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June 8, 2016

Honorable Common Council  
City Hall, Room 205

Re: Final judgment and proposed mediated settlement of attorney's fees regarding *Six Star Holdings, LLC and Ferol, LLC* v. *City of Milwaukee*, U.S.D.C. Case No. 10-CV-893; Seventh Circuit Case Nos. 15-1608 and 15-3418.

Dear Honorable Council Members:

Enclosed please find two proposed resolutions. We ask that the one authorizing mediated settlement of attorney's fees, costs and expenses and payment of judgment be introduced and referred to the Committee on Judiciary and Legislation and scheduled for closed and open sessions to discuss same. We also ask that the proposed resolution appropriating up to \$968,331.75 from the 2016 Common Council Contingent Fund be introduced and referred to the Committee on Finance and Personnel with the following recommendation.

The above-referenced lawsuit was commenced by two limited liability companies formed by the owners Silk Exotic Gentlemen's Club to pursue licensure to open new gentlemen club locations in the downtown and Walker's Point neighborhoods in 2010-11. The downtown tavern and tavern amusement license application for 730 North Old World Third Street was denied by the Common Council in 2010 and a 2011 theater license application was held until the ordinance was repealed in March 1, 2012. The Walker's Point proposal for 118 West Pittsburgh Avenue by plaintiff Ferol, LLC was withdrawn by the plaintiffs in 2009 and denied by the Common Council in 2010. Cross-motions for summary judgment were decided by the district court which held that the City's tavern licensing regulations were constitutional though the former theater and public entertainment club license provisions violated the First Amendment rights of the plaintiffs. Plaintiff Six Star Holdings, LLC received a \$1.00 nominal damages award for its as-applied claim regarding its held theater license application. In February 2015, a 12-person jury



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determined that Ferol, LLC would have opened a “dry” gentlemen’s club in in 2009 but for the existence of the unconstitutional former ordinances regarding theaters and public entertainment clubs and awarded \$435,500.00 lost profit damages. (Plaintiff had sought \$1.2 million in damages). A copy of that judgment is attached to this correspondence and the proposed resolutions. Thereafter, pursuant to 42 U.S.C. § 1983 and § 1988, the district court awarded plaintiffs \$425,553.50 in attorney’s fees and \$57,033.07 in costs and out-of-pocket expenses for a total award of \$482,586.57. The City appealed the district court’s decision to the Seventh Circuit Court of Appeals, arguing that plaintiff Ferol, LLC did not have as-applied standing to pursue a compensatory loss profit damages award from the City of Milwaukee because Ferol had never applied for a theater or public entertainment club license or had those ordinances enforced against it. Notwithstanding those arguments, the United States Court of Appeals for the Seventh Circuit affirmed the district court decision in its entirety and remanded the matter back to the district court for an additional assessment of costs and attorney’s fees. The City’s motion for rehearing *en banc* was subsequently denied. Plaintiffs’ counsel thereafter submitted a supplemental petition for attorney’s fees, costs and expenses relative to the Seventh Circuit case in the amount of \$106,667.50 in attorney’s fees and \$3,075.14 in expenses, with a total appellate attorney fee and expenses petition for \$109,742.64. On May 26, 2016, a court-appointed mediation was conducted relative to the City’s appeal of the attorney fee award by the district court and the supplemental petition for appellate attorney’s fees. Thereafter, through the court-ordered mediation, the parties had tentatively settled the trial and appellate attorney’s fee award for \$530,000.00 inclusive of all costs, expenses and interest. Pursuant to 28 U.S.C. § 1961, the plaintiffs are entitled to post-judgment interest rates from the date of judgment until payment. The parties would stipulate that interest since judgment until the end of May 2016 would be \$2,830.75.

Based upon the judgment damages award plus interest, and the court-appointed mediation settlement of attorney’s fees, payment by the City of Milwaukee should be made payable to the Jeff Scott Olson law firm trust account for \$968,331.75.

This office has defended this case for more than five and a half years through two rounds of summary judgment briefing, a three-day jury trial, appeal to the Seventh Circuit and petition for rehearing *en banc*. Should the City continue to litigate the attorney’s fee award, attorney’s fees will simply grow. There is not a reasonable likelihood of success for continued appeal of the fee award. Because settlement in

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this matter is deemed appropriate, we recommend a payment in the proposed amount and have enclosed appropriate resolutions for your convenience.

Very truly yours,

GRANT F. LANGLEY  
City Attorney

ADAM B. STEPHENS  
Deputy City Attorney

Enclosures  
229166/1081-2010-2885