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February 12, 2013

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

Re: Resolution Relating to the Claim of Milwaukee Metropolitan Sewerage
District
C.I. File No. 12-L-51

Dear Council Members:

We return the enclosed document which has been filed with the City Clerk and ask that it be introduced and referred to the Committee on Judiciary & Legislation with the following recommendation.

Claimant, Milwaukee Metropolitan Sewerage District, by its representative Susan B. Anthony, 260 West Seeboth Street, Milwaukee, WI 53204, alleges that on October 11, 2011 their contractor was excavating at South Water Street and East Washington Street and struck and severely damaged a City combined sewer that had not been properly marked by the City for the Diggers' Hotline request. They claim damages in the amount of \$44,000.00.

Our investigation reveals that this claim was filed on June 29, 2012. Wisconsin Statute §893.80 (1)(a) requires that a notice of claim must be filed within 120 days after the happening of the event giving rise to the claim. This notice of claim was not timely filed.

The Infrastructure Services Division indicates that the City, for excavation and construction purposes, provides current sewer plans if requested in the Diggers' Hotline. The plans illustrate the locations of City sewer facilities. The City's standard procedure is to not mark sewers. This hotline did not request plans, it requested marking of the area. The City followed its standard procedures. Upon request, the City can also provide onsite investigation and assistance. There were no requests. The Sewer Maintenance Section was called by the claimants' contractor to investigate a sewer clog in this area around the same time as this incident. However, this incident was never reported to them. The Environmental Engineering Section was unaware of any damage to the City's sewer

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facilities until it received this claim. They were not given an opportunity to inspect the damage, make repairs with our own crews or inspect the repairs. There is no evidence that the City was negligent in this matter. As such, the City would not be liable. Therefore, we recommend that this claim be denied.

Very truly yours,

GRANT F. LANGLEY
City Attorney

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Assistant City Attorney

PAF:ms
Enclosure
1029-2012-1635:185670