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3 (ITEM) From the Office of Corporation Counsel, requesting authorization to file
4 an appeal in the Court of Appeals of the Circuit Court decision in Midwest Development
5 Corporation v. Milwaukee County, Case No. 12-CV-11071, in the event that Midwest
6 Development Corporation files its own appeal, by recommending adoption of the
7 following:

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9 **A RESOLUTION**

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11 WHEREAS, Midwest Development Corporation (Midwest) and Milwaukee County
12 (County) entered into a long-term lease in 1983 for the Crystal Ridge property in
13 Franklin, Wisconsin, now known as The Rock, for the purpose of filling the landfill and
14 using it for athletic activities; and

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16 WHEREAS, at the end of the lease, Midwest continued to occupy the property
17 and became a holdover tenant; and

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19 WHEREAS, after the County entered into an agreement in 2012 with Rock
20 Sports Complex, LLC, to take over Crystal Ridge, Midwest filed a lawsuit in Milwaukee
21 County Circuit Court against the County alleging that the County constructively evicted
22 Midwest, and that a buy-back provision in the original lease entitled Midwest to recover
23 a maximum amount of \$4 million from the County for fixtures and improvements
24 allegedly made; and

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26 WHEREAS, the County filed a counterclaim in the same lawsuit alleging that
27 under the lease Midwest was responsible for the cost of erosion damage to the property
28 that occurred during its tenancy in an amount totaling between \$750,000 and
29 \$1,100,000; and

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31 WHEREAS, the Circuit Court ruled that the County did not constructively evict
32 Midwest, that the buy-back provision of the lease is not applicable, and Midwest is not
33 entitled to recover any damages from the County; and

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35 WHEREAS, the Circuit Court ruled that pursuant to the terms of the lease,
36 Midwest is not responsible for the cost of the erosion damages and the County is not
37 entitled to recover any damages from Midwest; and

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39 WHEREAS, the Office of Corporation Counsel believes that there is a good-faith
40 basis upon which to appeal that portion of the Circuit Court decision adverse to the
41 County, but recommends accepting the decision of the Circuit Court, provided Midwest
42 does not appeal; and

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44 WHEREAS, if Midwest pursues an appeal in this matter, the Office of
45 Corporation Counsel seeks the authority to pursue an appeal of the decision granting
46 summary judgment to Midwest on the County's counterclaim; and

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WHEREAS, any appeal would be handled internally in the Office of Corporation Counsel; and

WHEREAS, the Committee on Judiciary, Safety, and General Services, at its meeting of June 11, 2015, recommended adoption of Corporation Counsel's request (vote 7-0); now, therefore,

BE IT RESOLVED, Milwaukee County authorizes the filing of an appeal in the Court of Appeals of the Circuit Court decision in Midwest Development Corporation v. Milwaukee County, Case No. 12-CV-11071, in the event that Midwest Development Corporation files its own appeal.

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