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From Deputy Corporation Counsel, Office of Corporation Counsel, requesting authorization to initiate a lawsuit against the State of Wisconsin Local Government Property Insurance Fund, regarding payment of the remaining balance owed to Milwaukee County in the amount of \$908,673.07, from the July 6, 2013, courthouse fire, by recommending adoption of the following:

**A RESOLUTION**

WHEREAS, Milwaukee County (the County) is the insured under a policy of insurance issued by the State of Wisconsin Local Government Property Insurance Fund (the Fund), policy number 1200030 (the policy) for a policy term effective January 1, 2013, through January 1, 2014; and

WHEREAS, during the applicable policy period, the County sustained damage to, and loss of use of the courthouse, located at 901 North 9<sup>th</sup> Street, in the City of Milwaukee; and

WHEREAS, the County submitted Proofs of Loss in the amount of \$19,115,454.66. for which the Fund indemnified the County in the approximate amount of \$18,314,954.66, without itemizing payments to correspond to claimed items of repair or costs, and without describing what portions of any claims were denied; and

WHEREAS, the Fund itself characterized the loss as covered by the policy and the payments as reasonable and necessary in amounts; and

WHEREAS, the Fund and Lexington Insurance Company (Lexington) were also parties to an insurance agreement, whereby Lexington provided insurance coverage to the Fund, and indemnified the County’s claim in the amount of \$5,000,000; and

WHEREAS, during the applicable policy period, the County was also insured under a Cincinnati Insurance Company (Cincinnati) policy for which the County invoked a Joint Loss Agreement between the County, the Fund, and Cincinnati, requiring that Cincinnati pay \$800,000 of the County’s claim; and

WHEREAS, in December 2014, the Fund initiated legal action that ultimately resided in the Federal Court in the Eastern District of Wisconsin, Case Number 15-CV-142 (the Litigation), and which named the County, Lexington, and Cincinnati as defendants, and sought a declaration that reimbursement and/or coverage payment obligations were owed to the Fund from Lexington and/or Cincinnati but the litigation never asserted a claim against the County; and

WHEREAS, in September 2015, during the litigation, the County filed an updated Statement of Loss with the Fund for the unpaid \$908,673.07 balance; and

47 WHEREAS, the Fund neither denied, paid, nor adjusted that unpaid portion of  
48 the claim; and

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50 WHEREAS, the County sought dismissal from the litigation based on the Fund's  
51 failure to state a claim against it, at which time the Court provided the Fund with an  
52 opportunity to assert such claims before issuing a ruling; and

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54 WHEREAS, the Fund did not amend its pleadings to assert a cause of action  
55 against the County though provided an opportunity to do so and the Court therefore  
56 dismissed the County from the litigation on October 31, 2017, without addressing  
57 whether the Fund waived or reserved the right to later assert such claims against the  
58 County; and

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60 WHEREAS, since November 2017, the Fund has requested additional supporting  
61 materials regarding the County's Proof of Loss for the balance owed of \$908,673.07,  
62 which the County has provided to the Fund; and

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64 WHEREAS, in December 2017, the litigation was dismissed upon resolution of  
65 the insurance dispute between the Fund, Lexington, and Cincinnati; and

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67 WHEREAS, it is the opinion of the Office of Corporation Counsel (OCC), in  
68 consultation with outside counsel, Husch Blackwell, that the Fund's failure to pay the  
69 remaining \$908,673.07 for the courthouse fire warrants legal action for breach of  
70 contract and the duty of good faith and fair dealing; and

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72 WHEREAS, the OCC anticipates the potential costs of litigation to exceed  
73 \$10,000; and

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75 WHEREAS, Section 1.11(c)(4)2(b) of the Milwaukee County Code of General  
76 Ordinances requires approval by the Judiciary, Safety, and General Services (JSGS)  
77 Committee, and the Milwaukee County Board of Supervisors for all lawsuits or claims  
78 initiated by the County with a potential fiscal effect in excess of \$10,000; and

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80 WHEREAS, the Committee on JSGS, at its meeting of July 12, 2018,  
81 recommended adoption of File No. 18-525 (vote 4-0); now, therefore,

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83 BE IT RESOLVED, the Milwaukee County Board of Supervisors hereby  
84 authorizes Corporation Counsel, Office of Corporation Counsel, to initiate legal action  
85 against the Wisconsin Local Government Property Insurance Fund for payment of the  
86 remaining balance owed to Milwaukee County for the damages from the 2013  
87 courthouse fire.

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93 Fund.doc