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TO: Honorable Supervisors of the County Board

CC: County Clerk George Christenson (c/o Janelle Jensen)
County Executive Chris Abele
Interested Parties

FROM: Margaret Daun, Corporation Counsel 
Paul Kuglitsch, Deputy Corporation Counsel 

DATE: August 21, 2018

RE: Referral of File No. 18-532

At its July 26, 2018 meeting, your honorable body referred File No. 18-532 to the Office of Corporation Counsel pursuant to MCO 1.15. That ordinance allows a one-third minority of the County Board to refer a matter to the OCC for a “written opinion ... as to the legality of the resolution or ordinance offered.” File No. 18-532 is as follows:

From the Deputy Director, Department of Administrative Services, and the President and Chief Executive Officer, Milwaukee Public Museum (MPM), requesting authorization to amend Section 5.3 of the existing MPM Lease and Management Agreement to align unrestricted endowment asset requirements, expand definitions of uses for required fundraising, and extend deadlines to achieve fundraising goals.

File No. 18-532 sought review of an amendment to the existing Lease between Milwaukee County and the Milwaukee Public Museum (MPM) and a recommendation for approval from the Committee on Finance and Audit. Finance and Audit unanimously recommended adoption on July 19, 2018. The County Board then took up consideration of the item at its meeting on July 26, 2018. During its discussions, the County Board asked the OCC (1.) whether it had the authority to approve the amendment, and (2.) whether the MPM Board of Directors could approve something other than what had been approved by the County Board without requiring that the altered amendment return to the County Board for further consideration.¹ The answer to the first question is yes, the County Board controls this section of the Lease. The answer to the second question is no, the MPM Board must adopt the amendment as approved by the County Board or, if changes are made, resubmit any newly-crafted amendment to the County Board for approval.

¹ The resolution contains a “BE IT FURTHER RESOLVED” clause that states the amendment is subject to approval by the MPM Board of Directors.

Section 5.3 of the Lease, as approved by the County Board on July 25, 2013 (File No. 13-598), commits the County to appropriate funds each budget year through 2022 to support MPM maintenance and operations, provided that MPM meets a number of performance criteria. Pursuant to Wis. Stat. § 59.56(2)(b)², only the County Board has the authority to approve this action. By introducing File No. 18-532, DAS and MPM are requesting an amendment to that section of the Lease to change some of the performance criteria. Because only the County Board has the authority to appropriate funds to support the museum and any conditions placed thereon, any changes to Lease provision addressing these issues requires Board approval. Moreover, if County Board approves the amendment, any changes to it, i.e. changes by the MPM Board of Directors, would require additional Board approval.

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² Wis. Stat. § 59.56(2)(b) provides that “[t]he **board** may acquire, establish, expand, own, operate and maintain a public museum in the county and appropriate money for such purposes, except that a public museum owned by a county under this subsection may seek tax-exempt status as an entity described under section 501(c)(3) of the internal revenue code.” (emphasis added).