

**INTEROFFICE COMMUNICATION  
COUNTY OF MILWAUKEE**

**DATE:** August 24, 2015

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

**FROM:** Paul Bargren, Corporation Counsel *PB*  
Mark A. Grady, Deputy Corporation Counsel *MAG*

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

It is requested that this matter be referred to the Committee on Finance, Personnel and Audit for passive review of a contract amendment. Pursuant to §59.52(31)(b)(1), Wis. Stats., the County Executive has signed (or will sign) a contract amendment, authorizing an additional sum of \$40,000, for a total contract sum of \$290,000, and the amendment will take effect unless the Committee takes action to reject or affirm it within 14 days, **by September 17, 2015.**<sup>1</sup>

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 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 related 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 (40) issues have been

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<sup>1</sup> To allow 14 days for the Committee to complete its passive review at its September 17, 2015 meeting, a fully signed contract amendment will be submitted September 3 or later.

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 April of 2014 and increased the total contract amount to \$250,000. The current amendment of \$40,000 is expected to be sufficient to complete one level of appeal. An appeal to the Supreme Court, and a further contract amendment, is anticipated in the future, regardless of the outcome in 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 \$290,000.

These funds will be encumbered from the funds provided in the 2015 Litigation Reserve Account, Org. Unit 1961.

cc: Shanin Brown  
Erica Hayden  
Kelly Bablitch  
Raisa Koltun