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April 20, 2009

Alderman Ashanti Hamilton, Chair
Judiciary and Legislation Committee
City Hall, Room 205

Re: Claim of Brewery Project, LLC for Interest on Settlement

Dear Alderman Hamilton:

We have received and reviewed this claim. For the following reasons we recommend that this claim be paid from the Remission of Taxes Fund in the amount of \$5,662.59.

As a result of a decision of the Board of Review on August 28, 2007, claimant was entitled to a refund of \$113,251.81. Under Wis. Stat. § 70.511(2)(b), claimant was entitled to file a claim for this amount by November 1, 2007, in order to receive the refund by January 31, 2008. Because the Remission of Taxes Fund was exhausted for that year, the Assessor's Office requested claimant to delay its claim for a refund so that the refund would not be paid until January 31, 2009. Plaintiff did so and now seeks interest for the one-year delay in payment.¹

In the absence of an express agreement to pay interest when a party forbears from collecting an amount that is otherwise due, Wis. Stat. § 138.04 governs. *De Toro v. DI-LA-CH, Inc.*, 31 Wis. 2d 34, 1142 N.W.2d 192, 195 (1966). It provides for an annual interest rate of 5% in this case, 5% of \$113,251.85 for one year is \$5,662.59. We recommend payment of this amount from the 2009 Remission of Taxes Fund.

¹ This claim does not request interest for the delay in the Board of Review hearing that claimant requested in 2006 until the hearing took place in 2007. Such a claim is prohibited by Wis. Stat. § 70.511(2)(b).

Alderman Ashanti Hamilton, Chair

April 20, 2009

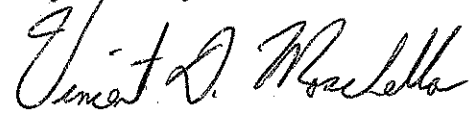
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Finally, we note that the unique circumstances of this particular claim do not in any way set a legal precedent that would bind the City in the future. Our recommendation here simply represents our judgment that this claimant would most likely prevail in court on the merits of this particular claim.

Very truly yours,



GRANT E. LANGLEY
City Attorney



VINCENT D. MOSCHELLA
Deputy City Attorney

VDM:wt:144964

c: Mary Reavey, Assessment Commissioner
Peter C. Weissenfluh, Chief Assessor

1056-2009-860