

**INTEROFFICE COMMUNICATION
OFFICE OF CORPORATION COUNSEL**

DATE: May 24, 2016

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

FROM: Paul Bargren, Corporation Counsel
Colleen A. Foley, Deputy Corporation Counsel

SUBJECT: Contract amendment for Whyte Hirschboeck Dudek SC relating
To O'Donnell Park claims

It is requested that this matter be referred to the Committee on Finance, Personnel and Audit for active review of a contract amendment. Pursuant to §59.52(31)(c), Wis. Stats., the County Executive has signed (or will sign) a contract amendment, authorizing an additional sum of \$50,000, for a total contract sum of \$340,000.

On February 2, 2012 (File No. 12-79), the County Board approved a contract with Whyte Hirschboeck Dudek SC ("WHD") for legal representation of Milwaukee County to pursue the County's claim against potentially responsible contractors for repair costs, lost revenue and other damages following the O'Donnell Park accident. 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.

The litigation in this case has been, and continues to be, extremely large and complex. After a six week trial, a jury verdict was rendered in October of 2013 finding, among other things, the County 2% responsible in the injury and death claims, but also awarding to the County \$6,000,000 for its repair costs and damages from the responsible contractors. WCMIC has paid the verdict amount that was awarded against the County and the County is no longer a defendant in the action. The County remains a party in order to pursue the \$6,000,000 verdict awarded to the County by the jury.

Following the jury trial, substantial litigation occurred in the circuit court, primarily relating to the responsibility of one of the contractor's insurers. Once that post-trial litigation was concluded, multiple appeals were filed. There are five different consolidated appeals with four appellants and five respondents, including the County with respect to the judgment in its favor. Approximately forty issues have been

identified by the appealing parties. Some of those issues may be sufficient for the Wisconsin Supreme Court to eventually accept review.

The contract to represent the County for its own claims has been amended several times during the litigation. The last amendment was subject to passive review in September of 2015 and increased the total contract amount to \$290,000. The current amendment of \$50,000 is expected to be sufficient to complete oral argument before the Court of Appeals. WHD is charging the County discounted hourly rates of \$220 per hour for shareholders and \$130 per hour for associates.

As noted above, the County Executive has signed, or will sign, the amendment increasing the contract amount to a total of \$340,000.

These funds will be encumbered from the funds provided in the 2016 Litigation Reserve Account, Org Unit 1961.

c: Raisa Koltun
Kelly Bablitch
Erica Hayden
Shanin Brown