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June 2, 2014

To the Honorable Common Council
Of the City of Milwaukee
Room 205 – City Hall

Re: Proposed Payment of Judgment in *Tom Reep, et al. v. City of Milwaukee*
Case No. 09-CV-003483

Dear Council Members:

Enclosed please find a proposed resolution. We ask that it be introduced and referred to the Committee on Judiciary & Legislation, with the following recommendation.

The above-noted lawsuit arises from the “significant rainfall” that the Milwaukee area experienced on June 7 and 8, 2008. The plaintiffs, 181 homeowners or residents, experienced damages to their homes or personal property in this storm from sewer backups into the properties.

The plaintiffs originally sued the City of Milwaukee, the Milwaukee Metropolitan Sewerage Commission, and Veolia Water, the private contractor that operated MMSD’s wastewater treatment facilities and the structures connecting the municipal sewer systems to the treatment plant. The plaintiffs settled with MMSD and Veolia prior to trial.

The plaintiffs lived in or owned homes in what generally can be described as the Lincoln Creek neighborhood. In that area, the residents were served by a number of separate city sanitary sewer systems. The residents in each of the systems had sanitary sewer lines and storm sewer lines, as opposed to single combined lines that connect to both the sanitary and storm sewers. The plaintiffs claimed that the city was negligent in maintaining flap gates and bypass pumps that it had placed on most of the sanitary sewer systems.

The trial proceeded against the city with 12 regular jurors and 2 alternates. By stipulation of the parties, the court allowed all 14 jurors to deliberate.



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The jury returned a verdict that the city, MMSD and Veolia were all causally negligent. The jurors allocated 36.77% of the negligence to the city, 27.15% to MMSD, and 36.08 to Veolia. The total of all plaintiffs' damages was set at \$1,491,000. Two jurors dissented to the question of whether the city's negligence was causal, while one juror dissented to the questions of whether MMSD or Veolia's negligence was causal. This led to an issue of whether the verdict was defective. None of the jurors dissented to the question on allocating the percentages of negligence.

Subsequent to the trial, the plaintiffs filed a bill of costs seeking just under \$453,000. The trial court limited many of the items, with one very significant exception. The plaintiffs presented 5 expert witnesses during the trial. The plaintiffs asked for expert witness fees costs in the amount of the number of plaintiffs (181) times the maximum amount under the statute per plaintiff (\$300) times the number of experts (5) plus mileage or \$271,797.32.

The trial court agreed with the plaintiffs and upheld the entire amount of \$271,797.32. This ruling followed a very recent Wisconsin Court of Appeals decision that allowed a trial court to exercise its discretion to assess the expert witness fee cost for each of a large number of plaintiffs. This brings the total amount of the judgment, including the damages in the verdict plus all other items of costs to \$926,231.86.

Because payment of the judgment in this matter at this time is deemed expeditious to the City of Milwaukee, we recommend payment of this claim in the amount of \$935,722.56, which includes statutory interest to the anticipated date of payment, and have enclosed an appropriate resolution for your convenience.

Very truly yours,



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JAS

Enclosure

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