



City of Appleton

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

Meeting Agenda - Final-revised Finance Committee

Monday, October 8, 2018

5:30 PM

Council Chambers, 6th Floor

1. Call meeting to order

2. Roll call of membership

3. Approval of minutes from previous meeting

[18-1437](#) Finance Committee minutes from September 24, 2018 meeting

Attachments: [MeetingMinutes24-Sep-2018-11-43-10.pdf](#)

4. **Public Hearings/Apearances**

5. **Action Items**

[18-1440](#) Award the Fire Station #5 2018 Remodeling project contract to Miron Construction Co. Inc in the amount of \$40,669 with a contingency of 7% for a project total not to exceed \$43,516

Attachments: [2018 Fire Station #5 Remodeling.pdf](#)

[18-1453](#) Request to approve the following 2018 Budget adjustment:

TIF 11 Capital Projects Fund

Capital Outlay	+\$2,354,153
Proceeds of Debt	+\$2,354,153

to establish a 2018 budget for the construction of a public parking ramp at the U.S. Venture site (2/3 vote required)

Attachments: [Finance Committee - USV Ramp 2018 Budget Request.pdf](#)

[18-1455](#) Request to approve Apple Ridge Development Agreement

Attachments: [Apple Ridge Development Agreement - Clean - 09-28-2018.pdf](#)

- [18-1403](#) Request to approve \$193,000 for Phase V, Part II payment of outstanding legal fees related to the financing of the Fox Cities Exhibition Center and deny Phase V Out of Scope payment in amount of \$129,143

Attachments: [vonBriesen Final Bills.pdf](#)
[vonBriesen Bills.pdf](#)

Legislative History

9/24/18 Finance Committee recommended for approval
The item was amended (as reflected in the heading) to approve only the payment of \$193,000 for Phase V, Part II.

10/3/18 Common Council referred to the Finance Committee

- [18-1459](#) The Finance Committee will go into closed session according to State Statute §19.85(1)(e) for the purpose of discussing the investment of public funds concerning the Fox Cities Exhibition Center invoices and reconvene into open session.

6. Information Items

- [18-1438](#) Contract 22-18 was awarded to Vinton Construction Company, Inc for the 2018 Scheig Phase 3 Redevelopment project in the amount of \$91,120 with a contingency of \$4,556. One change order in the amount of \$1,032 was issued. Request to issue the final contract payment of \$92,151.90

Attachments: [Scheig Phase 3 Finance Memo Final Pymt \(10-08-18\).pdf](#)

- [18-1439](#) Contract 19-18 was awarded to Martell Construction, Inc for the 2017 Wastewater Sidewalk Repair project in the amount of \$36,468 with a contingency of 10%. Payments issued to date total \$35,556.54. Request to issue the final contract payment of \$911.71

Attachments: [2017 Wastewater Sidewalks Final Payment_.pdf](#)

- [18-1454](#) The following 2018 Budget adjustments were approved by the Mayor and Finance Director in accordance with Policy:

General Fund - Fire Department

Donations	+\$11,378
Equipment	+\$11,378

to record donation from the Friends of the Appleton Fire Department for the purchase of two gear washers and installation of a photo board for retired personnel

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 regarding this agenda, please contact Tony Saucerman at (920) 832-6440.



City of Appleton

100 North Appleton Street
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Meeting Minutes Finance Committee

Monday, September 24, 2018

5:30 PM

Council Chambers, 6th Floor

1. Call meeting to order

Meeting called to order at 5:30pm.

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

[18-1400](#)

Finance Committee minutes September 10, 2018 meeting

Attachments: [MeetingMinutes10-Sep-2018-02-29-39.pdf](#)

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

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

4. Public Hearings/Appearances

5. Action Items

[18-1401](#)

Request to write off \$22,691.53 of accounts receivable invoices and \$18,098.94 of personal property taxes (outstanding over one year)

Attachments: [Write-off List 2018 for Committee.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

[18-1409](#)

Request to approve City quit claiming property to Atlas Mill, LLC

Attachments: [Quit Claim Deed.pdf](#)

Alderson Baranowski moved, seconded by Alderson Siebers, 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

[18-1408](#)

Request to approve termination of contract with von Briesen and the City Attorney's office to assume any further activity regarding the Exhibition Center site.

Alderson Baranowski moved, seconded by Alderson Croatt, 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

[18-1404](#)

The Finance Committee will go into closed session according to State Statute §19.85(1)(e) for the purpose of discussing the investment of public funds concerning the Fox Cities Exhibition Center invoices and reconvene into open session.

Alderson Baranowski moved, seconded by Alderson Croatt, to convene in Closed Session. Roll Call. Motion carried by the following vote:

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

Alderson Croatt moved, seconded by Alderson Lobner, to rise and report, returning into open session. Upon vote, motion carried unanimously.

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

[18-1403](#)

Request to approve \$193,000 for Phase V, Part II payment of outstanding legal fees related to the financing of the Fox Cities Exhibition Center and deny Phase V Out of Scope payment in amount of \$129,143

Attachments: [vonBriesen Final Bills.pdf](#)

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

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

6. Information Items

[18-1402](#)

The following 2018 Budget adjustments were approved by the Mayor and Finance Director in accordance with Policy:

General Fund - Library

Reimbursements - BMO Donation	+\$9,500
Part-time Wages - Childrens Services	+\$1,500
Fringe Benefits - Childrens Services	+\$ 300
Supplies - Childrens Services	+\$7,700

to record donation from BMO Harris to support the ELL program

Reimbursements - Friends of the APL	+\$ 787
Equipment - Network Services	+\$ 787

to record reimbursement from the Friends of the Appleton Public Library for computer equipment

This Presentation was received and filed

7. Adjournment

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

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



"...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

DATE: 10/08/2018

RE: Action: Award the Fire Station #5 "2018 Remodeling Project" contract to Miron Construction Co., Inc. in the amount of \$40,669 with a contingency of 7% for a project total not to exceed \$43,516.

The 2018 Capital Improvement Plan includes \$50,000 to remodel the kitchen area at Fire Station #5. The amount of \$5,955 has been utilized for design leaving a balance of \$44,045 for construction. The kitchen area at Fire Station #5 is original to the 1991 construction of the facility and is in need of renovation.

The bids were received as follows:

Miron Construction Co., Inc. (low bid)	\$40,669
Howard Immel	\$46,150
RJM Construction	\$47,350
Milbach Construction Services Co.	\$53,730

Our consulting engineer has written the City of Appleton a formal letter of recommendation to award the contract to Miron Construction Co., Inc. The Parks, Recreation, and Facilities Management Department has also reviewed the bids and is in agreement with the engineer's recommendation. Therefore, we recommend awarding the contract to Miron Construction Co., Inc. in the amount of \$40,669 plus a contingency of 7% only to be utilized as needed.

Please contact me at 832-5572 or at dean.gazza@appleton.org with any questions.



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

TO: Finance Committee

FROM: Tony Saucerman, Finance Director

DATE: October 8, 2018

RE: Request approval to establish a 2018 Budget for the construction of a public parking ramp as part of the US Venture development in TIF 11

On August 6, 2018, the Common Council approved an amended development agreement with U.S. Venture, Inc. to locate their corporate headquarters in downtown Appleton. As part of this agreement, the City agreed to fund and construct a public parking ramp beneath the new building. Since work on this project has begun, a budget for the remainder of 2018 must be established and approved. Based on the following estimate provided by the City's Director of Parks, Recreation and Facilities Management of costs expected to be incurred in 2018 for the project, I am requesting a budget adjustment for \$2,354,153 in the TIF 11 Capital Projects Fund for 2018.

Land (pro-rated through 12/31/18)	\$1,829,153
Architectural and Construction Management Fees	500,000
Other Professional Fees (soils management, survey, etc.)	<u>25,000</u>
Total	<u>\$2,354,153</u>

Funding for the project is expected to come from a general obligation debt issue which is anticipated to close in early 2019. Any costs incurred prior to the closing of the debt issue will be reimbursed by the debt proceeds.

As always, if any member of the Committee has any questions regarding this request, feel free to contact me.

DEVELOPMENT AGREEMENT

THIS AGREEMENT is made by and between the CITY OF APPLETON, a Wisconsin municipal corporation (hereinafter referred to as “the City”) and APPLE TREE APPLETON FOUR, LLC, (hereinafter called “Developer”).

WITNESSETH:

WHEREAS, certain lands known as Apple Ridge Development (hereinafter defined below as the “Land”) are located in proximity to the City and are in the City’s future growth area; and

WHEREAS, each of the City and the Developer desire to set forth their respective duties and responsibilities with respect to the development of the Land.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

SECTION 1

Definitions

1.1 “Developer” shall mean Apple Tree Appleton Four, LLC, its successor, assigns, and/or designees.

1.2 “Development Control” shall mean the comprehensive supervision of construction of all Public Improvements within an Administrative Project Area as such supervision is necessary to insure conformity with the provisions of this Agreement. Development Control shall be exercised by the Developer, in accordance with all applicable state, federal laws and City ordinances, however the Developer shall have discretion on the selection of those contractors who perform such work within the scope of such ordinances. All construction of public improvements performed by the Developer shall be constructed according

to City standards. Construction of Public Improvements shall be inspected and approved by City employees.

1.3 The “Land” shall mean that real property described in ***Exhibit A*** attached to this Agreement.

1.4 “Off-Site” shall mean those Public Improvements which are outside the boundaries of the Land except for those Public Improvements which abut or are adjacent to the Land.

1.5 “Public Improvements” shall mean streets, curbs, gutters, sidewalks, bridges, culverts, drainage structures, stormwater ponds, water and sewer facilities, pumps, pump houses, lift stations, transmission and service lines, manholes, fire hydrants, traffic and street signs, street lighting, and other such improvements which are to be dedicated to the City for public use as required in either this Agreement or subsequent agreements entered into between the City and the Developer as well as ordinances of the City, which are applicable City-wide and not just to the Land; however, standards regarding parks and common ground dedicated to the City by the Owner Developer may have restrictions and standards which vary and/or may be more restrictive than the ordinances of the City, if agreeable to both parties hereto.

1.6 The “City” shall mean that Wisconsin home rule municipal corporation now known as the City of Appleton, Wisconsin, and shall include any successor entity to said municipal corporation.

1.7 “Lot” shall mean any platted lot or lot designated by Certified Survey Map within the Land which is designated for residential use.

1.8 “Homeowner” shall mean the owner of any Lot which shall or does utilize the Lot as the site of their family residence.

SECTION 2

Approving and Organizational Documents

2.1 The City has approved, or the City agrees to the extent provided herein, to approve and to subsequently execute where appropriate, the following:

- (a) A resolution approving the execution of this agreement;
- (b) The following shall be included therein as enforceable terms with the Developer being a beneficiary in these provisions: (a) the Land shall be permitted to be improved (including, but not limited to, landscaping and buildings) pursuant to the ordinances of the City; (b) the width of the dedicated roadways within the Land shall meet City requirements, which will be determined at time of platting; (c) City shall accept fee title, at the City's sole discretion, to the outlots indicated on the approved Final Plat designated as outlots for storm water ponds only (on a phase by phase basis subject to minor revisions by the Developer). The Developer shall deed title to all ponds within the Land, necessary for stormwater, to the City upon completion of construction and approval by City.

2.2 All of the above documents described in Section 2.1 shall be collectively referred to herein as the "Approving and Organizational Documents".

2.3 **Ponds.** Maintenance. Maintenance of the ponds and the landscaped perimeter within the outlots shall be the responsibility of the City. The parties recognize that the City's primary interest in the ponds is for the pond's use as regional stormwater retention facilities. Upon acceptance of said ponds by the City, the City shall be owner of the ponds and Developer will be able to drain stormwater into said ponds.

SECTION 3

Public Improvements and Assessments

3.1 Except for items identified in Exhibit C City Costs (non-assessable per Development Agreement) and City Costs (assessable), the Developer shall be responsible for the installation of the following in the Proposed Development, to the standards set forth by the City and pursuant to Section 4 below:

- (a) Sanitary sewer mains, manholes and laterals;
- (b) Water mains, valves, hydrants, hydrant leads, fittings, and services;
- (c) Storm sewer mains, manholes, catch basins, inlet leads, overland flow paths, yard drains, stormwater ponds and associated piping and laterals;
- (d) Storm water facilities necessary to meet storm water management requirements for the development;
- (e) Street excavation and graveling, terrace seeding, lot filling, grading and seeding and all associated construction site erosion control measures;
- (f) Street lights;
- (g) Temporary lift stations, forcemains and electrical services to the stations to serve the development; and
- (h) All other infrastructure required for development not specifically set forth in this agreement.

3.2 The Developer shall provide an estimate for items 3.1(a) – 3.1(h) prior to the installation of the items.

3.3 The Developer shall provide a fully executed and signed *Waiver of Special Assessment Notices and Hearing* in ***Exhibit B***, acknowledging consent to pay Special

Assessment levied by the City for the following items to be furnished and/or installed by the City:

- (a) City administrative fees (plan review, inspections, etc.);
- (b) Sanitary Sewer Area Assessment;
- (c) Connection fees for watermain in Ballard Road as applicable;
- (d) Televising of sanitary and storm sewer lines;
- (e) Street Name Signs;
- (f) Traffic Control Signs;
- (g) Concrete Pavement abutting lots owned by the Developer at the time of concrete paving;
- (h) Sidewalks/sidepaths installed on lots owned by the Developer at the time of concrete paving.

An estimate of up-front City costs and associated special assessments to be paid by the Developer for items 3.3(a) – 3.3(h) is attached hereto at ***Exhibit C***. The actual final costs for items 3.3(a) – 3.3(h) will be used as the basis for the amount of the special assessments billed to the Developer.

3.4 The Developer anticipates developing the land in three phases. Costs for the Sanitary Sewer Area Assessment shall be assessed to the Developer in three equal phases. Connection fees for watermain in Ballard Road shall be assessed as applicable with Phase 1 of the development. Said assessments shall be assessed as each plat is approved for each phase of the development.

3.5 The Developer shall provide the City with copies of all final costs, invoices, labor costs, the contract documents and specifications, design documentation, all contract

administration supporting documentation, an itemized list of all expenses for the installation of sanitary sewer, sanitary lift stations, forcemains, storm sewer, water main, service laterals, street excavation and graveling, and street lights for the Proposed Development. Said information provided by Developer shall meet City's Infrastructure Adjustment Form requirements. The Developer's design engineer, or alternative licensed surveyor shall perform the construction staking and the City shall inspect the same.

3.6 The Developer's contractor shall perform the testing of the water main, sanitary sewer, storm sewer and compaction of fill material placed in future roadway areas of the Proposed Development under the supervision of City of Appleton inspectors.

3.7 The Developer shall provide lien waivers to the City from prime contractor, subcontractors, suppliers and consultants within 60 days of the installation of the items in Section 3.1.

3.8 The Developer agrees to convey by deed or dedication to the City all the streets, roads, courts, avenues, drives, public ways, and storm water facilities in the Proposed Development. Developer further agrees to convey any public access ways by dedication or easement to the City. All public improvements contemplated in the final plat shall be constructed within areas to be dedicated to the City either by deed, dedication or easement as contemplated in the final plat and this agreement.

3.9 The Developer shall establish a level loop on the hydrant(s) in the Proposed Development and a copy of all benchmarks shall be provided to the City.

3.10 The City agrees to accept the dedication of all the Public Improvements in the Proposed Development, whether by deed, dedication or easement subject to the City's

Acceptance of the Public Improvements in accordance with and subject to the terms of the City's Subdivision Ordinance.

3.11 The Developer shall repair or replace, as directed by the City and to the City's satisfaction, at its own cost, any damage caused to City property by the installation of the improvements in the Proposed Development, which shall be completed within six (6) months notification by the City to the Developer of the need to repair or replace such damage.

3.12 In recognition of the environmental challenges of this site resulting in lower density development, the City agrees to waive the special assessment fee for temporary asphalt (estimated cost of \$532,500) for the Development. The City also agrees to an additional contribution of \$387,500 towards infrastructure upon completion of Phase III.

3.13 Concrete streets shall be installed on a street-by-street basis only after 90% of the lots have been issued building permits on each street or after a 7-year period from the date of official street opening, whichever comes first.

3.14 The schedule for the Proposed Development is set forth in Exhibit D shall be as follows:

(a) Unless otherwise approved by the City, infrastructure installation may commence after City approval of the Final Plat, Drainage Plan, Established Grades, Storm Water Management Plan, Construction Plans, Construction Specifications and procurement of all necessary City and Regulatory Agency permits.

(b) Building permits may be issued upon City approval and acceptance of all infrastructure. Streets must be officially opened to the public by the City Engineer prior to the issuance of building permits.

SECTION 4

Dedication and Warranty of Public Improvements

4.1 The Developer shall install and dedicate Public Improvements outside the Land, as are necessary to serve the Land. All public construction within the territory of the Development shall be dedicated in the manner specified by the City. The Developer shall be responsible to obtain any easements or dedications necessary for the installation of all required public utilities, including, but not limited to, sanitary sewer and water. In addition, the Developer shall be responsible to obtain any floodplain easements that may result from any increases in FEMA floodplain elevation. The parties agree to cooperate with all normal and necessary private utilities including, but not limited to, electricity, natural gas, telephone, and cable television by allowing them to utilize the easements, consistent with the needs of the other respective easement holders, for the installation and maintenance of their respective utilities. Public utilities within the Development Area shall be constructed at the expense of the Developer and without obligation of the City. All public improvements shall be constructed according to engineering plans and specifications approved by the City.

4.2 The City shall be responsible for future public improvements in Lightning Drive to ultimately serve the Development with gravity sewer.

4.3 The City shall accept for continual maintenance all Public Improvements and such other improvements which are mutually agreed to be constructed and dedicated to the public, as soon as the same are located within the Land and built to City standards.

4.4 Once agreed to by the City and the Developer, the plans and specifications for Public Improvements shall not be amended except by written change orders, pursuant to mutual

agreement. No change order for Public Improvements shall be made without prior written approval of the City, which approval shall not be unreasonably withheld.

4.5 Public Improvements within the Development may be constructed in phases, subject to prior approval by the City. Once the construction of improvements is completed, tested, and approved for any distinct portion of a phase the Developer may obtain building permits for that portion of said phase, provided such construction is pursuant to a City-approved construction phasing schedule.

4.6 The City shall install non-assessable and assessable public improvements identified respectfully in Exhibit C as “City Costs (non-assessable per Development Agreement)” and “City Costs (assessable)” pursuant to this agreement based on the schedule depicted in *Exhibit D* unless a modification is mutually agreed upon by both parties.

SECTION 5

Final Acceptance of Public Improvements

5.1 Final approval of the Public Improvements constructed within the Development, shall be obtained from the Director of Public Works or their designee.

5.2 Public Improvements which are to be constructed in phases shall be finally accepted in such phases.

SECTION 6

Water and Water Related Public Improvements

6.1 The Developer shall furnish a looped watermain to the boundary of the Land through Ridgehaven Lane. The City shall reimburse the Developer the actual cost to install the looped watermain not to exceed \$80,000. The Developer shall be solely responsible for the installation of utility improvements to provide water service to and within the Land including

any oversizing that may be required for the overall distribution system as determined by the Department of Public Works. The City shall contribute \$80,000 for the upsizing of 8” watermain to 12” watermain.

All plans and specifications for the design of the infrastructure and water improvements within the boundaries of the Land shall be subject to the approval of the City’s Department of Public Works prior to the beginning of construction. Such approval shall not be unreasonably withheld.

6.2 In instances where this Agreement, or the ordinances of the City or the rules and regulations of the City do not set forth criteria for particular uses for the water supplied to the Land by the City, the criteria for uses may be proposed by Developer subject to the City’s approval utilizing generally accepted criteria, which approval shall not be unreasonably withheld.

6.3 The parties agree to cooperate fully in all matters concerning the development of the water system, including, but not limited to, securing of permits, implementation of augmentation plans and acquisition of all rights-of-way and easements necessary for such water system. It is agreed that the obtaining of such rights-of-way and easements outside the boundary of the Land is the responsibility of the City whether by voluntary agreement or condemnation. It is further agreed that providing of such rights-of-way and easements is the responsibility of the Developer within the boundaries of the Land.

SECTION 7

Sanitary Sewer

7.1 The City agrees that it shall provide such sewer utilities improvements, in Lightning Drive, up to the Land as may be required recouping the cost of same through normal

City assessment procedures. The Developer shall be solely responsible for providing sanitary sewer infrastructure on the Land including installation of any oversize sewer that may be required for the overall collection system as determined by the Department of Public Works.

7.2 The Developer shall provide temporary lift stations and forcemains and any necessary relocation of these facilities until the City provided gravity system is installed. The Developer shall be solely responsible for all costs related to the installation of sanitary sewer, temporary lift stations and temporary forcemains, within the Development. The City shall reimburse the Developer actual costs for the temporary lift stations, forcemains and relocations not to exceed \$175,000. All plans and specifications for the design of the infrastructure and sanitary sewer improvements within the boundaries of the Development shall be subject to the approval of the City's Department of Public Works prior to the beginning of construction.

7.3 Under any of the circumstances set forth herein, the City shall permit the Developer to connect with the City's sanitary sewer system at such reasonably accessible and economically feasible locations as determined by the City.

7.4 The parties agree to cooperate fully in all matters concerning the development of the sanitary sewer and sanitary sewer system, including, but not limited to, securing of permits, implementation of augmentation plans and acquisition of all rights-of-way and easements. It is agreed that the obtaining of such rights-of-way and easements is the responsibility of the Developer.

7.5 The Developer shall be responsible for the removal and abandonment of the temporary lift stations. The City shall be responsible for the abandonment of the temporary forcemains. The pumping equipment and control panels shall be retained by the Developer.

SECTION 8

Approvals, Permits, Plans and Plan Amendments

8.1 The parties agree to cooperate (i) in application for new permits or the amendment of existing permits, (ii) in the adoption of new plans and in the amendment of existing plans or plans approved in connection herewith, or (iii) in obtaining any and all other necessary or desirable certificates or approvals so as to effectuate the provisions of this Agreement.

8.2 Plats and plans requiring signatures of City officials shall be executed and recorded subsequent to the approval by the City Council and satisfaction of any conditions identified on the plat, provided (i) said plat or plan has been executed by all other required parties, (ii) the required fees for such plat or plan have been paid, (iii) other ordinance requirements pertaining to such plat or plan are currently being satisfied by Developer, and (iv) requirements of any applicable subdivision improvement agreement relating to such plat or plan are currently being satisfied by Developer, and are not in default. All such recording, filing and requirements shall be pursuant to those applicable specifications and requirements as described in the Wisconsin Statutes.

SECTION 9

Park Land Dedication

9.1 In lieu of dedication, Developer shall pay \$300 per lot in accordance with Appleton Municipal Code Sec. 17-29. Payment shall be made before approval may be affixed to the Final Plat.

SECTION 10

Streets

10.1 All streets within the Development shall be public streets and developed to current City of Appleton standards.

10.2 The Developer shall be responsible for design, permitting and construction of the bridges over Apple Creek. The City shall reimburse the Developer actual costs for the bridges in total not to exceed \$120,000 for each bridge.

10.3 Property owners shall install 5-foot sidewalk/10-foot sidepath within six months of issuance of certificate of use and occupancy permit. The City shall contribute \$80,000 towards the 10-foot sidepath.

10.4 The City shall work with the County to construct turn and by-pass lanes as required by Outagamie County. Costs associated with turn and by-pass lanes to be borne by City (estimated cost \$115,000).

SECTION 11

Stormwater

11.1 The Developer shall bear all costs associated with wetland delineation, stormwater management plans, erosion control plans, modeling, permitting, etc. to serve the Development.

11.2 The City shall accept responsibility for all detention ponds within the Land utilized in the storm water management plan conditioned upon being built to City's standards, and compliance with a maintenance manual, prepared by the Developer, for each detention pond. The City shall determine if each pond has been built to City's standards, and such standards shall include the establishment of self-sustaining native vegetation. Each pond shall be constructed

with a minimum ten-foot (10') buffer for access between the top of the pond slope and the adjacent property line.

SECTION 12

Annual Tax Guarantee

12.1 The City agrees to uniformly apply tax assessment procedures and practices with respect to the property and the Development in accordance with state law regarding property tax assessments. Notwithstanding the foregoing, Developer shall pay to the City the minimum real estate tax payment for the years and in accordance with the formula as set forth below. It is the intent of this provision that the Developers Minimum Real Estate Tax Payment shall be in such an amount as will fully amortize the City's \$1,690,000 contribution to the project over a 5-year period commencing with tax payments made in 2025, for the tax year 2024, and ending with the year 2032, for tax year 2031. The guaranteed value, for the purposes of this Agreement, is to be \$27,000,000.

12.2 The Minimum Real Estate Tax Payment shall be paid in the following manner: Commencing with the 2025 calendar year (for the tax year 2024) and for each calendar year thereafter to 2032, the Developer shall pay to the City the deficit, if any, between the amount of property taxes generated by the development and the amount of property taxes generated based on a \$27,000,000 assessed value (Minimum Real Estate Payment). If the amount of the actual real estate tax payments exceeds the Minimum Real Estate Tax Payment, no additional payment shall be due from Developer.

12.3 By August 15, starting with calendar year 2025, the City shall provide Developer with: (1) an itemization of the actual real estate tax payments received from the Development, and (2) a calculation in the amount, if any, by which the Minimum Real Estate Tax payment for

the Development for such calendar year exceeds the actual real estate tax payment allocable to the Development for the preceding calendar year. If for any given calendar year the Minimum Real Estate tax Payment exceeds the actual real estate tax payment, developer shall pay the amount of such excess to the City. If the amount of the actual real estate tax payment exceeds the Minimum Real Estate Tax Payment, no additional payment shall be due from Developer.

SECTION 13

Performance of Obligations – Remedies

13.1 Developer is entering into this Agreement and undertaking the obligations imposed upon the Developer herein contained in reliance upon the City's supplying of sewer and water service to the Development as previously outlined herein including, but not limited, to as set forth in Exhibit C and Exhibit D. Performance of the obligations of the Developer hereunder is expressly conditioned upon the Developer being permitted by the City to develop the Land in substantial conformity with *Exhibit E*, as Land is acquired by the Developer and/or an entity controlled by the managing partner of the Developer and providing necessary infrastructure and services utilizing the water and sewer systems of the City.

13.2 It is understood and agreed by the parties hereto that the remedies provided in this Section and Agreement are not exclusive, and that the parties hereto shall have all available remedies in law or equity, including, but not limited to, specific performance and injunctive relief.

13.3 The Developer has agreed to enter into this Agreement in reliance on (i) the Master Development Plan for the "Land" being mutually agreed upon by the parties, and (ii) the City providing sewer and water service to the Development site as previously indicated.

SECTION 14

Notices

14.1 All notices, statements and other communications given hereunder shall be made in writing by personal delivery or by mailing the same by certified mail, return receipt requested, or by next day express delivery, addressed to the other as aforesaid, and the date of such personal delivery the next day if any express delivery, or the date five (5) days after such mailing shall be deemed the date on which such notice is effective. Except as otherwise specified herein, all notices sent to the City hereunder shall be directed to the attention of the Mayor.

CITY: Kami Lynch, City Clerk
City of Appleton
100 North Appleton Street
Appleton, WI 54911-4799
Telephone: 920/832-6443
Facsimile: 920/832-5823

With a copy to: James P. Walsh, City Attorney
City of Appleton
100 North Appleton Street
Appleton, WI 54911-4799
Telephone: 920/832-6423
Facsimile: 920/832-5962

DEVELOPER: Apple Tree Appleton Four, LLC
Attn:

With a copy to:

14.2 In addition to the notices hereinabove required, City agrees to notify Developer, pursuant to the provisions of this Section, of any action contemplated by the City which would materially affect the provisions set forth in this Agreement.

SECTION 15

Binding Effect

15.1 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

15.2 This Agreement is binding and runs with the land.

15.3 This Agreement may be amended only by mutual agreement of the parties.

15.4 This Agreement is contingent upon the property being annexed to the city of Appleton.

SECTION 16

Approval of Common Council

16.1 This Agreement was considered by the Common Council at their regular meeting held on _____, 2018, and approved by a vote of ____ for and ____ against.

DONE AND SIGNED this ____ day of _____, 2018, at Appleton, Wisconsin.

[SIGNATURES BEGIN ON NEXT PAGE]

CITY OF APPLETON

By: _____
Timothy M. Hanna, Mayor

ATTEST:

By: _____
Kami Lynch, City Clerk

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me this ____ day of _____, 2018, Timothy M. Hanna, Mayor and Kami Lynch, City Clerk, of the City of Appleton respectively, to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Printed Name: _____
Notary Public, State of Wisconsin
My commission is/expires: _____

APPROVED AS TO FORM:

James P. Walsh, City Attorney

APPLE TREE APPLETON FOUR, LLC

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

STATE OF WISCONSIN)
 : ss.
_____ COUNTY)

Personally came before me this ____ day of _____, 2018,
_____ and _____, to me known to
be the persons who executed the foregoing instrument and acknowledged the same in the
capacity and for the purposes therein intended.

Printed Name: _____
Notary Public, State of Wisconsin
My commission is/expires: _____
City Law: A18-0513 Last Update: 09/28/2018

Apple Ridge Subdivision - EXHIBIT C

September 27, 2018

PHASE I (2018/2019)

Number of Lots: 79 Lots + 6 Outlots

Total Lot Area: 2,329,975 square feet

C/L Footage: 4,418 Ft.

Total Pavement Area: 17,700 S.Y. +/-

PHASE II

Number of Lots: 60+/-

Total Lot Area: 1,600,000 square feet +/-

C/L Footage: 2,830 Ft. +/-

Total Pavement Area: 11,800 S.Y. +/-

PHASE III

Number of Lots: 30+/-

Total Lot Area: 850,000 square feet +/-

C/L Footage: 1,445 Ft. +/-

Total Pavement Area: 6,000 S.Y. +/-

CITY COSTS / CONTRIBUTIONS (Non-Assessable Per Development Agreement)		TOTAL PROJECT COSTS	2018 Design & Construction	2019 Design & Construction	2020 Construction	2021 (or later)	NOTES / COMMENTS
Temporary Sanitary Lift Stations & Force Main		\$175,000.00	\$175,000.00	\$0.00	\$0.00	\$0.00	Developer Pays for Design, City contributes \$230,000 towards construction
Water Main Loop (Ridgehaven Lane)		\$80,000.00	\$80,000.00	\$0.00	\$0.00	\$0.00	Developer Pays for Design, City contributes \$80,000 towards construction
Turn Lanes / Bypass Lanes (Ballard Road, Apple Creek Road)		\$115,000.00	\$0.00	\$115,000.00	\$0.00	\$0.00	City to perform all coordination, design and construction
City Share of 10-foot wide Sidewalk/Trail		\$80,000.00	\$0.00	\$40,000.00	\$40,000.00	\$0.00	Two payments, one each after completion of Phases II and III.
City Share of 12" Water Main		\$80,000.00	\$0.00	\$40,000.00	\$40,000.00	\$0.00	Two payments, one each after completion of Phases II and III.
Temporary Asphalt Surface (All phases)		\$532,500.00	\$0.00	\$285,500.00	\$177,000.00	\$90,000.00	(\$15.00/s.y.)
Stream Crossings - Bridge Structures (All Phases)		\$240,000.00	\$0.00	\$120,000.00	\$120,000.00	\$0.00	Developer Pays for Design, City contributes \$100,000 towards construction
Additional Infrastructure contribution upon completion of Phase III		\$387,500.00	\$0.00	\$0.00	\$0.00	\$387,500.00	One payment, after completion of Phase III.
CITY COSTS (Assessable)		TOTAL PROJECT COSTS	2018 Design & Construction	2019 Design & Construction	2020 Construction	2021 (and later)	NOTES / COMMENTS
City Administrative Fees (Incl. Plan Review, Inspection, As-built, etc.)		\$69,544.00	\$35,344.00	\$0.00	\$22,640.00	\$11,560.00	(\$8.00 / C/L Ft.)
Sanitary Sewer Area Assessment (assessed per phase)		\$131,354.40	\$64,028.40	\$0.00	\$43,968.00	\$23,358.00	(\$27.48/1000 sq.ft. of lot area)
Sanitary Sewer Connection Fee (None. Served by future Lightning Drive)		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	(657 ft.) x (\$37.64 / ft.)
Water Main Connection Fee (assessed per phase)		\$8,452.22	\$8,452.22	\$0.00	\$0.00	\$0.00	(626.09 ft.) x (\$13.50 / ft.)
Sewer Televising (estimated cost)		\$12,110.00	\$0.00	\$6,160.00	\$0.00	\$5,950.00	(\$0.70 / Lin. Ft.)
Street Name / Traffic Control Signs (estimated cost)		\$17,350.00	\$0.00	\$8,800.00	\$5,660.00	\$2,890.00	(\$2.00 / C/L Ft.)
Concrete Pavement (After 90% build-out - per phase)		\$130,500.00	\$0.00	\$0.00	\$0.00	\$130,500.00	(8,700 L.F.) x (\$150.00/L.F.) x 10% of lots still owned by developer.
Sidewalks - with Concrete Pavement (inside plat limits)		\$80,000.00	\$0.00	\$0.00	\$0.00	\$80,000.00	(20,000 s.f.) x (\$4.00/s.f.)
		\$449,310.62	\$107,824.62	\$14,960.00	\$72,268.00	\$254,258.00	
DEVELOPER (Up-Front Costs)		TOTAL PROJECT COSTS	2018 Design & Construction	2019 Design & Construction	2020 Construction	2021 (and later)	NOTES / COMMENTS
Surveying and Engineering		\$0.00					
Sanitary Sewer / Temporary Lift Station		\$0.00					
Stormwater Management / Storm Sewer / Erosion Control		\$0.00					
Water Main		\$0.00					
Sanitary Laterals		\$0.00					
Storm Laterals		\$0.00					
Water Services		\$0.00					
Grading & Graveling		\$0.00					
Street Lights		\$0.00					
Private Electric		\$0.00					
Private Gas		\$0.00					
TOTALS		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	

Exhibit D

Apple Tree Development - Schedule

9/27/2018

TASK	2018	2019	2020	2021	2022	City Contribution	
Developer hires consultant	X					\$ -	
Developer initiates wetland delineation	X					\$ -	
Developer annexes property, designs subdivision, plats, drainage plan, stormwater management, permitting, etc.	X					\$ -	
Development Agreement to Council	X					\$ -	
Developer designs lift stations/force mains	X					\$ -	
Developer installs temporary lift stations and forcemains	X					\$ 175,000	
Developer constructs Phase I infrastructure	X					\$ -	
Developer loops watermain	X					\$ 80,000	\$ 255,000
Developer designs and permits bridge structure #1		X				\$ -	
Developer constructs bridge #1		X				\$ 120,000	
Developer completes grade & gravel		X				\$ -	
City constructs turn and by-pass lanes		X				\$ 115,000	
City share of 10-foot trail/sidewalk		X				\$ 40,000	
City share of 12" watermain		X				\$ 40,000	
City installs temporary asphalt Phase I		X				\$ 265,500	\$ 580,500
Developer constructs Phase II			X			\$ -	
Developer designs and permits bridge structure #2			X				
Developer constructs bridge #2			X			\$ 120,000	
City share of 10-foot trail/sidewalk			X			\$ 40,000	
City share of 12" watermain			X			\$ 40,000	
City installs temporary asphalt Phase II			X			\$ 177,000	\$ 377,000
Developer constructs Phase III				X		\$ -	
City installs temporary asphalt Phase III					X	\$ 90,000	
Additional contribution upon completion of Phase III					X	\$ 387,500	\$ 477,500
Total City Contribution						\$ 1,690,000	

INVOICE

****CONFIDENTIAL INFORMATION****
****ATTORNEY-CLIENT PRIVILEGE****

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

Invoice Date: February 5, 2018
Matter No. 010953-00017

Re: Phase V Part II - Loan Arranging

Successful arranging of debt facility for the Fox Cities Exhibition Center with five banks desiring to lend all funds necessary for design, site work and construction of the FCEC.	\$209,126.39
Credit per Engagement Agreement.	<u>(\$16,126.39)</u>
BALANCE DUE	\$193,000.00

Please remit payment to:

von Briesen & Roper, s.c.
100 W. Lawrence Street
Suite 106
Appleton, WI 54911

CONFIDENTIAL INFORMATION
ATTORNEY-CLIENT PRIVILEGE
CITY OF APPLETON
ATTN: KAREN HARKNESS
100 N. APPLETON STREET
APPLETON, WI

INVOICE NO. 250072
INVOICE DATE FEBRUARY 5, 2018
TAX ID. 39-1576289
ATTY. BENJAMIN D. LAFROMBOIS

PHASE V OUT OF SCOPE

MATTER NO. 010953-00019

PROFESSIONAL SERVICES RENDERED THROUGH JANUARY 31, 2018

CURRENT FEES	\$15,023.50
TOTAL CURRENT CHARGES THIS BILL	\$15,023.50
BALANCE FORWARD	\$114,119.50
TOTAL AMOUNT DUE	\$129,143.00

November 6, 2017

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

Dear Mayor Hanna:

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

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

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

Very truly yours,

von BRIESEN & ROPER, s.c.



Benjamin D. LaFrombois

BDL:sf

January 2, 2018

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

Re: January 31, 2017 Engagement Agreement

Dear Ms. Harkness:

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

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

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

Very truly yours,

von BRIESEN & ROPER, s.c.



Benjamin LaFrombois, Esq.

BDL:sf

Enc.

29861939_1 DOCX

February 5, 2018

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

Re: FCEC Phase V

Dear Mayor Hanna:

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

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

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

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

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

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

Mayor Hanna
February 5, 2018
Page 2

We are also enclosing an invoice from Baker Tilly for payment. This invoice pertains to the preparation of the valuation report.

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

Very truly yours,
von BRIESEN & ROPER, s.c.

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

Benjamin D. LaFrombois
BDL:sf

Encs.

29865580_3.DOCX

July 3, 2018

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

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

Dear Mayor Hanna:

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


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

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

We request immediate payment.

Very truly yours,

von BRIESEN & ROPER, s.c.



Benjamin LaFrombois, Esq.

BDL:sf

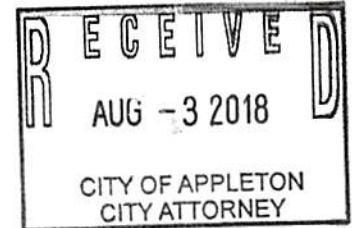
Encs.

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

31319368_1.DOCX

August 2, 2018

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



Re: Billings Question

Dear Mayor Hanna:

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

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

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

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

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

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

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

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

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

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

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

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

In summary:

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

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

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

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

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

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

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

Very truly yours,

von BRIESEN & ROPER, s.c.



Benjamin LaFrombois, Esq.

BDL:sf

Enc.

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



"...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: October 8, 2018

Re: Informational: Contract 22-18 was awarded to Vinton Construction Company, Inc. for the 2018 Scheig Phase 3 Redevelopment Project in the amount of \$91,119.90 with a contingency of \$4,556. One change order in the amount of \$1,032 was issued. Request to issue the final contract payment of \$92,151.90.

The 2018 Capital Improvement Plan included \$108,226 for the Scheig Center to replace paver bricks and improve ADA accessibility, install storm sewer infrastructure, and add security lighting. Of that amount \$12,550 was used for professional services and \$374.70 was used for tipping fees. Construction contract 22-18 was issued to Vinton Construction Company, Inc. in the amount of \$91,119.90. One change order in the amount of \$1,032 was issued for the replacement of an existing light bollard. The final contract total for this project is \$92,151.90. This contract is now complete as all punchlist items have been completed.

The Parks, Recreation and Facilities Management Department recommends issuing the final contract payment to Vinton Construction Company, Inc. in the amount of \$92,151.90.

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

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: October 8, 2018

Re: Informational: Contract 19-18 was awarded to Martell Construction, Inc. for the "2017 Wastewater Sidewalk Repair Project" in the amount of \$36,468.25 with a contingency of 10%. Payments issued to date total \$35,556.54 Request to issue the final contract payment of \$911.71.

The 2017 Capital Improvement Plan included \$220,000 to repair hardscapes at the Wastewater Treatment Plant. Contract 19-18 was awarded to Martell Construction Inc. for the 2017 Wastewater Sidewalk Repair Project in the amount of \$36,768.25 with a contingency of 10%. No change orders were issued. This contract is now complete as all punchlist items have been completed. Payments issued to date totaled \$35,556.54.

The Parks, Recreation and Facilities Management Department recommends issuing the final contract payment to Martell Construction, Inc. in the amount of \$911.71.

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