



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

July 25, 2000

Ordinance 13904

Proposed No. 2000-0384.2

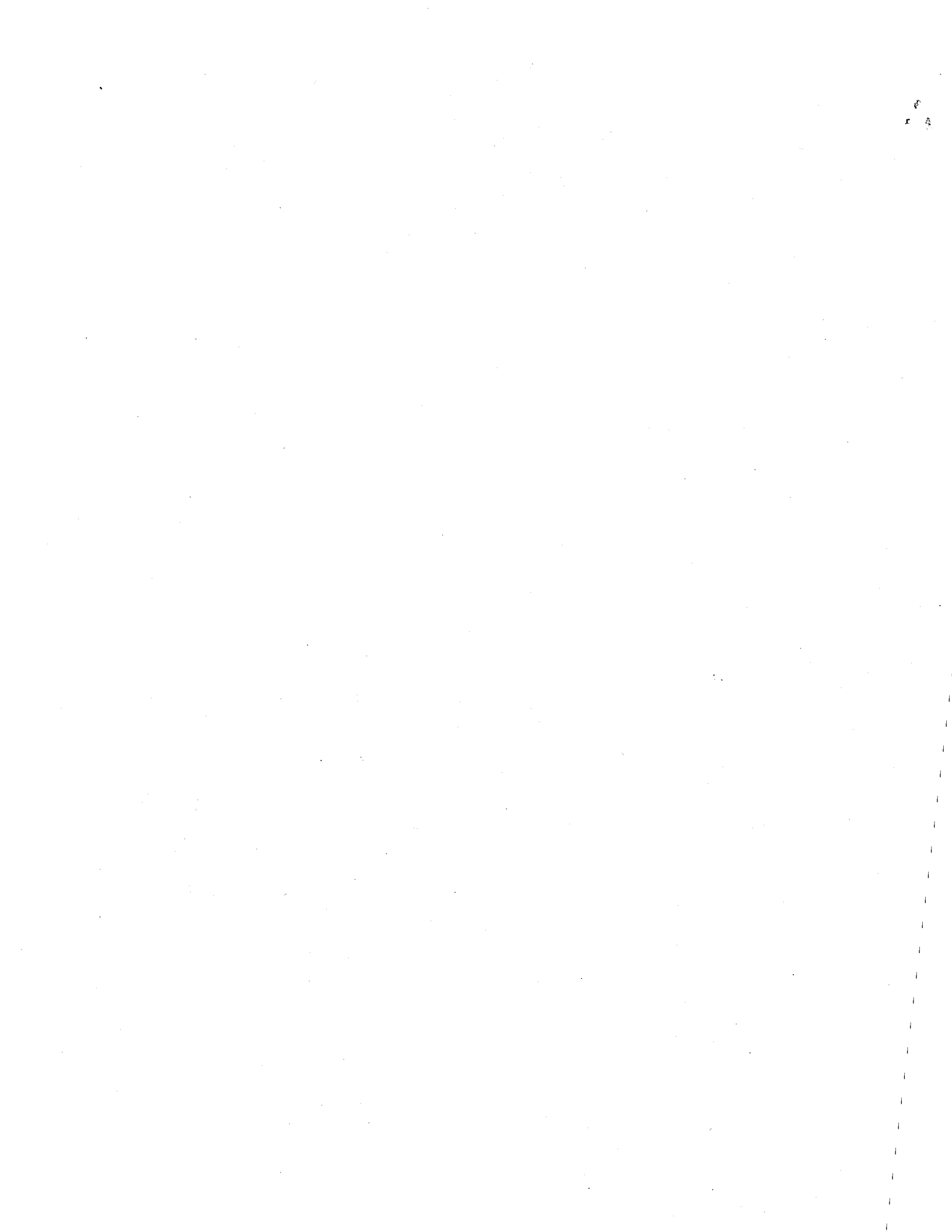
Sponsors McKenna, Sullivan and Phillips

1
2 AN ORDINANCE approving and adopting the class action
3 settlement agreement negotiated between King County and
4 plaintiffs in Clark, et al. v. King County, and directing the
5 executive to implement the terms of the agreement.
6
7
8

9 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

10 SECTION 1. The class action settlement agreement negotiated between King
11 County and the plaintiffs in Clark, et al. v. King County, No. 95-2-29890-7 SEA,
12 attached to this ordinance and by this reference made a part of this ordinance, is hereby
13 approved and adopted in substantially the same form as attached.

14 SECTION 2. Upon final approval of the class action settlement agreement by the
15 Superior Court of the state of Washington, the executive is directed to implement the
16 terms of the agreement.
17

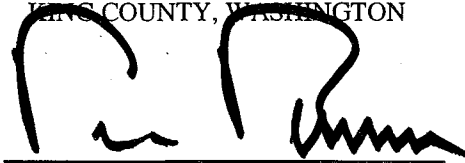


Ordinance 13904

Ordinance 13904 was introduced on 7/10/00 and passed by the Metropolitan King County Council on 7/24/00, by the following vote:

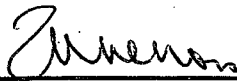
Yes: 13 - Mr. von Reichbauer, Ms. Miller, Ms. Fimia, Mr. Phillips, Mr. Pelz,
Mr. McKenna, Ms. Sullivan, Mr. Nickels, Mr. Pullen, Mr. Gossett, Ms.
Hague, Mr. Vance and Mr. Irons
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Pete von Reichbauer, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 27 day of July, 2000



Ron Sims, County Executive

Attachments

A. Class Action Settlement Agreement, No. 95-2-29890-7SEA



SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LEAH CLARK, KEITH PURVES,
 MEGANN DEVINE, DEAN WILSON,
 SUSAN COLES, and KAREN OLSON,

Plaintiffs,

v.

KING COUNTY,

Defendant.

CLASS ACTION

NO. 95-2-29890-7 SEA

CLASS ACTION SETTLEMENT AGREEMENT

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I.
INTRODUCTION

1. This Settlement Agreement is made pursuant to CR 23(e) to settle the class action of *Clark v. King County*, No. 95-2-29890-7 SEA. The provisions in this Agreement apply to all members of the *Clark* class. Class membership alone does not necessarily make monetary relief available. Class members are entitled to relief only as specifically stated in this Settlement Agreement. The Settlement Agreement is not effective until approved by the Metropolitan King County Council and by the King County Superior Court.

II.
DEFINITIONS

The following general definitions apply in this Agreement.

2. "Metro" as used in this Agreement refers to the former Municipality of Metropolitan Seattle ("Metro"), which was a separate governmental entity until January 1, 1994, when it merged with King County. "Metro" as used herein also includes the period from January 1, 1994 through December 31, 1995 when Metro was a separate department within King County, known as the Department of Metropolitan Services.

3. "Class members" as certified by the Court on June 4, 1997, refers to all individuals (a) who provided personal services to Metro and/or King County and (b) who, at the time they provided those services, were paid through temporary services agencies or leasing agencies or were considered and/or paid as independent contractors, and (c) who fall within the common law definition of employee. On May 13, 1999, the Court clarified that individuals paid through agencies at the Department of Public Works (the divisions of which were subsequently reorganized into the Department of Natural Resources and the Department of Transportation) were common-law employees and therefore are class members. On December 23, 1999, the Court

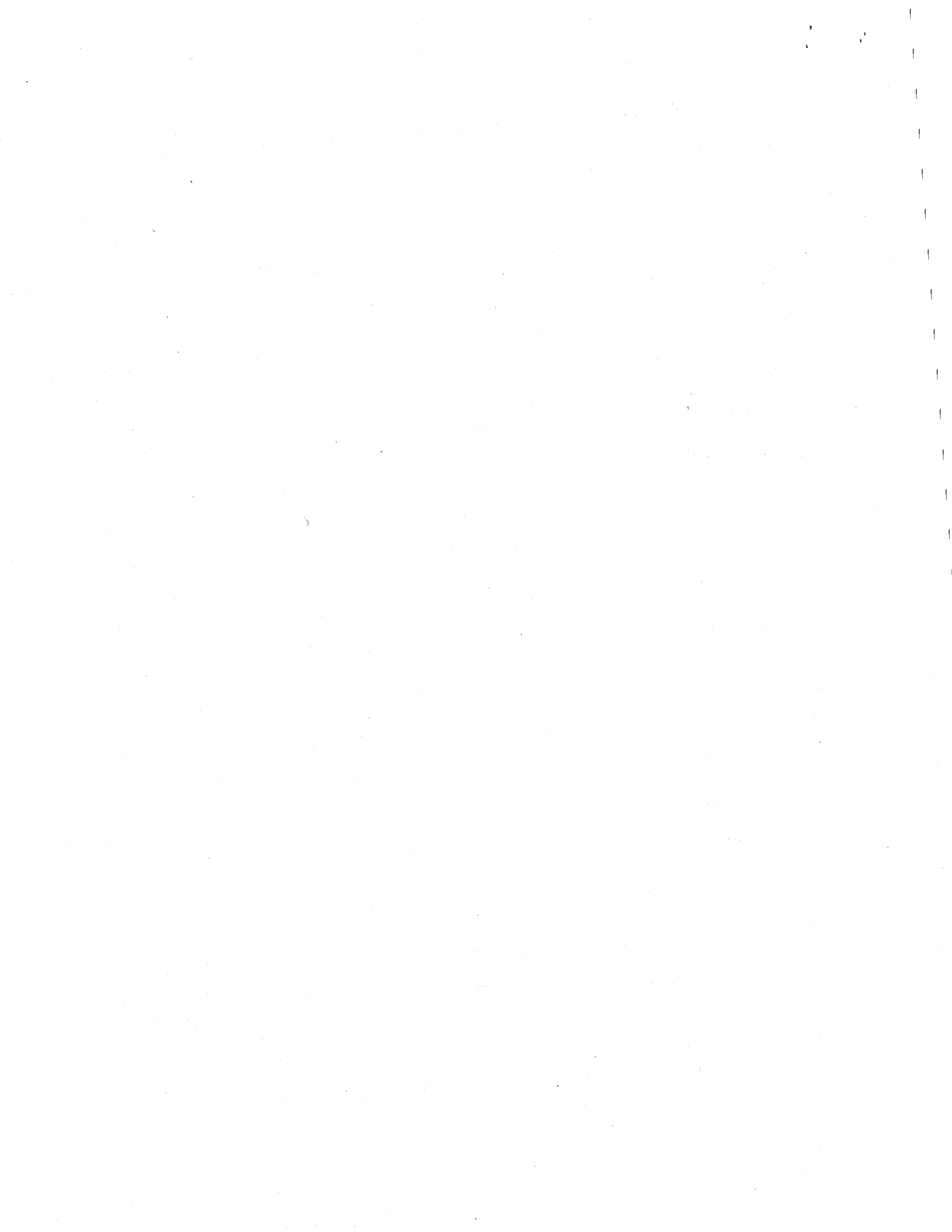
clarified the definition of “class member” with respect to individuals paid through agencies who worked for Metro.¹ The Court has ruled that Metro workers who were paid through temporary employment agencies were class members, except that (1) individuals who work(ed) for genuine consulting firms were not class members, (2) short-term workers are not class members,² and (c) workers paid through Barrett, Kelly Temporary Services, Nine-to-Five, Superior Design, and Western are presumptively not common-law employees nor class members because the agencies appear to have primarily short-term workers, but the presumption is rebuttable and it is plaintiffs’ burden to identify those workers paid through these agencies who were not short-term. By order entered January 4, 2000, the Court clarified that individuals paid through agencies whose total service for Metro and/or King County is less than six months were not common-law employees and are not class members in this case. On January 6, 2000, the class definition was clarified and provides that individuals paid through temporary employment agencies or payroll agencies and whose cumulative or total service for King County was six months or more are presumptively class members and are presumptively common-law employees of King County when paid through agencies, except that King County is not precluded from presenting evidence to exclude a particular individual from the class, except that (a) individuals who were employees of genuine consulting firms are not class members and (b) workers paid through B&M, Barrett, Kelly Temporary Services, Nine-to-Five, Superior Design, Technical Communications Consultants, Inc., Temporarily Yours, and Western are presumptively not common-law employees nor class members because the agencies appear to have primarily short-term workers, but the presumption is

¹ Pursuant to the Court’s December 23, 1999 order, the County is not precluded from bringing forward facts about particular individuals to establish they were not common-law employees of Metro.

rebuttable and it is plaintiffs' burden to identify those workers paid through these agencies who are/were not short-term. Additionally, the January 6, 2000 stipulation clarified that four individuals at the former Department of Youth Services, paid with 1099s and/or paid through an agency were King County common-law employees when paid with 1099s and/or through an agency. On May 30, 2000, the Court clarified the definition of "class member" and ruled that individuals who worked at King County paid through the temporary employment agencies of Globe and Hallmark are presumptively not class members in this case because these agencies appear to have primarily short-term workers, but the presumption is rebuttable and it is plaintiffs' burden to identify those workers paid through those agencies who are/were not short-term.

4. With respect to individuals paid with purchase orders and/or IRS Forms 1099, on May 30, 2000, the Court ruled that individuals who worked for Metro and/or King County who were paid as "independent contractors" with purchase orders and/or IRS Forms 1099, and whose cumulative service for Metro and/or King County was six months or more are presumptively common-law employees and class members; except that King County is not precluded from presenting evidence to exclude a particular individual from the class. The Court ruled that the following groups of workers presumptively meet these criteria -- Employment Counselors at the former Department of Youth Services, whose cumulative service is six months or more; Attorneys for Court-Appointed Special Advocates (CASAs) and court-appointed guardians ad litem in Family Court and/or Juvenile Court proceedings, whose cumulative service is six months or more and who did not maintain a private law practice; traffic reporters at Metro; court reporters, whose cumulative service is six months or more; an individual who worked at the Harborview Project;

² "Short Term Workers" was subsequently defined by the Court as individuals paid through agencies whose cumulative service for Metro and/or King County was less than six months. See January 4, 2000 order.



specific individuals who worked for Metro and who were paid through agencies and/or who became "King County Employees."³ King County may rebut the presumption. Individuals who worked for Metro and/or King County, who were paid as independent contractors with purchase orders and/or IRS Forms 1099 and whose cumulative service is less than six months are presumptively not common-law employees and not class members in this case, but the presumption is rebuttable, and it is the plaintiffs' burden to rebut the presumption. See Court orders dated June 4, 1997 and May 30, 2000.

5. By order entered May 30, 2000, the Court ruled that hourly-paid individuals who work(ed) six months or more for King County paid by Ajilon Corporation and/or Best Consulting are presumptively class members, but the presumption is rebuttable and King County is not precluded from presenting evidence to exclude a particular individual from the class. The Court further ruled that individuals who perform(ed) project-based work for Metro/King County at the direction of the following firms are presumptively not common-law employees nor class members: Analysts International, Aris Corporation, Ciber, Inc., Davis Consulting Services, Metamore/Comsys, Nortec, Inc., Premier Systems Group, Inc., Romac, Softsquare International, and salaried individuals at Ajilon Corporation and Best Consulting. The presumption is rebuttable by facts establishing that specific individuals are class members.

6. The term "class members" includes the named plaintiffs unless otherwise specified in this Agreement. "Named plaintiffs" refers to Leah Clark, Susan Coles, Megann Devine, Karen Olson, Keith Purves and Dean Wilson.

7. "Settlement Agreement" or "Agreement" refers to this document, together with any

³ The following individuals worked for Metro and were paid through agencies and/or became King County Employees: Karel Bauer, Leah Clark, Patrick Comstock, Roger Fernandes, Wilma Fontroy, Betty Hageman, Erik Hutchinson, Barbara Larson, David Melametz, Tanya Moll,



attachments. The Settlement Agreement may include amendments, supplements and additions as part of this Agreement, but only if they are in writing and signed by counsel for both parties, approved by the Court, and specifically refer to this Agreement.

8. "King County Employee" as used in this Agreement refers to persons employed by King County and paid through the King County payroll system and/or persons employed by Metro and paid through the Metro payroll system.

9. There are further definitions relating to specific parts of this Agreement which are found elsewhere in the Agreement.

III. GENERAL MATTERS

Compromise of Disputed Claims.

10. This Settlement Agreement is a compromise of disputed claims and is the product of serious and extended negotiation. The County's entry into this Agreement is a result of compromise and it does not constitute an admission of liability by the County. The compromise embodied in this Agreement is intended to fully and finally resolve the claims of class members in this case.

Claims Subject to this Settlement Agreement.

11. This Settlement Agreement completely resolves and settles the claims of class members relating to their exclusion from the rights and benefits accorded King County Employees through December 31, 2000. Plaintiffs maintain that Metro and/or King County misclassified class members as "contract workers," "agency employees," "contractors," and/or as "independent contractors," when class members were common-law employees of Metro and/or King County. Plaintiffs maintain that by misclassifying employees, Metro and King County violated certain

Frank Video, and Gary Wegner.



statutory provisions, ordinances, resolutions, contracts, and the requirement of equal treatment in the Washington Constitution. Plaintiffs allege that this misclassification resulted in wrongful exclusion from the Washington State Public Employees' Retirement System, alleged wrongful denial of wages, exclusion from the career service, and related claims based on Metro resolutions, contracts and County ordinances that provide particular items of compensation, benefits, and protections to King County Employees. These claims and all other claims asserted in plaintiffs' complaints, based on Metro's and/or King County's alleged misclassification of employees, are completely settled and resolved by this Settlement Agreement. Moreover, claims under Washington state remedial statutes (RCW 49.48.030 and 49.52.070) for double damages, attorney fees, and costs are fully settled and resolved by this Settlement Agreement. Except as specifically provided in this Agreement, all claims by either side for attorney's fees, costs, expert witness fees, database development, discovery costs, and all other litigation expenses and costs are completely settled and resolved by this Agreement. For class members paid with IRS Forms 1099, this Agreement also fully settles and resolves all claims for excess FICA and Medicare taxes paid by the class member, all liability insurance the class member was required to maintain by Metro and/or King County, and/or all other out-of-pocket expenses paid by the class member as a result of being allegedly misclassified. Claims that are separate and independent from the *Clark* lawsuit that might have been or may be raised by *Clark* class members against King County are not settled or resolved in this Settlement Agreement. Additionally, all PERS benefit claims are referred to the Department of Retirement Systems pursuant to the Court's order entered January 4, 2000 and will be resolved pursuant to the process described in Part VI of this Agreement.



12. Because certain class members' additional service for King County and/or Metro as a *Clark* class member was not all taken into account in the *Logan*⁴ class action lawsuit, some *Logan* class members did not obtain relief that could otherwise have been awarded if the cumulative effect of work hours that were considered or compensated in *Logan* were considered in combination with other work hours within *Clark*. For example, a potential class member in *Logan* might have appeared to have worked insufficient hours in the King County payroll records during a particular time period to have qualified for any relief under the *Logan* Settlement Agreement, but would have qualified under the *Logan* agreement to obtain some relief if all hours of work for King County during that time period were considered, including the hours of work that are within *Clark*. Accordingly, certain *Clark* class members who were also in the *Logan* class may be entitled to further monetary and/or other relief, as is provided in this Agreement. Any such cumulative effects or relief based on the aggregate hours of a person's service as a "temporary" employee are exclusively considered and settled in this case. This Agreement fully resolves all such "cumulative" claims not resolved in the *Logan* settlement, which claims were identified in the Court's Order in the *Clark* case entered December 30, 1997, pp. 6, 7, and in the *Logan* Settlement Agreement, K. Co. Ord. 12942, ¶¶8, 9. In no event shall *Clark* class members be entitled to double recovery.

Timeliness.

13. This Settlement Agreement includes certain commitments by the parties and counsel to take actions. Any procedural failure or error, such as a failure to act in a timely manner, does not preclude final approval and enforcement of the Settlement Agreement if the error can be corrected or made harmless (*e.g.*, a failure to give adequate notice to class members

⁴ *Logan v. King County*, No. 93-2-20233-4 SEA, and *Knox v. King County*, No. 97-2-



might be corrected by giving further notice and possibly rescheduling the settlement hearing).

Any modification to the schedule in this Agreement shall be by court order.

Effective Date of Agreement.

14. Notice of the proposed settlement to class members identified in the class database will be promptly distributed by King County pursuant to a schedule to be agreed to by the parties and established by the Court. In the event of a disagreement as to the schedule, the matter shall be resolved by the Court. The settlement hearing date shall be scheduled by the Court. This Settlement Agreement is effective upon signature of the King County Executive and upon approval by the Metropolitan King County Council and the King County Superior Court.⁵

**IV.
TRANSITION PROVISIONS**

Creation of Career Service and Term-Limited Temporary Positions for Specific Class Members.

15. Pursuant to Court orders entered March 20, 1998 and May 18, 1998, and the parties' stipulations, certain class members became "provisional" King County employees.⁶ No later than fourteen (14) days after the Agreement is approved by the Court, except for Stephanie Calcote, who did not resume employment with King County, the "provisional" employees who have not yet received career service positions shall become members of the County's career service,⁷ and their probationary period shall be deemed completed if their position is the same body of work performed as a "provisional" employee. If the position is a different body of work

05811-2 SEA, hereafter collectively referred to as "*Logan*."

⁵ The litigation has been stayed pending approval and execution of this Agreement.

⁶ These individuals are: Mindy Baker, Stephanie Calcote, Pride Canaday, Thomas Crawford, Shirley Lewis, Jeanie MacNab, Julie Magno, Tim Miller, Elizabeth Pine, Jacqueline Spady, Karen Ung, Meredith van Ry, Jean White, Betty Yee, and Tim Yee.



or in a different department, he/she shall be required to serve the same probationary period as other employees in the department.

16. No later than fourteen (14) days after approval of the Agreement by the Court, King County shall provide named plaintiff Keith Purves with a term-limited temporary position (“TLT”) of not less than three years. At the termination of the TLT position, Keith Purves will be placed on the County’s layoff/recall list and shall have the same layoff/recall rights as a career service employee.

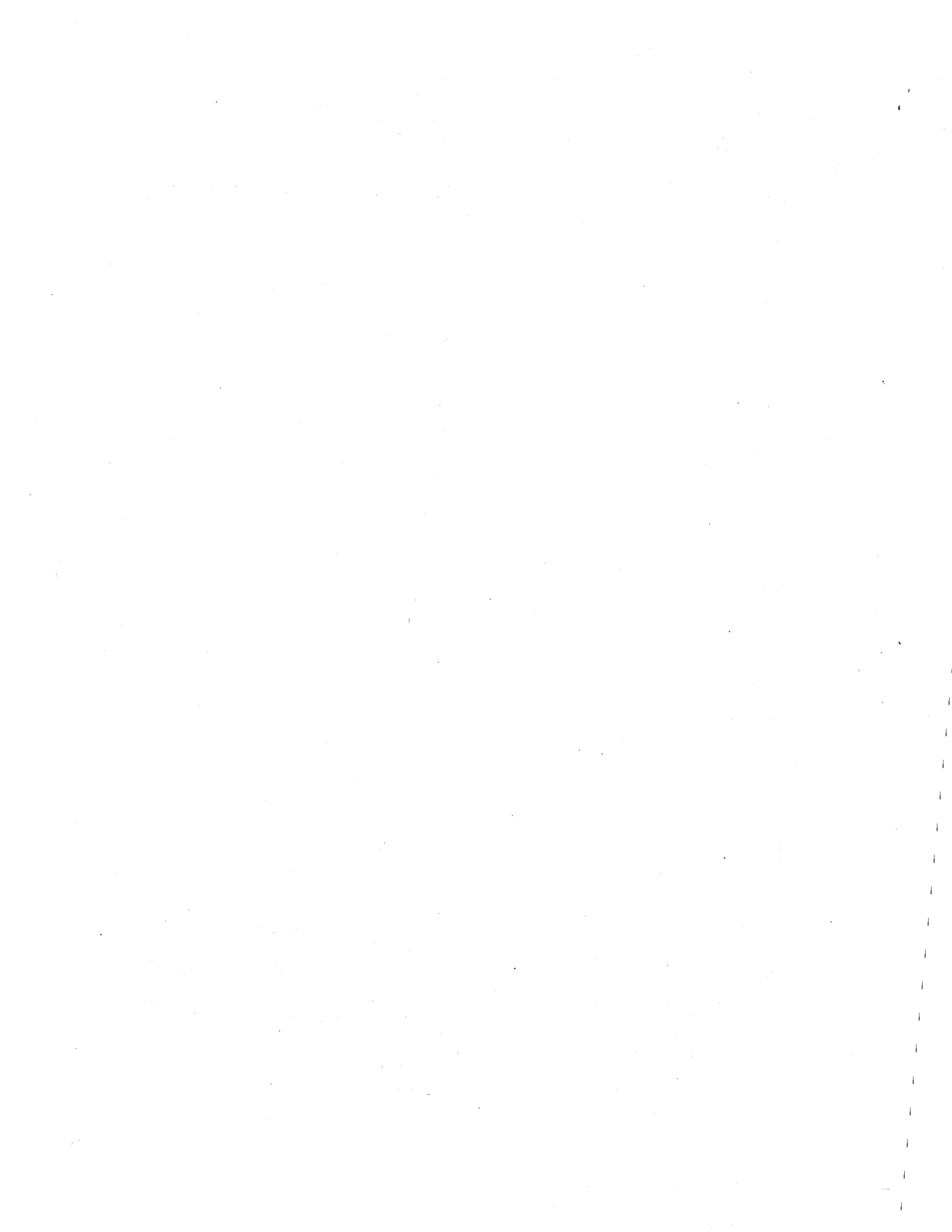
Creation of New Positions to Be Filled By “Contract Workers.”

17. In addition to career service positions for the class members identified above in ¶16, new term-limited temporary positions and new career service positions will be created as a result of the “Initial Contract Worker Body of Work Review” described below.

Annual Contract Worker Body of Work Review.

18. The County will conduct an annual body of work review as described herein beginning in 2001. The King County Council, the Prosecuting Attorney’s Office, the Superior Court, and the District Court (referred to as the “Agency”), and all Executive Departments shall prepare and submit to the Contract Worker Review Committee (CRC), a report documenting its use over the past twelve (12) months of (a) vendor-supplied workers and (b) non-professional/technical consultant service agreements wherein services are obtained from a consultant who uses a social security number rather than an employer identification number. (These individuals are referred to collectively as “contract workers.”) The following information shall be included in each report: name; social security number; hours worked to date (both annual and cumulative); hourly rate; overhead rate; the classification of work (where appropriate) that would apply if the

⁷ The following individuals previously became members of the County’s career service:



work were performed by a King County employee; the department's or Agency's standard work week (*i.e.*, 35 or 40 hours); description of the type of work performed; and identification of whether the work is either ongoing in nature or project related. Should the work performed last longer than six (6) months, the department or Agency shall describe what efforts were made to have the work performed by a King County Employee. Should any of the work described continue beyond the report's end date, the department or Agency shall recommend whether the work should continue to be performed by a contract worker or should be performed by a career service, FTE, or term-limited temporary employee.

19. Each department or Agency report shall be reviewed by the CRC. The CRC shall consist of the Deputy County Executive or his/her designee, the Budget Director or his/her designee, the OHRM Director or his/her designee, the Agency Representative, and the Department Director or his/her designee. Within sixty (60) days of the submission of the department or Agency report, the CRC shall make a factual determination as to whether ongoing bodies of work are being performed by contract workers. If the CRC determines that an ongoing body of work which is six months or more exists, the CRC, in consultation with the affected department or Agency, may recommend (a) creation of a new FTE position; (b) filling an existing vacant position; (c) creation of a term-limited temporary position, or (d) cessation of the work. If the CRC identifies such an ongoing body of work but does not make any of the recommendations outlined above, the department or Agency must discontinue the performance of such work by a contract worker. If the CRC recommends creation of a new FTE position but the County Council does not create such a position, the department or Agency shall discontinue the performance of such work by a contract worker. If the CRC recommends creation of a new, budgeted FTE, the

Thomas Crawford, Julie Magno, Betty Yee, and Tim Yee.

budgeted FTE will be requested for the next annual budget with the work performed in the interim by a temporary or term-limited temporary King County Employee.

20. The Agency, department, and CRC reports shall be subject to public disclosure and shall be made available to the King County Council.

Initial Body of Work Review.

21. King County will conduct an initial body of work review of current contract worker usage, utilizing the process described above at ¶¶19-20 following approval of this Agreement by the Metropolitan King County Council. For the initial body of work review, if the CRC recommends creation of a new FTE position, the FTE will be requested for the 2001 budget. Pending approval of the FTE in the proposed 2001 budget, the work will be performed by a temporary or term-limited temporary King County Employee and if the FTE position is approved, the incumbent will receive the hiring preference as set forth at ¶23.

22. Contract workers working for King County for six months or more as of the date of the settlement hearing, who as of that date were being paid through vendors or paid as “independent contractors” shall be eligible to apply for and shall be given hiring preference for the career service and term-limited temporary positions created in the initial “Contract Worker Body of Work Review” process, discussed at ¶21 above. King County will identify eligible contract workers and adopt procedures for the hiring preference.

Procedure for Filling Newly-Created Positions.

23. The hiring authority for each department or Agency will consider the contract workers described at ¶¶18 and 22 above within that department or Agency for the newly created positions. A contract worker seeking to be employed in a newly created position shall submit a letter of interest (in the form approved by OHRM). Contract workers who have performed similar

work for the County and who meet the minimum qualifications shall be considered for the position. When more than one contract worker is qualified for the position, the selection shall be based on the contract worker's qualifications, including the contract worker's work history, and the time worked in the same or similar positions. If contract workers would be in a bargaining unit represented by a labor union, the selection shall be based on the collective bargaining agreement's terms and/or through negotiation with the labor union.

Probationary Period and Seniority.

24. When a new FTE position is created, as described in §§19 and 21, in a department or Agency and is filled by the contract worker in that department or Agency who had been performing that job or a substantially similar body of work, and the contract worker has been working six (6) months or more prior to the appointment, or the department or Agency's normal probationary period if longer than six months, the probationary period shall be deemed completed and the contract worker shall not serve any probationary period. If the contract worker served less than six consecutive months, the contract worker shall serve the same probationary period as other employees in that department or Agency. For contract workers covered by a collective bargaining agreement, their seniority dates will be determined by the collective bargaining agreement or by the collective bargaining process.

25. When the contract worker fills a new FTE position created in §§19 and 21, in a department or Agency different from the one where he/she previously worked, or, if the job for which the contract worker is selected is not substantially similar to the contract worker's previous job, then the contract worker shall serve the same probationary period as other employees in that department or Agency. For contract workers covered by a collective bargaining agreement, their



seniority dates will be determined by the collective bargaining agreement or by the collective bargaining process.

Recall Rights.

26. If any contract workers who received a hiring preference as a result of the body of work review processes described above and who were not placed in a career service or a term-limited temporary position, either because they lack qualifications for the positions created or because there are fewer positions needed than there are qualified employees, the employees shall be entitled to participate in the County's layoff/recall program, provided, however, that their length of participation shall be for a period of 12 months.

Ordinance Drafting.

27. King County shall be responsible for drafting the ordinance(s) necessary for the Metropolitan King County Council to approve this Agreement.

V.

**PAY AND LEAVE ADJUSTMENTS FOR CLASS MEMBERS
WHO ARE CURRENT KING COUNTY EMPLOYEES**

Vacation and Sick Leave Accrual.

28. *Adjusted Hire Date.* All class members who are King County Employees in a benefits eligible position on the date of the settlement hearing and all class members who become King County Employees pursuant to this Agreement shall have their "hire date" adjusted to include his/her class member service when paid through an agency and/or paid as an "independent contractor." The class member's vacation and sick leave accrual rate shall be based on his/her "adjusted hire date," but no earlier than January 1, 1989. The "hire date" shall be adjusted within six (6) months of the date the Agreement is approved by the Court.

29. For class members who are King County Employees on the date of the settlement hearing, or who became King County Employees pursuant to this Agreement, and who are covered by a collective bargaining agreement, their seniority date will be determined by the collective bargaining agreement or by the collective bargaining process.

30. *Vacation.*

(a) *Vacation and Vacation Leave Balance.* Within sixty (60) days following completion of the final class database, King County shall determine the vacation leave balance for all class members employed by King County at that time. All vacation leave the class member would have received during his/her class member service under Metro Resolution 5388 and/or applicable King County ordinances (see, K.C.C. §3.12.190) and/or applicable collective bargaining agreements shall be added to the vacation balance accrued as a King County Employee. If there is a class member who is a King County Employee who was formerly paid by one of the following firms, that class member's vacation leave accrued during class member service shall be reduced by ten (10) days per year or the actual number of days of vacation paid by the firm(s) as shown in the class database, whichever is less: Analysts International, Aris Corporation, Ciber, Inc., Davis Consulting Services, Metamore/Comsys, Nortec, Inc., Premier Systems Group, Inc., Romac, Softsquare International, and salaried (but not hourly-paid) individuals at Ajilon Corporation and Best Consulting. The net additional amount in the class member's vacation balance (attributable to vacation accrued during class member service) shall be reduced by one-third; and King County shall pay the value of this one-third to class counsel's attorney fee award. See Part IX, ¶62. The value shall be determined based on the class member's hourly rate of pay after the pay adjustment is made multiplied by the number of the net vacation



hours accrued during class member service when the class members were paid through an agency or paid as an independent contractor.

(b) **Maximum Accrual Time Period.** In the event the class member's vacation leave balance awarded in ¶30(a), together with other accrued vacation leave, if any, exceeds the maximum accrual balance under K.C.C. §3.12.190-E, the class member shall be entitled to use any vacation leave beyond the maximum accrual amount by December 31, 2002, but not less than 15 months after the completion of the claims process (described at Part XI, ¶94 below), whichever is later. Accrued vacation leave which exceeds the maximum accrual amount and which is not used by December 31, 2002, or not less than 15 months after the completion of the claims process, shall be forfeited, provided, however, the appointing authority may approve a carryover for the reasons set forth at K.C.C. §3.12.190-E. A supervisor's approval of a class member's request to take accrued vacation leave shall not be unreasonably withheld. Under no circumstances shall a class member's vacation accrual be credited and/or available for use until ninety (90 days) after the completion of the claims process described at Part XI, ¶94, below.

(c) **Other.** Except as specifically provided above, all King County Code provisions, ordinances, and applicable collective bargaining agreements relating to vacation leave shall apply to class members' vacation leave.

31. **Sick Leave.**

(a) **Sick Leave Balance.** Within sixty (60) days following completion of the final class database, King County shall determine the sick leave balance for all class members employed by King County at that time. All sick leave accrual the class member would have received during



his/her class member service when paid through an agency or when paid as an “independent contractor” at the accrual rate of 0.0462 hours for each hour he/she worked, exclusive of overtime, up to a maximum of eight hours per month, or, the accrual rate in applicable collective bargaining agreements, shall be added to the sick leave balance accrued as a King County Employee. If there is a class member who is a King County Employee who was formerly paid by one of the following firms, that class member’s sick leave shall be reduced by three (3) days annually or the lesser of the number of sick leave days shown in the class database as actually paid by the firm(s): Analysts International, Aris Corporation, Ciber, Inc., Davis Consulting Services, Metamore/Comsys, Nortec, Inc., Premier Systems Group, Inc., Romac, Softsquare International, and salaried (but not hourly-paid) individuals at Ajilon Corporation and Best Consulting; see ¶5. The class member’s net sick leave balance shall be reduced by one-third; and King County shall pay the value of this one-third to class counsel’s attorney fee award. See Part IX, *infra*. The value shall be determined based on the class members’ hourly rate of pay after the pay adjustment is made (see ¶35, *infra*), multiplied by the number of sick leave hours accrued during class member service when the class members were paid through an agency or paid as an “independent contractor.”

(b) *Other.* Except as specifically provided above, all King County Code provisions, ordinances, and collective bargaining agreements relating to sick leave shall apply to class members’ sick leave.

Retroactive Pay Adjustments.

32. King County shall initiate a salary review of class members employed as “King County Employees” as of the date of the settlement hearing. This review is for the purpose of establishing the class member’s correct pay step consistent with King County practices and



collective bargaining agreements taking into account class members' service when paid through an agency and/or paid as an "independent contractor."

33. Within sixty (60) days after the date the Court approves this Agreement, King County shall post on King County's website a notice and form advising of this pay step review. King County shall also provide a copy of the notice and form to each collective bargaining unit. King County shall also provide individualized notice and the form to currently employed class members who are in the class database and of whom the County is aware. The notice and form shall be as approved by the parties, or, in the event of a disagreement, as approved by the Court.

34. The corrected pay step shall be based on King County salary schedule(s) applicable to career service employees, to the extent the time period in class member service was not previously considered in setting the class member's pay when a King County Employee; provided, however, class members represented by a union shall have their pay step determined based on the applicable collective bargaining agreements. It will be the class member's responsibility to initiate the review by completing and returning the form provided by the County within the time specified in the form. The decision regarding pay step adjustment shall be made solely on the information provided by the class member at the time the pay step adjustment is requested, subject to the County's factual review.

35. Each class member employed on the date of the settlement hearing shall receive pay retroactive to July 1, 1998, for all or whatever portion of this period the person was employed by the County, based on the corrected pay step that considers the class member's service when paid through an agency and/or paid as an "independent contractor;" provided, however, the class member's retroactive pay shall be reduced by one-third; and King County shall pay the value of this one-third to class counsel's attorney fee award. See Part IX, ¶62, *infra*. The County shall



make the pay step adjustment within six (6) months of the date the Settlement Agreement is approved by the Court.

36. From the gross amount of retroactive pay received by the class member, King County shall make appropriate deductions consistent with King County payroll practices (such as federal income tax, FICA, and Medicare tax, as well as any state-mandated PERS deduction to the extent applicable) and shall pay the appropriate share of employer payroll taxes.

37. In the event a class member separated from King County service prior to May 15, 2000, and becomes re-employed by King County, the class member's pay step (consistent with King County practices and collective bargaining agreements) upon rehire the County shall consider the class member's service when paid through an agency and/or paid as an "independent contractor" to the extent any other prior service for the County and/or Metro would otherwise be considered.

Other.

38. King County shall keep class counsel informed and shall timely report concerning vacation leave accrual, sick leave accrual, and pay step adjustments.

**VI.
ENTITLEMENT TO PENSION BENEFITS UNDER
THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

39. Class members whose cumulative service⁸ for Metro and/or King County meets the eligibility criteria set forth in RCW Chapter 41.40 shall be eligible for enrollment in and/or service credit for the Washington Public Employee's Retirement System (PERS).⁹ Notwithstanding the

⁸ See "cumulative service" as defined at ¶51, *infra*. The term "cumulative service" does not define the hours worked nor duration of work for purposes of PERS eligibility.

⁹ For purposes of this Agreement, PERS includes any retirement system administered by DRS or any retirement system (*i.e.*, the City of Seattle, City of Tacoma or City of Spokane) under which a class member can count service credit toward retirement.



foregoing, nothing in this Agreement or in the claims process outlined in this Agreement shall establish class members' PERS eligibility. King County shall work with the Washington Department of Retirement Systems (DRS) to determine class members' eligibility and service credit for PERS. King County shall be responsible to DRS for payment of PERS contributions. Class members shall be responsible to King County for repayment of the employees' share of their PERS contribution. Class counsel shall be kept timely informed of the proceedings between King County and DRS and will cooperate with the County in any discussions and/or proceedings regarding determining eligible service and/or enrollment of class members. Class counsel have no duty under this Agreement to represent class members in individual proceedings before the DRS in connection with PERS.

40. If it is established that the class member met PERS eligibility criteria and King County has paid the employee share of the PERS contribution to DRS prior to the date scheduled for distribution of the Fund (see ¶94, *infra*), class members who are King County Employees as of the date this Agreement is approved by the Court, or who, as part of this Agreement, become King County Employees, shall have the PERS employee obligation, up to and including 29% of the net (after deduction of mandatory payroll taxes) cash value of the settlement check, deducted from the settlement check. If the employee share of the PERS contribution to DRS is greater than 29% of the net cash value of the settlement check, 29% will be deducted from the check with a non-interest bearing promissory note to be signed regarding repayment of the remaining amount, amortized up to 18 months, but not more than 5% of the class member's gross wages from his/her employment. In instances of financial hardship, alternative arrangements will be made. If the County has not paid the employee share of the PERS contribution to DRS at the time of distribution of the Fund, the class member shall sign a promissory note as soon as possible after

the County has paid the employee share to DRS, or, at the class member's option, he/she may make full payment directly to King County. The promissory note shall detail the terms of the class member's obligation to repay the County for the class member's PERS contribution. Class members who are current King County Employees agree that the repayment amount shall be deducted directly from their paycheck. For class members who do not work for King County or who do not work for any retirement system administered by DRS or any retirement system under which a class member can count service credit toward retirement (*i.e.*, the City of Seattle, City of Tacoma, or City of Spokane), King County shall inform such class member of his/her right to a refund from DRS of the employee's share of the PERS contribution pursuant to RCW 41.40.260, .270, .280 and .730.

VII. COMPENSATION FOR PAST DENIAL OF PAY AND BENEFITS

Class Distribution Fund.

41. King County shall fund a Class Distribution Fund ("Fund") in the total amount of twelve million dollars (\$12.0 million) to compensate named plaintiffs, class counsel and Qualifying Class Members (as defined at ¶49 and 50 below), which, together with the other relief provided in this Agreement, is in full and final settlement of this lawsuit; see ¶12 above.

Named Plaintiffs.

Awards to Named Plaintiffs.

(a) From the Fund the named plaintiffs shall each receive \$7,500.00 cash for their participation as class representatives. This participation included, but was not limited to the commencement of this lawsuit, discovery matters (including answering interrogatories, producing voluminous personal records, and deposition testimony), preparation of declarations, attendance at



Court proceedings, attendance at meetings, and assisting class counsel.

(b) In addition to the amount in subparagraph (a), four named plaintiffs -- Leah Clark, Susan Coles, Megann Devine and Keith Purves -- have sustained economic losses due to the loss of their jobs, and each shall receive \$27,500.00 cash as compensation.

(c) King County shall make the payments (at subparagraphs (a) and (b) above) to the named plaintiffs, less mandatory withholdings, within ninety (90) days of the Superior Court's approval of the Settlement Agreement.

(d) In addition, the named plaintiffs shall receive, together with other Qualifying Class Members, their *pro rata* share of the balance remaining in the Fund.

Attorney Fees Award.

43. From the Fund King County shall pay class counsel four million dollars, as provided at Part IX, ¶61, *infra*.

Pro Rata Distribution of the Fund to Qualifying Class Members.

44. The balance remaining in the Fund after payments by King County to class counsel and the named plaintiffs shall be distributed *pro rata* to Qualifying Class Members (defined at ¶¶49 and 50 below) based on the number of Eligible Months (defined at ¶53 below) of service when the class member was (a) paid through an agency and/or (b) paid as an "independent contractor," and/or (c) paid as a "temporary" King County Employee, which time as a "temporary" employee was not compensated in the *Logan* Settlement (see ¶12 above).

45. Distribution of the Fund shall be based on the following formula. The numerator shall be the total aggregate months of all Qualifying Class Members' Eligible Months and the denominator shall be the remaining Fund balance (see ¶44 above). This fraction is the value of each Eligible Month. Each Qualifying Class Member shall receive the prorated value of each



Eligible Month times the number of Eligible Months the class member worked, provided that the amount shall not exceed one hundred percent of the components (see ¶¶ 47 and 48 below).

Nature of Compensation.

46. The components of prorated compensation in the Distribution Formula to be paid to Qualifying Class Members under this Agreement include back compensation for insured benefits, interest on insured benefits, and taxes incurred on insured benefits,¹⁰ other compensation (including, but not limited to, leave, failure to make installment payments for pension benefits, exclusion from 457(b) plan, exclusion from childcare reimbursement plan, bus passes, and other miscellaneous benefits), interest on other compensation, and increased income taxes on the total amount awarded due to receipt of a lump sum award. The percentage of each component of the aggregate Distribution Fund balance (see ¶44 above for the Fund balance to be distributed to Qualifying Class Members) is as follows: Insured benefits – 22.5%; other compensation – 29.0%; interest – 34%; and taxes – 14.5%. For purposes of ¶¶91 and 94 of this Agreement, these same percentages apply to the amount distributed to each Qualifying Class Member.

Distribution to Class Members Not to Exceed 100%.

47. The distribution to Qualifying Class members shall not exceed one-hundred percent of the components of compensation described at ¶46 above, and the balance in excess of one-hundred percent shall be returned to King County.

48. The determination of whether the distribution to Qualifying Class Members is greater than 100% is based on the following calculations. Factor A -- First, the number of Eligible Months for all Qualifying Class Members who file claims shall be added to determine the total

¹⁰ If the class member had received insured benefits from Metro and/or King County, the value of the amount received would not have been subject to FICA, Medicare, and income taxes.

aggregate qualifying months. The total aggregate qualifying months shall be multiplied by \$350, which total is the average aggregated value of insured benefits. This calculation is Factor A. Factor B -- Second, the average pay (\$30,000) in each year of class member service of the Qualifying Class Members who file claims shall be multiplied by 18.0 percent to determine "other compensation," as defined above. This calculation is Factor B. Factor C -- Third, Factors A and B shall be added and the sum of Factors A and B shall be multiplied by sixty-six percent to calculate the average aggregate interest. This calculation is Factor C. Factor D -- Fourth, Factors A, B and C shall be added and the sum multiplied by fifteen percent to determine the extra federal income tax (see footnote 10), which calculation shall be Factor D. Factor E -- Fifth, Factor A shall be multiplied by 7.65 percent to determine the extra FICA/Medicare taxes (see footnote 10) on insured benefits, which calculation is Factor E. Sixth, Factors A, B, C, D and E shall be added together. If the sum of Factors A, B, C, D and E is greater than the Fund balance at ¶44 above, the Fund balance shall be distributed to the Qualifying Class Member's *pro rata* as provided at ¶45 above. If the sum of Factors A, B, C, D and E is less than the Fund balance at ¶44 above, the difference between the Fund balance and the sum of Factors A, B, C, D and E shall be returned to the County; and the sum of Factors A, B, C, D and E shall then be distributed *pro rata* to the Qualifying Class Members as set forth at ¶45 above.

Class Members Qualifying for Payment from the Fund.

49. Qualification for distribution of the Fund shall be determined as follows. To qualify for payment from the Fund, (a) the class member's "cumulative service" (defined at ¶51 below) for Metro and/or King County must be nine consecutive months or more, (b) the class member must have worked an average of half-time or more per month ("half-time" defined at ¶52

When received as a lump sum, however, the total amount may be taxable income to the recipient

below), and (c) the class member must have been working for Metro and/or King County as of December 1, 1992 or thereafter.

Exceptions and Ineligible Time Periods.

50. Class members are not eligible to receive a distribution from the Fund: (a) for months when the class member, when paid through an agency or when paid as an “independent contractor,” was receiving a pension from a public entity, for example, PERS or the City of Seattle, or (b) for months when the class member, when paid through an agency or when paid as an “independent contractor,” was the primary named insured, or eligible to receive as the primary named insured, health insurance at significantly reduced or subsidized cost provided by a public entity such as the State of Washington, King County, or the City of Seattle;¹¹ or (c) if King County paid the class member for leave benefits (*e.g.*, vacation, sick leave or holidays), and King County provided regular pay and/or COLA increases to the class members; or (d) if the class member did not continue to work for Metro and/or King County as of December 1, 1992 and/or thereafter; or (e) except if the class member was paid through any of the following firms: Analysts International, Aris Corporation, Ciber, Inc., Davis Consulting Services, Metamore/Comsys, Nortec, Inc., Premier Systems Group, Inc., Romac, Softsquare International, and salaried (but not hourly-paid) individuals at Ajilon Corporation and Best Consulting; or (f) if the class member was an intern¹²

Definitions.

51. The term “cumulative service” as used in this Agreement (see ¶49 above) includes

subject to withholding.

¹¹ A full group rate, such as the amount paid for COBRA coverage, is not a subsidized cost.

¹² Under the King County Charter, administrative and other interns are exempt from the career service and are ineligible for benefits.



all time periods when the class member provided personal services for Metro and/or King County and was paid through an agency or agencies and/or paid as an “independent contractor” and, where applicable, paid as a King County Employee. “Consecutive months” for purposes of nine consecutive months means relatively consecutive months as defined in the standards and procedures to be adopted.

For example, a class member could have nine consecutive months of “cumulative service” if (a) paid through one agency for 10 months; (b) paid through one agency for 3 months and then paid thereafter through a second agency for 7 months; (c) paid through one agency for 3 months and then paid as a recognized Metro or King County Employee thereafter for 6 or more months; (d) paid as a King County Employee for 6 months and then paid thereafter through an agency for 3



or more months; or (e) paid for 10 months with purchase orders or invoices as an “independent contractor.” In each example above, the class member provided nine or more months of “cumulative service” for Metro and/or King County. There are other possible combinations and the above are simply examples.

52. The term “half-time” for purposes of Part VII of this Agreement means the class member worked an average of 21 or more hours per week, which is equivalent to an average of 91 hours per month.

53. The term “Eligible Months” means those months the Qualifying Class Member worked an average of half-time or more when the Qualifying Class Member was paid through an agency, paid as an “independent contractor,” or paid as a “temporary” King County Employee, but only for the months as a “temporary” employee when he/she did not receive a payment from the *Logan Settlement* because service in *Clark* was not considered (see ¶12 above). “Eligible Months” includes the time period from December 1, 1989 up to and including September 30, 2000; provided, however, that class members who worked for Metro and/or King County before December 1, 1992 but did not have cumulative service continuing on and after December 1, 1992, do not qualify for a distribution from the Fund. In addition, “Eligible Months” do not include the first three months of class member service due to the County’s standard benefit waiting period. For example, if the class member was paid through an agency and performing personal services for King County on March 1, 1995 through December 31, 1995, the months of March, April and May are excluded, and the months of June through December, 1995 are “Eligible Months.” Provided, however, in the event the distribution to Qualifying Class Members would exceed one-hundred percent of the components of compensation (see ¶¶47 and 48 above), then, an additional



three months shall be credited and added, and the Qualifying Class Members shall be entitled to prorated compensation for an additional three months.

54. The term "independent contractor" for purposes of qualifying for a distribution from the Fund includes those individuals and/or groups identified in the Court order, entered May 30, 2000, and the stipulation dated January 6, 2000, and who meet the criteria for a Qualifying Class Member as defined in ¶¶49 and 50 above. There may be other "independent contractors" (individuals who performed services for Metro and/or King County, paid with IRS Forms 1099) who meet the class definition in the May 30, 2000 order. Such individuals must present a claim.

VIII. IDENTIFICATION OF CLASS MEMBERS AND DETERMINATION OF CLASS MEMBERS' SERVICE

Database.

55. Neither Metro nor King County maintained comprehensive service records for persons paid through agencies and/or paid as "independent contractors," *i.e.*, paid through purchase orders, invoices and IRS Forms 1099. In 1997 the parties began to jointly compile a database to identify potential class members, their compensation, and their duration of service for Metro and/or King County.

56. The class database includes information from agency records (records which were subpoenaed), Metro and King County purchase orders and invoices, Metro and King County databases, Metro and King County personnel files and payroll records (where the individual was at some point a King County Employee), and information provided directly to class counsel by potential class members, either as part of this lawsuit or pursuant to the claims process. The augmented class database shall serve as the sole determinant for computing eligible months and for determining who is a Qualifying Class Member.



57. Due to ordinary business retention schedules and/or other circumstances,¹³ some agency records were destroyed or lost which would have been useful in identifying class members, locating class members, and identifying the potential class member's service and pay. Although some agencies' records are quite comprehensive, every agency's records contain some gaps in information.

58. When the settlement is approved, class counsel shall be responsible for and will continue to augment the database with agency records, as these are provided, and with information and documentation provided by potential class members. King County will cooperate to provide payroll and other records, usage reports provided by agencies, and/or information it may have concerning potential class members.¹⁴ Class counsel's database expert and King County's database expert will meet and discuss the methods used to identify class members and their service and the format of the class database in order to meet the information requirements of both parties. Class counsel will make the augmented class database available to King County so that King County can comply with its responsibilities under this Agreement. Notwithstanding some gaps in the information, the present class database, and as augmented in the future, is the most complete information available to identify class members, their service and pay.

IX. ATTORNEY FEES AND ADMINISTRATION COSTS

59. The Washington Supreme Court determined the method of computing attorneys' fees to be awarded in a class action for employee benefits in *Bowles v. Dept. of Retirement Systems*, 121 Wn.2d 52 (1993). In *Bowles*, a class of public employees obtained a declaratory

¹³ For example, some agencies were purchased by other agencies and the records of the purchased agencies no longer exist. Some agencies have gone out of business and their records no longer exist.

judgment concerning calculation of their average compensation that effectively increased their future pension benefits. The Supreme Court determined that the “common fund” approach should be applied in calculating fees for the attorneys representing the class in *Bowles* and that attorney fees should be set as a percentage of the recovery for the class. 121 Wn.2d at 72-73. The Court said that 20 to 30 percent is the usual “common fund” fee award and this range is a reasonable percentage. It also said the “benchmark” fee award in “common fund” cases is twenty-five percent of the recovery. *Id.* The Supreme Court applied this percentage of recovery approach in *Bowles* to the present value of the public employees’ increased future pension benefits obtained in that case. *Id.* at 57. The approach set forth in *Bowles* is applied here.

60. In accordance with the *Bowles* criteria, a reasonable attorney fee award is approximately \$4.2 million based on the components of the relief accorded class members as set forth in this Settlement Agreement. The components include the cash payments to the class, the PERS benefits conferred on class members, the leave and pay adjustments for currently employed class members, and the creation of jobs and hiring preferences for class members for new positions.

61. The fee award shall be paid as follows: King County shall pay \$4 million from the Class Distribution Fund and, in addition, King County shall pay such additional award as provided in Part V above, but in the event this value (Part V) is less than two hundred thousand dollars, King County shall pay the difference up to \$200,000.

62. Of the amount from the Class Distribution Fund in ¶43, King County shall pay one million dollars (\$1 million) to Bendich, Stobaugh & Strong, P.C., within three business days of the date this Settlement Agreement is approved by the Superior Court. The County shall pay the balance of three (\$3) million dollars from the Class Distribution Fund to Bendich, Stobaugh &

¹⁴ This includes, but is not limited to, for *Logan* class members, the identification of



Strong, P.C., when the Fund balance is distributed to Qualifying Class Members. In addition, pursuant to Part V of this Agreement, King County shall additionally pay \$200,000 to Bendich, Stobaugh & Strong, P.C., within three business days after the Settlement Agreement is approved by the Court. In the event one-third the value of pay adjustments, vacation and sick leave accrual exceeds two hundred thousand dollars (\$200,000), King County shall pay to Bendich, Stobaugh & Strong, P.C., the amount in excess of \$200,000 within sixty (60) days of the date these amounts are determined. See Part V above.

63. In addition, the law firm representing the class has incurred expenses in connection with the database. The firm will incur further time and expense in augmentation of the database, administration of the claims process, monitoring the County's compliance with the Settlement, and the transition of class members into career service and term-limited temporary positions. King County shall pay \$650,000 for claims administration, which \$650,000 is not paid from the Class Distribution Fund nor from the amounts described at Part V, but is in addition to those amounts. It covers all expenses, class counsel's costs of computer analyses, the costs of the claims administration process, as well as attorney fees and costs connected with the claims process and the monitoring and implementation of this Settlement up to the dismissal date of this action (see Part XIII), even if the time or resources required by counsel for the class has been underestimated or there are unexpected further time requirements and costs. This amount does not include any County expenses, including litigation expenses or the County's costs associated with the Settlement.

64. King County shall pay the \$650,000 to the Bendich, Stobaugh & Strong, P.C. "Claims Processing Account" as follows: (a) \$250,000 shall be paid within two weeks of the date

"temporary" employees who were not compensated in *Logan*.

the Settlement Agreement is approved by the Metropolitan King County Council; provided, however, that if the Court does not approve this Agreement, class counsel shall return any unspent portion of the \$250,000 to the County; (b) \$200,000 shall be paid upon mailing of the claim forms; (c) \$150,000 shall be paid within fourteen (14) days following the date set by the Court for submittal of the claim forms; see ¶75 below). The amounts in (a), (b) and (c) above consider the processing of claim forms through the date of distribution of the Claims Distribution Fund to Qualifying Class Members. The final \$50,000 shall be paid to the Bendich, Stobaugh & Strong, P.C. "Claims Processing Account" within fourteen (14) days following Court approval of the Final Report (see ¶92, *infra*).

**X.
SETTLEMENT APPROVAL PROCEDURE**

Notices.

65. Class counsel shall prepare a proposed notice of settlement hearing and summary of the proposed Settlement Agreement to be distributed to the class. The notice shall be as approved by the parties, or in the event of disagreement, as approved by the Court. The proposed notice shall be presented to the Court for its approval. The notice shall summarize major terms of the Settlement Agreement, state the time, date and place of the settlement hearing, and explain the procedures and deadlines for submitting written comments or objections. King County shall make a copy of the Settlement Agreement available to class members and the public without a copying charge at the King County Budget Office, Room 420, King County Court House, 516 Third Avenue, Seattle, Washington, and the Notice and the Settlement Agreement shall be posted on King County's internet and intranet sites no later than two (2) weeks after this Agreement has been approved by the Metropolitan King County Council.



List of Class Members for Notice of Settlement Hearing.

66. Based on the class database, class counsel shall prepare and provide to King County a list of persons who appear to be class members, together with address information and Social Security Numbers (SSNs), where available. King County shall compare the list provided by class counsel with King County's database, and if there are additional individuals who appear to be class members who are not in class counsel's list, King County shall provide the information concerning these individuals to class counsel, and these individuals shall be added to the list and the information shall be added to the database. King County shall mail notices to the class members' last known address as shown in the database, with the return address to be class counsel's or the Claims Processing Office; see ¶76, *infra*. In addition, for class members currently employed by King County, including current employees in temporary, part-time and/or full-time status, King County will "match" the SSNs with King County payroll data. Where there is a "match" King County will provide a copy of the notice of the settlement hearing to those currently employed class members.

Time of Mailing Notices and Settlement Hearing.

67. The timing of mailing notices of the settlement hearing shall be approved by the Court. It is anticipated that notices of the settlement hearing will be mailed to class members within two (2) weeks of the date that the King County Council approves the Settlement Agreement and that the settlement hearing will occur not less than thirty (30) days from the date the notices of the settlement hearing are mailed.

Other Notice.

81. 68. The County shall also provide a copy of the notice of the settlement hearing to employees' collective bargaining representatives prior to the time the notice of settlement

hearing is provided to the class members. King County and class counsel shall post the notice on their respective websites. Notice shall also be published in the Seattle Times, and King County shall pay the costs of this publication.

Other Enclosures.

69. At the time of mailing the notice, the mailing may also include a claim form, the content of which shall be prepared by the parties and approved by the Court. In the event of a disagreement as to the content of the claim form, the matter shall be resolved by the Court.

**XI.
CLAIMS PROCESSING**

Responsibility for Claims Administration.

70. Class counsel will be responsible for administering the claims process for distribution of the Fund. Class counsel and the Class Action Claims Processing Office (described below) shall keep King County informed about the claims administration process so that King County can perform its responsibilities required by the Settlement Agreement.

Timing of Claims Process and Mailing of Claim Forms.

71. It is not possible at this time to determine the precise timing of claim notices to class members, the precise content of claim forms, the nature of the documentation required from class members, the dispute resolution process, if needed, and the date of distribution of the Fund. Within thirty (30) days after approval of the Settlement Agreement by the Court, the parties will submit to the Court for its approval a proposed schedule which sets out the dates for mailing claim forms and the anticipated date when the Fund will be distributed to Qualifying Class Members.

72. In addition to mailing claim forms based on the class database, the Internal Revenue Service's process will be utilized to send claim forms to class members. King County shall bear the expense for the notice/claim form process through IRS. For the IRS process, class



counsel shall provide a single electronic list of class members and their Social Security numbers to King County, together with the notice and claim form. Within two (2) weeks of receipt of the electronic list, the County shall provide the information required, in the format required, to the IRS. King County shall provide class counsel with all information and documents it provides to IRS.

73. After consultation with King County, the matters relating to claims administration which have not yet been resolved shall be determined by class counsel and approved by the Court. All notices and claim forms to class members and the timing of the distribution to class members from the Fund shall be subject to Court approval.

Claim Requirements.

74. Only Qualifying Class Members (or their representatives, attorneys in fact, or representatives of their estates) who submit a claim form within the time specified by the Court shall qualify to receive a payment from the Class Distribution Fund.

75. If not postmarked by the Court-designated date, which date shall not be earlier than 90 days after IRS mails notices to class members, the claim will be deemed untimely and the claimant will not receive any monetary payment from the Fund.

Class Action Claims Processing Office.

76. Class counsel will designate a person or office (with an address, telephone number, and e-mail address), known as the Class Action Claims Processing Office (“Processing Office”).

77. The Processing Office shall determine which individuals are “Qualifying Class Members” (for purposes of distribution from the Fund). The claims process will be based on standards and procedures developed by class counsel with input from King County with the goals of (1) establishing efficient means to expedite the claims process and efficiently manage claims

processing resources, although there may be different standards for other types of relief under this Agreement which also utilize the database and (2) obtaining and retrieving information the County needs for its purposes under this Agreement. The standards and procedures shall be prepared within thirty (30) days of the designation of the Processing Office and shall be subject to review by King County and approval by the Court. In the event the parties disagree as to the standards and/or procedures, the areas of disagreement shall be determined by the Court.

Information to Be Utilized for Claims Processing.

78. Class counsel and the Claims Processing Office will rely and have a right to rely on the information in the class database as augmented by additional agency records, King County records, and documentation provided by class members. This and other tasks may be delegated or subcontracted by class counsel.

79. Class member identification, class member service, and class member eligibility for payment from the Fund will be based exclusively on the class database as augmented by additional information from agencies, King County, and documentation provided by potential class members. The type of documentation to be provided by class members, if needed, will be determined at a later date. Class counsel, the Claims Processing Office, and the Claims Officer (see ¶89 below) will have discretion in using and determining the validity of database information consistent with the standards and procedures.

Claims Procedure.

80. All claims must be mailed by U.S. mail, postage prepaid, to the Processing Office and must be postmarked by the date ordered by the Court, provided that, in the event the claimant previously downloaded a claim form from class counsel's website and sent the form to class counsel, that claim form may also constitute a valid claim if sufficient information was provided.



81. The Processing Office will maintain the original postmarked envelope and will maintain the original claim form, date-stamped with the date of receipt, and upon receipt shall open a file for each claimant. All claims postmarked after the specific date set by the Court shall be deemed untimely and will be disallowed.

82. The Processing Office shall also maintain all correspondence with the claimant in the claimant's file. The Processing Office shall file all correspondence/notices which have been returned as undeliverable in the claimant's file.

83. All Qualifying Class Members and Eligible Months will be based on the information in the class database as augmented (see ¶79 above).

84. If the information provided in the claimant's claim form is the same as the information in the class database, the Processing Office shall calculate the class member's Eligible Months. If the information in the class database is incomplete as described in the standards and procedures, or the claimant's information is different from the information in the class database, the standards and procedures adopted by the Court shall determine how the discrepancy shall be resolved.

85. The additional information the claimant may be required to submit includes but is not limited to documents that show (a) the time period he/she was paid through an agency, (b) the hours worked during those time periods, and (c) that the hours and time periods worked were for services at Metro/King County. For claimants who allege or claim to have been misclassified as "independent contractors," where the class database has incomplete information, the claimant will be required to provide IRS Forms 1099 and/or other documentation of the time periods and hours the claimant provided personal services for Metro and/or King County.

86. In order to be considered a Qualifying Class Member, a claimant who is not

identified in the class database must provide documentation of his/her service for Metro and/or King County as in ¶85 above and as established in the standards and procedures.

87. Documentation provided by the claimant shall first be reviewed by the Processing Office and the relevant information as defined in the standards and procedures shall be input into the class database. If the documentation is sufficient, the Processing Office shall determine the claimant's Eligible Months based on the augmented class database.

88. The Processing Office may choose to make further inquiries to the claimant for information, which information shall be input into the class database as defined in the standards and procedures.

Claims Officer.

89. If the Processing Office has a substantial disagreement with the claimant, the claimant shall be notified he/she may bring the matter promptly to the "Claims Officer," under procedures to be subsequently adopted and approved by the Court. The Claims Officer shall be a lawyer, labor relations or labor representative specialist, human resources specialist, accountant, or other person designated by class counsel and approved by the Court. In the event the County disagrees as to the person designated, the matter shall be resolved by the Court. The standards and procedures to be utilized by the Claims Officer shall be specified by class counsel, subject to review by King County, and approval by the Court. In the event the parties disagree as to these standards and procedures, these shall be determined by the Court.

90. The Claims Officer shall review the documentation and the claimant's dispute and shall make a determination as to the claimant's Eligible Months, and/or whether the claimant is a Qualifying Class Member, which determination(s) shall be final. The Claims Officer shall inform the Processing Office of the determination pursuant to the standards and procedures adopted by



the Court. The Processing Office shall notify the claimant of the Claims Officer's decision.

Computation of Cash Payments to Qualifying Class Members.

91. At the close of the claims period and following the resolution of the disputed claims referenced in ¶¶89-90, the Processing Office, in consultation with class counsel, (a) shall compute each Qualifying Class Member's *pro rata* share (see ¶44 above) of the Fund distributions to the class and (b) shall itemize each component of the *pro rata* share, including insured benefits, leave or other benefits, the tax component, and interest, as outlined in ¶46 above; this information shall then be provided electronically to King County, together with a copy of the class database.

Final Report.

92. At the close of the computation process (see ¶91 above), the Processing Officer and the Claims Officer shall report to the Court. The report shall state at a minimum (a) the number of claims received, (b) the number and identity of claimants, (c) the identity of the Qualifying Class Members and each Qualifying Class Member's number of Eligible Months, and the amount to be distributed to the Qualifying Class Member, (d) the number, identity of claimants and disposition of claims referred to the Claims Officer, and (e) a certification that the claims determinations and computation process were carried out pursuant to and complied with the terms of the Settlement Agreement and the standards and procedures approved by the Court. The Final Report shall be submitted to the Court for approval.

Review of Records.

93. For purposes of verification and to fulfill their respective responsibilities required by this Settlement Agreement, class counsel and King County or its designee shall be entitled to timely access to: (a) the class database, (b) programs and formulas used to calculate the payments to class members, (c) notices, mailing lists, and lists sent to IRS, and (d) other information



regarding the claims and the computation process. King County shall be entitled to reasonable access to all information and documentation maintained at the Processing Office. King County shall inform class counsel as soon as possible of any issue it identifies related to claims processing.

Disbursements to Qualifying Class Members.

94. No later than 60 days from the date the County is provided with the amount of all Qualifying Class Members' *pro rata* shares, the County shall disburse the payment to each Qualifying Class Member for his/her *pro rata* share of the Fund, together with an itemized statement or itemized pay stub showing the payment components, unless (a) the schedule is modified by the parties or the Court; or (b) if the Court has found that the Processing Office, the Claims Officer or class counsel have not substantially complied with the established standards and procedures. Any mandatory deductions shall be made consistent with King County payroll practices (such as FIT, FICA, Medicare Tax, and, where applicable, PERS). With respect to any portion allocated to interest and/or taxes no payroll deductions shall be made, but the interest portion and/or tax portion shall be reported to the IRS with the appropriate Form 1099. King County will provide required W-2s and 1099 forms to payees in a timely manner as required by federal law.

95. Enclosed with the disbursement, King County shall also include a letter explaining the potential tax consequences of the settlement check and the PERS process. This letter shall be prepared by King County, subject to approval by class counsel, and in the event of a disagreement, as approved by the Court.

Unclaimed Distributions.

116. 96. Class members shall have no more than six (6) months from the date



the check is mailed to cash the check, except as described in ¶97 below. In the event a class member's check is returned to King County as undeliverable due to an invalid address, King County will provide the returned envelope to the Processing Office to be placed in the claimant's file, or, if a check is not cashed within ninety (90) days of mailing, King County shall inform class counsel and the Processing Office. Additional efforts shall be made by the Processing Office or class counsel to locate the class member (such as by mailing to and/or contacting an emergency contact) and if other address information is located, the information shall be provided to King County to re-mail the check. King County shall only be obligated to re-mail a check once.

97. If, after compliance with ¶96 above, the class member still cannot be located or, if, after re-mailing to a new address or emergency contact, the check is not cashed within ninety (90) days from the date of the second mailing, these unclaimed settlement funds shall be returned to King County to be applied to its costs of settlement. The County shall keep class counsel informed about unclaimed distributions.

Compliance With Schedule.

98. The Class Distribution Fund for payments to the class shall not accrue further interest payable to Qualifying Class Members beyond the specified amount of the Fund, provided, however, except for good cause shown, in the event the disbursements to the Qualifying Class Members are not made by the deadline in ¶94 above, due to the County's delay in performing its requirements under this Agreement, which delay was not due to delay by the Processing Office or class counsel, interest shall accrue from that date at 12% per annum on the undistributed amounts



of the Fund (see Part VII above for Fund amount) and such interest shall be added *pro rata* to the amounts to be disbursed to the Qualifying Class Members.

Future Claims Barred.

99. King County shall have no further liability for payment to class members in excess of the \$12.0 million Fund. After disbursement of the \$12.0 million Fund no further claims against King County shall be considered or allowed and all such claims shall be disallowed.

**XIII.
EFFECTIVE DATE FOR NEW COUNTY PRACTICES**

100. Effective January 1, 2001, King County will not retain "contract workers" except as permitted under the body of work review process described at Part IV of this Agreement and any new County procedures.

**XIV.
COURT'S AUTHORITY AND ENFORCEMENT**

101. The Court's order *re* formulas dated March 29, 2000 is superseded by this Agreement. The other existing Court orders remain in effect except to the extent modified by this Agreement.

102. This Settlement Agreement is a product of substantial negotiations and compromises by the parties, and thus the Settlement Agreement represents a unitary whole and each and every term therein is an integral part of the entire Agreement. Pursuant to Civil Rule 23, the Court determines whether the proposed settlement as a whole is fair and reasonable and determines whether to approve or reject the entire Settlement Agreement. The Court is not authorized to modify the terms of the negotiated settlement. The Court retains authority to interpret and enforce this Agreement, to resolve minor ambiguities, to make reasonable modifications to which the parties agree, and to correct minor mistakes and minor technical errors, provided the purposes and intent

of the Agreement are fulfilled. Subsequent to the dismissal of claims (Part XV), the Court retains authority to compel performance of all requirements of the Agreement that are intended to be carried out after dismissal of claims.

**XV.
DISMISSAL OF CLAIMS**

103. The claims in this action described in ¶¶ 11 and 12, shall be dismissed with prejudice after the Transition Provisions (Part IV), Pay and Leave Adjustments (Part V), and Compensation and Payment Provisions (Parts VII and XI) are completed and the Final Report (¶92) (regarding disbursement of the Fund) has been approved by the Court. Class counsel shall be

responsible for dismissing the case sixty (60) days following completion of the distribution process at ¶¶96 and 97 above.

DATED this ____ day of _____, 2000.

Approved by:

KING COUNTY EXECUTIVE

RONALD SIMS

Approved by:

BENDICH, STOBAUGH & STRONG, P.C.

JUDITH E. BENDICH, WSBA #3754

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