

May ~~21~~28, 2015

Karen Harkness
Appleton Redevelopment Authority
VIA EMAIL

Re: Fox Cities Exhibition Center

Dear Karen:

Thank you for this opportunity to present a scope of services for Phase III of work related to the Fox Cities Exhibition Center. To reiterate the project's history to date, in September of 2014 Hinshaw completed its Phase I services to the City of Appleton ("City") with respect to the initial feasibility review of the planned development of the Exhibition Center to be part of a regional conference center.

Our Phase I comprehensive analysis included a review with City Staff of the due diligence related to the purchase agreement, which resulted in the procurement of soil borings and the need for identification of additional site engineering. Phase I also included a review of the governing documents of the Appleton Redevelopment Authority and a comparison of alternative ownership structures, including the Fox Cities Exhibition Center, Inc. In addition, we reviewed and found alternative financing structures that will likely lead to a substantial savings of the contemplated facility. One issue that drove the cost savings was working with the city's bond counsel and hotel management to obtain approval on a structure that would provide the facility with the greatest opportunity to be financed with tax exempt bonds. ~~—~~The financial structure / plan outlined in phase one will be refined and implanted as the project advances into the next phase of services.

Our Phase II services included the following activity and or outcomes:

- Examined the real estate acquisition component by the City by reviewing the geotechnical report and identifying a significant deficiency in the plans to date namely a properly developed site plan and geotechnical engineering of the slope and fill area of the site. In addition, we provided support to educate stakeholders and support the process of approving the purchase of the land. This process extended the intended completion date of December 31, 2014 to the present. We also provided guidance on strategic and advisory support relating to a deeper understanding of the development process, which resulted in the project decision makers to delay the purchase of the property. While these services were beyond the originally agreed upon scope of our services, they proved to be necessary in order to help the stakeholders make progressively informed decisions.

- Built a project financial model review of previously suggested funding structures, and facilitated an understanding between the various stakeholders within the coalition on financial issues to advance consensus amongst them on the optimal plan for the most efficient ownership structure. We developed financial analysis of the hotel ownership scenarios as well as participated in the City's evaluation of the unanticipated, out of scope, but critically important part of the overall plan involving the Exhibition Center. Our Phase II services continued past the intended end date of December 31st, 2014. After December 31, 2014, we continued to serve the City on a variety of matters involving its initial vote to approve the purchase of the Real Estate from the County and extensive time required to respond to the initial vote, outside the scope of Phase II services.
- When the Paper Valley Hotel was ~~expectantly~~unexpectedly listed with auction.com in November 2014, we provided complete and unhesitating services so that the City was exceptionally well informed and prepared for any outcome. These services were provided entirely out of scope of Phase II services because we made a commitment to the City to provide objective and thorough advice. By addressing the complexities introduced because of the auction.com process, we provided comprehensive and valuable insight even though it was outside the scope of services. The auction.com listing impacted the management agreement and financing structure issues we were addressing at the same time. We provided valuable and comprehensive support even though it was not required under the Phase II scope. We delivered an in depth comparison of similar agreements, a draft term sheet for the management of the exhibition center and a form agreement that will need to be customized and tailored to the terms to be negotiated.
- A significant aspect of the Phase II services was to engage with bond counsel to review the organizational and finance structure contemplated prior to our involvement. We initiated these discussions because our review raised a significant question whether the structure could be realized because it may violate the public use doctrine. This defect would have increased borrowing costs above any financial model previously prepared. Our discussion confirmed that the financing model had a material defect. As a result we were able to consider other approaches. There is still need to develop the details of the financing package and the management of the facility, but we have a path forward that we reasonably believe, without making any guarantees with respect to outcome, may bring about favorable outcomes. The value to the success of this project in identifying a material financing defect early on cannot be overstated. It is this type of project specific aptitude where the value of our services stands out. Discovering the defect early in our engagement allowed us to prevent a material crisis deep into the project when the costs of correcting the mistake would have been much higher.
- Key accomplishments arising from our Phase II work include the approval of the purchase agreement of land from the County, identification of a deficient financing structure prior to our involvement and redirected with a structure that will be reviewed and confirmed during Phase III, and the identification and modeling of financing techniques that will most likely save the City many times the cost of our services. For example, the phased take down of bond proceeds will provide material and substantial

savings. This feature of municipal financing was not considered in the proposals prior to our involvement. Phase II services have been fully performed plus the City received the value of out of scope services.

- Since the approval of the purchase agreement, we have worked with the City to identify the next steps, the communication plan and time plan for the development of the Exhibition Center. In addition we developed the legal and consulting fee structure set out below for Phase III. The fee structure is designed to accommodate the needs of the ARA and City through the end of the year with a bi-level fee structure.

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

The scope of work we collectively created with the City includes three primary aspects of the project for which our firm will provide services during Phase III of this engagement; working with the coalition of local governments to develop an agreement between them that addresses how the project will be funded, how risk associated with the project will be shared, how the Exhibition Center will be governed by them, and their collective relationship with the owners of the Hotel regarding its management and other involvement with the Exhibition Center. When the contingencies for the purchase of the property are satisfied, the closing services are not provided under Phase III.

We have agreed that our firm's services and fees in this Phase III will be divided into two distinct parts. One being a flat fee of \$160,000, to be completed within the Phase III scope of work, and the other, hourly, budgeted at \$80,000. The division of our work and fee into these two parts is to allow the City and our firm to better budget and manage our work as it progresses during Phase III of services. Our firm's flat fee services will end at the earlier of the closing of the real estate purchase by the City of Appleton or related entity from Outagamie County or December 31, 2015. However, real estate closing services are not included as part of the flat fee, but will be negotiated in good faith under a separate letter agreement at the appropriate time. Closing is a milestone that will mark the end of the flat fee services. While it is expected that we will be able to complete our hourly rate services within the \$80,000 budget, there may be unforeseen events that could result in this work going beyond such budget. In such event, the work will require approval by the ARA before it is provided. We will work closely with the City to monitor the budget to actual cost for this work and, to the extent it appears the budget will be exceeded, we will identify tasks and services to efficiently manage those tasks. We will have no obligation to provide hourly services over the budget and the City has no obligation to retain us for services beyond this budget.

The flat fee portion of our services is primarily intended to provide a reduced rate and maximum cost associated with our services. Attorney Ben LaFrombois' responsibilities shall be working with the ARA for an estimated (not minimum or maximum) 15 hours per week on this flat fee

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portion of the work between the approval of this engagement letter and December 31st 2015 or the closing of the real estate, whichever is earlier.

Our firm's hourly services will be provided by our firm's professionals whose particular expertise is required to advance the deliverables outlined below. 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), 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), 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. 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.

We have further discussed and agreed that while Mr. LaFrombois' time is expected to be mostly included in the flat fee portion of this engagement, some of his time associated with activity in our hourly fee deliverables may occur. When it appears that this will be necessary, Mr. LaFrombois will discuss it in advance with the City's ~~representative~~ [and obtain the City's approval](#).

The Basic Relationship Terms (Client, Direction, Disclosure & Confidentiality including Disclosure regarding Hinshaw Law & Consulting) are unchanged from prior phases of services.

The engagement shall be focused and directed upon the following services: Phase III Objectives:

1. Coalition Establishment

Hinshaw will provide objective planning recommendations and strategy to assist the coalition of local governments in establishing a balanced level of financial, developmental and operational participation amongst them. In helping form the level of each stakeholder's participation, Hinshaw will objectively weigh the source of hotel taxes, financing risk, construct a financial model that will help the parties understand and agree upon the adoption of necessary ordinance(s) and or intergovernmental agreement(s). A fundamental aspect of our firm's work in this area of services will be to facilitate coalition building amongst the local governments that leads to a fair agreement between them on how they will participate in the financing, risks, and operation of the Exhibition Center. As part of this work, we will also:

- a) Serve as a technical expert to the City Attorney's office in its drafting of intergovernmental agreements and ordinance(s) to have such agreements authorized by each of the local government coalition members; and

- b) Provide review of 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 will advise the City with respect to recommended hotel room tax commission changes 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 will seek to unify the efforts of the City’s prime independent, third-party Financial 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 will maintain a financial model developed by or in conjunction with the City’s Financial Advisor so that all members of the coalition can more easily understand the financial issues, their role in such issues and to reach accord on specific deal structuring terms between themselves in the intergovernmental agreement with the Hotel, and with bond holders / lenders.

Lead Lender – Hinshaw will assist the City in its identification of, scoping services for, and negotiating fees with other professionals. Hinshaw will seek to minimize cost 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. 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 Rule Making Board (MSRB), its Bond Counsel, Issuer's Counsel, and Lead Lender if applicable.

3. Management Agreement

Hinshaw will identify the key drivers for an agreement between the City, the Hotel Operator and the Convention and Visitor’s Bureau along with working with the City Attorney to facilitate consensus on such terms and finally drafting of an agreement between them to memorialize their agreement on the terms. The goal is to have such agreement in place by October 31, 2015.

ARA Governance – Hinshaw will work with the City Attorney to develop policies for the ARA to govern and enforce the terms of the management agreement in coordination with the requirements of the financing documents.

With respect to timing, each of our firm’s Phase III services, will be deemed completed on the sooner of the closing of the real estate from the county or December 31st, 2015.

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.

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Outside the Phase III services, our firm's additional services and associated fee for the real estate related services will be as follows (such services will not be undertaken without written direction from the City or ARA):

Real Estate Closing Coordination – We will review the Title Policy and related documentation for closing services and attend the closing. Hinshaw shall coordinate the closing and related real estate matters into the categories of work described above as well as the services that will be provided when Phase III is accomplished. The legal services we will provide associated with the closing will be charged at our hourly rate once authorized by the City to pursue closing. The closing services shall be paid at the time of closing as part of the closing costs of the transaction.

The Phase III scope of services as set out above and to be provided on an hourly basis are anticipated to be as follows (these services are outside the budgeted amount for Phase III, which fees will be paid at bond closing out of bond proceeds):

Bond Issuance – Hinshaw will act as local counsel for bond issuance including opinion letters to the City's Bond Counsel 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. Hinshaw will further work with the City's Bond Counsel and the City Attorney to review closing documents and intergovernmental agreements and ordinances related to this project. Hinshaw will draft the documentation, opinion letters and provide required exhibits for bond closing. Initial Advisory Services on Project Construction Delivery Method – We will work with the City to help it understand its options for how to most cost effectively 'deliver' (design and construct) the project. Such advice will take into account state and local laws, rules and policies with regard to contracting for such services, minimization of overlap and gaps in services, fee structuring and negotiations, and the ongoing oversight services ('owner representative') required to effectively manage a public project objectively and transparently to all stakeholders.

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

For the satisfactory performance of the Phase III services described in this letter, the City / ARA shall pay a flat fee of \$160,000, \$80,000 of which is to be paid ~~no later than May 31st, 2015~~ within five days of acceptance or approval of this Letter and the balance payable in two equal payments of \$40,000 each on or before August 15, 2015, and December 15, 2015. All monthly payments of the flat fee are due without further invoicing and should be made payable to Hinshaw Consulting in reference to matter number to be assigned upon approval of this letter and sent to:

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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 ARA of the amount due.

Phase III work will commence as of the date of the approval of the Appleton Redevelopment Authority of this engagement.

In addition to these fees, ARA 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 writing and in advance by ARA. 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 ~~21st~~ day of ~~May~~June, 2015.

Yours truly,

HINSHAW & CULBERTSON LLP

Benjamin D. LaFrombois
920-380-2067
blafrombois@hinshawlaw.com

BDL:sf

Accepted and agreed to:

APPLETON REDEVELOPMENT AUTHORITY

CITY OF APPLETON

By: _____
Karen Harkness, Executive Director

~~Date~~By: _____

Timothy Hanna, Mayor

Date: _____

Date: _____

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Summary report:	
Litéra® Change-Pro 7.5.0.96 Document comparison done on 5/29/2015 12:56:51 PM	
Style name: Hinshaw	
Intelligent Table Comparison: Active	
Original filename: Appleton Phase III Engagement Letter v10.docx	
Modified filename: Appleton Phase III Engagement Letter v12.docx	
Changes:	
<u>Add</u>	12
Delete	12
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	4
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	0
Total Changes:	28