

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: August 10, 2015

TO: Theo Lipscomb Sr., Chairman, County Board of Supervisors

FROM: Paul Bargren, Corporation Counsel

SUBJECT: Contract Amendment for von Briesen & Roper s.c. related to appeals defending Downtown Transit Center litigation judgment

This file is submitted for consideration during the September cycle. It is appropriate for referral to the Committee on Finance, Personnel and Audit for passive review consideration.¹

The file seeks to add \$50,000 to the litigation contract with the law firm von Briesen and Roper, s.c., and specifically Attorney Alan Marcuvitz of that firm. Approval will allow Atty. Marcuvitz to continue the successful litigation strategy that has resulted in a Circuit Court ruling establishing the County's title and right to proceed with the Couture development plan at the Transit Center property.

In October 2014, von Briesen and Atty. Marcuvitz were engaged to perform work on a development agreement and related documents for the Downtown Transit Center site. *See* File 14-827. Later, in File 14-914, the scope of their representation was expanded to formulate and carry out a litigation strategy related to obtaining a judgment in favor of the County. The total authorized for von Briesen's work on the documents and litigation was \$150,000; about \$4,000 of that amount remains unspent.

Von Briesen's litigation successful strategy resulted in a declaratory judgment by the Circuit Court in *Milwaukee County v. Preserve Our Parks, LLC*, Case No. 2015 CV 1536, entered on July 20, 2015 as follows:

By enacting Wis. Stat. 30.2038, the Wisconsin Legislature properly fixed and established the dividing line between lands covered by the public trust doctrine and lands which are not, and the [Transit Center] Property, as defined in the Complaint, is not covered by the public trust doctrine.

If Preserve Our Parks appeals that ruling, which it must do by September 3, 2015, additional money will be required to allow von Briesen and Atty. Marcuvitz to defend and preserve the judgment. Depending on the nature of the appeal, additional funds may be needed in the future, but the added \$50,000 will be sufficient for now.

¹ To allow 14 days for the Finance Committee to complete its passive review process at its September 17 meeting, a fully signed agreement will be submitted September 3 or later.