



## King County

# Budget and Fiscal Management Committee

### STAFF REPORT

<b>Agenda Item:</b>	7	<b>Name:</b>	Amy Tsai, Patrick Hamacher
<b>Proposed No.:</b>	2013-0025	<b>Date:</b>	February 20, 2013

### SUBJECT:

Proposed Ordinance 2013-0025 would approve the class action settlement agreement negotiated between King County and plaintiffs in Dolan v. King County. This is the second hearing.

### SUMMARY:

In January 2006, a class action lawsuit was filed against King County, alleging that King County had a duty to enroll lawyers and staff of the non-profit corporations with whom King County had contracted for public defense services in the Public Employees' Retirement System (PERS). The Washington Supreme Court ruled in January 2012 that the non-profits were "arms and agencies" of King County, making their employees King County employees for purposes of PERS enrollment.

With the matter of relief for the lawsuit still outstanding, the parties negotiated a proposed settlement agreement. The settlement requires Council approval. If the Council approves the settlement, judicial approval would be the next step. If the court approves the settlement and it becomes effective, the lawsuit would be dismissed.

This staff report summarizes the terms of the proposed settlement agreement and the settlement process that was presented in the first briefing on Feb. 5. It also contains a high-level summary analyzing the costs and benefits of the settlement terms, and a brief discussion of the AG letter that expressed concerns about the settlement. Executive session will likely be required to respond to Councilmember questions.

### BACKGROUND:

On Feb. 5, the Budget and Fiscal Management Committee was briefed by staff on the case timeline for Dolan and the contents of the settlement agreement. The staff report from the Feb. 5 briefing is attached as Attachment 5 for reference. **This background section summarizes some of the main points raised in the previous staff report. New analysis is contained in the analysis section.**

King County has historically contracted with private, non-profit entities for the provision of public defense services. As employees of independent contractors, the public defense attorneys and staff have not received County benefits, nor have they been enrolled for participation in PERS.

In January 2006, a class action lawsuit was brought in Pierce County Superior Court against King County, alleging that the County exerted so much control over the defender agencies that their staff effectively were county employees who should be eligible for the Public Employees' Retirement System (PERS). In January 2012, Supreme Court ruled that the non-profits had become "arms and agencies" of King County, making the employees of those non-profits employees of King County for purposes of PERS enrollment.

After the Supreme Court remanded the case, the parties engaged in extensive settlement negotiations. The parties reached agreement on a proposed settlement in December 2012. The settlement is subject to Council approval. If the Council approves the settlement, it will then be submitted to the trial court judge in Pierce County (Judge John Hickman) who issued the original decision for judicial approval as required by court rules.

The settlement agreement is attached to the proposed ordinance and was discussed in greater detail on Feb. 5. An overview is as follows:

- The County would pay **\$31 million** in retroactive PERS contributions, both the employer and employee portion, not including interest.
- The class would **waive claims** for other benefits (vacation, medical, etc.) for that time period.
- Plaintiffs' counsel would seek **attorney fees** of \$12 million, to be paid out of the "common fund" created by the settlement, with class members repaying the amount through deductions from their future retirement benefit payments.
- Public defense employees would become **county employees with full benefits for their positions** on July 1, 2013, the day after current contracts with the non-profits expire.
- The settlement terms state that how King County structures public defense delivery in the future is up to King County and is not part of the settlement.

In January, 2013, the Washington State Attorney General (AG), on behalf of DRS, sent the parties a letter identifying concerns about the settlement terms. Specifically, the AG is objecting to the method by which class counsel's fees are funded, the provision that no interest will be paid on the retroactive PERS contributions and the administrative burdens the settlement might pose for DRS (see letter, Attachment 2).

## ANALYSIS

### **Analysis of Settlement Timelines**

The settlement process was discussed on Feb. 5. The steps include the following:

- Council approval

- Preliminary judicial approval
- Notice of settlement
- Opportunity to object
- Attorney responses to objections
- Final settlement hearing
- Judge decision on objections, whether to approve the settlement, and attorney fees
- 30-day opportunity to appeal
- Settlement becomes effective if no appeal

If the Council approves the settlement agreement, it would take roughly 3 months to get to a final settlement hearing (2.5 months of built-in process timelines plus the need to schedule the final settlement hearing date). The appeal period would begin to run *after* the Judge enters an order on the request for final approval; how much time the Judge will need to make that decision is not known. With the 30-day opportunity to appeal, it is estimated that the earliest the settlement could become effective is roughly 4 months from Council approval.

Three hypothetical timelines if the proposed ordinance were to pass out of committee are presented below to provide some perspective on the timeline for approval. **These are provided for illustrative purposes only.**

**Table 1. Hypothetical Settlement Timelines**

Scenario 1	Scenario 2	Scenario 3	Time interval	Action
Feb. 20	Mar. 5	Mar. 19		Committee action
Feb. 25	Mar. 11	Mar. 25	6 days	Council action if expedited and no courtesy delay
Mar. 7	Mar. 21	Apr. 4	10 days	PO 2013-0025 effective if immediate Executive signature
Mar. 21	Apr. 4	Apr. 18	~2 wks	Preliminary judicial approval
Apr. 4	Apr. 18	May 2	~2 wks	Notice of settlement
May 2	May 16	May 30	~4-6 wks	Opportunity to object
May 16	May 30	Jun 13	~2 wks	Attorney response
May 30	Jun 13	Jun 27	~2-3 wks	Final approval order
-----July 1-----				<b>Employee recognition date</b>
July 1	July 12	July 29	30 days	Settlement effective if no appeal

*Reorganization Timeline*

The Settlement Agreement provides that on July 1, 2013 (the "recognition date"), the Class Members who were employed by the King County public defense agencies immediately before that date shall be recognized as employees of King County with full benefits for their positions. This recognition provision was viewed as a necessary term to reach agreement on the settlement. In addition, it has the effect of cutting off future accrual of potential claims for County benefits by current public defense employees.

In general, the Settlement Agreement becomes effective only if and when (1) the trial court enters an order approving the settlement after notice and an opportunity for the class members to object to the settlement and (2) that order becomes final and non-appealable. The Settlement Agreement creates an exception in that King County agrees to implement the employee recognition on July 1 even if there is a delay of the Effective Date due to an appeal or reconsideration proceeding initiated by a Class Member or DRS.

The July 1 recognition date raises several timing issues. First, if the Council approves the settlement and the Judge chooses to enter a final approval order, ideally the final approval order should occur prior to the county's duty to implement the recognition provision on July 1. Under all of the hypothetical timelines above, the final approval order could occur prior to July 1.

The second timing issue relates to the period between entry of a final judicial approval order and the Effective Date after all appeals or reconsideration proceedings, if any, have run their course. Obtaining early Council and judicial approval of the Settlement Agreement would reduce the likelihood of the employee recognition date of July 1 occurring during this window, before the settlement is fully effective. If the final approval order is entered on or before May 31, 2013, the appeal period would expire before the July 1 deadline for recognizing employees. If there were no appeal in that period, then the county would know prior to the July 1 recognition that the settlement agreement will be effective. If an appeal were filed, the County would not know whether the settlement is going to become effective until after the appeal is resolved, which would not happen before July 1. Note that although Scenario 1 in the table above (which assumes a Feb. 20 committee action date) shows a hypothetical timeline where the final judicial approval could be entered prior to May 31, many of the time factors are approximate and out of the county's control.

The third timing issue is the practical effect of complying with the July 1 recognition date deadline. Ideally, prior to recognizing Class Members as county employees, the county would want to have a public defense model that outlines the structure under which the Class Members would be brought on board. The Executive transmitted his proposal for a new public defense model on Feb. 15, 2013. Council staff have begun analyzing the Executive's proposal. The legislative process and infrastructure requirements to implement the model will add to the time pressures of meeting a July 1 goal.

### **Analysis of Settlement Terms**

The analysis below identifies costs and benefits of the terms of the proposed settlement agreement, if the agreement were to become effective. **Additional information on costs and benefits will be available in Executive Session.**

#### *Costs*

- Retroactive PERS contributions - Under the terms of the settlement agreement, King County would pay an estimated \$30.3M in retroactive PERS contributions,

both the employer and employee portion, not including interest. This includes \$17.9M in employer contributions and \$12.4M in employee contributions for the class period of 1978 to 2012.

- Full benefits after July 1 - After July 1, there would be the net cost of providing full county-level benefits to those class members who are recognized as County employees compared to the status quo.

### *Benefits*

- Release of past claims for other benefits - The County would receive a release of all class member claims for all other County employee benefits for the same period for which retroactive PERS contributions are made and up through the Effective Date of the Settlement.
- End of litigation costs and resource consumption - There would be a termination of class action litigation regarding PERS benefits and avoidance of future litigation costs and additional potential recoveries relating to PERS benefits and County benefits. Effecting the settlement also ends the expenditure of County time and resources on managing and responding to issues arising in the litigation.
- Attorney fees known and paid out of common fund - There would be certainty and resolution of the County's exposure regarding liability and attorney fees owed to Class Counsel, with those fees (\$12M) being paid out of settlement common fund and not increasing the amount to be paid by the County.
- No interest - The County would not have to pay interest on the back pension payments.
  - Note: DRS via the AG letter has raised a claim that it is entitled to collect interest on the past PERS contributions. The County's obligation to complete the settlement is conditioned on it not having to pay interest on those contributions and it can terminate the settlement if the payment of interest is required. If the settlement is terminated because interest will be required to be paid on those contributions, the parties will return to litigating the case.

### **AG Letter**

In January, 2013, the Washington State Attorney General (AG), on behalf of DRS, sent the parties a letter identifying concerns about the settlement terms. **Any discussion of the county's legal analysis of the letter should be conducted in executive session.**

The concerns stated by the AG include:

- The lack of interest on the retroactive PERS contributions.

- The mechanism by which plaintiffs' counsel's attorney fees would be paid and whether that payment gives rise to tax qualification issues for the PERS program or potential increased employer contributions statewide.
- The administrative burden on DRS of collecting the reimbursement of the attorney fees from future retirement benefit payments and the risk that DRS may not receive full repayment.

**REASONABLENESS:**

On balance, the available financial data suggest that the costs to the county from the proposed settlement terms are reasonable on their face when weighed against the benefits.

**INVITED:**

- Dwight Dively, Director, Office of Performance, Strategy and Budget (PSB)
- Tim Filer, Attorney, Foster Pepper PLLC (outside counsel on *Dolan* litigation)
- Sheryl Willert, Attorney, Williams, Kastner and Gibbs (Special Deputy Prosecuting Attorney for public defense legal advice)
- Kevin Wright, Senior Deputy Prosecuting Attorney, King County

**ATTACHMENTS:**

1. Proposed Ordinance 2013-0025 and attached settlement agreement
2. Letter from Attorney General, dated Jan. 7, 2013
3. Transmittal Letter, dated Jan. 8, 2013
4. Fiscal Note
5. 2013-0025 Staff report from Feb. 5, 2013



**KING COUNTY**  
**Signature Report**

**Attachment 1**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**January 10, 2013**

**Ordinance**

**Proposed No. 2013-0025.1**

**Sponsors Gossett**

1 AN ORDINANCE relating to the class action settlement  
2 agreement negotiated by and between King County and  
3 plaintiffs in Dolan v. King County; approving and adopting  
4 the agreement and directing the executive to implement the  
5 terms of the agreement.

6 BE IT ORDAINED BY THE COUNTY COUNCIL OF KING COUNTY:

7 SECTION 1. The class action settlement agreement negotiated by and between  
8 King County and the plaintiffs in Dolan v. King County, Pierce County Superior Court  
9 Cause No. 06-2-04611-6, attached hereto and by this reference made a part hereof, is  
10 hereby approved and adopted. Litigation counsel for King County is authorized to sign  
11 the settlement agreement on behalf of King County.

12 SECTION 2. Upon final approval of the class action settlement agreement by the

- 13 Pierce county superior court, the executive is directed to implement the terms of the
- 14 settlement agreement.
- 15

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

ATTEST:

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Larry Gossett, Chair

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Anne Noris, Clerk of the Council

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Dow Constantine, County Executive

**Attachments:** A. Dolan Settlement Agreement NO. 06-2-04611-6





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1  
2           **I. INTRODUCTION AND SUMMARY OF PROCEEDINGS**

3           1.       This Settlement Agreement is made under Civil Rule 23(e) to settle the class  
4 action of *Dolan v. King County*, Pierce Co. No. 06-2-04611-6. The proceedings leading up to  
5 this settlement are summarized below.

6           2.       In January 2006, Kevin Dolan filed this class action lawsuit against King County  
7 on behalf of the lawyers and the staff of the King County public defense agencies. (The class is  
8 defined in ¶ 51.) Dolan alleged that King County breached its duty to enroll the lawyers and  
9 staff of the King County public defense agencies in the Public Employees' Retirement System  
10 (PERS) and that King County failed to pay required PERS contributions to the Department of  
11 Retirement Systems (DRS).

12           3.       In March 2006, King County filed its Answer, which denied liability and denied  
13 that Plaintiffs were due any relief. King County asserted, among other things, that it had no  
14 obligation to enroll the lawyers and staff of the King County public defense agencies in PERS  
15 or to make contributions to PERS on their behalf because the lawyers and staff of the King  
16 County public defense agencies were not employees of King County and were instead  
17 employees of those non-profit corporations that provided public defense services as  
18 independent contractors to King County.

19           4.       In July 2006, the parties agreed on, and Superior Court Judge John R. Hickman  
20 signed, an order revising the case schedule reflecting the parties' agreement that the case would  
21 be addressed in three phases (1) class certification, (2) liability, and (3) if necessary, relief.

22           5.       In August 2006, King County amended its Answer to add a counterclaim, which  
23 sought reimbursement from the Plaintiff and the members of the Class for monetary  
24 contributions that King County might have to pay to PERS on their behalf due to the litigation.

25           6.       In August 2006, plaintiffs filed a motion to certify the class. King County did  
26 not oppose certification of the class. In September 2006 the Court certified a class defined as:  
27

1 All W-2 employees of the King County public defender agencies and any  
2 former or predecessor King County public defender agencies who work or  
3 have worked for one of the King County public defender agencies within three  
4 years of the filing of this lawsuit.

5 7. The August 2006 order expressly reserved for future briefing and argument  
6 certain issues pertaining to class certification. One of the reserved issues was whether the class  
7 should include individuals who had not worked at a public defense agency within three years  
8 prior to the filing of the lawsuit, but who had worked in a PERS-eligible job in that period. The  
9 parties called this group of individuals the "Reserved Group," defined as:

10 All W-2 employees of the King County public defender agencies and any  
11 former or predecessor King County public defender agencies who have not  
12 worked for one of the King County public defender agencies within three years  
13 of the filing of this lawsuit but who work or have worked in a PERS-eligible  
14 position within three years of the filing of this lawsuit.

15 8. In September 2006, plaintiffs filed a motion to dismiss King County's  
16 counterclaim, which King County opposed.

17 9. In October 2006, the Court granted in part and denied in part (without prejudice)  
18 plaintiffs' motion to dismiss the counterclaim.

19 10. In November 2006, plaintiffs filed their answer to King County's counterclaim.

20 11. In December 2006 and January 2007, the parties filed motions regarding class  
21 certification and the statute of limitations. King County filed a motion requesting that any class  
22 certification be under CR 23(b)(3), with Class Members having a right to opt out of the  
23 litigation. Plaintiffs filed a motion to certify the class under CR 23(b)(1) and/or (b)(2) without  
24 opt outs.

25 12. In December 2006, King County filed a motion for partial summary judgment  
26 on the statute of limitations. King County sought a ruling that even if plaintiffs' claim were  
27 successful, the statute of limitations would limit their claim to three years from the date of  
filing the complaint. The complaint was filed on January 24, 2006 and thus under King  
County's motion the class could not obtain relief for service in any time period before

1 January 24, 2003. Plaintiffs opposed King County's motion, arguing that the statute of  
2 limitations does not begin to run until a Class Member's retirement.

3 13. In February 2007, the Court issued a letter decision, which denied King  
4 County's motion on the statute of limitations. The Court said it was premature to decide the  
5 issue at that point and reserved ruling on the statute of limitations until after liability was  
6 decided.

7 14. In the Court's February 2007 letter decision, the Court denied King County's  
8 request to certify the class under CR 23(b)(3) with opt-outs. The Court said it would certify the  
9 class under CR 23(b)(1) and (b)(2) without pre-liability notice to the class and it would reserve  
10 the issue of notification pending a decision on liability.

11 15. In May 2007, the parties agreed on, and the Court issued, an order revising the  
12 case schedule. Under the revised case schedule the parties agreed to resolve whether the  
13 "Reserved Group" should be part of the class after liability was decided. The parties also  
14 agreed to a case schedule for resolving liability. The parties agreed to file dispositive motions  
15 on liability in February 2008, and this date was later moved by agreement to May 2008.

16 16. After the Court entered the order revising the case schedule, the parties engaged  
17 in extensive investigation and discovery concerning the issues relating to liability. In response  
18 to plaintiffs' written discovery, King County provided plaintiffs more than 60,000 pages of  
19 documents concerning the public defense agencies, which was in addition to the more than  
20 10,000 pages King County has provided plaintiffs in response to public record requests.

21 17. King County submitted written discovery to plaintiff Kevin Dolan and took  
22 numerous depositions. The individuals deposed included Kevin Dolan, David Chapman, Bob  
23 Boruchowitz, Anne Daly, Eileen Farley, Floris Mikkelson, Jeff Robinson, Tom Schwanz,  
24 Bruce Erickson, Rachel Levy, and Terry Howard. King County also sought records from the  
25 public defense agencies.

26 18. In June 2008, the parties filed cross-motions for summary judgment on liability.  
27 The parties' motions were supported by evidence in the form of deposition testimony,

1 declarations, and exhibits. There were about 6,000 pages of testimony and exhibits. The  
2 County submitted about 1,400 pages of deposition testimony from 11 witnesses and  
3 declarations from seven witnesses. Those depositions and declarations incorporated about  
4 2,700 pages of exhibits. Plaintiffs submitted lengthy declarations from numerous witnesses  
5 with nearly 2,000 pages of exhibits.

6 19. In July 2008, after oral argument, the Court issued its written decision on the  
7 parties' cross-motions for summary judgment on liability. The Court said that there were  
8 material issues of fact for a jury to decide and it therefore denied the motions.

9 20. In August 2008, the parties moved for reconsideration of the Court's order  
10 denying summary judgment or, in the alternative, for a trial before the Court on the summary  
11 judgment record.

12 21. The Court denied the parties' motions for reconsideration, but agreed to conduct  
13 a trial on the written summary judgment record. The Court ordered that the matter would be  
14 tried without a jury, and the parties had one month to submit witness and exhibit lists, and to  
15 prioritize the evidence on which they relied.

16 22. In September and October 2008, the parties submitted witness lists and  
17 additional briefs concerning the evidence.

18 23. In November 2008, the trial on the record occurred on two days. The parties  
19 made opening and closing arguments concerning the evidence and law.

20 24. In February 2009, after the trial and the Court's review of the extensive  
21 stipulated written record, the Court issued a 24-page written decision in plaintiffs' favor.

22 25. In March 2009, plaintiffs filed a motion for entry of findings of fact, conclusions  
23 of law, and a permanent injunction requiring King County to enroll the Class Members in  
24 PERS. King County opposed plaintiffs' motion.

25 26. In March 2009, King County filed a notice for discretionary review to the  
26 Supreme Court. King County also filed a motion for entry of judgment, certification of the  
27 issues for appeal, and a stay pending appeal.

1           27.     In April 2009, the Court entered a permanent injunction requiring King County  
2 to enroll then employed Class Members and future employed Class Members in PERS.

3           28.     In April 2009, the Court certified its decision on liability for appeal under Rule  
4 of Appellate Procedure 2.3(b)(4) because the matter involved a controlling issue of law as to  
5 which there was substantial ground for a difference of opinion and the Court stayed its  
6 permanent injunction pending the resolution of any appellate proceedings.

7           29.     The Court did not sign plaintiffs' initial proposed findings of fact and  
8 conclusions of law, asking plaintiffs to prepare a shorter set of findings. In May 2009 plaintiffs  
9 submitted a second set of proposed findings and conclusions, which the County again opposed.

10          30.     In May 2009, King County submitted its own proposed findings and  
11 conclusions, which plaintiffs opposed.

12          31.     In May 2009, King County filed a motion for discretionary review in the  
13 Washington State Supreme Court.

14          32.     In June 2009, the Court adopted plaintiffs' proposed findings of fact and  
15 conclusions of law with changes.

16          33.     In June 2009, the Washington State Attorney General office filed an *amicus*  
17 *curiae* memorandum in support of King County's motion for discretionary review.

18          34.     In June 2009, Plaintiffs filed their Answer to King County's motion for  
19 discretionary review in the Supreme Court. Plaintiffs also responded to the Attorney General's  
20 *amicus curiae* memorandum.

21          35.     In June 2009, the Supreme Court granted discretionary review of the Court's  
22 decision on liability.

23          36.     In 2009 and 2010, the parties both filed briefs and various motions in the  
24 Supreme Court.

25          37.     The Washington State Attorney General filed an *amicus curiae* brief on the  
26 merits in support of King County and against the plaintiffs. The plaintiffs filed an Answer to  
27 the Attorney General's brief and objected to King County's Answer to the brief.



1           38.     In August 2011, the Washington Supreme Court issued its decision affirming the  
2 Court's decision on liability. The Supreme Court's decision was 5 to 4.

3           39.     In September 2011, King County filed a motion for reconsideration of the  
4 Supreme Court's decision.

5           40.     In September 2011, the Supreme Court granted motions by various entities to  
6 file *amicus curiae* memoranda in support of King County's motion for reconsideration. The  
7 *amici* who supported reconsideration were the State of Washington, the Washington State  
8 Legislature, the Washington State Association of Counties, the Washington State Association  
9 of County Officials, and the Association of Washington Cities, and the Washington State  
10 Association of Municipal Attorneys.

11           41.     In October 2011, the Supreme Court issued an order requesting that plaintiffs  
12 file an answer to King County's motion for reconsideration and plaintiffs filed the answer in  
13 November 2011.

14           42.     In January 2012, the Supreme Court issued an order changing the opinion by  
15 making a few minor corrections, and it denied further reconsideration. The Supreme Court  
16 issued its mandate in February 2012.

17           43.     After the Supreme Court issued its mandate in February 2012, plaintiffs learned  
18 of potential legislation that could possibly negate the Supreme Court's decision. Plaintiffs  
19 hired a lobbyist and engaged in lobbying in Olympia, Washington to protect the class.  
20 Plaintiffs successfully obtained express language in the bill exempting the Dolan case from  
21 whatever effect the legislation might otherwise have on their pension rights. In April 2012, the  
22 parties signed a stipulation that the legislation would not be used as a defense in this action, and  
23 the Court approved the stipulation and made it a court order.

24           44.     After the Supreme Court issued its mandate in February 2012, plaintiffs filed a  
25 motion to enforce the mandate. King County opposed the motion.

26           45.     In March 2012, the Court entered an order modifying the permanent injunction.  
27 The Court's order required King County to commence enrolling current King County public

1 defense employees in PERS and to start making PERS contributions on their behalf. King  
2 County timely complied with, and continues to be in compliance with, that order.

3 46. In April 2012, the Court entered an order that plaintiff Class Members may not  
4 opt out of the relief phase of this action or mandatory enrollment in PERS because, among  
5 other reasons, PERS is a mandatory retirement system and all eligible employees must be  
6 enrolled.

7 47. In June 2012, the Court entered an order making the "Reserved Group" part of  
8 the class.

9 48. After the Supreme Court's remand, the parties have engaged in extensive  
10 settlement negotiations. The parties recognize that to further continue the *Dolan* litigation  
11 would delay its resolution for a considerable time (possibly for years due to possible appeals of  
12 rulings in the relief phase), would create additional burdens and costs for the parties, and would  
13 present uncertainties and risks for all parties as to the ultimate outcome. To avoid uncertainty,  
14 risks, delays, expenses, and burdens of further litigation, the parties agreed to this Settlement  
15 Agreement.

## 16 II. DEFINITIONS

17 The following general definitions apply in this Settlement Agreement:

18 49. "Action" means *Dolan v. King County*, Pierce County Superior Court Case No.  
19 06-2-04611-6, and all related appellate proceedings.

20 50. "Active PERS member." An active PERS member is an individual who is  
21 employed in a PERS eligible job and is currently enrolled in PERS.

22 51. "Class." The Class is:

23 All W-2 employees of the King County public defense agencies and any  
24 former or predecessor King County public defense agencies who work or  
25 who have worked for one of the King County public defense agencies  
within three years of the filing of this lawsuit;

26 and

1 All W-2 employees of the King County public defense agencies and any  
2 former or predecessor King County public defense agencies who have not  
3 worked for one of the King County public defense agencies within three  
4 years of the filing of this lawsuit, but who work or have worked in a  
5 PERS-eligible position within three years of the filing of this lawsuit.

6 The Class does not include W-2 King County public defense employees who were never in a  
7 PERS eligible position, e.g, student interns.

8 For purposes of relief, the Class consists of five groups as defined below:

9 “Group one.” Group one consists of those Class Members who were King County  
10 public defense employees as of April 1, 2012 or at any time thereafter until the Recognition  
11 Date (defined below in ¶73).

12 “Group two.” Group two consists of Class Members who were King County public  
13 defense employees at any time during the Class Period (defined below in ¶54), but were not  
14 currently employed as King County public defense employees on April 1, 2012 or thereafter  
15 until the Recognition Date and who have sixty or more months of service as a King County  
16 public defense employee.

17 “Group three.” Group three consists of Class Members who before the Class Period  
18 were former King County public defense employees and who were active members of PERS  
19 sometime during the Class Period. This is the group formerly referred to as the “Reserved  
20 Group.”

21 “Group four.” Group four consists of Class Members who were King County public  
22 defense employees at any time during the Class Period, but were not currently employed as  
23 King County public defense employees as of April 1, 2012 and were an active PERS member  
24 as of April 1, 2012, and whose PERS service at a King County public defense agency totaled  
25 less than sixty months, but when combined with PERS service credit earned in another PERS-  
26 eligible position is equal to or greater than sixty months.

27 “Group five.” Group five consists of Class Members who are not in Groups 1-4. Group  
five are Class Members who are former King County public defense employees as of April 1,

1 2012, who are not active members of PERS as of April 1, 2012, and whose PERS service as a  
2 King County public defense employee totaled less than 60 months. Group five Class Members  
3 include those who are inactive PERS members or former PERS members who withdrew their  
4 contributions, and those who were never enrolled in PERS.

5 52. "Class Counsel" is the law firm of Bendich, Stobaugh & Strong, P.C., and the  
6 firm's attorneys.

7 53. "Class Member" is a member of the Class.

8 54. "Class Period." The lawsuit was filed on January 24, 2006 and accordingly the  
9 period covered by the class definition is January 24, 2003 to the Recognition Date, July 1,  
10 2013. This time period is "the Class Period."

11 55. "Class Released Claims" means the claims described in ¶2 and ¶87 of this  
12 Agreement and released by Plaintiff and the Class Members pursuant to ¶97 and ¶99 of this  
13 Agreement.

14 56. "Common Fund" is the Present Value of the PERS pension benefits conferred  
15 upon Class Members as a result of Class Counsel's efforts.

16 57. "Common Fund Fee" is the attorney fee and costs that Class Counsel seek to  
17 obtain from the Class under this Agreement and the Common Fund doctrine from the Common  
18 Fund created by Class Counsel's efforts. The Common Fund Fee is the sole compensation that  
19 will be received by Class Counsel in this Action.

20 58. "Deduction Percentage" is the percent of each Class Member's future retirement  
21 benefits that will be deducted by DRS to repay DRS or the PERS Fund for advance of the  
22 Common Fund Fee paid by the Class Members as provided in the *Bowles v. Dept of Retirement*  
23 *Systems*, 121 Wn.2d 52, 69, 73 - 74 (1993). The Class Member may elect to pay DRS directly,  
24 ¶138, and the Deduction Percentage would not apply to those Class Members.

25 59. "DRS" is the Department of Retirement Systems, an agency of the State of  
26 Washington, that administers PERS. DRS has standing to be heard on (1) the PERS  
27 contributions that should have been made or picked up by King County will be made without

1 interest, and (2) repayment by Class Members of the advance of the Common Fund Fee as  
2 provided in ¶¶ 69, 106, 124, 130, 135-139 of the Agreement, including the adequacy of the  
3 reimbursement procedure for the fee advance, but it does not include the amount of the fee to  
4 be advanced

5 60. "Effective Date." Effective Date means the date on which the Court's Final  
6 Approval Order becomes final, which shall occur on the later of the following: (a) if no appeal  
7 or other reconsideration or review of the Final Approval Order is sought by any person or  
8 entity, the Effective Date shall be the thirty-first (31<sup>st</sup>) day after the Final Approval Order is  
9 entered by the Court, or (b) if a motion for reconsideration, an appeal, a motion for  
10 discretionary review, review by writ of certiorari, or any other form of review or  
11 reconsideration of the Final Approval Order is filed by any person or entity, the Effective Date  
12 shall be the day after (i) the Final Approval Order is affirmed or the appeal or other action  
13 seeking review of that order is dismissed or denied, and (ii) the Final Approval Order is no  
14 longer subject to further judicial review.

15 61. "Final Approval Order." The Final Approval Order is the Court's order that  
16 approves the Settlement Agreement after the final settlement hearing.

17 62. "Former PERS member" is a person who was employed in a PERS-eligible  
18 position and was a member of PERS, but withdrew PERS contributions when he or she no  
19 longer worked in a PERS eligible job.

20 63. "Inactive PERS member" is an individual who no longer is employed in a  
21 PERS-eligible position, but who is not yet retired and has not withdrawn any PERS  
22 contributions.

23 64. "Judicial Benefit Multiplier Program." The Judicial Benefit Multiplier Program  
24 is set forth in RCW 41.40.124 and .126. Under the program, Judges who are in PERS 1 or  
25 PERS 2 may for each year of service receive as their pension 3.5% of their average final salary  
26 up to a maximum of 75% of that salary, rather than the 2% of the average final salary that is  
27 provided under PERS 1 and PERS 2 for each year of service.

1           65.     “King County public defense agencies.” There are four current King County  
2 public defense agencies: The Defender Association (TDA); Associated Counsel for the  
3 Accused (ACA); Society of Counsel Representing Accused Persons (SCRAP); and Northwest  
4 Defender’s Association (NDA). There is one former King County public defense agency,  
5 Eastside Defender Association (EDA). Collectively these agencies are referred to as the “King  
6 County public defense agencies.”

7           66.     “King County public defense employees.” The County public defense  
8 employees are or were the lawyers and staff of the King County public defense agencies up to  
9 the Recognition Date. The Class Members are King County public defense employees.

10          67.     “King County Released Claim” means the claims described in ¶¶5 and ¶88 of this  
11 Agreement and released by King County pursuant to ¶98 and ¶99 of this Agreement.

12          68.     “PERS.” PERS is the Public Employees Retirement System. There are three  
13 PERS plans, PERS 1, PERS 2 and PERS 3.

14          69.     “PERS contributions” or “contributions.” PERS contributions or contributions  
15 means the amount that King County is to pay to DRS to establish the retroactive service credit  
16 in PERS on behalf of the Class Members as afforded under this Settlement Agreement. The  
17 contributions include those from King County as Employer Contributions and the Employee  
18 Contributions, *i.e.* the amounts that would have been deducted from Class Member’s salaries.  
19 The PERS contributions to be paid by King County do not include interest. The PERS  
20 contributions and the Plaintiff Award are the only amounts King County will be required to pay  
21 as consideration for this Settlement Agreement but King County may be required to advance  
22 the Common Fund Fee as provided in ¶¶ 124, 132, 135.

23          70.     “PERS pension benefit.” The PERS pension benefit is the Class Member’s  
24 annual and/or monthly PERS retirement payments attributable to the retroactive PERS-eligible  
25 service credit that is the subject of this Settlement Agreement. The PERS pension benefit is  
26 based on the statutory formula applicable to the plan in which the Class Member receives the  
27 retroactive PERS-eligible service credit – in general, years of service times 2% for PERS 1 and

1 2, and 1% for PERS 3 – times average final compensation equals the annual pension benefit  
2 which is divided by twelve to determine the monthly amount. The average final amount  
3 compensation is based on the highest 60 consecutive months of pay before retirement for  
4 PERS 2 and 3 and the highest two consecutive years before retirement for PERS 1. The years of  
5 service are capped at 30 years for PERS 1 and are not capped for PERS 2 and 3.

6 71. “Present Value.” Present Value means the value of the PERS pension benefits  
7 conferred upon Class Members due to Class Counsel’s efforts as set forth in this Settlement  
8 Agreement. Present Value is determined under the Present Value Calculation defined below.

9 72. “Present Value Calculation.” The Present Value Calculation is used solely in  
10 connection with the calculation and payment of the Common Fund Fee and is based on the  
11 retroactive PERS-eligible service credit that Class Members receive under the action and the  
12 Settlement Agreement. The Present Value Calculation does not include prior PERS service  
13 that Class Members may have nor does it include PERS service credit that Class Members  
14 accrue after April 1, 2012 when the Court ordered King County to begin enrolling currently  
15 employed Class Members in PERS and to make the required PERS contributions. For each  
16 Class Member, the Present Value Calculation determines the present value of the Class  
17 Member’s PERS pension based on the retroactive PERS-eligible service attained in this case.  
18 The sum of these individual Present Value Calculations equals the Present Value of the PERS  
19 benefits for the Class. The Present Value Calculation includes standard present value  
20 assumptions:

- 21 (1) Discount rate 5.50%;
- 22 (2) Cost of living increase – (COLA) for PERS Benefits (3% for PERS 2 and 3; and  
23 no COLA for PERS 1);
- 24 (3) Annual Salary increase, 4% for those still employed in PERS positions and  
25 zero% for those employees no longer employed in PERS positions;
- 26 (4) Retirement Age, 65 (except those over sixty-five are assumed to retire on the  
27 analysis date April 1, 2013);

1 (5) Mortality Assumptions at age 65 – 20.45 years for a male and 23.02 years for a  
2 female (mortality assumptions for those over 65 are less based on their age and  
3 sex).

4 (6) Analysis Date: April 1, 2013.

5 73. “Recognition Date.” The Recognition Date is July 1, 2013. The current  
6 contracts for public defense services between King County and the King County public defense  
7 agencies are currently set to expire on June 30, 2013. That expiration date is subject to  
8 extension by agreement, but if the contracts are extended that will not change the Recognition  
9 Date.

10 74. “Retroactive PERS-eligible service.” Under this Settlement Agreement, unless  
11 otherwise specified, the Class Members are eligible to receive retroactive PERS service credit  
12 for work as a King County public defense employee during the period January 1, 1978 to  
13 March 31, 2012. Class Members who (a) are now enrolled in PERS 1, (b) who are or were  
14 employed in a PERS-eligible position during the Class Period, and (c) who have not yet  
15 attained thirty years of PERS-eligible service, are entitled to retroactive PERS-eligible service  
16 credit for service at the King County public defense agencies before 1978, but only to the  
17 extent that service or a portion of the service does not cause their total PERS service credit to  
18 exceed the thirty-year maximum service credit for PERS 1.

19 75. “Settlement Agreement” or “Agreement” is the agreement that the parties have  
20 entered into to settle this case. The Agreement is effective when it is approved by the Court  
21 and the Effective Date occurs.

### 22 III. RETIREMENT PROVISIONS

23 76. As specified in this Agreement, Class Members (other than those in Group five)  
24 are eligible for PERS contributions based on retroactive PERS-eligible service.

25 77. In calculating the Class Members’ retroactive PERS-eligible service, the parties  
26 used the Class Member’s initial hire date with one of the King County public defense agencies,  
27 with three exceptions that apply to a few Class Members. The exceptions are: (1) for Class



1 Members hired by one of the public defense agencies before January 1, 1978, their retroactive  
2 PERS-eligible service under this agreement shall only begin on January 1, 1978; (2) for those  
3 Class Members initially hired in a position that is not PERS-eligible (*e.g.*, student intern), their  
4 eligible service begins when they start working in a PERS-eligible position (*e.g.*, lawyer);  
5 (3) for those Class Members already enrolled or previously enrolled in PERS 1, 2 or 3, their  
6 PERS eligible service commencement date (see ¶78 below), will be their prior enrollment date,  
7 but they will earn retroactive monthly service for their work as a King County public defense  
8 employee starting with their initial hire with one of the public defense agencies, unless the  
9 service is within exceptions 1 or 2 stated above, in which case the provisions of those  
10 exceptions applies, or unless they are within the provision of ¶74 concerning PERS 1 members  
11 with less than 30 years of PERS service.

12       78. Class Members shall receive service credit in PERS 2 unless they are already  
13 enrolled or were previously enrolled in PERS 1 or PERS 3, in which case they will earn service  
14 credit in the plan in which they are or were previously enrolled. Class Members are entitled to  
15 retroactive PERS-eligible service credit based on the service credit rules for the PERS plan  
16 applicable to them when they worked at the King County public defense agencies. These rules  
17 for PERS 1, 2 and 3 are set forth in Exhibit A.

18       79. For Group one Class Members, King County shall pay the PERS contributions  
19 for retroactive PERS-eligible service back to January 1, 1978. Because King County enrolled  
20 King County public defense employees in PERS in the pay period encompassing April 15,  
21 2012, those Group one Class Members, who began employment at a King County public  
22 defense agency after April 1, 2012 and who had no previous periods of employment at a King  
23 County public defense agency, have already had all PERS pension contributions paid. King  
24 County therefore does not owe any PERS contributions for these Group one Class Members.  
25 The Group one Class Members for whom King County will make the PERS contributions are  
26 listed on Exhibit B.



1 Recognition Date. King County agrees that on the Recognition Date, the Class Members who  
2 were employed by the King County public defense agencies immediately before the  
3 Recognition Date shall be employees of King County with full benefits for their positions (the  
4 "Transferred Class Members"). How King County accomplishes this recognition, and how it  
5 organizes public defense, are up to King County, and are not part of this settlement.

6 86. (a) Carried Over Vacation. Prior to the Recognition Date, Transferred Class  
7 Members may use or cash out vacation they have accrued at a King County public defense  
8 agency pursuant to the terms of the respective applicable collective bargaining agreement or  
9 personnel handbook. Alternatively, a Transferred Class Member may carry over his or her  
10 vacation to be available during employment with King County ("Carried Over Vacation").  
11 Transferred Class Members may establish Carried Over Vacation up to the maximum amount  
12 that can be cashed out under the collective bargaining agreement or personnel handbook at the  
13 applicable King County public defense agency. To establish Carried Over Vacation, a  
14 Transferred Class Member shall direct the applicable King County public defense agency to  
15 pay his or her vacation cash out amount to King County or the Transferred Class Member may  
16 pay King County directly for the amount of the vacation cash out. Payments shall be made to  
17 King County not later than 30 days after the Recognition Date and shall be accompanied by a  
18 statement from the applicable King County public defense agency showing how many vacation  
19 hours are represented by the payment. After receiving such funds for a particular Transferred  
20 Class Member, King County shall credit that Transferred Class Member with Carried Over  
21 Vacation of the same number of vacation hours as is represented by the cash out payment using  
22 the calculation done by the King County public defense agency. By way of example, if a  
23 Transferred Class Member had accrued 160 hours of vacation at TDA and was entitled, under  
24 TDA's collective bargaining agreement, to cash out 75% of that vacation, that Transferred  
25 Class Member would start employment at King County with 120 hours of vacation. Carried  
26 Over Vacation shall be subject to King County's rules and procedures for the use and  
27 disposition of vacation, including King County vacation balance cap. King County will use

1 each Transferred Class Member's initial hire date at a King County public defense agency for  
2 purposes of establishing their vacation accrual rates effective on the Recognition Date.

3 (b) Carried Over Sick Leave. As of the Recognition Date, each Transferred Class  
4 Member will have an initial amount of sick leave for their employment at King County in the  
5 amount of sick leave hours the Transferred Class Member had accrued at the pertinent King  
6 County public defense agency, up to a maximum of 100 hours (the "Carried Over Sick Leave").  
7 Carried Over Sick Leave shall be accounted for separately and shall be used entirely before the  
8 Transferred Class Member uses any sick leave accrued after the Recognition Date. Carried  
9 Over Sick Leave shall not be eligible for the 35% cash out available to King County employees  
10 when Transferred Class Members separate or retire from King County or die. Carried Over  
11 Sick Leave shall not be eligible to be donated to other King County employees. The maximum  
12 of Carried Over Sick Leave may be increased by King County in cases of exceptional need.  
13 This provision (b) is subject to revision through collective bargaining.

14 **V. COMPROMISED CLAIMS, COUNTERCLAIMS AND DEFENSES**

15 87. This settlement is a compromise. Plaintiff contends that the Class Members did  
16 not have the same employee benefits as King County employees, e.g., those working in the  
17 Prosecuting Attorney's Office in similar positions. Plaintiff contends that the Class Members  
18 have claims for non-PERS benefits (the "other benefit claims") that they could bring in an  
19 amended complaint and litigate in this case. King County has defenses to that claim and also  
20 could contend that the other benefit claims would not relate back to the date of filing of the  
21 lawsuit. The Class would dispute these King County contentions. This Settlement Agreement  
22 compromises, releases and fully extinguishes all of the other benefit claims in return for  
23 valuable consideration from King County.

24 88. In addition to recognizing Class Members as employees of King County with  
25 full benefits for their positions on the Recognition Date (see ¶73), King County is agreeing to  
26 make omitted PERS contributions to establish retroactive PERS-eligible service credit for the  
27 Class Members as provided in this Settlement Agreement. King County is further

1 compromising by foregoing its statute of limitations defense that Class Members could not  
2 receive service credit for any time period more than three years before this lawsuit was filed,  
3 *i.e.*, before January 24, 2003. King County is also paying both the employer contributions to  
4 PERS and the Employee Contributions, *i.e.*, contributions to PERS that would have been  
5 deducted from the Class Members' salaries on either a pre-tax basis as employer pick-up  
6 contributions or on an after tax basis as employee contributions before 1984. King County  
7 contended that it was entitled to reimbursement for the Employee Contributions and the Class  
8 argued that King County was not so entitled. Under the Settlement Agreement, King County  
9 forgoes any right to seek reimbursement or payment from the Class Members for the PERS  
10 contributions. King County's agreement not to assert its statute of limitations defense or to  
11 seek reimbursement or payment from Class Members, its agreement to pay the PERS  
12 contributions for the retroactive PERS-eligible service and its recognition of those Class  
13 Members employed by the King County public defense agencies immediately before the  
14 Recognition Date as King County employees with full benefits for their position, constitute the  
15 valuable consideration that the Class receives in exchange for compromising, releasing and  
16 extinguishing the other benefits claims in this Settlement Agreement.

## 17 VI. IMPLEMENTATION OF RETIREMENT PROVISIONS

18 89. The relief that Class Members receive under the retirement provisions of this  
19 Settlement Agreement is based on what Group they are in: one, two, three, four or five. The  
20 parties have made their best good-faith effort to correctly categorize Class Members and to  
21 identify and locate the Class Members. Their efforts include contacting DRS to determine who  
22 are Class Members and how much PERS service credit they currently have according to DRS  
23 records and when the PERS service occurred.

24 90. The parties have determined the eligible months of retroactive PERS-eligible  
25 service, the amount of such credit earned for each month, and the monthly pay for each eligible  
26 month for each Class Member. The parties agree that the PERS contributions to be paid by  
27 King County are approximately \$30.3 million which includes the amounts King County paid on

1 behalf of Class Members Katherine Beckerman and Ray Contreras and Cathy Tombow as  
2 approved by previous Court orders. (The Employer Contributions are about \$17.9 million and  
3 the Employee Contributions are about \$12.4 million (*see* ¶69).) The parties have also obtained  
4 the Class Members' hire dates, sex, and birthdates. The parties primarily used payroll and  
5 personnel data maintained by the King County public defense agencies in making these  
6 determinations. The King County public defense agencies' data did not include pay data for  
7 some time periods. If a Class Member had worked for more than one King County public  
8 defense agency or on more than one occasion for the same agency, the agencies did not always  
9 have all the Class Member's data. For the missing data, the parties used reliable information  
10 provided by Class Members, *i.e.*, Social Security earnings statements or other reasonable  
11 reliable information provided by Class Members or other sources.

12       91.       The parties obtained and previously submitted to DRS the PERS enrollment  
13 forms and information for all Group one Class Members who were not previously enrolled in  
14 PERS. The parties have also obtained PERS enrollment forms from the Group two Class  
15 Members that could be located and who have five years or more of service. The Group three  
16 Class Members that the parties have identified to date are already enrolled in PERS and so no  
17 additional PERS enrollment forms are needed for them.

18       92.       Within 60 days from the Effective Date, King County shall transmit to DRS the  
19 information compiled by the parties. This information includes for each known and located  
20 Class Member entitled under this Agreement to retroactive PERS-eligible service credit and  
21 payment of PERS contributions, the Class Member's name, social security number, birth date,  
22 sex, the PERS enrollment forms (if needed), eligible months and years of PERS service, the  
23 monthly service credit to which the Class Member is entitled, the monthly pay received by the  
24 Class Member for the eligible months of service with the King County public defense agency  
25 or agencies, the PERS contributions to be paid by King County for the Class Member for each  
26 month of service credit and the total contributions for each Class Member. DRS will use and  
27 record the information provided by King County under this paragraph to establish the Class

1 Members' retroactive PERS-eligible service so that the Class Members who wish to retire and  
2 receive their PERS pension may do so. The Class Members shall be treated by DRS as PERS  
3 members with all the rights and privileges of other PERS members retroactive to their initial  
4 PERS eligible service established in this Agreement, see ¶¶ 74, 77.

5 93. Some Class Members entitled to relief under this agreement are deceased. The  
6 surviving spouse of the deceased Class Member may execute the PERS enrollment forms on  
7 behalf of the deceased Class Member. The spouse of a deceased Class Member with ten years  
8 or more of service shall be entitled to the death before retirement benefit, the 100% survivor  
9 benefit as described in the DRS PERS Handbook. The spouse of a deceased Class Member  
10 with less than ten years of service shall be entitled to withdraw from PERS the amounts that  
11 would have been withheld from the deceased Class Member's salary as Employee  
12 Contributions, see ¶69. King County shall transmit the required PERS information noted above  
13 in paragraph 92 and shall transmit the PERS contributions to DRS for the deceased Class  
14 Member entitled to relief. Deceased Class Members who do not have a surviving spouse are  
15 not entitled to relief under this Agreement and King County shall not be required to make any  
16 PERS contributions on their behalf.

17 94. The parties have diligently tried to locate and notify eligible Class Members  
18 and they will continue these efforts. King County shall not be required to make any PERS  
19 contributions on behalf of Class Members who have not been located until the eligible Class  
20 Member is found and submits the information needed by the parties to enroll the Class Member  
21 in PERS and to provide the information and/or forms needed to obtain retroactive PERS-  
22 eligible service credit.

23 95. Any person who believes that he or she should be included as a Class Member  
24 in Group one, two, three, four or five but is not, may so notify King County. Any such claim  
25 must be submitted by not later than 90 days after the Recognition Date or it shall be deemed  
26 fully and finally waived. If King County agrees to allow the claim, the claim is resolved by the  
27 agreement. If King County does not agree with the claim, it will notify Class Counsel and the

1 parties will either submit the issue to the Court or will jointly appoint a neutral third party who  
2 shall finally resolve the claim. The neutral third party will decide what procedures are to be  
3 used in determining whether the person should be included in the Class, but such procedures  
4 shall entitle the claiming party, Class Counsel and King County a fair opportunity to present  
5 their respective positions.

## 6 VII. GENERAL MATTERS

### 7 Compromise of Disputed Claims and Counterclaims

8 96. This Settlement Agreement is a compromise and is the product of serious and  
9 extended negotiations. King County's entry into this Settlement Agreement is a result of  
10 compromise and does not constitute an admission of liability, fault or wrongdoing. The  
11 compromise embodied in this Settlement Agreement is intended to fully and finally resolve the  
12 claims of the Class Members in this case (including the other benefit claims, ¶¶ 2, 87, and the  
13 counterclaims of King County, ¶¶ 5 and 88. The parties recognize that the settlement may not  
14 be approved by the Superior Court and if it is not approved, this Agreement shall have no force  
15 and effect and the case will be litigated.

### 16 Release of Claims and Counterclaims Subject to the Settlement Agreement

17 97. Contingent upon final approval of this Settlement Agreement by the Court and  
18 the occurrence of the Effective Date, plaintiff and the Class Members for themselves, their  
19 heirs, estates, marital communities, executors, trustees, administrators, and assigns, hereby  
20 completely release and forever discharge King County and all of its past and current officers,  
21 agents, officials, council members, staff, attorneys, employees, agencies and departments, and  
22 the heirs, estates, marital communities, executors, trustees, administrators and assigns of any of  
23 them, from all claims in ¶¶ 2 and 87 arising out of or relating in any way to (1) any right to  
24 enrollment in PERS, for retroactive PERS-eligible service credit or for the payment of PERS  
25 contributions of any kind or amount other than as provided in the Settlement Agreement; (2)  
26 any claim for other King County employee benefits at any time before the Recognition Date,  
27 including the other benefits claims described above, and (3) attorney fees and litigation costs.



1 The claims released by plaintiff and the Class Members include any causes of action for the  
2 class for the alleged wrongful denial of wages or exclusion from career service benefits, any  
3 claims under RCW 49.48.030 and RCW 49.52.070 for double damages or attorney fees, any  
4 claims for denial of or of entitlement to medical, dental, life or long term disability coverage or  
5 benefits. The claims released by Plaintiff and the Class Members under this Agreement are the  
6 Class Released Claims. The Class Released Claims do not include claims based on facts,  
7 occurrences or omissions that happen after the Recognition Date or any individual claims that  
8 are not within ¶¶ 2 and 87.

9 98. Contingent upon final approval of this Agreement by the Court and the  
10 occurrence of the Effective Date, King County releases the King County Released Claim  
11 against Plaintiff and the Class Members and their respective heirs, estates, marital  
12 communities, executors, trustees and administrators.

13 99. Plaintiff and the plaintiff Class Members acknowledge and agree that the  
14 release and discharge of the Class Released Claims is a general release. King County  
15 acknowledges and agrees that the release and discharge of the King County Released Claim is a  
16 general release of these claims. The parties have entered into this Agreement as a compromise  
17 of disputed claims and counterclaims, and as a means of finally resolving all questions, issues,  
18 duties, obligations, and responsibilities between them regarding those disputed claims.

19 Plaintiff, the Class and King County further agree that the Agreement is a complete  
20 compromise of matters involving disputed issues of law and fact. It is understood and agreed  
21 by the parties that this settlement is a compromise and nothing contained herein is to be  
22 construed or interpreted as an admission of liability on the part of King County, by whom  
23 liability is expressly denied, or an admission as to any issue in dispute or which could have  
24 been in dispute between the parties. The fact of this settlement and the terms or agreements  
25 contained in this Settlement Agreement shall not be used in any other proceeding as evidence  
26 of any admission, fault, wrongdoing or liability of King County, except to enforce its  
27 provisions.

**Cooperation of the Parties**

1  
2 100. The parties recognize that time is of the essence and they will work in good  
3 faith to expeditiously and diligently effectuate this Settlement Agreement. In addition to the  
4 other methods of cooperation discussed in the Settlement Agreement, the parties also agree (a)  
5 to cooperate in presenting this Settlement to the Court, (b) to support its provisions at the  
6 Settlement hearing, (c) to cooperate in drafting and reviewing Court orders, notices, forms,  
7 modifications, if any, required by the Court for approval and other documents required by or  
8 necessary to effectuate this Settlement Agreement, including ordinances to timely provide  
9 information and records to implement this Settlement Agreement, (d) to minimize expenses,  
10 and (e) to do all other acts and duties assigned to each party in this Settlement Agreement to  
11 effectuate and implement this Settlement, including implementing the Agreement with DRS.

**Choice of Law**

12  
13 101. This Settlement Agreement shall be governed by and construed and enforced in  
14 accordance with Washington law, without regard to choice of law provisions.

**No Assignment**

15  
16 102. No provision of this Settlement Agreement shall provide any rights to, or be  
17 enforceable by, any person or entity that is not a named plaintiff, Class Member, spouse of  
18 deceased Class Member, party, or class counsel. No Class Member (or spouse of a deceased  
19 Class Member) or Class Counsel may assign or otherwise convey any right to enforce any  
20 provision of this Settlement Agreement.

**Joint Drafting – No Construction Against Either Party**

21  
22 103. Each of the parties has cooperated in the drafting and preparation of this  
23 Agreement. Hence, in any construction made to this Agreement, the same shall not be  
24 construed against any of the parties.  
25  
26  
27

**Timeliness**

1  
2 104. The Settlement Agreement includes certain commitments by the parties and  
3 counsel to take actions. Any procedural failure or error, such as a failure to act in a timely  
4 manner, does not preclude final approval and enforcement of the Settlement Agreement if the  
5 error can be corrected or made harmless.

**Taxation**

6  
7 105. The parties do not intend the PERS contributions made pursuant to this  
8 Settlement Agreement to be taxable wages because they are made to a qualified plan.

**Conditions**

9  
10 106. This Settlement Agreement is conditioned upon not having to pay interest on  
11 the omitted PERS contributions, in accordance with the practice of DRS in this type of  
12 situation. The parties' agreement to this Settlement Agreement is also conditioned upon DRS  
13 being required to and actually advancing the Common Fund Fee out of the County-paid  
14 Employee Contributions, or the Employee Contributions portion of the PERS Trust Fund  
15 assets, subject to repayment of this advance by the Class Members as provided in this  
16 Agreement. DRS may instead choose to advance the Common Fund Fee out of other DRS  
17 funds, subject to repayment by Class Members as provided in this Agreement. If the Court  
18 does not adopt both of these conditions upon settlement approval, then either of the parties may  
19 withdraw from this Settlement Agreement and the Agreement will be vacated and void. The  
20 Court's order preliminarily approving the Settlement Agreement will require the parties to  
21 provide DRS with a copy of the Class Notice and the Settlement Agreement so that DRS may  
22 be heard by the Court if DRS wishes to assert a position regarding these conditions.

**Amendment**

23  
24 107. Up to the date the Class Notice is sent the Class Members, the parties may  
25 amend the Agreement, if the amendment(s) or supplements are in writing, approved by Class  
26 Counsel and King County and the Court. After the date the Class Notices are sent to Class  
27

1 Members, the parties, with approval of the Court, may amend the Agreement in writing as  
2 approved by Class Counsel and King County where the amendment is clarifying and/or does  
3 not materially and substantially change the terms of the Settlement Agreement.

4 **Signers' Authority**

5 108. The parties' representatives who sign this Agreement each represent and  
6 warrant that they have been authorized to sign for and to bind their respective clients.

7 **Approval Date of Settlement Agreement**

8 109. Following signature by the parties' respective authorized representatives, this  
9 Settlement Agreement will be deemed approved only after (1) the Pierce County Superior  
10 Court enters the Final Approval Order approving the Settlement Agreement pursuant to Civil  
11 Rule 23(e) and (2) the Effective Date occurs.

12 **Counterparts**

13 110. This Settlement Agreement may be executed in counterparts.

14 **VIII. NOTICE TO CLASS AND SETTLEMENT HEARING PROCEDURES**

15 **Preliminary Approval**

16 111. The parties agree, as soon as practicable after execution of this Settlement  
17 Agreement, to jointly move the Court to:  
18

19 (a) Find preliminarily that this settlement is a fair and reasonable  
20 compromise of the claims;

21 (b) Order that notice of the settlement be provided to Class Members  
22 and that the form of the notice submitted by the parties with the Settlement Agreement is  
23 approved;

24 (c) Find that the content of the proposed notice and the mechanisms of  
25 communicating such notice meet the requirements of Civil Rule 23(e) and the Due Process  
26 Clause with respect to all Class Members;

1 (d) Set a date by which DRS must submit any statements regarding the  
2 Settlement and by which any Class Member who objects to the terms of this Settlement  
3 Agreement may file written objections to this Settlement Agreement with the Clerk of the  
4 Court, and serve such objections on Class Counsel and counsel for King County;

5 (e) Set a date for the final settlement hearing date pursuant to Civil Rule  
6 23(e) at which DRS may appear to present its positions and any Class Member who filed  
7 written objections and/or who meets other requirements established by the Court may  
8 appear in order to object to the fairness, adequacy, or reasonableness of this Settlement  
9 Agreement or to any order or findings of the Court.

10 **Notice Provisions**

11 112. Class Counsel shall pay all costs of mailing notice of the settlement to Class  
12 Members. The parties shall otherwise bear their own costs in this regard.

13 113. Class Members who can be identified through reasonable effort, as described  
14 below, shall be given notice of the settlement in the form proposed by the parties, subject to  
15 any modifications ordered by the Court. The notice shall summarize the major terms of the  
16 Settlement Agreement, state the time, date and place of the settlement fairness hearing, and  
17 explain the procedures and deadlines for submitting written comments or objections.

18 114. Plaintiffs shall mail the notice to the last known address provided by the public  
19 defense agencies, or to the last known address obtained by Class Counsel, of each Class  
20 Member whose identity and address is reasonably ascertainable. The notice should be mailed  
21 at a time set by the Court.

22 115. In addition to mailing individual notices, King County shall:

23 (a) Post this Settlement Agreement and the Class Notice on intranet and  
24 internet websites maintained by King County; and

25 (b) Provide a copy of this Settlement Agreement and the Class Notice to the  
26 executive directors of the King County public defense agencies for them to distribute to the  
27 currently employed Class Members and to SEIU, Local 925.

1 116. Class Counsel shall also at its own cost post the Settlement Agreement and  
2 Class Notice on its website.

### 3 Objections to Settlement

4 117. Unless the Court directs otherwise, all comments or objections, if any, from a  
5 Class Member pertaining to the Settlement Agreement shall be submitted in writing to the  
6 Court, Class Counsel, and the defendant's counsel a date set by the Court in advance of the  
7 hearing on the settlement. Any objections not so submitted shall be waived. Any Class  
8 Member wishing to appear at the settlement hearing to comment on or to object to the  
9 Settlement shall so specify in his or her written comment or written objection. If DRS wishes  
10 to submit a statement on the matters in ¶59, it must submit its statement in writing no later than  
11 the date set by the Court. If DRS wishes to appear at the settlement hearing it shall so specify  
12 in its written statement.

### 13 Effect of Appeals

14 118. If the Effective Date is delayed by an appeal by a Class Member or DRS, or  
15 does not occur by reason of a Class Member or DRS filing an appeal or commencing other  
16 proceedings seeking reconsideration or review of the Final Approval Order, King County will  
17 nevertheless implement the Recognition Provisions set forth in paragraphs 73, 85, 86 and 88 of  
18 this Agreement. All of the parties' other obligations that are intended to occur after the Final  
19 Approval Order is entered remain subject to the Effective Date occurring, with the following  
20 additional exception: King County will, during the course of any appeal or reconsideration  
21 proceedings, report to DRS certain Class Members' retroactive PERS-eligible service credit  
22 and pay history and enroll those Class Members in PERS ("Interim Retiring Class Members").  
23 The Interim Retiring Class Members must (a) be members of Group 1 or Group 2 who are at  
24 least 63 years old as of December 31, 2012, and be otherwise eligible to retire at the time they  
25 seek to retire, or (b) be disabled to the extent that they are unable to work in public defense and  
26 be otherwise eligible for disability retirement. Interim Retiring Class Members must notify  
27 King County and Class Counsel that they wish to retire while an appeal is pending. Class

1 Members who have already retired and are receiving a retirement benefit under PERS are not  
2 eligible to receive the relief specified in this paragraph. Upon request from DRS, King County  
3 will pay to DRS the PERS contributions as calculated under this Settlement Agreement for the  
4 Interim Retiring Class Members. If King County pays any PERS contributions to DRS on  
5 behalf of the Interim Retiring Class Members: (a) those amounts will be credited against the  
6 PERS contributions that King County will ultimately be required to pay on behalf of Class  
7 Members as a result of this settlement or otherwise in this Lawsuit, and (b) in no event shall the  
8 operation of this paragraph increase the amount of PERS contributions that King County is  
9 required to pay under this Settlement Agreement.

10 119. If the Effective Date is delayed by reason of a Class Member or DRS filing an  
11 appeal or commencing other proceedings seeking reconsideration or review of the Final  
12 Approval Order, but the Effective Date ultimately occurs, the Common Fund shall be re-  
13 calculated following the Effective Date with a new date of analysis and the Common Fund Fee  
14 on remand shall be \$12 million or the same percentage of the recalculated Common Fund,  
15 whichever is greater, unless the appellate or trial court orders otherwise. Any re-calculation of  
16 the Common Fund shall not require King County to pay any increased amount under the  
17 Settlement Agreement.

## 18 IX. SETTLEMENT ADMINISTRATION

### 19 Responsibility for Settlement Administration

20 120. King County shall be responsible for administering the settlement and  
21 transmitting the PERS information report and contributions required under ¶¶ 69, 74, 76-84, 92  
22 and 93 of this Agreement. Before the PERS information and PERS contributions are submitted  
23 to DRS, Class Counsel must give their approval.

### 24 Information to be Utilized

25 121. The information compiled by the parties described in ¶¶ 89-93 of this  
26 Agreement will be transmitted to DRS and used to make the required PERS report and PERS  
27 contributions and to establish the monthly pay and the retroactive PERS eligible service for the

1 Class Members, so that they will be properly enrolled in PERS and may retire if they are  
2 eligible and wish to do so. Based on the information provided, DRS shall treat the Class  
3 Members as PERS members with all the rights and privileges of other PERS members  
4 retroactive to their initial PERS eligible service established in this Agreement. See ¶¶ 74, 77.

5 **Locating Eligible Class Members Who Have Not Yet Been Found**

6 122. Some Class Members entitled to relief have not been located. Class Counsel  
7 will make a good-faith effort to locate and contact these eligible Class Members and to obtain  
8 the information needed to provide relief under this Agreement.

9 **Review of Records by Class Counsel**

10 123. For purposes of verification and to fulfill their responsibilities required by this  
11 Settlement Agreement, Class Counsel shall, upon request and until the Recognition Date, be  
12 entitled to the settlement administration records and the records concerning the transition. King  
13 County has access to work and salary history records obtained by Class Counsel.

14 **X. COMMON FUND**

15 124. The Common Fund in this Action is the value of the PERS pension benefits  
16 conferred upon Class Members as a result of Class Counsel's efforts, which Class Counsel  
17 calculate, using actuarial methods, to be about \$130 million. The Transferred Class Members  
18 will become King County employees with full benefits for their positions as a result of Class  
19 Counsel's efforts. This is also very valuable relief, but is not part of the Common Fund as  
20 defined in this Agreement. As part of the settlement, King County will also pay to DRS the  
21 PERS contributions on behalf of the Class Members which will allow the Class Members to  
22 obtain PERS pension benefits and to retire if they wish. This is also very valuable relief.

23 125. The Common Fund is used in the Agreement to determine the reasonableness  
24 of the Common Fund Fee and to determine the Deduction Percentage for Class Members to  
25 repay DRS for the advance of the Common Fund Fee. For those Class Members who elect not  
26 to repay DRS out deductions from future retirement payments, but by repaying DRS directly,  
27



1 the Common Fund is also used to determine the Class Member's pro rata share of the Common  
2 Fund Fee. See ¶138.

### 3 XI. ATTORNEY FEES

#### 4 Common Fund Fee

5 126. In *Bowles v. Department of Retirement Systems*, 121 Wn.2d 52 (1993), the  
6 Washington Supreme Court determined the method of computing attorney fees in class actions  
7 involving public employee benefits. The Supreme Court said that when class counsel's efforts  
8 have created a "common fund" or recovery for the class, the fee awarded is a percentage of the  
9 fund because "the size of the recovery constitutes a suitable measure of the attorneys'  
10 performance." *Id.* at 72. The Supreme Court therefore adopted the percentage approach to  
11 calculate common fund attorney fees and it specifically rejected the lodestar method of  
12 calculating fees in a common fund case. *Id.* at 73. The Supreme Court said a percentage-of-  
13 recovery approach to awarding common fund attorney fees "furthers important policy  
14 interests." *Id.* at 72. The "benchmark" fee in a common fund case is 25% of the recovery  
15 obtained and 20% to 30% is the usual range for a common fund fee. *Id.*

16 127. In *Bowles*, the plaintiff class obtained an increase in the value of their pension  
17 benefits. And the court in *Bowles* required DRS to advance the attorney fees out of the PERS I  
18 trust fund on behalf of the plaintiff class subject to future reimbursement by the class. *Bowles*,  
19 121 Wn.2d at 69. The attorney fee advance was from the employees' contributions, not from  
20 the employer contributions. *Id.* at 75. Attorney fees in *Bowles* were calculated as a percentage  
21 of the present value of the class recovery and that percentage was then deducted from the class  
22 members' future pension payments in order to repay DRS for advancing the fee on behalf of  
23 the class members. *Id.* at 74.

24 128. The Common Fund obtained in this action is the value of the PERS pension  
25 benefits conferred upon Class Members as a result of Class Counsel's efforts, calculated by  
26 plaintiffs to be about \$130 million. With an estimated Common Fund of \$130 million, a 25%  
27 benchmark Common Fund Fee under *Bowles* would be \$32.50 million and the 20%-30% "usual

1 range” for a Common Fund Fee under *Bowles* would be \$26 to \$39 million. The \$12 million  
2 Common Fund Fee Class Counsel seeks here is a reasonable percentage-of-recovery fee in this  
3 common fund case, below the “usual range” for common fund fees under *Bowles*, based on the  
4 value of the Common Fund as calculated by plaintiffs. Class Counsel would seek the  
5 \$12 million for the Common Fund Fee even if the Present Value were lower so long as the  
6 \$12 million fee is at or below the normal range, i.e., if it is 20% or less of the Common Fund.

7 129. Class Counsel invested several lawyer years of work in the case on a  
8 contingent-fee basis and assumed substantial risk in the representation of the plaintiffs,  
9 including loss of other valuable work. Class Counsel’s risk is illustrated by the Supreme  
10 Court’s 5-4 decision in favor of the plaintiffs. If one justice in the majority had sided with the  
11 dissent, Class Counsel would not only have received no fee in this action, but Class Counsel  
12 would also have lost years of time and substantial expenses invested in the case. Class Counsel  
13 obtained excellent results for the class, and the Class Members will receive valuable pension  
14 benefits in the future that they otherwise would not have received but for Class Counsel’s  
15 efforts. The Transferred Class Members will also be recognized by King County as King  
16 County employees with full benefits for their positions. This relief is also very valuable.

17 130. The parties agree that Class Counsel is entitled to a Common Fund Fee, that  
18 DRS should advance the common fund fee for the Class Members from the Employee  
19 Contributions, as provided in *Bowles* and in ¶135 of this Agreement. King County was not  
20 involved in the present value calculations done by plaintiffs and their experts to determine the  
21 amount of the Common Fund. Accordingly, King County does not take a position on the  
22 present value calculation, or the precise amount of the Common Fund. But it does concur that  
23 the Common Fund is substantial.

24 131. The Common Fund Fee is, with the remainder of the Settlement Agreement,  
25 subject to final approval by the Court. The Court may modify the amount of the Common  
26 Fund Fee to Class Counsel without rejecting the Settlement as a whole if the amount of the  
27 proposed fee is found to be unreasonable in the context of the results obtained, risks, and

1 overall settlement and is above the range of reasonableness for a Common Fund Fee based on  
2 the size of the Common Fund.

3 132. Whether King County pays the Common Fund Fee to Class Counsel by  
4 deducting that amount from the omitted PERS Contributions or DRS pays the Common Fund  
5 Fee, it shall be paid within thirty-five (35) calendar days after the Effective Date.

6 **Award to Named Plaintiff**

7 133. The named plaintiff Kevin Dolan should receive a plaintiff's award of \$45,000  
8 for his work in assisting class counsel. Mr. Dolan's participation from 2006 through 2012 has  
9 included but is not limited to, commencement of this lawsuit, class certification, discovery  
10 matters (including answering interrogatories, producing extensive personal records, and  
11 deposition testimony), preparation of declarations, attendance at meetings, communications  
12 with class members, and assisting class counsel in the trial court proceedings, the proceedings  
13 in the Supreme Court, and in the Legislature, see ¶43. In connection with its consideration of  
14 whether to approve the Settlement, the Court may modify the amount of the plaintiff's award if  
15 the Court determines that the amount of award is unreasonable in the context of the case.

16 134. The award to the named plaintiff described above shall be paid by King County  
17 within thirty-five calendar days after the Effective Date. The parties intend that plaintiff's  
18 award should not be treated as wages, but as 1099 income.

19 **PAYMENT BY CLASS MEMBERS OF COMMON FUND FEE**  
20 **ADVANCED BY DRS**

21 135. The Class will pay the Common Fund Fee as explained below. As in *Bowles*,  
22 the Common Fund Fee will be paid by Class Members from the Employee Contribution portion  
23 of the PERS contributions, not from the Employer Contribution portion of the PERS  
24 contributions. As in *Bowles*, the Deduction Percentage is the percent that the Common Fund  
25 Fee is of the Common Fund, i.e., 9.2% with a Common Fund of \$130 million and a Common  
26 Fund Fee of \$12 million. The Deduction Percentage would be higher here if the Common  
27 Fund were lower or it would be lower if the Common Fund were higher. As in *Bowles*,  
because it is not feasible for Class Members to make current payments, DRS will advance the

1 Class Members' payment from the Employee Contributions either by: (1) King County paying  
2 the Common Fund Fee to Class Counsel out of the Employee Contribution portion of the PERS  
3 contributions to otherwise be paid to DRS or (2) if DRS prefers, by the PERS Trust Fund or  
4 DRS advancing the Common Fund Fee out of the Employee Contribution paid to DRS as part  
5 of the PERS contributions. The Class Members shall repay the advanced Common Fund Fee to  
6 the PERS Trust fund(s) or DRS by the deductions from retirement benefits as stated in ¶¶ 136-  
7 137 below or as provided in ¶138.

8       136. This paragraph explains the method for deducting the Common Fund Fee from  
9 future retirement benefits of the Class Members other than those who are Judges participating  
10 in the Judicial Benefit Multiplier Program. The Common Fund and the Deduction Percentage  
11 for a Class Member's future retirement benefit is based on the retroactive PERS-eligible  
12 service earned for the King County public defense work that is the subject of this action and  
13 excludes other PERS service the Class Members may have had previously or for PERS service  
14 they will have in the future. Accordingly, the Deduction Percentage from PERS pension  
15 benefit payments for each Class Member will be multiplied by a fraction in which the  
16 numerator is the number of months retroactive PERS-eligible service obtained in this action for  
17 King County public defense service, and the denominator is the total number of months of  
18 PERS service credit the Class Member has at retirement. For example, if a Class Member had  
19 120 months of retroactive PERS-eligible service in King County public defense agency work  
20 and a total of 360 months of PERS service credit at retirement, the fraction would be one-third  
21 and the actual Deduction Percentage would be one-third of 9.2%, or about 3.07%. Because  
22 most Class Members will earn additional PERS service after the resolution of this case or  
23 because they have prior PERS service, the actual deduction percentage will be less than 9.2%  
24 as shown in the preceding illustration.

25       137. For Class Members who are Judges participating in the Judicial Benefit  
26 Multiplier Program, the Deduction Percentage shall be based on the effect that the retroactive  
27 PERS-eligible service obtained in this case has on the percentage of the Judge's final average

1 salary the Judge is eligible to obtain as a pension. By way of illustration, under PERS 1 and 2,  
2 a PERS member earns 2% of his or her average final salary for each year of service, while  
3 under the Judicial Benefit Multiplier Program, participating Judges earn 3.5% of their final  
4 average salary for each year of Judicial service. Thus, for each year of service as a Judge — by  
5 way of illustration of how the Deduction Percentage for the Common Fund Fee is calculated  
6 for Judges participating in the Judicial Benefit Multiplier Program — if Class Member Judge  
7 has 10 years of retroactive PERS-eligible service as a King County public defense employee  
8 and 15 years of PERS service as a Judge in the Judicial Benefit Multiplier Program when the  
9 Judge retires, the public defense service equates to 20% of his or her average final salary (10  
10 years times 2% per year) while the Judge's work as a Judge in the Judicial Benefit Multiplier  
11 Program for 15 years equates to 52.5% of the Judge's average final salary (15 years times  
12 3.5%). Thus, in this illustration, the Judge's PERS pension equals 72.5% of the Judge's  
13 average final salary. The Judge's King County public defense service thus provides in this  
14 illustration about 27.59% of the Judge's final salary (.20 divided by .7250 equals .2759 or  
15 27.59%) and the Deduction Percentage for the Judge for the Common Fund Fee would be  
16 .2759 times 9.2 which equals about 2.538% of the Judge's monthly pension amount.

17 138. As an alternative, instead of repaying DRS from Class Members' future  
18 retirement benefits for the advance of the Common Fund Fee, the Class Members may pay  
19 DRS or the PERS fund directly. If the Class Member chooses this option, the Class Members  
20 pro rata share of the Common Fund Fee will be determined based on the percentage of the  
21 Common Fund that the present value of the Class Member's PERS pension benefit is of the  
22 Common Fund. For example, if the present value of the Class Member's PERS Benefit is  
23 \$500,000, the Class Member's pro rata share would be \$500,000 divided by \$130,000,000  
24 (Common Fund) times \$12,000,000 (Common Fund Fee) which equals about \$46,154 (Class  
25 Member's pro rata share of the Common Fund Fee). If the Class Member chooses this  
26 alternative, the Class Member may pay their share of the pro rata Common Fund Fee by using  
27 funds in an existing retirement account (such as an IRA) to the extent permitted by law without

1 incurring taxes or they may choose to repay DRS over five years either by payroll deductions  
2 for those employed in PERS positions or by a payment plan acceptable to DRS for those not  
3 employed in PERS positions. Each Class Member is solely responsible for any tax  
4 consequences of proceeding under this paragraph.

5 139. If a Class Member withdraws from PERS before retiring, DRS shall calculate,  
6 as of the time of the withdrawal, the present value of the future benefit check deductions that  
7 would have been made under this Agreement. DRS shall be entitled to offset and retain that  
8 amount before paying any remaining balance owed to the Class Member.

## 9 XII. COURT'S AUTHORITY AND ENFORCEMENT

10 140. This Settlement Agreement is a product of substantial negotiations and  
11 compromises by the parties, and thus the Settlement Agreement represents a unitary whole and  
12 each and every term therein is an integral part of the entire Agreement. Pursuant to Civil Rule 23,  
13 the Court will determine whether the proposed settlement as a whole is fair and reasonable and  
14 whether to approve or reject the entire Settlement Agreement. Except as provided in the  
15 Agreement, the Court is not authorized to modify the terms of the negotiated settlement. Prior to  
16 the Effective Date, all proceedings in the Action will be stayed except those relating or necessary  
17 to the approval, implementing, interpreting and enforcing the Settlement Agreement. The Court  
18 retains authority after the Effective Date to implement, interpret and enforce this Agreement, to  
19 resolve minor ambiguities, to make reasonable modifications to which the parties agree, and to  
20 correct minor mistakes and minor technical errors, provided the purposes and intent of the  
21 Agreement are fulfilled.

## 22 XIII. DISMISSAL OF CLAIMS AND COUNTERCLAIMS

23 141. Class Released Claims and the King County Released Claim that were or could  
24 have been brought in this action shall be dismissed with prejudice not later than forty-five (45)  
25 days after the Effective Date. After the dismissal of claims, the Court retains authority to  
26 implement, interpret and enforce the Agreement and to compel performance of all requirements  
27 of the Agreement that are intended to be carried out after dismissal of claims. As part of

1 implementing, interpreting and enforcing the Settlement Agreement the Court retains authority  
2 to resolve individual issues, if any, concerning PERS enrollment and PERS contributions, and  
3 any individual issues concerning the retroactive PERS enrollment of individual Class Members  
4 that occurs under this Agreement.

5  
6 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

7  
8 FOSTER PEPPER PLLC

BENDICH, STOBAUGH & STRONG, P.C.

9  
10 \_\_\_\_\_  
11 Tim Filer, WSBA #16285  
12 *Attorneys for Defendant King County*

\_\_\_\_\_

David F. Stobaugh, WSBA #6376  
*Attorneys for Plaintiffs*

## EXHIBIT A

## SERVICE CREDIT

September 1, 1991, and After**Plan 1**

A PERS Plan 1 member earns service credit for each month of employment in an eligible position.

- A member compensated for 70 hours or more earns one month of service credit.
- A member earning some compensation but for less than 70 hours in a month earns 1/4 month of service credit.

**Plan 2 or Plan 3**

A PERS Plan 2 or Plan 3 member earns service credit for each month of employment in an eligible position.

- A member compensated for 90 hours or more earns one month of service credit.
- A member compensated for at least 70 hours but less than 90 hours earns 1/2 month of service credit.
- A member earning some compensation but for less than 70 hours earns 1/4 month of service credit.

Prior to September 1, 1991**Plan 1**

Before September 1, 1991, a PERS Plan 1 member in an eligible position earned service credit on a monthly basis as follows:

- If compensated for 70 hours or more, the member earned one month of service credit.
- If compensated for less than 70 hours in a month, the member did not earn service credit for that month.

**Plan 2 or Plan 3**

Before September 1, 1991, a PERS Plan 2 or Plan 3 member in an eligible position earned service credit on a monthly basis as follows:

- If compensated for 90 hours or more, the member earned one month of service credit.
- If compensated for less than 90 hours, the member did not earn service credit for that month.



EXHIBIT B – GROUP 1

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- Adair, Mark
- Adams, John
- Alejo, Maria
- Allman, Theresa
- Almerez, Arthur
- Alyabyeva, Tatyana
- Alyn, Chloe
- Anderson, Linda
- Anderson, Elizabeth
- Andreasen, Gustaf
- Andrews, Joshua
- Ankeny, Kyle
- Aralica, Edwin
- Atwood, Jennifer
- Bajra, Preman
- Baker, Debra
- Baker, Karen
- Beard, Jennifer
- Beattie, Brian
- Bendernagel, David
- Benjamin, Rodney
- Berry, Audrey
- Bielman, Deborah
- Birrane, Deborah
- Black, James
- Bloom, Ragnar
- Bowles, Amy
- Boyum, Kari
- Bradley, Mark
- Brandes, Ramona
- Breeton, Angela
- Brian, Hope
- Bright, Debra
- Brinster, Jeanette
- Brownstein, Stacey
- Buchanan, Graham
- Burkland, Reid
- Bussarakum, Isabel
- Calder, Carolynn
- Cameron, Chad
- Capers, Cathy
- Carter, Twyla
- Cavallo, Janet
- Chang, Kenneth
- Charlton, Claudia

- 1 Chiu, Cynthia
- 2 Church, Cherilyn
- 3 Ciecko, Alena
- 4 Coleman, Natasha
- 5 Collins, Risa
- 6 Conant, Seth
- 7 Conroy, James
- 8 Contreras, Ray
- 9 Corbley, Michael
- 10 Cork, Whitney
- 11 Covello, Matthew
- 12 Cox, Loring
- 13 Cox, Amy
- 14 Crawford, Wanda
- 15 Croft, D. Kim
- 16 Cromwell, Elinor
- 17 Cronin, Kim
- 18 Cuadra, Leslie
- 19 Cunningham, D'adre
- 20 Daly, Anne
- 21 Daly, Cailin
- 22 Daugaard, Lisa
- 23 Davis, Gary
- 24 Davison, Elvira
- 25 Deckman, Emily
- 26 Defelice, Michael
- 27 Dhillon, Kuljinder
- 28 Dhingra, Roopali
- 29 Diefendorf, Jayne
- 30 Dillon, Megan
- 31 Dizon, Meloni
- 32 Dolan, Kevin
- 33 Dolan, Anne
- 34 Donion, Cynthia
- 35 Drenning, John
- 36 Driscoll, Denise
- 37 Drogseth, Melinda
- 38 Dryden, Rachel
- 39 Dubow, Jesse
- 40 Dunne, Thomas
- 41 Duran, Miguel
- 42 Edmiston, Roberta
- 43 Edmonds, Corey
- 44 Edwards, Charity
- 45 Edwards, Katharine
- 46 Elliott, Catherine
- 47 Elliott, Trudy

- 1 Ellis, Shoshana
- 2 Elmore, Nina
- 3 Eppler, George
- 4 Erickson, Diana
- 5 Ewers, John
- 6 Exe, Kimberly
- 7 Eyre, Pandora
- 8 Faller, Virginia
- 9 Farden, Katie
- 10 Farley, Eileen
- 11 Felsman, Kris
- 12 Ferrucci, Mckenzie
- 13 Fisher, Mary
- 14 Flaherty, Brian
- 15 Flora, Mark
- 16 Foedisch, Victoria
- 17 Franklin, Christopher
- 18 Frantz, Louis
- 19 Franz, Matthew
- 20 Free, Jay
- 21 Freeman, Roger
- 22 Freer, Victoria
- 23 Gaer, Roger
- 24 Gallardo, Viviana
- 25 Garberding, Paige
- 26 Garcia, Lourdes
- 27 Garrett, Lucas
- Gestaut, Kristen
- Gibbs, Devon
- Gibson, Catlin
- Giddings, France
- Giske, Megan
- Goldsmith, Benjamin
- Gonzales, Carlos
- Gonzalez-Pena, Parsi
- Good, Cherie
- Gould, Shannon
- Gray, Ryan
- Gray, Karen
- Gregory, Gerald
- Gruenhagen, Todd
- Haefer, Reid
- Haley, Juanita
- Hall, Randall
- Hamaji, Leo
- Hamlin, Spencer
- Hampton, Brad

- 1 Harrigan, Mary
- 2 Hart, Larry
- 3 Harvey, Shannon
- 4 Hecklinger, Nikole
- 5 Heigaard, Angela
- 6 Heiman, Ron
- 7 Henrikson, Kenneth
- 8 Hermon, Holly
- 9 Heyd, Jana
- 10 Hill, Gordon
- 11 Hochstrasser, Verna
- 12 Hodder, Brian
- 13 Honore, Travis
- 14 Howard, Terry
- 15 Huffman, Carey
- 16 Hunter, Linda
- 17 Hunter, Louis
- 18 Hurley, Katherine
- 19 Jackson, Christine
- 20 James, Cloretta
- 21 Jarvis, Zachary
- 22 Jenkins, Judy
- 23 Johnson, Timothy
- 24 Johnson, Dillon
- 25 Johnson, Kelli
- 26 Jourdan, Robert
- 27 Kalfayan, Stephanie
- 28 Kaplan, Benjamin
- 29 Kato, Nicholas
- 30 Kellemen, Joshua
- 31 Kerr, Lisa
- 32 Ketterling, Scott
- 33 Kim, Robert
- 34 Kim, Tomackie
- 35 Kinard, Deborah
- 36 King, Mary
- 37 King, Amy
- 38 Knowles, Devon
- 39 Kolpa, Tracy
- 40 Krut, Amanda
- 41 Kurth, Russell
- 42 Kvistad, Jamie
- 43 Lalonde, Lauren
- 44 Langley, Mark
- 45 Lapps, Tracy
- 46 Larose, Sheila
- 47 Lawry, Julie

1 Lederer, Rebecca  
2 Lee, Seung-jae  
3 Lennier, Sherrie  
4 Lennox, Lindsay  
5 Levinson, Lori  
6 Levy, Gail  
7 Lichtenstadter, Richard  
8 Livesley, Wendy  
9 Lofgren, Paula  
10 Longaker, Kirsten  
11 Love, Marilyn  
12 Luer, Carl  
13 Lurie, Deborah  
14 Luthra, Anuradha  
15 Lutz, James  
16 MacDonald, Stacey  
17 Madsen, Donald  
18 Maguire, Kelli  
19 Maguire, Dillon  
20 Makaryan, Emiliya  
21 Malle, Joshua  
22 Marley, Sacha  
23 Mattson, Nancy  
24 May, Deborah  
25 Mayor, Mark  
26 McCabe, Kevin  
27 McClellan, Kathleen  
McCoy, Marvin  
McCullough, Michael  
McIntyre, Heather  
McKee, Maureen  
McKee, Nastassia  
McKinney, Elizabeth  
McKinney, Erin  
McLane, Lauren  
Menovcik, Matthew  
Merchant, Karim  
Mikkelsen, Floris  
Miller, Theodore  
Mitchell, Valarie  
Montgomery, Wanda  
Mordekhova, Evgeniya  
Morris, Laurie  
Morris, Michael  
Morris, Daron  
Murphy, Micheline  
Murray, Karen

1 Murray, Kristen  
2 Nacht, Linmarie  
3 Nadeau, Carlton  
4 Naden, Marian  
5 Narvaez, Alexandra  
6 Naylor, Marcus  
7 Newcomb, Jonathan  
8 Nicolaus, Erica  
9 Noy, Kham  
10 Nyrop, Kris  
11 Oberlander, Melanie  
12 O'Connor, Colleen  
13 Odama, Melissa  
14 Ostermann, John  
15 Overton, Melody  
16 Page, John  
17 Paglisotti, Lisa  
18 Palmer, Harold  
19 Pang, Matthew  
20 Parker, Amy  
21 Parrotta, Sandro  
22 Pasion, Pamela  
23 Paulsen, Anita  
24 Pelka, Dan  
25 Penn, Patricia  
26 Perkins, Abbey  
27 Petersen, Robert  
Peterson, Dorry  
Phair, Vone  
Picchena, Jill  
Pickering, Suzanne  
Podriznik, Richard  
Poisel, Joshua  
Pollock, Terri  
Powell, Martin  
Powers, Sasha  
Prado, Arnold  
Pratt, Magdalena  
Prestia, William  
Price, Nicole  
Proud, Sonya  
Randolph, John  
Redford, Debra  
Redman, Helen  
Rettinghouse, Heidi  
Richards, Janna  
Richards, Joseph

- 1 Rieger, Donna
- Riley, Thomas
- 2 Rivera, Vanessa
- Roberson, David
- 3 Roberts, Royce
- 4 Roberts, Lorraine
- Robinson, James
- 5 Rodriguez, Michelle
- Rogers-williams, Evelina
- 6 Romanovich, Robin
- Ronholt, Linda
- 7 Rosier, Nichelle
- 8 Ross, Kathryn
- Rowe, Michelle
- 9 Rush, Cassie
- Rybalkin, Nicole
- 10 Saeda, Scott
- Salomon, Jesse
- 11 Samuel, Anna
- Sandver, Nathan
- 12 Sanguinetti, Bopha
- 13 Scheinman, Tenaya
- Schmidt, Scott
- 14 Schultz, Lynn
- Schultz, Rachael
- 15 Scott, Debra
- Seager, Sara
- 16 Seawell, David
- Seelig, Catherine
- 17 Selk, Christian
- 18 Sellers, Stephanie
- Sevilla, Iris
- 19 Shamulka, Bruce
- Shaw, Kris
- 20 Shotwell, Kristin
- Silva, Cathy
- 21 Sirkin, Micol
- 22 Skow, Cynthia
- Slaughter, Lynn
- 23 Somerstein, Leslie
- Sonik, Lauren
- 24 Sorenson, David
- Spencer, Erick
- 25 Spencer, Jeffery
- 26 St. John, Quita
- Stearn, Theresa
- 27 Stenchever, Marc

- 1 Stephens, Isaac
- 2 Steward, Kevin
- 3 Stewart, Virginia
- 4 Studeman, Pamela
- 5 Swaby, Christopher
- 6 Symons, Brandt
- 7 Tallarico, Shari
- 8 Taylor, Tiffany
- 9 Thomas, Leona
- 10 Tobin, Milo
- 11 Torres, Marlon
- 12 Tran, Hong
- 13 Trickey, Lois
- 14 Turner, Tiffanie
- 15 Valerio, Pat
- 16 Vargas, Haydee
- 17 Varnado-Rhodes, Sharon
- 18 Vavrick, Douglas
- 19 Vernon, Paul
- 20 Vollmar, Ryan
- 21 Waldman, Nancy
- 22 Walker, Sofia
- 23 Wallace, Katherine
- 24 Walton, Martha
- 25 Ward, Byron
- 26 Ward, Raymond
- 27 Warden, Alison
- Wartnik, Felicia
- Welch, Cort
- Welter, Timothy
- Wheeler, Quinlan
- Wiggins, Henry
- Wiggs-martin, Josephine
- Williams, Robert
- Williams, Leonard
- Wilson, Deborah
- Witherspoon, Bettye
- Wolf, Sam
- Wolfe, Justin
- Wood, Susan
- Woynarowski, Mick
- Wrenn, Denise
- Wyman, Robert
- Yescas, Claudia
- Young, Lei
- Zimmerman, Henry
- Zorich, Jacklynn



## EXHIBIT C – GROUP 2

1  
2 Abraham, Sunil  
3 Acosta, Fabian  
4 Alsept, Renee  
5 Anderson, Iris  
6 Avila-Arriola, Marina  
7 Baer, Simmie  
8 Baskin, Judith  
9 Beckerman, Kathryn  
10 Bell, Brenda  
11 Berry, Eric  
12 Bjork, Amity  
13 Black, Kevin  
14 Bock, Robert  
15 Boland, Alyssa  
16 Boruchowitz, Robert  
17 Bramhall, Elizabeth  
18 Brown, Elizabeth  
19 Brown, Susan  
20 Brown, Dana  
21 Brusanowski, Anna  
22 Bryant, Alesia  
23 Bullock, Gina  
24 Burich, Claire  
25 Caldwell, Sam  
26 Carey, Ann  
27 Carnell, Laura  
Carpenter, John  
Carroll, Dennis  
Carter-Eldred, Scott  
Castillo, Anita  
Cervantes, Benito  
Chapman, David  
Christensen, Lisa  
Clark, Karen  
Cohan, Molly  
Cook, Mark  
Corbley, Charlotte  
Crowley, Shawn  
Curtis, Yvonne  
Dalton, Thomas  
Darling, Marjorie  
Daw, Daniel  
Debruler, Charles  
Demps, Sharlotte  
DiIorio, Rosalyn

1 Donaldson, Vade  
2 Duong, Tammy  
3 Ellerby, Carol  
4 Ellis, Jeffrey  
5 Elsberry, Cindy  
6 Estes, Cynthia  
7 Exe, Lynn  
8 Felker, Daniel  
9 Figures, Wilma  
10 Finney, Michele  
11 Flavin, Elizabeth  
12 Flennaugh, Robert  
13 Freitas, Veronica  
14 Gales, William  
15 Garcia, Laura  
16 Garrison, Leslie  
17 Gibson, Laurel  
18 Giffin, Holli  
19 Gill, Sharon  
20 Girard, Gregory  
21 Gordon, Kimberly  
22 Gormley, Cathleen  
23 Gregory, Willie  
24 Griffie, Norman  
25 Griffin, Theresa  
26 Gustavson, Lori  
27 Hammerstad, David  
Hardy, Willie  
Hartman, Jennifer  
Henderson, Vernon  
Hibbard, Cynthia  
Hobbs, Virginia  
Holmes, Juanita  
Holt, Douglas  
Hornfeck, Lisa  
Hough, Dennis  
Humiston, Lewis  
Jefferson, Gwen  
Jefferson, W  
Jessen, Barbara  
Jursek, Edward  
Kane, Karla  
Kay, Robert  
Kehoe-Ehlers, Shoshana  
King, Charlene  
Kitching, Alfred  
Koenig, James

- 1 Konrad, Lois
- 2 Lamendola, Benoit
- 3 Langston, Van
- 4 Lara, Stacey
- 5 Larranaga, Mark
- 6 Lavengood, Rachel
- 7 Leage, Samantha
- 8 Lee, Sohaye
- 9 Lee, Marvin
- 10 Leonard, Russell
- 11 Levidow, Richard
- 12 Lewis, Duncan
- 13 Lewis, Hong-vy
- 14 Lightbourn, Frenchie
- 15 Lillevik, Linda
- 16 Lind, Connie
- 17 Linton, Asia
- 18 Lopez, Elizabeth
- 19 Lynch, Joseph
- 20 MacDonald, Peter
- 21 Mador, Alan
- 22 Malat, Jill
- 23 Marlow, Ian
- 24 Marshall, Virginia
- 25 McConnell, Kevin
- 26 McCrae, Douglas
- 27 McDonald, Catherine
- McGrath, Nicole
- McKinney, Claudia
- McLean, Kevin
- Meryhew, Brad
- Meyer, Mirvia
- Meyer, David
- Miazga, Michael
- Mills, Lamar
- Mishalanie, Nancy
- Moceri, Anita
- Moran, Timothy
- Morgan, Michael
- Mulligan, Lisa
- Nip, Kinglun
- Obermeier, Katherine
- Olson, David
- Ozzengett, Juni
- Pareira, Marcy
- Parenteau, Mark
- Partington, Norman

- 1 Pasion, Patrick
- 2 Peale, Walter
- 3 Pfeifer, Jessica
- 4 Platz, Kathleen
- 5 Potter, Elizabeth
- 6 Prothero, Mark
- 7 Reese, JoAnn
- 8 Richards, Clifford
- 9 Rivas, Ruth
- 10 Rodriguez, Francisco
- 11 Roosen-runge, Kord
- 12 Sagdahl, Patrick
- 13 Schwartz, Jen
- 14 Shannon, Katera
- 15 Shapiro, Adam
- 16 Spanton, Cindy
- 17 Stanton, Andrew
- 18 Stanton, Janet
- 19 Staton, Jeff
- 20 Stelter Belisle, Katie
- 21 Stoddard, Michael
- 22 Sutton, Aimee
- 23 Towery, Diana
- 24 Trujillo, Lee
- 25 Virtue, Clarence
- 26 Wackerman, Don
- 27 Walsh, Michael
- 28 Warner, Richard
- 29 Werake, Mahinda
- 30 Weston, Eric
- 31 Wheaton, Renee
- 32 White, James
- 33 White, Mary
- 34 White, Sara
- 35 Wiley, Joanne
- 36 Williams, Brenda
- 37 Williams, Terry
- 38 Witchley, Steven
- 39 Wojewodzki, Maureen
- 40 Wolney, Mary
- 41 Woods, Clemmen
- 42 Yatsko, Sarah
- 43 Yeung, Wang

EXHIBIT D – GROUP 3

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- Becker, Richard
- Bellam, Deborah
- Boivin, Barbara
- Chess-Prentice, Faye
- Comstock, Kenneth
- Craighead, Susan
- deIongh, Bailey
- Doerty, James
- Dowd, Patrick
- Doyle, Theresa
- Ernsdorff, Gary
- Garratt, Julia
- Halpert, Helen
- Hansen, Terri
- Harper, Anne
- Harris, Barbara
- Hassett, Stephen
- Hill, Hollis
- Horton, Janet
- Hultman, Carl
- Inveen, Laura
- Kessler, Ronald
- Konat, James
- Leech, Richard
- Madsen, Barbara
- McAdoo, Enid
- McDermott, Richard
- Merelle, Linda
- Moore, Catherine
- Mulligan, Terry
- Nakata, Alicia
- Pinkett, Carolyn
- Portnoy, Linda
- Radcliffe, Mary
- Rietschel, Jean
- Roberts, Mary
- Scarr, Rod
- Schipp, William
- Schwanz, Thomas
- Short, Mary Beth
- Smith, Douglas
- Spearman, Mariane
- Spearman, Michael
- Spector, Julie
- Thoenig, Raymond

1 Tombow, Cathy  
2 Trickey, Michael  
3 Ulrey, Page  
4 Welden, Robert  
5 Yeannakis, George

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EXHIBIT E – GROUP 4

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Baker, Melissa  
Corsilles, Cindy  
Daniels, Leah  
Dannen, Sara  
D'Annunzio, Jacob  
DanPullo, Susan  
Hughes, Rachel  
McCurdy, Margaret  
Newman, Erica  
O'Brien, Kathleen  
Quint, Emily  
Stark, Rahmie  
Zacher, Nicole

## EXHIBIT F – GROUP 5

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Abbott, Carl  
Adrian, Beatye  
Adwell, Sarah  
Agranoff, Lisa  
Alderson, Nichelle  
Alexander, Amy  
Allen, Candice  
Anderson, Patrice  
Anderson, Jennifer  
Andresen, Kristin  
Armstrong-blanchard, Emma  
Berdecia, Tamera  
Bianchi, John  
Bible, James  
Binkley, Paula  
Black, Kristen  
Blanchette, Portia  
Bland, Marguerite  
Boden, Martha  
Boman, Jane  
Bounyavong, Jazmyn  
Boyd, Lilah  
Boyden, Richard  
Brophy, Brendan  
Brown Lee, Deborah  
Bruch, Sarah  
Byrd, Luke  
Cahill, Caedmon  
Cameron, Katherine  
Canary, Kelly  
Carney, Christopher  
Carroll, Jenny  
Carter, Catherine  
Casanova, Liezl  
Castro, Dariene  
Castro Sanjuan, Sanjuan,  
Cava, Mario  
Chang, Angela  
Chiang-lin, Tim  
Chin, Robert  
Choquette, Peter  
Cohen, Nannette  
Compton, Julee  
Conlan, Teresa  
Connolly, Daniel



1 Cook, Annette  
2 Cope, Erica  
3 Copeland, Sean  
4 Cosgrove, Jennifer  
5 Cotton, Stephanie  
6 Counts, Jr.,  
7 Cozad, Elisa  
8 Croft, Catherine  
9 Crowe, Dineal  
10 Culbertson, Jennifer  
11 Cupps, Lucas  
12 Curtis, Erin  
13 Dansky, Kara  
14 Davis, Jesse  
15 Day, John  
16 Dederer, Anne  
17 Dempsey, Amy  
18 Dennison, Joe  
19 Derrico, Dave  
20 Desimone, Amy  
21 Devine, Jenny  
22 Devlin, Sean  
23 Dezengetita, Kate  
24 Douglass, Lisa  
25 Dunphy, Robert  
26 Earle, Monalesia  
27 Edmond, Lee  
Edwards, Lea  
Eggertsen, Burton  
Ejarque, Raymond  
Escher, John  
Everds, Mark  
Felsman, Ashley  
Ferrari-agudelo, Laura  
Ferry, Ashley  
Fisher, Danielle  
Fitzgerald, Aida  
Franklin, Krista  
Freeman, Lawrence  
Freimuth, Andrea  
Frost, Elisabeth  
Fukumoto, Jennilee  
Fuller, Kendra  
Fullner, Erin  
Funk, Lindsay  
Garrison, Eula  
Gerlitz, Theresa

- 1 Gignoux, Edward
- 2 Gill, Karanbir
- 3 Ginsberg, Raphael
- 4 Glatzer, Ollie
- 5 Goldman, Jeffrey
- 6 Goldstein, Mordecai
- 7 Graf-brennen, Miles
- 8 Grant, Terry
- 9 Green, Latoya
- 10 Green, Marcel
- 11 Gregory, Jason
- 12 Greisch, Alice
- 13 Gross, Nicholas
- 14 Guneratne, Kathleen
- 15 Gutierrez, Isela
- 16 Haenel, Alicia
- 17 Hahn, Jenny
- 18 Hampton, Eve
- 19 Hansen, Angela
- 20 Harris, Candace
- 21 Hart, Brent
- 22 Hawkins, Sarah
- 23 Hazen, Julie
- 24 Hicks, Shanon
- 25 Hill, Julia
- 26 Hillas, Duart
- 27 Holmes, Andrew
- 28 Hutchinson, Ken
- 29 Hutchison, Saraellen
- 30 Jacobsen, Sonja
- 31 Jensen, Erik
- 32 John, Jesse
- 33 Johnson, Holly
- 34 Johnson, Sean
- 35 Johnson, Thomas
- 36 Jones, Salem
- 37 Jones, Christine
- 38 Jones, Elisa
- 39 Kakar, Aisha
- 40 Kellogg-mortenson, Julie
- 41 Kendle, Dorey
- 42 Kern, Bryan
- 43 Khandelwal, Anita
- 44 Kilpatric, Dylan
- 45 Kim, Jamie
- 46 Kim, Jamie
- 47 Klement, Tal

1 Knappert, Anton  
2 Kudryn, Margaret  
3 Kysar, Anne  
4 Langham, Karla  
5 Larson, Amanda  
6 Lasusa, Jenene  
7 Lauderbaugh, Jann  
8 Lawrence, Lisa  
9 Lee, Kay-c  
10 Lee, Sang  
11 Leyba, Matthew  
12 Liddy, Wayne  
13 Lipman, Avi  
14 Lovell, Erin  
15 Lugo, Carlos  
16 Lundgren, Ellyn  
17 Lusignan, Kerry  
18 Lynn, Kate  
19 Madrone, Adrian  
20 Mainland, Jean  
21 Mangiaracina, Kelly  
22 Manley, Mark  
23 Marshall, Joseph  
24 Marshall, Christine  
25 Martin, Vanessa  
26 Marvy, Paul  
27 McCarthy, Michele  
McCord, Melissa  
McDaniel, David  
McDermott, Matthew  
McDonald, Robert  
McGowan, Matthew  
McKenzie, Rochelle  
McMurdo, Ann  
McNamara, Antoine  
Mendez, Damian  
Mentzer, Morgan  
Meyer, Sandra  
Miller, Marilyn  
Millikan, Alison  
Mills, Michelle  
Min, Susan  
Mitchell, Jeanette  
Montez, Susan  
Montgomery, Janika  
Moritz, Staci  
Morrison, Mary

1 Morton, Damarcus  
2 Moseley, Sarah  
3 Moua, Ge  
4 Muth, Amy  
5 Muwero, Heather  
6 Myles, Achebe  
7 Niemeyer, Patricia  
8 Njoku, Noble  
9 Norman, Daniel  
10 Norwood, Ryan  
11 Oelke, Suzanne  
12 Offenbecher, Cooper  
13 O'Leary, Kristin  
14 O'Neill, Marjorie  
15 Ortiz, Carlos  
16 Osher, Julia  
17 Osterhage, Josl  
18 Painter, Robyn  
19 Pascua, Madison  
20 Payan, Nadine  
21 Pearson, Alyn  
22 Perry, Armand  
23 Peterson, Janelle  
24 Phelps, Porsche  
25 Phillips, Galia  
26 Piccolo, Christine  
27 Pinkham, Malena  
Potts, Cory  
Prettyman, Carmen  
Price, Robin  
Ramsey, Robert  
Range, Jack  
Reams-giersch, Julia  
Reilly, Renee  
Rekhi, Heather  
Repanich, Andrew  
Ricciardi, Michael  
Rice, Andrew  
Ridge, Paul  
Roberts, Haley  
Rodriguez, Andrea  
Rodriguez Abad, Abad,  
Rogers, Karin  
Rosen, Joshua  
Ross, Gyasi  
Royalty, Paula  
Rozsnafszky, Nicholas

- 1 Rubenstein, Andrew
- 2 Rubia, Nicole
- 3 Russell, Patricia
- 4 Sampson, Rani
- 5 Sanders, Shaakirrah
- 6 Sanderson, Karen
- 7 Scarsella, Alisha
- 8 Schaer, Joshua
- 9 Secrest, Sheley
- 10 Sekhon, Nirej
- 11 Selfridge, Marian
- 12 Sellers, Michelle
- 13 Shah, Roheela
- 14 Shea, Kathleen
- 15 Shuster, Ariell
- 16 Sinness, Kirsten
- 17 Sjursen, George
- 18 Sklow, Diane
- 19 Slattery, Jennifer
- 20 Smith, Laura
- 21 Smith, Leslie
- 22 Snyder, David
- 23 Spung, Debra
- 24 Stalker, Alex
- 25 Stelly, Jennifer
- 26 Stenberg, Carley
- 27 Stephens, Kyana
- 28 Stephens, Mary
- 29 Straub, Heather
- 30 Straub, Alexander
- 31 Strom, David
- 32 Symms, Jennifer
- 33 Taft, Robin
- 34 Tavel, Phillip
- 35 Thomas, Janet
- 36 Tobias, Rachel
- 37 Torres, Fernanda
- 38 Trinkl, Monica
- 39 Trowbridge, Paul
- 40 Truong, Tai
- 41 Tucker, Laurie
- 42 Tucker, Chrishendra
- 43 Tungova, Jana
- 44 Tutmarc, Andrea
- 45 Tuttle, Naomi
- 46 Tvedt, Collete
- 47 Unten, Christine

- 1 Valdez, Sarah
- 2 Valencia, Erika
- 3 Vanderhaar, Caroline
- 4 Vanderwerf, Stevan
- 5 Voget, Jane
- 6 Wagonfeld, Ariella
- 7 Walker, Trish
- 8 Weil, Noah
- 9 White, Miriam
- 10 White, Laura
- 11 Whitson, Andrew
- 12 Wilhite, Robert
- 13 Williams, Harry
- 14 Williams, Desiree
- 15 Williamson, Jill
- 16 Wilson, Amanda
- 17 Winchester, Tonia
- 18 Wong-gantt, Melinda
- 19 Wright, Sherry
- 20 Wyeth, Jennifer
- 21 Wysocki, Cindy
- 22 Yoon, Ellen
- 23 Young, Ellie
- 24 Young, Joel
- 25 Zaleski, Alice
- 26 Zevenbergen, Haley
- 27 Zytniak, Karen

## EXHIBIT G

**RETIREMENT CONTRIBUTION RATES**  
**PERS Plan 2 and 3 - Non-State Agencies (Political Subdivisions)**

**PERS 2 PLAN and PERS 3 PLAN**

FROM THIS DATE	THROUGH THIS DATE	EMPLOYER PICK-UP RATE	EMPLOYER RATE
10/01/77	06/30/79	0.0551	0.0707
07/01/79	06/30/81	0.0551	0.0741
07/01/81	07/31/82	0.0511	0.0650
08/01/82	06/30/83	0.0511	0.0656
07/01/83	06/30/85	0.0511	0.0731
07/01/85	06/30/86	0.0483	0.0792
07/01/86	06/30/87	0.0483	0.0797
07/01/87	08/31/88	0.0490	0.0616
09/01/88	06/30/89	0.0490	0.0622
07/01/89	08/31/90	0.0470	0.0650
09/01/90	08/31/91	0.0470	0.0761
09/01/91	12/31/91	0.0470	0.0794
01/01/92	08/31/92	0.0485	0.0794
09/01/92	06/30/93	0.0485	0.0751
07/01/93	08/31/93	0.0485	0.0746
09/01/93	08/31/95	0.0500	0.0758
09/01/95	08/31/97	0.0508	0.0762
09/01/97	06/30/99	0.0465	0.0750
07/01/99	04/30/00	0.0185	0.0460
05/01/00	08/31/00	0.0154	0.0381
09/01/00	06/30/01	0.0243	0.0467
07/01/01	03/31/02	0.0088	0.0177
04/01/02	04/30/02	0.0065	0.0133
05/01/02	06/30/03	0.0065	0.0132
07/01/03	08/31/04	0.0118	0.0140
09/01/04	06/30/05	0.0118	0.0138
07/01/05	06/30/06	0.0225	0.0244
07/01/06	12/31/06	0.0350	0.0369
01/01/07	06/30/07	0.0350	0.0546
07/01/07	08/31/07	0.0415	0.0612
09/01/07	06/30/08	0.0415	0.0613
07/01/08	06/30/09	0.0545	0.0831
07/01/09	08/31/09	0.0389	0.0529
09/01/09	06/30/11	0.0390	0.0531
07/01/11	08/31/11	0.0459	0.0707
09/01/11	03/31/12	0.0464	0.0725
04/01/12	06/30/12	0.0464	0.0708
07/01/12		0.0464	0.0721

## PERS 1 PLAN

FROM THIS DATE	THROUGH THIS DATE	EMPLOYER PICK-UP RATE	EMPLOYER RATE
07/01/77	06/30/79	0.06	0.0567
07/01/79	06/30/81	0.06	0.0736
07/01/81	07/31/82	0.06	0.0650
08/01/82	06/30/83	0.06	0.0656
07/01/83	06/30/85	0.06	0.0731
07/01/85	06/30/86	0.06	0.0876
07/01/86	06/30/87	0.06	0.0881
07/01/87	08/31/88	0.06	0.0612
09/01/88	06/30/89	0.06	0.0618
07/01/89	08/31/90	0.06	0.0650
09/01/90	08/31/91	0.06	0.0761
09/01/91	08/31/92	0.06	0.0794
09/01/92	06/30/93	0.06	0.0751
07/01/93	08/31/93	0.06	0.0746
09/01/93	08/31/95	0.06	0.0758
09/01/95	08/31/97	0.06	0.0762
09/01/97	06/30/99	0.06	0.0750
07/01/99	04/30/00	0.06	0.0460
05/01/00	08/31/00	0.06	0.0381
09/01/00	06/30/01	0.06	0.0467
07/01/01	03/31/02	0.06	0.0177
04/01/02	04/30/02	0.06	0.0133
05/01/02	06/30/03	0.06	0.0132
07/01/03	08/31/04	0.06	0.0140
09/01/04	06/30/05	0.06	0.0138
07/01/05	06/30/06	0.06	0.0244
07/01/06	12/31/06	0.06	0.0369
01/01/07	06/30/07	0.06	0.0546
07/01/07	08/31/07	0.06	0.0812
09/01/07	06/30/08	0.06	0.0613
07/01/08	06/30/09	0.06	0.0831
07/01/09	08/31/09	0.06	0.0529
09/01/09	06/30/11	0.06	0.0531
07/01/11	08/31/11	0.06	0.0707
09/01/11	03/31/12	0.06	0.0725
04/01/12	06/30/12	0.06	0.0708
07/01/12		0.06	0.0721





Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

7141 Cleanwater Drive SW • PO Box 40108 • Olympia WA 98504-0108

January 7, 2013

David F. Stobaugh  
Stephen K. Strong  
Stephen K. Festor  
Lynn S. Prunhuber  
Bendich, Stobaugh, & Strong  
701 Fifth Ave., Suite 6550  
Seattle, WA 98104-7062

RECEIVED  
JAN 08 2013

BENDICH, STOBAUGH & STRONG, P.C.

Tim Filer  
Kathryn Carder McCoy  
Foster Pepper  
1111 Third Ave., Suite 3400  
Seattle, WA 98101-3299

RE: *Dolan v. King County*  
Pierce County Case No. 06-2-04611-6

Dear Counsel:

I write to you on behalf of my client, the Department of Retirement Systems (Department), the state agency that administers the Public Employees' Retirement System (PERS). The Department has learned that the parties in the *Dolan v. King County* case have reached a settlement agreement that has been reduced to writing and filed with the Pierce County Superior Court.

The Department has grave concerns regarding certain provisions of the parties' settlement agreement. Many of the provisions of the current agreement appear to violate state law. Other provisions, if put into effect, could expose PERS to the possible loss of its federal tax qualified status under 26 U.S.C. 401(a) and 414(d). The effect of federal tax disqualification will be catastrophic to PERS members and retirees, as well as to the public employers of our state.

The Department was not consulted by the parties before settlement was reached. If it had been consulted, the Department would have been in a position to warn the parties of the legal and administrative concerns that effectively make the agreement impossible to implement. Because this agreement has not yet been approved by the court, the Department raises the following legal and administrative concerns regarding specific provisions.

## ATTORNEY GENERAL OF WASHINGTON

Counsel  
Page 2  
January 7, 2013

1. The agreement imposes several duties upon, and directives to, the Department despite the Department not being a party to this lawsuit or to the agreement. I am not aware of any case or statute that provides that a settlement agreement may bind and direct an entity that is not a party to that agreement, or to the lawsuit from which the agreement arises. The agreement fails to invoke the jurisdiction of the court over the Department as a non-party and, as a result, the Department is not bound to the provisions of the agreement.
2. The Department's second concern is in regard to the payment of attorneys' fees. The agreement provides for the immediate payment of \$12 million in attorneys' fees to the Bendich Stobaugh firm by deduction of that sum by King County or the Department from the employees' pension contributions that King County is required to pay into the PERS trust funds. In the alternative, the agreement provides that the Department pay the attorneys' fees to Bendich Stobaugh from the PERS pension trust fund itself, and that those class members would 'repay' the PERS trust when they retire, withdraw their retirement contributions, or pay the costs on their own from private retirement accounts.

First, under 26 U.S.C. 401(a) and 414(d), money held in a governmental pension plan may not be paid to individuals or entities who are not members or beneficiaries of members of the pension plan. The staff of Bendich Stobaugh are not members or beneficiaries of PERS and attorneys' fees paid from a qualified plan's trust funds are not proper payments under federal law. If PERS trust funds are used to 'front' the attorneys' fees in this case, PERS faces the prospect that the Internal Revenue Service will revoke PERS' tax qualified status. This means that PERS will become a private pension plan, will no longer offer tax protected contributions to its members and governmental employers, and will face a host of other onerous requirements. It is legally impossible for the Department to 'front' attorneys' fees from the PERS trust fund.

Second, deduction of attorneys' fees from the class's pension contributions by King County or the Department is equally unavailable. Employer and employee contributions supply a portion of the money needed to fund benefits for hundreds of thousands of PERS members and retirees. Here, the parties intend that \$12 million of the contributions that would normally be deposited into the PERS trust fund would be used, instead, to pay attorneys' fees. That money is needed to pay for the class members' current and future benefits. The deduction of \$12 million in required contributions to the pension funds would cause a material liability to the funds and, as a result, require an increase of at least a .01 % in the monthly pension contributions paid by all PERS employers as well the same increase in contributions paid by all PERS 2 members, not just an increase in contributions by the class. This increase

ATTORNEY GENERAL OF WASHINGTON

Counsel  
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January 7, 2013

comes at a time when both public employers and public employees across the state can ill afford it.

Third, the agreement provides that King County will not pay interest on its employer and employee contributions. The parties to this agreement may not legally agree to prohibit the payment of interest on those contributions, nor do I believe the court has the authority to order that King County not pay interest. RCW 41.50.125 provides broad authority to the Department to impose interest on the delayed or late payment of employer and employee contributions to the pension funds, as is the case here. I am unaware of any case or statute that allows parties in a settlement agreement to determine whether interest is paid on pension contributions. As explained above, employer and employee contributions provide a portion of the money used to pay current and future pension benefits. However, income received from the investment of the funds provides the bulk of the monies used to support pension benefits. Even if attorneys' fees are not deducted from the employee contributions, the PERS trust funds have already lost significant investment income from contributions that support benefits that are now considered 'earned' since 1978. Under the plaintiffs own calculations, with this settlement there would be an immediate addition of \$111 million dollars in liability to the PERS system that is not funded (\$130 million - (\$31 million - \$12 million)). The investment income that would have been realized on the employer and employee contributions if they had been paid timely (i.e., when the service was performed) may, possibly, be recoverable by imposing interest on those contributions now. I warn you, however, that the interest required to pay for the loss of the investment income will be considerable. In its role as administrator of PERS, and pursuant to statute, you are on notice that the Department must and will require the payment of interest on employer and employee contributions in this situation.

In addition to the legal concerns raised above, the proposed settlement agreement raises significant administrative and policy concerns.

1. First, the settlement agreement as currently written will require the Department to modify its IT infrastructure to collect a percentage of each retirement payment and apply it to this unpaid liability. It will also require the Department to perform and pay for administrative bill collection functions that could just as easily be performed or contracted out by the County. The volume of members this covers would likely stretch the resources available to the Department in this area.
2. Second, given that not all members who earn a benefit will retire, and if they do, may not live long enough to pay their share of the attorneys' fees, and the possibility that a withdrawing member's account balance would not be sufficient to cover the cost of their share of the attorneys' fees, it is possible that the fee award will never be recouped in its entirety under the proposed methods of collection. The settlement

ATTORNEY GENERAL OF WASHINGTON

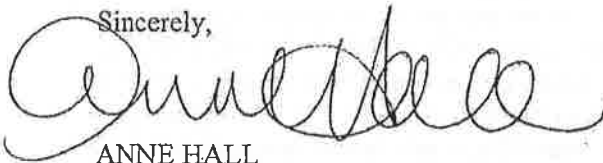
Counsel  
Page 4  
January 7, 2013

agreement makes no provision for who will be responsible to pay the unpaid fee to the trust funds.

3. Finally, this settlement writes a blank check that obligates the pension system, the trust fund, and the existing members and employers to pay. It sets a precedent that the Department can be excluded from all legal proceedings related to an issue that is within the scope of the Department's authority to determine, and then be forced to pay for a settlement to which it did not agree, to which it was not a party, and which is legally infirm.

For the above reasons, then, the Department requests that the parties withdraw their current settlement agreement from consideration by the court. If the parties continue negotiations, the Department is available for consultation regarding settlement provisions that would be workable and consistent with the laws. If the parties pursue the current settlement agreement, the Department will pursue all available legal and administrative options to oppose it.

Sincerely,



ANNE HALL  
Senior Counsel  
Chief Counsel to the Department of Retirement Systems  
Office of the Washington State Attorney General

cc: Steve Hill, Director  
Department of Retirement Systems



**King County**

**Dow Constantine**

King County Executive

401 Fifth Avenue, Suite 800

Seattle, WA 98104-1818

**206-263-9600** Fax 206-296-0194

TTY Relay: 711

www.kingcounty.gov

Attachment 3

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2013 JAN -8 PM 4:02

CLERK  
KING COUNTY COUNCIL

January 8, 2013

2013-025

The Honorable Larry Gossett  
Chair, King County Council  
Room 1200  
COURTHOUSE

Dear Councilmember Gossett:

This letter transmits to the King County Council an ordinance approving the proposed settlement agreement in the *Dolan v. King County* class action lawsuit. Council approval is necessary for the parties to seek judicial approval by Pierce County Superior Court Judge Hickman.

This settlement agreement has been negotiated between King County and counsel for the Class in the *Dolan* case. The settlement agreement is subject to Council approval. The ordinance authorizes the County to enter into the settlement agreement and directs the Executive to implement it. The settlement agreement is also subject to approval by the Pierce County Superior Court, and seeking that judicial approval will be the first step in implementing the agreement.

The *Dolan* lawsuit was filed in 2006 on behalf of current and former employees of the four private nonprofit organizations that provided public defense services under contracts with King County. The lawsuit alleged that King County had exercised such significant control over the defense organizations that they had effectively become agencies of King County. The lawsuit sought a ruling that the employees of these defender organizations were, and for some time had been, entitled to be enrolled in the Public Employees Retirement System (PERS).

In August 2011, the Washington State Supreme Court ruled that the public defense organizations were "arms and agencies" of King County and not independent contractors. The Supreme Court determined that the employees of the nonprofit public defense organizations are employees of the County for purposes of membership in Public Employees Retirement System (PERS). Following the Washington State Supreme Court's decision, the trial court required current public defense employees to be enrolled in PERS, which happened in April 2012. The County is currently paying PERS contributions for all employees of the nonprofit public defense firms.

The Honorable Larry Gossett  
January 8, 2013  
Page 2

The settlement agreement provides that class members will receive PERS service credit for the time they worked as employees of the public defense organizations during the period from January 1, 1978 to April 1, 2012. King County will pay all the PERS contributions for that service credit, which is estimated as \$31 million.

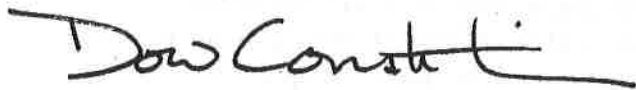
King County will also recognize those class members who are employed at the public defense organizations as of June 30, 2013 as County employees, with full employee benefits for their positions beginning July 1, 2013. These benefits include King County health insurance and other King County employee benefits. How King County accomplishes this recognition and how it organizes public defense is left up to King County and is not part of this settlement.

The settlement also resolves potential claims by the class members that they were entitled to County employment benefits *other* than enrollment in PERS. The class members are releasing these claims up to the July 1, 2013 recognition date.

This settlement supports Objective 2 of the Justice and Safety Goal of the King County Strategic Plan by ensuring the availability of public defenders for those who need them.

If you have any questions, please feel free to contact Dwight Dively, Performance, Strategy and Budget Division Director, at 206-263-9687.

Sincerely,



Dow Constantine  
King County Executive

Enclosures

cc: King County Councilmembers  
    ATTN: Michael Woywod, Chief of Staff  
        Anne Noris, Clerk of the Council  
Carrie S. Cihak, Chief Advisor, Policy and Strategic Initiatives, King County  
    Executive Office  
Dwight Dively, Director, Office of Performance Strategy and Budget  
Jackie MacLean, Director, Department of Community and Human Services (DCHS)  
David Chapman, Director, Office of Public Defense, DCHS

## FISCAL NOTE

Ordinance/Motion No. 00-  
 Title: Dolan v. King County Settlement Agreement  
 Affected Agency and/or Agencies: Department of Community and Human Services, Office of Public Defense  
 Note Prepared By: Krishna Duggirala  
 Note Reviewed By: Krista Camenzind

Impact of the above legislation on the fiscal affairs of King County is estimated to be:

**Revenue to:**

Fund/Agency	Fund Code	Revenue Source	Current Year	1st Year	2nd Year	3rd Year
<b>TOTAL</b>						

**Expenditures from:**

Fund/Agency	Fund Code	Department	Current Year	1st Year	2nd Year	3rd Year
General Fund	000000010		31,000,000			
<b>TOTAL</b>			<b>31,000,000</b>			

**Expenditures by Categories**

	Current Year	1st Year	2nd Year	3rd Year
Retrospective PERS payments	31,000,000			
<b>TOTAL</b>	<b>31,000,000</b>			

**Assumptions:**

Fiscal note reflects the estimated impact of the *Dolan v King County* settlement agreement.  
 It is anticipated the settlement amount will be funded through existing reserves and fund balance in the General Fund.







## King County

## Budget and Fiscal Management Committee

STAFF REPORT

<b>Agenda Item:</b>	6	<b>Name:</b>	Amy Tsai, Patrick Hamacher
<b>Proposed No.:</b>	2013-0025	<b>Date:</b>	February 5, 2013

**SUBJECT:**

Proposed Ordinance 2013-0025 would approve the class action settlement agreement negotiated between King County and plaintiffs in Dolan v. King County.

**SUMMARY:**

In January 2006, a class action lawsuit was filed against King County, alleging that King County had a duty to enroll lawyers and staff of the non-profit corporations with whom King County had contracted for public defense services in the Public Employees' Retirement System (PERS). After a direct appeal and reconsideration proceedings, the Washington Supreme Court ruled in January 2012 that the non-profits were "arms and agencies" of King County, making the employees of those non-profits employees of King County for purposes of PERS enrollment.

On remand, the trial court ordered King County to enroll the current public defense employees in PERS. Since April 2012, King County has been paying employer contributions to PERS for all of the public defense employees and the employees have been making PERS contributions through salary deductions.

With the matter of relief for the lawsuit still outstanding, the parties negotiated a proposed settlement agreement. The settlement requires Council approval. If the Council approves the settlement, judicial approval would be the next step. If the court approves the settlement and it becomes effective, the lawsuit would be dismissed.

The settlement agreement is attached to the proposed ordinance. The County would pay \$31 million in retroactive PERS contributions, both the employer and employee portion. The class would waive claims for other benefits (vacation, medical, etc.) for that time period. Plaintiffs' counsel would seek attorney fees of \$12 million, to be paid out of the "common fund" created by the settlement, with class members repaying the amount through deductions from their future retirement benefit payments. Public defense employees would become County employees with full benefits on July 1, 2013, the day after current contracts with the non-profits expire. How King County structures public defense delivery in the future is up to King County and is not part of the settlement.

There is some time sensitivity to the Council's decision on whether to adopt the settlement agreement, because the judicial settlement approval process will take time. Council approval is needed before judicial review of the proposed settlement can begin.

**This staff report is a first briefing on the settlement terms and timelines. Staff analysis of issues is ongoing. Consequently, this proposed legislation is not yet ready for action by the Committee.**

## **BACKGROUND:**

### Indigent Defense in Washington State and King County

Public defense services are mandated by the U.S. Constitution, the Washington State Constitution and state law. The Sixth Amendment of the United States Constitution and Article I, Section 22 of the Washington State Constitution guarantee assistance of counsel to every citizen accused of a matter where loss of liberty is possible. The Revised Code of Washington (RCW 10.101.005) states that "The legislature finds that effective legal representation must be provided for indigent<sup>1</sup> persons...consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches."

It is up to each city or county to decide whether to have a public defender office, use assigned counsel, or contract for public defense services.<sup>2</sup> King County provides funds for indigent defense through its own Office of Public Defense (OPD), which is a division within the Department of Community and Human Services. OPD, in turn, assigns cases to four private, non-profit contract agencies (each with its own board of directors) or uses a pool of assigned counsel for conflict cases. The functions of OPD are codified in K.C.C. Chapter 2.60.<sup>3</sup>

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<sup>1</sup> RCW 10.101.010(3), defines "indigent" as including those who are receiving public assistance, involuntarily committed to a mental health facility, or near the federally established poverty level; and those who are unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

<sup>2</sup> A 2002 state survey showed that counties in the state who contract for public defense have various models such as contracting with private attorneys who bid to provide representation under contract for a fixed amount of time and pay, mixed systems of contracted attorneys and court-appointed counsel, or having a contracted attorney who acts as the public defender and apportions work out to other contracted attorneys.

<sup>3</sup> King County Code K.C.C. 2.60.010 states, "It is the intention of King County to make publicly financed legal services available to the indigent and the near indigent person in all matters when there may be some factual likelihood that he may be deprived of his liberty pursuant to the laws of the state of Washington or King County."

## Dolan v. King County History

King County has historically contracted with private, non-profit entities for the provision of public defense services. As employees of independent contractors, the public defense attorneys and staff have not received County benefits, nor have they been enrolled for participation in PERS.

In January 2006, a class action lawsuit was brought in Pierce County Superior Court against King County, alleging that the County exerted so much control over the defender agencies that their staff effectively were county employees who should be eligible for the Public Employees' Retirement System (PERS).

In February 2009, Pierce County Superior Court Judge Hickman ruled that, over time, the non-profit entities had effectively become county agencies, so that their employees were employees of the County for purposes of enrollment in PERS. Judge Hickman stayed enforcement of his ruling while King County appealed.

King County appealed, but in August 2011, the Washington Supreme Court affirmed the trial court's decision in a five to four decision. The Supreme Court ruled that the non-profits were "arms and agencies" of King County, making the employees of those non-profits employees of King County for purposes of PERS enrollment.

The County made a motion for reconsideration<sup>4</sup> which was denied, and the case was remanded back to the Superior Court. In March 2012 the trial court entered an order requiring King County to enroll the current employees of the public defense firms in PERS. Since April 2012, King County has been making employer contributions to PERS for those employees and the employees' PERS contributions have been deducted from their salaries.

After the Supreme Court remanded the case, the parties engaged in extensive settlement negotiations. The parties reached agreement on a proposed settlement in December 2012. The settlement is subject to Council approval. If the Council approves the settlement, it will then be submitted to Judge Hickman for judicial approval as required by court rules.

In January, 2013, the Washington State Attorney General (AG), on behalf of DRS, sent the parties a letter identifying strong concerns about the settlement terms. Specifically, the AG is objecting to several issues related to IRS Tax Status, recoverability of employee contributions and the lack of interest payments (see letter, Attachment 2). The settlement agreement includes a mechanism for DRS to raise objections before Judge Hickman as discussed in the settlement process timeline below.

---

<sup>4</sup> In that motion the County stated that if the decision were upheld, "there is no reason to doubt that these individuals will also be employees for purposes of unemployment compensation, industrial insurance, health care insurance, state and local taxation, wages and hours legislation and many other situations not yet contemplated by this Court." This is of note because in the proposed settlement, plaintiffs would waive all non-PERS benefits claims for the full period of time for which the County is making PERS contributions.

## ANALYSIS

### Proposed Settlement Terms

The proposed settlement agreement, included as Attachment A to Proposed Ordinance 2013-0025, would do the following:

- Class members would obtain retroactive PERS service credit for the time that they worked as public defense employees during the period January 1, 1978 up to April 1, 2012. King County would pay the State all the omitted PERS contributions, both employee and employer, for about \$31 million.
- King County would not pay interest on the retroactive employer or employee share of PERS contributions. King County has the option to terminate the settlement if it is required to pay such interest.
- The class members would release King County for all claims for other County employee benefits (vacation, medical, dental, etc.) from 1978 until the settlement becomes effective, creating a "clean slate" on these issues.
- People employed as public defense employees as of June 30, 2013 would become County employees with full benefits for their positions on July 1, 2013 (the day after the current contracts with the non-profits expire). This provision would be implemented even if the Effective Date of the settlement were to be delayed by an appeal from the final approval order by either an objecting class member or the Department of Retirement Systems.
- How King County accomplishes the recognition of public defenders as employees and how it organizes its public defense services is not part of the settlement and would be up to King County.
- Plaintiffs' counsel would seek a "common fund" award of attorney fees consisting of a percentage of the value of the retirement benefits to be received by the class members. They intend to seek an award of \$12 million. This award is the responsibility of the class members and would not increase the amount to be paid by King County. The attorney fees would be paid shortly after the settlement becomes effective either by deduction from the amounts paid by King County or by payment by the Department of Retirement System, which administers PERS. Class members would repay the attorney fees with deductions from future retirement benefits by DRS.

### Settlement Process Timeline

If the Council approves the settlement, obtaining an order granting final judicial approval of the settlement agreement is expected to take approximately three more months, not including any appeal periods. If the court approves the settlement and it becomes effective, the lawsuit would be dismissed.

The next steps that would follow Council approval, and approximate timeframes, are as follows:

1. The parties will seek preliminary judicial approval of the settlement. The Court would also be asked to approve a notice of settlement that would be sent to the class members. (2 weeks).
2. If the Judge finds the settlement to be reasonable and grants preliminary approval, the approved notice will be mailed to the class members (2 weeks).
3. Class members will have 30 to 45 days to object to the terms (4-6 weeks). DRS is expected to file its formal objections during this period.
4. After the close of the objection period, plaintiffs' attorneys and attorneys for the County will respond to any objections (2 weeks).
5. The Court will hold a final settlement (fairness) hearing to (1) decide whether to grant final approval to the settlement, (2) consider and rule on objections, if any, to the settlement from class members and DRS and (3) rule on plaintiffs' attorney fee request. After the Court rules on these issues (which may take place after the final settlement hearing), the settlement will become effective unless an appeal is filed within 30 days.
6. If there is an appeal from the final approval order, the effective date of the settlement would be delayed. The settlement agreement provides, however, that the July 1 recognition of current public defense employees as County employees with full benefits for their positions will proceed even if the effective date of the settlement is delayed by an appeal.
7. If an appeal is successful, the settlement will not become effective and the parties could negotiate a new settlement or return to litigation.

Policy and legal analysis of the proposed settlement agreement is on-going, including the financial reasonableness of the settlement agreement, the relationship between the agreement and the County's impending decisions regarding the structure of public defense, and implications of the concerns raised by the AG.

#### **NEXT STEPS:**

There is some time sensitivity to the Council's decision on whether to adopt the settlement agreement, because the process will take time and the next step is contingent on Council approval. Council's legal counsel is conducting legal review of the settlement agreement. Council staff are conducting policy analysis of the agreement. The analysis for the next briefing will include identification of the issues affecting the decision-making timeline.

#### **INVITED:**

- Dwight Dively, Director, Office of Performance, Strategy and Budget (PSB)

- Tim Filer, Attorney, Foster Pepper PLLC (outside counsel on *Dolan* litigation)
- Kevin Wright, Senior Deputy Prosecuting Attorney, King County

**ATTACHMENTS:**

1. Proposed Ordinance 2013-0025 and attached settlement agreement
2. Letter from Attorney General, dated Jan. 7, 2013
3. Transmittal Letter, dated Jan. 8, 2013
4. Fiscal Note