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January 31, 2022

**VIA EMAIL**

Mr. Scott B. Manske  
Comptroller  
Milwaukee County  
County Courthouse  
901 North Ninth Street, Room 301  
Milwaukee, WI 53233

Re: Financing the Proposed Relocation of Milwaukee Public Museum

Dear Scott:

As the County's bond counsel, you asked us whether the County can issue general obligation bonds or notes for the purpose of financing a portion of the cost of the proposed relocation of the Milwaukee Public Museum (the "MPM Project"). As discussed further below, based on the representations that the MPM Project will be operated as a public museum and that the County will continue to own the artifacts, the County has the authority to issue general obligation bonds or notes to finance a contribution toward payment of capital expenditures related to the MPM Project.

**COUNTY AUTHORITY**

Pursuant to Chapter 67 of the Wisconsin Statutes, the County has the authority to issue general obligation bonds or notes for any capital project the County has the authority to undertake. Section 59.56(2) of the Wisconsin Statutes gives the County Board of Supervisors the authority to "appropriate money for the establishment, expansion, operation and maintenance of public museums in the county, including, but not limited to, any public museum owned by a city." The statute does not require the County to own or operate the public museum. While our understanding is that the entity that would own and operate the MPM Project would be a nonprofit corporation with 501(c)(3) status under the Internal Revenue Code, Section 59.56(2) does not require the public museum to be owned or operated by a nonprofit corporation. The key requirement of the statute is that the museum is public.

## PUBLIC MUSEUM CONSIDERATIONS

If the MPM Project is operated as a public museum, the County will have authority to issue general obligation bonds or notes for the purpose of providing funds for *capital expenditures* related to the MPM Project (italics added to emphasize the County's authority to finance capital expenditures as opposed to operating expenses). Accordingly, the arrangements between the County and the MPM entities must be structured to assure that the MPM Project is a public museum. It is our understanding that, if the County decides to contribute funds to the MPM Project, the County will enter into an operating agreement with the entity that would own and operate the MPM Project. Such an agreement should contain provisions which confirm the public nature of the MPM Project. To illustrate this point, the first paragraph of Section 5.4 of the current Lease and Management Agreement, dated August 15, 2013 between the County and Milwaukee Public Museum, Inc., as amended from time to time (the "Agreement"), provides an example of a provision that would be sufficient, if included in any future operating agreement, for us to conclude that the MPM Project is a public museum for purposes of Section 59.56(2). The first paragraph of Section 5.4 of the Agreement provides the following:

The Museum shall be operated as a facility open to the general public, subject to such reasonable rules and regulations as the Milwaukee Public Museum may promulgate in its discretion from time to time regarding matters such as, but not limited to: admission fees; days and hours of operation; the safety of employees and the general public; the safety, protection and security of Artifacts; the anonymity of donors who desire anonymity; and, to the extent permitted by law, the confidentiality of employee records and business records.

The future operating agreement does not have to include the language above verbatim. We are only including it here to provide an example of language that would be sufficient for us to conclude that the MPM Project would be operated as a public museum. The County is free to change that provision in any way that continues to require the MPM Project to be operated as a public museum.


Further, the County's ownership of the artifacts that will be displayed or stored in the MPM Project contributes to the conclusion that the MPM Project will be operated as a public museum. Section 5.5 of the Agreement describes a formal written policy regarding the accession and deaccession of the artifacts that is subject to approval by the County Board. Any provision in a future operating agreement that requires County Board approval of artifact policy will bolster the conclusion that the MPM Project will be operated as a public museum.

## CONCLUSION

If the MPM Project is operated as a public museum, the County has the authority to issue general obligation bonds or notes to finance a contribution toward payment of capital expenditures related to the MPM Project. If the County decides to contribute funds to the MPM Project, the County must have a way, such as with an operating agreement, to ensure that the MPM Project is operated as a public museum.

Very truly yours,

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cc: Pamela Bryant (via email)  
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