

November 9, 2018

James P. Walsh
City Attorney
City of Appleton
100 N. Appleton Street
Appleton, WI 54911

Re: von Briesen Invoice

Dear Attorney Walsh:

This letter is provided in follow-up to our recent phone conversation and supplements our August 2, 2018 letter. At the October 22, 2018 Finance Committee meeting there was a comment made that the services provided under our Phase V Engagement Letter, including the out of scope services, had not been authorized by the City, particularly the Common Council.

In response to this assertion, the Phase V Engagement Letter was approved by the Common Council on May 17, 2017. When approved, funds in an amount of up to \$462,500 were also approved. The Phase V Engagement Letter expressly authorized out of scope or additional services with the following language:

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.** Phase V Engagement Letter Page 5, emphasis added.

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. Phase V Engagement Letter Page 6, emphasis added.

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There is an important comparison in interpreting the Phase V Engagement Letter. The Phase IV Engagement Letter contained different language respecting out of scope services. That letter stated "Out of scope services shall be approved in writing by the City prior to the services being performed." In fact, an early draft of that letter used the term "Common Council" instead of "City". The Phase V Engagement Letter contained no such requirement. The Phase V letter was less restrictive.

The Phase V letter, as approved and funded by the Common Council, authorized out of scope services and contemplated a change in fee based upon circumstances.

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

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 LaFrombois, Esq.

BDL:sf

Enc.

cc: Mayor Timothy Hanna, hand delivered
Tony Saucerman, Director of Finance, hand delivered
Karen Harkness, Director of Community and Economic Development, hand delivered
Finance Committee Members, hand delivered