire Department reorganization to eliminate 1.0 fte Fire Inspector union position and add 1.0 fte Battalion Chief position.

Attachments: [Fire Reorganization - March 2015.pdf](#)
[Fire Attachment A - Department Staffing Timeline.pdf](#)
[Fire Attachment B - Table of Organization - Current.pdf](#)
[Fire Attachment C - Table of Organization - Proposed.pdf](#)

This Report Action Item was approved.

- 15-489** Request to Over Hire the position of Firefighter.

Attachments: [Request to Over Hire in the Position of Firefighter - March 2015.pdf](#)

This Report Action Item was approved.

10. MINUTES OF THE FINANCE COMMITTEE

- 15-468** Request to approve the 2014-2015 Budget appropriations:
1. Items not under contract -\$5,868,430
2. Special consideration -\$514,661

Attachments: [Consolidated 14-15 carryover - not under contract \(amended\).pdf](#)
[Consolidated 14-15 carryover - special consideration.pdf](#)

This Report Action Item was approved.

- 15-470** Request to approve awarding City Park Playground Resilient Surface Project to Team REIL, Inc. in the amount of \$106,932.20 with a contingency of \$5,345.00 for a contract total not to exceed \$112,277.20

Attachments: [Park Playground surface project 3-25-15.pdf](#)

This Report Action Item was approved.

- 15-487** Request to approve awarding Unit C-15 Sidewalk Sawcutting to ASTI Sawing, Inc. in an amount not to exceed \$30,000.00

Attachments: [Award of Contract C-15.pdf](#)

This Report Action Item was approved.

- 15-502** Request to award sole source contract to Taser International for body cameras and Taser's under a 5 year contract in the amount not to exceed \$98,605 in year one.

Attachments: [Taser Finance Memo 3-19-15.pdf](#)

This Report Action Item was approved.

- 15-503** Request to approve the following 2015 Budget adjustment:

General Fund - Police Dept

Other Contracts - MDC security & token maintenance	-\$18,850
Equipment - Computer analysis equipment	-\$8,000
Equipment - Body cameras & tasers	\$26,850

To transfer funds from other areas to help fund "Officer Safety Program" body cameras and tasers

This Report Action Item was approved.

M. CONSOLIDATED ACTION ITEMS

- 15-528** Consolidated Action:
Item 15-507 - Safety & Licensing
Item 15-464 - Human Resources

This Report Action Item was approved.

- 15-529** Consolidated Action:
Item 15-448 - Safety & Licensing
Item 15-489 - Human Resources

This Report Action Item was approved.

O. ITEMS HELD

P. ORDINANCES

Q. LICENSE APPLICATIONS AND COMMUNICATIONS REFERRED TO COMMITTEES OF JURISDICTION

R. RESOLUTIONS SUBMITTED BY ALDERPERSONS REFERRED TO COMMITTEES OF JURISDICTION

BOARD OF HEALTH

#5-R-15 – Trauger/Meltzer/Konetzke/Martin/Williams/Dalton/Coenen

Weight of the Fox Valley (WOTFV)

"Whereas, The WOTFV serves the (Calumet, Outagamie, Winnebago) tri-county region with a vision of communities that together achieve and maintain a healthy weight at every age.

Whereas, Obesity is a medical term in which excess body fat has accumulated to the extent that it may have a negative effect on health, leading to reduced life expectancy and/or increased health problems.

Whereas, Over 60% of Fox Valley residents are overweight or obese.

Whereas, The rate of Wisconsin residents who are obese has more than doubled in the last 24 years to 30%.

Whereas, Obesity-related conditions include heart disease, stroke, diabetes, high blood pressure, sleep apnea, liver disease, lung disease, arthritis, gout, certain types of cancer and also can impact mental health.

Whereas, The economic cost of obesity in Wisconsin is estimated to be \$3.1 billion per year and going up.

Whereas, Physical activity can improve health by lowering the risk for diseases associated with obesity. Physical activity can help with weight control, and improve academic achievement in students.

Whereas, Access to walking and biking trails has increasingly become a daily mode of transportation and has shown to increase physical activity.

Whereas, The East Central Wisconsin Regional Planning Commission Bicycle and Pedestrian Plan seeks to increase physical activity and enhance safe and convenient walk and bike routes to destinations via well interconnected multimodal transportation network.

Now therefore, be it resolved, that as community leaders we commit to battling this epidemic.

1. Support the efforts of Weight of the Fox Valley.

2. Support the policy and program recommendations found in the Appleton (Fox Cities) Transportation Management Area and Oshkosh Metropolitan Planning Organization Bicycle and Pedestrian Plan prepared with support from the East Central Wisconsin Regional Planning Commission."

S. OTHER COUNCIL BUSINESS

T. ADJOURN

Meeting adjourned at 7:45 PM.

Alderson Stueck moved, seconded by Alderson Croatt, that the meeting be adjourned. Roll Call. Motion carried by the following vote:

Aye: 15 - Alderson Croatt, Alderson Dannecker, Alderson Garb, Alderson Jirschele, Alderson Konetzke, Alderson Lobner, Alderson Martin, Alderson Plank, Alderson Spears, Alderson Stueck, Mayor Hanna, Alderson Trauger, Alderson Dalton, Alderson Williams and Alderson Meltzer

Excused: 1 - Alderson Coenen

Dawn A. Collins, City Clerk




"...meeting community needs...enhancing quality of life."

OFFICE OF THE MAYOR

Timothy M. Hanna
100 North Appleton Street
Appleton, Wisconsin 54911-4799
(920) 832-6400 FAX (920) 832-5962
e-mail: mayor@appleton.org

TO: Members of the Common Council

FROM: Mayor Timothy Hanna 

DATE: May 17, 2015

RE: Committee Reappointments

It is with pleasure that I present the following reappointments for your information at the April 22 Common Council meeting:

FOX CITIES TRANSIT COMMISSION

Bob Buckingham	3-year term (Town of Grand Chute Representative)
Carol Kasimor	3-year term (City of Neenah Representative)

NOTICE OF PUBLIC HEARING

#2-15

RE: Proposed Zone Change

A public hearing will be held in the Council Chambers, City Hall, Appleton, Wisconsin, on April 22, 2015, at 7:00 P.M., or as soon thereafter as can be heard, to consider the following proposed zone change:

Rezoning #2-15 – East Evergreen Drive and North Lightning Drive, from AG Agricultural District, C-O Commercial Office District and R-1 A Single-Family District to C-O Commercial Office District and R-3 Multi-Family District.

LEGAL DESCRIPTION :

The owner/applicant proposes to rezone to C-O Commercial Office District:

Part of Certified Survey Map No. 1282 and Part of the Southeast 1/4 of the Southwest 1/4, Section 7, Township 21 North, Range 18 East, City of Appleton, Outagamie County, Wisconsin, as shown on the map.

The owner/applicant proposes to rezone to R-3 Multi-Family District:

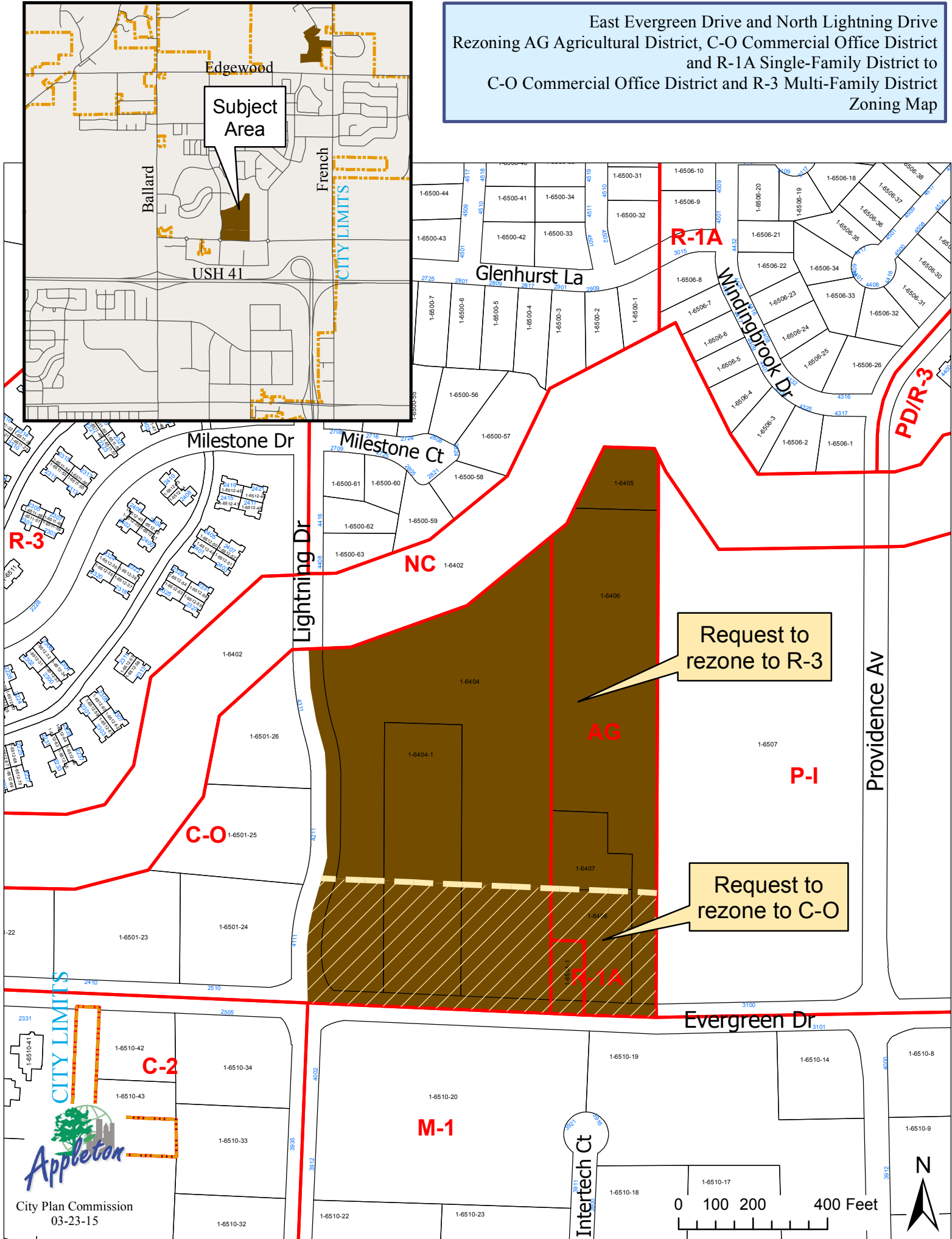
Part of Certified Survey Map No. 1282 and Part of the Northeast 1/4 and Southeast 1/4 of the Southwest 1/4, Section 7, Township 21 North, Range 18 East, City of Appleton, Outagamie County, Wisconsin, as shown on the map.

April 2, 2015

DAWN A. COLLINS
City Clerk

RUN: April 4, 2015
April 7, 2015

East Evergreen Drive and North Lightning Drive
Rezoning AG Agricultural District, C-O Commercial Office District
and R-1A Single-Family District to
C-O Commercial Office District and R-3 Multi-Family District
Zoning Map



Operator's Licenses for 4/9/15 S & L

Approved

Cody W. Bennett	1415 ½ N. Alvin Street
Christopher A. Billingsly	926 ½ E. Washington Street
Linda M. Burge	1018 E. Lindbergh Street
Melissa E. Donnemeyer	2501 wilson Court, #3
Nathan J. Edmondson	1016 N. Morrison Street
Taylor P. Ehle	1390 Maricopa Drive, #F, Oshkosh
Ashlee B. Essary	1470 Navigator Way, #80, DePere
Bailee A. Ferg	1669 S. Nicolet Road, #4
Cherie L. Hahn	3422 E. Paris Way, #7
Chelsea M. Hohl	1305 Lucerne Drive, #1, Menasha
Tammy Kerry	3320 N. Meade Street, #8
Melissa L. Kincannon	1525 Hillcrest Drive, Kaukauna
Alexander P. Lang	W4657 Glenn Street
Courtney J. Mahony	W5262 Arbor Vitae Court, Sherwood
Charlotte Morse	1415 Sterling Heights Ct, #2, Green Bay
Darcy K. Powell	210 W. Main Street, Little Chute
Aron L. Staeger	2985 W. Lawrence Street, #B2
Ashley S. Thomas	1503 E. Pauline Street
Dylan E. Turnbow	356 River Drive
Stephanie N. Uttendorfer	1621 Schaefer Circle, #16
Alicia A. Van Vonderen	W1893 County Road J, Freedom
Sonia E. Verrett	507 Oak Street, Neenah
Mindy L. Visocky	814 W. Hawes Avenue
Kaidan J.S. Whitehouse	1305 Villa Park Circle, #9, Green Bay
Shannon M. Willkommen	1818 N. Richmond Street



LEGAL SERVICES DEPARTMENT

Office of the City Clerk

Dawn Collins, Clerk

MEMO

"...meeting community needs...enhancing quality of life."

March 18, 2015

TO: Safety & Licensing Committee

CC: Amanda Jadin

FR: Dawn Collins

RE: Review of General Policy Statement on Beer/Liquor Licensing

Attached with this memo is the General Policy Statement on Beer/Liquor Licensing for the 2014 review which did not occur. All departments involved in the licensing review/approval process have reviewed and provided feedback to this revision, including former APD Attorney Doucette and current Assistant City Attorney Jadin. Along with minor punctuation or language use modifications, the following is a summary of the revisions.

Page 2. Remove the required standards for issuing a Special Use Permit and clarify that an application must be reviewed to determine whether or not a Special Use Permit is required.

Page 3. Amend language that 'non-use' applies to an issued license (vs. granted) only. Amend the definition of 'issuance' to include department approvals.

Page 4. Include language identifying the required documents that make up the retail application packet.

Page 5. Amend language to reflect correct department name. Amend language to represent current planning terminology.

Page 7. Acronym spelled out.

Page 8. Shorten response time from 30 days to 10 days after notification made to party on waiting list. Clarification of *who* shall request an extension.

Page 10. Language added to address the Sidewalk Café ordinance.

It is the intent of this office to review and bring this policy forward to S&L on an annual basis beginning the fall of 2015.

:dc

-CITY OF APPLETON POLICY		TITLE: GENERAL POLICY STATEMENT ON BEER/LIQUOR LICENSING	
ISSUE DATE: unknown	LAST UPDATE: August 2010		
POLICY SOURCE: Office of the City Clerk		TOTAL PAGES: 11	
Reviewed by Attorney's Office Date: September 22, 2011	Safety and Licensing Committee Approval Date: July 29, 2010 Update approved: Oct. 28, 2010 Update approved: Oct. 13, 2011 Update approved: March 26, 2015	Council Approval Date: August 4, 2010 Update: November 3, 2010 Update: October 19, 2011 Update:	

I. PURPOSE

The City of Appleton believes the safety and welfare of its citizens and neighborhoods are of highest priority and the judicious dispensing of alcohol is in keeping with this belief. The possession of a beer or liquor license in the city is a privilege not a right; a privilege that must not be taken for granted but rather must be continually conditioned by the holder's adherence to applicable laws and regulations.

II. POLICY

All licenses granted and issued for the sale of fermented or intoxicating liquors shall be carried out under the provisions of W.S.A. Chapter 125 and the City of Appleton Municipal Code, Chapter 9, Article III.

Safety and Licensing Committee shall consider the application at a public meeting at which all interested parties will be given an opportunity to be heard. The Committee will, by a majority vote of those present, make a recommendation to the Common Council which shall consider the application at its next regularly scheduled meeting.

In performing its review and preparing its recommendation for approval or disapproval, the Safety and Licensing Committee shall take the following matters under consideration:

- The existence of the community need will ~~also~~ be assessed by the committee. In this regard, such things as the type of operation proposed will be assessed for area and community impact.
- A building should not only be appropriate to the intended use, but should also be appropriate from an aesthetic and tax revenue standpoint.

- The number of licensed premises within the immediate geographic area of the proposed location will be considered.

III. DISCUSSION

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No corporation, partnership or individual will be ~~issued~~ allowed to apply for a beer/liquor license until a Special Use Permit has been applied for, if required, for the premises. This would allow ~~for~~ the Community ~~and Economic~~ Development Department to ~~review and determine whether or not the applicant must apply for and receive approval of a Special Use Permit pursuant to the current Zoning Code.~~ address the standards required for issuing such a Special Use Permit:

- ~~1) Zoning. The proposed use conforms to the underlying zone district purpose and development standards and is in harmony with the general purposes and intent of the Appleton zoning ordinance. When there is an existing nonconforming structure, the development standards may be waived by the Common Council.~~
- ~~2) Plans. The proposed use conforms to the VISION 20/20: Comprehensive Plan, any applicable urban design or other plan officially adopted by the Common Council.~~
- ~~3) Traffic. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.~~
- ~~4) Landscaping and Screening. Appropriate landscaping and screening has been or will be provided to protect adjacent uses or properties from light, noise, and other visual impacts that are associated with the proposed use as established in Appleton Municipal Code Section 23-172(i), Perimeter parking lot and loading space landscaping and Section 23-601, Landscaping and screening standards.~~
- ~~5) Neighborhood Compatibility. The proposed use is compatible with the predominant or prevailing land use of the neighborhood surrounding the proposed development.~~
- ~~6) Services. Adequate facilities, access roads, drainage and/or necessary services have been or will be provided.~~

~~Additionally, the Special Use Permit may be granted with conditions and restrictions upon the establishment, location, construction, maintenance and method of the special use as deemed necessary for the protection of the public interest and to secure compliance with standards 1 through 6 listed above. In all cases in which special uses are subject to conditions, the Plan Commission may recommend and the City Council may require evidence and guarantees, as it may deem necessary (as proof that the stipulated conditions are being and will be complied with).~~

~~Special Use Permits shall be issued permanently or for a specified period of time as may be specified by the City Council upon recommendation of the Plan Commission and shall be an obligation of any party to whom a property may be transferred or assigned.~~

IV. DEFINITIONS

Abandonment or non-use – means a continuing refusal or failure of the licensee to use the license for the purpose or purposes for which the license was ~~granted-issued~~ by the city ~~council~~ for a period of one (1) year. The Common Council may, for good cause shown, extend such period.

Class “A” License – A license to sell beer to consumers in original packages or containers for off-premises consumption.

“Class A” License - A license to sell intoxicating liquor to consumers only in original packages or containers for off-premises consumption.

Class “B” License – A license to sell beer to consumers for on-premises or off-premises consumption.

“Class B” License – A license to sell intoxicating liquor to consumers by the glass for on-premises consumption.

“Class C” License – A license to sell wine by the glass or in an opened original container for consumption on the premises where sold.

Grant – (or granting) – means the approval of a license application by the governing body.

Issuance – means completion of the licensing process by distributing the license to the licensee after ~~department approvals are met and~~ proof of payment of the license fee has been received by the appropriate municipal official.

Temporary Class “B” or Temporary “Class B” – A license to sell beer or wine at a picnic or similar gathering of limited duration. Such license may be issued only to a bona fide club, local or county fair, agricultural societies, churches, lodges or societies that have been in existence for at least six months.

Reserve “Class B” license – A liquor license available under the quota system existing before Dec. 1, 1997 that were not granted or issued by the municipality as of Dec. 1, 1997 and determined by engaging in a series of calculations as described in Wis. Statutes.

Provisional Retail license – A license issued to a person who has applied for a Class “A”, Class “B”, “Class A”, “Class B”, or “Class C” license for a period of 60 days or when the license is issued to the holder, whichever is sooner.

V. PROCEDURES

All new and renewal license applications shall be filed with the Office of the City Clerk on State of Wisconsin approved application forms. No other form will be accepted. A new application shall include respective Auxiliary Questionnaire for each member of the legal entity, Schedule for Appointment of Agent, proof of responsible beverage server's course (if applicable), copy of FEIN, copy of State Seller's permit, and a copy of proof of control of the premise (i.e., lease or purchase agreement). A minimum \$50.00 processing fee and publication fee (\$60.00 – new application, \$20.00 – renewal application) must be paid prior to the processing of the license application. All remaining fees, including outstanding debt to the City, must be paid prior to the issuance of the license.

When the license application is filed for all applications for Class “A”, “Class A”, Class “B”, “Class B”, and Class “C” with the City Clerk, it shall be forwarded to the Director of Community Development, the Inspection Supervisor, the Health Officer, the Police Chief, the Fire Chief, and the Finance Director, the Alderperson of the ward for information and review. The purpose of the review shall be to assemble information regarding applications for beer and liquor licenses which may be helpful to the Safety and Licensing Committee in its decision-making process.

When a provisional retail license is requested, the City Clerk shall inform the applicant that they must possess a Health license prior to operating this business. The City Clerk shall immediately notify the Health Department when such license has been issued.

Based upon the findings of the review, a written report by the staff member shall be submitted to the City Clerk who will present this information to the Safety and Licensing Committee. The Common Council shall not consider any application requiring staff review until it has been on file with the City Clerk for a minimum of fifteen (15) days.

The City Clerk will provide each applicant with a copy of all City policies and ordinances covering liquor and beer licensing. In addition, the Clerk will inform the applicant that one or more meetings will be scheduled at which the applicant's request will be discussed.

Staff Inspection Procedures

All approving departments shall investigate and shall provide a written report to the City Clerk.

Police Department ~~I~~Investigation:

1. The character and reputation of the applicant including the applicant's criminal record based upon a local and state check.
2. A financial background investigation of the corporation, partnership or individual.

3. If the owner is a corporation, a complete listing of all corporate officers and stock holders owning more than 10% of the shares.
4. A detailed summary of the nature of the proposed operation, to include: Special features or operating policies which may impact the demand for police services.
5. Whether the applicant currently has or previously had another Class A, B or C license in the city or in the State or is involved in multiple ownership circumstances.
6. Also, to be considered will be the design, type and size of the proposed establishment and the operational details; number of floor personnel and door checkers; the groups to which the proposed establishment intends to cater; noise, crowd, parking lot control methods; outdoor facilities; and plans for live entertainment including decibel level and soundproofing measures.
7. The review of the operation should include if there is any agreed-to restriction that would enhance the application, i.e., a service bay only, beer only, the hours of operation, and the number of bar stools.

Fire Department Investigation:

1. Compliance with all State and Local Fire codes.
2. Proper posting of capacity sign in an approved location.
3. Fire inspection history with facility and/or owner.
4. Any other items of concern regarding fire prevention and/or suppression.

Health Department Inspection:

1. The proposed building's compliance with all health code provisions.
2. The condition of the building and equipment from a health-standard viewpoint.
3. Any previous problems from a Health Department standpoint with the proposed owner.
4. Other health matters of potential concern.

Community and Economic Development Department Investigation:

1. ~~E~~nsure that all requirements of the Special Use Permit have been met. Review and determine whether or not the applicant must apply for and receive approval of a Special Use Permit pursuant to the current Zoning Ordinance.
2. ~~The property reflects the current zoning ordinance. Appropriate zoning classification:~~ ~~I~~Ensure the use of the building or property is allowed as a permitted use or special use in the Zoning District in which it is located.
3. Such things as traffic, ~~noise~~, parking and other related issues will be reviewed for their impact on the surrounding area.
4. Other planning and development factors.

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Comment [DAC1]: Per Sec 12-77, duty of Health Dept or Police Dept to enforce provision of noise ordinance. Noise impacts are investigated under Sec 6 of Police Investigation above.

Inspection Division Investigation:

1. Compliance with state building code and local building and zoning code requirements.
2. Any previous building code problems with the proposed owner.
3. Other items of concern from a building inspection standpoint.

Related Procedures for License Recommendations

1. The Police, Fire and Health departments shall make a minimum of one inspection during each license year. The most recent inspection shall be used to make recommendations on granting the renewal license.
2. Inspection Division shall inspect the licensed premise only when a new application is received, a change of ownership is requested, or a complaint against the property is received.
3. With regard to the license renewal period, all compliance shall be completed before issuance. All applicants who do not apply for renewal by April 15th -will not receive the reduced renewal fee.
4. Throughout the license year, the Police and Health Departments shall notify the Safety and Licensing Committee of any convictions which result in the assessment of demerit points against any license.
 - a. Accumulation of demerit points shall be grounds for recommending non-renewal, revocation, suspension, denial or transfer or granting of the license. The Safety and Licensing Committee may recommend that prosecution be undertaken by the City Attorney. Such action shall not preclude independent prosecution by the City Attorney.
 - b. If the Safety and Licensing Committee recommends that prosecution be undertaken by the City Attorney, a hearing shall be scheduled before the Safety and Licensing Committee. If a hearing takes place, the Safety and Licensing Committee shall comply with the requirements of Section 9.54 of the Municipal Code and the suspension or revocation would take place the Friday following Council action. Prior to the hearing date, the City Attorney may work out a settlement agreement with the licensee in lieu of the hearing. Any settlement agreement shall comply with the requirements of Section 9.54 of the Municipal Code and must be approved by the Safety and Licensing Committee and the Common Council, and begin within a 13-day period of Council action.
 - c. If the license is suspended by the Safety and Licensing Committee and the Common Council, the City Clerk will provide that licensee with a sign that must

be posted in a conspicuous location on the premise. The sign shall read as follows:

The (type of license) for this establishment:
(establishment name,
agent and address)
is suspended from
(date and time approved by Safety and Licensing Committee and
Common Council) through
(date and time approved by Safety and Licensing Committee and
Common Council)
due to the establishments violation of State Statute(s) and/or the
Appleton City Ordinance(s) prohibiting (type of violation(s)).

By Order of the City of Appleton Safety and Licensing Committee
and the Appleton Common Council on
(date suspension is approved).

Sale of ~~f~~Fermented ~~m~~Malt ~~b~~Beverages in a ~~p~~Park by the City

The City cannot grant a license to sell fermented malt beverages to itself. However, pursuant to W.S.A. 125.06, the sale of fermented malt beverages can occur in a public park operated by a municipality without a license as long as the municipality authorizes the sale. The Parks and Recreation Committee has jurisdiction to consider whether the sale of fermented malt beverages shall be allowed in a park. The Committee will, by a majority vote of those present, make a recommendation to the Common Council. If the Parks and Recreation Committee and the Common Council authorize the sale of fermented malt beverages in any park the following will apply:

1. Any person serving fermented malt beverages shall obtain an operator's license.
2. The police department will periodically conduct inspections and Controlled Alcohol Transaction (CAT) checks at these locations.
3. The police department shall report any violations to the Park and Recreation Committee and the Safety and Licensing Committee.
4. Since technically a license cannot be obtained, demerit points cannot be assessed according to ordinance if a violation occurs at such a location. Therefore, demerit points shall be assessed to the location as if the location has a license in the same manner established in City Ordinance 9-54.
5. The Park and Recreation Committee shall suspend the authorization granted pursuant to W.S.A. 125.06 to sell fermented malt beverages in any public park

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- for not less than 10 days nor more ~~than~~ 90 days if the location accumulates demerit points totaling 150-199 within a 12 month period.
6. The Park and Recreation Committee shall revoke the authorization granted pursuant to W.S.A. 125.06 to sell fermented malt beverages in any public park for at least 12 months if the location accumulates demerit points totaling 200 or more within an 18 month period.

Waiting List

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1. If the City has met its quota on the issuance of- “Class B” Beer/Liquor License, a waiting list of those persons wishing to obtain a license will be established. The names will be added to the list in the order that they are received.
2. Every year at license renewal time, this list shall be updated. It shall be the requirement of the requestor to submit a written request no later than July 1 to the Office of the City Clerk indicating their name, company or corporation, and the proposed address, if known, indicating their desire to remain on the list. A letter confirming their placement will be sent after July 1.
3. If a license becomes available, the first person on the list will be notified and given ~~31~~ 10 business days to respond. If they do not respond within the ~~31~~ 10 business days, the next person on the list shall be notified.

Inactive (Abandoned) Licenses

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1. Any licensee issued a license to sell alcohol beverages that abandons such business shall forfeit any right or preference the licensee may have to the holding of or renewal of such license.
2. Abandonment shall be sufficient grounds for revocation or non-renewal of any alcohol beverage license.
3. The Appleton Police Department will notify the City Clerk, in writing, of any establishment that has abandoned their license. An Inactive license will meet the definition of abandonment or non-use under Section 9-52(9) of the Appleton Municipal Code.
4. Upon receipt of this notification, the City Clerk will send a Certified letter to the owner(s) and/or Agent as indicated on the original application for the sale of intoxicating liquors. The date of letter will be the defining date for determining a one year period.
5. ~~The license holder may request an extension of the one year period.~~ An extension may be granted for good cause. Any extension of the one year period shall be reviewed and approved by the Safety and Licensing Committee and Common Council prior to the expiration of the one year deadline.
6. If after one year, the establishment is still deemed as Inactive, a revocation or non-renewal hearing shall be held.

Convenience Store Beer License Regulations

The Safety and Licensing Committee and the Common Council of the City of Appleton issue Class A licenses to convenience stores with the provision that only Class “A” beer licenses will be issued to convenience stores also selling gasoline.

Certain limits will be placed on the issuance of those licenses:

1. The City of Appleton shall issue no more than one license for every 1500 persons residing in the City, to be reviewed every 5 years, with the next review to be done in the year 2014~~6~~.
2. The establishment shall be limited to twenty (20) percent the amount of floor area used relating to the sale of alcoholic beverages.
3. The hours of operation for all Class “A” beverage sales will be 8:00 a.m. to 12:00 midnight.
4. If the applicant has previously held a license and has required an inordinate number of police calls to maintain order and public presence as a good neighbor, those facts may be considered as ground for denial of the license.

Reserve “Class B” Economic Development Grant

In December 1997, the State of Wisconsin passed a law which requires municipalities to charge a fee of \$10,000.00 for all “Class B” Beer/Liquor Licenses. This fee is in addition to the regular fees set by the municipality for this type of license.

The City of Appleton, in February 1998, approved action to develop a grant program to refund all or part of the \$10,000.00 fee. This action states:

“That this grant be made available to any successful applicant who has paid the full \$10,500.00 application and processing fees for said license and can demonstrate that they have improved the property involved in an amount equal to or greater than the amount of the grant as long as state law requires the \$10,000 fee.”

We find that businesses such as restaurants, hotels and taverns make important contributions to the City’s economy. These establishments serve important public purposes including increasing the City’s property tax base, providing employment opportunities, attracting tourists and generally enhancing the economic and cultural climate of the community.

The grant application can be submitted to the Office of the City Clerk after the license is issued for all or any portion of the \$10,000.00 fee. The application is sent to various departments for their review and is then submitted to the Safety and Licensing and Common Council for approval. After the final Common Council approval, the Finance

Committee will take action to approve the budget appropriation prior to the refunding of the grant dollars. This process may take 6 to 8 weeks to complete.

Special Class “B” Beer, “Class B” Wine Licenses

Special Class “B” Beer and Special “Class B” Wine Licenses may be issued by the City Clerk after approval is granted by the Safety and Licensing Committee and all necessary department recommendations are satisfied.

All applications for Special Class “B” Beer Licenses must be on file in the Office of the City Clerk for at least ten (10) working days. All applications for Special “Class B” Wine licenses must be on file in the Office of the City Clerk for at least 15 days.

Should the Safety and Licensing Committee deny approval of any Special Class “B” Beer or “Class B” Wine License, such denial shall be considered as a recommendation to the Common Council. Said request is forwarded to the Common Council for its approval or denial.

Sidewalk Café

~~Pursuant to Section 9-262(b) of Chapter 9, a Class B license holder may serve alcoholic beverages in the sidewalk café area as long as a Special Use Permit has been granted for the sidewalk café and the Class B license has been amended to include the parameters of the sidewalk café. In addition, pursuant to Section 9-262 of the Municipal Code, the licensee must comply with all regulations pertaining to sidewalk cafes. once a Special Use Permit is applied for and approved. The licensed premises should be amended to include such area and regulations pertaining to sidewalk café complied with.~~

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Open Street Concept - Special Class “B” Beer License

The Safety and Licensing Committee may recommend approval of the ~~OPEN~~pen ~~STREET~~reet ~~CONCEPT~~oncept when granting a Special Class “B” Beer License and forward to the Common Council for final approval.

To develop a consistent procedure regarding licensure of Special Class “B” Fermented Malt Beverage sales at all events occurring within the City where the organizers are requesting open concept sales and provide for an environment that promotes public health and safety regarding alcohol consumption at these events, the Safety and Licensing Committee may require additional restrictions when considering requests for Special Class “B” Beer licenses involving open concept sales. “Open Concept” refers to the sale and consumption of beverages which are allowable with a Special Class “B” Beer license within a geographically defined area that is not secured or enclosed by fences or other physical barriers.

The Safety and Licensing Committee may require the organizers of such events to comply with beverage sale restrictions, or any other restrictions the Committee or the Common Council may deem appropriate.

In addition, the Safety and Licensing Committee reserves the right to limit the number of open concept events held within the City each license year.

OpenPEN Street ConceptONCEPT - BeverageEVERAGE SaleALE
RestrictionsESTRICTIONS

1. Fermented malt beverages ~~should~~shall be served in single portion containers, not to exceed 16 oz.
2. Sale of fermented malt beverages ~~should~~must shall halt at least ~~1/2~~one half hour prior to the end of the scheduled activities or entertainment.
3. Comparable non-alcoholic beverages (e.g., soda) should be made available in at least the same number of service sites as alcoholic beverages.
4. There must be at least one person per dispensing site on premises at all times who is licensed under Section 9-71 of the Municipal Code to supervise the service of beverages.
5. The sponsoring organization will:
 - provide and implement a plan and mechanism of identification to ~~ie~~ensure that persons under the legal drinking age are not served alcoholic beverages~~;~~;
 - provide and implement a plan for event security~~;~~;
 - promote designated driver programs which could include free non-alcoholic beverages, a contract with taxi or bus company for free rides, or other means to promote incentive for responsible choices~~;~~;
 - provide and implement promotional advertising campaigns that incorporate messages of abstinence or responsible use, such as printed ads and radio/television spots that encourage such messages in conjunction with the event's promotional information~~;~~;
 - provide and implement an onsite advertising campaign devoted to messages of abstinence, responsible use, and the health risks associated with alcohol consumption, such as posters, banners, etc.

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Updated and approved by Council

October 19, 2011



REPORT TO CITY PLAN COMMISSION

Plan Commission Informal Hearing Meeting Date: March 23, 2015

Common Council Public Hearing Meeting Date: April 22, 2015 (Public Hearing on Rezoning)

Item: Rezoning #2-15 – East Evergreen Drive

Case Manager: David Kress

GENERAL INFORMATION

Owner: North Meadows Investments, LTD

Applicant: Newmark Grubb Pfefferle c/o Tom Scheuerman

Address/Parcel #: North of East Evergreen Drive and east of North Lightning Drive (Tax Id #31-1-6504-01, #31-1-6404-00, #31-1-6404-01, #31-1-6405-00, #31-1-6406-00, #31-1-6407-00, and #31-1-6408-00)

Petitioner's Request: The applicant is requesting a Rezoning to change the Zoning Map from the AG Agricultural District, C-O Commercial Office District, and R-1A Single-Family District to R-3 Multi-Family District and C-O Commercial Office District for the subject parcels. The request is being made to accommodate future development on the vacant site.

BACKGROUND

The applicant's site consists of seven lots, totaling 23.379 acres, located on the northeast corner of the East Evergreen Drive and North Lightning Drive intersection. This area was annexed from the Town of Grand Chute in 1990 (AAL Annexation), 1999 (Baumann Annexation), 2000 (Calmes Annexation), and 2013 (North Meadows Annexation). The northern portion of parcel #31-1-6404-00 was rezoned several times since being annexed in 1990, most recently from PD/C-2 Planned Development General Commercial District to C-O Commercial Office District in 2000 (Rezoning #17-00). All other parcels have held the same zoning district since annexation occurred. There were dwellings on parcels #31-1-6504-01 and #31-1-6404-01 from the time of annexation until being razed in 2006 and 2011, respectively.

A two-lot Certified Survey Map (CSM) was submitted in conjunction with the rezoning request to combine and reconfigure the current lots. CSMs are administratively reviewed and approved by City staff.

STAFF ANALYSIS

Existing Conditions: The subject area is currently undeveloped. A wooded area covers roughly half of parcel #31-1-6404-01.

Proposed Zoning Classifications: The purpose of the R-3 Multi-Family District is to provide for and maintain residential areas characterized by multiple family dwellings, while maintaining the basic qualities of a dense residential neighborhood, which may include other housing types and institutional and limited non-residential uses.

The purpose of the C-O Commercial Office District is to provide a buffer between commercial and residential areas by permitting professional or business offices that serve the general public. Stringent setback and landscaping standards required in this district will create a visual screen for adjacent properties.

Zoning Ordinance Review Criteria: Based on initial CSM review, the proposed R-3 lot and proposed C-O lot meet the applicable development standards for the R-3 Multi-Family District and C-O Commercial Office District, per Section 23-96(g) and Section 23-111(h) of the Municipal Code.

Surrounding Zoning Classification and Land Uses:

North: NC Nature Conservancy District and R-1B Single-Family District. The adjacent land uses to the north are currently a mix of single-family residential and public open space, including the Apple Creek corridor and recreational trail.

South: M-1 Industrial Park District. The adjacent land uses to the south are currently a mix of undeveloped land and business uses, including multi-tenant office buildings.

East: P-I Public Institutional District. The adjacent land uses to the east are currently institutional, including a place of worship and school.

West: C-O Commercial Office District. The adjacent land uses to the west are currently a mix of commercial uses, including multi-tenant office buildings.

General Information: A rezoning is often triggered by development proposals or changing circumstances in the City. In this case, the desire to reconfigure historic lot lines (via CSM) and market the site for future development prompted the applicant to submit the rezoning request. Per Section 23-40(b) of the Municipal Code, there shall not be more than one zoning district on any parcel of land. Therefore, combining and reconfiguring the lots, which are currently in different zoning districts, also necessitates a rezoning.

Appleton Comprehensive Plan 2010-2030: Comprehensive Plan Amendment #12-13, which related to the subject site, was approved by Common Council on September 4, 2013. The City of Appleton *Comprehensive Plan 2010-2030* now identifies this area for future commercial and multi-family residential uses. The proposed R-3 Multi-Family District and C-O Commercial Office District rezoning is consistent with the Future Land Use Map. Listed below are related excerpts from the City's *Comprehensive Plan 2010-2030*.

Goal 1 – Community Growth

Appleton will continue to provide opportunities for residential, commercial and industrial growth, including appropriate redevelopment sites within the downtown and existing neighborhoods and greenfield development sites at the City's edge.

Goal 3 – Housing Quality and Affordability

Appleton will provide a variety of rental and ownership housing choices in a range of prices affordable to community residents, and ensure that existing housing is adequately maintained in terms of physical quality and market viability.

Goal 8 – Economic Development

Appleton will pursue economic development that brings good jobs to the area and supports the vitality of its industrial areas, downtown, and neighborhood business districts.

OBJECTIVE 5.3 Housing and Neighborhoods:

Provide a range of housing styles that meet the needs and appeal to all segments of the community.

OBJECTIVE 9.4 Economic Development:

Encourage new development and redevelopment activities that create vital and attractive neighborhoods and business districts.

Policy 9.4.1 Ensure a continued adequate supply of industrial and commercial land to sustain new business development.

OBJECTIVE 10.1 Land Use:

Provide an adequate supply of suitable land meeting the demand for development of various land uses.

Standards for Zoning Map Amendments: Per Section 23-65(d)(3) of the Municipal Code, all recommendations for Official Zoning Map amendments shall be consistent with the adopted plans, goals and policies of the City and with the intent of this zoning ordinance. Related excerpts are listed below.

- a. Prior to making a recommendation on a proposed rezoning, the Plan Commission shall make a finding to determine if the following conditions exist. No rezoning of land shall be approved prior to finding at least one (1) of the following:
 1. The request for a zone change is in conformance with the Comprehensive Plan for the City of Appleton. *The rezoning request is in conformance with the Comprehensive Plan 2010-2030, as the Future Land Use Map identifies this area for future commercial and multi-family residential uses.*
 2. A study submitted by the applicant that indicates that there has been an increase in the demand for land in the requested zoning district, and as a result, the supply of land within the City mapped as such on the Official Zoning Map, is inadequate to meet the demands for such development.
 3. Proposed amendments cannot be accommodated by sites already zoned in the City due to lack of transportation, utilities or other development constraints, or the market to be served by the proposed use cannot be effectively served by the location of the existing zoning district(s).
 4. There is an error in the code text or zoning map as enacted.

- b. In addition to the findings required to be made by subsection (a), findings shall be made by the Plan Commission on each of the following matters based on the evidence presented:
 1. The adequacy of public facilities such as transportation, utilities and other required public services to serve the proposed site. *The subject area is served by existing infrastructure, and the transportation network should be able to accommodate the proposed rezoning.*
 2. The effect of the proposed rezoning on surrounding uses. *Commercial / business uses are already located to the south and west of the subject area. The proposed rezoning would allow for similar commercial uses along East Evergreen Drive. Also, multi-family residential uses have recently been developed nearby along North Lightning Drive. The single-family residential uses located to the north are separated from the subject area by the Apple Creek corridor, which is approximately 200 feet wide.*

Review Criteria: Based upon the above analysis, it would appear the criteria established by Section 23-65(d)(3) Zoning Amendments has been satisfied.

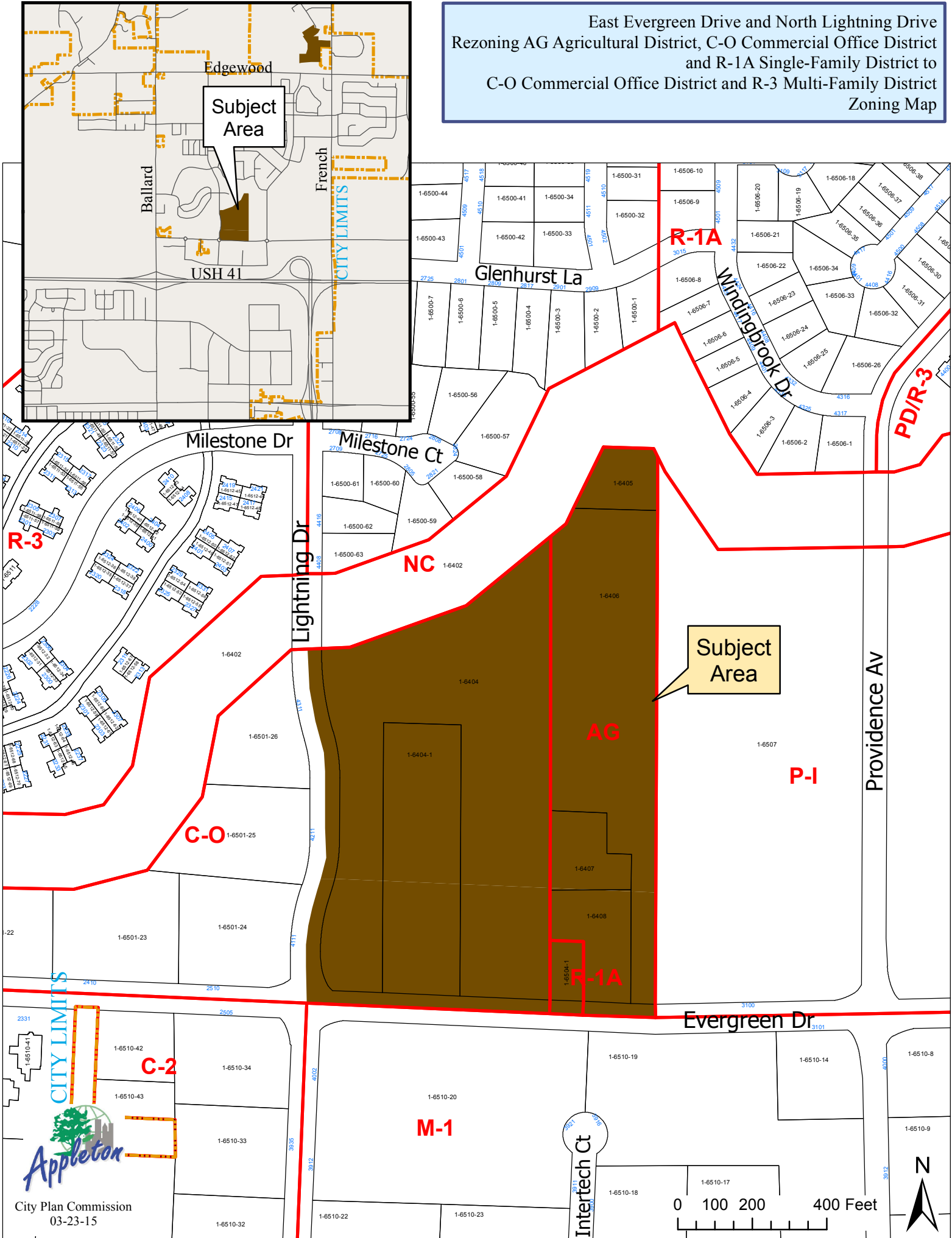
Technical Review Group (TRG) Report: This item was discussed at the March 3, 2015 Technical Review Group meeting. No negative comments were received from participating departments.

Written Public Comments: Staff has received one letter from Thomas Franklin, 4417 North Windingbrook Drive (see attached).

RECOMMENDATION

Staff recommends, based upon the standards for zoning map amendments as required by Section 23-65(d)(3) of the Zoning Ordinance, that Rezoning Application #2-15 to rezone the subject site located at East Evergreen Drive and North Lightning Drive (Tax Id #31-1-6504-01, #31-1-6404-00, #31-1-6404-01, #31-1-6405-00, #31-1-6406-00, #31-1-6407-00, and #31-1-6408-00) from AG Agricultural District, C-O Commercial Office District, and R-1A Single-Family District to R-3 Multi-Family District and C-O Commercial Office District, including to the midpoint of the adjacent road right-of-way and as shown on the attached map, **BE APPROVED.**

East Evergreen Drive and North Lightning Drive
Rezoning AG Agricultural District, C-O Commercial Office District
and R-1A Single-Family District to
C-O Commercial Office District and R-3 Multi-Family District
Zoning Map



ALL OF CERTIFIED SURVEY MAP NO. 1282, AND PART OF THE
NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE SOUTHWEST 1/4,
SECTION 7, TOWNSHIP 21 NORTH, RANGE 18 EAST,
CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN.

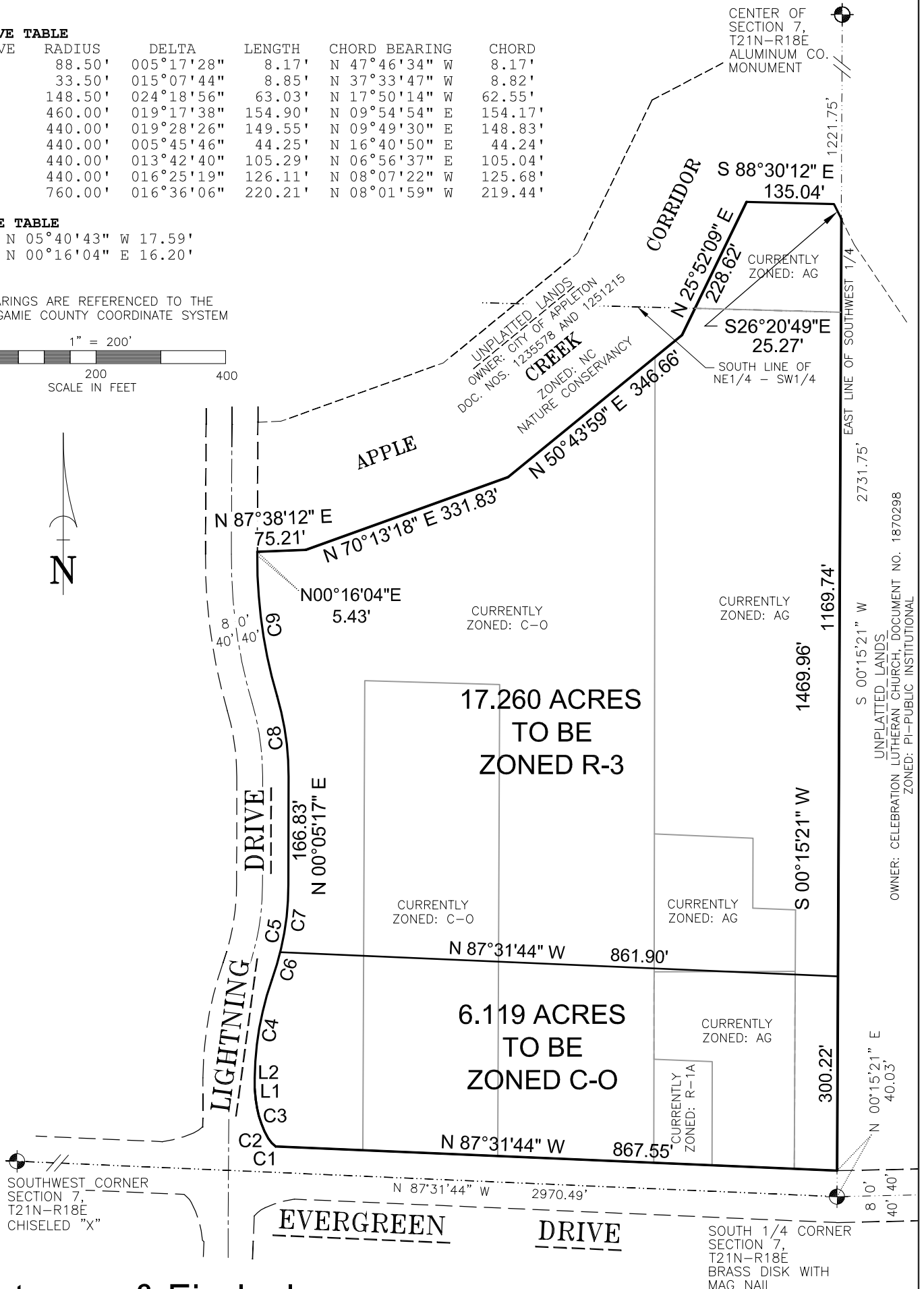
CURVE	RADIUS	DELTA	LENGTH	CHORD BEARING	CHORD
1	88.50'	005°17'28"	8.17'	N 47°46'34" W	8.17'
2	33.50'	015°07'44"	8.85'	N 37°33'47" W	8.82'
3	148.50'	024°18'56"	63.03'	N 17°50'14" W	62.55'
4	460.00'	019°17'38"	154.90'	N 09°54'54" E	154.17'
5	440.00'	019°28'26"	149.55'	N 09°49'30" E	148.83'
6	440.00'	005°45'46"	44.25'	N 16°40'50" E	44.24'
7	440.00'	013°42'40"	105.29'	N 06°56'37" E	105.04'
8	440.00'	016°25'19"	126.11'	N 08°07'22" W	125.68'
9	760.00'	016°36'06"	220.21'	N 08°01'59" W	219.44'

L1 N 05°40'43" W 17.59'
L2 N 00°16'04" E 16.20'

1" = 200'

0 200 400

SCALE IN FEET



m.e.

Planning
Environmental
Surveying
Engineering
Architecture

THIS INSTRUMENT WAS DRAFTED BY: A.Sedlar

4417 N. Windingbrook Dr.
Appleton, WI 54913
franklintef@hotmail.com
March 17, 2015

Mr. David Kress, Principle Planner
Community and Economic Development
City Hall
100 North Appleton St.
Appleton, WI 54911

RECEIVED

MAR 18 2015

CITY OF APPLETON
COMMUNITY/ECON DEVELOPMENT

Dear Mr. Kress,

We recently received notice of a public hearing regarding to re-zoning an Evergreen Drive parcel from Agricultural to R-3 and Commercial. While it strikes me as inevitable and not a problem - no one is going to farm it again - I do have concerns over what happens after re-zoning is a fact, and for good reason.

Last year we were notified of a request by Faith Lutheran Church on Evergreen at Providence Avenue for a variance to add an additional sign larger than allowed by ordinance. I sent a letter questioning

- (1) why a sign exceeding code was necessary,
- (2) why a variance to a necessary and proper ordinance should be granted, and
- (3) why set a precedence of granting variances when no burden exists in conforming to the ordinance?

The variance was apparently granted and Faith Lutheran erected one sign larger than code and a second sign conforming to code. Faith already had one sign. With the addition of two new signs, they now have three signs.

The ordinance clearly limits Faith to two signs total. The ordinance is not being enforced.

(d) **Places of worship and nursing home exceptions.** Places of worship and nursing homes will be allowed one (1) ground sign not to exceed sixteen (16) feet in height and forty-eight (48) square feet per sign face for each street frontage as calculated for multiple-faced signage §23-524(b). One (1) wall sign will also be allowed per street frontage subject to design standards in accordance with Division 4.

From past practice, it appears the City willingly and easily grants variances to ordinances. The parcel on Evergreen is small. Adhering to open space and set-back codes will appropriately limit the number of multi-family units and associated parking spaces. This will lead to a variance request by the developer.

I oppose rezoning the parcel without an iron-clad statement written into the record that any and all structures strictly conform to the codes now existing and no variances will be granted to construct anything not conforming to the existing codes.

Sincerely,





Thomas E. Franklin

Petition for Declining Re-zone Request

This is a formal request to have the re-zoning request for the property:
North of East Evergreen Drive & East of North
Lightning Drive, Parcels #31-1-6524-01, #31-1-6404-00,
#31-1-6404-01, #31-1-6405-00, #31-1-6406-00, #31-1-6407-00,
#31-1-6408-00.

declined. You have a round-a-bout right @ the corner
and acres of woods that holds deer, Turkey
and other wildlife. We do not need more traffic & multi-family.
We the undersigned below request that the re-zoning
be denied.

Date:	Name:	Address	Signature
3/6/15	Stuart Mikkelsen	4401 N. Windingbrook Dr.	
3/16/15	JAMES E KERRIGAN	4325 N WINDINGBROOK DR	
3/16/15	Michele Savoie	4317 N Windingbrook Dr	Michele Savoie
3/16/15	Shannon Rabas	4409 N. Windingbrook Dr.	Shannon Rabas
3/16/15	Kathy Znanek	4417 N Windingbrook Dr	Kathy Znanek
3/16/15	Duane Krueger	4425 N Windingbrook Dr.	Duane A Krueger
3/16/15	Eryn Arnold	3015 E. Glenhurst Ln	Eryn Arnold
3/16/15	Chris Danz	2909 E Glenhurst Ln	Chris Danz
3/16/15	Vicki Peebles	2901 E. Glenhurst Lane	Vicki L. Peebles
3/16/15	Mike Simon	2817 E Glenhurst Lane	Mike Simon
3/16/15	Tim Broeckert	2809 E Glenhurst Ln.	Tim Broeckert
3/16/15	Danell R. Zach	4333 N. Windingbrook	Danell R. Zach
3/16/15	Shan VanDyke	2725 E. Milestone Ct	Shan VanDyke
3/16/15	Melanie Eady	2805 E. Milestone Ct.	Melanie Eady

Date	Address	Name	Sig
3-16-15	2824 E. Milestone Ct.	Lori Riehle	Lori Riehle
3-16-15	2821 E. Milestone Ct.		
3-16-15	2808 E. Milestone Ct.	Gilpatrick Schmittke	Gilpatrick Schmittke
3-16-15	2724 E. Milestone Ct.	Anthony Popp	Anthony Popp
3-16-15	4416 N. Lightning Dr.	Paul Knoll	Paul Knoll
	4408 N. Lightning Dr.		



"...meeting community needs...enhancing quality of life."

MEMORANDUM

TO: Community and Economic Development Committee (CEDC)
FROM: Karen Harkness, Director
DATE: March 31, 2015
RE: Wisconsin Economic Development Corporation's (WEDC) Community Development Investment Grant (CDI)

Wisconsin Economic Development Corporation's (WEDC) Community Development Investment Grant Program was created to support urban, small city and rural community re/development efforts by providing financial incentives for shovel-ready projects with emphasis on, but not limited to, downtown community driven efforts. Grants up to \$500,000 are available for implementation projects. This program operates through a competitive process and applications are due April 17, 2015. Grants must be submitted by the municipality where the project is located. Grant recipients must demonstrate significant, measurable benefits in job opportunities, property values and/or leveraged investment by local and private partners.

Awardees from the first round:

<u>Recipient</u>	<u>Project</u>	<u>Grant</u>	<u>Amount Leveraged</u>
City of Menomonie	Menomonie Market Food Co-op	\$500,000	\$3,399,580
City of Edgerton	Tobacco Warehouse Redevelopment	\$489,000	\$2,105,422
City of Milwaukee	Walnut Way Wellness Commons	\$430,000	\$1,295,000
Milwaukee County	Harbor District Planning	\$40,000	\$120,000
Village of Waunakee	Creative Economy Branding and Marketing	\$11,800	\$35,450
City of Stoughton	Riverfront Redevelopment Planning	\$10,000	\$30,000
Village of Sister Bay	Downtown Marketing and Recruitment	<u>\$6,250</u>	<u>\$18,750</u>
		\$1,487,050	\$7,004,202

513 West College, LLC has requested to partner with the City of Appleton to apply for this round of CDI Grants for their proposed project at 513 West College Avenue - appropriately named "513". Staff has been working with them to review their project and to complete the grant application for submittal on or before April 17, 2015. See the attached letter and bios of the LLC.

The April schedule of CEDC (4/6) and Council (4/22) meetings require us to seek approval of applying for the grant prior to the application being completed. We will share the finished grant with committee.



March 6, 2015

To Whom It May Concern:

As members of 513 West College, LLC, we are pleased to introduce our proposed project at 513 W. College Avenue in downtown Appleton—appropriately named “513.”

513 will be the Fox Valley’s first seed-to-fruit business workspace, giving entrepreneurs the ability to start a company in the simplest of workspaces and expand in-house as the company grows. Start with rented table space; move up to a private office; and then to a market-rate office suite all while never changing your address!

This is not your typical 25,000-square foot office building. 513 will become “home base” for the local entrepreneurial community, housing small business owners who have a goal of growing their own businesses and the business climate of Northeast Wisconsin. Partnerships with local industry leaders, non-profit and educational representatives, will create a “go-to” atmosphere for the local business and entrepreneurial communities.

What also makes this property different is that as 513 West College, LLC, we are forging this opportunity as a for-profit venture. We are renovating a frequently-vacant downtown Appleton building into “Class Funk” office space, mixing market-rate office tenants with a heavily-subsidized co-working space to foster the business incubator environment critical to start-ups. And we are not shy about this fact, as it is why we are pursuing a partnership with the City of Appleton and the WEDC—to help create what many non-profits and well-intentioned community leaders have tried but been unable to do: financially underwrite a risky co-working space endeavor and make it sustainable.

With the assistance of the City of Appleton and WEDC’s Community Development and Investment (CDI) Grant, it *will* be sustainable, and a force by which the business, entrepreneurial, IT and tech communities can all flourish and make our region smarter and stronger. This is only the beginning!

With your help, we will structure a project that satisfies lender, investor, and entrepreneurial demands, resulting in a project that will foster and grow the next generation of great Fox Valley businesses for years to come. We ask for your support so that we can apply for the CDI grant by April 17, 2015.

Respectfully submitted and with appreciation for your consideration,

513 West College, LLC:

Garritt R. Bader

Brad Cebulski

Neil Mix

Peter Nugent

Brandon Wentland

So who are we?!



Garritt R. Bader
Principal, GB Real Estate Investments

Garritt R. Bader is a self-employed commercial real estate broker and developer in Green Bay. He has brokered and developed retail, multi-family and office properties since starting his company in 2007. Garritt is a graduate of Marquette University and the University of Florida, and is a member of the Downtown Green Bay & Olde Main Committees, and on the board of On

Broadway, Inc.



Brad Cebulski
Owner/President, BConnected, LLC

Brad graduated from UW-Eau Claire in 2011 with a degree in Entrepreneurial Management. Since then, he has channeled his passion for small businesses by founding BConnected, LLC, to help small businesses navigate the confusing social media landscape. When not helping small businesses, he listens to music and eats copious amounts of sushi. He also thrives, runs, and operates on coffee.



Neil Mix
Entrepreneur, Engineer, Investor

Neil Mix, Appleton resident, is a Silicon Valley entrepreneur and engineer who helped build Pandora Radio from the ground up and co-founded a company acquired by Microsoft. More recently he's been connecting with local startups as an investor and advisor.



Peter Nugent
Founder, The Docking Station and President, Enlighten Financial

Peter Nugent founded Enlighten Financial, a risk management firm working with community banks throughout the Midwest. He is co-founder of The Docking Station, a shared office and collaborative space in Green Bay. He resides in Green Bay and is a graduate of St. Norbert College. Peter believes a strong entrepreneurial base is key to creating the cities of the future and is working to ensure that Northeastern Wisconsin is on the leading edge.



Brandon Wentland
Founder and President, Optimal

Brandon Wentland is the founder and President of Optimal, a local digital and internet marketing company. He is passionate about making Northeast

513 West College Avenue – WEDC Application

03.31.15

Listed below are goals, objectives, and policies from the City of Appleton's *Comprehensive Plan 2010-2030* that relate to and support the proposal.

Chapter 4: Issues and Opportunities

Goal 8 – Economic Development:

Appleton will pursue economic development that brings good jobs to the area and supports the vitality of its industrial areas, downtown, and neighborhood business districts.

Chapter 7: Utilities and Community Facilities

Objective 7.1 – Provide a pattern of development that minimizes impacts to municipal services and utilities.

Chapter 8: Agricultural, Natural, Historic, and Cultural Resources

Objective 8.3 – Continue and expand efforts to preserve, restore, and interpret important features of Appleton's rich history.

Policy 8.3.2 – Educate property owners and encourage context-sensitive restoration of Appleton's historic and potentially historic properties.

Chapter 9: Economic Development

Objective 9.2 – Create the resources and culture in which entrepreneurial development is encouraged.

Policy 9.2.1 – Develop a program for entrepreneurial development comprised of networking, financial assistance, training, and supportive services for all types of entrepreneurs.

Objective 9.3 – Ensure the continued vitality of downtown and the City's neighborhood commercial districts.

Objective 9.4 – Encourage new development and redevelopment activities that create vital and attractive neighborhoods and business districts.

Objective 9.5 – Create a community environment that is conducive to attracting and retaining the creative class.

Policy 9.5.2 – Encourage the creation of vibrant mixed-use urban areas in the downtown and along the Fox River that are both walkable and bicycle-friendly.

Chapter 10: Land Use

Objective 10.2 – Encourage redevelopment to meet the demand for a significant share of future growth, and to enhance the quality of existing neighborhoods.

Chapter 11: Intergovernmental Cooperation

Objective 11.2 – Work with the State of Wisconsin and federal agencies on issues of concern to the City of Appleton.

Policy 11.2.3 – Seek available opportunities for grant funding and programs that can help to develop capital facilities or improve delivery of municipal services, acquire parks and open space land, or stimulate economic or cultural development.

Chapter 14: Downtown Plan

Initiative 4 – Business and Office Development:

Strategy 4.5 – Encourage entrepreneurial business development in the downtown.

GRANT TRACKING FORM



PART #1: Notification of Grant Funds

(email to lisa.remiker@appleton.org)

APPLICANT DEPARTMENT: Community and Economic Development Department

DATE: 3/30/2015

APPLICANT DEPARTMENT GRANT CONTACT NAME/TITLE: Karen Harkness/Director

COMMITTEE OF JURISDICTION: Community and Economic Development Committee

NAME OF GRANT/FUNDING SOURCE: Community Development Investment Grant/WI Economic Development Corp

AMOUNT OF GRANT REQUEST: \$up to \$500,000

LOCAL MATCH REQUIREMENT: \$0

SOURCE OF MATCH: ☐ General Fund ☐ Non-General Fund ☒ Not Applicable

TIMEFRAME OF GRANT: 4/17/2015 - submittal through / /

TYPE OF GRANT REQUEST: ☒ Monetary ☐ Other (explain under 'purpose of grant')

PURPOSE OF GRANT (summary): The grant will support urban, small city and rural community redevelopment efforts by providing financial incentives for shovel-ready projects with emphasis on, but not limited to, downtown community-driven efforts.

How does the grant meet City/Department/Program goals? See attachment

What are the personnel requirements (include both existing and new staff) of the grant? 0

DEPARTMENT HEAD SIGNATURE:

Karen E. Harkness

PART #2: Request to Accept Grant Funds

(complete after notification of grant award; email to lisa.remiker@appleton.org)

AMOUNT OF GRANT AWARD: \$

FEDERAL/STATE ID #:

LOCAL MATCH REQUIREMENT: \$

Please describe the source of match, if applicable:

Please describe any major changes in proposed grant-funded activities:

PART	TO:	DATE:	TO:	DATE:	TO:	DATE:
#1: Request to Apply	Finance Dept		COJ – Info/Action		FAC – Info/Action	
#2: Request to Accept	Finance Dept		COJ – Action		FAC – Action	

COJ = Committee of Jurisdiction

FAC = Finance and Administration Committee



MEMORANDUM

"...meeting community needs...enhancing quality of life."

TO: Community and Economic Development Committee

FROM: Matt Rehbein, Economic Development Specialist

DATE: March 30, 2015

RE: Request for Waiver of Repurchase Rights for Lot Five (5), Northeast Business Park No. One (1) - Retroactive

Gasman Enterprises, LLC acquired Northeast Business Park Lots 5 and 6 from the City of Appleton on July 17, 2006 for \$133,650 or \$45,000 per acre. Subsequently, Happy Joes was built on Lot 6 in 2009 which is currently assessed at \$859,300 (Land \$138,600, Improvements \$720,700). Lot 5 was sold to S & J Enterprises Fox Cities, LLC on December 2, 2014 for \$92,000 (\$66,503.82 per acre). The current assessed value of the land is \$120,000 (\$96,744.11 per acre). No improvements have been built on the site. A map of these parcels is attached.

An action was taken by Council on December 3, 2008 to rezone the parcel as general commercial (PD/C2), which removed all Deed Restrictions except for the Repurchase Rights (Repurchase language attached). The City was not first offered the land for repurchase prior to the sale as required per the Deed Restriction. A copy of the Deed Restrictions was provided to the buyer in a meeting at City Hall on Sept. 11, 2014. A Real Estate Inquiry Form was provided to Nova Title on November 11, 2014 which notes the City's Rights (attached) and the Deed Restrictions were recorded April 23, 1997. In speaking with the closing agent from Nova Title, he indicated they have since changed their internal policies to ensure these rights are enforced in the future.

S & J Enterprises Fox Cities, LLC has met with Staff and is interested in building an aquatics center on this site. Plans are too preliminary to warrant bringing forward details of construction cost or renderings, but all indications are they have purchased the land in good faith to establish a business at this location. A final Implementation Plan will be required, including approval by Plan Commission and Common Council prior to any construction.

S & J Enterprises Fox Cities, LLC is requesting a waiver of the City's repurchase rights according to Section XII of the Declaration of Deed Restrictions to retroactively allow for the sale of the property.

Staff Recommendation:

The Community and Economic Development Committee waive the City's Repurchase Rights for Lot Five (5), Northeast Business Park No. One (1), retroactively allowing the transfer from

Gasman Enterprises, LLC to S & J Enterprises Fox Cities, LLC. This waiver of repurchase rights is not transferable, survivable, or assignable. The City's Repurchase Rights would remain on this property.

XII. Repurchase Rights:

Failure to Build: In the event the owner of land purchased from the City of Appleton does not commence construction of a building within one (1) year after the date of purchase, ownership shall revert to the City. The City shall pay the following repurchase price: the sum of the original purchase price and all special assessments which may have been paid by the buyer or levied against the property after the date of purchase minus the sum of any unpaid property taxes, proration of the current years property taxes to date of closing, title insurance policy premium or cost of warranty abstract, and any liens and encumbrances on the property of a definite or ascertainable amount. Further, repurchase price shall be adjusted by the amount equal to the amount of an option fee for that year had the property been under option between the City and the Buyer. Conveyance shall be by warranty deed.

Resale of Vacant Land: In the event the owner of land purchased from the City of Appleton elects to sell any portion thereof which is vacant, the property shall first be offered, in writing, to the City of Appleton. The City of Appleton shall have sixty (60) days from date of receipt of such offer to accept or reject repurchase of the property unless an extension of time may be mutually agreed upon and set forth in writing. In the event the City does not elect to repurchase the property, the owner may sell the land, but these Declarations of Covenants and Restrictions shall run with the land and be binding on the subsequent owner. The purchase price shall be computed as in Article XII above. Conveyance shall be by warranty deed. The seller shall furnish a title insurance policy at the seller's expense.



REAL ESTATE INQUIRY FORM

This standard form provides information available at City Center concerning the subject property as of the date noted, and is supplied at your request. It is understood that this form is issued subject to potential errors and omissions and shall not be binding upon the City of Appleton, subject to Sec. 19.35, Wisconsin Statutes you are entitled to examine the public records in the following offices and verify the information to the persons' own satisfaction.

KEY NO.: 31-1-6510-05

Sale ☒Refinance ☐

PRESENT OWNER'S NAME: GASMAN ENTERPRISES LLC

ADDRESS OF PROPERTY: 0 E EVERGREEN DR

CORNER LOT: ☐ Yes ☒ No OTHER STREET OF CORNER LOT:

YEAR BUILT: 0

PRESENT USE: commercial lot

LOT SIZE: 60260.00

PRESENT ZONING CLASSIFICATION: PDC2

Does not include any delinquent special assessments held in Trust by the Counties. Does not include obligations for services provided by not yet billed (i.e., snow removal, weed cutting, etc.). Does not include subdivision fees which are recorded liens. If between 11/15 and 12/31 may not include S/A added to tax roll. **NOTICE:** City licenses or permits cannot be issued for real estate locations if current or previous businesses/individuals at that location have outstanding amount due to the City. Said amounts are not reported herein and may not be recorded liens. Contact the Finance Department, if property use will require City licenses or permits.

REAL ESTATE TAXES

Year <u>2013</u> Taxes Levied	\$ 2,858.48
Special Assessments on Tax Roll	\$ 00.00
State Credit	\$ 172.64
Less: Lottery Credit	\$ 00.00
1 st Dollar Credit	\$ 00.00
Total Tax Bill	\$ 2,685.84
Amount Paid	\$ 00.00
Interest Due	* \$ 00.00
Balance Due	* \$ 00.00

* After 8/1 contact appropriate County for amount due.

PERSONAL PROPERTY

PP Key #

Taxes Levied	\$
Total Tax Bill	\$
Amount Paid	\$
Delinquent Taxes	\$
Year _____	
Amount Due	\$

City Service Invoice Account # N/A

Amount of Last Utility Bill \$

Dates Covered

Are there any outstanding to date ☐ Yes ☐ No (including all past finals)

If Yes, Amount Outstanding: \$ Acct No. if Final

Has Final Been Taken Yet? ☐ Yes ☐ No

Name on Account if different than owner:

YOU MUST SCHEDULE A FINAL UTILITY(WATER/SEWER) METER READING FOR THE DATE OF CLOSING.

OUTSTANDING SPECIAL ASSESSMENTS

If yes, type and amount outstanding:

☐ Yes☒ No

Amounts good thru:

Call 920-832-6438 for updated figures, if needed.

Legal Description of Property:

NORTHEAST BUSINESS PARK NO 1 LOT 5 1.38 AC M/L

County: OutagamieAssessed Value as of January 1, 14 Same as last year ☒ Yes ☐ No**Land:** \$120,500.00 **Improvements:** \$0.00 **Total:** \$120,500.00**Assessment:** Partial☐ This property is under construction and/or being remodeled or is in a revaluation district and may be subject to change in assessment next year. Not final until Board of Review meets.**Proposed Change: Land:****Improvements:****Total:**

Permit administratively closed (\$35 fee to re-inspect)

http://www.appleton.org/i/d/public_works/old_open_permits.pdf☐ Yes☒ No

One or more open permits

☐ Yes☒ No

Open orders of non-compliance

☐ Yes☒ No

Lot meets current area requirements for present occupancy

☒ Yes☐ No

Property is located in Flood Plain

☐ Yes☒ No

Sidewalks are required six (6) months after occupancy

☒ Yes☐ No

Clearwater/driveway inspection required

☐ Yes☒ NoIf yes, please go to http://www.appleton.org/i/d/public_works/clearwater_city_letter_and_form_for_website_12-7-11.pdf

If an approved Clearwater/driveway inspection was done in the past five (5) years please go to

http://www.appleton.org/i/d/public_works/5_year_exemption_letter.pdf

Planned or commenced public improvements

☐ Yes☒ No

If yes, type of assessment.

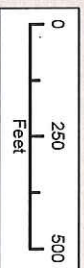
PLEASE NOTE: If current owner decides to sell, the City has right of first refusal pertaining to any sale.
(11/20/08)**FIRE DEPARTMENT INFORMATION:**Routine Inspections Required ☐ Yes ☐ NoOutstanding Violations/Orders ☐ Yes ☐ NoSmoke Detectors Required ☐ Yes ☐ NoIs this property required to have a monitored, smoke detection system in accordance with a development agreement on file with the City? ☐ Yes ☐ No

Subject Site



Legend

- City Owned Parcels For Sale
- Park Parcels
- Park Boundary
- Railroad
- City Limits





March 16, 2015

To: Fox Cities Transit Commission
Finance Committee

From: Deborah Wetter, General Manager

Subject: Approve Valley Transit Procurement Manual

Background:

During Valley Transit's Federal Transit Administration (FTA) 2013 triennial review, we received several findings related to procurement. The FTA informed us that we could no longer use the City of Appleton procurement policies as written procedures for Valley Transit because all state and federal requirements are not incorporated within the City's documents. The corrective action for this finding was that Valley Transit would provide the FTA with written procurement policies and procedures along with a description of how the policies would be implemented.

Following the triennial review, Deb Ebben attended several FTA sponsored procurement classes to learn the rules and regulations that needed to be incorporated into Valley Transit's procurement manual. After several revisions, the FTA approved the attached Valley Transit procurement manual. Upon FTA approval, Valley Transit is required to ask its governing boards, the Fox Cities Transit Commission and the City of Appleton Common Council to approve the manual. All employees who are authorized to make purchases on behalf of Valley Transit must follow the rules set forth in the Valley Transit Procurement Manual.

Recommendation:

Approve the Valley Transit Procurement Manual



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION V
Illinois, Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

200 West Adams Street
Suite 320
Chicago, IL 60606-5253
312-353-2789
312-886-0351 (fax)

March 9, 2015

Ms. Deborah Wetter
General Manager
City of Appleton *d.b.a.* Fox Valley Transit
801 Whitman Avenue
Appleton, WI 54914

Re: Federal Transit Administration FY 2013 Triennial Review – Close Out Letter

Dear Ms. Wetter:

The Federal Transit Administration (FTA) has received and reviewed your responses to the FY 2013 Triennial Review Final Report. The City of Appleton *d.b.a.* Fox Valley Transit has submitted the appropriate documentation to resolve all of the deficiencies identified in the aforementioned report.

Please consider your FY 2013 Triennial Review to be closed. If you have questions, please contact Cyrell McLemore at Cyrell.McLemore@dot.gov or (312) 886-1625, or me at (312) 353-2789.

Thank you for the cooperation shown to us throughout the Triennial Review process.

Sincerely,

Marisol R. Simón
Regional Administrator, FTA Chicago



PROCUREMENT MANUAL



PREPARED BY VALLEY TRANSIT
January 2015

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CHAPTER I
INTRODUCTION

Valley Transit, a department of the City of Appleton, provides a range of transportation services for the general public in Fox Cities region, which includes the Cities of Appleton, Kaukauna, Menasha, Neenah, Villages of Kimberly, Little Chute, Towns of Buchanan, Grand Chute, Menasha and the Counties of Calumet, Outagamie and Winnebago. Valley Transit provides fixed route service along with complimentary ADA paratransit and various ancillary paratransit services.

Valley Transit procures goods, inventory items, consultant and professional services as necessary to fulfill the purposes of Valley Transit. As a direct recipient of Federal Transit Administration funds, Valley Transit is required to comply with certain federal rules and regulations when it procures items with the use of these federal funds. In order to ensure a fair and competitive system and to comply with industry best practices, Valley Transit has adopted this Procurement Manual. It represents the minimum standards that must be met by Valley Transit contract administrators.

CHAPTER II

PROVISIONS APPLICABLE TO ALL PROCUREMENTS

General Principles

Procurement Policy. The policies contained in this Procurement Manual are intended to maintain the integrity of Valley Transit's procurement processes, while ensuring that purchases are made in a cost effective, timely manner; with fair and open competition; and in accordance with all applicable laws and regulations.

Conflicts of Interest. No preferential treatment may be given to any contractor. It is Valley Transit's goal to avoid actual or perceived conflicts of interest in contracts and to promote full and open competition. In the case of a real or apparent conflict of interest, the Valley Transit employee, officer, board member or agent with the actual or perceived conflict must not participate in the selection, award, or administration of such contract. The following standards of conduct govern employees engaged in the selection, award or administration of federally funded contracts:

- The officers, employees, board members and agents of Valley Transit must not solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements.
- A conflict of interest is deemed to exist if the employee, officer, board member or agent of Valley Transit, his/her partner, any member of his/her immediate family, or an organization that employs or is about to employ any of the foregoing, has a financial or other interest in the proposed contract.
- A conflict of interest will not be deemed to exist where the financial interest is insubstantial.

Valley Transit may take disciplinary action up to and including dismissal for violations of these standards by officers, employees, board members or agents of the recipient.

Competition. Procurement transactions should be conducted in a manner that, to the extent practical, promotes open and free competition. Awards will be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to Valley Transit.

- *Restraint of Trade.* Valley Transit employees, officers, and agents must not support or acquiesce in noncompetitive pricing practices between firms or between affiliated companies.
- *Organizational Conflicts of Interest - Exclusion from Competition.* Contractors who participate in the development or drafting of Valley Transit's specifications, requirements, statements of work, invitations for bids, or requests for proposals will be excluded from competing for such procurements. In order to mitigate potential organizational conflicts of interest, Valley Transit user and procurement personnel shall conduct a review of pending requisitions/projects to ensure that such conflicts are identified and eliminated. An organizational conflict of interest occurs when any of the following circumstances arise:
 - Lack of Impartiality or impaired objectivity. When the contractor is unable, or

- potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.
 - Unequal access to information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
 - Biased ground rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- *Geographic Preferences.* Procurement transactions using Federal funds will be conducted in a manner that prohibits the use of in-state or local geographical preferences in the solicitation and evaluation of bids proposals, except in those cases where applicable Federal statutes or regulations expressly mandate or permit geographic preference.
- *Arbitrary Action.* Arbitrary actions in the procurement process are prohibited. Examples could include award of a contract to other than the low bidder without appropriate justification and rejection of bids or proposals without rational reasons.

Requirements/Prohibitions Related to Contract Selection and Reimbursement Methods. Valley Transit must comply with the following prohibitions and requirements related to selecting the type of contract or basis for reimbursement for federally funded procurements.

- *Responsive offers.* Valley Transit will only make awards to responsive offers from responsible offerors. A responsive offer is one that complies with all material requirements of the solicitation. A responsible offeror is one possessing the technical, physical, financial and ethical capacity to successfully perform a specific contract.
- *Cost plus a percentage of cost.* Valley Transit must not utilize the "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting.
- *Time and materials.* Valley Transit must not utilize the "time and materials" contract unless Valley Transit determines that no other contract type is suitable and the contract explicitly specifies a ceiling price that the bidder or offeror may only exceed at its own risk.
- *Cost reimbursement.* Where Valley Transit chooses to enter a "cost reimbursement" contract, its employees, officers, and agents must comply with the applicable provisions of Federal Acquisition Regulation (FAR) Part 31. Specifically, Valley Transit must utilize the guidelines in FAR Part 31 to determine whether the contractor's proposed costs are reasonable, allowable, and allocable.
- *Advance payments.* Advance payments of federal funds are prohibited unless prior written concurrence is obtained from the federal funding agency.
- *Progress payments.* If progress payments are used for a selected contract, such payments must be made on the basis of costs incurred or, for construction contracts only, on the basis of percentage of completion of the relevant project. Valley Transit

must obtain adequate security (i.e., title to work in progress; letter of credit) for any progress payments made.

- *Contract terms.* Valley Transit will enter into contracts with performance periods that do not exceed the time necessary to accomplish the purpose of the contract. Pricing, competition, fairness and public perception will be used to determine the contract period, with rationale documented in the procurement file. The period of contract performance for rolling stock and replacement parts may be a multi-year contract, with an option not exceeding five (5) years to buy additional buses or replacement parts, as defined in FTA C4220.1F. Rolling stock and replacement parts procurements shall be limited to Valley Transit's material requirements for the applicable contract period.

Debarment and Suspension. Valley Transit must not contract with parties debarred or suspended from Federal programs under DOT regulations, "non-procurement Suspension and Debarment," 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4. Valley Transit's employees, officers, and agents shall conduct this check prior to forming a contract for procurement. These records may presently be checked at www.sam.gov.

Federal Clauses. Valley Transit must comply with all applicable Federal laws and regulations. Some of the laws and regulations affect third party contractors, other laws and regulations will affect the nature of the property or services to be acquired or terms under which the property or services must be acquired. Valley Transit will use the matrix in the Appendix of this procurement manual as a reference for applicable clauses. The matrix will be reviewed and updated annually.

Revenue Rolling Stock Pre-Award and Post-Delivery activities. When purchasing revenue rolling stock with FTA funds, Valley Transit must comply with applicable requirements of 49 U.S. Section 5323(m) and those provisions of FTA regulations "Pre-Award and Post-Delivery Audits, 49 CFR Part 663 that do not conflict with 49 U.S. Section 5323(m).

The pre-award audit includes a Buy America certification, a purchaser's requirements certification, and where appropriate, a manufacturer's Federal Motor Vehicle Safety certification. A pre-award purchaser's certification is a certification that the rolling stock is the same product described in the solicitation specification and the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the specification set forth in the solicitation.

Valley Transit must ensure that a post-delivery audit is complete before title to the rolling stock is transferred. A post-delivery audit includes a post-delivery Buy America certification, a post-delivery purchaser's requirements certification and a manufacturer's Federal Motor Vehicle Safety Standard self-certification. A post-delivery requirements certification is a certification that a resident inspector was at the manufacturing site throughout the period of manufacture of the rolling stock, monitored and completed a report on the manufacture of the rolling stock. The report should include accurate records of all vehicle construction activities, address how the construction and operation of the vehicles fulfills the contract specifications and record of visually inspection and road testing the vehicles.

CHAPTER III

PROCUREMENT PLANNING AND ADMINISTRATION

1. Contract Administration System

Valley Transit's contract administration system is intended to manage procurement activities and help ensure that contractors engaged by Valley Transit perform in accordance with the terms, conditions and specifications of their respective contracts.

Activities. Contract administration may involve a variety of activities, including but not limited to: monitoring project progress; monitoring financial status of contractors; ensuring contractor compliance with quality assurance requirements; and evaluating adequacy of engineering efforts.

Evaluation. Valley Transit will evaluate contract performance and, as appropriate, document whether contractors have met the terms, conditions and specifications of the contract.

Responsibilities. Valley Transit will identify an individual who will be responsible for the maintenance of procurement records for each project.

2. Procurement Planning

Valley Transit staff should plan procurements in advance to best address the needs of Valley Transit. The Common Grant rules require the recipient of FTA funds to maintain and make available written records detailing the history of each procurement. Planning a procurement process should include:

Avoidance of Duplicative Procurements. In order to avoid purchasing unnecessary items, Valley Transit staff should keep records of and regularly review planned procurements.

Analysis of Alternatives to Purchase. Procurement activity will be reviewed by the Valley Transit Administrative Manager at least annually to determine if certain classes of purchases should be consolidated or broken out to obtain more economic pricing. Where appropriate, analysis will also be made of lease versus purchase alternatives or any other appropriate methodology to determine the most economical approach.

Contract Type. In determining the type of contract to be utilized, staff should consider price, risk, uncertainty, and responsibility for costs. The type of contract used should reflect the cost risk and responsibility assumed by the contractor or supplier. Contract types include, but are not limited to, the following:

- *Firm fixed-price contracts.* This contract type provides a firm contract price, without the right to cost adjustments except in specific circumstances as set forth in the contract terms and conditions.
- *Cost reimbursement/cost-plus-fixed-fee contracts.* This contract type includes an estimate of the total contract costs, to be paid on a reimbursement basis, which amount cannot be exceeded without Valley Transit approval, plus a negotiated fixed fee.
- *Time and materials/labor hour contracts.* These contract types are based on payment

for direct labor hours at specified, fully burdened hourly rates, and, as applicable for materials at agreed upon cost. This type of contract must not be utilized unless Valley Transit determines that no other contract type is suitable. If used, a ceiling price should be included in the contract, with provisions specifying that the contractor exceeds this ceiling at its own risk, unless prior written approval of Valley Transit is obtained for an increase in the ceiling price.

- *Revenue contract.* A revenue contract is a contract in which the recipient or subrecipient provides access to public transportation assets for primary purpose of either producing revenues in connection with an activity related to public transportation, or creating business opportunities with the use of FTA assisted property. To ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, Valley Transit should conduct revenue contracting as follows:
 - Limited contract opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then Valley Transit will use a competitive process to permit interested parties an equal chance to obtain the limited opportunity.
 - Open contract opportunities. If, however, one party seeks access to a public transportation asset, and Valley Transit is willing and able to provide contracts or licenses to other parties similarly situated, then competition would not be necessary.

Procurement Type. The Valley Transit staff responsible for the applicable procurement will determine which method of procurement is to be utilized based on the criteria set forth in this Procurement Manual. Procurement methods include, but are not limited to, the following:

- *Micro purchases* Micro purchases do not require multiple quotes, formal bidding procedures or non-competitive procurement findings. For federally funded procurements, the threshold for micro purchases is \$3,000. The City of Appleton's requires two quotes for purchases over \$1,000 (See small purchases below). Procurements should not be split (i.e., segmented into smaller contracts to fall under the micro purchase thresholds) to avoid competition and should be distributed equitably among qualified suppliers.
- *Small purchases.* For federally funded procurements, the threshold for a small purchase is \$100,000, but the City of Appleton's requirements are more stringent. Small purchases have several thresholds; \$1,000 - \$4,999, \$5,000 - \$15,000 and purchases over \$15,000.
 - \$1,000 - \$4,999, Two quotes are required
 - \$5,000 – 14,999, Three written quotes are required
- *Small and Large purchases \$15,000 and over.* When making a purchase for \$15,000 or more, one of the following procurement methods should be used:
 - *Low bid competitive procurement.* A low bid competitive procurement pursuant to issuance of an invitation for bids (IFB) may be used where a complete, adequate, and sufficiently generic specification is developed; adequate

competition is available in the marketplace (two or more responsive and responsible bidders will compete); and the procurement lends itself to a firm-fixed price contract. An IFB will be used when required by the applicable funding source based on the project type and anticipated contract value.

- *Competitively negotiated procurement.* A competitively negotiated procurement pursuant to issuance of a Request for Proposals (RFP) or Request for Qualifications (RFQ) may be used where a low bid competitive procurement is not appropriate or desirable for the solicitation, including, but not limited to, the procurement of professional services including architect, engineering, construction management, accounting, legal and other similar services, and the contract is anticipated to exceed the small purchase threshold. Joint procurements utilizing competitively negotiated procurement are allowed. All architect and engineering (A&E) projects will follow the Brooks Act; use of RFQ procurement and price negotiation with the most qualified candidate.
- *Non-competitive procurement/Sole source.* Procurements may be made through solicitation of a proposal from only one source. For federally funded procurements, Valley Transit must perform a cost and profit analysis prior to making the award, which analysis must be included in the procurement file. An amendment to an existing contract that is beyond the scope of the original procurement, including any negotiated options, or that increases the contract amount over the small purchase threshold (“tag-on”) is subject to this section.
- *Piggybacking.* Valley Transit may “piggyback” on a contract/solicitation process completed by another entity that complies with the requirements of this manual, if the procurement allows another entity to purchase the same supplies or equipment under the original contract/solicitation process.
- *Emergency; Unusual and Compelling Urgency.* If Valley Transit has an unusual and urgent need for the property or services, such that Valley Transit would be seriously injured by having to comply with competitive procurement requirements. Valley Transit may also enter into a contract in a non-competitive manner when the public exigency or emergency will not allow for the delay of engaging in a competitive procurement.

3. Procurement Specifications

In order to provide for fair, unbiased review and evaluation of competitive proposals, Valley Transit solicitations for goods and services over the small purchase threshold should provide clear specifications.

Specification Requirements for Procurements. All competitive solicitations should provide, as applicable:

- **Clear Descriptions.** A clear and accurate description of the technical requirements for the material, product, or service to be procured.
- **Preference for Performance Specifications.** A description of the requirements which

the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals. The specifications should include the range of acceptable characteristics or minimum acceptable standards.

- Quality Requirements. A description of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
- Nonrestrictive Specifications. Technical requirements for the procurement that do not contain features which unduly restrict competition.
- Use of “brand name or equal” purchase descriptions only if:
 - An adequate specification cannot be provided without performing an inspection and analysis in time for the acquisition under consideration; and
 - When minimum needs are carefully identified and those salient physical and functional characteristics of the brand name product are clearly set forth in the solicitation.
- The preference, to the extent practical and financially feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient.

Exclusionary or Discriminatory Specifications. Valley Transit, its employees, officers, and agents must not use federal funds to support an exclusionary or discriminatory specification. In conformity with this mandate:

- Valley Transit will not impose unreasonable business requirements for bidders or offerors.
- Valley Transit will not impose unnecessary experience requirements for bidders or offerors.
- Valley Transit will not require excessive prequalification of contractors.
- Valley Transit will not impose excessive bonding without the original recipient’s and the funding agency’s written concurrence.
- Valley Transit will not specify a brand name product without allowing offers of an equal product.
- Valley Transit will not specify in-State or local geographic preferences, except to comply with State licensing requirements or in the case of procuring architectural engineering or disaster relief services.

4. Independent Cost Estimate

An independent cost estimate must be completed prior to the solicitation/receipt of bids or proposals for federally funded procurements in order to assist with determining price

reasonableness. The independent estimate must be prepared without knowledge of the contractor's proposed pricing. Depending on the procurement type and scope, independent cost estimates may be completed by Valley Transit staff, by independent third-party staff, or by a firm retained to complete the estimate. Methods of completing the independent cost estimate vary based on the procurement and include:

- Checking historical records or published price guides.
- Completing a detailed and in-depth estimate, such as required for preparing an engineer's estimate for a construction contract.

5. Contractor Selection

Responsible Contractors. Valley Transit will only award contracts to responsible contractors who possess the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. An evaluation committee or procurement officer will determine if a contractor is responsible. In making this determination, Valley Transit will ensure that the prospective contractor satisfies the following criteria:

- Have a satisfactory record of integrity and business ethics by checking references and work history.
- Be neither debarred nor suspended from Federal programs by checking the System for Award Management (SAM) website.
- Be in compliance with the Common Grant Rules affirmative action and FTA's Disadvantaged Business Enterprise requirements by including verbiage in contracts and monitoring the contractor for compliance.
- Be in compliance with applicable licensing and tax laws and regulations.
- Have, or can obtain, sufficient financial resources to perform the contract as required by 49 U.S.C. Section 5325(j)(2)(D).
- Have, or can obtain, the necessary production, construction, and technical equipment and facilities.
- Be able to comply with the required delivery or performance schedule.
- Be able to provide a satisfactory current performance record, a satisfactory past performance record, sufficient resources, adequate past experience and past deficiencies not the fault of the provider.

Information collected in solicitation should include:

- Description/references of similar work performed in the preceding five year period, including work in progress
- For contracts over \$250,000, certified financial statements for the preceding three year period. If certified statements are not available, acceptable financial documentation would be required.
- Description of plant, equipment, machinery, etc. necessary to support work.
- Compliance certification for DBE requirements, tax/licensing laws, criminal history and debarments/performance issues.

Utilization of Specific Businesses and Disadvantaged Business Enterprises (DBE). It is the policy of Valley Transit that disadvantaged business enterprises (DBEs), as defined in 49 C.F.R.

Part 26, shall have an opportunity to participate in awards of its contracts and subcontracts. Valley Transit employees, officers, and agents shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises in federally funded procurements. As feasible, Valley Transit should do the following to promote participation:

- Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- Make information on forthcoming opportunities available and arrange timeframes for purchases and contracts to encourage and facilitate participation by such organizations.
- Consider in the contract process whether firms competing for larger contracts intend to subcontract with such organizations.
- Consider contracting with consortiums of such organizations when a contract is too large for one of these firms to handle individually.

6. Cost and Price Analysis.

A cost or price analysis must be performed for every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the recipient must make independent estimates before receiving bids or proposals. The cost or price analysis is based on the independent cost estimate, which is developed before a solicitation is issued. For contract modifications, the independent estimate must be prepared without knowledge of the contractor's proposed pricing. The analysis must be included in the project file.

Cost Analysis. Cost analysis is the review and evaluation of each element of cost to determine if the expense is reasonable and allowable. A cost analysis must be performed under the following conditions:

- When the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost.
- When adequate price competition is lacking, including sole source procurements unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.
- Adequate price competition may be determined to exist when the perception of competition exists, even if only one bid or proposal is received; conversely, the receipt of multiple bids or proposals with widely differing prices may not constitute adequate price competition.
- Profit is to be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- Prior to the use of a cost-type contract, Valley Transit will make a determination that the contractor's accounting system is adequate to properly segregate and bill costs, and also adequate to allocate indirect costs in accordance with generally accepted accounting principles. In no event shall fixed indirect cost rates, that are not subject to audit and adjustment, be used in a cost-type contract, as such agreements constitute an unlawful cost-plus-percent-of cost method of compensation. Provisional indirect billing rates may be used by must be subject to later audit and adjustment.
- As required by 49 U.S.C. Section 5325(b)(2), the following requirements apply to a third party contract for program management, architectural engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping or related services:
 - The third party contract or subcontract must be performed and audited in compliance with FAR Part 31 cost principles.
 - The recipient and the third party contractor, its subcontractors and subrecipients, if any, must accept FAR indirect cost rates for the one-year applicable accounting periods established by a cognizant Federal or State government agency, if those rates are not currently under dispute.
 - After a firm's indirect cost rates established as described in the above paragraph are accepted, those rates will apply for purposes of contract estimation, negotiation, administration, reporting, and payments, not limited by administrative or defacto ceilings.

Price Analysis. A price analysis looks at the price as a whole without examination of its various components. Acceptable methods of price analysis include the comparison of price quotations submitted, market prices and similar indicia, together with discounts. A price analysis may be used in all instances where a cost analysis is not required to determine the reasonableness of the proposed contract price.

Federal Cost Principles. The FTA recognizes that recipients may have difficulty obtaining information necessary to conduct a proper cost or price analysis. As applicable, Valley Transit should utilize the guidelines provided in Federal Acquisition Regulations, Part 31, to determine whether proposed costs are reasonable and allowable.

7. Contract Award

Approval Authority. Final authority for procurement rests with Valley Transit's Fox Cities Transit Commission and The City of Appleton Common Council (governing boards) except as delegated by the City of Appleton Mayor to the Valley Transit General Manager.

General Manager Approval Threshold. The General Manager is authorized to approve and enter into contracts, including contract amendments, on behalf of Valley Transit under his/her single signature authority where the expenditure is less than fifteen thousand dollars (\$15,000). Segmentation of contracts to avoid this threshold is not permitted.

Option Contracts. If the exercise of an option under an existing contract entered into by the General Manager under his/her Single Signature Authority will result in a total contract value in

excess of the Single Signature Authority threshold, approval of the governing boards is required.

Contract Amendments. Where an amendment to an existing contract entered into by the General Manager under his/her Single Signature Authority will result in a total contract value in excess of the Single Signature Authority threshold, approval of the governing boards is required.

Governing Board Approval. The governing boards are the only entity permitted to award contracts valued at fifteen thousand dollars (\$15,000) or more and are not for the renewal or re-award of existing, previously approved and budgeted, ongoing operational requirements.

8. Procurement Records

All negotiated contracts in excess of the micro-purchase threshold must include a provision permitting Valley Transit, the federal awarding agency, the Comptroller General of the United States, or any other duly authorized representatives, to access any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

Valley Transit will keep and maintain, in accordance with its records retention policy, a file or record for each federally funded procurement. FTA's Master Agreement requires that during the course of the project and for three years thereafter, it will maintain intact and readily accessible all data, documents, reports, records, contracts and supporting materials relating to the project. All rolling stock records must be kept for three years after retirement of the asset. Procurement files must include the following:

- The rationale for the method of procurement.
- The basis for the contract type selected.
- The basis for contractor selection.
- The justification for lack of competition where competitive bids or offers are not obtained.
- The basis for the award cost or price.

9. Protest Procedures

Applicability. These protest procedures apply to all Valley Transit formal competitive procurements (RFPs, RFQs and IFBs), unless different procedures are included in the procurement documents. Procurements that intend to utilize the protest procedures set forth herein should include a reference to these procedures. As used in this section, an "interested party" is any person or entity that has timely submitted a bid or proposal in response to a formal procurement. Protests may only be filed by an interested party.

Guidelines for Protests.

- *Strict compliance.* Strict compliance with the protest procedures is required. No

statement by Valley Transit employees, officers, or agents will modify or otherwise alter the protest procedures. Only Valley Transit's governing boards are authorized to modify these procedures, or the protest procedures set forth in the applicable procurement documents.

- *Exhaustion of Remedies Required Prior to Pursuing Protest with Federal Funding Agency or any legal action in any court or tribunal.* The protest procedures are intended to constitute administrative remedies that must be exhausted prior to an interested party commencing any legal action or requesting review by any applicable federal funding agency.
- *Deadline.* Protests must be filed promptly after the basis for the protest is known, but no later than:
 - Protests relating to the procurement solicitation must be submitted in writing no later than five (5) working days from the date of the first published advertisement.
 - Protests relating to the evaluation process must be submitted in writing no later than five (5) working days from the postmarked date of written evaluation correspondence sent by the General Manager to the Provider.
 - Protest relating to the award must be submitted in writing no later than five (5) working days from the date of the award.
 - Protests relating to post-award issues must be submitted in writing no later than five (5) working days from the date that the protestor verbalizes the concern to the General Manager.
 - Requests for reconsideration (if data becomes available that was not previously known, or there has been an error of law or regulation) or appeal to a higher level must be submitted in writing no later than seven (7) working days from the date of the initial determination.
- *Contents Of Protest.* Protests must clearly identify the interested party and the procurement involved in the protest. Protests must completely and succinctly state each and every ground for protest in detail, its legal authority for each protest allegation, and the factual basis for such protest. The protest must include all factual and legal documentation in sufficient detail to establish the merits of the protest. Items that are not included in a protest shall be deemed waived and uncontested.
- *Filing Of Protest.* Protests must be delivered to the Valley Transit offices during normal business hours (but in no event later than 5:00 p.m.) on or before the applicable deadline. Protests must be directed to the attention of the General Manager of Valley Transit.

Resolution. Protests will be decided on the basis of written submissions and any other fact finding determined necessary or appropriate by Valley Transit. Valley Transit may establish a protest evaluation team, and may consult with its legal counsel.

General Manager Response.

Upon receipt of a written protest, the General Manager will meet with the protestor within five

(5) working days and attempt to resolve the matter informally. If information provided at the conference is to be considered in the protest decision it must be submitted in writing within three (3) days of the conference. The General Manager will respond in writing within five (5) working days of the meeting to each substantive issue raised in the written protest.

If the protestor is not satisfied and indicates an intention to appeal to the next step, the General Manager will temporarily suspend the procurement process, provided that the protest has been timely filed before award, unless it is determined that:

- The items to be procured are urgently required;
- Delivery or performance will be unduly delayed by failure to make the award promptly; or
- Failure to make prompt award will otherwise cause harm to Valley Transit.

Each prospective Provider will be advised of the pending protest if the protest is filed before award.

Decision On Protest. The General Manager will issue a written decision regarding the protest within thirty (30) days after the filing of the detailed statement of protest.

Local Appeal Procedure. If the protestor makes a timely appeal of the General Manager's decision the matter will be forwarded to the Fox Cities Transit Commission (FCTC) for their review. The protestor will be notified in writing of the date that the appeal will be heard. The recommendation of the FCTC will then be forwarded to the Appleton Common Council for ultimate local disposition of the protest.

FTA Funded Procurements. When the protest involves an FTA funded procurement, the contract administrator will disclose information regarding the protest to FTA, and will keep the FTA informed about the status of the protest. If the protest alleges that Valley Transit has failed to follow its written bid protest procedures, the protestor may ask that FTA review the protest in accordance with FTA C4220.1F. The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has received actual or constructive notice of Valley Transit's final decision. The FTA will generally limit its review of protests to those situations where a grantee, (i) does not have protest procedures, (ii) has not complied with its protest procedures, or (iii) has not reviewed a protest when given the opportunity to do so, or in cases of violations or federal law or regulation.

10. Bonding Requirements

Construction. Valley Transit, City of Appleton shall specify bonds in compliance with (1) FTA requirements for construction or facility improvement contracts in FTA 4110.1F, Chapter IV, 2. H., and (2) Section 770.14 of the Wisconsin Statutes.

Non-Construction. For non-construction contracts, bonding requirements are discouraged except where applicable law or regulation provides for such bonding, or Valley Transit, City of Appleton determines that such a requirement is necessary as part of the risk management plan for a project.

11. Payment Provisions

Advance Payments. The use of FTA funds for payments in advance of the incurrence of costs by the contractor is generally prohibited, without prior written approval from the FTA. FTA does permit advance payments from FTA funds for those purchases where advance payment is customary in the commercial marketplace such as utility services, rents and subscriptions. FTA approval of such advance payments is required when the amount exceeds \$100,000.

Progress Payments. Progress payments are to be made only for costs incurred in the performance of the contract. When progress payments are used, Valley Transit must obtain title to property or other adequate security for the amount of the progress payment. Progress payments for construction contracts may be made on a percentage of completion basis.

12. Liquidated Damages

Risk Management. Valley Transit shall determine whether to use or not to use a liquidated damages provision for a specific procurement, as part of an overall risk management program.

Calculation. The amount of liquidated damages must be reasonably calculated to reflect anticipated damages Valley Transit might suffer as a result of an inadequacy or delay in contract performance, and such damages would be difficult or impossible to determine. Liquidated damages may be imposed for an entire contract or for a readily identifiable milestone or deliverable, and the measurement period may be other than a day, where appropriate. All liquidated damages recovered under an FTA funded contract will be credited to the project unless FTA agrees otherwise.

CHAPTER IV

PROCUREMENT CLASSIFICATIONS

1. Micro-purchases

Micro purchases do not require multiple quotes, formal bidding procedures or non-competitive procurement findings. For federally funded procurements, the threshold for micro purchases is \$3,000, but the City of Appleton's requirements are more strict with a threshold of \$1,000. Procurements should not be split (i.e., segmented into smaller contracts to fall under the micro purchase thresholds) to avoid competition.

Micro-purchases may be made by obtaining a single proposal or quotation from a commercial vendor that makes available to the public, in significant quantities, equipment, materials or supplies. Award may be made if it is determined that the price is fair and reasonable, and that there are no significant differences in quality or price among available vendors. The determination of price reasonableness must be recorded on a checklist on the receipt. Valley Transit will distribute micro-purchases equitably among qualified suppliers.

Micro-purchases are exempt from Buy America requirements. The Davis Bacon Act (40U.S.C 3141) applies to construction micro-purchases in excess of \$2,000.

2. Small purchases \$1,000 to \$14,999

For federally funded procurements, the threshold for a small purchase is \$100,000, but the City of Appleton's requirements are more stringent. For small purchases in this range, the following requirements apply:

- \$1,000 - \$4,999, Two documented verbal quotes are required
- \$5,000 – 14,999, Three written quotes are required

Small purchases in this range may be made by obtaining the required number of quotes. Award may be made if it is determined that the price is fair and reasonable, and that there are no significant differences in quality or price among available vendors. The determination of price reasonableness must be recorded on a checklist on the receipt.

Small purchases in this range are exempt from Buy America requirements. The Davis Bacon ACT (40U.S.C. 3141) applies to construction purchases in excess of \$2,000.

3. Purchases \$15,000 or more

When making a purchase for \$15,000 or more, a formal procurement method should be used. The following is a list of general standards that every competitive solicitation should adhere to:

- The procurement should be publicized in a manner intended, at a minimum, to notify potential sources in Valley Transit's service area of the nature and type of the solicitation and the date for responses.
- Every reasonable effort should be made to encourage the maximum number of responses. Pre-qualification or other methods of restricting responses shall not be used unless required for security or public safety reasons or by law.

- The solicitation document shall contain, at a minimum, instructions on how the response is to be prepared and submitted; the deadline for submittals and other key dates in the process (such as the date and time of a pre-bid or pre-proposal conference); the basis upon which an award will be made; a statement reserving Valley Transit's needs and the technical requirements to be met by the successful offeror; a set of terms and conditions intended to be used for any resulting contract; and representations and certifications as required by law or deemed necessary by Valley Transit
- The solicitation period shall remain open for sufficient time to enable the preparation of quality submittals responsive to Valley Transit's needs. The minimum bid period for competitive procurements will normally be 30 days, except in cases of urgency a shorter time may be specified. Whenever a period shorter than 30 days is considered necessary, every effort will be made to contact prospective bidders to ensure they can submit bids or proposals in the desired response time.
- Responses to any questions from prospective sources, or any amendments to the solicitation, shall be distributed to all parties known to have received the solicitation. Should the amendment substantially change the terms of the solicitation, the period for receipt of offers shall be extended to allow offerors to change their proposals accordingly.
- New contracts or agreements for services or equipment over \$15,000 must have a recommendation by the Fox Cities Transit Commission and approval of the Common Council. New contracts or agreements are defined as those which:
 - Are for services or equipment procured on a special or one-time basis;
 - Are not for the renewal or re-award of existing, previously approved and budgeted, ongoing operational requirements; or
 - Are not defined by either of the prior statements but have an anticipated total contract cost in excess of \$100,000.

CHAPTER V
FORMAL PROCUREMENT METHODS

1. Competitive Sealed Bidding – Invitation for Bid (IFB)

Bids can be publicly solicited through a formal Invitation for Bid (IFB) with a fixed-price contract (lump sum or unit price) being awarded to the lowest priced responsive bid from a responsible bidder. All bids are publicly opened at the time and place prescribed in the IFB and bidders are afforded a suitable opportunity to examine all bids received after they are opened. Sealed bid procurements should be used when the following circumstances are present:

- A complete, adequate, precise, and realistic specification or purchase description is available.
- Two or more responsible bidders are willing and able to compete effectively for the business.
- The procurement generally lends itself to a firm fixed price contract.
- The successful bidder can be selected on the basis of price.
- Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price only.

Options. Valley Transit may include in any procurement, an option providing Valley Transit the unilateral right to extend the term of the contract and/or to purchase additional supplies or services called for by the contract. The option quantities must be evaluated as part of the contract award. Prior to exercise of an option, Valley Transit must ensure and document in the file that the exercise of the option is in accordance with the terms set forth in the contract, and that the exercise of the option results in a procurement that is more economical and/or advantageous than otherwise available in the marketplace..

Procurement Procedures. The following procedures apply to sealed bid procurements:

- The invitation for bids is publicly advertised.
- Bids are solicited from an adequate number of known suppliers.
- The invitation for bids, including any specifications and pertinent attachments, describes the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
- Bidders are allowed sufficient time to prepare bids before the date of bid opening.
- All bids are publicly opened at the time and place prescribed in the invitation for bids.
- A firm fixed price contract is usually awarded in writing to the lowest responsive and responsible bidder.
- Any or all bids may be rejected if there is a sound, documented business reason.

Single responsive bid. In the event that a single responsive bid is received from a responsible bidder, Valley Transit may negotiate with the bidder to ensure that a fair and reasonable price is obtained. If the responsive bid from the lowest responsible bidder exceeds available funds, Valley Transit may negotiate with the apparent low bidder to obtain a contract price within available funds, provided that Valley Transit has established in writing conditions and procedures for such negotiations prior to issuance of the IFB and summarized them therein. The scope cannot be modified or altered in a manner that might have attracted additional bidders if the negotiation is incorporated into the contract.

2. Competitive Negotiation – Sealed Proposals (RFP/RFQ)

A competitively negotiated procurement pursuant to issuance of a Request for Proposals (RFP) or Request for Qualifications (RFQ) may be used where a low bid competitive procurement is not appropriate or desirable for the solicitation, including, but not limited to, the procurement of professional services including architect, engineering, construction management, accounting, legal and other similar services, and the contract is anticipated to exceed the small purchase threshold. All architect and engineering (A&E) projects will follow the Brooks Act; use of RFQ procurement and price negotiation with the most qualified candidate.

Valley Transit may exercise flexibility in the formulation of the RFP/RFQ, so long as it is in compliance with the procurement specification requirements and other provisions of this manual. The RFP/RFQ should contain the scope of work and the model contract to be used with the successful offeror, or should identify key contractual components/requirements if a model contract is not available at the time of RFP/RFQ distribution.

Competitive proposals should be used when any of the following circumstances are present:

- The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present.
- Uncertainty about whether more than one bid will be submitted in response to an invitation for bids.
- Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.
- Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals.

Procurement Procedures. The following procedures apply to procurements by competitive proposals:

- The request for proposals is publicly advertised.
- All evaluation factors and their relative importance are specified in the solicitation; but numerical or percentage ratings or weights need not be disclosed.
- Proposals are solicited from an adequate number of qualified sources.
- A specific method is established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
- The offerors whose proposals are found by the Valley Transit to be within the competitive range, or may be reasonably made to be within the competitive range, will be notified and any questions and/or requests for clarifications provided to them in writing. Each such offeror may be invited for a private interview(s) and discussions with the Procuring Agency to discuss answers to written or oral questions, clarifications, and any facet of its proposal.
- In the event that a proposal, which has been included in the competitive range, contains conditions, exceptions, reservations or understandings to any Contract requirements as provided in "Form for Proposal Deviation", said conditions, exceptions, reservations or understandings may be negotiated during these meetings. However, Valley Transit shall have the right to reject any and all such conditions and/or exceptions, and instruct the

offeror to amend its proposal and remove said conditions and/or exceptions; and any offeror failing to do so may cause Valley Transit to find such proposal to be outside the competitive range.

- No information, financial or otherwise, will be provided to any offeror about any of the proposals from other offerors. Offerors will not be given a specific price or specific financial requirements they must meet to gain further consideration, except that proposed prices may be considered to be too high with respect to the marketplace or unacceptable. Offerors will not be told of their rankings among the other offerors.
- Technical evaluations are completed before sealed price proposals are opened.
- The methodology for price evaluation and compilation of final scores will be defined on a procurement by procurement basis.
- Price proposal is evaluated and combined with technical evaluation for an overall score.
- An award is made to the responsible offeror whose proposal is most advantageous to Valley Transit's program with price and other factors considered.

After the issuance of the RFP/RFQ, Valley Transit contract administrators may host an informational conference or open a written question and answer period for the benefit of offerors.

Evaluation. The project manager will appoint at least three persons who have knowledge of the procurement's subject matter/technology to evaluate technical proposals. Technical personnel may be from other public agencies if necessary. The project manager will ensure the following:

- All Committee members will submit individual scoring sheets, along with narrative evaluations – scoring mechanics will be defined for individual procurements.
- Evaluation factors that will be considered, along with the relative importance of each in the solicitation will be included in the RFP. Price will not be assigned a weight as an evaluation factor, but will be considered as a separate factor along with the weighted technical factors for award of the contract.
- The evaluation committee will review bids and offers submitted in accordance with the specified criteria and score the proposals in accordance with a pre-determined scoring method. The committee will include a narrative of the qualitative differences among the proposals listing technical strengths, weaknesses, performance risks and ambiguities.
- After the technical evaluation is complete, pricing will be compared and a final recommendation for approval will be made. When determining the recommendation, a "best value" approach will be taken by comparing the technical strengths and weaknesses with the prices offered to determine the best value. Where the procurement is for A&E services, the selection process will not involve prices.

Best and Final Offers (BAFO). After all interviews have been completed, each of the offerors in the competitive range will be afforded the opportunity to amend its proposal and make its BAFO. The request for BAFOs shall include:

- Notice that discussions/negotiations are concluded.
- Notice that this is the opportunity for submission of a BAFO.
- A common date and time for submission of written BAFOs, allowing a reasonable opportunity for preparation of the written BAFOs.

- Notice that if any modification to a BAFO is submitted, it must be received by the date and time specified for the receipt of BAFOs and is subject to the late submissions, modifications, and withdrawals of proposals provisions of the Request for Proposal.
- Notice that if offerors do not submit a BAFO or a notice of withdrawal and another BAFO, their immediate previous Offer will be construed as their BAFO.
- Any modifications to the initial proposals made by an offeror in its BAFO shall be identified in its BAFO. BAFOs will be evaluated by Valley Transit according to the same requirements and criteria as the initial proposals. Valley Transit will make appropriate adjustments to the initial scores for any sub-criteria and criteria which have been affected by any proposal modifications made by the BAFOs. These final scores and rankings within each criteria will again be evaluated by Valley Transit and considered according to the relative degrees of importance as defined in the established evaluation criteria.
- Valley Transit will then choose the proposal which it finds to be most advantageous based upon the evaluation criteria. The results of the evaluations and the selection of a proposal for any award will be documented in a report.
- Valley Transit reserves the right to make an award to an offeror whose proposal it judges to be most advantageous based upon the evaluation criteria, without conducting any written or oral discussions with any offerors or solicitation of any BAFOs.

Negotiation with Top Ranked Firm; Award. As appropriate based on the solicitation procedures set forth in the RFP/RFQ, Valley Transit may negotiate with the top ranked firm(s) and may:

- Award a contract to the offeror whose proposal is most advantageous to Valley Transit with price and other factors considered, as determined based on the factors set forth in the RFP/RFQ.
- Award a contract on the basis of best value to Valley Transit, provided that the solicitation documents establish that award may be made on the basis of best value.
- For procurement of architectural and engineering services, which are defined to include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services, Valley Transit will follow the Brooks Act “qualifications-based” procurement method. This method entails conducting a two-step procurement process (RFQ) that does not consider price in the initial evaluation of proposals. Valley Transit will first negotiate with the most qualified offeror. If agreement cannot be reached with the most qualified firm, Valley Transit will negotiate with the next firm(s) until agreement is reached on a fair and reasonable price.

Options. Valley Transit may include in any procurement, an option providing Valley Transit the unilateral right to extend the term of the contract and/or to purchase additional supplies or services called for by the contract. The option quantities must be evaluated as part of the contract award. Prior to exercise of an option, Valley Transit must ensure and document in the file that the exercise of the option is in accordance with the terms set forth in the contract, and that the exercise of the option results in a procurement that is more economical and/or advantageous than otherwise available in the marketplace.

3. Noncompetitive Proposals – Sole Source

Noncompetitive (Sole Source) procurements are accomplished through solicitation and acceptance of a proposal from only one source. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph. Guidance as to what is “within the scope” of a contract may be found in the FTA Best Practices Procurement Manual, Section 9.2.1 – Contract Scope and Cardinal Changes. “Tag-ons” are defined by the FTA as additions to the scope of work or deliverable items that were not included in the original contract competition, and which must be treated as sole source additions to the contract. Tag-ons are not to be treated as changes within the scope of the contract.

Justification. Contract files must contain written explanation of sole source justification. Procurement by noncompetitive proposals may be used when only one source is practicably available and the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

- A unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted and is available to Valley Transit only from one source.
- Patent or data rights restrictions preclude competition.
- When a follow-on contract for the continued development or production of highly specialized equipment and major components thereof would result in a substantial duplication of costs (such as software upgrade).
- When awarding to another contractor, a follow-on contract for continued development or production of a highly specialized equipment would result in unacceptable delays.

Special provisions. Sole source purchases over \$5,000 but less than \$15,000 must be approved by the City of Appleton Purchasing Manager. Any sole source purchase over \$15,000 must have a recommendation by the Fox Cities Transit Commission and approval of the Common Council.

4. Architectural and Engineering (A&E)

Valley Transit will use qualification-based competitive proposal procedures based on the Brooks Act, Chapter 11 of Title 40 of the United States Code, and 49 U.S.C. §5325(b), when contracting for A&E services. The Brooks Act requires that:

- An offeror’s technical qualifications be evaluated
- Price be excluded as an evaluation factor
- A pricing proposal be requested from, and negotiations be conducted only with the most qualified offerer
- Failing agreement on price, the proposal must be rejected and negotiations conducted with the next most qualified offeror, until a contract award can be made to the most qualified offeror whose price is fair and reasonable.

The Brooks Act qualifications-based procurement method can only be used for the procurement of A&E services which are defined to include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services, where any amount of Federal funds is utilized.

5. Joint procurement

The FTA uses the term “joint procurement” to mean a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum.

Joint procurements are encouraged by the FTA because it offers the advantage of combining or “pooling” procurements with other agencies in order to obtain better pricing. Joint procurements are typically done with a competitive proposal written to fit the needs of all agencies participating in the procurement. Joint procurements solicitations must include total minimum and maximum quantities which are state in the solicitation and contract.

6. Assignment of Contract Rights “piggybacking”

FTA expects its recipients to limit its procurements to the amount of property and services required to meet its reasonably expected needs without adding excess capacity simply for the purpose of assigning contract rights to others at a later date. The FTA expects recipients to be able to justify the quantities it procures. Although the FTA does not encourage the practice, a recipient may find it useful to acquire contract rights through assignment (“piggyback”). If this procurement type is used, Valley Transit must determine that the original contract price remains fair and reasonable and the original contract provisions are adequate for compliance with all Federal requirements. It is Valley Transit’s responsibility to ensure the existing contract contains an assignability clause and all required FTA contract clauses and certifications (Buy America, etc.) If the existing contract does not contain both an assignability clause and required contract clauses, it may not be used.

7. State or Local Government purchasing schedules or purchasing contracts

The FTA uses the term “state or local government purchasing schedule” to mean an arrangement that a State or local government has established with several or many vendors in which those vendors agree to provide essentially an option to the State or local government and its subordinate government entities, to acquire specific property or services in the future at established prices.

The Common Grant Rule for governmental recipients encourages recipients to enter into this type of agreement, but the FTA does not authorize grantees to consider intergovernmental purchasing schedule to be the type of State or local intergovernmental agreement to which this rule refers to. The FTA recognizes joint purchases to be the only type of intergovernmental agreement suitable for use by its grantees.

8. Design-Build Projects

A design-build project is a project under which Valley Transit would enter into a contract with a seller, firm or consortium of firms to both design and build a public transportation facility. The design-bid-build procurement method requires separate contracts for design services and for construction. Design services must use qualifications based procurement procedures and construction must use competitive procurement procedures. The construction may include sealed bidding or competitive negotiation procurement methods, as appropriate.

The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project’s design and construction.

Procurement Method Determined by Value. First, the various contract activities to be undertaken must be separated and classified as design or construction. Next calculate the estimated total value of each. Because both design and construction are included in a single procurement, the FTA expects the recipient to use the procurement method appropriate for the services having the greatest cost, even though other necessary services would not typically be procured by that method.

- Construction Predominant. The construction costs of a design-build project are usually predominant so that the recipient would be expected to use competitive negotiations or sealed bids for the entire procurement rather than the qualification-based “Brooks Act” procurement procedures. Specifically, when construction costs will be predominant, unless FTA determines otherwise in writing, an FTA recipient may not use qualifications-based procurement procedures to acquire architectural engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural and engineering, surveying, mapping, or related A&E services unless required by State law adopted before August 10, 2005.
- Design Services Predominant. In the less usual circumstance in which the cost of most work to be performed will consist of costs for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural engineering, surveying, mapping, or related A&E services, FTA expects the recipient to use qualifications-based procurement procedures based on the “Brooks Act,” 40 U.S.C. Sections 1101 through 1104, as described in subsection 3.e of this Chapter.

Selection Processes. The design-build procurement may be structured using one or more steps as described below:

- One-Step Method. The design-build procurement can be done in a single step.
- Two-Step Method. For large design-build projects a two-step selection process may be used. This method consists of:
 - The first step is a review of the prospective contractors’ technical qualifications and technical approach to the project. The recipient may then narrow the competitive range to those prospective contractors with satisfactory qualifications that demonstrate a technically satisfactory approach.
 - Review of Complete Proposals. The second step consists of soliciting and reviewing complete proposals, including price, submitted by prospective contractors first determined to be qualified. By using this two-step method, it will not be necessary to undertake extensive proposal reviews, nor will prospective offerors need to engage in expensive proposal drafting. This two-step selection procedure is separate and distinct from prequalification and is but one procurement method available to the recipient.

Appendix

Procurement Checklist

Project _____ Project Manager _____

Process/Assignment

BEFORE THE PROCUREMENT PROCESS:

Procurement Method(IFB, RFP, RFQ) _____

Justification of method _____

Sole Source Justification (attach extra pages – if needed) _____

	<u>Employee assigned</u>	<u>Target comp date</u>
Determine/Write Scope of Work/Specs	_____	_____
Project Manager-develop evaluation process*	_____	_____
Independent Cost Estimate	_____	_____

PROCUREMENT PACKAGE PREPARATION:

Draft complete RFQ/RFP/IFB document**	_____	_____
Review and include Protest Procedures/Certs	_____	_____
Identify potential bidders/vendors (prepare list)	_____	_____
Bid document reviewed by VT staff	_____	_____
Bid document reviewed by Legal/COA Purchasing	_____	_____
WisDOT review/approval if bid/RFP is funded with WisDOT FTA grant	_____	_____

CONDUCTING THE PROCUREMENT:

	<u>Employee assigned</u>	<u>Target comp date</u>
Finalize bid document	_____	_____
Email vendors & post on web	_____	_____
Advertisements-legal notice	_____	_____
File notarized copy of ad from paper	_____	_____
Conduct Demos / Pre-Bid Meeting	_____	_____
Receive & document approved equals/requests	_____	_____
Question/answer period	_____	_____
Prepare Addendums & distribute to all vendors that received original bid & post on web	_____	_____

PROPOSAL REVIEW AND AWARD PROCESS:

	<u>Employee assigned</u>	<u>Target comp date</u>
Evaluate bids - responsiveness	_____	_____
Evaluate bids - Proof of Insurance, DBE, certs Bid bonds (construction)	_____	_____
Review evaluation process & criteria, separating technical & price evaluations	_____	_____
Evaluate/Score technical requirements - Team	_____	_____
Evaluate/Score price & financial capability	_____	_____
Receive & file pre-award audit report (buses)	_____	_____
Negotiate lower price/better product	_____	_____
Reference Check	_____	_____
Offeror is not on Excluded Parties List system	_____	_____
Price/Cost Analysis	_____	_____
Notify Selected & Rejected Bidders/Proposers	_____	_____
Protest period	_____	_____
FCTC/FC/ACC approve to award contract	_____	_____

POST AWARD AND POST DELIVERY ACTIVITIES:

	<u>Employee assigned</u>	<u>Target comp date</u>
Issue Contract (PO w/certs or contract)		
Monitor & file Progress reports		
Monitor & file prevailing wage payrolls		
Project Delivery, receive packing slips		
Receive and file signed post delivery audit report		
Monitor Vehicle Title/Registration		
Payment of invoice(s)		
Request/file affidavits of completion (const)		
Payment of retainage		
Drawdown funding (WisDOT or FTA)		

*Evaluation process must include members of technical team & technical scoring method which matches the bid document.

**Bid Document must include all boilerplate (terms & conditions, timeline and FTA certifications & assurances) and items to be evaluated in order of importance.

INDEPENDENT COST ESTIMATE

Project Manager:

Project Description/Name:

Delivery/Completion Date:

Total Estimated Price/Cost:

Date of Estimate:

Background			
Background of the project:	[Replace this text with a brief description of the project background. Identify the source of the project request.]		
Method			
	Yes	No	Comments
Published catalog or price list (attach pertinent catalog or price list pages)	<input type="checkbox"/>	<input type="checkbox"/>	
Recent prices for same or similar item/service (identify contracts, purchase orders, sources and attach any pertinent documents)	<input type="checkbox"/>	<input type="checkbox"/>	
In-house engineering or technical estimate	<input type="checkbox"/>	<input type="checkbox"/>	
Independent Third Party estimate (attach estimate)	<input type="checkbox"/>	<input type="checkbox"/>	
Other	<input type="checkbox"/>	<input type="checkbox"/>	[Replace this text with explanation of other]

Additional Information

[Replace this text with additional information.]

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All>\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted).	>\$100,000	>\$100,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				\$100,000	
Veterans Employment				>\$2,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations.			
Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.



April 15, 2015

To: Fox Cities Transit Commission
Finance Committee

From: Debra Ebben, Administrative Services Manager and Amy Erickson, Operations Supervisor

Subject: Authorization to award a contract to Lamers Bus Lines for the provision of a Construction Circulator Service

Background:

Valley Transit is asking for authorization to award a contract to Lamers Bus Lines to provide circulator service around the construction project on Appleton Road near Highway 441. The construction project began on April 13, 2015 and runs directly through Valley Transit's Route 1 and Route 30, making it impassable without major detours and time delays. At this time, Valley Transit does not have the equipment or the manpower to run additional hours and miles needed to provide all the service required by the detour of Route 1 and Route 30.

Staff determined after consulting with East Central Wisconsin Regional Planning Commission as well as the Wisconsin DOT 441/10 project staff that the most efficient and the least inconvenient option for our customers is to have one segment of Route 30 operate from Goodwill (Route 30 North) to the Downtown Appleton Transit Center. A separate bus runs from Piggly Wiggly on Appleton Road (Route 30 South) to the Neenah Transit Center and back. Route 1 has been modified slightly to allow it to stay on schedule in spite of the extra traffic on Oneida. A circulator operates on a continuous loop connecting both parts of Route 30 and with Route 1 and is operated by a private contractor with a smaller vehicle.

Valley Transit requested quotes for the service from four separate vendors; Running Inc., Lamers Bus Lines, Kobussen Bus, and Abby Vans. Running and Abby Vans declined to quote. Lamers quoted \$49.50 per hour and Kobussen quoted \$69.00 per hour. If the project doesn't get extended and goes as planned, the total cost should be approximately \$57,000.

Valley Transit is actively pursuing reimbursement for the service from Wisconsin DOT, as the reason for providing the service is because of the 441/10 construction project. However, we believe that even if they decline to assist us with the cost, we will be able to fund the circulator out of our existing 2015 budget.

Recommendation: Award the contract for the Construction Circulator Service to Lamers Bus Lines.

CITY OF APPLETON
Department of Public Works
MEMORANDUM

TO: ☒ **Finance Committee**
☐ **Municipal Services Committee**
☐ **Utilities Committee**

SUBJECT: Award of Contract

The Department of Public Works recommends that the following described work:

Y-13 Wastewater Treatment Plant Storm Sewer Reconstruction

Be awarded to:

Name: Advance Construction Company
Address: 2141 Woodale Avenue
Green Bay, WI 54313

In the amount of : 2,411,249.75

With a 2.5 % contingency of : \$60,000.00

For a project total not to exceed : \$2,471,249.75

**** OR ****

In an amount Not To Exceed : _____

Budget: \$2,450,500.00
Estimate: \$2,450,500.00
Committee Date: 04/08/15
Council Date: 04/22/15

Item	Qty./Unit	Description	#1 - Advance Const. Co.			#2 - Globe Contractors			#3 - Super Excavators, Inc.			#4 - Iowa Trenchless LC		
			Unit	Price/\$	Total/\$	Unit	Price/\$	Total/\$	Unit	Price/\$	Total/\$	Unit	Price/\$	Total/\$
1.	700	Furnish & Install 60" Class IV Storm Sewer (Trenchless)	lin.ft.	\$1,100.00	\$770,000.00		\$1,000.00	\$700,000.00		\$1,000.00	\$700,000.00		\$1,000.00	\$700,000.00
2.	790	Furnish & Install 54" Class IV Storm Sewer (Trenchless)	lin.ft.	\$1,030.00	\$813,700.00		\$1,000.00	\$790,000.00		\$900.00	\$711,000.00		\$1,000.00	\$790,000.00
3.	150	Furnish & Install 54" Class III Storm Sewer (Open Cut)	lin.ft.	\$265.00	\$39,750.00		\$500.00	\$75,000.00		\$350.00	\$52,500.00		\$330.00	\$49,500.00
4.	90	Furnish & Install 43"x 68" Class IV Horizontal Elliptical Storm Sewer	lin.ft.	\$305.00	\$27,450.00		\$600.00	\$54,000.00		\$500.00	\$45,000.00		\$425.00	\$38,250.00
5.	40	Furnish & Install 24" Class III Storm Sewer (Open Cut)	lin.ft.	\$150.00	\$6,000.00		\$350.00	\$14,000.00		\$600.00	\$24,000.00		\$250.00	\$10,000.00
6.	115	Furnish & Install 15" Class III Storm Sewer (Open Cut)	lin.ft.	\$85.65	\$9,849.75		\$200.00	\$23,000.00		\$175.00	\$20,125.00		\$175.00	\$20,125.00
7.	1	Furnish & Install 43"x 68" Concrete Apron End Wall	ea.	\$10,000.00	\$10,000.00		\$6,000.00	\$6,000.00		\$4,500.00	\$4,500.00		\$3,500.00	\$3,500.00
8.	1	Furnish & Install Storm Box Manhole Structure DD-168	lump sum	\$105,000.00	\$105,000.00		\$112,000.00	\$112,000.00		\$225,000.00	\$225,000.00		\$130,000.00	\$130,000.00
9.	1	Furnish & Install Storm Box Manhole Structure DD-169	lump sum	\$142,000.00	\$142,000.00		\$174,000.00	\$174,000.00		\$200,000.00	\$200,000.00		\$205,000.00	\$205,000.00
10.	1	Furnish & Install Saddle Type Storm Manhole Structure DD-179	lump sum	\$45,000.00	\$45,000.00		\$30,000.00	\$30,000.00		\$50,000.00	\$50,000.00		\$26,500.00	\$26,500.00
11.	1	Furnish & Install Deep Storm Box Manhole Structure DD-170	lump sum	\$142,000.00	\$142,000.00		\$110,000.00	\$110,000.00		\$160,000.00	\$160,000.00		\$200,000.00	\$200,000.00
12.	1	Furnish & Install Deep Storm Box Manhole Structure DD-171	lump sum	\$146,000.00	\$146,000.00		\$184,000.00	\$184,000.00		\$210,000.00	\$210,000.00		\$265,000.00	\$265,000.00
13.	1	Furnish & Install Standard Storm Box Manhole Structure DD-172	lump sum	\$19,715.00	\$19,715.00		\$25,000.00	\$25,000.00		\$50,000.00	\$50,000.00		\$95,000.00	\$95,000.00
14.	1	Furnish & Install Standard Storm Box Manhole Structure DD-173	lump sum	\$14,925.00	\$14,925.00		\$19,000.00	\$19,000.00		\$8,000.00	\$8,000.00		\$17,500.00	\$17,500.00
15.	1	Furnish & Install Storm Box Manhole Junction Structure DD-180	lump sum	\$18,650.00	\$18,650.00		\$16,000.00	\$16,000.00		\$10,000.00	\$10,000.00		\$18,000.00	\$18,000.00
16.	1	Furnish & Install Standard Storm Box Manhole Structure DD-174	lump sum	\$13,820.00	\$13,820.00		\$15,000.00	\$15,000.00		\$8,000.00	\$8,000.00		\$17,500.00	\$17,500.00
17.	2	Boulder Obstructions	ea.	\$3,000.00	\$6,000.00		\$5,000.00	\$10,000.00		\$1.00	\$2.00		\$10,000.00	\$20,000.00
18.	2	Furnish & Install WisDOT Type "B" Inlet Protection	ea.	\$100.00	\$200.00		\$100.00	\$200.00		\$100.00	\$200.00		\$140.00	\$280.00
19.	3	Furnish & Install WisDOT Type "C" Inlet Protection	ea.	\$70.00	\$210.00		\$100.00	\$300.00		\$150.00	\$450.00		\$140.00	\$420.00
20.	1	Furnish & Install "E" Inlet w/Casing	ea.	\$2,000.00	\$2,000.00		\$1,955.00	\$1,955.00		\$1,750.00	\$1,750.00		\$2,450.00	\$2,450.00
21.	1	Abandon Storm Main and Manholes	lump sum	\$66,260.00	\$66,260.00		\$100,000.00	\$100,000.00		\$135,000.00	\$135,000.00		\$112,500.00	\$112,500.00
22.	130	Furnish and Install 12" CURLEX Sediment Log	lin.ft.	\$9.00	\$1,170.00		\$30.00	\$3,900.00		\$20.00	\$2,600.00		\$20.00	\$2,600.00
23.	50	Furnish and Install Turbidity Barrier	lin.ft.	\$40.00	\$2,000.00		\$50.00	\$2,500.00		\$30.00	\$1,500.00		\$50.00	\$2,500.00
24.	10	Furnish and Install Heavy Riprap	cu. Yd.	\$465.00	\$4,650.00		\$150.00	\$1,500.00		\$30.00	\$300.00		\$35.00	\$350.00
25.	580	Furnish and Install Silt Fence	lin.ft.	\$2.00	\$1,160.00		\$2.00	\$1,160.00		\$2.00	\$1,160.00		\$3.50	\$2,030.00
26.	2	Furnish and Install Rock Filler Bag Protection	ea.	\$120.00	\$240.00		\$1,000.00	\$2,000.00		\$50.00	\$100.00		\$75.00	\$150.00
27.	100	Stockpiling of Biosolids & Contaminated Soil On-Site	cu. yds.	\$35.00	\$3,500.00		\$50.00	\$5,000.00		\$50.00	\$5,000.00		\$200.00	\$20,000.00
TOTAL ITEMS 1 THROUGH 27:				\$2,411,249.75			\$2,475,515.00			\$2,626,187.00			\$2,749,155.00	

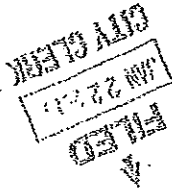
MEMO: 2014 Claims for Excessive Real Estate Assessment
DATE: 04/8/15
TO: Finance Committee
FROM: DeAnn Brosman, City Assessor

Walgreens – Parcels # 31-4-6162-01, 5-1173-00, 6-7601-00, 5-4253-00, 5-4250-00

Walgreens has filed a claim for Excessive Assessment on four of their stores and an associated parking lot. The assessed values were sustained at the 2014 Board of Review where no new evidence was presented. This claim is a continuation of 2011-2013 claims which were denied by City Council and are being pursued in circuit court. This claim must be filed with the city annually in order for Walgreens to preserve their litigation rights.

The circuit court proceedings were “stayed” pending the outcome of Walgreens v. the City of Oshkosh. In December 2014, the Oshkosh Appellate Court ruled in favor of Walgreens. As a result, our judge has ordered that we have a mediation session with Walgreens by November. **I am recommending denial of this claim to allow for these legal proceedings to occur.**

*****A notice was mailed to the claimants on March 31st notifying them of the dates/times for the Finance Committee meeting and City Council meeting.**



January 20, 2015

Reinhart Boerner Van Deuren s.c.
P.O. Box 2018
Madison, WI 53701-2018

22 East Mifflin Street
Suite 600
Madison, WI 53703

Telephone: 608-229-2200
Fax: 608-229-2100
Toll Free: 800-728-6239
reinhartlaw.com

Don M. Millis, Esq.
Direct Dial: 608-229-2234
dmillis@reinhartlaw.com

CLAIM FOR EXCESSIVE ASSESSMENT

SERVED BY PROCESS SERVER

Dawn Collins, Clerk
City of Appleton
100 N. Appleton Street
Appleton, WI 54911

Dear Clerk:

Re: Tax Parcel Nos.: 31-4-6162-01, 31-5-
1173-00, 31-5-7601-00 & 31-5-4253-00
(combined with 31-5-4250-00)

Now comes Claimant, Walgreen Co., tenant of parcels 31-4-6162-01, 31-5-1173-00, 31-5-7601-00 and 31-5-4253-00 (combined with 31-5-4250-00) (the "Properties") in Appleton, Wisconsin, by Claimant's attorneys Reinhart Boerner Van Deuren s.c., and files this Claim for Excessive Assessment against the City of Appleton (the "City"), pursuant to Wis. Stat. §74.37. You hereby are directed to serve any notice of disallowance on the undersigned agent of the claimant.

1. This Claim is brought under Wis. Stat. § 74.37(3)(d), for a refund of excessive real estate taxes imposed on Claimant by the City for the year 2014, plus statutory interest, with respect to the Properties.

2. Claimant is the tenant on the Properties, is responsible for the payment of property taxes and the prosecution of property tax disputes involving the Properties and is authorized to bring this claim in its own name.

3. The City is a body corporate and politic, duly organized as a municipal corporation under Wisconsin law, with its principal office located at 101 North Appleton Street, in the City.

4. The Properties are located at 3330 E. Calumet Street, 700 West College, 2803 North Meade Street and 729 West Northland Avenue within the City, and are identified in the

Dawn Collins, Clerk
January 20, 2015
Page 2

City records as Tax Parcel Nos. 31-4-6162-01, 31-5-1173-00, 31-5-7601-00 and 31-5-4253-00 (combined with 31-5-4250-00).

5. The Wisconsin Department of Revenue determined that the aggregate ratio of property assessed in the City was 101.9311574% as of January 1, 2014.

6. For 2014, property tax was imposed on property in the City at the rate of \$22.265 per \$1,000 for of the assessed value for Property.

7. For 2014, the City's assessor set the assessment of the Properties as follows:

31-4-6162-01	\$3,400,000
31-5-1173-00	\$3,600,000
31-6-7601-00	\$3,768,000
31-5-4253-00 (combined with 31-5-4250-00):	\$5,301,000

8. Claimant appealed the 2014 assessment of the Properties by filing a timely objection with the City's Board of Review pursuant to Wis. Stat. § 70.47 and otherwise complying with all of the requirements of Wis. Stat. § 70.47, except Wis. Stat. § 70.47(13).

9. The City's Board of Review heard the Claimant's objection and sustained the assessment on the merits as follows:

31-4-6162-01	\$3,400,000
31-5-1173-00	\$3,600,000
31-6-7601-00	\$3,768,000
31-5-4253-00 (combined with 31-5-4250-00):	\$5,301,000

10. The City imposed tax on the Properties as follows:

31-4-6162-01	\$75,701
31-5-1173-00	\$80,154
31-6-7601-00	\$83,895

Dawn Collins, Clerk
January 20, 2015
Page 3

31-5-4253-00 (combined with 31-5-4250-00):	\$118,027
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11. Claimant is timely paying the property taxes imposed by the City on the Properties for 2014, or the required installment thereof.

12. The fair market value of the Properties as of January 1, 2014 was no higher than the following:

31-4-6162-01	\$2,000,000
31-5-1173-00	\$2,000,000
31-6-7601-00	\$1,885,940
31-5-4253-00 (combined with 31-5-4250-00)	\$1,885,940

13. Based on the aggregate ratio of 101.9311574%, the correct assessments of the Properties for 2014 is no higher than the following:

31-4-6162-01	\$2,038,623
31-5-1173-00	\$2,038,623
31-6-7601-00	\$1,922,360
31-5-4253-00 (combined with 31-5-4250-00)	\$1,922,360

Dawn Collins, Clerk
January 20, 2015
Page 4

14. Based on the tax rate of \$22.265 per \$1,000 of assessed value, the correct amount of property tax on the Properties for 2014 should be no higher than the following:

31-4-6162-01	\$45,390
31-5-1173-00	\$45,390
31-6-7601-00	\$42,801
31-5-4253-00 (combined with 31-5-4250-00)	\$42,801

15. The 2014 assessments of the Properties, as set by the City's Board of Review were excessive and, upon information and belief, violated Article VIII, Section 1 (i.e., the Uniformity Clause) of the Wisconsin Constitution. As a result, the property tax imposed on the Properties for 2014 were excessive in at least the amount of \$181,394.

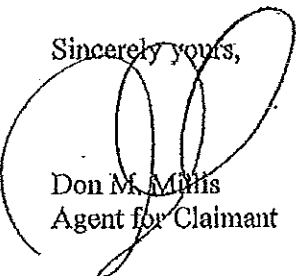
16. Claimant is entitled to a refund of 2014 tax in the amount of \$181,394, or such greater amount as may be determined to be due to Claimant, plus statutory interest.

17. The amount of this claim is \$181,394, plus interest thereon.

Dawn Collins, Clerk
January 20, 2015
Page 5

Dated at Madison, Wisconsin, this 20th day of January, 2015.

Sincerely yours,



Don M. Mills
Agent for Claimant

27867150



"...meeting community needs...enhancing quality of life."

City of Appleton
City Assessor
100 N. Appleton St.
Appleton, WI 54911
920-832-5850

Attn: Don Millis
Reinhart Boerner Van Deuren s.c.
PO Box 2018
Madison WI 53701-2018

March 31st, 2015

RE: WI Statute 74.37 Claims for Excessive Assessment – Walgreens Pharmacy parcels

Dear Attorney Millis,

Your 2014 claims for Excessive Assessment on the following five parcels will be submitted to the city's Finance Committee for approval or denial next Wednesday, April 8th. If you would like to attend the meeting, it will be held at 4:30 pm in room A/B on 6th Fl. of City Hall, 100 N. Appleton St.

Parcel 31-4-6162-01 at 3330 E Calumet St.
31-5-1173-00 at 700 W College Ave.
31-5-4253-00 at 729 W Northland Ave.
31-5-4250-00 adjacent parking lot.
31-6-7601-00 at 2803 N Meade St.

The Finance Committee's decision will be voted on at the Wednesday, April 22nd City Council meeting. I would recommend that you contact our City Clerk at 920-832-6448 prior to these meeting dates to confirm that the item is on the agenda and to discuss the procedures required to speak on the item if you so desire. Feel free to contact our City Attorney if you have other questions.

Sincerely,

DeAnn Brosman
City Assessor

MEMO: 2014 Claims for Excessive Real Estate Assessment
DATE: 04/8/15
TO: Finance Committee
FROM: DeAnn Brosman, City Assessor

KFC – Parcel# 31-6-0327-00

An Excessive Assessment claim was filed for the fast food restaurant at 111 E. Wisconsin Ave. The assessed value was sustained by the 2014 Board of Review. The restaurant underwent a major remodel in 2008. It is assessed at \$553,900 in line with other occupied fast food properties. H&K Partners LLC (tenant & franchisee) is requesting an assessment of \$254,800.

H & K's representative submitted an appraisal completed for tax assessment purposes to the Board of Review in the amount of \$300,000. Four out of the six comparable sales used by the appraiser were unoccupied buildings. A 2013 WI Appellate Court ruling concluded that sales prices of unoccupied dark stores are not good comparables for occupied stores. Buyers of unoccupied buildings incur holding costs, higher risk, leasing commissions, remodeling costs, etc. H & K has provided no evidence supporting a \$254,800 assessed value.

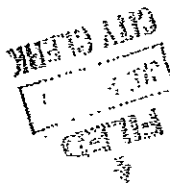
The assessed value of \$553,900 is supported by sales prices of comparable properties, the income approach to value using comparable market rents and not the higher actual rent, the cost to replace the building less depreciation, and all other evidence. **Based on these facts, I am recommending denial of this claim.**

*****A notice was mailed to the claimants on March 31st notifying them of the dates/times for the Finance Committee meeting and City Council meeting.**



[Handwritten signature]
13
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11
15

January 20, 2015



Reinhart Boerner Van Deuren s.c.
P.O. Box 2018
Madison, WI 53701-2018

22 East Mifflin Street
Suite 600
Madison, WI 53703

Telephone: 608-229-2200
Fax: 608-229-2100
Toll free: 800-728-6239
reinhartlaw.com

Don M. Millis, Esq.
Direct Dial: 608-229-2234
dmillis@reinhartlaw.com

CLAIM FOR EXCESSIVE ASSESSMENT

SERVED BY PROCESS SERVER

Dawn Collins, Clerk
City of Appleton
100 N. Appleton Street
Appleton, WI 54911

Dear Clerk:

Re: Tax Parcel No. 316 032700

Now comes Claimant, CNL Net Lease c/o KFC, owner as by their agent H&K Partner, LLC of parcel 316 032700 (the "Property") in Appleton, Wisconsin, by Claimant's attorneys Reinhart Boerner Van Deuren s.c., and files this Claim for Excessive Assessment against the City of Appleton (the "City"), pursuant to Wis. Stat. § 74.37. You hereby are directed to serve any notice of disallowance on the undersigned agent of the claimant.

1. This Claim is brought under Wis. Stat. § 74.37(3)(d), for a refund of excessive real estate taxes imposed on Claimant by the City for the year 2014, plus statutory interest, with respect to the Property.

2. Claimant is the owner on the Property, is responsible for the payment of property taxes and the prosecution of property tax disputes involving the Property and is authorized to bring this claim in its own name.

3. The City is a body corporate and politic, duly organized as a municipal corporation under Wisconsin law, with its principal office located at 100 N. Appleton Street, in the City.

4. The Property is located at 111 E. Wisconsin Avenue within the City, and is identified in the City records as Tax Parcel No. 316 032700.

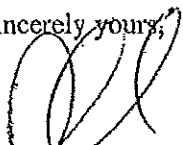
5. The Wisconsin Department of Revenue determined that the aggregate ratio of property assessed in the City was 101.9311574% as of January 1, 2014.

6. For 2014, property tax was imposed on property in the City at the rate of \$22.265 per \$1,000 for of the assessed value for Property.
7. For 2014, the City's assessor set the assessment of the Property at \$553,900.
8. Claimant appealed the 2014 assessment of the Property by filing a timely objection with the City's Board of Review pursuant to Wis. Stat. § 70.47 and otherwise complying with all of the requirements of Wis. Stat. § 70.47, except Wis. Stat. § 70.47(13).
9. The City's Board of Review heard the Claimant's objection and sustained the assessment on the merits at \$553,900.
10. The City imposed tax on the Property in the amount of \$12,333.
11. Claimant is timely paying the property taxes imposed by the City on the Property for 2014, or the required installment thereof.
12. The fair market value of the Property as of January 1, 2014 was no higher than \$250,000.
13. Based on the aggregate ratio of 101.9311574%, the correct assessment of the Property for 2014 is no higher than \$254,828.
14. Based on the tax rate of \$22.265 per \$1,000 of assessed value, the correct amount of property tax on the Property for 2014 should be no higher than \$5,674.
15. The 2014 assessment of the Property, as set by the City's Board of Review was excessive and, upon information and belief, violated Article VIII, Section 1 (i.e., the Uniformity Clause) of the Wisconsin Constitution. As a result, the property tax imposed on the Property for 2014 was excessive in at least the amount of \$6,659.
16. Claimant is entitled to a refund of 2014 tax in the amount of \$6,659, or such greater amount as may be determined to be due to Claimant, plus statutory interest.
17. The amount of this claim is \$6,659, plus interest thereon.

Dawn Collins, Clerk
January 20, 2015
Page 3

Dated at Madison, Wisconsin, this 20th day of January, 2015.

Sincerely yours,

A handwritten signature in dark ink, consisting of a series of loops and a long horizontal stroke, positioned above the printed name.

Don M. Millis
Agent for Claimant

28990633



City of Appleton
City Assessor
100 N. Appleton St.
Appleton, WI 54911
920-832-5850

Attn: Don Millis
Reinhart Boerner Van Deuren s.c.
PO Box 2018
Madison WI 53701-2018

March 31st, 2015

RE: WI Statute 74.37 Claim for Excessive Assessment – KFC restaurant parcel

Dear Attorney Millis,

Your 2014 claim for Excessive Assessment on parcel 31-6-0327-00 located at 111 E. Wisconsin Ave. will be submitted to the city's Finance Committee for approval or denial next Wednesday, April 8th. If you would like to attend the meeting, it will be held at 4:30 pm in room A/B on 6th Fl. of City Hall, 100 N. Appleton St.

The Finance Committee's decision will be voted on at the Wednesday, April 22nd City Council meeting. I would recommend that you contact our City Clerk at 920-832-6448 prior to these meeting dates to confirm that the item is on the agenda and to discuss the procedures required to speak on the item if you so desire. Feel free to contact our City Attorney if you have other questions.

Sincerely,

DeAnn Brosman
City Assessor

RELOCATION ORDER

The City of Appleton, Outagamie/Calumet/Winnebago Counties, Wisconsin, by its Common Council and for its Relocation Order hereby resolves as follows:

1. That this Resolution is a Relocation Order in accordance with subsection 32.05(1), Wisconsin Statutes, for the purpose of the within-described public improvement project and it is also a determination of necessity for that project in accordance with subsection 32.07(2), Wisconsin Statutes;
2. That the City of Appleton hereby determines that it is necessary and of public purpose to widen the pavement to accommodate turning movements at Telulah Avenue and for the construction of a roundabout at East South River Street, in the City of Appleton, Wisconsin.
3. That said roadway will be built within the areas marked on the scale drawings, which are attached to this Relocation Order as Exhibit "A" and Exhibit "B" and are incorporated herein;
4. That the legal descriptions for the acquisition areas necessary for this construction are contained in Exhibits "C", "D", "E", "F", "G" and "H", which are also incorporated herein;
5. That the City of Appleton will acquire a fee simple interest in the areas described in Exhibits "B", "C", "D", "E", "F" and "G", from the present owners and Permanent Limited Easement interest in the areas described in Exhibits "F" and "H".

Record and return to:

City of Appleton – City Attorney's Office
100 North Appleton Street
Appleton, WI 54911-4799

Passed and approved this _____ day of _____, 2015.

I hereby certify that on this _____ day of _____, 2015, that the within Relocation Order was adopted by a vote of _____ ayes and _____ nays by the City Council for the City of Appleton, Wisconsin.

ATTEST:

Dawn A. Collins, City Clerk

APPROVED:

Timothy M. Hanna, Mayor

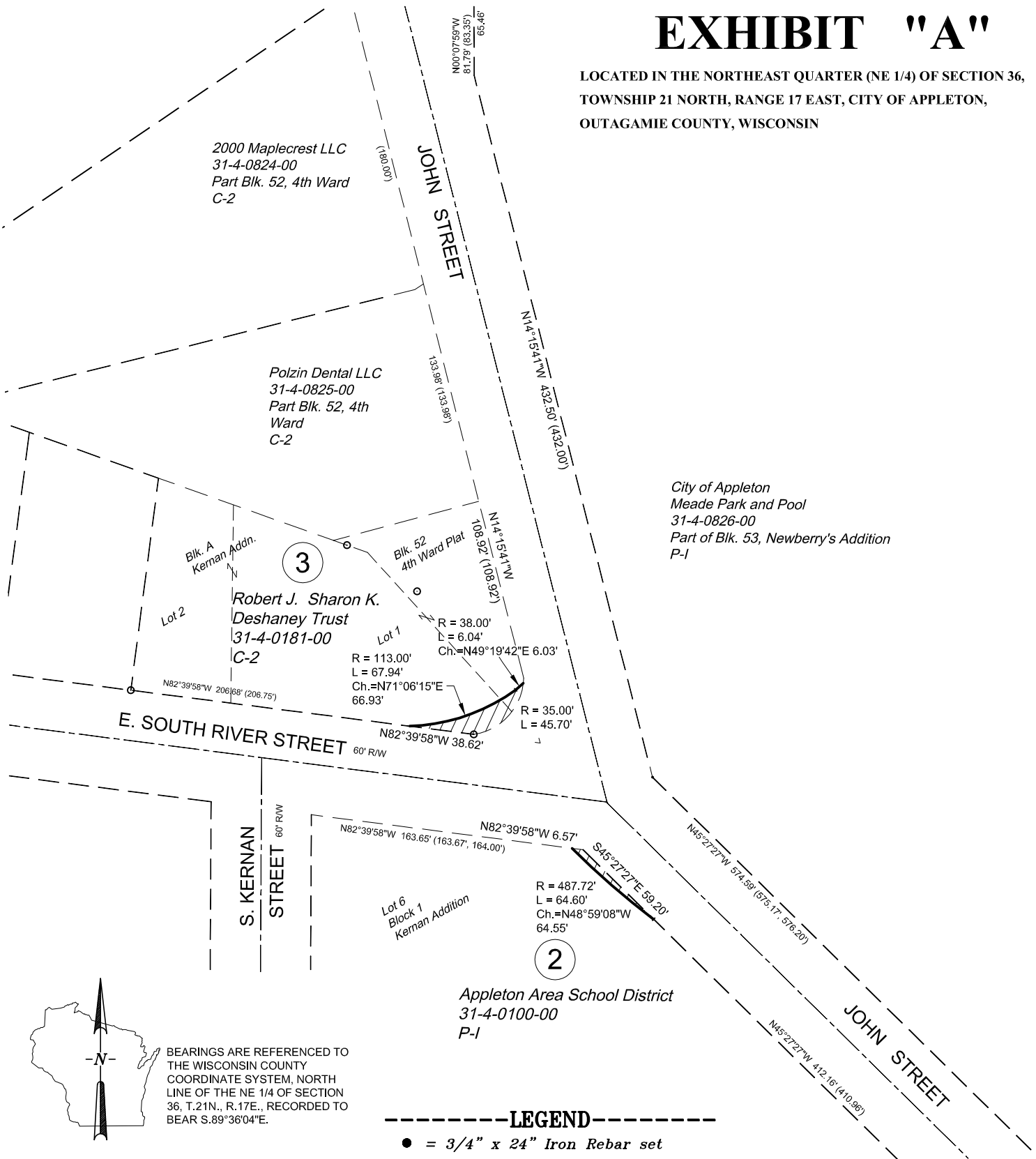
This instrument was drafted by:

James P. Walsh, Appleton City Attorney

J:\Attorney\WORD\Condemnation\John Street\John Street - Relocation Order.doc

EXHIBIT "A"

LOCATED IN THE NORTHEAST QUARTER (NE 1/4) OF SECTION 36,
TOWNSHIP 21 NORTH, RANGE 17 EAST, CITY OF APPLETON,
OUTAGAMIE COUNTY, WISCONSIN



CITY OF APPLETON

DEPT. OF PUBLIC WORKS
ENGINEERING DIVISION
100 NORTH APPLETON STREET
APPLETON, WI 54911
920-832-6474

DRAFTED BY: T. KROMM

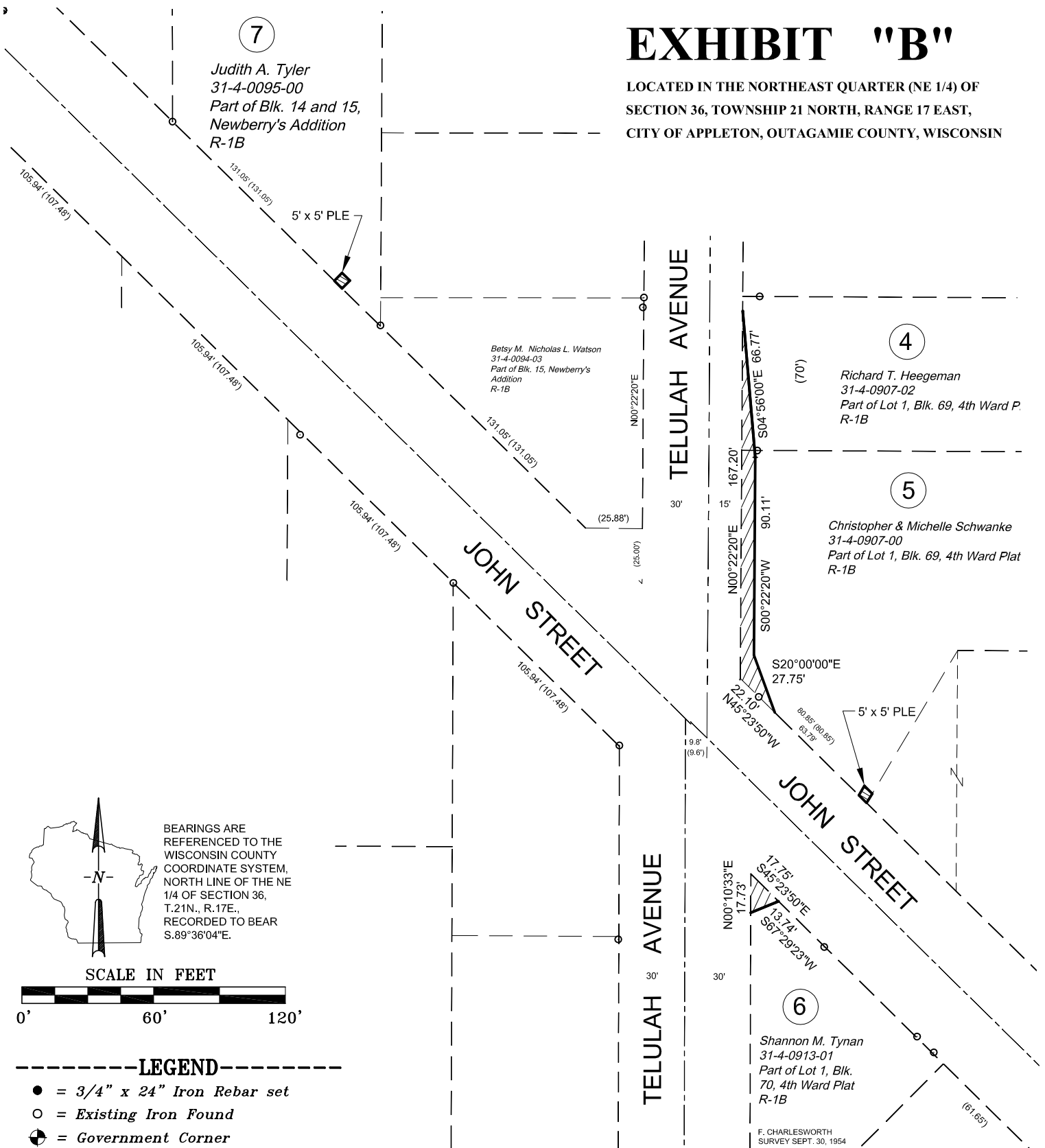
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SCHEDULE OF LAND AND INTERESTS REQUIRED

PARCEL NO.	SHEET NO.	OWNER	INTEREST	NEW AREA	EXISTING	REMAINING
1	1		FEE	SQ FT	ACRES	ACRES
2	1	APPLETON AREA SCHOOL DISTRICT	FEE	164 SQ FT	3.46 ACRES	3.46 ACRES
3	1	ROBERT J. SHARON K. DESHANEY TRUST	FEE	564 SQ FT	25,985± SQ FT	25,421± SQ FT

EXHIBIT "B"

LOCATED IN THE NORTHEAST QUARTER (NE 1/4) OF
SECTION 36, TOWNSHIP 21 NORTH, RANGE 17 EAST,
CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN



SCHEDULE OF LAND AND INTERESTS REQUIRED

PARCEL NO.	SHEET NO.	OWNER	INTEREST	NEW AREA	EXISTING	REMAINING
4	B	RICHARD T. HEEGEMAN	FEE	186 SQ FT	11,480± SQ FT	11,294± SQ FT
5	B	CHRISTOPHER AND MICHELLE SCHWANKE	FEE PLE	739 SQ FT 24 SQ FT	17,930± SQ FT	17,191± SQ FT
6	B	SHANNON M. TYNAN	FEE	112 SQ FT	7,799± SQ FT	7,687± SQ FT
7	B	JUDITH A. TYLER	PLE	25 SQ FT	N/A	N/A

CITY OF APPLETON

DEPT. OF PUBLIC WORKS
ENGINEERING DIVISION
100 NORTH APPLETON STREET
APPLETON, WI 54911
920-832-6474

DRAFTED BY: T. KROMM

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EXHIBIT C

Legal Description for Acquisition Parcel 2 Appleton Area School District

A portion of land for street right way, being all those lands of the owner within the following described area:

A part of Lot 6 in Block 1, **KERNAN ADDITION**, according to the recorded Assessor's Plat of the City of Appleton, being located in the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 36, T.21N., R.17E., City of Appleton, Outagamie County, Wisconsin, containing 164 square feet of land m/l and being further described by:

Commencing at the North $\frac{1}{4}$ corner of said Section 36;
Thence South 89°36'04" East 617.92 feet along the North line of the NE $\frac{1}{4}$ of said Section 36;
Thence South 00°23'56" East 887.07 feet to the South line of E. South River Street at the Southwesterly line of John Street also being coincident with an angle point in the Northerly line of said Block 1 and being the point of beginning;
Thence South 45°27'27" East 59.20 feet along the Northeasterly line of said Block 1 and also being coincident with the Southwesterly line of John Street;
Thence Northwesterly 64.60 feet along the arc of a curve to the right having a radius of 487.72 feet and the chord of which bears North 48°59'08" West 64.55 feet to the North line of said Block 1 and also being the Southerly line of E. South River Street;
Thence South 82°39'58" East 6.57 feet along the Southerly line of E. South River Street to the Point of Beginning.

Part of Tax Parcel No. 31-4-0100-00.

SEE ALSO EXHIBIT "A"

EXHIBIT D

Legal Description for Acquisition Parcel 3 Robert J. Sharon K. Deshaney Trust

A portion of land for street right way, being all those lands of the owner within the following described area:

A part of Lot 1 in Block A, **KERNAN ADDITION** and a part of Block 52, **FOURTH WARD PLAT**, all according to the recorded Assessor's Plat of the City of Appleton, being located in the NW ¼ of the NE ¼ of Section 36, T.21N., R.17E., City of Appleton, Outagamie County, Wisconsin, containing 564 square feet of land m/l and being further described by:

Commencing at the North ¼ corner of said Section 36;
Thence South 89°36'04" East 591.87 feet along the North line of the NE ¼ of said Section 36;
Thence South 00°23'56" East 823.46 feet to the most Easterly and common corner of said Block A and said Block 52;
Thence North 14°15'41" West 40.00 feet along the Easterly line of said Block 52 and also being coincident with lands described in Volume 207 on Page 386 as Document Number 269325;
Thence Southwesterly 3.14 feet along the arc of a curve to the right having a radius of 35.00 feet and the chord of which bears South 04°07'55" West 3.14 feet to the point of beginning;
Thence continue Southwesterly 45.70 feet along the arc of a curve to the right having a radius of 35.00 feet and the chord of which bears South 44°06'16" West 42.52 feet to the Northerly line of E. South River Street;
Thence North 82°39'58" West 38.615 feet along the Northerly line of E. South River Street;
Thence Northeasterly 67.945 feet along the arc of a curve to the left having a radius of 113.00 feet and the chord of which bears North 71°06'15" East 66.93 feet;
Thence Northeasterly 6.04 feet along the arc of a curve to the left having a radius of 38.00 feet and the chord of which bears North 49°19'42" East 6.03 feet to the Point of Beginning.

Part of Tax Parcel No. 31-4-0181-00.

SEE ALSO EXHIBIT "A"

EXHIBIT E

Legal Description for Acquisition

Parcel 4

Richard T. Heegeman

A portion of land for street right way, being all those lands of the owner within the following described area:

A part of Lot 1 in Block 69, **FOURTH WARD PLAT**, according to the recorded Assessor's Plat of the City of Appleton, being located in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 36, T.21N., R.17E., City of Appleton, Outagamie County, Wisconsin, containing 186 square feet of land m/l and being further described by:

Commencing at the North $\frac{1}{4}$ corner of said Section 36;

Thence South 89°36'04" East 1331.02 feet along the North line of the NE $\frac{1}{4}$ of said Section 36;

Thence South 00°22'20" West 1495.34 feet to the Southwest corner of Lot 1 of said Block 69 and said point being 45.00 feet East of the West line of Telulah Avenue and being the point of beginning;

Thence North 00°22'20" East 167.20 feet along the East line of Telulah Avenue coincident with the West line of said Lot 1;

Thence South 04°56'00" East 66.77 feet;

Thence South 00°22'20" West 98.28 feet;

Thence Southeasterly 15.98 feet along the arc of a curve to the left having a radius of 20.00 feet and the chord of which bears South 22°30'45" East 15.555 feet to the Northeasterly line of John Street coincident with the Southerly line of said Lot 1;

Thence North 45°23'50" West 17.06 feet along the Northeasterly line of said John Street to the point of beginning.

Said parcel subject to all easements and restrictions of record.

Part of Tax Parcel No. 31-4-0907-02.

SEE ALSO EXHIBIT "B"

EXHIBIT F

Legal Description for Acquisition Parcel 5 Christopher and Michelle Schwanke

A portion of land for street right way, being all those lands of the owner within the following described area:

A part of Lot 1 in Block 69, **FOURTH WARD PLAT**, according to the recorded Assessor's Plat of the City of Appleton, being located in the SE ¼ of the NE ¼ of Section 36, T.21N., R.17E., City of Appleton, Outagamie County, Wisconsin, containing 739 square feet of land m/l and being further described by:

Commencing at the North ¼ corner of said Section 36;
Thence South 89°36'04" East 1331.02 feet along the North line of the NE ¼ of said Section 36;
Thence South 00°22'20" West 1495.34 feet to the Southwest corner of Lot 1 of said Block 69 and said point being 45.00 feet East of the West line of Telulah Avenue and being the point of beginning;
Thence North 00°22'20" East 167.20 feet along the East line of Telulah Avenue coincident with the West line of said Lot 1;
Thence South 04°56'00" East 66.77 feet;
Thence South 00°22'20" West 90.11 feet;
Thence South 20°00'00" East 27.75 feet to the Northeasterly line of John Street being coincident with the Southerly line of said Lot 1;
Thence North 45°23'50" West 17.06 feet along the Northeasterly line of said John Street to the point of beginning.
Said parcel subject to all easements and restrictions of record.
Part of Tax Parcel No. 31-4-0907-00.

SEE ALSO EXHIBIT "B"

Also

A Permanent Limited Easement for street lighting purposes, being all those lands of the owner within the following described area:

A part of Lot 1 in Block 69, **FOURTH WARD PLAT**, according to the recorded Assessor's Plat of the City of Appleton, being located in the SE ¼ of the NE ¼ of Section 36, T.21N., R.17E., City of Appleton, Outagamie County, Wisconsin, containing 24 square feet of land m/l and being further described by:
Commencing at the North ¼ corner of said Section 36;
Thence South 89°36'04" East 1331.02 feet along the North line of the NE ¼ of said Section 36;
Thence South 00°22'20" West 1495.34 feet to the Southwest corner of Lot 1 of said Block 69 and said point being 45.00 feet East of the West line of Telulah Avenue;

Thence South 45°23'50" East 75.85 feet along the Southwesterly line of Lot 1 of said Block 69 and being coincident with the Northeasterly line of John Street to the point of beginning;

Thence North 30°48'11" East 5.00 feet;

Thence South 45°23'50" East 5.00 feet;

Thence South 30°48'11" West 5.00 feet to the Northeasterly line of John Street;

Thence North 45°23'50" West 5.00 feet along the Northeasterly line of John Street to the point of beginning.

Said parcel subject to all easements and restrictions of record.

Part of Tax Parcel No. 31-4-0907-00.

SEE ALSO EXHIBIT "B"

EXHIBIT G

Legal Description for Acquisition

Parcel 6

Shannon M. Tynan

A portion of land for street right way, being all those lands of the owner within the following described area:

A part of Lot 1 in Block 70, **FOURTH WARD PLAT**, according to the recorded Assessor's Plat of the City of Appleton, being located in the SE ¼ of the NE ¼ of Section 36, T.21N., R.17E., City of Appleton, Outagamie County, Wisconsin, containing 112 square feet of land m/l and being further described by:

Commencing at the North ¼ corner of said Section 36;

Thence S.89°36'04"E. 1331.02 feet along the North line of the NE ¼ of said Section 36;

Thence S.00°10'39"W. 1584.33 feet to the most Northerly corner of Lot 1 of said Block 70 and said point being 60.00 feet East of the West line of Telulah Avenue and being the point of beginning;

Thence S.45°23'50"E. 17.75 feet along the Southeasterly line of John Street and being coincident with the Northeasterly line of said Lot 1;

Thence S.67°29'23"W. 13.74 feet to the East line of said Telulah Avenue being coincident with the West line of said Lot 1;

Thence N.00°10'33"E. 17.73 feet along the East line of Telulah Avenue coincident with the West line of said Lot 1 to the point of beginning.

Said parcel subject to all easements and restrictions of record.

Part of Tax Parcel No. 31-4-0913-01.

SEE ALSO EXHIBIT "B"

EXHIBIT H

Legal Description for Acquisition (Permanent Limited Easement)

Parcel 7
Judith A. Tyler

A Permanent Limited Easement for street lighting purposes, being all those lands of the owner within the following described area:

A part of Block 14, **NEWBERRY'S ADDITION**, according to the recorded Assessor's Plat of the City of Appleton, being located in the NW ¼ of the NE ¼ of Section 36, T.21N., R.17E., City of Appleton, Outagamie County, Wisconsin, containing 25 square feet of land m/l and being further described by: Commencing at the North ¼ corner of said Section 36;
Thence South 89°36'04" East 1286.02 feet along the North line of the NE ¼ of said Section 36;
Thence South 00°22'20" West 1452.54 feet to the most Southerly corner of Block 15 of said Newberry's Addition;
Thence North 45°27'27" West 191.63 feet along the Southwesterly line of Block's 15 and 14 of said Newberry's Addition and also being coincident with the Northeasterly line of John Street to the point of beginning;
Thence continue North 45°27'27" West 5.00 feet along the northeasterly line of John Street;
Thence North 44°32'33" East 5.00 feet;
Thence South 45°27'27" East 5.00 feet;
Thence South 44°32'33" West 5.00 feet to the point of beginning.
Said parcel subject to all easements and restrictions of record.

Part of Tax Parcel No. 31-4-0095-00.

SEE ALSO EXHIBIT "B"



March 16, 2015

To: Fox Cities Transit Commission
Finance Committee

From: Deborah Wetter, General Manager

Subject: Approve Valley Transit Procurement Manual

Background:

During Valley Transit's Federal Transit Administration (FTA) 2013 triennial review, we received several findings related to procurement. The FTA informed us that we could no longer use the City of Appleton procurement policies as written procedures for Valley Transit because all state and federal requirements are not incorporated within the City's documents. The corrective action for this finding was that Valley Transit would provide the FTA with written procurement policies and procedures along with a description of how the policies would be implemented.

Following the triennial review, Deb Ebben attended several FTA sponsored procurement classes to learn the rules and regulations that needed to be incorporated into Valley Transit's procurement manual. After several revisions, the FTA approved the attached Valley Transit procurement manual. Upon FTA approval, Valley Transit is required to ask its governing boards, the Fox Cities Transit Commission and the City of Appleton Common Council to approve the manual. All employees who are authorized to make purchases on behalf of Valley Transit must follow the rules set forth in the Valley Transit Procurement Manual.

Recommendation:

Approve the Valley Transit Procurement Manual



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION V
Illinois, Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

200 West Adams Street
Suite 320
Chicago, IL 60606-5253
312-353-2789
312-886-0351 (fax)

March 9, 2015

Ms. Deborah Wetter
General Manager
City of Appleton *d.b.a.* Fox Valley Transit
801 Whitman Avenue
Appleton, WI 54914

Re: Federal Transit Administration FY 2013 Triennial Review – Close Out Letter

Dear Ms. Wetter:

The Federal Transit Administration (FTA) has received and reviewed your responses to the FY 2013 Triennial Review Final Report. The City of Appleton *d.b.a.* Fox Valley Transit has submitted the appropriate documentation to resolve all of the deficiencies identified in the aforementioned report.

Please consider your FY 2013 Triennial Review to be closed. If you have questions, please contact Cyrell McLemore at Cyrell.McLemore@dot.gov or (312) 886-1625, or me at (312) 353-2789.

Thank you for the cooperation shown to us throughout the Triennial Review process.

Sincerely,

Marisol R. Simón
Regional Administrator, FTA Chicago



PROCUREMENT MANUAL



PREPARED BY VALLEY TRANSIT
January 2015

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CHAPTER I
INTRODUCTION

Valley Transit, a department of the City of Appleton, provides a range of transportation services for the general public in Fox Cities region, which includes the Cities of Appleton, Kaukauna, Menasha, Neenah, Villages of Kimberly, Little Chute, Towns of Buchanan, Grand Chute, Menasha and the Counties of Calumet, Outagamie and Winnebago. Valley Transit provides fixed route service along with complimentary ADA paratransit and various ancillary paratransit services.

Valley Transit procures goods, inventory items, consultant and professional services as necessary to fulfill the purposes of Valley Transit. As a direct recipient of Federal Transit Administration funds, Valley Transit is required to comply with certain federal rules and regulations when it procures items with the use of these federal funds. In order to ensure a fair and competitive system and to comply with industry best practices, Valley Transit has adopted this Procurement Manual. It represents the minimum standards that must be met by Valley Transit contract administrators.

CHAPTER II

PROVISIONS APPLICABLE TO ALL PROCUREMENTS

General Principles

Procurement Policy. The policies contained in this Procurement Manual are intended to maintain the integrity of Valley Transit's procurement processes, while ensuring that purchases are made in a cost effective, timely manner; with fair and open competition; and in accordance with all applicable laws and regulations.

Conflicts of Interest. No preferential treatment may be given to any contractor. It is Valley Transit's goal to avoid actual or perceived conflicts of interest in contracts and to promote full and open competition. In the case of a real or apparent conflict of interest, the Valley Transit employee, officer, board member or agent with the actual or perceived conflict must not participate in the selection, award, or administration of such contract. The following standards of conduct govern employees engaged in the selection, award or administration of federally funded contracts:

- The officers, employees, board members and agents of Valley Transit must not solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements.
- A conflict of interest is deemed to exist if the employee, officer, board member or agent of Valley Transit, his/her partner, any member of his/her immediate family, or an organization that employs or is about to employ any of the foregoing, has a financial or other interest in the proposed contract.
- A conflict of interest will not be deemed to exist where the financial interest is insubstantial.

Valley Transit may take disciplinary action up to and including dismissal for violations of these standards by officers, employees, board members or agents of the recipient.

Competition. Procurement transactions should be conducted in a manner that, to the extent practical, promotes open and free competition. Awards will be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to Valley Transit.

- *Restraint of Trade.* Valley Transit employees, officers, and agents must not support or acquiesce in noncompetitive pricing practices between firms or between affiliated companies.
- *Organizational Conflicts of Interest - Exclusion from Competition.* Contractors who participate in the development or drafting of Valley Transit's specifications, requirements, statements of work, invitations for bids, or requests for proposals will be excluded from competing for such procurements. In order to mitigate potential organizational conflicts of interest, Valley Transit user and procurement personnel shall conduct a review of pending requisitions/projects to ensure that such conflicts are identified and eliminated. An organizational conflict of interest occurs when any of the following circumstances arise:
 - Lack of Impartiality or impaired objectivity. When the contractor is unable, or

- potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.
 - Unequal access to information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
 - Biased ground rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- *Geographic Preferences.* Procurement transactions using Federal funds will be conducted in a manner that prohibits the use of in-state or local geographical preferences in the solicitation and evaluation of bids proposals, except in those cases where applicable Federal statutes or regulations expressly mandate or permit geographic preference.
- *Arbitrary Action.* Arbitrary actions in the procurement process are prohibited. Examples could include award of a contract to other than the low bidder without appropriate justification and rejection of bids or proposals without rational reasons.

Requirements/Prohibitions Related to Contract Selection and Reimbursement Methods. Valley Transit must comply with the following prohibitions and requirements related to selecting the type of contract or basis for reimbursement for federally funded procurements.

- *Responsive offers.* Valley Transit will only make awards to responsive offers from responsible offerors. A responsive offer is one that complies with all material requirements of the solicitation. A responsible offeror is one possessing the technical, physical, financial and ethical capacity to successfully perform a specific contract.
- *Cost plus a percentage of cost.* Valley Transit must not utilize the "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting.
- *Time and materials.* Valley Transit must not utilize the "time and materials" contract unless Valley Transit determines that no other contract type is suitable and the contract explicitly specifies a ceiling price that the bidder or offeror may only exceed at its own risk.
- *Cost reimbursement.* Where Valley Transit chooses to enter a "cost reimbursement" contract, its employees, officers, and agents must comply with the applicable provisions of Federal Acquisition Regulation (FAR) Part 31. Specifically, Valley Transit must utilize the guidelines in FAR Part 31 to determine whether the contractor's proposed costs are reasonable, allowable, and allocable.
- *Advance payments.* Advance payments of federal funds are prohibited unless prior written concurrence is obtained from the federal funding agency.
- *Progress payments.* If progress payments are used for a selected contract, such payments must be made on the basis of costs incurred or, for construction contracts only, on the basis of percentage of completion of the relevant project. Valley Transit

must obtain adequate security (i.e., title to work in progress; letter of credit) for any progress payments made.

- *Contract terms.* Valley Transit will enter into contracts with performance periods that do not exceed the time necessary to accomplish the purpose of the contract. Pricing, competition, fairness and public perception will be used to determine the contract period, with rationale documented in the procurement file. The period of contract performance for rolling stock and replacement parts may be a multi-year contract, with an option not exceeding five (5) years to buy additional buses or replacement parts, as defined in FTA C4220.1F. Rolling stock and replacement parts procurements shall be limited to Valley Transit's material requirements for the applicable contract period.

Debarment and Suspension. Valley Transit must not contract with parties debarred or suspended from Federal programs under DOT regulations, "non-procurement Suspension and Debarment," 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4. Valley Transit's employees, officers, and agents shall conduct this check prior to forming a contract for procurement. These records may presently be checked at www.sam.gov.

Federal Clauses. Valley Transit must comply with all applicable Federal laws and regulations. Some of the laws and regulations affect third party contractors, other laws and regulations will affect the nature of the property or services to be acquired or terms under which the property or services must be acquired. Valley Transit will use the matrix in the Appendix of this procurement manual as a reference for applicable clauses. The matrix will be reviewed and updated annually.

Revenue Rolling Stock Pre-Award and Post-Delivery activities. When purchasing revenue rolling stock with FTA funds, Valley Transit must comply with applicable requirements of 49 U.S. Section 5323(m) and those provisions of FTA regulations "Pre-Award and Post-Delivery Audits, 49 CFR Part 663 that do not conflict with 49 U.S. Section 5323(m).

The pre-award audit includes a Buy America certification, a purchaser's requirements certification, and where appropriate, a manufacturer's Federal Motor Vehicle Safety certification. A pre-award purchaser's certification is a certification that the rolling stock is the same product described in the solicitation specification and the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the specification set forth in the solicitation.

Valley Transit must ensure that a post-delivery audit is complete before title to the rolling stock is transferred. A post-delivery audit includes a post-delivery Buy America certification, a post-delivery purchaser's requirements certification and a manufacturer's Federal Motor Vehicle Safety Standard self-certification. A post-delivery requirements certification is a certification that a resident inspector was at the manufacturing site throughout the period of manufacture of the rolling stock, monitored and completed a report on the manufacture of the rolling stock. The report should include accurate records of all vehicle construction activities, address how the construction and operation of the vehicles fulfills the contract specifications and record of visually inspection and road testing the vehicles.

CHAPTER III

PROCUREMENT PLANNING AND ADMINISTRATION

1. Contract Administration System

Valley Transit's contract administration system is intended to manage procurement activities and help ensure that contractors engaged by Valley Transit perform in accordance with the terms, conditions and specifications of their respective contracts.

Activities. Contract administration may involve a variety of activities, including but not limited to: monitoring project progress; monitoring financial status of contractors; ensuring contractor compliance with quality assurance requirements; and evaluating adequacy of engineering efforts.

Evaluation. Valley Transit will evaluate contract performance and, as appropriate, document whether contractors have met the terms, conditions and specifications of the contract.

Responsibilities. Valley Transit will identify an individual who will be responsible for the maintenance of procurement records for each project.

2. Procurement Planning

Valley Transit staff should plan procurements in advance to best address the needs of Valley Transit. The Common Grant rules require the recipient of FTA funds to maintain and make available written records detailing the history of each procurement. Planning a procurement process should include:

Avoidance of Duplicative Procurements. In order to avoid purchasing unnecessary items, Valley Transit staff should keep records of and regularly review planned procurements.

Analysis of Alternatives to Purchase. Procurement activity will be reviewed by the Valley Transit Administrative Manager at least annually to determine if certain classes of purchases should be consolidated or broken out to obtain more economic pricing. Where appropriate, analysis will also be made of lease versus purchase alternatives or any other appropriate methodology to determine the most economical approach.

Contract Type. In determining the type of contract to be utilized, staff should consider price, risk, uncertainty, and responsibility for costs. The type of contract used should reflect the cost risk and responsibility assumed by the contractor or supplier. Contract types include, but are not limited to, the following:

- *Firm fixed-price contracts.* This contract type provides a firm contract price, without the right to cost adjustments except in specific circumstances as set forth in the contract terms and conditions.
- *Cost reimbursement/cost-plus-fixed-fee contracts.* This contract type includes an estimate of the total contract costs, to be paid on a reimbursement basis, which amount cannot be exceeded without Valley Transit approval, plus a negotiated fixed fee.
- *Time and materials/labor hour contracts.* These contract types are based on payment

for direct labor hours at specified, fully burdened hourly rates, and, as applicable for materials at agreed upon cost. This type of contract must not be utilized unless Valley Transit determines that no other contract type is suitable. If used, a ceiling price should be included in the contract, with provisions specifying that the contractor exceeds this ceiling at its own risk, unless prior written approval of Valley Transit is obtained for an increase in the ceiling price.

- *Revenue contract.* A revenue contract is a contract in which the recipient or subrecipient provides access to public transportation assets for primary purpose of either producing revenues in connection with an activity related to public transportation, or creating business opportunities with the use of FTA assisted property. To ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, Valley Transit should conduct revenue contracting as follows:
 - Limited contract opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then Valley Transit will use a competitive process to permit interested parties an equal chance to obtain the limited opportunity.
 - Open contract opportunities. If, however, one party seeks access to a public transportation asset, and Valley Transit is willing and able to provide contracts or licenses to other parties similarly situated, then competition would not be necessary.

Procurement Type. The Valley Transit staff responsible for the applicable procurement will determine which method of procurement is to be utilized based on the criteria set forth in this Procurement Manual. Procurement methods include, but are not limited to, the following:

- *Micro purchases* Micro purchases do not require multiple quotes, formal bidding procedures or non-competitive procurement findings. For federally funded procurements, the threshold for micro purchases is \$3,000. The City of Appleton's requires two quotes for purchases over \$1,000 (See small purchases below). Procurements should not be split (i.e., segmented into smaller contracts to fall under the micro purchase thresholds) to avoid competition and should be distributed equitably among qualified suppliers.
- *Small purchases.* For federally funded procurements, the threshold for a small purchase is \$100,000, but the City of Appleton's requirements are more stringent. Small purchases have several thresholds; \$1,000 - \$4,999, \$5,000 - \$15,000 and purchases over \$15,000.
 - \$1,000 - \$4,999, Two quotes are required
 - \$5,000 – 14,999, Three written quotes are required
- *Small and Large purchases \$15,000 and over.* When making a purchase for \$15,000 or more, one of the following procurement methods should be used:
 - *Low bid competitive procurement.* A low bid competitive procurement pursuant to issuance of an invitation for bids (IFB) may be used where a complete, adequate, and sufficiently generic specification is developed; adequate

competition is available in the marketplace (two or more responsive and responsible bidders will compete); and the procurement lends itself to a firm-fixed price contract. An IFB will be used when required by the applicable funding source based on the project type and anticipated contract value.

- *Competitively negotiated procurement.* A competitively negotiated procurement pursuant to issuance of a Request for Proposals (RFP) or Request for Qualifications (RFQ) may be used where a low bid competitive procurement is not appropriate or desirable for the solicitation, including, but not limited to, the procurement of professional services including architect, engineering, construction management, accounting, legal and other similar services, and the contract is anticipated to exceed the small purchase threshold. Joint procurements utilizing competitively negotiated procurement are allowed. All architect and engineering (A&E) projects will follow the Brooks Act; use of RFQ procurement and price negotiation with the most qualified candidate.
- *Non-competitive procurement/Sole source.* Procurements may be made through solicitation of a proposal from only one source. For federally funded procurements, Valley Transit must perform a cost and profit analysis prior to making the award, which analysis must be included in the procurement file. An amendment to an existing contract that is beyond the scope of the original procurement, including any negotiated options, or that increases the contract amount over the small purchase threshold (“tag-on”) is subject to this section.
- *Piggybacking.* Valley Transit may “piggyback” on a contract/solicitation process completed by another entity that complies with the requirements of this manual, if the procurement allows another entity to purchase the same supplies or equipment under the original contract/solicitation process.
- *Emergency; Unusual and Compelling Urgency.* If Valley Transit has an unusual and urgent need for the property or services, such that Valley Transit would be seriously injured by having to comply with competitive procurement requirements. Valley Transit may also enter into a contract in a non-competitive manner when the public exigency or emergency will not allow for the delay of engaging in a competitive procurement.

3. Procurement Specifications

In order to provide for fair, unbiased review and evaluation of competitive proposals, Valley Transit solicitations for goods and services over the small purchase threshold should provide clear specifications.

Specification Requirements for Procurements. All competitive solicitations should provide, as applicable:

- **Clear Descriptions.** A clear and accurate description of the technical requirements for the material, product, or service to be procured.
- **Preference for Performance Specifications.** A description of the requirements which

the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals. The specifications should include the range of acceptable characteristics or minimum acceptable standards.

- Quality Requirements. A description of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
- Nonrestrictive Specifications. Technical requirements for the procurement that do not contain features which unduly restrict competition.
- Use of “brand name or equal” purchase descriptions only if:
 - An adequate specification cannot be provided without performing an inspection and analysis in time for the acquisition under consideration; and
 - When minimum needs are carefully identified and those salient physical and functional characteristics of the brand name product are clearly set forth in the solicitation.
- The preference, to the extent practical and financially feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient.

Exclusionary or Discriminatory Specifications. Valley Transit, its employees, officers, and agents must not use federal funds to support an exclusionary or discriminatory specification. In conformity with this mandate:

- Valley Transit will not impose unreasonable business requirements for bidders or offerors.
- Valley Transit will not impose unnecessary experience requirements for bidders or offerors.
- Valley Transit will not require excessive prequalification of contractors.
- Valley Transit will not impose excessive bonding without the original recipient’s and the funding agency’s written concurrence.
- Valley Transit will not specify a brand name product without allowing offers of an equal product.
- Valley Transit will not specify in-State or local geographic preferences, except to comply with State licensing requirements or in the case of procuring architectural engineering or disaster relief services.

4. Independent Cost Estimate

An independent cost estimate must be completed prior to the solicitation/receipt of bids or proposals for federally funded procurements in order to assist with determining price

reasonableness. The independent estimate must be prepared without knowledge of the contractor's proposed pricing. Depending on the procurement type and scope, independent cost estimates may be completed by Valley Transit staff, by independent third-party staff, or by a firm retained to complete the estimate. Methods of completing the independent cost estimate vary based on the procurement and include:

- Checking historical records or published price guides.
- Completing a detailed and in-depth estimate, such as required for preparing an engineer's estimate for a construction contract.

5. Contractor Selection

Responsible Contractors. Valley Transit will only award contracts to responsible contractors who possess the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. An evaluation committee or procurement officer will determine if a contractor is responsible. In making this determination, Valley Transit will ensure that the prospective contractor satisfies the following criteria:

- Have a satisfactory record of integrity and business ethics by checking references and work history.
- Be neither debarred nor suspended from Federal programs by checking the System for Award Management (SAM) website.
- Be in compliance with the Common Grant Rules affirmative action and FTA's Disadvantaged Business Enterprise requirements by including verbiage in contracts and monitoring the contractor for compliance.
- Be in compliance with applicable licensing and tax laws and regulations.
- Have, or can obtain, sufficient financial resources to perform the contract as required by 49 U.S.C. Section 5325(j)(2)(D).
- Have, or can obtain, the necessary production, construction, and technical equipment and facilities.
- Be able to comply with the required delivery or performance schedule.
- Be able to provide a satisfactory current performance record, a satisfactory past performance record, sufficient resources, adequate past experience and past deficiencies not the fault of the provider.

Information collected in solicitation should include:

- Description/references of similar work performed in the preceding five year period, including work in progress
- For contracts over \$250,000, certified financial statements for the preceding three year period. If certified statements are not available, acceptable financial documentation would be required.
- Description of plant, equipment, machinery, etc. necessary to support work.
- Compliance certification for DBE requirements, tax/licensing laws, criminal history and debarments/performance issues.

Utilization of Specific Businesses and Disadvantaged Business Enterprises (DBE). It is the policy of Valley Transit that disadvantaged business enterprises (DBEs), as defined in 49 C.F.R.

Part 26, shall have an opportunity to participate in awards of its contracts and subcontracts. Valley Transit employees, officers, and agents shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises in federally funded procurements. As feasible, Valley Transit should do the following to promote participation:

- Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- Make information on forthcoming opportunities available and arrange timeframes for purchases and contracts to encourage and facilitate participation by such organizations.
- Consider in the contract process whether firms competing for larger contracts intend to subcontract with such organizations.
- Consider contracting with consortiums of such organizations when a contract is too large for one of these firms to handle individually.

6. Cost and Price Analysis.

A cost or price analysis must be performed for every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the recipient must make independent estimates before receiving bids or proposals. The cost or price analysis is based on the independent cost estimate, which is developed before a solicitation is issued. For contract modifications, the independent estimate must be prepared without knowledge of the contractor's proposed pricing. The analysis must be included in the project file.

Cost Analysis. Cost analysis is the review and evaluation of each element of cost to determine if the expense is reasonable and allowable. A cost analysis must be performed under the following conditions:

- When the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost.
- When adequate price competition is lacking, including sole source procurements unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.
- Adequate price competition may be determined to exist when the perception of competition exists, even if only one bid or proposal is received; conversely, the receipt of multiple bids or proposals with widely differing prices may not constitute adequate price competition.
- Profit is to be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- Prior to the use of a cost-type contract, Valley Transit will make a determination that the contractor's accounting system is adequate to properly segregate and bill costs, and also adequate to allocate indirect costs in accordance with generally accepted accounting principles. In no event shall fixed indirect cost rates, that are not subject to audit and adjustment, be used in a cost-type contract, as such agreements constitute an unlawful cost-plus-percent-of cost method of compensation. Provisional indirect billing rates may be used by must be subject to later audit and adjustment.
- As required by 49 U.S.C. Section 5325(b)(2), the following requirements apply to a third party contract for program management, architectural engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping or related services:
 - The third party contract or subcontract must be performed and audited in compliance with FAR Part 31 cost principles.
 - The recipient and the third party contractor, its subcontractors and subrecipients, if any, must accept FAR indirect cost rates for the one-year applicable accounting periods established by a cognizant Federal or State government agency, if those rates are not currently under dispute.
 - After a firm's indirect cost rates established as described in the above paragraph are accepted, those rates will apply for purposes of contract estimation, negotiation, administration, reporting, and payments, not limited by administrative or defacto ceilings.

Price Analysis. A price analysis looks at the price as a whole without examination of its various components. Acceptable methods of price analysis include the comparison of price quotations submitted, market prices and similar indicia, together with discounts. A price analysis may be used in all instances where a cost analysis is not required to determine the reasonableness of the proposed contract price.

Federal Cost Principles. The FTA recognizes that recipients may have difficulty obtaining information necessary to conduct a proper cost or price analysis. As applicable, Valley Transit should utilize the guidelines provided in Federal Acquisition Regulations, Part 31, to determine whether proposed costs are reasonable and allowable.

7. Contract Award

Approval Authority. Final authority for procurement rests with Valley Transit's Fox Cities Transit Commission and The City of Appleton Common Council (governing boards) except as delegated by the City of Appleton Mayor to the Valley Transit General Manager.

General Manager Approval Threshold. The General Manager is authorized to approve and enter into contracts, including contract amendments, on behalf of Valley Transit under his/her single signature authority where the expenditure is less than fifteen thousand dollars (\$15,000). Segmentation of contracts to avoid this threshold is not permitted.

Option Contracts. If the exercise of an option under an existing contract entered into by the General Manager under his/her Single Signature Authority will result in a total contract value in

excess of the Single Signature Authority threshold, approval of the governing boards is required.

Contract Amendments. Where an amendment to an existing contract entered into by the General Manager under his/her Single Signature Authority will result in a total contract value in excess of the Single Signature Authority threshold, approval of the governing boards is required.

Governing Board Approval. The governing boards are the only entity permitted to award contracts valued at fifteen thousand dollars (\$15,000) or more and are not for the renewal or re-award of existing, previously approved and budgeted, ongoing operational requirements.

8. Procurement Records

All negotiated contracts in excess of the micro-purchase threshold must include a provision permitting Valley Transit, the federal awarding agency, the Comptroller General of the United States, or any other duly authorized representatives, to access any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

Valley Transit will keep and maintain, in accordance with its records retention policy, a file or record for each federally funded procurement. FTA's Master Agreement requires that during the course of the project and for three years thereafter, it will maintain intact and readily accessible all data, documents, reports, records, contracts and supporting materials relating to the project. All rolling stock records must be kept for three years after retirement of the asset. Procurement files must include the following:

- The rationale for the method of procurement.
- The basis for the contract type selected.
- The basis for contractor selection.
- The justification for lack of competition where competitive bids or offers are not obtained.
- The basis for the award cost or price.

9. Protest Procedures

Applicability. These protest procedures apply to all Valley Transit formal competitive procurements (RFPs, RFQs and IFBs), unless different procedures are included in the procurement documents. Procurements that intend to utilize the protest procedures set forth herein should include a reference to these procedures. As used in this section, an "interested party" is any person or entity that has timely submitted a bid or proposal in response to a formal procurement. Protests may only be filed by an interested party.

Guidelines for Protests.

- *Strict compliance.* Strict compliance with the protest procedures is required. No

statement by Valley Transit employees, officers, or agents will modify or otherwise alter the protest procedures. Only Valley Transit's governing boards are authorized to modify these procedures, or the protest procedures set forth in the applicable procurement documents.

- *Exhaustion of Remedies Required Prior to Pursuing Protest with Federal Funding Agency or any legal action in any court or tribunal.* The protest procedures are intended to constitute administrative remedies that must be exhausted prior to an interested party commencing any legal action or requesting review by any applicable federal funding agency.
- *Deadline.* Protests must be filed promptly after the basis for the protest is known, but no later than:
 - Protests relating to the procurement solicitation must be submitted in writing no later than five (5) working days from the date of the first published advertisement.
 - Protests relating to the evaluation process must be submitted in writing no later than five (5) working days from the postmarked date of written evaluation correspondence sent by the General Manager to the Provider.
 - Protest relating to the award must be submitted in writing no later than five (5) working days from the date of the award.
 - Protests relating to post-award issues must be submitted in writing no later than five (5) working days from the date that the protestor verbalizes the concern to the General Manager.
 - Requests for reconsideration (if data becomes available that was not previously known, or there has been an error of law or regulation) or appeal to a higher level must be submitted in writing no later than seven (7) working days from the date of the initial determination.
- *Contents Of Protest.* Protests must clearly identify the interested party and the procurement involved in the protest. Protests must completely and succinctly state each and every ground for protest in detail, its legal authority for each protest allegation, and the factual basis for such protest. The protest must include all factual and legal documentation in sufficient detail to establish the merits of the protest. Items that are not included in a protest shall be deemed waived and uncontested.
- *Filing Of Protest.* Protests must be delivered to the Valley Transit offices during normal business hours (but in no event later than 5:00 p.m.) on or before the applicable deadline. Protests must be directed to the attention of the General Manager of Valley Transit.

Resolution. Protests will be decided on the basis of written submissions and any other fact finding determined necessary or appropriate by Valley Transit. Valley Transit may establish a protest evaluation team, and may consult with its legal counsel.

General Manager Response.

Upon receipt of a written protest, the General Manager will meet with the protestor within five

(5) working days and attempt to resolve the matter informally. If information provided at the conference is to be considered in the protest decision it must be submitted in writing within three (3) days of the conference. The General Manager will respond in writing within five (5) working days of the meeting to each substantive issue raised in the written protest.

If the protestor is not satisfied and indicates an intention to appeal to the next step, the General Manager will temporarily suspend the procurement process, provided that the protest has been timely filed before award, unless it is determined that:

- The items to be procured are urgently required;
- Delivery or performance will be unduly delayed by failure to make the award promptly; or
- Failure to make prompt award will otherwise cause harm to Valley Transit.

Each prospective Provider will be advised of the pending protest if the protest is filed before award.

Decision On Protest. The General Manager will issue a written decision regarding the protest within thirty (30) days after the filing of the detailed statement of protest.

Local Appeal Procedure. If the protestor makes a timely appeal of the General Manager's decision the matter will be forwarded to the Fox Cities Transit Commission (FCTC) for their review. The protestor will be notified in writing of the date that the appeal will be heard. The recommendation of the FCTC will then be forwarded to the Appleton Common Council for ultimate local disposition of the protest.

FTA Funded Procurements. When the protest involves an FTA funded procurement, the contract administrator will disclose information regarding the protest to FTA, and will keep the FTA informed about the status of the protest. If the protest alleges that Valley Transit has failed to follow its written bid protest procedures, the protestor may ask that FTA review the protest in accordance with FTA C4220.1F. The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has received actual or constructive notice of Valley Transit's final decision. The FTA will generally limit its review of protests to those situations where a grantee, (i) does not have protest procedures, (ii) has not complied with its protest procedures, or (iii) has not reviewed a protest when given the opportunity to do so, or in cases of violations or federal law or regulation.

10. Bonding Requirements

Construction. Valley Transit, City of Appleton shall specify bonds in compliance with (1) FTA requirements for construction or facility improvement contracts in FTA 4110.1F, Chapter IV, 2. H., and (2) Section 770.14 of the Wisconsin Statutes.

Non-Construction. For non-construction contracts, bonding requirements are discouraged except where applicable law or regulation provides for such bonding, or Valley Transit, City of Appleton determines that such a requirement is necessary as part of the risk management plan for a project.

11. Payment Provisions

Advance Payments. The use of FTA funds for payments in advance of the incurrence of costs by the contractor is generally prohibited, without prior written approval from the FTA. FTA does permit advance payments from FTA funds for those purchases where advance payment is customary in the commercial marketplace such as utility services, rents and subscriptions. FTA approval of such advance payments is required when the amount exceeds \$100,000.

Progress Payments. Progress payments are to be made only for costs incurred in the performance of the contract. When progress payments are used, Valley Transit must obtain title to property or other adequate security for the amount of the progress payment. Progress payments for construction contracts may be made on a percentage of completion basis.

12. Liquidated Damages

Risk Management. Valley Transit shall determine whether to use or not to use a liquidated damages provision for a specific procurement, as part of an overall risk management program.

Calculation. The amount of liquidated damages must be reasonably calculated to reflect anticipated damages Valley Transit might suffer as a result of an inadequacy or delay in contract performance, and such damages would be difficult or impossible to determine. Liquidated damages may be imposed for an entire contract or for a readily identifiable milestone or deliverable, and the measurement period may be other than a day, where appropriate. All liquidated damages recovered under an FTA funded contract will be credited to the project unless FTA agrees otherwise.

CHAPTER IV

PROCUREMENT CLASSIFICATIONS

1. Micro-purchases

Micro purchases do not require multiple quotes, formal bidding procedures or non-competitive procurement findings. For federally funded procurements, the threshold for micro purchases is \$3,000, but the City of Appleton's requirements are more strict with a threshold of \$1,000. Procurements should not be split (i.e., segmented into smaller contracts to fall under the micro purchase thresholds) to avoid competition.

Micro-purchases may be made by obtaining a single proposal or quotation from a commercial vendor that makes available to the public, in significant quantities, equipment, materials or supplies. Award may be made if it is determined that the price is fair and reasonable, and that there are no significant differences in quality or price among available vendors. The determination of price reasonableness must be recorded on a checklist on the receipt. Valley Transit will distribute micro-purchases equitably among qualified suppliers.

Micro-purchases are exempt from Buy America requirements. The Davis Bacon Act (40U.S.C 3141) applies to construction micro-purchases in excess of \$2,000.

2. Small purchases \$1,000 to \$14,999

For federally funded procurements, the threshold for a small purchase is \$100,000, but the City of Appleton's requirements are more stringent. For small purchases in this range, the following requirements apply:

- \$1,000 - \$4,999, Two documented verbal quotes are required
- \$5,000 – 14,999, Three written quotes are required

Small purchases in this range may be made by obtaining the required number of quotes. Award may be made if it is determined that the price is fair and reasonable, and that there are no significant differences in quality or price among available vendors. The determination of price reasonableness must be recorded on a checklist on the receipt.

Small purchases in this range are exempt from Buy America requirements. The Davis Bacon ACT (40U.S.C. 3141) applies to construction purchases in excess of \$2,000.

3. Purchases \$15,000 or more

When making a purchase for \$15,000 or more, a formal procurement method should be used. The following is a list of general standards that every competitive solicitation should adhere to:

- The procurement should be publicized in a manner intended, at a minimum, to notify potential sources in Valley Transit's service area of the nature and type of the solicitation and the date for responses.
- Every reasonable effort should be made to encourage the maximum number of responses. Pre-qualification or other methods of restricting responses shall not be used unless required for security or public safety reasons or by law.

- The solicitation document shall contain, at a minimum, instructions on how the response is to be prepared and submitted; the deadline for submittals and other key dates in the process (such as the date and time of a pre-bid or pre-proposal conference); the basis upon which an award will be made; a statement reserving Valley Transit's needs and the technical requirements to be met by the successful offeror; a set of terms and conditions intended to be used for any resulting contract; and representations and certifications as required by law or deemed necessary by Valley Transit
- The solicitation period shall remain open for sufficient time to enable the preparation of quality submittals responsive to Valley Transit's needs. The minimum bid period for competitive procurements will normally be 30 days, except in cases of urgency a shorter time may be specified. Whenever a period shorter than 30 days is considered necessary, every effort will be made to contact prospective bidders to ensure they can submit bids or proposals in the desired response time.
- Responses to any questions from prospective sources, or any amendments to the solicitation, shall be distributed to all parties known to have received the solicitation. Should the amendment substantially change the terms of the solicitation, the period for receipt of offers shall be extended to allow offerors to change their proposals accordingly.
- New contracts or agreements for services or equipment over \$15,000 must have a recommendation by the Fox Cities Transit Commission and approval of the Common Council. New contracts or agreements are defined as those which:
 - Are for services or equipment procured on a special or one-time basis;
 - Are not for the renewal or re-award of existing, previously approved and budgeted, ongoing operational requirements; or
 - Are not defined by either of the prior statements but have an anticipated total contract cost in excess of \$100,000.

CHAPTER V
FORMAL PROCUREMENT METHODS

1. Competitive Sealed Bidding – Invitation for Bid (IFB)

Bids can be publicly solicited through a formal Invitation for Bid (IFB) with a fixed-price contract (lump sum or unit price) being awarded to the lowest priced responsive bid from a responsible bidder. All bids are publicly opened at the time and place prescribed in the IFB and bidders are afforded a suitable opportunity to examine all bids received after they are opened. Sealed bid procurements should be used when the following circumstances are present:

- A complete, adequate, precise, and realistic specification or purchase description is available.
- Two or more responsible bidders are willing and able to compete effectively for the business.
- The procurement generally lends itself to a firm fixed price contract.
- The successful bidder can be selected on the basis of price.
- Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price only.

Options. Valley Transit may include in any procurement, an option providing Valley Transit the unilateral right to extend the term of the contract and/or to purchase additional supplies or services called for by the contract. The option quantities must be evaluated as part of the contract award. Prior to exercise of an option, Valley Transit must ensure and document in the file that the exercise of the option is in accordance with the terms set forth in the contract, and that the exercise of the option results in a procurement that is more economical and/or advantageous than otherwise available in the marketplace..

Procurement Procedures. The following procedures apply to sealed bid procurements:

- The invitation for bids is publicly advertised.
- Bids are solicited from an adequate number of known suppliers.
- The invitation for bids, including any specifications and pertinent attachments, describes the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
- Bidders are allowed sufficient time to prepare bids before the date of bid opening.
- All bids are publicly opened at the time and place prescribed in the invitation for bids.
- A firm fixed price contract is usually awarded in writing to the lowest responsive and responsible bidder.
- Any or all bids may be rejected if there is a sound, documented business reason.

Single responsive bid. In the event that a single responsive bid is received from a responsible bidder, Valley Transit may negotiate with the bidder to ensure that a fair and reasonable price is obtained. If the responsive bid from the lowest responsible bidder exceeds available funds, Valley Transit may negotiate with the apparent low bidder to obtain a contract price within available funds, provided that Valley Transit has established in writing conditions and procedures for such negotiations prior to issuance of the IFB and summarized them therein. The scope cannot be modified or altered in a manner that might have attracted additional bidders if the negotiation is incorporated into the contract.

2. Competitive Negotiation – Sealed Proposals (RFP/RFQ)

A competitively negotiated procurement pursuant to issuance of a Request for Proposals (RFP) or Request for Qualifications (RFQ) may be used where a low bid competitive procurement is not appropriate or desirable for the solicitation, including, but not limited to, the procurement of professional services including architect, engineering, construction management, accounting, legal and other similar services, and the contract is anticipated to exceed the small purchase threshold. All architect and engineering (A&E) projects will follow the Brooks Act; use of RFQ procurement and price negotiation with the most qualified candidate.

Valley Transit may exercise flexibility in the formulation of the RFP/RFQ, so long as it is in compliance with the procurement specification requirements and other provisions of this manual. The RFP/RFQ should contain the scope of work and the model contract to be used with the successful offeror, or should identify key contractual components/requirements if a model contract is not available at the time of RFP/RFQ distribution.

Competitive proposals should be used when any of the following circumstances are present:

- The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present.
- Uncertainty about whether more than one bid will be submitted in response to an invitation for bids.
- Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.
- Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals.

Procurement Procedures. The following procedures apply to procurements by competitive proposals:

- The request for proposals is publicly advertised.
- All evaluation factors and their relative importance are specified in the solicitation; but numerical or percentage ratings or weights need not be disclosed.
- Proposals are solicited from an adequate number of qualified sources.
- A specific method is established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
- The offerors whose proposals are found by the Valley Transit to be within the competitive range, or may be reasonably made to be within the competitive range, will be notified and any questions and/or requests for clarifications provided to them in writing. Each such offeror may be invited for a private interview(s) and discussions with the Procuring Agency to discuss answers to written or oral questions, clarifications, and any facet of its proposal.
- In the event that a proposal, which has been included in the competitive range, contains conditions, exceptions, reservations or understandings to any Contract requirements as provided in "Form for Proposal Deviation", said conditions, exceptions, reservations or understandings may be negotiated during these meetings. However, Valley Transit shall have the right to reject any and all such conditions and/or exceptions, and instruct the

offeror to amend its proposal and remove said conditions and/or exceptions; and any offeror failing to do so may cause Valley Transit to find such proposal to be outside the competitive range.

- No information, financial or otherwise, will be provided to any offeror about any of the proposals from other offerors. Offerors will not be given a specific price or specific financial requirements they must meet to gain further consideration, except that proposed prices may be considered to be too high with respect to the marketplace or unacceptable. Offerors will not be told of their rankings among the other offerors.
- Technical evaluations are completed before sealed price proposals are opened.
- The methodology for price evaluation and compilation of final scores will be defined on a procurement by procurement basis.
- Price proposal is evaluated and combined with technical evaluation for an overall score.
- An award is made to the responsible offeror whose proposal is most advantageous to Valley Transit's program with price and other factors considered.

After the issuance of the RFP/RFQ, Valley Transit contract administrators may host an informational conference or open a written question and answer period for the benefit of offerors.

Evaluation. The project manager will appoint at least three persons who have knowledge of the procurement's subject matter/technology to evaluate technical proposals. Technical personnel may be from other public agencies if necessary. The project manager will ensure the following:

- All Committee members will submit individual scoring sheets, along with narrative evaluations – scoring mechanics will be defined for individual procurements.
- Evaluation factors that will be considered, along with the relative importance of each in the solicitation will be included in the RFP. Price will not be assigned a weight as an evaluation factor, but will be considered as a separate factor along with the weighted technical factors for award of the contract.
- The evaluation committee will review bids and offers submitted in accordance with the specified criteria and score the proposals in accordance with a pre-determined scoring method. The committee will include a narrative of the qualitative differences among the proposals listing technical strengths, weaknesses, performance risks and ambiguities.
- After the technical evaluation is complete, pricing will be compared and a final recommendation for approval will be made. When determining the recommendation, a "best value" approach will be taken by comparing the technical strengths and weaknesses with the prices offered to determine the best value. Where the procurement is for A&E services, the selection process will not involve prices.

Best and Final Offers (BAFO). After all interviews have been completed, each of the offerors in the competitive range will be afforded the opportunity to amend its proposal and make its BAFO. The request for BAFOs shall include:

- Notice that discussions/negotiations are concluded.
- Notice that this is the opportunity for submission of a BAFO.
- A common date and time for submission of written BAFOs, allowing a reasonable opportunity for preparation of the written BAFOs.

- Notice that if any modification to a BAFO is submitted, it must be received by the date and time specified for the receipt of BAFOs and is subject to the late submissions, modifications, and withdrawals of proposals provisions of the Request for Proposal.
- Notice that if offerors do not submit a BAFO or a notice of withdrawal and another BAFO, their immediate previous Offer will be construed as their BAFO.
- Any modifications to the initial proposals made by an offeror in its BAFO shall be identified in its BAFO. BAFOs will be evaluated by Valley Transit according to the same requirements and criteria as the initial proposals. Valley Transit will make appropriate adjustments to the initial scores for any sub-criteria and criteria which have been affected by any proposal modifications made by the BAFOs. These final scores and rankings within each criteria will again be evaluated by Valley Transit and considered according to the relative degrees of importance as defined in the established evaluation criteria.
- Valley Transit will then choose the proposal which it finds to be most advantageous based upon the evaluation criteria. The results of the evaluations and the selection of a proposal for any award will be documented in a report.
- Valley Transit reserves the right to make an award to an offeror whose proposal it judges to be most advantageous based upon the evaluation criteria, without conducting any written or oral discussions with any offerors or solicitation of any BAFOs.

Negotiation with Top Ranked Firm; Award. As appropriate based on the solicitation procedures set forth in the RFP/RFQ, Valley Transit may negotiate with the top ranked firm(s) and may:

- Award a contract to the offeror whose proposal is most advantageous to Valley Transit with price and other factors considered, as determined based on the factors set forth in the RFP/RFQ.
- Award a contract on the basis of best value to Valley Transit, provided that the solicitation documents establish that award may be made on the basis of best value.
- For procurement of architectural and engineering services, which are defined to include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services, Valley Transit will follow the Brooks Act “qualifications-based” procurement method. This method entails conducting a two-step procurement process (RFQ) that does not consider price in the initial evaluation of proposals. Valley Transit will first negotiate with the most qualified offeror. If agreement cannot be reached with the most qualified firm, Valley Transit will negotiate with the next firm(s) until agreement is reached on a fair and reasonable price.

Options. Valley Transit may include in any procurement, an option providing Valley Transit the unilateral right to extend the term of the contract and/or to purchase additional supplies or services called for by the contract. The option quantities must be evaluated as part of the contract award. Prior to exercise of an option, Valley Transit must ensure and document in the file that the exercise of the option is in accordance with the terms set forth in the contract, and that the exercise of the option results in a procurement that is more economical and/or advantageous than otherwise available in the marketplace.

3. Noncompetitive Proposals – Sole Source

Noncompetitive (Sole Source) procurements are accomplished through solicitation and acceptance of a proposal from only one source. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph. Guidance as to what is “within the scope” of a contract may be found in the FTA Best Practices Procurement Manual, Section 9.2.1 – Contract Scope and Cardinal Changes. “Tag-ons” are defined by the FTA as additions to the scope of work or deliverable items that were not included in the original contract competition, and which must be treated as sole source additions to the contract. Tag-ons are not to be treated as changes within the scope of the contract.

Justification. Contract files must contain written explanation of sole source justification. Procurement by noncompetitive proposals may be used when only one source is practicably available and the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

- A unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted and is available to Valley Transit only from one source.
- Patent or data rights restrictions preclude competition.
- When a follow-on contract for the continued development or production of highly specialized equipment and major components thereof would result in a substantial duplication of costs (such as software upgrade).
- When awarding to another contractor, a follow-on contract for continued development or production of a highly specialized equipment would result in unacceptable delays.

Special provisions. Sole source purchases over \$5,000 but less than \$15,000 must be approved by the City of Appleton Purchasing Manager. Any sole source purchase over \$15,000 must have a recommendation by the Fox Cities Transit Commission and approval of the Common Council.

4. Architectural and Engineering (A&E)

Valley Transit will use qualification-based competitive proposal procedures based on the Brooks Act, Chapter 11 of Title 40 of the United States Code, and 49 U.S.C. §5325(b), when contracting for A&E services. The Brooks Act requires that:

- An offeror’s technical qualifications be evaluated
- Price be excluded as an evaluation factor
- A pricing proposal be requested from, and negotiations be conducted only with the most qualified offerer
- Failing agreement on price, the proposal must be rejected and negotiations conducted with the next most qualified offeror, until a contract award can be made to the most qualified offeror whose price is fair and reasonable.

The Brooks Act qualifications-based procurement method can only be used for the procurement of A&E services which are defined to include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services, where any amount of Federal funds is utilized.

5. Joint procurement

The FTA uses the term “joint procurement” to mean a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum.

Joint procurements are encouraged by the FTA because it offers the advantage of combining or “pooling” procurements with other agencies in order to obtain better pricing. Joint procurements are typically done with a competitive proposal written to fit the needs of all agencies participating in the procurement. Joint procurements solicitations must include total minimum and maximum quantities which are state in the solicitation and contract.

6. Assignment of Contract Rights “piggybacking”

FTA expects its recipients to limit its procurements to the amount of property and services required to meet its reasonably expected needs without adding excess capacity simply for the purpose of assigning contract rights to others at a later date. The FTA expects recipients to be able to justify the quantities it procures. Although the FTA does not encourage the practice, a recipient may find it useful to acquire contract rights through assignment (“piggyback”). If this procurement type is used, Valley Transit must determine that the original contract price remains fair and reasonable and the original contract provisions are adequate for compliance with all Federal requirements. It is Valley Transit’s responsibility to ensure the existing contract contains an assignability clause and all required FTA contract clauses and certifications (Buy America, etc.) If the existing contract does not contain both an assignability clause and required contract clauses, it may not be used.

7. State or Local Government purchasing schedules or purchasing contracts

The FTA uses the term “state or local government purchasing schedule” to mean an arrangement that a State or local government has established with several or many vendors in which those vendors agree to provide essentially an option to the State or local government and its subordinate government entities, to acquire specific property or services in the future at established prices.

The Common Grant Rule for governmental recipients encourages recipients to enter into this type of agreement, but the FTA does not authorize grantees to consider intergovernmental purchasing schedule to be the type of State or local intergovernmental agreement to which this rule refers to. The FTA recognizes joint purchases to be the only type of intergovernmental agreement suitable for use by its grantees.

8. Design-Build Projects

A design-build project is a project under which Valley Transit would enter into a contract with a seller, firm or consortium of firms to both design and build a public transportation facility. The design-bid-build procurement method requires separate contracts for design services and for construction. Design services must use qualifications based procurement procedures and construction must use competitive procurement procedures. The construction may include sealed bidding or competitive negotiation procurement methods, as appropriate.

The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project’s design and construction.

Procurement Method Determined by Value. First, the various contract activities to be undertaken must be separated and classified as design or construction. Next calculate the estimated total value of each. Because both design and construction are included in a single procurement, the FTA expects the recipient to use the procurement method appropriate for the services having the greatest cost, even though other necessary services would not typically be procured by that method.

- Construction Predominant. The construction costs of a design-build project are usually predominant so that the recipient would be expected to use competitive negotiations or sealed bids for the entire procurement rather than the qualification-based “Brooks Act” procurement procedures. Specifically, when construction costs will be predominant, unless FTA determines otherwise in writing, an FTA recipient may not use qualifications-based procurement procedures to acquire architectural engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural and engineering, surveying, mapping, or related A&E services unless required by State law adopted before August 10, 2005.
- Design Services Predominant. In the less usual circumstance in which the cost of most work to be performed will consist of costs for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural engineering, surveying, mapping, or related A&E services, FTA expects the recipient to use qualifications-based procurement procedures based on the “Brooks Act,” 40 U.S.C. Sections 1101 through 1104, as described in subsection 3.e of this Chapter.

Selection Processes. The design-build procurement may be structured using one or more steps as described below:

- One-Step Method. The design-build procurement can be done in a single step.
- Two-Step Method. For large design-build projects a two-step selection process may be used. This method consists of:
 - The first step is a review of the prospective contractors’ technical qualifications and technical approach to the project. The recipient may then narrow the competitive range to those prospective contractors with satisfactory qualifications that demonstrate a technically satisfactory approach.
 - Review of Complete Proposals. The second step consists of soliciting and reviewing complete proposals, including price, submitted by prospective contractors first determined to be qualified. By using this two-step method, it will not be necessary to undertake extensive proposal reviews, nor will prospective offerors need to engage in expensive proposal drafting. This two-step selection procedure is separate and distinct from prequalification and is but one procurement method available to the recipient.

Appendix

Procurement Checklist

Project _____ Project Manager _____

Process/Assignment

BEFORE THE PROCUREMENT PROCESS:

Procurement Method(IFB, RFP, RFQ) _____

Justification of method _____

Sole Source Justification (attach extra pages – if needed) _____

	<u>Employee assigned</u>	<u>Target comp date</u>
Determine/Write Scope of Work/Specs	_____	_____
Project Manager-develop evaluation process*	_____	_____
Independent Cost Estimate	_____	_____

PROCUREMENT PACKAGE PREPARATION:

Draft complete RFQ/RFP/IFB document**	_____	_____
Review and include Protest Procedures/Certs	_____	_____
Identify potential bidders/vendors (prepare list)	_____	_____
Bid document reviewed by VT staff	_____	_____
Bid document reviewed by Legal/COA Purchasing	_____	_____
WisDOT review/approval if bid/RFP is funded with WisDOT FTA grant	_____	_____

CONDUCTING THE PROCUREMENT:

	<u>Employee assigned</u>	<u>Target comp date</u>
Finalize bid document	_____	_____
Email vendors & post on web	_____	_____
Advertisements-legal notice	_____	_____
File notarized copy of ad from paper	_____	_____
Conduct Demos / Pre-Bid Meeting	_____	_____
Receive & document approved equals/requests	_____	_____
Question/answer period	_____	_____
Prepare Addendums & distribute to all vendors that received original bid & post on web	_____	_____

PROPOSAL REVIEW AND AWARD PROCESS:

	<u>Employee assigned</u>	<u>Target comp date</u>
Evaluate bids - responsiveness	_____	_____
Evaluate bids - Proof of Insurance, DBE, certs Bid bonds (construction)	_____	_____
Review evaluation process & criteria, separating technical & price evaluations	_____	_____
Evaluate/Score technical requirements - Team	_____	_____
Evaluate/Score price & financial capability	_____	_____
Receive & file pre-award audit report (buses)	_____	_____
Negotiate lower price/better product	_____	_____
Reference Check	_____	_____
Offeror is not on Excluded Parties List system	_____	_____
Price/Cost Analysis	_____	_____
Notify Selected & Rejected Bidders/Proposers	_____	_____
Protest period	_____	_____
FCTC/FC/ACC approve to award contract	_____	_____

POST AWARD AND POST DELIVERY ACTIVITIES:

	<u>Employee assigned</u>	<u>Target comp date</u>
Issue Contract (PO w/certs or contract)		
Monitor & file Progress reports		
Monitor & file prevailing wage payrolls		
Project Delivery, receive packing slips		
Receive and file signed post delivery audit report		
Monitor Vehicle Title/Registration		
Payment of invoice(s)		
Request/file affidavits of completion (const)		
Payment of retainage		
Drawdown funding (WisDOT or FTA)		

*Evaluation process must include members of technical team & technical scoring method which matches the bid document.

**Bid Document must include all boilerplate (terms & conditions, timeline and FTA certifications & assurances) and items to be evaluated in order of importance.

INDEPENDENT COST ESTIMATE

Project Manager:

Project Description/Name:

Delivery/Completion Date:

Total Estimated Price/Cost:

Date of Estimate:

Background			
Background of the project:	[Replace this text with a brief description of the project background. Identify the source of the project request.]		
Method			
	Yes	No	Comments
Published catalog or price list (attach pertinent catalog or price list pages)	<input type="checkbox"/>	<input type="checkbox"/>	
Recent prices for same or similar item/service (identify contracts, purchase orders, sources and attach any pertinent documents)	<input type="checkbox"/>	<input type="checkbox"/>	
In-house engineering or technical estimate	<input type="checkbox"/>	<input type="checkbox"/>	
Independent Third Party estimate (attach estimate)	<input type="checkbox"/>	<input type="checkbox"/>	
Other	<input type="checkbox"/>	<input type="checkbox"/>	[Replace this text with explanation of other]

Additional Information

[Replace this text with additional information.]

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All>\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted).	>\$100,000	>\$100,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				\$100,000	
Veterans Employment				>\$2,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations.			
Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.