

PALM BEACH COUNTY
BOARD of COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: **09/14/2021** Consent Regular
 Public Hearing

Department:
Submitted By: Internal Auditor's Office

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

An Employment Agreement with Joseph F. Bergeron to extend his service as County Internal Auditor for an additional four-year period beginning on October 1, 2021 and ending on September 30, 2025.

Summary: Mr. Bergeron's current employment contract is set to expire on September 30, 2021. At its July 28, 2021 meeting, the Internal Audit Committee (IAC) unanimously approved recommending a new four-year contract for Mr. Bergeron to serve as the County's Internal Auditor, providing for a base salary for the fiscal year beginning October 1, 2021 of \$209,057.53, along with standard County benefits of employment, as is the case under his current contract. This contract replaces Mr. Bergeron's current contract, originally entered into in 2004 and extended via subsequent amendments. Countywide (DB)

Background and Policy Issues:

The Office of the Internal Auditor is established by Section 4.4 of the Palm Beach County Charter, which provides that the County Internal Auditor shall be selected by the BCC and shall serve at its pleasure. Pursuant to the Palm Beach County Code, the Internal Auditor shall be recommended to the BCC by the IAC, with the IAC recommending compensation adjustments and contract renewal. §§ 2-462(a); 2-260.16(1)(h), PBC Code. Upon the recommendation from the IAC, a majority vote of the entire membership of the BCC (4 votes) is required for the appointment to be effective. § 2-462(a), PBC Code.

On July 28, 2021, the Audit Committee unanimously approved recommending to the BCC extending Mr. Bergeron's service as County Internal Auditor for a new four-year term, from October 1, 2021 until September 30, 2025. The new contract base salary for the fiscal year beginning October 1, 2021 will be \$209,057.53. The contract also retains the provision from Mr. Bergeron's original contract for him to, in subsequent years, participate in any across the board increase in salary in the same percentage as provided other County employees as determined by the BCC during its budget process. Under the contract, Mr. Bergeron is also to receive all standard County employment benefits.

Attachments:

Employment agreement with Joseph F. Bergeron

Recommended by: Joseph F. Bergeron 9 August 2021
Internal Auditor Date

Recommended by: W. Baker 8/20/21
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures					
Operating Costs	209,058				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	209,058				
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included In Proposed Budget? Yes X No
Budget Account No.: Fund 0001 Agency 500 Org. 5000 Object 1201
Program Number _____ Revenue Source _____

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

The fiscal impact shown above is base salary only and is included in the FY 2022 budget.

Department Fiscal Review:

III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Administration Comments:

Liza Monte 8/11/21
Budget/OFMB *JA 8/11/21*
*for review
see below
8/11/21*

Dr. J. Jacobson 8/16/21
Contract Administration
8-16-21 TW

B. Legal Sufficiency:

MLC 8/17/21
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

**EMPLOYMENT AGREEMENT FOR INTERNAL AUDITOR SERVICES
BETWEEN PALM BEACH COUNTY AND JOSEPH BERGERON**

THIS AGREEMENT, is made and entered into this _____ day of _____, 2021, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as the COUNTY, and Joseph F. Bergeron, herein referred to as the INTERNAL AUDITOR, an individual residing at 13689 Exotica Lane, Wellington, FL 33414.

WHEREAS, on August 17, 2004, the parties entered into an employment contract, as extended through various amendments, whereby the COUNTY employed the INTERNAL AUDITOR as the Internal Auditor of Palm Beach County pursuant to the Charter of Palm Beach County; and

WHEREAS, said employment contract is set to expire on September 30, 2021; and

WHEREAS, on July 28, 2021, pursuant to the Palm Beach County Internal Audit Committee Charter Ordinance, the Palm Beach County Internal Audit Committee unanimously approved recommending a new four-year contract for the INTERNAL AUDITOR; and

WHEREAS, for administrative purposes and to reflect current COUNTY policies in the contract, the parties wish to enter into the instant employment agreement, rather than amending the prior agreement to extend the term; and

WHEREAS, the parties intend for the instant employment agreement to be for a four-year term, commencing on October 1, 2021 and expiring on September 30, 2025;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the COUNTY and the INTERNAL AUDITOR agree as follows:

SECTION 1 – TERM

The COUNTY shall hereby extend the employ of the INTERNAL AUDITOR as the INTERNAL AUDITOR of Palm Beach County pursuant to the Charter of Palm Beach County for a period of four (4) years beginning on October 1, 2021 and ending on September 30, 2025.

SECTION 2 – COMPENSATION

The COUNTY shall pay the INTERNAL AUDITOR an annual salary of \$209,057.53. In addition, starting with the COUNTY’s fiscal year beginning on October 1, 2022, the COUNTY shall pay the INTERNAL AUDITOR, any increase in salary in the same percentage as provided

other County employees as determined by the Board of County Commissioners during its budget process.

SECTION 3 – BENEFITS

The COUNTY shall continue to provide the INTERNAL AUDITOR with all benefits accruing to COUNTY employees under the Rules and Regulations for the Personnel Management System of Palm Beach County for administrative and executive positions including any benefits previously accrued, except to the extent modified by this employment agreement. The INTERNAL AUDITOR shall be entitled to the same health, life and disability insurance; sick, annual and other leave; and other fringe COUNTY benefits as now exist, or as are amended, to apply to employees of similar position and shall be entitled to increase and accrue such benefits in accordance with standard COUNTY policy relative to long-term employment with the COUNTY. The INTERNAL AUDITOR shall be entitled to participate in the Senior Management Service class of the Florida Retirement System.

All regulations, rules and benefits of the COUNTY, existing and as they are subsequently adopted, relating to vacation and sick leave, or retirement and pension system contributions, holidays, fringe benefits, and working conditions of its non-merit administrative employees shall apply to the INTERNAL AUDITOR as they would to other such employees of the COUNTY.

SECTION 4 – PERFORMANCE

The INTERNAL AUDITOR shall serve at the pleasure of the Board and nothing in this employment agreement shall prevent, limit, or otherwise interfere with the right of the Board to terminate the services and employment of the INTERNAL AUDITOR, subject only to the provisions set forth in Section 9 of this employment agreement.

SECTION 5 -- QUALIFICATIONS

The INTERNAL AUDITOR covenants and certifies that he possesses, and will continue to possess as long as serving as the County's Internal Auditor, the requirements to serve as the Internal Auditor for the County, including, but not limited to, those set forth in the Palm Beach County Charter, requiring that the Internal Auditor be a certified public accountant or certified internal auditor.

SECTION 6 -- DUTIES

The INTERNAL AUDITOR shall perform the duties as established by COUNTY, including, but not limited to, those set forth in the Palm Beach County Charter, and the Palm Beach County Internal Auditor Ordinance, as may be amended.

SECTION 7 – AUDIT RECORDS

The INTERNAL AUDITOR shall retain a complete file of all audit reports, audit work papers, and other supportive material in accordance with record retention requirements established by applicable law. In no instance shall such records be disposed of sooner than three years from the date of the report.

SECTION 8 – EXCLUSIVE EMPLOYMENT

The INTERNAL AUDITOR shall remain in the exclusive employ of the COUNTY until termination of this employment agreement, and shall not accept or become employed by any other employer until said termination. He may, however, engage in occasional writing or teaching, performed during time off, provided said activity does not conflict with his COUNTY duties and is in accordance with all applicable laws, including, but not limited to, Section 112.311, et seq., Florida Statutes, “Code of Ethics,” and other applicable ordinances, resolutions or other provisions of law. At all times, and under all circumstances, COUNTY business shall take precedence and priority over and above the other demands or commitments of the INTERNAL AUDITOR.

SECTION 9 - TERMINATION

This employment agreement may only be terminated and the INTERNAL AUDITOR’s employment by the COUNTY concluded, in accordance with the procedures set forth in this Section:

- A. County’s termination at the end of the contract period:** At least ninety (90) days prior to the expiration of this employment agreement or any subsequent extensions, renewals or continuations thereof, the COUNTY shall provide the INTERNAL AUDITOR with written notice of its decision not to renew this employment agreement. The INTERNAL AUDITOR shall notify the Board of this requirement thirty (30) days in advance of the ninety (90) day period. In the event the INTERNAL AUDITOR does not provide the aforementioned notice to the Board, the Board shall be relieved of its

obligation to provide its notice of non-renewal, and this employment agreement shall terminate at the end of its term. In the event the COUNTY does provide such ninety (90) day notice, the INTERNAL AUDITOR shall remain employed by the COUNTY through the end of the term of this employment agreement. At the end of said term, the COUNTY shall have no obligation to pay the INTERNAL AUDITOR any monies other than the unpaid balance of his salary for time actually worked plus payment for any unused sick and vacation leave in accordance with then existing COUNTY policy relating to non-merit administrative employees.

B. Internal Auditor's termination at the end of the contract period: In the event the INTERNAL AUDITOR wishes to terminate this employment agreement at the end of its term, or any extensions, renewals or continuations thereof, he shall provide at least ninety (90) days notice in writing to the Board.

C. County's termination without cause during term of this Agreement: The COUNTY may, at any time, terminate this employment agreement and conclude the INTERNAL AUDITOR's employment with the COUNTY, at its pleasure and without cause, provided that: (1) the COUNTY provides the INTERNAL AUDITOR with written notice of its intent to do so, (2) the action is approved by a majority vote of the entire membership of the Board, and (3) in accordance with § 215.425(4), Fla. Stat. the COUNTY provides severance pay to the INTERNAL AUDITOR through the remaining term of this agreement; provided, however, that said severance pay may not exceed an amount greater than 20 weeks of compensation. In accordance with § 215.425(4)(a)(2), Fla. Stat., the aforementioned severance pay is prohibited if the INTERNAL AUDITOR is fired for misconduct, as defined in § 443.036(29), Fla. Stat.

D. County's termination for cause during term of this Agreement: The COUNTY may, at any time, terminate this employment agreement and conclude the INTERNAL AUDITOR's employment with the COUNTY for cause. "For cause" shall mean: (1) gross negligence in the handling of COUNTY affairs, (2) willful disobeying, disregarding or violating any lawful direct order, request, policy, ordinance or resolution of the Board, and (3) conviction of a crime relating to his official duties or involving moral turpitude. This action may only be taken by a majority vote of the entire membership of the Board. If the COUNTY decides to terminate this employment

agreement “for cause” the COUNTY shall have no obligation to pay the INTERNAL AUDITOR any monies other than the unpaid balance of his salary for time actually worked, plus payment for any unused sick and vacation leave in accordance with then existing COUNTY policy relating to non-merit administrative employees.

E. Internal Auditor’s voluntary resignation: In the event the INTERNAL AUDITOR voluntarily resigns his position with the COUNTY before the expiration of the term of this employment agreement, he shall provide the COUNTY with ninety (90) days written notice of said intent to resign. Upon receipt of such notice the COUNTY may, at its option, require him to terminate his employment at an earlier date than set forth in the notice of resignation, provided that the COUNTY may not require him to terminate his employment less than thirty (30) days after receipt of said notice, with no obligation to pay him any monies other than the unpaid balance of his salary for time actually worked, plus payment for any unused sick and vacation leave in accordance with then existing COUNTY policy relating to non-merit administrative employees. This option may only be exercised by a majority vote of the entire membership of the Board.

SECTION 10 – COMPLIANCE WITH LAWS

The INTERNAL AUDITOR shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. INTERNAL AUDITOR is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

SECTION 11 – ENTIRE AGREEMENT

The text of this document sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this employment agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 12 – SEVERABILITY


If any term or provision of this employment agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this employment agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be

affected, and every other term and provision of this employment agreement shall be deemed valid and enforceable to the extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal on the day set forth above.

WITNESS:

INTERNAL AUDITOR:


Signature


Joseph F. Bergeron

David Zamora
Name

ATTEST:

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

Joseph Abruzzo, Clerk

Deputy Clerk

Dave Kerner, Mayor

APPROVED AS TO
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS


Assistant County Attorney

N/A
County Administrator