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January 10, 2014

The Honorable Common Council
City of Milwaukee
Milwaukee City Hall

Re: Resolution to approve settlement of the City of Milwaukee's claims against Engberg Anderson, Inc., Simpson Gumpertz & Heger Inc., Lexington Insurance Company, Bloom Companies, LLC and Endurance American Specialty Insurance Company in the matter of *City of Milwaukee v. Simpson, Gumpertz & Heger, Inc., et al*, Milwaukee County Circuit Court Case No. 12 CV 004989.

Dear Council Members:

Enclosed is Substitute One to File No. 131295, Resolution to approve settlement of the City of Milwaukee's claims against Engberg Anderson, Inc., Simpson Gumpertz & Heger Inc., Lexington Insurance Company, Bloom Companies, LLC and Endurance American Specialty Insurance Company in the matter of *City of Milwaukee v. Simpson, Gumpertz & Heger, Inc., et al*, Milwaukee County Circuit Court Case No. 12 CV 004989.

As you know from prior resolutions, the City has been in litigation to recover the cost of repairs and other damages due to problems with the terra cotta restoration work which had been completed on the Milwaukee City Hall in 2008. Suit was filed in Milwaukee County Circuit Court on May 12, 2012. On July 2, 2013, the Common Council approved settlement with the general contractor, J. P. Cullen & Sons, Inc. in File No. 130163. That settlement requires J. P. Cullen & Sons to repair and replace distressed terra cotta on the façade for a contract price of \$6,707,000, although the City had independently estimated the cost of repairs at \$14.6 million.

The lawsuit has since continued against Simpson Gumpertz & Heger Inc. (structural engineers), Engberg Anderson, Inc. (the architect of record), and Bloom Companies, LLC (construction oversight engineers). If the proposed settlement with these remaining parties is adopted, the City will receive a total of \$7,995,000 as a full and final settlement,

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and the lawsuit will be dismissed. This total payment of just under \$8 million will pay for the repairs at the reduced contract price, and compensate the City for a substantial portion of its other damages relating to the terra cotta problems that came to light when a piece of a decorative urn fell off City Hall on February 17, 2011.

The value of the total settlement of the litigation is approximately \$15.9 million considering the in kind contribution by J. P. Cullen & Sons, and the cash payment by the engineers and architects. Nothing in the settlements indicate that any of the parties were at fault or are liable for the City's damages. The City Attorney recommends this settlement in order to avoid the expense, delay and uncertainty of continued litigation. A copy of the proposed Settlement Agreement and Release is enclosed.

Very truly yours,

Grant F. Langley,
City Attorney

Miriam R. Horwitz
Assistant City Attorney

MRH/MRH
1081-2012-1217
c: Ghassan Korban, Commissioner of Public Works