

COUNTY OF MILWAUKEE
Inter-Office Communication

DATE: January 30, 2013

TO: Chairwoman Marina Dimitrijevic
Milwaukee County Board of Supervisors

FROM: Julie Esch, Director of Operations, DAS

**SUBJECT: Requesting Authorization to Retain the Law Firm of Reinhart
Boerner Van Deuren S.C. for Legal Services Related to the
Downtown Transit Center**

Background

In April 2012, the Division of Economic Development issued a Request for Information (RFI) to gauge the prospective interest in purchasing and redeveloping the Downtown Transit Center property. Barrett Visionary Development responded to the RFI expressing interest in acquiring the Downtown Transit Center, proposing a \$120 million, 44-story tower comprising high-end apartments, retail, parking and a hotel. Based on the responses to the RFI, the Director of Economic Development recommended that negotiations with Barrett Visionary Development commence for a development contract for the Transit Center site.

In May 2012, the Milwaukee County Board of Supervisors declared the Downtown Transit Center property surplus, to be offered for sale for redevelopment. The Milwaukee County Board of Supervisors subsequently authorized the Director of Economic Development to negotiate with Barrett Visionary Development (File No. 12-633) on the terms and conditions of purchasing the Downtown Transit Center property and developing the property as *The Couture*.

As part of the due diligence process, the State of Wisconsin Department of Natural Resources reviewed the public trust doctrine and has concluded that none of the property is subject to it. However, some individuals and groups have indicated that they do not agree with the DNR conclusion.

Due to the specialized knowledge and expertise of attorneys with the law firm of Reinhart Boerner Van Deuren S.C., the Office of Corporation Counsel previously entered into a contract for legal services with Reinhart Boerner Van Deuren S.C.

for an amount not to exceed \$40,000.00, to provide advice concerning the public trust doctrine and its applicability to the subject property, with discounted hourly rates not to exceed \$335 per hour for shareholders, but those sums have been expended.

In order to act as expeditiously as possible to fulfill the policies of prior adopted resolutions and to develop the subject property consistent with the public trust doctrine, it is necessary to obtain legal certainty concerning Milwaukee County's legal right to develop the property as intended.

Recommendation

It is recommended that the Office of Corporation Counsel be authorized to retain Reinhart Boerner Van Deuren, S.C. to obtain legal certainty as it pertains to Milwaukee County's legal right to develop the property for an additional amount of \$100,000, and a total contract amount not to exceed \$140,000, with hourly rates not to exceed \$335 per hour. It is recommended that litigation be authorized as set forth in the resolution.

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A resolution authorizing the Office of Corporation Counsel to retain the law firm of Reinhart Boerner Van Deuren S.C. for legal services related to the Downtown Transit Center property and to authorize the filing of an action for a declaration of rights in property with respect to the Downtown Transit Center property, by recommending adoption of the following:

A RESOLUTION

WHEREAS, the Downtown Transit Center was built in 1992 and serves as a marshaling facility for Milwaukee County Transit buses that terminate on the east end of downtown Milwaukee; and

WHEREAS, due to transit route modifications since its construction, the Downtown Transit Center facility is underused and not critical to the operation of the transit system; and

WHEREAS, in August 2011, the Long Range Lakefront Planning Committee recommended that “the Downtown Transit Center site be redeveloped with high-value, multi-story use housing amenities more appropriate to its lakefront location;” and

WHEREAS, the recommendation also identified the site as having the potential of connecting Downtown Milwaukee to the lakefront, adding value to the area and complementing the existing lakefront development and structures, as well as drawing visitors and residents to the lakefront; and

WHEREAS, the Milwaukee County Board of Supervisors approved the Long Range Lakefront Planning Committee’s report on November 3, 2011, by a vote of 18-1; and

WHEREAS, in April 2012, the Division of Economic Development issued a Request for Information (RFI) to gauge the prospective interest in purchasing and redeveloping the Downtown Transit Center property; and

WHEREAS, in May 2012, the Milwaukee County Board of Supervisors declared the Downtown Transit Center property surplus, to be offered for sale for redevelopment; and

40 WHEREAS, Barrett Visionary Development responded to the RFI expressing
41 interest in acquiring the Downtown Transit Center, proposing a \$120 million, 44-story
42 tower comprising high-end apartments, retail, parking and a hotel; and

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44 WHEREAS, based on the responses to the RFI, the Director of Economic and
45 Community Development recommended that negotiations with Barrett Visionary
46 Development commence for a development contract for the Transit Center site; and

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48 WHEREAS, in July of 2012 (File No. 12-633), the Milwaukee County Board of
49 Supervisors authorized the Director of Economic Development to negotiate with Barrett
50 Visionary Development on the terms and conditions of purchasing the Downtown
51 Transit Center property and developing the property as *The Couture*; and

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53 WHEREAS, the State of Wisconsin Department of Natural Resources has
54 concluded that none of the property is subject to the public trust doctrine, but some
55 individuals and groups have indicated that they do not agree with the DNR conclusion;
56 and

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58 WHEREAS, due to the specialized knowledge and expertise of attorneys with the
59 law firm of Reinhart Boerner Van Deuren S.C., the Office of Corporation Counsel
60 previously entered into a contract for legal services with Reinhart Boerner Van Deuren
61 S.C. for an amount not to exceed \$40,000.00, to provide advice concerning the public
62 trust doctrine and its applicability to the subject property, with discounted hourly rates
63 not to exceed \$335 per hour for shareholders, but such sums have been expended; and

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65 WHEREAS, in order to act as expeditiously as possible to fulfill the policies of
66 prior adopted resolutions and to develop the subject property consistent with the public
67 trust doctrine, it is necessary to obtain legal certainty concerning Milwaukee County's
68 legal right to develop the property as intended;

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70 NOW THEREFORE,

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72 BE IT RESOLVED, that the Office of Corporation Counsel is authorized and
73 directed to amend the legal services contract with Reinhart Boerner Van Deuren S.C.,
74 for an additional amount of \$100,000, and a total contract amount not to exceed
75 \$140,000, with hourly rates not to exceed \$335 per hour, to represent Milwaukee
76 County in litigation to declare rights in the property; and

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78 BE IT FURTHER RESOLVED, that Reinhart Boerner Van Deuren S.C. is
79 authorized to negotiate for the issuance of a title insurance policy to the potential buyer

80 and its lender and such endorsements to that policy as would be appropriate on the sale
81 of the subject property for development and to take any actions as may be appropriate
82 and necessary to assure the issuance of a title insurance policy; and

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84 BE IT FURTHER RESOLVED, that the additional funds are authorized to be
85 expended from the 2013 Budget, Org Unit 1961, the Litigation Reserve, and that this
86 contract shall be exempt from the provisions of §56.30 of the County Ordinances; and

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88 BE IT FURTHER RESOLVED. that pursuant to §1.11(c)(3), M.C.G.O., the
89 Milwaukee County Board of Supervisors authorizes the filing of an action under Chapter
90 841, Stats., for a declaration of rights in property to obtain a judgment determining the
91 extent of the County's title and rights to the subject property.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: January 30, 2013

Original Fiscal Note

Substitute Fiscal Note

SUBJECT: Authorization to retain Reinhart Boerner Van Deuren, S.C. for legal services related to the Downtown Transit Center and authorization for litigation.

FISCAL EFFECT:

- | | |
|---|--|
| <input checked="" type="checkbox"/> No Direct County Fiscal Impact | <input type="checkbox"/> Increase Capital Expenditures |
| <input type="checkbox"/> Existing Staff Time Required | <input type="checkbox"/> Decrease Capital Expenditures |
| Increase Operating Expenditures
(If checked, check one of two boxes below) | <input 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	\$0	\$0
	Revenue	\$0	\$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. Funding is being requested to hire Reinhart Boerner Van Deuren for legal services to obtain legal certainty as it pertains to Milwaukee County's right to develop the Downtown Transit Center.
 - B. The Direct Cost is a total contract amount not to exceed \$140,000 from the Litigation Reserve Account (Org. Unit 1961), but with the new expenditure being \$100,000.
 - C. Funding for this request is within the 2013 Adopted Budget for the Litigation Reserve Account.
 - D. The not-to-exceed amount is based on a not-to-exceed rate of \$335/hour.

Department/Prepared By Mark A. Grady, Deputy Corporation Counsel

Authorized Signature _____

Did DAS-Fiscal Staff Review? Yes No

¹ 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.