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DATE: March 8, 2019

TO: Milwaukee County Finance & Audit Committee
Legislative Research Director Steve Cady

FROM: Corporation Counsel Margaret C. Daun

SUBJECT: Amendments to Resolution in File Nos. 18-802

On February 1, 2019, a first amendment to File No. 18-802 was submitted to the Milwaukee County Finance & Audit Committee. That amendment did two things: (1) at the suggestion and recommendation of the County Comptroller, it clarified the language proposed in the original file for subsection 3.1(1)(d) to better reflect the Comptroller's understanding of the operational requirements to effect the intent of the legislation's sponsors; and (2) put forward a "savings clause," which is a highly standard term of art that preserves the balance of an agreement or piece of legislation if a court were to invalidate a term thereof (a concept also enshrined in well-known principles of statutory construction). The amendment was adopted by the Finance Committee.

Neither of these changes are material or substantive, and may instead be considered "technical corrections" in the opinion of the OCC. Therefore, these changes do not require reconsideration of the resolution or amendments contained in File No. 18-802 by the Pension Board.

On March 14, 2019, a second amendment to File No. 18-802 will be submitted to the Milwaukee County Finance & Audit Committee. It was reviewed in advance by the Office of Corporation Counsel. This second amendment accomplishes three things: (1) it specified, given a potential adoption date of the ordinance package, the effective dates for various subsections of the amendment package; (2) put into place language requested by the Pension Board for subsection 8.21, which was inadvertently omitted when the February 1 amendments were introduced; and (3) changed the word of "proscribe" (meaning to forbid) to "prescribe" (meaning to require) throughout the amendment package where the use of "proscribe" was clearly in error.

None of these changes are material or substantive, and may instead be considered "technical corrections" in the opinion of the OCC. Therefore, these changes do not require reconsideration of the resolution or amendments contained in File No. 18-802 by either the Pension Study Commission or the Pension Board.

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The Office of Corporation Counsel strengthens the County community and empowers residents through highly competent, creative, compassionate and responsive legal services provided in strategic partnership with County stakeholders to optimize decision making, reduce risks, and maximize public resources.

As to the amendment introduced on March 14, 2019 to section 8.21, this conclusion is supported by the labeling of the change by the Pension Board in its December 11, 2018 letter as a "technical revision." Further, as to the amendment to 8.21, it is the opinion of the OCC that the amendment is entirely stylistic and does nothing to alter the substantive import of new language of 8.21.

Separately, the OCC respectfully offers this explanation of the change from the old 8.21 language to the new language for 8.21 put forward in the resolution in File No. 18-802, regardless of whether the March 14 amendment is adopted or not. (In other words, the below is being provided as additional background and has nothing to do with the above-proffered opinion from the OCC that the March 14 amendment to 8.21 is a technical correction and does not trigger the necessity for a second review by either the PSC or Pension Board.)

The current language in 8.21 states as follows ("Old Section 8.21"):

The secretary of the pension board is delegated the authority to implement all collective bargaining agreements which amend any provision with this ordinance governing the employees' retirement system or which create new benefits or result in different computations for entitlements as such relates to the members of specific collective bargaining unit. All provisions of such collective bargaining agreements as applicable to specific members and relating to the employees' retirement system are hereby incorporated by reference within this ordinance for the purpose of this delegation of authority.

The proposed new language for 8.21 is as follows (assuming the March 14 amendment is adopted) ("New Section 8.21"):

- (1) General Powers - RPS performs general administration of the Employees' Retirement System for the Pension Board. RPS shall report to the pension board at each meeting any material actions taken as reasonably adjudged by RPS under the circumstances in existence at the time of the report.
- (2) Collective Bargaining Agreements - RPS is authorized to implement all collective bargaining agreements which amend any provision within this ordinance governing the Employees' Retirement System or which create new benefits or result in different computations for entitlements as such relates to the members of specific collective bargaining units. All provisions of such collective bargaining agreements as applicable to specific members and relating to the Employees' Retirement System are

hereby incorporated by reference within this ordinance for the purpose of this delegation of authority.

(3) In taking any actions or refraining from taking action, RPS must operate in conformity with the Ordinances and Pension Board Rules.

In the opinion of the OCC, Old Section 8.21 has very little to no legal or operational meaning for three reasons. First, the Pension Board currently last elected its outside counsel to act as Secretary in December of 2007. No further formal delegation of secretarial duties has occurred in twelve years (demonstrating that this does not have a lot of operational meaning). Outside counsel to date has been responsible for attending Pension Board meetings and preparing minutes.

Second and related, at no time is there any record known to the OCC that any secretary performed any duties specifically or uniquely related to collective bargaining agreements (CBAs).

Third, as a matter of practice, RPS, as overseen and supervised by the Pension Board, has a legal obligation to conform its administration of the plan with all applicable laws, regulations, ordinances, rules – and CBAs as they relate to pension benefits.

New Section 8.21 (with or without the March 14 amendment) does not change pension plan administration – it merely clarifies existing legal and operational reality, including the specific clarification of the relationship between the Pension Board and RPS, as well as RPS's responsibility to implement CBAs.

With this as a general understanding, the OCC points out that the change from Old Section 8.21 to New Section 8.21 (with or without the March 14 amendment) also, specifically, does not:

- a. transfer of any power from the Pension Board
- b. change any CBA-specific pension administration
- c. change that the County and Pension Board have the power, respectively, to adopt ordinance changes and Pension Board rules, and to alter any RPS-adopted policy/process/practice as they wish
- d. change that policies, practices and processes drafted and implemented by RPS must be in conformity with Pension Board rules, County ordinances, applicable state statutes and applicable regulations, etc. to be legal and enforceable
- e. change that RPS has no independent authority to operate in any manner that goes beyond statutes, regulations, County ordinances, and Pension Board rules

Additionally, it is beyond a truism or maxim of (either private or public sector) pension fund management to state that the administrative staff of a pension further specify operational policies, procedures, and practices to implement the rules and laws governing and establishing the plan.

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