

Agenda Item #: **5A-2**

AGENDA ITEM SUMMARY

Meeting Date: October 1, 2013

Consent

Regular

Ordinance

Public Hearing

Submitted By:

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title:

Staff recommends motion to approve a Memorandum of Understanding (MOU) with the Clerk and Comptroller and Palm Beach County for release of the IG Account Segregated Funds.

Summary:

The MOU provides a means for the Clerk to release funds that were paid by certain municipalities in 2011 and the first quarter of 2012 pursuant to the terms of the funding mechanism method outlined in the Inspector General Ordinance Sec. 2-429. Shortly after fifteen municipalities filed suit to challenge the funding mechanism, the Clerk and Comptroller's Office intervened in the lawsuit to determine its rights and responsibilities under the Ordinance. Since then, the Clerk has not invoiced the municipalities pursuant to the Ordinance, and has not released the funds initially paid by the municipalities. Under this MOU, a total of \$223,588. will be released by the Clerk to help fund Inspector General operations. (Countywide) LB

Background and Justification (or Policy Issues): The County Attorney's Office initiated settlement discussions with the Clerk and Comptroller earlier this Summer. Based on this MOU, the Clerk and Comptroller will remain a party to the litigation, but has agreed to release the funds initially paid by the municipalities. In exchange for this, the County agrees that if a court ultimately orders the County or Clerk to pay or refund any of the released funds, the County will reimburse the IG Account from General Revenue, and not seek reimbursement from the Clerk.

Attachments:

MOU with the Clerk and Comptroller (3)

Recommended by: N/A
Department Director _____ Date _____

Approved By:  9/11/13
County/Deputy/Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	20__	20__	20__
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	* _____	_____	_____	_____	_____
No. ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes _____ No _____
 Budget Account No.: Fund _____ Department _____ Unit _____
 Object _____ Reporting Category _____

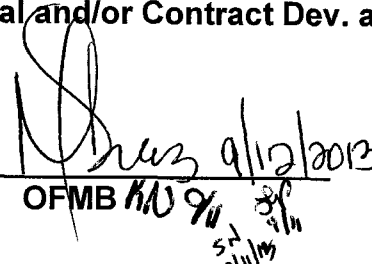

B. Recommended Sources of Funds/Summary of Fiscal Impact:

*Approval of the MOU will result in the return of \$223,588, plus a small amount of accumulated interest, to the OIG fund.

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

 9/12/2013
 OFMB *HW 9/11/13*
 9/10/13
 Contract Dev. and Control

B. Legal Sufficiency:


 Assistant County Attorney

C. Other Department Review:

 Department Director

REVISED 9/03

ADM FORM 01

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Agreement") is entered into by and between the CLERK & COMPTROLLER, PALM BEACH COUNTY ("Clerk & Comptroller") and PALM BEACH COUNTY, a political subdivision of the State of Florida ("County") (singly a "Party", and together the "Parties").

WHEREAS, the Clerk & Comptroller is an elected constitutional officer with constitutional responsibilities, such as to safeguard public funds by serving as "auditor, recorder and custodian of all county funds" (Art. V, § 16 and Art. VIII, § 1(d), Fla. Const.); and

WHEREAS, the Clerk & Comptroller also has statutory responsibilities such as serving as the custodian, keeper, accountant, auditor, inspector and examiner of all County accounts (§§ 28.12, 129.09, 136.06(1), 136.08, Fla. Stat.); and

WHEREAS, Ordinance No. 2011-009 (the "Implementing Ordinance") was enacted on May 17, 2011, to establish the countywide Office of Inspector General ("OIG"); and

WHEREAS, the Implementing Ordinance enacted a mechanism to fund the OIG (the "Funding Mechanism"), pursuant to which the Clerk & Comptroller deposits payments received into the Office of Inspector General, Palm Beach County, Florida, Special Revenue Fund (the "IG Account"); and

WHEREAS, on or about November 14, 2011, certain municipalities (the "Plaintiffs") sued the County in Case No. 502011CA017953 in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (the "Lawsuit"), seeking a declaration that the Funding Mechanism is unlawful; and

WHEREAS, the Clerk & Comptroller because of her constitutional and statutory duties and fiduciary responsibilities to the public intervened in the Lawsuit by agreed order without asserting a position regarding the pending challenge to the enforceability of the Funding Mechanism, *but exclusively for the purpose of requesting a declaration* as to whether her compliance with the Funding Mechanism is consistent with law; and

WHEREAS, pending the court declaration, and consistent with her constitutional, statutory, and fiduciary responsibilities, the Clerk & Comptroller segregated the funds already received and deposited into the IG Account pursuant to the terms of the Funding Mechanism (the "Segregated Funds"), and has maintained and safeguarded the Segregated Funds pending resolution of the Lawsuit; and

WHEREAS, the County has budgeted and paid during the pendency of the Lawsuit its proportionate share of the expenses of the OIG as required under the challenged Funding Mechanism, as well as amounts in excess of its proportionate share including at this time the entire 2014 budget of the OIG; and

WHEREAS, the Parties have reached an agreement on releasing the Segregated Funds pending resolution of the Lawsuit consistent with their respective legal obligations.

NOW, THEREFORE, in consideration of the mutual representations, terms, and covenants hereinafter set forth, the Parties hereby agree as follows:

A. Term. This Agreement shall become effective upon signing by both Parties (the "Effective Date"), and shall continue in effect until final judgment is entered in the Lawsuit and all appeals have been exhausted, and mandate on final appeal has issued.

B. Clerk & Comptroller Duties. The Clerk & Comptroller agrees to release the Segregated Funds within five (5) business days of receipt of written request for same from the County. The Clerk & Comptroller and County agree that this disbursement is in reliance on the duties and responsibilities of the County as set forth below.

C. County Duties. The County, from time to time, may, in its absolute and sole discretion, continue to provide funding for the OIG in excess of its proportional share under the Funding Mechanism. Furthermore, in the event the Funding Mechanism is ever declared unenforceable, or in the event that the County or Clerk & Comptroller is ever ordered to pay or refund any of the Segregated Funds, then the County agrees:

1. to reimburse the IG Account from General Revenue, within five (5) business days of receipt of written request for same from the Clerk & Comptroller, any of the Segregated Funds allowed to be withdrawn from the IG Account prior to the termination of this Agreement;

2. not to seek reimbursement from the Clerk & Comptroller for any of the funds the Clerk & Comptroller has paid for the funding of the OIG pursuant to the Funding Mechanism or otherwise, including any funds paid or otherwise provided by the County under the challenged Funding Mechanism, or otherwise.

D. Notice. Any notice required or given under or in connection with this Agreement, shall be deemed given and received when sent by email, fax, or hand-delivery as follows:

To County: Brad Merriman, Assistant County Administrator
301 N Olive AVE STE 1101
West Palm Beach FL 33401

With a copy to: Leonard Berger, Chief Assistant County Attorney
301 N Olive AVE STE 601
West Palm Beach FL 33401

To Clerk & Comptroller: Shannon Ramsey-Chessman, Chief Operating Officer, Finance
301 N Olive AVE 9th Floor
West Palm Beach FL 33401

With a copy to: Hampton Peterson, Legal Counsel & Ethics Officer
301 N Olive AVE 9th Floor
West Palm Beach FL 33401

E. Non-Admission. Neither this Agreement, nor anything contained herein, is to be construed as an admission by the County or Clerk & Comptroller of any liability, wrongdoing or unlawful conduct whatsoever and it is acknowledged that both parties enter into this Agreement to avoid the expense and burden inherent in litigation.

F. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same instrument. Photocopies and fax copies of signatures shall be deemed as binding as original signatures.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the _____ day of _____, 2013.

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____

By: _____

Steven L. Abrams, Mayor

(SEAL)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____

County Attorney

By: _____

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____