

November 6, 2017

Mayor Timothy Hanna
City of Appleton
100 North Appleton Street
Appleton, WI 54911-4799

Dear Mayor Hanna:

The purpose of this letter is to memorialize our discussions respecting the recent work relating to the municipalities' objections to the pledge agreement. As noted on several occasions, the work responding to the objections was out of scope for our Phase V engagement for document preparation and loan arranging.

We completed our loan arranging activities with the meeting of lenders on Tuesday, October 3, 2017. Time spent addressing the municipalities' unwillingness to proceed with the financing will be billed as additional fees to the Phase V engagement. The work was completed on behalf of the FCEC project, so we would anticipate that this cost will be paid out of room tax proceeds. Unless directed otherwise, we will issue a separate invoice for these out of scope services, with payment being received at the closing of the FCEC loan.

We are grateful to be of service to the City of Appleton. If you have questions or comments, please contact me.

Very truly yours,

von BRIESEN & ROPER, s.c.



Benjamin D. LaFrombois

BDL:sf

TAGLaw International Lawyers

Benjamin LaFrombois, Esq.
Direct Telephone
920-233-1701

blafrombois@vombriesen.com

January 2, 2018

Karen Harkness
City of Appleton
100 N. Appleton Street
Appleton, WI 54911

Re: January 31, 2017 Engagement Agreement

Dear Ms. Harkness:

The Phase V Engagement Agreement was approved by the City of Appleton Common Council on Wednesday, May 17, 2017 and fully executed by all parties on June 9, 2017. In the Engagement Agreement, the anticipated closing date of the draw loan was May 2017.

By letter dated May 31, 2017, we agreed to extend our services to July 31, 2017. By letter dated July 7, 2017, we agreed to extend our services to August 31, 2017. By letter dated November 14, 2017, we agreed to extend our services to December 31, 2017. By this letter, we agree to extend our services to January 31, 2018.

Please contact me with any questions you may have. Thank you.

Very truly yours,

von BRIESEN & ROPER, s.c.



Benjamin LaFrombois, Esq.

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Enc.

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February 5, 2018

Mayor Timothy Hanna
City of Appleton
100 North Appleton Street
Appleton, WI 54911-4799

Re: FCEC Phase V

Dear Mayor Hanna:

We are pleased that the City of Appleton chose von Briesen & Roper to develop a financing package to address the increased costs related to the opening of the Fox Cities Exhibition Center. Our engagement, as defined in our letter of January 31, 2017, included the following:

Part I: Preparation of a full set of draft loan documents. This portion of the engagement was quoted at a flat fee of \$75,000.

We are pleased to enclose the full set of draft loan documents as agreed upon. Our invoice for this service is also enclosed.

Part II: Organize lenders, negotiate the terms of the loan without a City guarantee as directed and as required under the Cooperation Agreement, build and maintain a financial model of the proposed loan, create analysis and facilitate the organizing and arranging of the loan. This portion of the engagement was agreed to be performed at our hourly rates with a limit of no more than \$193,000.

As previously discussed, we have fulfilled our obligations by assembling a group of five local lenders who are ready, willing and able to close this loan within the scope of the Cooperation Agreement. Our invoice for this portion of our engagement is enclosed. Our time has exceeded this limit so we will credit amounts above \$193,000.

Out of Scope: Part II of our engagement became fully deliverable on October 3, 2017 when a meeting of all five participating lenders took place. Per our discussions and letter of November 6, copy enclosed, work relating to certain municipalities unwillingness to proceed with the financing is out of the scope of our current engagement agreement and therefore is being billed separately. Our invoices for services rendered in this regard through December 31, 2017 and for January 2018 are enclosed.

Mayor Hanna
February 5, 2018
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We are also enclosing an invoice from Baker Tilly for payment. This invoice pertains to the preparation of the valuation report.

We shall continue communication with the bank group and otherwise support the City's efforts to finance the FCEC until directed otherwise. If you have questions or comments, please contact me.

Very truly yours,

von BRIESEN & ROPER, s.c.

A handwritten signature in black ink, appearing to read 'B. LaFrombois', with a long horizontal flourish extending to the right.

Benjamin D. LaFrombois
BDL:sf

Encs.

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July 3, 2018

Mayor Tim Hanna
City of Appleton
100 N. Appleton Street
Appleton, WI 54911

Re: Payment of von Briesen & Roper, s.c. Invoices

Dear Mayor Hanna:

On January 31, 2017 the City of Appleton (the "City") engaged von Briesen & Roper, s.c. to continue its representation of the City with respect to the Fox Cities Exhibition Center Phase V.


On November 6, 2017 we memorialized in a letter that the financing had been arranged as requested and that out of scope services had been requested and would be billed separately.

At your request, on February 5, 2018 we issued and delivered invoices for the Phase V and out of scope services (copies enclosed). These invoices remain unpaid. On several occasions, we requested payment, to which there has been no response.

We request immediate payment.

Very truly yours,

von BRIESEN & ROPER, s.c.



Benjamin LaFrombois, Esq.

BDL:sf

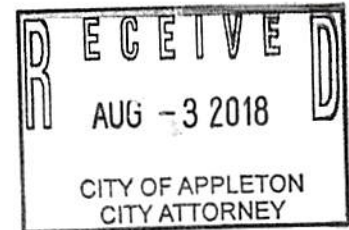
Encs.

cc w/encs: Attorney Robert Mathers, von Briesen & Roper, s.c.
Attorney Walsh
Director Saucerman
Director Harkness

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August 2, 2018

Mayor Timothy Hanna
City of Appleton
100 N. Appleton Street
Appleton, WI 54911



Re: Billings Question

Dear Mayor Hanna:

This letter is in response to your letter dated July 23, 2018 where you requested an explanation regarding the Phase V in-scope and out-of-scope services provided by von Briesen & Roper, s.c. We memorialized this issue in a letter dated November 6, 2017, copy attached. The letter was the culmination of much discussion between us about the Phase V scope of services. The discussion arose because matters relating to the enforcement of the Cooperation Agreement were outside the scope of the Phase V flat fees. We verbally agreed to clarify the scope of services and then we memorialized this agreement in the November 6, 2017 letter. Your July 23 letter is the first communication we received regarding the November 6, 2017 letter and the invoices which are now approximately six months past due.

With respect to the out-of-scope services, each time you requested us to prepare a document, attend a meeting, or make a phone call, you authorized those services. We relied upon and responded to your continued requests for services. These service requests are memorialized and authorized through the Phase V engagement letter, the November 6, 2017 letter and continuous email, phone calls, meetings and texts during that time. We do not provide unrequested services. **You could have asked at any time that we cease our services.** You have yet to make such a direct request. When you ceased making requests we ceased providing services. Your objection, nearly nine months later, is particularly problematic because the services have been rendered as requested.

The first extension of the Phase V engagement letter occurred in July 2017 and we mutually noted that the Phase V engagement did not include work related to the modifications to, litigation of, or disputes related to the Cooperation Agreement. It was not always easy to separate the two distinct matters, which is why there was extended discussion and a written record to bring clarity to the issues. We agreed that after the October 3, 2017 lender commitment, the demarcation between debt placement services (in-scope) and the dispute over the Cooperation Agreement (out-of-scope) was clear. Thus, after our discussions about the out-of-scope work, our agreement was memorialized in the November 6, 2017 letter which you did not question until now.

As early as July 2017 and at points thereafter, we advised you to file a declaratory judgment action to resolve disputes respecting the Cooperation Agreement. When discussed in July 2017, we said that matters of dispute arising from the Cooperation Agreement would be out-of-scope under the Phase V engagement. You declined to pursue litigation. At that time, I suggested that you conduct a more rigorous communication program with the municipalities than what you had previously initiated and sought your approval to do so.

My request was denied. Although I do not know why, I assume it was because the services would have been out-of-scope. You continued with full responsibility for communication with the parties. After the July discussion, while you managed communication with the municipalities, we continued our debt placement services including communicating with the lenders.

In October, the discussion about enforcement of the Cooperation Agreement ensued and you elected to pursue a negotiated resolution rather than pursuing declaratory judgment. As the dispute metastasized in October you changed direction and asked me to communicate with the parties to the Cooperation Agreement. You also asked that we maintain communication with the potential lenders with the hope that the lenders would not withdraw their commitment. Whether you pursued declaratory judgment or whether you sought a negotiated resolution, neither of those options involved debt placement services under Phase V.

We discussed out-of-scope services and the potential need for Common Council approval. It was not von Briesen & Roper's place or responsibility to obtain such approval. There is also the matter of an attorney's duty to maintain confidentiality. An attorney is prohibited from disclosing privileged and confidential information. Even if there was a process for us to request and obtain Common Council approval, unilateral action by us seeking such approval by the Common Council would have likely been a breach of our ethical duty. You made informed and intentional decisions to manage internal approvals as you determined them to be appropriate and necessary.

After October 3, 2017 our out-of-scope services arose from the breach of the Cooperation Agreement and the dispute among the parties to the Agreement. Prior to October, you assumed responsibility for communication with the other municipalities, which is consistent with the Phase V in-scope services. We communicated with the lenders and you communicated with the municipalities. The reason being, the municipalities were not party to, nor authorized to direct, the financing.

Once the dispute with the municipalities progressed in October, you then requested that we communicate with the municipalities to assist with your attempts to resolve the matter. Consistent with the Phase V in-scope services, we had no communication with the municipalities prior to October, except to inquire of meeting schedules for approval of the pledge agreement. Normal course approval of the pledge agreement would have been within Phase V in-scope services. Once the municipalities refused to comply with the Cooperation Agreement the services were out-of-scope.

The Phase V in-scope services do not include amendments to, litigation over, or dispute resolution involving the Cooperation Agreement; thus it excluded the dispute over the Cooperation Agreement.

You would not have requested our assistance (i.e. the out-of-scope services) if the parties had followed the Cooperation Agreement. Put another way, if the parties to the Cooperation Agreement would have complied with its terms, there would have been no out-of-scope services.

Our communication with the municipalities, along with the other out-of-scope services, was out-of-scope because those services related to amendments to, litigation over, or dispute resolution involving the Cooperation Agreement. It is inaccurate to assert that our out-of-scope communication with the municipalities, or any other person or entity, should have been included as Phase V in-scope services.

In summary:

1. The Phase V engagement agreement included services for the drafting of the loan documents and for finance services to arrange lenders to make a syndicated loan including financial modeling. This engagement was lender focused and you assumed the responsibility of communicating with the other municipalities until the dispute arose. Under Phase V (in-scope services) you made and managed all

communication with the parties to the Cooperation Agreement, and no such services on our part were included in the Phase V engagement agreement. The communication referenced in the engagement letter was lender directed communication, not municipal.

2. On October 3, 2017, we held a meeting with the five lenders participating in the proposed bank financing. All lenders confirmed that they were ready, willing and able to close and you were so informed. Once the financing had been arranged, our efforts to *maintain* this commitment, and our discussions surrounding this activity, fell outside the scope of our engagement agreement. These communications arose solely because of the Cooperation Agreement dispute.
3. After the October 3 meeting, our services distinctly changed direction as we worked with you to obtain compliance by the parties to the Cooperation Agreement. As memorialized in our letter of November 6, 2017, all services arising from the breach of the Cooperation Agreement were outside the scope of the Phase V agreement. Thereafter, we continued to support your efforts to enforce the Cooperation Agreement. At no time were we told to stop working. To the contrary, we continued to meet and communicate regularly, strategizing the enforcement of the Cooperation Agreement.

Almost six months have passed since we delivered our invoices and almost nine months since we delivered the November 6 letter. It is disconcerting that you waited this long, and after services have been provided, to inquire as to the veracity of the November 6 letter. If you objected, you had a duty to respond timely.

Regarding St. Joe's, I had been asked by Director Harkness to suspend our work relating to this project until directed otherwise. It was and is our understanding that the direction to hold off on further action with St. Joe's was from you through Director Harkness. We have spent substantial time putting in place the strategy for the matter. The matter is ready to proceed once we are authorized.

Fox Communities Credit Union requested reimbursement for the cost of an appraisal prepared by Baker Tilley. This invoice for the preparation of the appraisal remains unpaid. A copy is attached.

We renew our request for immediate payment of our invoices in full.

Very truly yours,

von BRIESEN & ROPER, s.c.



Benjamin LaFrombois, Esq.

BDL:sf

Enc.

cc: James P. Walsh, City Attorney
Robert A. Mathers, von Briesen & Roper
Tony Saucerman, Director of Finance
Karen Harkness, Director of Community and Economic Development