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Corporation Counsel

PAUL D. KUGLITSCH
ANNE B. KEARNEY
Deputy Corporation Counsel

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ALAN M. POLAN
KATHRYN M. WEST
DALE R. NIKOLAY
SCOTT F. BROWN
TEDIA K. GAMIÑO
MARYNELL REGAN
DAVID N. FARWELL
LISA M. PROCACCIO
Assistant Corporation Counsel

DATE: February 8, 2019

TO: Theodore Lipscomb, Sr., Chair, Milwaukee County Board of Supervisors

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

FROM: Paul D. Kuglitsch, Deputy Corporation Counsel *PK*

SUBJECT: Request to file an action pursuant to MCO § 1.11(c)(3)(2)(b)
*Milwaukee County v. Hammel, Green, and Abrahamson, Inc. and VJS
Construction Services, Inc.*

It is requested that this matter be referred to the Committee on Judiciary, Safety, and General Service for approval for filing an action.

Pursuant to Section 1.11(c)(3)(2)(b) of the Milwaukee County Code of General Ordinances, the Committee on Judiciary, Safety, and General Services, subject to full board approval, shall approve the initiation of all suits or claims by the County against other persons or entities where the amount claimed exceeds ten thousand dollars (\$10,000.00) or where the rights sought to be declared have a potential fiscal effect on the County in excess of ten thousand dollars (\$10,000.00). There is an exception to this requirement for emergency situations, which does not apply to this request.

As set forth in the ordinance, this memo is the request of the Office of Corporation Counsel to file a large claims civil action against Hammel, Green, and Abrahamson, Inc. ("HGA") and VJS Construction Services, Inc. ("VJS").

On December 18, 2015, Milwaukee County Department of Administrative Services, Architecture and Engineering Division ("DAS-A&E"), retained HGA to provide architectural and engineering design services for the various phases of the Milwaukee County Zoo's Adventure Africa Elephant Exhibit, an approximately \$16 million dollar capital project. Subsequently, on August 22, 2017, DAS-A&E engaged VJS to serve as the prime contractor for constructing the project. During the construction phase, four (4) errors and/or omissions were discovered involving both design and construction issues, which resulted in change orders totaling approximately \$250,000.00.

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The Office of Corporation Counsel strengthens the County community and empowers residents through highly competent, creative, compassionate and responsive legal services provided in strategic partnership with County stakeholders to optimize decision making, reduce risks, and maximize public resources.

1. Cast-in-Place Reinforcement Concrete Retaining Wall. At 2 ½ months old, a 100ft. long retaining wall experienced visible bowing and cracking, resulting in the need for correction. Milwaukee County's expert, Mead & Hunt, attributes the cause to "deficient design." Additionally, HGA's hired expert, Wiss, Janney, Elstner Associates, Inc., concluded that "the design revealed deficiencies in the design of the wall." The corrections to the retaining wall resulted in a change order of approximately \$90,000.00.
2. Elephant Cable Barriers and Augered Cast-in-Place Concrete Foundations. Approximately 130 reinforcing bar cages and anchor bolts were fabricated as components of the concrete caissons for the elephant cable barrier. However, the reinforcing bar cages do not allow the anchor bolts to fit inside, as they are supposed to according to the design plans. Mead & Hunt's report states that the design for the concrete caissons are vague, and do not sufficiently note the clear concrete cover for the reinforcing steel. In addition, a note on the design plans indicate that if an ambiguity exists in the design, the construction contractor should seek clarification before proceeding. The construction contractor did not seek clarification and proceeded to construct the caissons based on their assumption regarding the design. The change order related to this error or omission of approximately \$135,000.00.
3. Bleeders and Drain Tile at Retaining Walls. Despite clear recommendations to include proper drainage that were made in the geotechnical report, the design plans for the retaining wall completely omitted any drain tile, drain pipes, or weep holes. It is standard and customary practice for the architect to detail these items in the plan design. The omission resulted in a change order of approximately \$7,000.00.
4. Re-position/addition of Steel Reinforcement in the Elephant Pool Shotcrete Concrete. After the installation of the reinforcement in the elephant pool was complete, the design for the pool was modified by the structural engineer to add reinforcing steel that was not originally drawn in the design. This error and omission from the original design resulted in the construction contractor modifying work that had already been completed according to the original design, and then reinstalling the reinforcement. The omission resulted in a change order of approximately \$4,000.00.

Although the errors and/or omissions are related to the work of HGA's and VJS' subcontractors, the contracts with HGA and VJS require the design consultant and prime contractor to be responsible for all work performed by their subcontractors. Milwaukee County Risk Management has issued demands for the damages to HGA and VJS; however, negotiations have been unsuccessful.

Based on the above, the OCC is requesting approval to file a large claims civil action against HGA and VJS for contractual and tort claims. At the present time, it is estimated that the damages are approximately two hundred and fifty thousand dollars (\$250,000.00).