



## 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

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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(ITEM NO. ) From Corporation Counsel recommending the adoption of a resolution to settle a breach of contract claim filed by Grandview Management, Inc. against Milwaukee County related to the 2010-2011 closure of the O'Donnell Park parking structure, and to settle any claims Grandview may have against the County arising from the 2016 closure of the Domes at the Mitchell Park Horticultural Conservatory.

### **A RESOLUTION**

WHEREAS, from October 2002 until December 2017, Grandview Management, Inc. (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; and

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

WHEREAS, with respect to Grandview's operations at O'Donnell Park, 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, causing Milwaukee County to close the parking structure for over one year to complete repairs; and

WHEREAS, Grandview believes the O'Donnell Agreements required Milwaukee County to keep the parking structure in a reasonably safe and serviceable condition, and required Milwaukee County to provide parking; and

WHEREAS, on June 23, 2016, Grandview filed a lawsuit against Milwaukee County in state court (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; and

WHEREAS, with respect to Grandview's operations at the Domes, 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; and

41 WHEREAS, the Domes remained closed for 3 to 9 months; and

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43 WHEREAS, Grandview believes the Domes Agreement required Milwaukee  
44 County to provide and maintain the existing buildings and equipment in a safe and  
45 clean condition; and

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47 WHEREAS, on April 11, 2016, Grandview filed a notice of claim against Milwaukee  
48 County alleging the County had breached the Domes Agreement by failing to keep the  
49 buildings and equipment in a safe and clean condition; and

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51 WHEREAS, in each instance, Grandview claims that the closure of the facilities  
52 caused it substantial damages which include but are not limited to lost revenue for  
53 cancelled or relocated events, staff parking costs, loss of employees, discounts and/or  
54 upgrade costs given to retain business, decreased sales, cost of purchasing and  
55 increased waste of inventory, costs of professional services, and payrolls costs; and

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57 WHEREAS, since the lawsuit and notice of claim were filed, Grandview and  
58 Milwaukee County have diligently pursued a settlement of all current disputes related to  
59 O'Donnell Park and the Domes; and

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61 WHEREAS, the terms of the settlement have been incorporated into the attached  
62 Term Sheet; and

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64 WHEREAS, the Term Sheet has been reviewed by the Department of Parks,  
65 Recreation, and Culture, as well as the Offices of the Comptroller, County Executive and  
66 Corporation Counsel; and

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68 WHEREAS, the Offices of the Comptroller and County Executive have  
69 recommended four changes, which include the following:

70

- 71 1. Instead of receiving 7% of gross sales (food and beverage) for sales between  
72 \$0 - \$600,000 each contract year, the County receive 8%;
- 73 2. The buy-out schedule of the Domes Agreement, if terminated, must  
74 depreciate during the year, either monthly or daily;
- 75 3. The amortization schedule for the HVAC unit at the Annex must depreciate  
76 during the year, either monthly or daily; and
- 77 4. Milwaukee County must be permitted to close the Domes for inspection;  
78 provided, however, it gives adequate notice to Grandview so Grandview does  
79 not schedule events during the inspection periods.

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81 ; and

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83 WHEREAS, these recommended changes have been agreed to by Grandview; and

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85 WHEREAS, in recognition of these newly agreed to terms, Milwaukee County has  
86 agreed to allow Grandview to book events at the Domes and the Annex through June  
87 30, 2019, pending approval of this resolution; and

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89 WHEREAS, a settlement of these disputes allows the parties to strengthen their  
90 partnership, to continue to provide excellent services to the residents of Milwaukee  
91 County, and to drive revenue to Milwaukee County; now, therefore,

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93 BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby  
94 approves the settlement with Grandview, consistent with the attached Term Sheet and  
95 recommended changes of the Offices of the Comptroller and County Executive as a  
96 complete release and resolution of all claims in the matters related to O'Donnell Park  
97 and the Domes; and

98

99 BE IT FURTHER RESOLVED, that the Milwaukee County Board of Supervisors  
100 hereby authorizes the County Executive, Office of the Comptroller, County Clerk,  
101 Corporation Counsel, and any other Milwaukee County official deemed necessary to  
102 prepare and execute all documents, instruments, agreements or otherwise, and to  
103 perform all actions necessary to complete the settlement with Grandview, consistent  
104 with the attached Term Sheet and recommended changes of the Offices of the  
105 Comptroller and County Executive; and

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107 BE IT FURTHER RESOLVED, the sum of up to \$200,000 is authorized to be paid  
108 from the settlement proceeds received in *Wosinski, et al. v. Advance Cast Stone, et al.* for  
109 HVAC capital improvements to the Annex, as described in the Term Sheet; and

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111 BE IT FURTHER RESOLVED, that an administrative transfer shall be processed by  
112 the Office of the Comptroller and Department of Administrative Services to create a  
113 2017 capital project for the installation of an HVAC unit at the Annex.

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## MILWAUKEE COUNTY FISCAL NOTE FORM

**DATE:** December 29, 2017

Original Fiscal Note ☒

Substitute Fiscal Note ☐

**SUBJECT:** From Corporation Counsel requesting approval of a resolution authorizing a settlement of the Grandview Management, Inc. litigation, as well as claims related to the closure of the Domes at the Mitchell Park Horticultural Conservatory.

### FISCAL EFFECT:

- |  |   |
|--|---|
| <input type="checkbox"/> No Direct County Fiscal Impact  | <input checked="" type="checkbox"/> Increase Capital Expenditures |
| <input checked="" type="checkbox"/> Existing Staff Time Required                                       | <input type="checkbox"/> Decrease Capital Expenditures            |
| <input type="checkbox"/> Increase Operating Expenditures<br>(If checked, check one of two boxes below) | <input checked="" type="checkbox"/> Increase Capital Revenues     |
| <input type="checkbox"/> Absorbed Within Agency's Budget   | <input type="checkbox"/> Decrease Capital Revenues                |
| <input type="checkbox"/> Not Absorbed Within Agency's Budget   |   |
| <input type="checkbox"/> Decrease Operating Expenditures   | <input type="checkbox"/> Use of contingent funds                  |
| <input type="checkbox"/> Increase Operating Revenues   |   |
| <input type="checkbox"/> Decrease Operating Revenues   |   |

*Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.*

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0
Capital Improvement Budget	Expenditure	≤ \$200,000	0
	Revenue	≤ \$200,000	0
	Net Cost	0	0



## DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. 1 If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

- A. Request to execute a settlement agreement with Grandview Management, Inc. to resolve litigation related to the 2010-2011 closure of the O'Donnell Park parking structure, and claims related to the 2016 closure of the Domes at the Mitchell Park Horticultural Conservatory.
- B. Grandview will pay Milwaukee County 8% of gross sales (food and beverage) for sales between \$0 - \$600,000, and 10% of gross sales in excess of \$600,000. Milwaukee County and Grandview will also split room rental revenue in excess of \$50,000 in a contract year 50/50 – County to retain the first \$50,000. Milwaukee County and Grandview will each contribute up to \$200,000 to pay for an HVAC unit to be installed at the Annex. The \$200,000 contribution from the County will come from a settlement related to the O'Donnell Park parking structure that the County recently received. The County and Grandview will each pay their respective utility charges related to using the HVAC. A percentage of the room rental revenue will be used by Grandview to establish a maintenance fund to pay for the service and/or replacement of the unit at the end of the unit's useful life. If at the end of the operating agreement a new agreement is not reached, the maintenance fund will be split between the parties on a 50/50 basis.
- C. No impact.
- D. None.

Department/Prepared By Paul D. Kuglitsch, Deputy Corporation Counsel

Authorized Signature

Paul Kuglitsch

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?<sup>2</sup> ☐ Yes ☐ No ☒ Not Required

<sup>1</sup> If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

<sup>2</sup> Community Business Development Partners' review is required on all professional service and public work construction contracts.

## **ZILLI PROPOSED TERMS:**

### **General Concepts**

The purpose of this proposal is to settle all current disputes relating to O'Donnell and the Domes, with the goal of creating a win – win scenario and to strengthen the partnership between Zilli and the County. The purpose is not to develop or promote any particular positions or arguments. Moreover, a great deal of time and effort was spent by Zilli to develop a proposal that did not necessitate the outlay of any cash by the County other than its ongoing obligations under the agreements and in the event of an early termination of the Domes.

#### **I. Annex:**

##### **A. Term:**

- i. Initial Term: 10 years from execution of a new operating agreement.
- ii. Extension Options: Two 5 year extension options exercisable by Zilli upon 12 months' prior written notice. Provided that Zilli is in compliance under the applicable operating agreements, the County will not have the right to refuse to extend.
- iii. No County Early Termination Right: Except for standard default provisions, no right in the County to terminate prior to end of Term, including during any extensions.

B. Capital Improvements: The Annex requires capital improvements, e.g. HVAC unit and any other necessary improvements. Zilli is researching what may be required. Zilli is willing to advance between \$100,000 -\$200,000 in capital improvement costs provided the County will match Zilli's contribution dollar for dollar. Zilli's capital improvement costs will be amortized over the initial 10-year term. If the agreement between Zilli and the County is terminated during the initial term by no fault of nor at the request of Zilli, the County will pay Zilli Zilli's unamortized costs of capital improvements. Because the Annex requires these capital improvements, Zilli cannot move forward without the County's commitment to timely fund its share.

##### **C. Key Terms:**

- i. Maintenance and Repair: County will agree to keep the venue in good operating and safe condition and repair during the entire term. Zilli agrees to establish a maintenance fund based upon the lifecycle of the HVAC unit for maintenance and replacement purposes.<sup>1</sup> The HVAC for the Annex will be separately metered and Zilli agrees to pay the HVAC utility

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<sup>1</sup> An arrangement on funding has been agreed to in principle, but requires further discussion.

charges for Zilli hosted events. The County agrees to pay the HVAC utility charges for County hosted events.

- ii. Casualty: If there is a closure or other interruption in Zilli's ability to use the venue due to casualty, then the County will agree to repair unless the damage is over an agreed upon percentage or other agreed upon benchmark. Once the venue is again being used for Zilli events, then there will be a reduced rent schedule based on the length of the interruption and until operations have recovered from the closure/interruption. If the casualty is so significant that the venue will not be repaired and the applicable agreement is terminated, then the County will pay Zilli any of its unamortized costs of capital improvements.
- iii. Non-Casualty Closures: If there is a temporary closure or other interruption, reduced hours or other limitations for events arising from the condition of the venue (excluding only casualty and Zilli's willful misconduct or breach), then the County will undertake reasonable efforts to repair the damage. Once the venue is again being used for Zilli events, then there will be an abated/reduced rent schedule based on the length of the interruption and until operations have recovered from the closure (the abatement/reduction will be more generous than for a casualty as in the event of a casualty there may be some insurance proceeds available to Zilli to compensate for the loss of business from a casualty).

D. Rent (inclusive of the Domes):

- i. Percentage Rent: Zilli is willing to agree to pay seven percent (7%) of gross sales (food and beverage) to the County for sales between \$0 - \$600,000 each contract year. Zilli is further willing to agree to pay ten percent (10%) of gross sales (food and beverage) for sales in excess of \$600,000 each contract year.
- ii. Room Revenue from Catering Events: In return for having control of venue/room rentals for events with catering opportunities, Zilli is willing to pay the County the first \$50,000 in room revenue each contract year.<sup>2</sup> Any room revenue in excess of \$50,000 in a contract year will be split 50/50 between Zilli and the County.
- iii. Revenue from Non-catering Events. The County will retain all rental revenue from events without catering opportunities for which it rents the Annex and the Domes. These events may include, but are not limited to, ceremony-only weddings, approximately 22 winter markets, urban rummage sales, County town hall meetings, Friends of the Domes events and meetings, and Department of Parks, Recreation and Culture events

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<sup>2</sup> Subject to reduction if/when the Domes close (for whatever reason).

and meetings. This non-revenue event revenue will not be included in the calculations of Section I.D.ii. Room Revenue above.

- iv. Calendar: County and Zilli would need to agree upon a calendar that allows the County to have its events, but that also guarantees a generous number of marketable venue dates to Zilli at both the Domes and the Annex.
- v. Termination Right. If the Dome Agreement is terminated, Zilli shall have the right upon 9 months prior written notice to terminate the Annex agreement.

## **II. Domes:**

- A. Term: From execution of a new operating agreement and coterminous with the Annex unless and then until the earlier of (i) County Board of Supervisors taking legislative action deciding to either permanently close the Domes or to institute major repairs or renovation of the Domes within the next 18 months after such action and the delivery of the lesser of (A) 18 months written notice to Zilli terminating the Domes operating agreement or (B) after written notice to Zilli, the date that is one business day after the last venue booking on Zilli's books for the Domes, or (ii) the permanent closure of the Domes because the venue is no longer safe for the public.

- B. Future of the Domes:

- i. If the County Board decides to rebuild the Domes or to construct a new facility (if the new facility allows for event hosting (at the sole discretion of County)), then the County and Zilli will negotiate reasonably, with due diligence and in good faith terms and conditions of a new operating agreement whereby Zilli will be able to operate in the facility on terms as close as possible to the terms of the Domes agreement. The new operating agreement will require approval by the Milwaukee County Comptroller and the County's bond counsel to ensure that any necessary bond issuance for the rebuilding and/or reconstruction of the Domes will be tax exempt. To the extent practicable (and as approved by the Comptroller and bond counsel), the new operating agreement term will run concurrently to the Annex.
  - 1. If Zilli and the County (with the approval of the Comptroller and bond counsel) are able to work out a new operating agreement, the term of the new agreement (and the Annex agreement) will be extended for the same amount of time the Domes were closed for rebuilding and/or reconstruction.
  - 2. The County will be afforded five (5) years to complete the rebuilding and/or reconstruction.

- ii. If the Domes permanently close for whatever reason, or if Zilli and the County cannot agree on a new operating agreement (see Section II.B.i.1.) within a reasonable time, or if the County decides to not rebuild the Domes or not reconstruct another facility capable of hosting events, then the County will buy out the Domes agreement pursuant to the following schedule determined based on the calendar year in which the County gives Zilli notice under Section II.A.(i)(A) or (B), as applicable, or the calendar year the Domes is closed under Section II.A.(ii), whichever first occurs:

2019	2020	2021	2022	2023	2024	2025
\$396,000	\$330,000	\$264,000	\$198,000	\$132,000	\$66,000	\$0.00

If the County Board of Supervisors took legislative action deciding to institute major repairs or renovation of the Domes within the next 18 months after such action and the County has not instituted such repairs or renovations within such time period, then Zilli can at any time after 18 months from such legislative action elect to receive payment as if the Domes had permanently closed as of the date of such action.

- C. Capital Improvements: Existing amortization schedule stays in place and is payable to Zilli based on the remaining amortization for the calendar year in which the County gives Zilli notice under Section II.A.(i)(A) or (B), as applicable, or the calendar year the Domes is closed under Section II.A.(ii) or is deemed closed under B. above or the Domes agreement otherwise terminates as provided therein, whichever first occurs.
- D. Rent, Room Revenue and Calendar: See Section I.D. above.
- E. Maintenance and Repair, Casualty, and Non Casualty: Same as 1.C. above subject to the County's rights under this Article II

### III. Other Venues:

#### A. Boerner:

- i. Initial Term: The current agreement expires December 31, 2023.
- ii. Extension Term: The current 5 year extension option, which may be exercised if mutually agreed to, will be modified to be exercisable by Zilli upon 18 months' prior written notice. Provided that Zilli is in compliance under the applicable operating agreements, the County will not have the right to refuse to extend.

- iii. No County Early Termination Right: Except for standard default provisions, no right in the County to terminate prior to end of Term, including during any extensions.
- iv. Square Footage: The space within which Zilli operates at Boerner will be clearly defined in the attached map and cannot exceed the square footage or enter into other areas of the facility.
- v. Second Option. If the Domes is permanently closed prior to 2023, Zilli will be granted a second 5 year extension term to be exercisable by Zilli upon 18 months' prior written notice. Provided that Zilli is in compliance under the applicable operating agreements, the County will not have the right to refuse to extend.