



City of Appleton

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

Meeting Agenda - Final Finance Committee

Monday, May 8, 2017

5:30 PM

Council Chambers, 6th Floor

1. Call meeting to order
2. Roll call of membership
3. Approval of minutes from previous meeting
[17-634](#) April 25, 2017 Finance Committee minutes.

Attachments: [MeetingMinutes25-Apr-2017-04-27-33.pdf](#)

4. Public Hearings/Apearances

5. Action Items

- [17-549](#) Request to approve professional services contract with von Briesen & Roper, S.C. for Phase V services related to the financing of the Fox Cities Exhibition Center and approve the related 2017 Budget adjustment below:

Exhibition Center Capital Projects Fund

Consulting Services	+\$462,500
Debt Proceeds/Room Tax	+\$462,500

to provide funding for consulting services related to the financing of the Fox Cities Exhibition Center.

Attachments: [Memo to Finance Von Briesen Phase V Engagement Letter2.pdf](#)
[Engagement Agreement - Loan Documents and Closing.PDF](#)
[FCEC Professional Services Agreement, Phase IV 3-01-2016.pdf](#)

Legislative History

4/25/17	Finance Committee	recommended for approval
5/3/17	Common Council	referred to the Finance Committee

- [17-632](#) Request to approve bid packages and project related expenses into the Guaranteed Maximum Price Amendment to Miron Construction for the Fox Cities Exhibition Center for a contract not to exceed \$5,458,967.

Attachments: [2017 Expo Center Bid Package #5 .pdf](#)

- [17-633](#) Request to reject bids from H.J. Martin & Sons, Inc. and Bernie's Equipment for not meeting the bidding guidelines. In addition, reject bids from Martell Construction which substantially exceeded our budgeted amount. The scope will be reviewed and modified to rebid.

Attachments: [2017 Expo Center Bid Package #5 \(002\).pdf](#)

6. Information Items

- [17-545](#) Set Meeting Day and Time

Meetings will be held on the second and fourth Monday of each month at 5:30pm

Legislative History

4/25/17	Finance Committee	held
	5 or 5:30 on Monday	

- [17-631](#) Director's Reports:
Finance
Legal Services

17-635

The following 2017 Budget adjustments were approved by the Mayor and Finance Director in accordance with Policy:

General Fund - Library

Reimbursements - Friends of the Library	+\$26,000
Administration Expenses	+ \$3,575
Children's Services Expenses	+\$14,700
Community Partnership Expenses	+ \$5,900
Network Services Expenses	+ \$1,825

to record funds received from the Friends of the Appleton Public Library

Reimbursements - OWLS	+\$24,500
Training - Administration	+ \$3,500
Materials - Materials Management	+\$21,000

to record funds received from the Outagamie Waupaca Library System (OWLS)

Reimbursements - United Way	+\$14,502
Supplies - Children's Services	+\$14,502

to record funds received from the United Way

General Fund - Fire Department

Donations	+ \$684
Equipment	+ \$684

to record contribution from Winnebago County for rescue equipment

7. Adjournment

Notice is hereby given that a quorum of the Common Council may be present during this meeting, although no Council action will be taken.

Reasonable Accommodations for Persons with Disabilities will be made upon Request and if Feasible.

For questions on agenda, please contact Tony Saucerman at (920) 832-6440.



City of Appleton

100 North Appleton Street
Appleton, WI 54911-4799
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Meeting Minutes Finance Committee

Tuesday, April 25, 2017

4:30 PM

Council Chambers, 6th Floor

1. Call meeting to order

Meeting called to order at 4:30pm.

2. Roll call of membership

Present: 5 - Alderperson Plank, Alderperson Lobner, Alderperson Siebers, Alderperson Croatt and Alderperson Baranowski

3. Approval of minutes from previous meeting

[17-539](#)

April 11, 2017 Finance Committee minutes

Attachments: [MeetingMinutes11-Apr-2017-11-39-38.pdf](#)

Alderperson Lobner moved, seconded by Alderperson Siebers, that the Minutes be approved. Roll Call. Motion carried by the following vote:

Aye: 4 - Alderperson Plank, Alderperson Lobner, Alderperson Siebers and Alderperson Croatt

Abstained: 1 - Alderperson Baranowski

4. Public Hearings/Appealances

5. Action Items

[17-540](#)

Request to award the Scheig Center, Memorial Park - Plaza Redevelopment contract to Sommers Construction Company, Inc in the amount of \$94,371 with a contingency of 10% for a project not to exceed \$103,808.

Attachments: [Scheig Center Plaza Redevelopment.pdf](#)

Alderperson Baranowski moved, seconded by Alderperson Siebers, that the Report Action Item be recommended for approval. Roll Call. Motion carried by the following vote:

Aye: 5 - Alderperson Plank, Alderperson Lobner, Alderperson Siebers, Alderperson Croatt and Alderperson Baranowski

[17-541](#)

CEA Review Committee Report for April 11, 2017.

Attachments: [CEA Minutes11-Apr-2017-03-54-38.pdf](#)

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

Aye: 5 - Alderson Plank, Alderson Lobner, Alderson Siebers,
Alderson Croatt and Alderson Baranowski

[17-548](#)

Request to approve the following 2017 Budget adjustment:

Stormwater Utility

Green Grove Plat Project	+\$6,925
Northland Pond Project	- \$6,925

General Fund - Public Works Department

Asphalt Reconstruction	+\$40,189
Sidewalk Reconstruction	- \$40,189

to reallocate funds to pay for stormwater and street improvement projects undertaken in cooperation with the Town of Grand Chute.

Attachments: [DPW Grand Chute Memo.pdf](#)

Alderson Lobner moved, seconded by Alderson Baranowski, that the Report Action Item be recommended for approval. Roll Call. Motion carried by the following vote:

Aye: 5 - Alderson Plank, Alderson Lobner, Alderson Siebers,
Alderson Croatt and Alderson Baranowski

[17-549](#)

Request to approve professional services contract with von Briesen & Roper, S.C. for Phase V services related to the financing of the Fox Cities Exhibition Center and approve the related 2017 Budget adjustment below:

Exhibition Center Capital Projects Fund

Consulting Services	+\$462,500
Debt Proceeds/Room Tax	+\$462,500

to provide funding for consulting services related to the financing of the Fox Cities Exhibition Center.

Attachments: [Memo to Finance Von Briesen Phase V Engagement Letter2.pdf](#)
[Engagement Agreement - Loan Documents and Closing.PDF](#)
[FCEC Professional Services Agreement, Phase IV 3-01-2016.pdf](#)

Aldersperson Baranowski moved, seconded by Aldersperson Croatt, that the Report Action Item be recommended for approval. Roll Call. Motion carried by the following vote:

Aye: 4 - Aldersperson Lobner, Aldersperson Siebers, Aldersperson Croatt and Aldersperson Baranowski

Nay: 1 - Aldersperson Plank

[17-552](#)

Request to reject bid from Slusarek Construction, Inc in the amount of \$75,500 for the Arbutus Park Retaining Wall Project.

Attachments: [2017 Arbutus Park Retaining Wall \(Reject Bids\).pdf](#)

Aldersperson Lobner moved, seconded by Aldersperson Baranowski, that the Report Action Item be recommended for approval. Roll Call. Motion carried by the following vote:

Aye: 5 - Aldersperson Plank, Aldersperson Lobner, Aldersperson Siebers, Aldersperson Croatt and Aldersperson Baranowski

[17-563](#)

Request to award the 2017 Alicia Park Hillside Stabilization project contract to Radtke Contractors, Inc in the amount of \$39,000 with a contingency of \$8,000 for a project not to exceed \$47,000.

Attachments: [2017 Alicia Hillside Stabalization.pdf](#)

Aldersperson Lobner moved, seconded by Aldersperson Baranowski, that the Report Action Item be recommended for approval. Roll Call. Motion carried by the following vote:

Aye: 5 - Aldersperson Plank, Aldersperson Lobner, Aldersperson Siebers, Aldersperson Croatt and Aldersperson Baranowski

17-577

Request to approve Contract Amendment/Change Order No. 1 to contract 73-16 for Unit Y-16 Arbutus Park Stormwater Lift Station Reconstruction to increase for the addition of retaining wall reconstruction to the scope of work in the amount of \$45,925.00 resulting in an increase to contingency from \$21,377.50 to \$25,877.50. Overall contract increased from \$235,152.50 to \$285,577.50.

Attachments: [Unit Y-16 Contract Amendment-Change Order No.1.pdf](#)

Aldersperson Lobner moved, seconded by Aldersperson Croatt, that the Report Action Item be recommended for approval. Roll Call. Motion carried by the following vote:

Aye: 5 - Aldersperson Plank, Aldersperson Lobner, Aldersperson Siebers, Aldersperson Croatt and Aldersperson Baranowski

17-597

Request to approve Contract Amendment/Change Order No. 1 to contract #3-17 for Unit H-17 Northland Pond Construction for Micro-Tunnel with an increase of \$658,945. Overall contract increase from \$2,724,224 to \$3,383,169.

Attachments: [Northland Av Contract Chg.pdf](#)
 [Northland Av Map.pdf](#)

Aldersperson Baranowski moved, seconded by Aldersperson Croatt, that the Report Action Item be recommended for approval as amended. Roll Call. Motion carried by the following vote:

Aye: 5 - Aldersperson Plank, Aldersperson Lobner, Aldersperson Siebers, Aldersperson Croatt and Aldersperson Baranowski

17-580

Railroad Donation Agreement for trestles

Attachments: [RR - Donation Contract.pdf](#)

Aldersperson Lobner was excused at 5:45pm

Aldersperson Baranowski moved, seconded by Aldersperson Croatt, that the Report Action Item be recommended for approval. Roll Call. Motion carried by the following vote:

Aye: 3 - Aldersperson Plank, Aldersperson Croatt and Aldersperson Baranowski

Nay: 1 - Aldersperson Siebers

Excused: 1 - Aldersperson Lobner

6. Information Items

[17-547](#) Change Order #3 to Caldwell Tank in the amount of \$2,428 for the Glendale Water Tower Project resulting in the construction contract being reduced from \$2,443,762 to \$2,441,334.

Attachments: [Change Order 3 Glendale Project.pdf](#)

This Presentation was received and filed

[17-545](#) Set Meeting Day and Time

5 or 5:30 on Monday

This Presentation was held until the May 9, 2017 meeting.

[17-582](#) **Resolution #7-R-17**

April 19, 2017

Submitted by: Alderperson Baranowski - District 5

Referred to: Attorney's Office, Finance Committee

WHEREAS, social media plays an important role in the ability to communicate with the public, it can infringe on open meeting laws, THEREFORE, the City Attorney review and draft a policy that governs the proper use of social media during posted City meetings.

This Report Action Item was received and filed

[17-542](#) Election of Vice-Chair

Alderperson Baranowski was appointed Vice-Chair

This Report Action Item was received and filed

[17-543](#) Election of Tax Appeals Board Member

Alderperson Baranowski was appointed to the Tax Appeals Board

This Report Action Item was received and filed

[17-544](#) Election of Central Equipment Agency Board Member

Alderperson Lobner was appointed to the Central Equipment Agency Board

This Report Action Item was received and filed

[17-546](#)**Appoint a Contact Person**

Alderson Plank was appointed Contact Person with Finance Director Tony Saucerman as secondary Contact Person

This Report Action Item was received and filed

[17-581](#)

The Finance Committee will go into closed session according to State Statute §19.85(1)(e) for the purpose of discussions of real estate negotiations regarding the railroad trestles and reconvene into open session.

This Report Action Item was not needed due to vote outcome of Item 17-580.

7. Adjournment

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

Aye: 4 - Alderson Plank, Alderson Siebers, Alderson Croatt and Alderson Baranowski

Excused: 1 - Alderson Lobner



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

MEMORANDUM

TO: Finance Committee

FROM: MAYOR TIM HANNA

DATE: April 11, 2017

RE: von Briesen Engagement Letter for Phase V of Exhibition Center

Attached is the von Briesen (vB) Engagement Letter for Phase V of the Exhibition Center.

Phase IV services were approved February 5, 2016 with an end date of December 31, 2016. vB was asked and agreed to continue to provide services 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. Responses to the RFP were due January 13, 2017 and garnered three responses. vB analyzed the responses and recommended pursuing negotiations with a specific lender.

Phase V services have an effective date of February 1, 2017 which coincides with the start of negotiations.

Phase V scope of services are divided into two parts and outlined below:

Phase V, Part 1

- Drafting of the original loan documents
- Anticipate close in draw phase of May 2017 and term of loan close January 2018

Fee for Phase V, Part 1 is a flat fee of \$75,000 based on lenders joining in a syndicated loan and not a bond issuance. Amount is due upon approval of this agreement. If the close date is delayed past June 2017, the flat fee shall be reasonably adjusted according to the extent of the delay.

Phase V, Part 2

- Communicating to interested lenders the financial requirements of the project
- Develop terms of the loan
- Build, verify and audit formulas
- Maintain and communicate financial model to multiple stakeholders
- Organize, communicate with, and bring together multiple lenders to facilitate an agreement between all thus creating a syndicated loan to finance the FCEC.
- Develop, negotiate, draft, re-draft, edit and modify the loan documents
- Engage with and facilitate communication and negotiations with lender's counsel
- Establish and maintain a financing data room related to FCEC financing close

Fee for Phase V, Part 2 is at an hourly rate ranging from \$150 for paralegal work and a range of \$225 to \$425 for attorney work and limited to no more than \$193,000 with services completed prior to January 31, 2018.

The Phase V Engagement Letter also has an Incentive Fee which is outlined below:

Incentive Fee

- Upon closing of the syndicated loan, vB shall be paid 1.25% for the loan amount less all amounts paid under Phase V, Parts 1 and 2, excluding the flat fee.
- Earned and paid at the time the draw loan closes except for \$50,000 which shall be reserved for payment until the successful transition from the draw loan to the term loan.

TAGLaw International Lawyers

Benjamin LaFrombois, Esq.
Direct Telephone
920-233-4704
blafrombois@vonbriesen.com

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

HINSHAW

& CULBERTSON LLP

ATTORNEYS AT LAW

100 West Lawrence Street
Appleton, WI 54911-5754

920-738-7550

920-738-9294 (fax)

www.hinshawlaw.com

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

January 1, 2016

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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.

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.

(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 Cocciemiglio (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.

January 1, 2016

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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

January 1, 2016

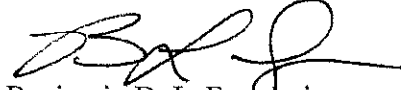
Page 7

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

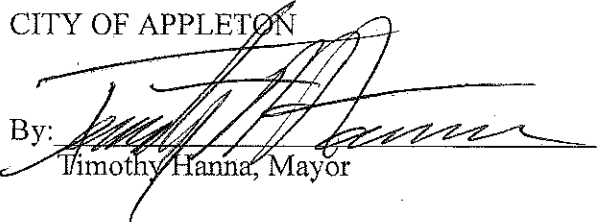
blafrombois@hinshawlaw.com

BDL:sf

Accepted and agreed to:

CITY OF APPLETON

By:



Timothy Hanna, Mayor

Date: 3/1/16



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

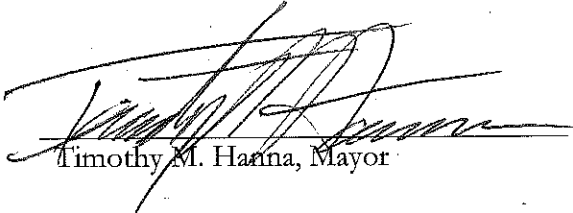
CITY OF APPLETON
a Wisconsin Municipal Corporation

Agreement:

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

Date: March 1, 2016


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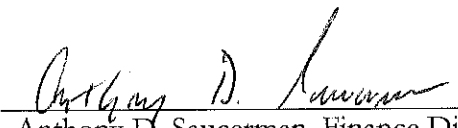
Attest:


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



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

**PARKS, RECREATION & FACILITIES
MANAGEMENT**

Dean R. Gazza, Director

1819 East Witzke Boulevard
Appleton, Wisconsin 54911-8401
(920) 832-5572 FAX (920) 993-3103
Email - dean.gazza@appleton.org

TO: Finance Committee

FROM: Dean R. Gazza, Director of Parks, Recreation and Facilities Management

DATE: 5/8/2017

RE: Action Item: Approval of Bid Packages and project related expenses into the Guaranteed Maximum Price Amendment to Miron Construction for the Fox Cities Exhibition Center for a contract not to exceed \$5,458,967.

The delivery method utilized for this project is Construction Manager at risk (CM) and varies from the traditional design-bid-build delivery method traditionally used when time is not a project constraint. In this method, the CM is hired as the Owner's agent and contracts directly with sub-contractor(s) in an "at-risk" position. All work is publicly bid to comply with state bidding laws. Once the lowest qualified bidder is determined, the sub-contractor(s) contracts with the CM to complete the work. The CM provides a guaranteed maximum price in which any costs above this are the risk of the CM. The City only pays for the actual costs of the work completed (up to the maximum guarantee) and any change orders if there is a scope change.

It is currently anticipated that the project will include six (6) bid packages. Future bid packages will be incorporated via a change order to the initial contract with the CM.

On April 6, 2017, bids were opened for Bid Package #5. We received multiple bids as provided below and recommend proceeding with the lowest responsible bidder:

Sheet Applied Waterproofing: Hillside Dampproofing, Inc.

Contractor	Bid
Hillside Dampproofing, Inc.	\$96,900
Zander Solutions, LLC.	\$265,000

Fluid Applied Membrane Waterproofing: Hillside Dampproofing, Inc.

Contractor	Bid
Hillside Dampproofing, Inc.	\$677,660
Zander Solutions, LLC.	\$715,000

General Trades: Miron Construction Co., Inc

Contractor	Bid
Miron Construction Co., Inc.	\$1,167,900
H.J. Martin & Son, Inc.	\$1,288,799

Electrical: Suburban Electric Contractors, Inc

Contractor	Bid
Suburban Electric Contractors, Inc	\$2,465,832
Van Ert Electric	\$2,845,840

Tiling: Resch's Tile, Inc

Contractor	Bid
Resch's Tile Inc.	\$142,000
H.J. Martin & Son, Inc.	Did not follow bid instructions

Flooring: Section will be rebid

Contractor	Bid
H.J. Martin & Son, Inc.	Did not follow bid instructions

Epoxy Systems: Protective Coating Specialists, Inc.

Contractor	Bid
Protective Coating Specialists, Inc.	\$17,585
Applied Flooring, LLC.	\$48,216

Acoustical Systems: VerHalen, Inc.

Contractor	Bid
VerHalen, Inc	\$269,176
Appleton Latching Corporation	\$285,250

Painting & Wall Covering: Spies Painting

Contractor	Bid
Spies Painting, Inc.	\$151,880
Corcoran Glass & Paint, Inc.	\$223,500
Klinger Painting	\$270,040
Omni Glass & Paint Co., Inc.	\$298,795

Loading Dock Equipment: Poweramp Equipment

Contractor	Bid
Poweramp Equipment	\$49,650
Bernie's Equipment	\$39,123*
(*) – Bid was turned in late.	

Signage: Jones Sign Co., Inc.

Contractor	Bid
Jones Sign Co., Inc.	\$311,000

Landscaping: VandeHey Company, Inc.

Contractor	Bid
VandeHey Company, Inc.	\$37,732
Lakeshore Cleaners	\$42,010.75

Site Concrete: Section to be rebid (Over Budget)

Contractor	Bid
Martell Construction	\$649,900

In addition, insurance and performance/payment bonds currently total \$71,652. While we have had some variation with some of the bids received to date, overall bid package #5 has come in as anticipated and the project remains on budget.

Please feel free to contact me at 832-5572 with any questions, or by email at dean.gazza@appleton.org.



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

**PARKS, RECREATION & FACILITIES
MANAGEMENT**

Dean R. Gazza, Director

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