

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: November 19, 2012

TO: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM: Kimberly R. Walker, Corporation Counsel *KRW*
Mark A. Grady, Deputy Corporation Counsel *MAG*

SUBJECT: Resolution to Amend Contract for Whyte, Hirschboeck & Dudek S.C.
relating to O'Donnell Park claims

It is requested that this matter be referred to the Committee on Judiciary, Safety and General Services.

On February 2, 2012 (File No. 12-79), the County Board approved a contract with Whyte, Hirschboeck & Dudek S.C. ("WHD") for legal representation of Milwaukee County to pursue the County's claims *against* potentially responsible contractors for repair costs, lost revenue and other damages. WHD had already been retained for several years by the Wisconsin County Mutual Insurance Corporation (WCMIC), initially to assist in the investigation of the accident and later to *defend* Milwaukee County in the lawsuit filed against the County and others by the injured parties. Because WHD was already fully involved and informed with respect to the litigation, the contract with WHD to represent the County for its own claims is extremely efficient and captures substantial cost savings for the County compared to selecting a different firm.

The contract to represent the County for its own claims was approved by the County Board for a total amount not to exceed \$50,000.00. WHD is charging the County the same discounted hourly rates that it charges to WCMIC: \$220 per hour for shareholders and \$130 per hour for associates. The authorized funds have been, or soon will be, expended.

The parties in the litigation have spent substantial attorney fees on pre-trial discovery and motions for summary judgment. There have been many law firms involved in the litigation to represent the numerous parties. Multiple expert witness consultants have been retained and deposed by the parties with respect to liability issues. Most defendants filed motions for summary judgment that have recently been heard by the circuit court. Those motions and briefs totaled hundreds, if not thousands, of pages in length. With respect to the County's and the plaintiffs' claims, the court has dismissed all claims against CD Smith on the bases of the statute of repose and the statute of limitations. However, the court denied the dismissal of claims against Advanced Cast Stone (ACS). Therefore, the County's and plaintiffs' claims against ACS will continue to go forward to trial. The court also dismissed the plaintiffs' claims against Dietz Engineering, but did

not dismiss the plaintiffs' claims against Findorff. One plaintiff's claims against the City of Milwaukee have also been dismissed.

The County has a multi-million dollar claim for damages. Much of the remaining work for WHD on behalf of the County relates to providing pre-trial discovery and presenting County witnesses to the other parties in order to demonstrate the basis for those damage claims.

We request authority to increase authorized expenditures under the contract by an additional \$50,000.00, to a total authorization of \$100,000.00. The additional \$50,000.00 is an estimate of the amount that will be needed to cover fees for the remaining work between now and any trial. There is a possibility that legal disputes related to insurance coverage for the County's claims could cause an increase in the fees needed beyond this amount, but that is not anticipated at this time. In addition, if a settlement is not reached between the parties, a trial will be held and additional fees beyond this amount will be required. If needed, additional authorization will be sought from the County Board at that time.

These funds would be authorized to be encumbered from the funds provided in the 2013 Litigation Reserve Account, Org. Unit 1961.

cc: Amber Moreen
Janelle Jensen