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3 From Corporation Counsel, Office of Corporation Counsel, and outside counsel,
4 requesting authorization to settle the claims in *James Kubicek LCSW v. Milwaukee Co.*
5 *Behavioral Health Division and Milwaukee Co. Dept. of Health & Human Services*,
6 Milwaukee County Circuit Court Case No. 16-CV-1031, by recommending adoption of
7 the following:

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9 **A RESOLUTION**

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11 WHEREAS, James Kubicek (Kubicek) was a long-time Deputy Administrator,
12 and occasionally, Acting Administrator of the Milwaukee County (the County) Behavioral
13 Health Division (BHD) of the County's Department of Health and Human Services; and
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15 WHEREAS, in November 2014, Kubicek was offered an executive position at a
16 private employer; and
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18 WHEREAS, Kubicek alleges that he accepted this executive position effective
19 January 9, 2015, only because he had been promised continued County employment
20 that would qualify him for the Rule of 75, an early retirement benefit available to some
21 County employees that permits them to retire with a full pension when the sum of their
22 age and County service credits equals or exceeds 75; and
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24 WHEREAS, to accomplish this, Kubicek exhausted his unused vacation and
25 other paid time off and then he took a position as a pool social worker (which had no
26 regular work schedule or required hours but allowed him to continue as a County
27 employee) until he accumulated sufficient age to qualify for the Rule of 75 benefit in
28 February 2016; and
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30 WHEREAS, effective May 18, 2015, Kubicek was terminated from the pool social
31 worker position without cause or hearing; and
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33 WHEREAS, Kubicek alleged that he had a contractual right to the Rule of 75
34 benefit, that the County's promises to him estopped the County from discharging him,
35 and that he was the victim of a wrongful discharge; and
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37 WHEREAS, Kubicek's claims were tried to a jury in Circuit Court in late July/early
38 August 2018; and
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40 WHEREAS, though Kubicek's contract claim was dismissed by the presiding
41 judge, the jury found in his favor on the estoppel claim and the judge has indicated that
42 it will decide the wrongful discharge claim as a matter of law; and
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44 WHEREAS, the jury's verdict in Kubicek's favor on the estoppel claim would
45 entitle him to Rule of 75 pension benefit payments totaling over \$426,000; and
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47 WHEREAS, there is additional exposure to the County should the judge decide
48 Kubicek's wrongful discharge claim in his favor; and

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50 WHEREAS, negotiations between the parties have resulted in a settlement
51 agreement that provides for a release of all Kubicek's claims and a dismissal of the
52 pending litigation with prejudice in return for a payment from the County to Kubicek in
53 the total amount of \$350,000, and preservation of Kubicek's right to a deferred vested
54 pension benefit when he reaches age 60; and

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56 WHEREAS, outside trial counsel and Corporation Counsel, Office of Corporation
57 Counsel, recommend this settlement; and

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59 WHEREAS, the Committee on Judiciary, Safety, and General Services, at its
60 meeting of November 29, 2018, recommended adoption of File No. 18-906 (vote 5-0);
61 now, therefore,

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63 BE IT RESOLVED, the Milwaukee County Board of Supervisors approves
64 payment in the total amount of \$350,000 from Milwaukee County to James Kubicek
65 (Kubicek), to settle all claims arising out of Kubicek's lawsuit and to ensure dismissal of
66 said lawsuit with prejudice, and no attorney fees or litigation costs to any party.

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70 11/29/18
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