



## OFFICE OF CORPORATION COUNSEL

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### MEMORANDUM

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

FROM: Paul D. Kuglitsch, Deputy Corporation Counsel PK

DATE: December 29, 2017

RE: *Grandview Management, Inc. v. Milwaukee County*  
Case No. 2016-CV-4676

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I request that this matter be referred to the Committee on Judiciary, Safety and General Services and the Committee on Parks, Energy and Environment for approval of a settlement related to a breach of contract claim filed by Grandview Management, Inc. (Grandview) against Milwaukee County connected to the 2010-2011 closure of the O'Donnell Park parking structure, and any claims Grandview may have against the County arising from the 2016 closure of the Domes at the Mitchell Park Horticultural Conservatory (Domes).

#### O'Donnell Park

From October 2002 until December 2017, Grandview operated a restaurant and full-service event planning and catering business under various lease and catering agreements (O'Donnell Agreements) with Milwaukee County at the O'Donnell Park Pavilion and adjacent garden plazas.

On June 24, 2010, one of the architectural precast panels attached to the exterior of the O'Donnell Park parking structure unexpectedly fell to the ground, killing a 15-year old boy and seriously injuring two other people. The sudden failure of the precast panel caused Milwaukee County to close the parking structure for over one year to undertake an engineering study of the structure and to complete necessary repairs.

In subsequent personal injury and wrongful death lawsuits, a jury awarded millions of dollars to the families impacted by the failure of the precast panel. The jury also determined that the total amount of causal negligence attributed to the defendants for the panel failure was 88% to Advance Cast Stone, Co., 10% to J.H. Findorff & Son, Inc., and 2% to Milwaukee County. In this same series of lawsuits, Milwaukee County filed a cross-claim for breach of contract against Advance Cast Stone. Milwaukee County prevailed on its cross-claim and was awarded damages. On appeal, the Wisconsin Court of Appeals reversed and remanded on the issue of coverage for the damages awarded to Milwaukee County.

During the pendency of this litigation, the parties sought to settle their disputes through mediation. Ultimately, the parties resolved that matter for a confidential settlement amount.

While the above-referenced litigation was winding its way through the courts, Grandview filed a lawsuit against Milwaukee County on June 23, 2016 (Case No. 16-CV-4676) alleging the County had breached the O'Donnell Agreements by failing to keep the parking structure in a reasonably safe and serviceable condition, and by failing to provide parking for the year in which the parking structure was closed. Grandview claimed that as a result of the breaches, it sustained substantial damages which include but are not limited to lost revenue for cancelled or relocated events, staff parking costs, loss of employees, discounts and/or upgrade costs given to retain business, decreased sales, cost of purchasing and increased waste of inventory, costs of professional services, and payroll costs.

Based upon the jury's finding in the previous litigation that Advance Cast Stone and J.H. Findorff were mainly responsible for the precast panel failure, Milwaukee County plead in those firms and their insurers as third-party defendants for contribution if the County was found to be liable to Grandview.

#### Domes

Grandview currently operates a full-service event planning and catering business under a catering agreement (Domes Agreement) with Milwaukee County at the Domes, and has done so since January 2009.

On January 29, 2016, Milwaukee County closed the Arid Dome due to falling concrete, and on February 5, 2016, closed the remaining Domes due to similar safety concerns.

On April 11, 2016, Grandview filed a notice of claim with Milwaukee County alleging the County had breached the Domes Agreement by failing to keep the buildings and equipment in a safe and clean condition. Grandview claimed that as a result of the breach, it has sustained damages which include but are not limited to lost revenue, costs from cancelled or relocated events that were have to occurred at the Domes, and damages arising from customers who are unwilling to book future events at the Domes due to the ongoing uncertainty of the Domes' future. No lawsuit has yet been filed.

#### Settlement

In an effort to resolve the litigation, Grandview and Milwaukee County have diligently pursued settlement of all current disputes related to O'Donnell Park and the Domes. The agreed upon proposal is set forth in the attached Term Sheet – also described below.<sup>1</sup> In addition, and in part based upon the settlement with Grandview, Milwaukee County has released Advance Cast Stone and J.H. Findorff, and their insurers, from the Grandview litigation and received the confidential settlement in the O'Donnell litigation.

As part of the settlement with Grandview, Milwaukee County will allow Grandview to continue to operate a full-service event planning and catering business at the Domes, but now include the

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<sup>1</sup> The Offices of the Comptroller and County Executive have made several recommendations related to the proposal, which have been agreed to by Grandview and slightly modify the Term Sheet. These recommendations are outlined in this report and are reflected in the authorizing resolution.

Annex. The period of operation at the Annex will be 10 years, with two 5-year options to renew. The period of operation at the Domes will run concurrently with the Annex, unless the County Board decides to either permanently close the Domes or institute major repairs or renovations of the Domes. If the County elects to permanently close the Domes before 2025 (or within 6 years), the County will buy out the new operating agreement on a depreciating schedule. If the County elects to institute major repairs or renovations of the Domes, it has 5 years to complete the repairs or renovation and Grandview may continue to operate in the new space after construction, if able to do so.

As rent, Grandview will pay eight percent (8%) of gross sales (food and beverage) to the County for sales between \$0 - \$600,000 each contract year. Grandview will also pay ten percent (10%) of gross sales (food and beverage) for sales in excess of \$600,000 each contract year. The annual room rental revenue from catering events in excess of \$50,000 will be split 50/50 – the County retaining the first \$50,000.

In addition, and in order to allow the Annex to host events year round, Milwaukee County and Grandview have agreed to split the cost of installing an HVAC unit at the Annex. The projected cost is \$400,000. Grandview has agreed to advance up to \$200,000 provided the County matches Grandview's contribution dollar for dollar. The County's match of up to \$200,000 could be paid out of the O'Donnell litigation settlement. Maintenance of the HVAC unit will also be split between Milwaukee County and Grandview – funded by a percentage of room rental revenues. The HVAC unit will be separately metered and the County and Grandview will each be responsible for its utility charges when using the unit.

Furthermore, Milwaukee County retains the right to host events at the Annex and retain all room rental revenue for county-hosted events.

Last, Grandview's agreement with Milwaukee County at Boerner Botanical Gardens may be extended by Grandview for 5 years, provided Grandview is in compliance under the applicable operating agreement.

As noted in footnote 1, the Offices of the Comptroller and County Executive have reviewed and approved the Term Sheet with four recommendations, which are as follows:

1. Instead of receiving 7% of gross sales (food and beverage) for sales between \$0 - \$600,000 each contract year, the County receive 8%;
2. The buy-out schedule of the Domes Agreement, if terminated, must depreciate during the year, either monthly or daily;
3. The amortization schedule for the HVAC unit at the Annex must depreciate during the year, either monthly or daily; and
4. Milwaukee County must be permitted to close the Domes for inspection; provided, however, it gives adequate notice to Grandview so Grandview does not schedule events during the inspection periods.

These recommendations have been accepted by Grandview.

Attachments: Term Sheet (Grandview County)

cc: Raisa Koltun  
Kelly Bablich  
Allyson Smith  
Erica Hayden  
James Sullivan

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