



**FACSIMILE MESSAGE**

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PLEASE DELIVER THE FOLLOWING TO:

Memory Tag: 2# \_\_\_\_\_

Name:	Alderman D'Amato	Facsimile No.	414-286-3456
Company:	City of Milwaukee	Phone No.	

FROM: Margaret M. Derus  
DATE: June 6, 2003

REQUESTED BY Lisa A. Cecil  
EXTENSION 8721

ATTORNEY NO. 00669  
CLIENT NO. 012092  
MATTER NO. 0106

Total number of pages sent, including this page

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**COMMENTS:**

Dear Alderman D'Amato:

Attached is the Tolling Agreement between American Society for Quality and the City of Milwaukee that you discussed with Barbara Boxer. Thank you.

Margaret M. Derus

## **TOLLING AGREEMENT**

THIS TOLLING AGREEMENT, dated this \_\_\_\_ day of \_\_\_\_\_ 2003, is entered into by and between American Society for Quality, Inc., a New York not-for-profit corporation ("ASQ") and the City of Milwaukee, a Wisconsin municipal corporation ("City").

### **RECITALS**

- A. ASQ is a not-for-profit organization that provides quality control education and training and develops quality control standards.
- B. On February 19, 2002, ASQ filed a Property Tax Exemption Request ("Exemption Request") for the property located at 101 West Wisconsin Avenue, Milwaukee, WI 53203 (tax key number 397-0334-1) ("Property").
- C. On October 10, 2002, the City denied the Exemption Request.
- D. After the City denied the Exemption Request, the City sent ASQ a 2002 property tax bill for the Property in the amount of \$280,871.09. ASQ paid the 2002 property tax and by letter dated January 30, 2003, notified the City that the tax had been paid under protest.
- E. On January 30, 2003, ASQ filed with the City Clerk a claim for refund of the 2002 property taxes ("Refund Claim") pursuant to section 74.35 of the Wisconsin Statutes.
- F. Under Wisconsin Statutes section 74.35, the City has ninety (90) days within which to allow or disallow the Refund Claim. If the Refund Claim is

disallowed, ASQ has ninety (90) days in which to commence an action in circuit court to recover the tax paid. If the City does not act within ninety (90) days, the Refund Claim will be deemed disallowed.

G. The City has not yet allowed or disallowed the Refund Claim. The ninety (90) day period in which the City may act will expire on April 30, 2003.

H. In the joint interest of the parties, ASQ and the City agree to toll the running of any and all applicable statutes of limitations, statutes of repose, or other claim-bar or notice periods, and for that reason are entering into this Tolling Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth, ASQ and the City agree as follows:

### **AGREEMENT**

1. **Tolling Agreement.**

1.1 ASQ and the City agree to toll the ninety (90) day period under Wisconsin Statute section 74.35 in which the City may take action on the Refund Claim. To this end, ASQ and the City agree to extend the period in which the City may allow or disallow the Refund Claim until July 15, 2003, unless earlier terminated under the provisions of this Tolling Agreement.

1.2 ASQ and the City agree that upon the expiration of the ninety (90) day period described in paragraph 1.1 herein, or its earlier termination under the provisions of this Tolling Agreement, ASQ will have the statutorily provided ninety (90) days in which to commence an action in circuit court in the manner

contemplated in the Wisconsin Statutes. This ninety (90) day period will expire on September 13, 2003, or ninety (90) days after this Tolling Agreement is earlier terminated under paragraph 1.3 herein.

1.3 ASQ or the City may terminate this Tolling Agreement upon the expiration of ten days following the giving of written notice to the other party. Notice of the termination shall be in writing and shall be deemed properly given when sent by first class mail, certified or registered mail postage prepaid, or by facsimile transmission and addressed as provided below.

(a) If to ASQ:

Margaret M. Derus  
Reinhart Boerner Van Deuren s.c.  
P.O. Box 2965  
Milwaukee, WI 53201-2965  
Fax: (414) 298-8097

(b) If to City:

City of Milwaukee, City Clerk  
City Hall  
200 East Wells Street  
Milwaukee, WI 53202  
Fax: (414) \_\_\_\_\_

1.4 Nothing in this Tolling Agreement shall be construed to revive any claim already time-barred by any applicable statute of limitations.

2. Binding Agreement.

ASQ and the City hereby agree that this Tolling Agreement is binding upon, and inures to the benefit of, the parties and their heirs, successors and assigns.

3. Amendments.

ASQ and the City agree that this Tolling Agreement may not be amended except by written agreement executed by ASQ and the City.

4. Execution in Multiple Parts.

This Tolling Agreement may be executed and delivered in separate counterparts, each of which shall constitute an original of this Tolling Agreement and all of which taken together shall constitute one and the same Tolling Agreement.

5. Facsimile Signatures.

Facsimile signatures shall be deemed to be original signatures for the purposes of this Tolling Agreement.

6. No Admission.

This Tolling Agreement does not constitute and shall not be construed as an admission of fact or liability on the part of either ASQ or the City.

7. Authority.

ASQ represents to the City that its representatives executing this Tolling Agreement have been duly authorized to execute and to cause ASQ to enter into this Tolling Agreement. The City represents and warrants to ASQ that the undersigned City official(s) are duly authorized to execute and to cause City to enter into this Tolling Agreement.

IN WITNESS WHEREOF, ASQ and the City have caused this Tolling Agreement to be executed by duly authorized agents as of the date first above written.

AMERICAN SOCIETY FOR QUALITY, INC.

THE CITY OF MILWAUKEE

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
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