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3 From Corporation Counsel, Office of Corporation Counsel, and outside legal counsel,  
4 requesting authorization to settle the claims in *Susan L. Baldwin, et al. v. Milwaukee*  
5 *County, et al.*, Wisconsin Court of Appeals Case No. 2016AP002380 and Milwaukee  
6 County Circuit Court Case No. 2015-CV-009354, by recommending adoption of the  
7 following:

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9 **A RESOLUTION**

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11 WHEREAS, Susan L. Baldwin (Baldwin) was a Milwaukee County Board  
12 Supervisor and the Director, Department of Parks, Recreation, and Culture, from 1984  
13 until 2003, and in 1969, had a six-week summer job with Milwaukee County (the  
14 County); and

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16 WHEREAS, in 2000, then Corporation Counsel Robert Ott and then-Employee  
17 Retirement Services (ERS) Manager Jac Amerell accepted Baldwin's payment of  
18 \$683.37 to purchase ERS service credits for her work in 1969, which made Baldwin  
19 eligible for increased retirement benefits based on being a pre-1982 ERS  
20 member/participant; and

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22 WHEREAS, when Baldwin retired in 2003, she received a monthly pension of  
23 \$4,198.13, which was \$413.03 per month greater than her monthly pension, assuming a  
24 1984 hiring date; and

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26 WHEREAS, in 2007, ERS discovered that Baldwin might not have been eligible  
27 to participate in ERS for her 1969 summer job and warned her of a possible resulting  
28 overpayment; and

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30 WHEREAS, in 2015, with cost of living and other increases applicable to  
31 similarly-situated ERS participants, plus interest, the increased benefit payable to  
32 Baldwin because of her purchase of 1969 service credit totaled approximately  
33 \$223,209; and

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35 WHEREAS, in 2014, ERS began to correct the overpayments to Baldwin and  
36 offered to withhold half of Baldwin's corrected benefit amount to do so, a decision that  
37 Baldwin unsuccessfully appealed to the Pension Board; and

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39 WHEREAS, Baldwin subsequently sued ERS and the County in Circuit Court,  
40 where the trial judge sustained the Pension Board's decision; and

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42 WHEREAS, the trial court's decision was reversed by the Wisconsin Court of  
43 Appeals; and  
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45 WHEREAS, the matter is now before the Wisconsin State Supreme Court; and

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47 WHEREAS, while it is undisputed that Baldwin's 1969 work did not qualify for  
48 ERS credits, the Court of Appeals held that ERS rules should have barred correction of  
49 the overpayments; and

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51 WHEREAS, ERS and the County's Corporation Counsel, Office of Corporation  
52 Counsel (OCC), contend that the Court of Appeals misinterpreted ERS rules and  
53 incorrectly applied its interpretation to grant benefits contrary to pension plan language  
54 and the Voluntary Compliance Program agreement between ERS, the County, and the  
55 Internal Revenue Service; and

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57 WHEREAS, the Court of Appeals' misapplication of ERS rules risks continuation  
58 of overpayments to others who did or will benefit from administrative errors in such  
59 calculations and may also adversely affect the ability of ERS to increase benefits if such  
60 errors cause benefit underpayments in other cases; and

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62 WHEREAS, negotiations between the parties have resulted in a proposed  
63 settlement that would cause dismissal of the lawsuit and would substantively reduce the  
64 possibility of similar claims in the future, would permit ERS and the County to file a  
65 motion to vacate the Court of Appeals decision without objection from the Baldwins,  
66 would continue payment of Baldwin's benefit in the correct amount going forward  
67 without permitting her to recoup any past reduction of her benefit, and would not require  
68 the County or ERS to pay Baldwin's attorney fees or litigation costs; and

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70 WHEREAS, outside trial counsel and Corporation Counsel, OCC, recommends  
71 this settlement; and

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73 WHEREAS, the Committee on Judiciary, Safety, and General Services, at its  
74 meeting of November 29, 2018, recommended adoption of File No. 18-905 (vote 5-0);  
75 now, therefore,

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77 BE IT RESOLVED, the Milwaukee County Board of Supervisors approves the  
78 settlement whereby Susan L. Baldwin (Baldwin) will receive her correct pension benefit  
79 going forward, no additional money will be recouped from Baldwin, Milwaukee County  
80 (the County) as plan sponsor will pay \$174,420 to the Employee Retirement System  
81 (ERS) Trust to make the trust whole for the overpayments and the Baldwin lawsuit will  
82 be dismissed with prejudice; and

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84 BE IT FURTHER RESOLVED, ERS and the County will move to vacate the  
85 Court of Appeals decision without objection from the Baldwins, and all parties will be  
86 responsible for their attorney fees and litigation costs.

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