IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 50 2011 CA 017953

TOWN OF GULF STREAM, VILLAGE OF TEQUESTA, CITY OF RIVIERA BEACH, TOWN OF JUPITER, CITY OF DELRAY BEACH, TOWN OF PALM BEACH SHORES, TOWN OF MANALAPAN, VILLAGE OF WELLINGTON, TOWN OF MAGNONIA PARK, CITY OF PALM BEACH GARDENS, TOWN OF HIGHLAND BEACH, TOWN OF LAKE PARK, CITY OF WEST PALM BEACH, TOWN OF OCEAN RIDGE, CITY OF BOCA RATON, municipal Corporations of the State of Florida,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official capacity as the Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

INSPECTOR GENERAL'S MOTION TO INTERVENE

SHERYL STECKLER, in her official capacity as Inspector General of Palm Beach County ("Inspector General"), by and through her undersigned counsel, and in accordance with Rule 1.230, Florida Rules of Civil Procedure, files this Motion for entry of an Order allowing her to intervene in this proceeding and to have a status that is not subordinate to the other parties in

this proceeding, or with as few restrictions as this Court deems just and appropriate. In support of this Motion, the Inspector General states:

1. Rule of Civil Procedure 1.230, Interventions, provides:

   "Anyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion."

2. As asserted in the Clerk and Comptroller's Motion to Intervene which was granted by this Court, in Florida intervention should be liberally granted. See, *National Wildlife Fed, Inc. v. Glisson*, 531 So. 2d 996, 998 (Fla. 1988).

3. As will be addressed below, the Inspector General is the public official most likely to be directly and seriously impacted by this litigation, but was neither named as a party nor served.

Independence of the Inspector General

4. The Inspector General is a county officer mandated in Article VIII, Section 8.3 of the Charter of Palm Beach County.
5. The Inspector General is independent of the plaintiff Municipalities.
6. The Inspector General is also independent in all material respects of the defendant County Board of County Commissioners (BOCC):
   a. The Inspector General is not chosen by the BOCC, but by an "Inspector General Committee," comprised of the State Attorney, the Public Defender, and all five members of the independent Palm Beach County Commission on Ethics.

b. The Inspector General is not an "at will" employee of the BOCC. She has a four year employment contract and, as specified in the Charter and Inspector General Ordinance, she may only be removed "for cause." And removal "for cause" can only be accomplished by a "supermajority" of *both* the BOCC and the Inspector General Committee.

c. Article VIII, Section 8.3 of the Charter of Palm Beach County specifies that the minimum funding level (the "Funding Base") of the Office of Inspector General (OIG) shall be "one quarter of one percent of contracts of the County and all other governmental entities subject to the authority of the Inspector General," and that the BOCC may not establish a lower budget for the OIG unless so requested by the Inspector General.

d. The Inspector General hires and fires her own staff, without approval from the BOCC.

7. The Inspector General has "full and unrestricted access" to the records of all County and Municipal officials and employees. She can also require any official or employee to submit to questioning and provide sworn statements.
8. The Inspector General determines which matters she will investigate, audit, or inquire into without approval from the BOCC or the Municipalities.
9. The Inspector General is the sole determiner of the contents of her reports.
10. The Inspector General is the sole determiner of which matters she will refer to other agencies.
11. Reports issued by the Inspector General are public records and are accessible to the public on the internet and through other means.

12. In essence, the Inspector General reports to the citizens.

13. The County Attorney, who directly reports to the BOCC, has repeatedly refused to disclose her litigation strategy to, or discuss it with, the OIG, due to the "functional independence" of the Inspector General.

Impact of this Matter on the Inspector General

14. The plaintiff Municipalities are challenging provisions in the County Charter and the Inspector General Ordinance relating to the funding of the OIG, including the constitutionality of certain provisions.

15. Furthermore, the plaintiff Municipalities have generally refused to remit payment as required by the both the County Charter and Ordinance, thereby impeding the operation of the Office of Inspector General.

16. As a result of this legal action, the Clerk and Comptroller has elected not to perform her duties as required by the Ordinance, which are comprised of calculating the respective funds owed by each entity, sending out quarterly invoices, and depositing the funds received (which the Clerk characterizes as her "collection" duties). The Clerk has also elected not to permit the expenditure of any funds received from any municipality to fund the Office of Inspector General, even funds remitted under the Ordinance by any of the 24 municipalities which are not parties to the lawsuit.

17. The ballot language approved on November 2, 2010, by the voters of Palm Beach County and each municipality regarding the Inspector General asked:

> Shall the Palm Beach County Charter be amended to require the Board of County Commissioners to establish by ordinances applicable to Palm Beach County and all municipalities approving this amendment: ..... an independent Inspector General *funded by the County Commission and all other governmental entities subject to the authority of the Inspector General*? (Emphasis supplied.)

18. The ballot language clearly stated that each entity must provide a share of the funding for the OIG. Nevertheless, the plaintiff Municipalities argue that, for a variety of reasons, they have no responsibility to provide such funding. They also maintain in paragraph 2. of their complaint that: "For the funding of the Inspector General Program to be lawful, the County must fund it in its entirety."

19. In essence, the plaintiff Municipalities are arguing that the BOCC is solely responsible for providing the minimum funding specified by the Charter; i.e., "one quarter of one percent of contracts of the County and all other governmental entities subject to the authority of the Inspector General."

20. In contrast, the County Attorney (on behalf of the BOCC) implies in her Counterclaim that if the Municipalities do not pay their "share" of the OIG's funding, then the OIG will not be funded at the minimum level required in the Charter.

21. The positions taken by, and actions of, the parties to this proceeding constitute an attack on various provisions of the County Charter and the viability of the OIG. They place in jeopardy the OIG's funding and budget and impede the Inspector General's ability to plan activities, recruit staff, and generally perform her duties.

22. In its counterclaim the defendant BOCC recognizes the direct and serious impact this has had on the OIG, as the BOCC requests an award of damages from the plaintiff Municipalities due to "the OIG's diminished ability to oversee County vendors and County operations…[as a result of] the Municipalities refus[al] to properly fund the OIG."

Legal Standard

23. In *Union Central Life Insurance Co. v. Carlisle*, 593 So. 2d 505, at 507 and 508 (Fla. 1992), the Supreme Court of Florida explained the required legal analysis for intervention:

> "First, the trial court must determine that the interest asserted is appropriate to support intervention. *See Morgareidge*. Once the trial court determines that the requisite interest exists, it must exercise its sound discretion to determine whether to permit intervention. In deciding this question the court should consider a number of factors, including the derivation of the interest, any pertinent contractual language, the size of the interest, the potential for conflicts or new issues, and any other relevant circumstance.
>
> Second, the court must determine the parameters of the intervention. As the drafters of rule 1.230 noted:
>
> Under this rule, the court has full control over intervention, including the extent thereof; although intervention under the rule is classified as of right, there must be an application made to the court, and the court in its discretion, considering the time of application as well as other factors, may deny the intervention or allow it upon conditions'
>
> 30 Fla. Stat. Ann. 352 Authors' Comment--1967 (1985) (emphasis added). Thus, intervention should be limited to the extent necessary to protect the interests of all parties."

24. Even if this dispute were confined to the issue of whether the BOCC and the Municipalities should all contribute to the "funding base" of the OIG, or whether the BOCC has sole responsibility to provide that minimum level of funding, the Inspector General would have an unquestionable interest in this matter and would meet the legal standard for intervention.

25. However, because an issue has arisen as to whether the Charter requirement establishing the OIG's minimum "funding base" must be honored by anyone, the

Inspector General respectfully asserts that she is a "necessary" or "indispensible" party to this proceeding.

26. Florida appellate courts will void a judgment entered in a case if a necessary party has not been included. See, *Yorty v. Abreu*, 988 So. 2d 1155 (3rd DCA 2008); *Green v. Hood*, 98 So. 2d 488 (Fla. 1957).

27. As an additional point, it is respectfully asserted that under the above facts, the Inspector General could now file a new action against certain parties regarding issues directly relating to this dispute. That action would likely be consolidated with the instant case and the Inspector General, as unrestricted plaintiff in the new case, would have an unsubordinated status. Permitting intervention here in an unsubordinated capacity would best serve the interests of justice and judicial economy.

28. Allowing the Inspector General to enter this proceeding at this time will not prejudice the parties. Although this case was filed in November, 2011, for most of this period the litigation has been "in abeyance" at the request of the parties so they could engage in dispute resolution procedures (ultimately fruitless) under Chapter 164. Therefore, little or no litigation has occurred since the case was filed. See, *Beeler v. Banco Industrial de Venezuela*, 834 So. 2d 952 at 953 (3rd DCA 2003).

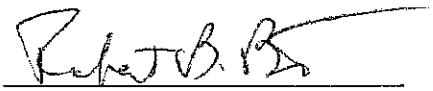
29. Finally, the Inspector General respectfully suggests that it may not best serve the interests of justice to permit this matter to be litigated solely by parties who may not have the same desire as their citizens for oversight by the Inspector General. Because the voters chose to have an Inspector General oversee the operations of these governmental entities, and because she reports directly to the citizens, the Inspector General respectfully suggests that she is the party best situated to defend the interests

of the voters who approved the ballot question and enacted the Charter provision requiring her oversight over all of the plaintiffs and the defendant.

WHEREFORE, the Inspector General respectfully requests that this Court enter an Order finding her a necessary party and allowing her to intervene in an unsubordinated capacity, or allowing intervention with as few restrictions as this Court deems just and appropriate, including authorization to file the specific pleadings attached hereto as the following Exhibits:

1. Inspector General's Motion to Dismiss Clerk's and Comptroller's Amended Complaint in Intervention, Cross-Claim, and Counterclaim for Declaratory and Other Relief.
2. Inspector General's Crossclaim For Issuance of Writ of Mandamus to the Clerk.
3. Inspector General's Motion to Dismiss Municipalities' Complaint for Declaratory Relief.
4. Inspector General's Crossclaim for Issuance of Writ of Mandamus to Plaintiff Municipalities.

I HEREBY CERTIFY that a copy of the foregoing has been provided by email and U.S. Mail this 7th day of June, 2012, to those on the attached service list.



Robert B. Beitler
General Counsel
Fla. Bar No. 327751
Email: RBeitler@pbcgov.org
Attorney for Intervenor
Office of Inspector General
Palm Beach County
P.O. Box 16568
West Palm Beach, FL 33416
Tel: 561-233-2350
Fax: 561-233-2370

SERVICE LIST

Claudia M. McKenna, City Attorney
Douglas N. Yeargin, Assistant City Attorney
Kimberly L. Rothenburg, Assistant City Attorney
City of West Palm Beach
P.O. Box 3366
West Palm Beach, Florida 33402
Phone: (561) 822-1350
Fax: (561) 822-1373
Emails: cmckenna@wpb.org
dyeargin@wpb.org
krothenburg@wpb.org
COUNSEL FOR CITY OF WEST PALM BEACH

John C. Randolph, Esquire
Jones, Foster, Johnson & Stubb, P.A.
P.O. Box 3475
West Palm Beach, Florida 33402-3475
Phone: (561) 659-3000
Fax: (561) 832-1454
Email: jrandolph@jones-foster.com
COUNSEL FOR TOWN OF GULF STREAM

Keith W. Davis, Esquire
Corbett and White, P.A.
1111 Hypoluxo Road, Suite 207
Lantana, Florida 33462-4271
Phone: (561) 586-7116
Fax: (561) 586-9611
Email: keith@corbettandwhite.com
COUNSEL FOR VILLAGE OF TEQUESTA, TOWN OF PALM BEACH SHORES and TOWN OF MANGONIA PARK

Pamela Hanna Ryan, City Attorney
City of Riviera Beach Attorney's Office
600 W. Blue Herron Boulevard
Riviera Beach, Florida 33404-4311
Phone: (561) 845-4069
Fax: (561) 845-4017
Email: pryan@rivierabch.com
COUNSEL FOR CITY OF RIVIERA BEACH

Thomas Jay Baird, Esquire
Jones, Foster, Johnson & Stubbs, P.A.
801 Maplewood Drive, Suite 22A
Jupiter, Florida 33458-8821
Phone: (561) 650-8233
Fax: (561) 746-6933
Email: tbaird@jones-foster.com
COUNSEL FOR TOWN OF JUPITER and TOWN OF LAKE PARK

R. Brian Shutt, City Attorney
Terrill Pyburn, Assistant City Attorney
City of Delray Beach
200 NW 1st Avenue
Delray Beach, Florida 33444-2768
Phone: (561) 243-7090
Fax: (561) 278-4755
Email: shutt@MyDelrayBeach.com
pyburn@MyDelrayBeach.com
COUNSEL FOR CITY OF DELRAY BEACH

Trela J. White, Esquire
Corbett and White, P.A.
1111 Hypoluxo Road, Suite 207
Lantana, Florida 33462-4271
Phone: (561) 586-7116
Fax: (561) 586-9611
Email: trela@corbettandwhite.com
COUNSEL FOR TOWN OF MANALAPAN

R. Max Lohman, Esquire
Corbett and White, P.A.
1111 Hypoluxo Road, Suite 207
Lantana, Florida 33462-4271
Phone: (561) 586-7116
Fax: (561) 586-9611
Email: max@corbettandwhite.com
COUNSEL FOR CITY OF PALM BEACH GARDENS

Thomas Edward Sliney, Esquire
Buckingham, Doolittle & Burroughs, LLP
5355 Town Center Road, Suite 900
Boca Raton, Florida 33486-1069
Phone: (561) 241-0414
Fax: (561) 241-9766
Email: tsliney@bdblaw.com
COUNSEL FOR TOWN OF HIGHLAND BEACH

Kenneth G. Spillias, Esquire
Lewis, Longman & Walker
515 N. Flagler Drive, Suite 1500
West Palm Beach, Florida 33401-4327
Phone: (561) 640-0820
Fax: (561) 640-8202
Email: kspillias@llw-law.com
COUNSEL FOR TOWN OF OCEAN RIDGE

Diana Grub Frieser, City Attorney
City of Boca Raton
201 W. Palmetto Park Road
Boca Raton, Florida 33432-3730
Phone: (561) 393-7700
Fax: (561) 393-7780
Email: dgrioli@myboca.us
COUNSEL FOR CITY OF BOCA RATON

Martin Alexander, Esquire
Holland & Knight, LLP
222 Lakeview Avenue, Suite 1000
West Palm Beach, Florida 33401
Phone: (561) 833-2000
Fax: (561) 650-8399
Email: martin.alexander@hklaw.com

Nathan A. Adams, IV, Esquire
Post Office Drawer 810
Tallahassee, Florida 32302
Phone: (850) 224-7000
Fax: (850) 224-8832
Email: Nathan.adams@hklaw.com

Denise Coffman, Esquire
General Counsel for Clerk and Comptroller, Sharon Bock
301 North Olive Avenue, 9th Floor
West Palm Beach, Florida 33401
Phone: (561) 355-1640
Fax: (561) 355-7040
Email: DCOFFMAN@mypalmbeachclerk.com
COUNSEL FOR PALM BEACH COUNTY CLERK & COMPTROLLER

Andrew J. McMahon, Esquire
Palm Beach County Attorney's Office
P.O. Box 1989
West Palm Beach, FL 33402
Phone: (561) 355-6021
Fax: (561) 355-4234
Email: amcmahon@pbcgov.org

Philip Mugavero, Esquire
Palm Beach County Attorney's Office
P.O. Box 1989
West Palm Beach, FL 33402
Phone: (561) 355-6021
Fax: (561) 355-4234
Email: pmugaver@pbcgov.org
COUNSEL FOR PALM BEACH COUNTY (BOCC)

EXHIBIT 1

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 50 2011 CA 017953

TOWN OF GULF STREAM, VILLAGE OF TEQUESTA, CITY OF RIVIERA BEACH, TOWN OF JUPITER, CITY OF DELRAY BEACH, TOWN OF PALM BEACH SHORES, TOWN OF MANALAPAN, VILLAGE OF WELLINGTON, TOWN OF MAGNONIA PARK, CITY OF PALM BEACH GARDENS, TOWN OF HIGHLAND BEACH, TOWN OF LAKE PARK, CITY OF WEST PALM BEACH, TOWN OF OCEAN RIDGE, CITY OF BOCA RATON, municipal Corporations of the State of Florida,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official capacity as the Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

INSPECTOR GENERAL'S MOTION TO DISMISS CLERK AND COMPTROLLER'S AMENDED COMPLAINT IN INTERVENTION, CROSS-CLAIM, AND COUNTERCLAIM FOR DECLARATORY AND OTHER RELIEF

Intervenor Sheryl Steckler, in her official capacity as Inspector General of Palm Beach County (the "Inspector General"), by and through her undersigned counsel, pursuant to Rule 1.100 Florida Rules of Civil Procedure, files this Motion to Dismiss the

Clerk and Comptroller's (the "Clerk's") Amended Complaint in Intervention, Cross Claim, and Counterclaim for Declaratory and Other Relief, and states:

1. The Clerk's Amended Complaint in Intervention, Cross Claim, and Counterclaim for Declaratory and Other Relief, filed on or about December 15, 2011, claims that she:

"is uncertain whether she should take any of the following actions which are required by the Funding Mechanism in the ordinance, or may be required for the Clerk & Comptroller to comply with her constitutional, statutory and other duties:

a. Prepare allocation schedules for the County and the Municipalities based on the most current LOGER system data for future quarters in FY 2012 and beyond, adjusted for revenues from sources other than the County and Municipalities and funds estimated to be received but not expended by the IG;

b. Send Past due Notices to the Municipalities that have not yet paid their invoices or take other enforcement actions;

c. Invoice the Municipalities for their proportionate share of the financial support budgeted by the County for the IG for future quarters in FY 2012 and beyond;

d. Deposit in the IG Account any funds received in response to invoices mailed to the Municipalities for their proportionate share of the financial support budgeted by the County for the IG for FY 2011 and 2012;

e. Return any funds deposited in the IG Account received in response to invoices mailed to the Municipalities for their proportionate share of the financial support budgeted by the County for the IG for FY 2011 and 2012, or prevent use of such funds pending resolution of this lawsuit; and

f. Attest to checks or warrants drawn on the IG Account, sign any warrant for the payment of any claim or pay any County funds in excess of those deposited in the IG Account by any source other than the Municipalities, and affix the corporate seal thereto."

2. As an independent officer of the County, the Clerk is required to proceed on the presumption that a duly enacted Ordinance, which she is required to in whole or in part administer, is lawful:

   a. "A regularly enacted ordinance will be presumed to be valid until the contrary is shown..." *State v. Ehinger*, 46 So. 2d 601 (Fla. 1950); *Seaboard Air Line Railroad Company v. Hawes*, 269 So. 2d 392 (4th DCA 1972).

b. "State officers and agencies must presume legislation affecting their duties to be valid, and do not have standing to initiate litigation for the purpose of determining otherwise." (citations omitted) *Department of Education v. Lewis*, 416 So. 2d 455, at 458 (Fla. 1982).

3. As is material hereto, the Clerk's prayer for relief requests that *if the Court determines that the Funding Mechanism in the Ordinance is unlawful*, the Court then declare whether the Clerk should:

"a. permanently cease any further collection efforts (including without limitation preparing allocation schedules, invoicing, collecting, and depositing funds received into the IG Account) pursuant to the Ordinance with respect to any of the Municipalities;
b. return all funds paid by Municipalities pursuant to the Ordinance that have been segregated and maintained pending the resolution of this Lawsuit;
c. refrain from processing or attesting to any payments from the IG Account with respect to funds budgeted to be received from the Municipalities pursuant to the Ordinance; and
d. otherwise perform her duties with respect to the IG account in accordance with the remaining provisions of the Ordinance and constitutional, statutory and other duties imposed on the Clerk & Comptroller under applicable law;"

4. However, in the cover letter from counsel to the Clerk to the County Attorney, dated November 22, 2011 (Attached as Exhibit A) which accompanied delivery of her original Motion to Intervene and Complaint in Intervention for Declaratory and Other Relief, the Clerk advised the BOCC that *prior to* receiving direction from this Court, she would:

"1. Discontinue further collection efforts pursuant to the Ordinance;
2. Segregate all funds paid by Municipalities pursuant to the ordinance; and
3. Discontinue processing payments from the IG Account, once County funds are exhausted."

5. The Clerk has since implemented this.

6. Because the Clerk has elected not to perform her duties under the Inspector General Ordinance and other laws, her Complaint in this case must be dismissed:

"In Florida, the general rule is that a public official may not seek a declaratory judgment as to the nature of his duties unless he 'is willing to perform his duties, but is prevented from doing so by others.' *Reid v. Kirk*, 257 So.2d 3, 4 (Fla. 1972); *see* [**3] *Department of Revenue v. Markham*, 396 So.2d 1120, 1121 (Fla. 1981). The validity of the law is to be assumed by the public official who is to carry it out. By the same token, that official does not have standing to sue for the purpose of determining that the law is not valid. *Department of Education v. Lewis*, 416 So.2d 455, 458 (Fla. 1982); *Miller v. Higgs*, 468 So.2d 371, 374 (Fla. 1st DCA 1985). The foregoing principles are equally applicable when a public official questions the validity of a regulation or rule because a valid rule or regulation of an administrative agency has the force and effect of law. *See Florida Livestock Board v. Gladden*, 76 So. 2d 291, 293 (Fla. 1954); *Bystrom v. Equitable Life Assurance Society*, 416 So.2d 1133, 1142 n.9 (Fla. 3d DCA 1982), *rev. denied*, 429 So.2d 5 (Fla. 1983); *see also Markham*, 396 So.2d 1120 (court held property appraisers lacked standing to contest Department of Revenue regulations). Because Commissioner Swift has not been prevented from performing his duties under the Florida Administrative Code and because those rules are to be presumed valid, declaratory judgment is inappropriate." *Graham v. Swift*, 480 So. 2d 124 (3rd DCA 1985)

In *Graham*, supra,, the Third District Court remanded the case back to the trial court with instructions to dismiss Commissioner Swift's Declaratory Judgment action.

7. Although the Clerk maintains that "she has been prevented, in part, from performing her collection duties as prescribed in the Funding Mechanism in the ordinance by all Municipalities, which have refused to make payment as required by the Ordinance," this does not justify her actions:

   a. Only a minority of Municipalities have failed to make payment.

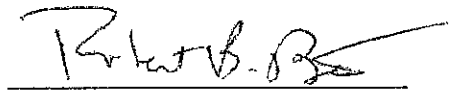
   b. The fact that some municipalities have failed to pay has not "prevented" the Clerk from performing her ministerial responsibilities under the Ordinance, which consist of calculating the respective funds owed by each entity, sending out quarterly invoices, and depositing the funds received.

   c. Even assuming for the sake of argument that the Clerk truly had been "prevented" from performing some duties, that would not justify her refusal to

perform her other duties relating to the OIG. For example, the majority of Municipalities were voluntarily paying their "shares" of the IG funding as required by the Ordinance. However, rather than presuming the Ordinance to be valid until the contrary has been determined by this Court, the Clerk refuses to allow those funds to be spent by the OIG.

WHEREFORE, the intervenor Inspector General respectfully requests that this Court enter an Order Dismissing the Clerk and Comptroller's Amended Complaint in Intervention, Cross-Claim, and Counterclaim for Declaratory and Other Relief.

I HEREBY CERTIFY that a copy of the foregoing has been provided by email and U.S. Mail this 7th day of June, 2012, to those on the attached service list.



Robert B. Beitler
General Counsel
Fla. Bar No. 327751
Email: RBeitler@pbcgov.org
Attorney for Intervenor
Office of Inspector General
Palm Beach County
P.O. Box 16568
West Palm Beach, FL 33416
Tel: 561-233-2350
Fax: 561-233-2370

EXHIBIT A

Holland & Knight

315 South Calhoun Street, Suite 600 | Tallahassee, FL 32301 | T 850.224.7000 | F 850.224.8832
Holland & Knight LLP | www.hklaw.com

NATHAN A. ADAMS, IV
850-425-5640
nathan.adams@hklaw.com

November 22, 2011

VIA HAND DELIVERY AND REGULAR MAIL

Denise M. Nieman
County Attorney
Palm Beach County
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401

Dear Ms. Nieman:

Our firm represents Clerk & Comptroller Sharon R. Bock in her official capacity. On or about November 14, 2011, fifteen Palm Beach County municipalities filed a lawsuit (the "Lawsuit") to declare unlawful the funding mechanism for the Office of Inspector General (the "IG"), contained in Section 3 of Ordinance No. 2011-009 (codified at Art. XII, § 2-429, County Code) (the "Ordinance"). The Ordinance requires Palm Beach County ("the County") and each of its municipalities (the "Municipalities") to offer financial support to the IG.

The Clerk & Comptroller deposits funds collected pursuant to the Ordinance in the Office of Inspector General, Palm Beach County, Florida Special Revenue Fund (the "IG Account"), which is a County depository under the custody and control of the Clerk & Comptroller pursuant to Article V, section 16 and Article VIII, section 1(d) of the Florida Constitution. When the IG requests payment from the IG Account, the Clerk & Comptroller performs her constitutional and statutory audit responsibilities and, if proper, issues payment.

In the Lawsuit, certain Municipalities assert that the funding mechanism for the IG constitutes an unlawful tax upon their residents. Because the legality of the funding mechanism is in question, the Clerk & Comptroller is uncertain as to how to carry out her duties and responsibilities.

The Clerk & Comptroller has constitutional and statutory duties and responsibilities to protect the public's funds and to ensure that they are received and spent lawfully. If the Court determines the funding mechanism under the current Ordinance is unlawful, then any use of the funds collected from any Municipality and deposited in the IG Account also would be unlawful. In that case, the Clerk & Comptroller may not issue payment from funds not lawfully available for expenditures of the IG. In addition, the Clerk & Comptroller may be held personally liable for any funds improperly collected or expended.

Furthermore, the Clerk & Comptroller calculates that there will be a FY 2012 funding shortfall of approximately $1.6 million in the IG Account, which represents the Municipalities' share of the

County-approved IG budget. As a neutral third party, the Clerk & Comptroller takes no position on the merits of the Lawsuit, but seeks to intervene in the pending action for the purpose of seeking declaratory relief concerning, inter alia, the following:

1. The funds the Clerk & Comptroller has already collected or may hereafter receive from the Municipalities;

2. The funds received from the Municipalities that the IG may request from the IG Account;

3. The shortfall in the IG Account; and

4. The Clerk & Comptroller's continuing duties under the Ordinance.

A copy of the Motion to Intervene and Complaint for Declaratory Relief being filed on behalf of the Clerk & Comptroller is attached for your information.

Until the Clerk & Comptroller receives direction from the Court, the Clerk & Comptroller will:

1. Discontinue further collection efforts pursuant to the Ordinance;

2. Segregate all funds paid by Municipalities pursuant to the Ordinance; and

3. Discontinue processing payments from the IG Account, once County funds are exhausted.

The Clerk & Comptroller will seek appropriate interim direction and relief from the Court during the pendency of the Lawsuit regarding these matters, unless the Board of County Commissioners commits to do the following:

1. Fund any budget deficit in the IG Account resulting from nonpayment by the Municipalities; and

2. Reimburse the Clerk & Comptroller for any funds received from Municipalities used to pay IG expenditures.

If the Board of County Commissioners takes these actions to ensure sufficient funding of the IG, the Clerk & Comptroller will permit the expenditure of current budgeted funds beyond the County's proportionate share. If such actions are not taken, there will be insufficient funds to cover the IG's FY 2012 budget and the Clerk & Comptroller will be statutorily prohibited from expending funds beyond the County's proportionate share.

Please call me with any questions or comments that you may have.

Sincerely,

HOLLAND & KNIGHT LLP

Nathan A. Adams, IV

NAA/s

Enclosures

cc: Sharon R. Bock, Esq., Clerk & Comptroller, Palm Beach County
Denise Coffman, Clerk & Comptroller Legal Counsel
Palm Beach County Board of County Commissioners
All Palm Beach County municipalities
Inspector General of Palm Beach County
State Attorney
Attorney General
Martin Alexander

EXHIBIT 2

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

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Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official capacity as the Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

INSPECTOR GENERAL'S CROSSCLAIM FOR ISSUANCE OF WRIT OF MANDAMUS TO CLERK

Intervenor SHERYL STECKLER, in her official capacity as Inspector General of Palm Beach County, by and through her undersigned counsel, pursuant to Rules 1.170 and 1.630, Florida Rules of Civil Procedure, files this Crossclaim for Issuance of a Writ of Mandamus to

Sharon Bock, in her official capacity as Clerk & Comptroller of Palm Beach County (the "Clerk"), and states:

1. This Crossclaim is a complaint for the issuance of Writ of Mandamus to the Clerk.

Jurisdiction and Venue

1. This Court has jurisdiction to grant the relief requested herein, the issuance of a Writ of Mandamus, pursuant to Article V, Section 5(b) of the Constitution of the State of Florida, section 26.012, Florida Statutes, and Rule 1.630 of the Florida Rules of Civil Procedure.
2. Venue is proper in Palm Beach County pursuant to section 47.011, Florida Statutes because all parties are located in Palm Beach County and the cause of action accrued here.

Parties

3. The Clerk is an independent constitutional officer of Palm Beach County (County).
4. The Inspector General is an officer of Palm Beach County who in all material respects is independent of the Palm Beach County Board of County Commissioners (BOCC).

Office of Inspector General

5. In November 2010, a ballot question asked the voters of this County (as regards the Inspector General):

> "Shall the Palm Beach County Charter be amended to require the Board of County Commissioners to establish by ordinances applicable to Palm Beach County and all municipalities approving this amendment: ..... an independent Inspector General funded by the County Commission and all other governmental entities subject to the authority of the Inspector General?"

Over 72% of the voters of Palm Beach County, and a majority in each of its 38 municipalities, voted their approval.

6. As a result of this election, the Inspector General position is mandated in Article VIII, Section 8.3 of the Charter of Palm Beach County.

7. The Charter also specifies that the minimum funding level (the "Funding Base") of the Office of Inspector General (OIG) shall be:

   "one quarter of one percent of contracts of the County and all other governmental entities subject to the authority of the Inspector General."

8. Under the Charter, the funding provided to the OIG in any given year may only be less than 0.25% if the Inspector General so requests, which occurred for the current fiscal year.

9. Per the results of this election, the Inspector General has oversight responsibilities over both the County agencies and all municipal governments within Palm Beach County.

10. As required by the Charter, the BOCC adopted an Ordinance (the Inspector General Ordinance) to implement these requirements. Section 2-422 specifies:

"Sec. 2-422. - Office created and established.

There is hereby established the office of inspector general which is created in order to promote economy, efficiency, and effectiveness in the administration of and, as its priority, to prevent and detect fraud and abuse in programs and operations administered or financed by the county or municipal agencies. The inspector general shall initiate, conduct, supervise and coordinate investigations designed to detect, deter, prevent and eradicate fraud, waste, mismanagement, misconduct, and other abuses by elected and appointed county and municipal officials and employees, county and municipal agencies and instrumentalities, contractors, their subcontractors and lower tier subcontractors, and other parties doing business with the county or a municipality and/or receiving county or municipal funds. The inspector general shall head the office of inspector general. The organization and administration of the office of inspector general shall be independent to assure that no interference or influence external to the office of inspector general adversely affects the independence and objectivity of the inspector general."

11. The Inspector General reports her findings directly to the entity involved and to the public.

12. Per the requirements of the ballot question approved by the voters, the County's resulting Inspector General Ordinance requires that funding for the OIG be provided by both the County and all municipalities subject to her jurisdiction. See sections 2-429 and 2-429.1 of the Inspector General Ordinance.

13. The Inspector General Ordinance assigns the Clerk only limited duties. Specifically, the Ordinance requires the Clerk to:

    a. Prepare allocation schedules to determine the County's and each municipality's proportionate share of the OIG budget.

    b. Invoice the County and municipalities quarterly for their respective shares.

    c. Deposit funds received into the Inspector General Special Revenue Fund.

14. As detailed in both the Clerk's Motion to Intervene and Complaint in Intervention, the Clerk, as constitutional and statutory clerk, auditor, and custodian of county funds has additional duties relating to the OIG which are similar to her duties for other County entities. Specifically and as is relevant here, she must sign warrants for the payment of legitimate and legal expenses incurred by the OIG.

15. The Clerk's specific responsibilities in paragraphs 13 and 14 above are ministerial in nature.

16. The underlying lawsuit in this case was filed by 15 of the County's 38 municipalities, challenging their obligation to share the cost of funding the OIG. One has since dismissed its claim and there are currently 14 plaintiff municipalities.

Conduct of the Clerk

17. As is material hereto, the Clerk's prayer for relief in both her original Complaint (filed on or about November 22, 2011) and her Amended Complaint (filed on or about December

22, 2011), requests that *if the Court determines that the Funding Mechanism in the Ordinance is unlawful*, the Court then declare whether the Clerk should:

> "a. permanently cease any further collection efforts (including without limitation preparing allocation schedules, invoicing, collecting, and depositing funds received into the IG Account) pursuant to the Ordinance with respect to any of the Municipalities;
> b. return all funds paid by Municipalities pursuant to the Ordinance that have been segregated and maintained pending the resolution of this Lawsuit;
> c. refrain from processing or attesting to any payments from the IG Account with respect to funds budgeted to be received from the Municipalities pursuant to the Ordinance; and
> d. otherwise perform her duties with respect to the IG account in accordance with the remaining provisions of the Ordinance and constitutional, statutory and other duties imposed on the Clerk & Comptroller under applicable law;"

18. However, in the cover letter from counsel to the Clerk to the County Attorney, dated November 22, 2011 (Attached as Exhibit A), which accompanied delivery of her original Motion to Intervene and Complaint in Intervention for Declaratory and Other Relief, the Clerk advised the BOCC that *prior to* receiving direction from this Court she would:

> "1. Discontinue further collection efforts pursuant to the Ordinance;
> 2. Segregate all funds paid by Municipalities pursuant to the ordinance; and
> 3. Discontinue processing payments from the IG Account, once County funds are exhausted."

19. The Clerk has since implemented this, including prohibiting the expenditure of Inspector General funds received under the Ordinance from all municipalities, including those which are not participating in the lawsuit.

20. The Clerk's *sole* justification is that, if the Court determines the funding mechanism to be unlawful, then the expenditure of funds remitted by municipalities under the Ordinance would also be illegal and the Clerk could be personally responsible for these funds pursuant to section 129.09, Florida Statutes, which provides:

> "County auditor not to sign illegal warrants.—Any clerk of the circuit court, acting as county auditor, who shall sign any warrant for the payment of any claim or bill or

indebtedness against any county funds in excess of the expenditure allowed by law, or county ordinance, or to pay any illegal charge against the county, or to pay any claim against the county not authorized by law, or county ordinance, shall be personally liable for such amount, and if he or she shall sign such warrant willfully and knowingly he or she shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

21. During the current fiscal year, as a direct result of being deprived of municipal funding, the Office of inspector General did not receive full allocation of funds required under the Charter and Ordinance and approved by the BOCC. As a result, the OIG's ablity to plan activities, recruit staff, and generally perform her duties was impeded and her office, as well as the County, the paying municipalities and the public sustained unquantifiable damages.

Legal Argument

22. As an independent officer of the County, the Clerk is required to proceed on the presumption that a duly enacted Ordinance, which she is required to in whole or in part administer, is lawful:

    a. "A regularly enacted ordinance will be presumed to be valid until the contrary is shown..." *State v. Ehinger*, 46 So. 2d 601 (Fla. 1950); *Seaboard Air Line Railroad Company v. Hawes*, 269 So. 2d 392 (4th DCA 1972).

    b. "State officers and agencies must presume legislation affecting their duties to be valid..." (citations omitted) *Department of Education v. Lewis*, 416 So. 2d 455, at 458 (Fla. 1982).

23. Mandamus requires that the petitioner establish both a clear legal right to have a public officer perform a ministerial duty, and that there are no other legal remedies available.

"In Order for a court to issue a writ of mandamus, a petitioner 'must show that he has a clear legal right to the performance of a clear legal duty by a public officer and that he has no other legal remedies available to him.' *Hatten v. State*, 561 So. 2d 562, 563 (Fla. 1990)." *Holcomb v. Department of Corrections*, 609 So. 2d 751 (1st DCA 1992).

24. In the instant case, the Inspector General has a clear legal right to have the Clerk perform her ministerial duties under both the County's Inspector General Ordinance and Florida Statutes. The Clerk has no authority to cease performing her duties merely because a statute has been challenged. She must assume that the Charter and Ordinance are valid, and faithfully perform her duties until and unless a Court advises her to cease doing so or strikes the provisions being challenged. An obvious parallel would be if the Florida Department of Revenue were to cease collecting all sales taxes throughout the state, thereby disabling state government, merely because someone in Jacksonville filed a legal challenge to Florida's sales tax laws.

25. The County, in its counterclaim, recognizes that the failure to fund the OIG at the level required by both the Charter and Ordinance will result in "substantially less comprehensive" oversight by the OIG, and will also result in damages to the County. However, the Inspector General respectfully maintains that there is no real legal remedy for this underfunding. The Inspector General has responsibility to "promote economy, efficiency, and effectiveness in the administration of and, as its priority, to prevent and detect fraud and abuse in programs and operations administered or financed by the county or municipal agencies." Less will be accomplished if funding is not provided. What is not discovered due to lack of resources is unlikely to ever be known, and cannot be quantified and valued for a subsequent award of monetary damages. Moreover, the uncertainty over the status of the Inspector General's funding created in part, by the actions of the Clerk, has impeded the Inspector General's recruiting efforts and her operation in general. These issues, too, cannot be quantified or assigned a monetary

value. Similarly, the County, the municipalities which are not parties to this lawsuit, and the general public have no adequate remedy at law.

26. The Inspector General also disputes the Clerk's sole excuse for refusing to perform her ministerial duties, that she will become personally liable under section 129.09, Florida Statutes, which provides that a Clerk shall be personally liable for payment "...in excess of the expenditure allowed by law, or county ordinance...," if at some future time this Court declares the Ordinance's current Funding Mechanism to be defective.

    a. There is no good faith argument that can be advanced as to why the Clerk would be personally liable under this law for performing her ministerial duties which involve: preparing allocation schedules to determine the County's and each municipality's proportionate share of the OIG budget; invoicing the County and municipalities quarterly for their respective shares; and depositing funds received into the Inspector General Special Revenue Fund. None of these duties can be claimed to constitute making expenditures.

    b. As to allowing the expenditure of funds remitted by municipalities, it is respectfully submitted that, irrespective of who this Court ultimately determines must provide funding to support the OIG, that decision will not make previous expenditures by the OIG "illegal." The Inspector General's expenditures will have remained within the minimum budget mandated for her in the County Charter. So the Clerk cannot be personally liable under section 129.09, Florida Statutes.

    c. Moreover, even if this Court were to ultimately strike the Funding Methodology in the current Ordinance, until that occurs Florida law requires the Clerk to

presume the current Ordinance (and Methodology) are valid in all respects and faithfully perform her duties accordingly, and she cannot be liable under section 129.09, Florida Statutes, for doing so.

27. Finally, because the Clerk's sole reason for refusing to perform her duties is her fear of personal liability, the entry by this Court of a Writ of Mandamus directing her to perform those duties will eliminate any question of personal liability and clear the path for her to perform the duties she was elected and is being paid to perform.

WHEREFORE, the Inspector General respectfully requests that this Court issue a Writ of Mandamus directing that the Clerk timely perform her ministerial duties to prepare allocation schedules to determine the County's and each municipality's proportionate share of the OIG budget; invoice the County and municipalities quarterly for their respective shares; and deposit funds received into the Inspector General Special Revenue Fund, and that she cease segregating and prohibiting the expenditure of funds received from municipalities.

I HEREBY CERTIFY that a copy of the foregoing has been provided by email and U.S. Mail this 7th day of June, 2012, to those on the attached service list.

Robert B. Beitler
General Counsel
Fla. Bar No. 327751
Email: RBeitler@pbcgov.org
Attorney for Intervenor
Office of Inspector General
Palm Beach County
P.O. Box 16568
West Palm Beach, FL 33416
Tel: 561-233-2350
Fax: 561-233-2370

EXHIBIT A

Holland & Knight

316 South Calhoun Street, Suite 600 | Tallahassee, FL 32301 | T 850.224.7000 | F 850.224.8832
Holland & Knight LLP | www.hklaw.com

NATHAN A. ADAMS, IV
850-425-5640
nathan.adams@hklaw.com

November 22, 2011

VIA HAND DELIVERY AND REGULAR MAIL

Denise M. Nieman
County Attorney
Palm Beach County
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401

Dear Ms. Nieman:

Our firm represents Clerk & Comptroller Sharon R. Bock in her official capacity. On or about November 14, 2011, fifteen Palm Beach County municipalities filed a lawsuit (the "Lawsuit") to declare unlawful the funding mechanism for the Office of Inspector General (the "IG"), contained in Section 3 of Ordinance No. 2011-009 (codified at Art. XII, § 2-429, County Code) (the "Ordinance"). The Ordinance requires Palm Beach County ("the County") and each of its municipalities (the "Municipalities") to offer financial support to the IG.

The Clerk & Comptroller deposits funds collected pursuant to the Ordinance in the Office of Inspector General, Palm Beach County, Florida Special Revenue Fund (the "IG Account"), which is a County depository under the custody and control of the Clerk & Comptroller pursuant to Article V, section 16 and Article VIII, section 1(d) of the Florida Constitution. When the IG requests payment from the IG Account, the Clerk & Comptroller performs her constitutional and statutory audit responsibilities and, if proper, issues payment.

In the Lawsuit, certain Municipalities assert that the funding mechanism for the IG constitutes an unlawful tax upon their residents. Because the legality of the funding mechanism is in question, the Clerk & Comptroller is uncertain as to how to carry out her duties and responsibilities.

The Clerk & Comptroller has constitutional and statutory duties and responsibilities to protect the public's funds and to ensure that they are received and spent lawfully. If the Court determines the funding mechanism under the current Ordinance is unlawful, then any use of the funds collected from any Municipality and deposited in the IG Account also would be unlawful. In that case, the Clerk & Comptroller may not issue payment from funds not lawfully available for expenditures of the IG. In addition, the Clerk & Comptroller may be held personally liable for any funds improperly collected or expended.

Furthermore, the Clerk & Comptroller calculates that there will be a FY 2012 funding shortfall of approximately $1.6 million in the IG Account, which represents the Municipalities' share of the

County-approved IG budget. As a neutral third party, the Clerk & Comptroller takes no position on the merits of the Lawsuit, but seeks to intervene in the pending action for the purpose of seeking declaratory relief concerning, inter alia, the following:

1. The funds the Clerk & Comptroller has already collected or may hereafter receive from the Municipalities;

2. The funds received from the Municipalities that the IG may request from the IG Account;

3. The shortfall in the IG Account; and

4. The Clerk & Comptroller's continuing duties under the Ordinance.

A copy of the Motion to Intervene and Complaint for Declaratory Relief being filed on behalf of the Clerk & Comptroller is attached for your information.

Until the Clerk & Comptroller receives direction from the Court, the Clerk & Comptroller will:

1. Discontinue further collection efforts pursuant to the Ordinance;

2. Segregate all funds paid by Municipalities pursuant to the Ordinance; and

3. Discontinue processing payments from the IG Account, once County funds are exhausted.

The Clerk & Comptroller will seek appropriate interim direction and relief from the Court during the pendency of the Lawsuit regarding these matters, unless the Board of County Commissioners commits to do the following:

1. Fund any budget deficit in the IG Account resulting from nonpayment by the Municipalities; and

2. Reimburse the Clerk & Comptroller for any funds received from Municipalities used to pay IG expenditures.

If the Board of County Commissioners takes these actions to ensure sufficient funding of the IG, the Clerk & Comptroller will permit the expenditure of current budgeted funds beyond the County's proportionate share. If such actions are not taken, there will be insufficient funds to cover the IG's FY 2012 budget and the Clerk & Comptroller will be statutorily prohibited from expending funds beyond the County's proportionate share.

Please call me with any questions or comments that you may have.

Sincerely,

HOLLAND & KNIGHT LLP

Nathan A. Adams, IV

NAA/s

Enclosures

cc: Sharon R. Bock, Esq., Clerk & Comptroller, Palm Beach County
Denise Coffman, Clerk & Comptroller Legal Counsel
Palm Beach County Board of County Commissioners
All Palm Beach County municipalities
Inspector General of Palm Beach County
State Attorney
Attorney General
Martin Alexander

EXHIBIT 3

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 50 2011 CA 017953

TOWN OF GULF STREAM, VILLAGE OF TEQUESTA, CITY OF RIVIERA BEACH, TOWN OF JUPITER, CITY OF DELRAY BEACH, TOWN OF PALM BEACH SHORES, TOWN OF MANALAPAN, VILLAGE OF WELLINGTON, TOWN OF MAGNONIA PARK, CITY OF PALM BEACH GARDENS, TOWN OF HIGHLAND BEACH, TOWN OF LAKE PARK, CITY OF WEST PALM BEACH, TOWN OF OCEAN RIDGE, CITY OF BOCA RATON, municipal Corporations of the State of Florida,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official capacity as the Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

INSPECTOR GENERAL'S MOTION TO DISMISS MUNICIPALITIES' COMPLAINT FOR DECLARATORY RELIEF

Intervenor SHERYL STECKLER, in her official capacity as Inspector General of Palm Beach County (the "Inspector General"), by and through her undersigned counsel,

pursuant to Rule 1.100 Florida Rules of Civil procedure, files this Motion to Dismiss the Municipalities' Complaint for Declaratory Relief (the "Complaint"):

1. The Municipalities' Complaint challenges the validity of provisions within the County's Charter and Inspector General Ordinance relating to the funding of the Office of Inspector General. Specifically, the plaintiffs allege that the challenged provisions violate provisions in Florida's Constitution and statutes relating to their "home rule" and their authority to adopt budgets.

2. In their prayer relief, the plaintiffs request:

   "...that this Court enter a judgment declaring that:

   a. The Municipalities shall not be required to pay the expenses of the Inspector General Program;

   b. Any and all expenses relating to the Inspector General Program shall be paid for solely by the County;

   c. Any efforts by the County to require the Municipalities to appropriate funds to pay for the expenses of the Inspector General Program are unlawful and unenforceable;

   d. Section 8.3 of the Charter and subsequent Implementing Ordinance are unconstitutional as they are in conflict with the powers and duties granted to the Municipalities under the Florida Constitution and Chapter 166, Florida Statutes;

   e. Section 8.3 of the Charter and subsequent Implementing ordinance are unconstitutional as they are in conflict with the budgeting powers granted to the Municipalities pursuant to Chapter 166.0241, Florida Statutes; and

   f. The Municipalities are awarded their costs incurred in the prosecution of this action and are granted such other and further relief as deemed just and proper under the circumstances."

3. As to each plaintiff Municipality, the filing of this Complaint was at the instance of the elected commission or council (officials and officers) of the respective municipality.

4. Under Florida law, elected officials and other officers are required to proceed on the presumption that a duly enacted Ordinance, which they are required to in whole or in part administer, is lawful:

   a. "A regularly enacted ordinance will be presumed to be valid until the contrary is shown..." *State v. Ehinger*, 46 So. 2d 601 (Fla. 1950); *Seaboard Air Line Railroad Company v. Hawes*, 269 So. 2d 392 (4th DCA 1972).

   b. "State officers and agencies must presume legislation affecting their duties to be valid, and do not have standing to initiate litigation for the purpose of determining otherwise." (citations omitted) *Department of Education v. Lewis*, 416 So. 2d 455, at 458 (Fla. 1982).

5. Included in this requirement is the obligation to comply with the provisions they are challenging, which in this case are the obligations set forth in the Charter and Ordinance requiring the Municipalities to pay their quarterly share of the funding of the Office of Inspector General.

6. With only limited exception, the plaintiff Municipalities have refused and failed to comply with this obligation to pay their share of the funding of the Office of Inspector General.

7. Because the plaintiff Municipalities have refused to comply with their duties under the County Charter and the Inspector General Ordinance, their Complaint must be dismissed:

> "In Florida, the general rule is that a public official may not seek a declaratory judgment as to the nature of his duties unless he 'is willing to perform his duties, but is prevented from doing so by others.' *Reid v. Kirk*, 257 So.2d 3, 4 (Fla. 1972); *see Department of Revenue v. Markham*, 396 So.2d 1120, 1121 (Fla. 1981). The validity of the law is to be assumed by the public official who is to carry it out. By the same token, that official does not have standing to sue for the purpose of determining that the law is not valid. *Department of Education v. Lewis*, 416 So.2d 455, 458 (Fla. 1982); *Miller v. Higgs*, 468 So.2d 371, 374 (Fla. 1st DCA 1985). The foregoing principles are equally applicable when a public official questions the validity of a regulation or rule because a valid rule or regulation of an administrative agency has the force and effect of law. *See Florida*

Livestock Board v. Gladden, 76 So. 2d 291, 293 (Fla. 1954); *Bystrom v. Equitable Life Assurance Society*, 416 So.2d 1133, 1142 n.9 (Fla. 3d DCA 1982), *rev. denied*, 429 So.2d 5 (Fla. 1983); *see also Markham*, 396 So.2d 1120 (court held property appraisers lacked standing to contest Department of Revenue regulations). Because Commissioner Swift has not been prevented from performing his duties under the Florida Administrative Code and because those rules are to be presumed valid, declaratory judgment is inappropriate." *Graham v. Swift*, 480 So. 2d 124,125 (3rd DCA 1985)

In *Graham*, supra, the Third District Court remanded the case back to the trial court with directions to dismiss Swift's Declaratory Judgment complaint.

WHEREFORE, the intervenor Inspector General respectfully requests that this Court enter an Order dismissing the plaintiff Municipalities' Complaint for Declaratory Relief.

I HEREBY CERTIFY that a copy of the foregoing has been provided by email and U.S. Mail this 7th day of June, 2012, to those on the attached service list.

Robert B. Beitler
General Counsel
Fla. Bar No. 327751
Email: RBeitler@pbcgov.org
Attorney for Intervenor
Inspector General
Palm Beach County
P.O. Box 16568
West Palm Beach, FL 33416
Tel: 561-233-2350
Fax: 561-233-2370

EXHIBIT 4

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 50 2011 CA 017953

TOWN OF GULF STREAM, VILLAGE OF TEQUESTA, CITY OF RIVIERA BEACH, TOWN OF JUPITER, CITY OF DELRAY BEACH, TOWN OF PALM BEACH SHORES, TOWN OF MANALAPAN, VILLAGE OF WELLINGTON, TOWN OF MAGNONIA PARK, CITY OF PALM BEACH GARDENS, TOWN OF HIGHLAND BEACH, TOWN OF LAKE PARK, CITY OF WEST PALM BEACH, TOWN OF OCEAN RIDGE, CITY OF BOCA RATON, municipal Corporations of the State of Florida,

Plaintiffs,

vs.

PALM BEACH COUNTY, a political subdivision,

Defendant.

SHARON R. BOCK, in her Official capacity as the Clerk & Comptroller of Palm Beach County, Florida,

Intervenor.

INSPECTOR GENERAL'S CROSSCLAIM FOR ISSUANCE OF WRIT OF MANDAMUS TO PLAINTIFF MUNICIPALITIES

Intervenor SHERYL STECKLER, in her official capacity as Inspector General of Palm Beach County, by and through her undersigned counsel, pursuant to Rules 1.170 and 1.630,

Florida Rules of Civil Procedure, files this Crossclaim for Issuance of a Writ of Mandamus to all of the plaintiff Municipalities and states:

Jurisdiction and Venue

1. This Court has jurisdiction to grant the relief requested herein, the issuance of a Writ of Mandamus, pursuant to Article V, Section 5(b) of the Constitution of the State of Florida, section 26.012, Florida Statutes, and Rule 1.630 of the Florida Rules of Civil Procedure.
2. Venue is proper in Palm Beach County pursuant to section 47.011, Florida Statutes because all parties are located in Palm Beach County and the cause of action accrued here.

Parties

3. Each of the plaintiff Municipalities is a political subdivision of the state, and each is located within Palm Beach County.
4. The Inspector General is an officer of Palm Beach County mandated in the County Charter who in all material respects is independent of the Palm Beach County Board of County Commissioners (BOCC).

General Background

5. On November 2, 2010, a ballot question asked the voters of this County (as regards the Inspector General):

   "Shall the Palm Beach County Charter be amended to require the Board of County Commissioners to establish by ordinances applicable to Palm Beach County and all municipalities approving this amendment: ..... an independent Inspector General funded by the County Commission and all other governmental entities subject to the authority of the Inspector General?"

   Over 72% of the voters of Palm Beach County, and a majority in each of its 38 municipalities, voted their approval.

6. The Charter also specifies that the minimum funding level (the "Funding Base") of the Office of Inspector General (OIG) shall be:

   "one quarter of one percent of contracts of the County and all other governmental entities subject to the authority of the Inspector General."

7. Under the Charter, the funding provided to the OIG in any given year may only be less than 0.25% if the Inspector General so requests.

8. Following that election, and as required in the resulting Charter provision, an Ordinance Drafting Committee was appointed to draft an amended Inspector General Ordinance to implement the Charter's requirements relating to the Inspector General, including the requirement in the ballot language that the Inspector General be funded by "all government entities subject to" her authority.

9. As also required by the Charter, the Ordinance Drafting Committee (Drafting Committee) consisted of seven members; three representatives of the municipalities; three representatives of the County; and the Inspector General.

10. At the April 6, 2011 meeting of the Drafting Committee, the city managers from two municipalities which participated in the filing of this legal action, Delray Beach and Wellington (Wellington has since dropped out of the suit), requested financial relief. Specifically, they advised the Drafting Committee that because they were required to establish their budgets for the then current fiscal year (October 1, 2010 through September 30, 2011) prior to October 1, their budgets for that year did not include any moneys to fund the OIG for that fiscal year.

11. After considering this request, the Drafting Committee ultimately agreed to recommend to the BOCC that the final Inspector General Ordinance permit the municipalities to remit their respective shares of the OIG's funding for the balance of the 2010-2011 fiscal year

(the period from June 1 to September 30) during the next fiscal year, along with their scheduled quarterly payments for the then current year.

12. The amended (current) Inspector General Ordinance was adopted by the BOCC in May, 2011, to be effective on June 1, 2011. It requires that funding for the OIG be provided by both the County and by all municipalities subject to her jurisdiction. It requires each entity to pay one quarter of its annual share in quarterly installments each year. It also provides for the payment during fiscal year 2011-2012 of the amounts due from each municipality for the previous fiscal year. See sections 2-429 and 2-429.1 of the Inspector General Ordinance.
13. The Inspector General's jurisdiction and duties relating to the county's municipalities commenced on June 1, 2011.
14. As also required by the Ordinance, on October 10, 2011, the Clerk and Comptroller sent each municipality an invoice for one quarter of their proportionate shares of the funding of the OIG for the 2011-2012 fiscal year, and an invoice for their proportionate shares of the funding of the OIG for the previous fiscal year.
15. On November 14, 2011, the plaintiff Municipalities filed the instant case.
16. Despite the fact that the plaintiff Municipalities have each accepted the jurisdiction and services of the Inspector General since June 1, 2011, with limited exception the plaintiff Municipalities have failed to pay the amounts due for their proportionate shares of the funding of the OIG. The plaintiff Municipalities have benefitted from the services of the Inspector General without contributed their share of the OIG funding.

Legal Argument

17. Each of the plaintiff Municipalities' is directed by officers who are required to proceed on the presumption that a duly enacted Ordinance which affects their duties is lawful:

    a. "A regularly enacted ordinance will be presumed to be valid until the contrary is shown..." *State v. Ehinger*, 46 So. 2d 601 (Fla. 1950); *Seaboard Air Line Railroad Company v. Hawes*, 269 So. 2d 392 (4th DCA 1972).

    b. "State officers and agencies must presume legislation affecting their duties to be valid..." (citations omitted) *Department of Education v. Lewis*, 416 So. 2d 455, at 458 (Fla. 1982).

18. Mandamus requires that the petitioner establish both a clear legal right to have a public officer perform a ministerial duty, and that there are no other legal remedies available.

    "In Order for a court to issue a writ of mandamus, a petitioner 'must show that he has a clear legal right to the performance of a clear legal duty by a public officer and that he has no other legal remedies available to him.' *Hatten v. State*, 561 So. 2d 562, 563 (Fla. 1990)." *Holcomb v. Department of Corrections*, 609 So. 2d 751 (1st DCA 1992).

19. In the instant case, the Inspector General has a clear legal right to have the plaintiff Municipalities comply with the requirements of the Ordinance and remit their funding obligation in a timely manner. The officers of the plaintiff Municipalities have no authority to refrain from paying this obligation merely because they have challenged the Ordinance.

20. Payment of this funding obligation is a ministerial duty. The precise amount due from each municipality is the result of a definitive formula and factors set out in the Ordinance.

21. This obligation remains in effect until and unless a Court strikes the provisions being challenged.

22. The County, in its counterclaim, recognizes that the failure to fund the OIG at the level required by both the Charter and Ordinance will result in "substantially less comprehensive" oversight by the OIG, and will also result in damages to the County. However, the Inspector General respectfully maintains that there is no real legal remedy for this underfunding. The Inspector General has responsibility to "promote economy, efficiency, and effectiveness in the administration of and, as its priority, to prevent and detect fraud and abuse in programs and operations administered or financed by the county or municipal agencies." Less will be accomplished if funding is not provided. What is not discovered due to lack of resources is unlikely to ever be known, and cannot be quantified and valued for a subsequent award of monetary damages. Moreover, the uncertainty over the status of the Inspector General's funding created in part, by the actions of the Clerk, has impeded the Inspector General's recruiting efforts and her operation in general. These issues, too, cannot be quantified or assigned a monetary value.

23. Similarly the County, the municipalities which are not parties to this lawsuit, and the general public have no adequate remedy at law.

WHEREFORE, the Inspector General respectfully requests that this Court issue a Writ of Mandamus directing that each of the plaintiff Municipalities timely perform their ministerial duties to pay their respective shares of the OIG funding until and unless this Court finds the Charter and Ordinance provisions requiring such payments to be unlawful and therefore ineffective.

I HEREBY CERTIFY that a copy of the foregoing has been provided by email and U.S. Mail this 7th day of June, 2012, to those on the attached service list.

Robert B. Beitler
General Counsel
Fla. Bar No. 327751
Email: RBeitler@pbcgov.org
Attorney for Intervenor
Office of Inspector General
Palm Beach County
P.O. Box 16568
West Palm Beach, FL 33416
Tel: 561-233-2350
Fax: 561-233-2370