

HINSHAW

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January 1, 2016

Karen Harkness
Community and Economic Development
City of Appleton
VIA EMAIL

Re: Fox Cities Exhibition Center

Dear Karen:

Thank you for the continued opportunity to serve the City of Appleton (City) with respect to the Fox Cities Exhibition Center (FCEC). Below you will find a summary of the work we recently completed in our phase III of services of which the flat fee portion of our work pertaining to the closing of the real estate for the construction of the FCEC on November 25, 2015 and the hourly fee portion of our phase III work will be concluded on December 31, 2015.

As we move into our phase IV of our work I thought it would be good to recap our progress to date and then provide an overview of the work we will complete during phase IV. 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 and Phase II (which is described in greater detail in prior engagement letters) and then provide a more detailed description of the work we are just completing.

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 Appleton Redevelopment Authority, 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 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 by the City of land 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 could likely save the City many times the cost of our services.

Building on the Barger Tradition

Phase III Review:

1. 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 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:

- a) 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 and follow-up to collect the executed agreements; and
- b) Reviewed governmental policies and procedures to allow the Hotel Tax Commission to work in harmony with bond documents, the management agreement, and any marketing agreement(s). Hinshaw 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.

2. Finance

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

Lender – During Phase III Hinshaw 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 prepared by Hinshaw. We engaged in discussions with parties familiar with the markets that may lend into this FCEC project. Hinshaw performed preliminary review of the market conditions for debt financing. During Phase II, Hinshaw had identified and contracted with a financial advisor for the project at a fee that was advantageous for the City. This contract did not move forward because the real estate purchase agreement was not approved by the City at that time. During Phase III, we maintained the contact and relationship with the financial advisor as well as others who may serve in that capacity. The primary focus with

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respect to the finance piece of the project during Phase III was the financial model and assessing market conditions. The work relating to contracting with parties who will be involved in the debt structuring was by necessity deferred to Phase IV. Now that the real property is purchased, Phase IV will include the scope of services that builds upon the work done in Phase II and Phase III. During Phase III, Hinshaw has sought to minimize costs by avoiding overlap of services, minimizing errors to minimize gaps in required future services, as well as contribute to the efficient cohesive participation of all of these key professionals in the project. These professionals will include but are not limited to the identification of 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.

3. Management Agreement

Hinshaw negotiated and drafted the Fox Cities Exhibition Center Management Agreement, which was fully executed November 18, 2015.

4. Real Estate Closing

Hinshaw 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:

This letter is to memorialize the agreement we have reached regarding our firm's deliverables and fees for the project's next phase (Phase IV) of work. Our client in this work will continue to be the City of Appleton and the Appleton Redevelopment Authority (hereinafter collectively "Client" or "Clients") whose interests are aligned in this matter. As such, there is no expectation of confidentiality between the Clients. The City shall be the party responsible for the fees identified herein.

Phase IV Flat Fee Services:

The scope of work we collectively created with the Clients includes three primary aspects of the project for which our firm will provide as flat fee services during Phase IV of this engagement:

(1) Finance-Related Services

As noted above, Phase I, II and III laid the foundation for Phase IV Financing, which is where the planning will most likely result in a completed financing package for the FCEC. The following is a description of those items which will need to be accomplished to finance the construction of the FCEC.

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Financial Advisor Selection Process and Collaboration - Hinshaw will participate in the Financial Advisor Selection Process. Hinshaw will coordinate the efforts of the City's prime independent, third-party advisors – (i.e. lender, underwriter, municipal advisor, bond counsel) as well as the City's internal directors who have a role in finance. In carrying out this financial coordination role, Hinshaw Consulting will maintain the financial model to support the efforts of the financial advisor, underwriter and others with a role in financing the FCEC to reach accord on specific deal structuring terms. Hinshaw will further assist the City in its identification of, scoping services for and negotiating fees with other professionals. Hinshaw will continue to seek to minimize costs by avoiding overlap of services, minimizing errors to minimize gaps in required services, as well as contribute to the efficient cohesive participation of all of these key professionals in the project. The professionals identified will include, but are not limited to, the Financial / Municipal Advisor in accordance with the Municipal Securities Rule Making Board (MSRB), its Bond Counsel, Issuer's Counsel and Lender/Underwriter if applicable. Given the uncertain form and timetable for the project's funding, one of various funding paths may be selected which will determine when Hinshaw's duties under Phase IV will conclude with respect to Finance-Related Services. Although we cannot predict the precise path the financing will take, we would like to identify alternate paths so that we can both have a reasonable expectation of the services to be provided under Phase IV Financing. The description of the paths are as follows:

- (a) The primary objective includes a path that combines construction financing within the long term financing package. If this package is identified as the most advantageous to the Project, then Hinshaw's Phase IV Finance-Related Services will be concluded upon the closing of the financing package.
- (b) A second path may include construction financing package that is distinct from the long-term financing package. In this situation the construction financing will be documented separately from the long-term financing package and the long-term financing package will be deferred until the construction is complete. The reason this option may be utilized is because of the interest savings by not having to draw the entire cost of the project before the money is needed. The interest savings of this type of approach would need to be balanced with the inherent market risks of deferring the locking in of long term interest rates. Hinshaw will assist in exploring the available options while working with the financial advisor and other professionals that can provide advice and counsel so that the stakeholders have information necessary to decide the best course of action. In this instance, Hinshaw's Phase IV Finance-Related Services will be concluded upon the closing of the construction loan and the completion of all legal documentation relating to that loan. Subsequent work relating to the long-term financing package would be outside the scope of Phase IV.
- (c) In the event that Client does not proceed with the financing options contemplated in (a) or (b) above and no suitable alternative is agreed upon, Hinshaw's Phase IV Finance-Related Services will be deemed completed on July 31, 2016.

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(2) Issuer's Counsel Services

Hinshaw will act as local counsel for bond issuance including opinion letters to the City's Bond Counsel, drafting of loan documents (if requested by bond counsel) and other required documents, and coordinating the completion and delivery of all required information to Bond Counsel. Hinshaw will participate in finance meetings, negotiations, and closing to facilitate and expedite financing.

(3) Development Process Advice

Hinshaw will provide input with respect to varying process options as to how to manage the development and construction of the Exhibition Center project. This advice shall include a review the different delivery methods available to the City and the pros and cons of the methods. Additionally, Hinshaw will advise on how to initiate the process selected. This scope is limited to advice and counsel and does not include the work arising from the selected development process.

Scope limit on document review: Under the Phase IV Flat Fee portion we shall prepare and review the financing documents. The Flat Fee portion includes up to three rounds of comments by bond counsel and other interested parties. Prior to the third round of comments, we will inform and advise the City of the status and mutually cooperate to minimize further comments and additional costs. After the third round of comments, the services for completing drafting shall be billed at hourly rates for the time expended.

Phase III/IV Hourly Services:

Post-closing follow-up to the real estate closing:

Complete steps necessary following the closing of a transaction. In addition, provide advice and counsel respecting the notice of assignment of the environmental indemnity. Real Estate services as described herein shall be provided primarily by Attorney Ben LaFrombois.

Our firm's hourly services will be provided by our firm's professionals whose particular expertise is required to advance the deliverables outlined above. The parties anticipate that members of the Hinshaw team will include Paul Nicolosi (Partner with extensive municipal experience with projects such as the Exhibition Center), Gino Galluzzo (Partner with extensive municipal experience with projects such as the Exhibition Center), Kevin Schauer (analyst with extensive experience with municipal projects of this type), Greg Cox (Partner with in-depth experience with intergovernmental agreements and the strategies to enact them), Kelly Hintzsche (experienced associate with experience with similar projects), Courtney Coccimiglio (attorney and architect with commercial real estate, design and development expertise), Alyssa Campbell (Appleton based associate to support the above services in an economical and efficient manner) and others as deemed appropriate by our firm. We will apply the hourly rates typically charged for these professionals. Hourly fees shall be capped at \$24,000. Any services in excess of \$24,000 shall be approved in writing by the City prior to the services being performed. Out of scope services shall be approved in writing by the City prior to those services being performed.

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All hourly fees shall be billed and paid monthly. Frequently multiple events are contained in a single time entry with sufficient detail to describe the consolidated work provided by the professional and the time for all such events aggregated.

The hourly rates for the attorneys listed above range from \$230 to \$465 per hour. The hourly rates of other attorneys which may be used range from \$200 to \$465 per hour.

The Basic Relationship Terms (Client, Direction, Disclosure & Confidentiality including Disclosure regarding Hinshaw Law & Consulting) are unchanged from prior phases of services, unless the more specific and detailed provision is contained herein such as the identification of the client as both the City of Appleton and the Appleton Redevelopment Authority.

It is the intent of the City and Hinshaw to cooperatively pursue the scope of services described above. The City and Hinshaw will communicate regularly regarding progress toward completing the scope of services. Hinshaw shall work diligently toward achieving the objectives defined above without any guarantee with respect to results.

The Ongoing General Services are unchanged from prior phases of services.

Other than as listed below, the miscellaneous items remain unchanged from prior phases of services.

Compensation and Reimbursable Expenses

We have agreed that our firm's services and fees under the Phase IV Flat Fee will be a flat fee of \$240,000.00, payable in equal monthly installments to be fully paid by the end of July, 2016. All monthly payments of the flat fee are due on the 15th of the respective month without further invoicing and should be made payable to Hinshaw Consulting in reference to the matter number to be assigned upon approval of this letter and sent to:

Attn: Jose Leon
222 N. LaSalle Street
Suite 300
Chicago, IL 60601

The hourly fee portion of our firm's services will be billed monthly and shall be due within thirty days from the date of the invoice.

In the event payment is not timely received, Hinshaw will issue an invoice notifying the Client of the amount due.

Phase IV work will conclude no later than July, 2016, subject to the Client's approval.

In addition to these fees, the City shall be responsible for payment of all costs and disbursements reasonably incurred by Hinshaw on its behalf to the extent that said expenses are approved in

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writing and in advance by the Client. Such costs and disbursements may include, but are not limited to, photocopying, travel expenses (economy class unless otherwise approved in advance), and internet research charges such as Westlaw or other specialized database related to the services being provided.

This Agreement is made effective as of the 1st day of January, 2016.

Yours truly,

HINSHAW & CULBERTSON LLP



Benjamin D. LaFrombois

920-380-2067

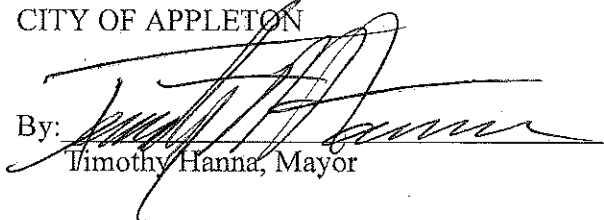
blafrombois@hinshawlaw.com

BDL:sf

Accepted and agreed to:

CITY OF APPLETON

By:



Timothy Hanna, Mayor

Date: 3/1/16



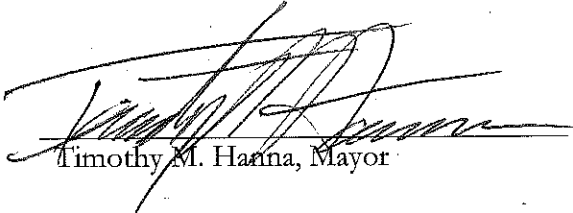
"...meeting community needs...enhancing quality of life."

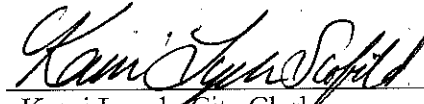
CITY OF APPLETON
a Wisconsin Municipal Corporation

Agreement:

Fox Cities Exhibition Center
Phase IV Services
Hinshaw & Culbertson, LLP

Date: March 1, 2016

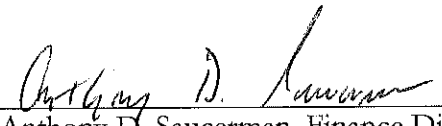
By: 
Timothy M. Haana, Mayor

Attest: 
Kami Lynch, City Clerk

Approved as to form:


James P. Walsh, City Attorney

Countersigned pursuant to §62.09(10), Wis. Stats.:


Anthony D. Saucerman, Finance Director