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February 6, 2009

Honorable Common Council
Of the City of Milwaukee
City Hall—Room 205

Re: Settlement of *City of Milwaukee v. Zurich American Insurance Company*
Case No. 08-CV-012661

Dear Council Members:

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

During the demolition of the Park East freeway in 2002, James Cape & Sons Company, which was insured by Zurich American Insurance Company, was involved in demolishing the concrete portion of the freeway structure. As a part of this work, it was planned that the concrete from the freeway would be recycled. A machine needed to grind the concrete down to a useable size was not available for some time during this project. Cape therefore had to pile the broken concrete in a large pile near the demolition site. It piled this material in a street near the location of North 4th Street and West McKinley Avenue.

The demolition project was under the direction of City of Milwaukee staff, working on behalf of the State of Wisconsin. There are disputes as to whether Cape was directed to pile this concrete at the selected location.

On or about September 23, 2002, a water main in the street below the rubble broke. The water main break also severely damaged a WE Energies steam tunnel adjacent to the underground main. Cape and its insurer have also disputed whether the rubble above the main was the cause of the main break.

Hon. Common Council
February 6, 2009
Page 2


The City of Milwaukee incurred \$165,482.17 in expenses to repair the main. WE Energies also incurred substantial expense to repair its steam tunnel. WE Energies previously brought suit against Zurich American and agreed to settle for approximately 50% of their claimed damages.

Zurich American Insurance Company has agreed to pay \$87,500 in settlement of the City's claims in the above-noted lawsuit. Because settlement of this matter is deemed expeditious to the City of Milwaukee, we recommend payment of this proposed settlement amount and have enclosed an appropriate resolution for your convenience.

Very truly yours,



GRANT F. LANGLEY
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Encl.

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