

TAGLaw International Lawyers

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## ENGAGEMENT LETTER

January 31, 2017

City of Appleton  
Appleton Redevelopment Authority  
Attn: Mayor Tim Hanna  
Attn: Director Karen Harkness  
100 N. Appleton Street  
Appleton, WI 54911

Re: Extension of scope of services under Engagement Letter dated September 1, 2016;  
Acknowledgement of completion of services under Engagement Letter dated January 1, 2016, approved February 5, 2016.

Dear Mayor Hanna and Ms. Harkness:

Thank you for asking von Briesen & Roper, s.c. ("**von Briesen**") to continue its representation of the City of Appleton (the "**City**") and to engage with the Appleton Redevelopment Authority (the "**ARA**") for Phase V. As we move into the next phase of our work, I thought it would be good to recap progress to date and then provide an overview of the work we will complete during the next phase. To put in context the work just completed as well as the work we will be undertaking as we move ahead, I will provide a brief recap of Phase I through IV (which is described in greater detail in prior engagement letters) and then provide a more detailed description of the work we are just completing.

Phases I through IV were performed in whole or part while I was an attorney with the law firm of Hinshaw & Culbertson LLP. When I moved from H&C, I continued the work at von Briesen.

- Phase I & II Overview:

Key accomplishments/activities during Phase I included review with City staff of the due diligence related to the purchase agreement, a review of the governing documents of the ARA, a comparison of alternative ownership structures and analysis of the project's eligibility under tax exempt status. Through our work with the City's bond counsel and hotel management we were able to obtain approval on a management and ownership structure that would provide the facility with the greatest opportunity to be financed with tax exempt bonds.

Key accomplishments during Phase II included the approval of the purchase agreement of land by the City from the County, identification and remediation of a deficient financing structure that may have prevented tax-exempt status for the project, identification of current and potential sources and

economic modeling of various techniques that likely saved the City many times the cost of the services provided by us.

- Phase III Review:

#### Coalition Establishment

Hinshaw provided objective planning recommendations and strategy to assist the development of the ten communities into a unified coalition for the financing, ownership and management of the Fox Cities Exhibition Center ("FCEC"). This work included the creation of an objectively balanced financial contribution plan from each community, and a developmental and operational oversight and participation plan for all of them to be involved in the FCEC's construction and oversight. In developing an 'ask' from each community stakeholder's participation, we objectively weighed the source and quality of the region's hotel taxes, and the financing risk to construct a financial model that allowed the stakeholders to more fully and quickly appreciate and agree upon a plan documented by ordinance(s) and/or intergovernmental agreement(s). A fundamental aspect of our work in this area drove the coalition building amongst the local government stakeholders that allowed all of them to reach agreement that was ultimately memorialized in intergovernmental agreements. As part of this work, we also:

Drafted intergovernmental agreements and ordinance(s) to have such agreements authorized by each of the local government coalition members, including custom ordinances for each municipality, organized binders of the documents, including the original documents applicable to each municipality, and distributed the record books to each municipality to facilitate a clear understanding, especially at the beginning stages where the project must grow to maturity and throughout the life of the project, to be used as a reference and guide to assist each stakeholder in the good management and cooperation of the parties to the agreements; and

Reviewed governmental policies and procedures to allow the Hotel Room Tax Commission to work in harmony with bond documents, the management agreement, and any marketing agreement(s), advised the City with respect to the legal aspects of the hotel room tax commission structure necessary to accommodate bond requirements in particular as it relates to authorization of the central government assessment, collection, auditing and distribution of hotel room tax proceeds, and prepared the draft bylaws of the Room Tax Commission, which became the foundation and underpinnings for the bylaws adopted Monday, March 20, 2017.

#### Finance

Coordination & Collaboration - We unified the efforts of the City's third-party advisors - (i.e. lender, financial advisor, bond counsel) as well as assisted the City's internal directors who have a role in finance. In carrying out this financial coordination role, we maintained a financial model developed so that the members of the coalition were able to more easily understand the financial issues and their role in such issues and reach accord on the intergovernmental agreements.

Lender - During Phase III we assisted the City with utilizing the financial model to review and discuss how the lending marketplace might respond to a borrowing collateralized by room tax as envisioned in the model. We engaged in discussions with parties familiar with the markets that may lend into the FCEC project. We performed a preliminary review of the market conditions for debt

financing for a project with costs of approximately \$24,000,000 when the exhibition center was contemplated to be constructed above ground. During Phase II, we had identified and contracted with a financial advisor for the project at a fee that was advantageous for the City. Because the real estate purchase agreement was not approved by the City at this time, an alternative path was pursued. During Phase III, we maintained the contact and relationship with the financial advisor as well as others who may serve in similar capacity. The primary focus with respect to the finance piece of the project during Phase III was the financial model and assessing market conditions for an above-ground concept with estimated cost of \$24,000,000. The work relating to contracting with parties who will be involved in the debt structuring was by necessity deferred until the intergovernmental agreements were entered into and the real property transaction completed.

Phase IV builds upon the work done in Phase II and Phase III. During Phase III, we sought to minimize costs by avoiding overlap of services, minimizing errors to diminish gaps in required future services, as well as contribute to the efficient cohesive participation of all of the key professionals in the project. These professionals include, but are not limited to, the City's/ARA's Financial/Municipal Advisor in accordance with the Municipal Securities Rulemaking Board (MSRB), its Bond Counsel, Issuer's Counsel, and Lender if applicable.

#### Management Agreement

I negotiated and drafted the Fox Cities Exhibition Center Management Agreement, which was fully executed November 18, 2015. The negotiations began with meetings in Chicago to accommodate the owners of the hotel and bad weather which prevented them from being in Appleton. Thereafter negotiations continued for a several day meeting in Appleton followed by additional due diligence by all parties and final negotiations. This Agreement was accomplished with careful timing to coordinate with the intergovernmental agreements and the requirement that the Management Agreement be entered into prior to purchasing the real estate. The real estate closing took place November 24, 2015.

- Phase III continuing services related to environmental indemnification:

We continue to provide advice and counsel respecting the notice of assignment of the environmental indemnity related to real property purchased for the use by the FCEC.

- Phase III Real Estate Closing:

I provided services related to the closing of the transaction with Outagamie County, including title policy review (successfully removed easement exceptions from Schedule BII of the title commitment), preparation of the warranty deed, Wisconsin Real Estate Transfer Return, Assignment of Environment Indemnification Agreement, Right of First Refusal, Closing Statement, and memorializing parking obligations of the City that survive closing and generally coordinated closing activity and requirements.

- Phase IV Financial Advisor Selection Process and Collaboration:

Phase IV services approved February 5, 2016 included an end date of December 31, 2016. We were asked to, and agreed to, continue to provide service under the Phase IV agreement through January 31, 2017 to direct the issuance and response to the Request for Proposal (“**RFP**”) to borrow funds

to construct the Fox Cities Exhibition Center, which was the result of the change to a below ground facility, which increased the amount needed to be borrowed, which required an entirely different strategic approach to be able to finance the costs which increased from approximately \$24,000,000 to approximately \$31,000,000, 29% higher than previously modeled and anticipated. We took on the additional role of finding a new strategic direction for financing and to put in place the potential lenders which would participate in a loan that would raise a sufficient amount to fund the higher construction costs associated with the below ground design. Months of work were spent developing the new strategic direction, communicating it to and educating the stakeholders, other professionals involved in the project and potential lenders. The RFP which was due January 13, 2017 garnered three responses. We reviewed and analyzed the responses and made a recommendation to pursue negotiations with a particular lender. We propose the next phase of services with an effective date of February 1, 2017, coinciding with the negotiations.

In summary, Phase IV was not to have extended past December 31, 2016. We extended the deadline to provide out of scope services to reach the end of the financing request for proposals to assist the City in determining a path forward. Moreover, when the decision was made to construct the FCEC underground, it involved increased costs. The increased costs of the FCEC materially changed how it would be possible to finance the construction costs. The anticipated method of financing the FCEC was to issue bonds to the public markets. With the increased costs, a bond issuance to the public markets would most likely not have raised adequate funds to cover the construction costs. Thus, Phase IV services became an effort to determine a path to borrow adequate funds, given the increased costs of construction. To fulfill our obligation under the Phase IV contract we have addressed the issue of the path forward to borrowing adequate funds to cover the increased construction costs and we extended the deadline to fulfill those services. If the FCEC had been constructed per the above-ground conceptual plan and within the time frame originally proposed, it is reasonable to assume that the Phase IV services would have been completed and that Phase V services would not be needed.

### **PHASE V SCOPE OF SERVICES**

Phase V: Implement new strategic plan to finance the increased FCEC costs.

This letter memorializes the completion of Phase IV services. This Phase V scope of services shall be divided into two parts.

**Phase V Part 1. The drafting of the loan documents:** We are pleased to offer a flat fee for the drafting of the loan documents. The flat fee excludes work related to the organizing of the lending group and negotiating the terms as well as the subsequent rounds of drafting that may be needed at the request and in conjunction with the lending group and lenders' counsel. For the document preparation, we will perform the services for \$75,000. The flat fee services will be deemed accomplished upon the delivery of a full set of loan documents for review by lenders' counsel. These documents are listed on Exhibit A. This agreement does not include the cost of legal opinion letters performed by non-von Briesen attorneys. After the first set of documents are delivered to the lenders, subsequent edits and modifications shall be provided on an hourly basis consistent with Phase V Part 2.

**Phase V Part 2. Finance Services to arrange lenders to make a syndicated loan including financial modeling:**

We were retained to represent the City and ARA in connection with the financing of the construction costs of the FCEC by making contact with lenders and to assist with obtaining financing by those lenders. These services are law related services as defined under the ethics rules for lawyers and may not be subject to the same protections afforded legal services such as attorney client privilege. These services do not include the giving of legal advice nor the review of or preparation of contracts or other agreements. The essential service provided is to identify interested lenders, communicate to them the requirements of the project, develop terms of the loan, build, verify and audit formulas, maintain and communicate a financial model of the proposed terms of the loan, provide information to the lenders with the hope of securing a financing commitment, create analysis and facilitate the organizing and arranging (a term of art referring to the party that forms the terms, communicates them, persuades and informs potential lenders and manages the complicated process of obtaining commitments and then completing the robust, complicated and delicate requirements to close such a loan) of the loan. We will attend meetings to organize lenders, negotiate terms and facilitate communication between all parties as necessary to perform the services. The services will require substantial engagement with the lenders and their counsel to facilitate their understanding of the transaction and to facilitate the agreement between the lending institutions. We will establish and maintain a financing data room related to the FCEC finance closing. These services shall include the negotiation of the terms of the loan and working with lenders to reach an agreement on those terms. Generally, the services under Phase V Part 2 which are not legal services shall be law related services.

Nothing in this Agreement shall be construed as an assumption by von Briesen of the responsibilities or duties of the Municipal Advisor or Financial Advisor. von Briesen's services shall be rendered compatibly and in coordination with the services provided by the Municipal Advisor or Financial Advisor, particularly Speer Financial, which has been engaged as the MSRB licensed party to advise the City and ARA. We shall be entitled to rely upon Speer Financial's proper performance of their obligations pursuant to their contract with the City.

**Legal Services:**

We were retained to represent the City and ARA as described above with respect to legal services related to the loan we are attempting to secure for the financing of the construction costs of the FCEC. The services under this Phase V Part 2 include the work related to the editing and modification of the loan documents after the first set of documents is delivered. Generally, the legal services shall be all of those services related to Phase V that are of a legal nature and content.

It is anticipated that the loan contemplated herein shall close in the draw phase in May 2017 and the term loan shall close January 2018. The flat fee services should be performed between the date of this letter and May 2017. If the closing date is delayed past June, the flat fee shall be reasonably adjusted according to the extent of the delay. The flat fee anticipates a set of documents based upon participating lenders joining in a syndicated loan and not a bond issuance. In the event the transaction must be re-structured because of a change in circumstances, the flat fee shall be reasonably adjusted according to the work that will need to be performed under those new circumstances. The flat fee shall be paid upon approval of this Agreement. The hourly rate services shall be submitted monthly with the first invoice including services starting February 1, 2017.

### **FEES FOR SERVICES**

The Phase V Part 2 work shall be performed at an hourly rate ranging from \$150.00 for paralegal work and a range of \$225 to \$425.00 for attorney work. We will attempt to use the lowest cost resource appropriate to the work needing to be accomplished.

At your request, we have agreed to limit the Phase V Part 2 fees to no more than \$193,000.00. The limit shall include hourly work within the scope described above occurring prior to January 31, 2018. If the closing of the term loan occurs later than January 31, 2018, the limit shall be reasonably increased by an amount equal to the work required to close the term loan, or otherwise work toward a closing of the loan that is provided after January 31, 2018. All work related to legal opinion letters performed by von Briesen attorneys shall not be counted against the limit.

Incentive Fee: In the event the loan contemplated herein closes, von Briesen shall be paid a fee equal to 1.25% of the loan amount less all amounts paid under Phase V Part 1 and 2 hourly services, which excludes the flat fee. The incentive fee shall be paid and earned at the time the draw loan closes except for \$50,000 of the fee which shall be reserved for payment upon the successful transition from the draw loan to the term loan. von Briesen shall continue to provide services described herein through the transition to the term loan.

You acknowledge that we are not general counsel for the City or the ARA and that our acceptance of this engagement does not involve an undertaking to represent the City's and the ARA's interests in any matter other than that described above. Furthermore, you acknowledge that our representation does not entail an obligation to advise you of subsequent legal developments related to the matter for which we are retained after completion of our representation.

While this letter is intended to deal with the specific legal services described above, these terms and conditions will also apply to any additional legal services that we may agree to provide that are outside the initial scope of our representation.

We are pleased to have this opportunity to be of service to the City and the ARA. If at any time during the course of our representation you have any questions or comments about our costs, services, or any aspect of how we provide services, please do not hesitate to call me.

Very truly yours,

von BRIESEN & ROPER, s.c.

Benjamin LaFrombois, Esq.

BDL:sf  
enc.

The City of Appleton agrees to retain the services of von Briesen & Roper, s.c. under the terms and conditions specified above.

CITY OF APPLETON

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Tim Hanna, Mayor

The Appleton Redevelopment Authority agrees to retain the services of von Briesen & Roper, s.c. under the terms and conditions specified above.

APPLETON REDEVELOPMENT AUTHORITY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Karen Harkness, Director