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October 16, 2006

Mr. William C. Thompson II  
Executive Director  
Deferred Compensation  
City Hall, Room 103P

Re: Charter Amendment Regarding Fiduciary Obligations

Dear Mr. Thompson:

In correspondence dated August 7, 2006, you requested that we review a proposed charter ordinance and a proposed amendment to the Master Plan Document for the City of Milwaukee Section 457 Deferred Compensation Plan. The amendments are intended to clarify the limits of fiduciary responsibilities with respect to participant-directed investments of accounts in Plan.

Section 881.01, Wisconsin Statutes, sets forth the "prudent investor rule" which governs fiduciaries who invest and manage assets on behalf of beneficiaries and defines their duties to the beneficiaries.

Section 881.01(2)(b) provides that:

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a will, trust or court order. A fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in reasonable reliance on the provisions of the will, trust or court order.

We understand that the proposed amendments are intended to amend both the City Charter and the provisions of the trust applicable to the City of Milwaukee Deferred Compensation Plan to clarify the limited liability of the plan fiduciaries with respect to investments that are directed by individual participants. We further

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understand that the proposed legislation is intended to reflect the provisions of section 404(c) of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1104(c), which sets forth the standards of care for a fiduciary. ERISA generally applies to private-sector retirement plans. Section 404(c) sets forth a "safe harbor" in which a fiduciary to a plan will be deemed to have met its obligations with respect to participant-directed investments of section 401(k) private-sector plans.

In order to qualify as a participant-directed plan eligible for the safe harbor protection from liability of section 404(c), the plan must, among other requirements, offer a broad range of invest alternatives sufficient to provide the participant or beneficiary with a reasonable opportunity to:

- (A) Materially affect the potential return on amounts in his individual account with respect to which he ~~is~~ permitted to exercise control and the degree of risk to which such amounts are subject;
- (B) Choose from at least three investment alternatives:
  - (1) Each of which is diversified;
  - (2) Each of which has materially different risk and return characteristics;
  - (3) Which in the aggregate enable the participant or beneficiary choosing among them to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the participant or beneficiary; and
  - (4) Each of which when combined with investments in the other alternatives tends to minimize through diversification the overall risk of a participant's or beneficiary's portfolio.

29 C.F.R. §2550.404c-1(b)(3)(i)(B).

The amendments you provided mirror these provisions. We recommend that they be revised as indicated in the attached drafts to more closely duplicate the ERISA

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language.

You should be aware that ERISA section 404(c) sets forth very specific standards with respect to information that must be provided to participants and beneficiaries in order that they may make informed investment decisions for their accounts. The ERISA standards provide appropriate guidelines for the types of information that that should be made available when participants and beneficiaries are evaluating investment options. ERISA section 404(c) plans must also permit participants to give instructions to the plan with respect to their investment options at least once every three months.

With the changes indicated in the attached drafts, we recommend adoption of the proposed amendments to Section 5-50 of the Milwaukee City Charter and Section 10(b) of the Master Agreement. We will prepare the Charter amendment and submit it to the Common Council for consideration.

Very truly yours,

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Enclosures

1073-2006-2166:11075