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DATE: May 26, 2015

TO: Marina Dimitrijevic, Chairwoman,
County Board of Supervisors

FROM: Kathryn M. West, Assistant Corporation Counsel *KMW*

SUBJECT: Midwest Development Corporation v. Milwaukee County
Case No. 12-CV-11071

I request that this matter be referred to the Committee on Judiciary, Safety and General Services so that it may be placed on the agenda for the next meeting. At that time, pursuant to section 1.28(1) of the Ordinances, we will seek approval of the attached resolution authorizing the filing of an appeal of an adverse decision we received on Milwaukee's Counter-claim against Midwest Development Corporation ("Midwest") in the above-referenced litigation, but only if Midwest files an appeal of the adverse decision that Midwest received.

Milwaukee County entered into an agreement with Midwest in 1983 in which the company leased the Crystal Ridge property in Franklin, now known as The Rock. The agreement allowed Midwest to lease Crystal Ridge for the purpose of filling the landfill and using it for athletic activities. The lease ended in 2008 and, still occupying the property, Midwest became a hold-over tenant.

In the latter part of 2012, the County entered into an agreement with Rock Sports Complex, LLC to take over Crystal Ridge. This prompted Midwest to file a lawsuit against Milwaukee County on October 9, 2012, in which it alleged that the County constructively evicted the company, and that a buy-back provision in the original lease entitled Midwest to recover up to \$4 million from the County for fixtures and improvements allegedly made.

In 2013, the Milwaukee County Board of Supervisors authorized this Office to file a counter-claim against Midwest to recover the cost of remediation work associated with significant erosion damage to the property's access roads and slopes during Midwest's tenancy. Our engineer's estimate put the cost of such repairs between \$750,000 and \$1,100,000.

Both parties filed motions for summary judgment on their respective claims, and oral argument was heard on February 3, 2015. The court issued its decision, *attached*, on the motions May 4, 2015. In its decision, the Court granted Milwaukee County's motion for summary judgment on Midwest's claims, but granted judgment to Midwest on Milwaukee County's claims for recovery of the erosion damage. The crux of these two determinations is that neither party prevailed in its claim for a financial recovery against the other. The only exception is that the Court summarily ordered Milwaukee County to pay Midwest the pro-rated portion of the rent that Midwest had

pre-paid for the year that the Rock's lease started; that is, a total of \$5,500. Milwaukee County had previously tendered to Midwest a check for this amount in 2012, however Midwest refused to accept it.

Although our office believes there is a good-faith basis for appealing the Circuit Court decision adverse to Milwaukee County as to the erosion damages, we recommend accepting the circuit court's decision, as long as Midwest does so as well. However, at this time, we do not know whether Midwest intends to pursue an appeal in this matter. This Office seeks the authority to pursue an appeal of the decision granting summary judgment to Midwest on the County's counter-claim, if Midwest files an appeal of the decision granting the County summary judgment on Midwest's claims.

cc: Kelly Bablitch
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