

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

CASE NO.: 502011CA017953XXXXMB  
DIVISION: AO

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, TOWN OF MANGONIA PARK,  
CITY OF PALM BEACH GARDENS, TOWN OF  
HIGHLAND BEACH, TOWN OF LAKE PARK,  
CITY OF WEST PALM BEACH, TOWN OF  
OCEAN RIDGE, and 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.

**PLAINTIFFS' UNOPPOSED MOTION FOR LEAVE TO FILE AMENDED  
COMPLAINT FOR DECLARATORY RELIEF**

Plaintiffs, TOWN OF GULF STREAM, et al. (the "Municipalities"), by and through their undersigned counsel and pursuant to Fla. R. Civ. P. 1.190, hereby file this unopposed Motion for Leave to File an Amended Complaint for Declaratory Relief against Defendant, PALM BEACH COUNTY (the "County"). In support thereof, the Municipalities state as follows:

1. Plaintiffs seek to file the Amended Complaint for Declaratory Relief, which is attached hereto as Exhibit 1.

2. The County has no objection to the Municipalities' Motion.
3. Leave to amend "shall be freely given when justice so requires." Fla. R. Civ. P.

1.190(a).

4. The Amended Complaint for Declaratory Relief clarifies and supplements previous allegations and adds a claim for declaratory relief on grounds of sovereign immunity.

5. This Motion is not made for purposes of delay, and this is Plaintiffs' first request to amend the Complaint.

6. Additionally, the parties will not be prejudiced by the allowing the amendments.

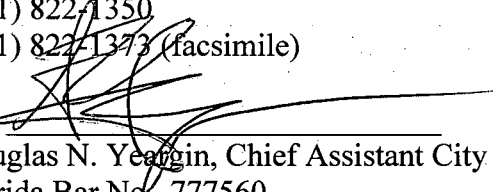
The case was recently noticed for trial on July 25, 2013.

WHEREFORE, Plaintiffs respectfully request that this Court grant their Unopposed Motion for Leave to file the Amended Complaint for Declaratory Relief, and grant such other and further relief as deemed just and proper under the circumstances.

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent, via e-service this 30<sup>th</sup> day of July, 2013 to the following: [marty.alexander@hklaw.com](mailto:marty.alexander@hklaw.com), Martin Alexander, Esquire, Holland & Knight, LLP, 222 Lakeview Avenue, Suite 1000, West Palm Beach, FL 33401 and [Nathan.adams@hklaw.com](mailto:Nathan.adams@hklaw.com), Nathan A. Adams, IV, Esquire, Holland & Knight, LLP, Post Office Drawer 810, Tallahassee, FL 32302, Counsel for Clerk & Comptroller Sharon R. Bock, [amcmahon@pbcgov.org](mailto:amcmahon@pbcgov.org), Andrew J. McMahon, Esquire, Chief Assistant County Attorney, Palm Beach County Attorney's Office, and [pmugaver@pbcgov.org](mailto:pmugaver@pbcgov.org), Philip Mugavero, Esquire, Assistant County Attorney, Palm Beach County Attorney's Office, Attorneys for Palm Beach County, 300 N. Dixie Highway, Suite 359, West Palm Beach, FL 33401, [hpeterson@mypalmbeachclerk.com](mailto:hpeterson@mypalmbeachclerk.com), Hampton C. Peterson, Esquire, General Counsel for Clerk and Comptroller, Sharon R. Bock, 301 N. Olive Ave., 9<sup>th</sup> Floor, West Palm Beach, FL 33401.

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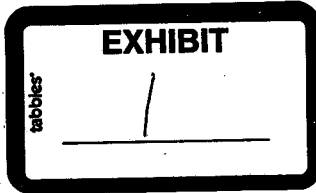
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IN THE CIRCUIT COURT FOR THE  
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TOWN OF GULF STREAM, VILLAGE OF  
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municipal corporations of the State of Florida,

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PALM BEACH COUNTY, a political subdivision,

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

Intervenor.

**AMENDED COMPLAINT FOR DECLARATORY RELIEF**

Plaintiffs, 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, TOWN OF MANGONIA 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, ("Municipalities"), hereby file this Amended

Complaint for Declaratory Relief against Defendant, PALM BEACH COUNTY (the "County"), and allege as follows:

**GENERAL ALLEGATIONS**

1. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes.
2. This action arises from the County's demand that the Municipalities pay a portion of the costs associated with the countywide Office of Inspector General Program. The Municipalities do not bring this action to overturn the Inspector General Program. Instead, the Municipalities bring this action solely to contest the funding mechanism for the Program. The funding mechanism is unlawful and unenforceable against the Municipalities given that it is contrary to law. For the funding of the Inspector General Program to be lawful, the County must fund it in its entirety.
3. The County is a political subdivision of the State of Florida.
4. The Municipalities are municipal corporations of the State of Florida.
5. This court has jurisdiction over the parties and the subject matter as all parties are located in Palm Beach County, the ordinances at issue were adopted in Palm Beach County and this lawsuit seeks declaratory relief.
6. Venue is proper in Palm Beach County.
7. All conditions precedent to maintaining this action have been performed, have occurred or have been waived. The parties have participated in and concluded the statutory conflict resolution proceedings required by Ch. 164, Fla. Stat.

**FACTS COMMON TO ALL COUNTS**

**History of Countywide Programs in Palm Beach County**

8. Palm Beach County adopted a "home rule" Charter in 1985 ("the Charter"). Article I, Section 1.3 of the Charter sets forth the relationship between County ordinances and Municipal

ordinances which conflict with one another. In accordance with this Charter section, Municipal ordinances prevail over County ordinances to the extent of any conflict, except in instances where the voters of both the County and the Municipalities have voted in a referendum to amend the County Charter to create a "countywide" ordinance on a particular subject matter.

9. The approval of a "countywide" ordinance by referendum vote makes that ordinance applicable in both the County and the Municipalities within the County. The referendum process is initiated by a "Charter Ordinance," which has been adopted by the Board of County Commissioners ("BCC") and which describes the proposed "countywide" ordinance to be voted on.

10. Prior to 2010, five amendments to the County Charter occurred. All of these amendments were initiated by the BCC, and were the subject of a Charter Ordinance.

11. Each of these amendments proposed countywide ordinances on a particular subject matter over which the County wanted to achieve uniform standards or regulation within the municipalities as well as the unincorporated portions of the County. Each of these amendments was approved by the voters in both the Municipalities and the unincorporated portions of the County after a referendum vote. These amendments included:

- A. The Protection of Wells and Wellfields;
- B. Countywide Impact Fees;
- C. The creation of a Countywide Planning Council and Land Use Element (repealed);
- D. The establishment of a countywide level of service for certain roads; and
- E. Voluntary Annexation.

12. Each countywide program enumerated above has been and continues to be funded by appropriations from the BCC. All were administered and staffed by the County Administrator through the appropriate County Department, with the exception of the Countywide Planning Council, which had its own staff.



13. The Municipalities are not required to share in the costs of any of these countywide programs.

14. The Countywide Planning Council was an independent agency with an Executive Director, planners, administrative personnel, and a General Counsel. Article VII, Section 7.15 of the County's Charter provided: "*The planning council shall annually adopt a budget and submit it to the board of county commissioners... The county shall fund the planning council each year in an amount reasonably sufficient to permit the planning council to accomplish its responsibilities.*" Accordingly, although the Countywide Planning Council was an independent agency, it was at all times entirely funded by an annual appropriation by the BCC until the program was repealed.

#### **New Ethics Ordinances in Palm Beach County and the Creation of the Office of Inspector General**

15. Following the conviction of three County Commissioners for crimes they committed while in office and related to their official duties, the BCC initiated and adopted ordinances intended to more strictly monitor themselves and County employees on ethics issues (collectively referred to as the "Ethics Ordinances").

16. The Ethics Ordinances established a new Code of Ethics, a Commission on Ethics to enforce the Code of Ethics, and an Office of Inspector General (the "Inspector General"), which was designed to detect misconduct involving abuse, corruption, fraud, waste, inefficiencies and mismanagement in County government.

#### **Implementation of the Office of Inspector General Via Four (4) Ordinances**

##### **A. Original Ordinance**

17. The Inspector General's Original implementing Ordinance (Ordinance No. 2009-049), which was applicable only in the unincorporated portions of Palm Beach County, was

adopted by the BCC on December 15, 2009 (the "Original Ordinance"). A copy of the Original Ordinance is attached hereto as Exhibit 1 and incorporated herein by reference.

18. Section 2(B)(4) of the Original Ordinance described the County's funding mechanism for the Inspector General as follows:

The costs of reviews, audits, inspections and investigations by the Inspector General shall be **defrayed in part** by imposition of a fee which shall be equal to one quarter of one percent (0.25%) of the contract price (hereinafter "IG contract fee). [emphasis added.]

19. The County imposed the IG contract fee on vendors and contractors that had contracts with the County unless an exception applied.

20. Section 2(B)(4) of the Original Ordinance provided that the IG contract fee did not apply to the following contracts:

- a. Contracts for legal services;
- b. Auditing contracts;
- c. Contracts under one thousand dollars (\$1,000), except for decentralized purchase orders as set forth in the Palm Beach County Purchasing Ordinance, section 2-51(f)(1)(l);
- d. Federal, state and local government-funded grants;
- e. Interlocal agreements;
- f. Revenue-generating contracts; and
- g. Purchases made pursuant to the State of Florida Department of Revenue approved Sales Tax Recovery Program.

21. Section 2(H) of the Original Ordinance, entitled "Financial Support and Budgeting" established the County's sole responsibility to appropriate for and fund the Inspector General during fiscal year 2009-2010 as follows:

In order to ensure adequate funding for the prompt establishment of the Inspector General pending implementation, the Board of County Commissioners hereby approves an amount equal to three hundred twenty thousand dollars (\$320,000) to fund all Inspector General operations for the remainder of the 2009-2010 fiscal year.

**B. Amended Ordinance**

22. On September 28, 2010, the BCC adopted Ordinance No. 2010-041 to, among other things, amend the funding mechanism that was contained in the Original Ordinance (the "Amended Ordinance"). A copy of the Amended Ordinance is attached hereto as Exhibit 2 and incorporated by reference.

23. Section 2-423(4) of the Amended Ordinance provided that the funding mechanism for the Inspector General would now be as follows:

The costs of reviews, audits, inspections and investigations by the inspector general shall be **funded at minimum** in an amount equal to one quarter of one (0.25) percent of contracts entered into by the county, as may be adjusted as necessary (hereinafter "minimum funding percentage"). [emphasis added.]

24. This new funding mechanism eliminated the IG contract fee imposed on vendors and contractors to fund the Inspector General Program and instead stated that the County itself would fund the Program in an amount equal to one quarter of one percent (0.25%) of County contracts.

25. The same contracts mentioned in paragraph 20 above were exempt from the new minimum funding percentage.

26. Section 2-429 of the Amended Ordinance again confirmed that the County was solely responsible to fund the Inspector General for the remainder of the 2009-2010 fiscal year in an amount equal to \$320,000.00.

**C. Ballot Question Ordinance**

27. Prior to and after its adoption of the Ethics Ordinances, the BCC unilaterally determined that it was necessary to extend the Ethics Ordinances to the Municipalities. To do so, the BCC adopted Ordinance No. 2010-019 on July 20, 2010 (the "Ballot Ordinance"). A copy of the Ballot Ordinance is attached hereto as Exhibit 3 and incorporated herein by reference.

28. The Ballot Ordinance called for a referendum to be held at the next election to ask the voters of Palm Beach County whether to amend the County Charter and create a countywide Code of Ethics, a countywide Commission on Ethics and a countywide Office of Inspector General. Once approved, these countywide programs would be applicable in all municipalities in addition to the unincorporated areas of the County where they were already in effect.

29. With respect to the proposed countywide Commission on Ethics and its funding, Section 8.2 of the Ballot Ordinance provided: “The Commission on Ethics shall be *adequately funded by the County Commission and all other governmental entities that elect to be subject to the authority of the Commission on Ethics pursuant to interlocal agreement.*” [emphasis added.]

30. The Ballot Ordinance did not require the Municipalities to pay a proportionate share of the funding for the operation of the Commission on Ethics if the referendum were passed.

31. Rather, the Ballot Ordinance only contemplated that the County and any governmental entities who *elected* to enter into interlocal agreements with the County to voluntarily come under the jurisdiction of the Commission on Ethics would share in the funding of this Office.

32. The use of the language “that elect to” was intended to apply to the Constitutional Offices, the School District of Palm Beach County, the Health Care District or other governmental entities should those entities elect to enter into interlocal agreements with the County to share in the funding of the Commission on Ethics.

33. The Ballot Ordinance’s funding mechanism for the Commission on Ethics, to the extent it did not require the Municipalities to share in the cost of the program, was consistent with the previously adopted countywide programs mentioned in paragraph 11 above.

34. With respect to the funding for the countywide Inspector General Program, the Ballot Ordinance proposed a funding mechanism that was materially different than the one used for the Commission on Ethics. Section 8.3 of the Ballot Ordinance, entitled "Inspector General," contains the following statement at line 10:

The Office of Inspector General shall be funded at minimum in an amount equal to one quarter of one percent of contracts of the County and all other governmental entities subject to the authority of the Inspector General (the "Funding Base") as determined by the Implementing Ordinance.

35. Under this proposed funding mechanism for the Office of Inspector General, Municipalities, for the first time since the County became a Charter County, would be required to share in the cost of a countywide program.

36. The Ballot Ordinance did not give the Municipalities an ability to decline the IG service after the referendum passed and thereby avoid this mandatory cost sharing.

37. Sections 8.3 and 8.4(a) of the Ballot Ordinance also contained provisions demonstrating that the County, and not the Municipalities, retained the exclusive authority to determine the budget and increases to the funding base for the Office of the Inspector General. Section 8.3 provides:

The Board of County Commissioners may increase or decrease the Funding Base upon a showing of need for such adjustment based upon criteria contained in the Implementing Ordinance but in no event shall the Funding Base be reduced below one quarter of one percent unless the request for such reduction is made by the Inspector General.

Section 8.4 further provides:

The Board of County Commissioners has adopted ordinances establishing and providing for the funding, authority and powers of the Palm Beach County Commission on Ethics and the Office of Inspector General (the "Existing Ordinances").

38. With respect to the actual ballot language to be presented to the voters, Part 2 of the Ballot Ordinance, entitled "Referendum and Ballot Language," stated:

On November 2, 2010, a general election is to be held, and in accordance with the requirements of the Constitution and Laws of Florida, the following question shall be placed on the ballot by the Supervisor of Elections:

REQUIRING COUNTY CODE OF ETHICS, INDEPENDENT ETHICS COMMISSION AND INDEPENDENT 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: a Code of Ethics, an independent Commission on Ethics funded by the County Commission, and an independent Inspector General funded by the County Commission and all other governmental entities subject to the authority of the Inspector General?

YES  
NO

39. The actual ballot language was silent as to the specific method to be used in funding the Inspector General Program.

40. Both the Ballot Ordinance and actual ballot language were silent as to the anticipated budget for, or the estimated annual costs to be paid by the County and the Municipalities to fund the Inspector General Program.

41. Both the Ballot Ordinance and actual ballot language were silent as to what contracts would be included in calculating the amount equal to 0.25% of contracts to fund the Inspector General Program.

42. Since the Ballot Ordinance and ballot language were silent on the issue of estimated costs and what contracts would be included in the 0.25% of contracts calculation, the only ordinances available for review by the voters prior to the referendum that discussed these

issues were the Original Ordinance and the Amended Ordinance. The current cost of the Inspector General Program is more than 8 times higher than what was shown in these Ordinances.

43. On November 2, 2010, the referendum vote on the County Charter Amendment was held. A majority of the voters of each of the 38 Municipalities and of Palm Beach County as a whole approved the Ballot as presented in the preceding paragraph 38.

**D. Implementing Ordinance**

44. On May 17, 2011, the BCC adopted the ordinance implementing the newly approved countywide Inspector General Program and providing for the funding for said Program (the "Implementing Ordinance"). The Implementing Ordinance repealed the Original Ordinance (Ordinance No. 2009-049). A copy of the Implementing Ordinance is attached hereto as Exhibit 4 and incorporated herein by reference.

45. The Implementing Ordinance proposed an entirely different method to fund the Inspector General's Office than what had been utilized in the Original Ordinance (Ordinance No. 2009-049), and the Amended Ordinance (Ordinance No. 2010-041).

46. Sections 2-429(1) and (2) of the Implementing Ordinance provide that the County and Municipalities are required pay for a portion of the costs associated with the Office of Inspector General, and that these shares are to be calculated based on the actual expenses of the County and each Municipality as reported to the Florida Department of Financial Services Local Government Electronic Reporting System ("LOGGER").

47. Section 2-429(7) of the Implementing Ordinance further provides that the Municipalities are to be billed for their share of the costs associated with the Office of Inspector General as follows:

(7) The office of the clerk and comptroller shall invoice the county and each municipality one-fourth of the proportionate share as adjusted on October 10, January 10, April 10 and July 10 of each year. Payment shall be submitted to the board and due no later than thirty (30) days from the date of the invoice. Upon receipt, all funds shall be placed in the Office of Inspector General, Palm Beach County, Florida Special Revenue Fund. In the event payment is not timely received, the county or any municipality in compliance with this section may pursue any available legal remedy.

48. Section 2-429.1(2) of the Implementing Ordinance further gives the BCC, and not the Municipalities, the authority to adjust the funding base percentage for the Office of Inspector General on an annual basis.

49. Sections 2-429(6) and 2-429.1(1)(c) of the Implementing Ordinance further give the BCC, and not the Municipalities, the exclusive authority to approve the Office of Inspector General's budget each fiscal year and any supplemental budget requests during the course of any fiscal year.

50. The County, through the Clerk & Comptroller of Palm Beach County, issued its first invoice to the Municipalities for the Inspector General funding on October 10, 2011.

**COUNT I – DECLARATORY RELIEF**  
**(CHARGES TO MUNICIPALITIES BARRED BY SOVEREIGN IMMUNITY)**

51. The Municipalities reallege and incorporate by reference paragraphs 1 through 50 as if fully stated in this count.

52. The Ballot Ordinance, the County Charter Amendment, and the Implementing Ordinance require that the Municipalities pay money toward funding the Office of Inspector General.

53. The Implementing Ordinance authorizes the Municipalities to be billed for these costs.

54. These mandatory charges to the Municipalities are unlawful and unenforceable.



55. There has been no express waiver of the Municipalities' sovereign immunity allowing the County to charge and collect monies from the Municipalities or to demand payment from the Municipalities for the Office of Inspector General.

56. There is no written contract between the County and the Municipalities allowing the County to charge and collect monies from the Municipalities or to demand payment from the Municipalities for the Office of Inspector General.

57. The Municipalities are in doubt as to their rights and the effect of the County's actions as described above.

58. There is a real and present controversy concerning the legality of the County's actions regarding the funding for the Inspector General Program.

59. There exists a bona fide actual present and practical need for a declaration regarding these issues since the County sent invoices to the Municipalities on October 10, 2011, demanding payment from each Municipality.

WHEREFORE, the Municipalities respectfully request that this Court enter a judgment declaring that:

- a. The Municipalities are not required to pay for expenses associated with Office of Inspector General;
- b. The Office of Inspector General shall be funded solely by the County;
- c. Any efforts by the County to charge the Municipalities for the expenses of the Inspector General Program are unlawful and unenforceable; and
- d. 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.

**COUNT II – DECLARATORY RELIEF**  
**(UNLAWFUL TAX AS TO MUNICIPALITIES)**

60. The Municipalities reallege and incorporate by reference paragraphs 1 through 50 as if fully stated in this count.

61. The Ballot Ordinance, the County Charter Amendment, and the Implementing Ordinance require that the Municipalities pay money toward funding the Office of Inspector General.

62. The Implementing Ordinance authorizes the Municipalities to be billed for these costs.

63. These mandatory charges to the Municipalities are unlawful and unenforceable.

64. The County's charges to the Municipalities do not constitute user fees.

65. There is no rational nexus between the service being performed by the Inspector General and the charges imposed on the Municipalities. In fact, the Inspector General may never review, audit or investigate a contract that is the subject of the funding base or that constitutes an actual expense of the Municipality even though the County contends the charges are based on these items. Additionally, the charges imposed on the Municipalities are not voluntary under the Countywide Program. The Municipalities have no ability to opt out of the Inspector General Program at any time and thereby avoid the charge. The charges are mandatory.

66. The County's charges to the Municipalities do not constitute special assessments. Special assessments are tied to special benefits for real property. The charges are not related to any benefit to real property.

67. The County's charges to the Municipalities do not constitute regulatory fees.

68. Regulatory fees may be imposed pursuant to Fla. Stat. § 166.221 on "businesses, professions, and occupations" so long as the fee is commensurate with the cost of the regulatory

activity. The plain language of this statute does not permit the County to levy a regulatory fee on the Municipalities.

69. Regulatory fees can be imposed only where there is a true regulatory scheme in place. The Inspector General Program is not a regulatory program, but an advisory program.

70. Given that the charges imposed on the Municipalities for the Inspector General Program do not constitute user fees, special assessments, or regulatory fees, they can only be a tax.

71. There has been no provision by general law or the State Constitution authorizing the County to levy this tax. Therefore, this tax is unlawful and unenforceable.

72. The voters approved the ballot question making the Municipalities subject to the Inspector General Program. The fact that the voters approved the ballot question, however, does not make the charges to the Municipalities for that Program legal. *See Gaines v. City of Orlando*, 450 So.2d 1174 (Fla. 5th DCA 1984) (a charter provision that conflicts with the state constitution or state law is not any more lawful simply because the charter provision was adopted by the electorate).

73. As an alternative to the current funding method for the Inspector General Program, the County has previously stated that it can require County and municipal vendors to pay a 0.25% contract fee on every contract they enter into with the County or Municipalities (the "IG Contract Fee").

74. Under this alternative funding method, the County has stated that the Municipalities would be responsible for imposing the IG Contract Fee on their respective vendors and collecting said Fee.

75. This IG Contract Fee is the same one that the County previously followed pursuant to the Original Ordinance (Ordinance No. 2009-049), but repealed pursuant to the Amended Ordinance (Ordinance No. 2010-041).

76. Any effort by the County to force the Municipalities to impose the IG Contract Fees on their municipal vendors is unlawful and unenforceable.

77. The Implementing Ordinance (Ordinance No. 2011-009), which contains the current funding mechanism, does not currently state that the Inspector General Program will be funded pursuant to the IG Contract Fee.

78. Forcing the Municipalities to charge their vendors for the Inspector General Program requires the Municipalities to spend money on imposing and collecting the IG Contract Fees. Any requirement that the Municipalities spend money for the funding of the Inspector General Program constitutes an unlawful tax and is unenforceable for the same reasons as set forth in paragraphs 63-72 above.

79. The Municipalities are prohibited under Florida law from charging their vendors for an alleged Inspector General "regulatory fee" because the Municipalities cannot pass illegal taxes on to their vendors.

80. The Municipalities are prohibited under Florida law from charging their vendors for an alleged Inspector General "regulatory fee" because there is no regulatory scheme in place for the Inspector General Program.

81. The Municipalities are prohibited under Florida law from charging their vendors for an alleged Inspector General "regulatory fee" because Florida law provides that only the governmental entity providing the regulatory service can impose the regulatory fee. The County provides the alleged regulation, not the Municipalities. Therefore, only the County can impose such a fee, not the Municipalities.

82. The Municipalities are prohibited under Florida law from charging their vendors for an alleged Inspector General "regulatory fee" because a municipality may not impose a regulatory fee if the regulation has been preempted by a county charter. The County claims it has preempted the field of Inspector General oversight based on its Charter Amendment. Therefore, the Municipalities are prohibited from imposing a regulatory fee on their vendors for such oversight.

83. There are no legal means by which the Municipalities can be forced to pass this cost on to vendors.

84. The Municipalities cannot be compelled to implement a program to collect an unlawful tax.

85. The Municipalities are in doubt as to their rights and the effect of the County's actions as described above.

86. There is a real and present controversy concerning the legality of the County's actions regarding the funding for the Inspector General Program.

87. There exists a bona fide actual present and practical need for a declaration regarding these issues since the County sent invoices to the Municipalities on October 10, 2011, demanding payment from each Municipality.

WHEREFORE, the Municipalities respectfully request that this Court enter a judgment declaring that:

- a. The Municipalities are not required to pay for expenses associated with Office of Inspector General;
- b. The Municipalities shall not be required to implement a program to collect the IG Contract Fee from its vendors to fund the Inspector General Program;
- c. Any and all expenses relating to the Inspector General Program shall be paid for solely by the County;

- d. Any efforts by the County to charge the Municipalities for the expenses of the Inspector General Program are unlawful and unenforceable; and
- e. 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.

**COUNT III – DECLARATORY RELIEF**  
**(UNLAWFUL FUNDING MECHANISM DUE TO PAYMENT**  
**FOR THE SAME SERVICES TWICE)**

88. The Municipalities reallege and incorporate by reference paragraphs 1 through 50 as if fully stated in this count.

89. The Ballot Ordinance, the County Charter Amendment, and the Implementing Ordinance require that the Municipalities pay money toward funding the Office of Inspector General.

90. The Implementing Ordinance authorizes the Municipalities to be billed for these costs.

91. These mandatory charges to the Municipalities are unlawful and unenforceable.

92. Municipal residents, whether individuals or businesses, pay the same ad valorem county taxes as those residents living in unincorporated areas.

93. A portion of these ad valorem county taxes paid by municipal residents go toward paying for the County's share of the Inspector General Program.

94. Municipal residents, therefore, already pay for the Inspector General Program through their payment of ad valorem county taxes.

95. Under the current funding mechanism, these same municipal residents also are required to pay ad valorem municipal taxes, a portion of which goes toward the Municipalities' share of the Inspector General Program.

96. Under the current funding mechanism, municipal residents are required to pay for the services of the Inspector General twice while the residents of the unincorporated areas of the County are only required to pay for the services of the Inspector General once.

97. A taxpayer receives the same services from the IG, whether he or she is within an incorporated municipality or the unincorporated areas of the County. A municipal taxpayer receives no additional services in exchange for paying more.

98. The funding for the Inspector General Program is inequitable to municipal residents. The Municipalities are being forced to take taxpayer monies away from municipal programs to fund the Inspector General Program when municipal residents have already paid their share of ad valorem county taxes.

99. The County should be required to pay for the entire countywide Inspector General Program as it has done for all other countywide programs approved by referendum.

100. The Municipalities are in doubt as to their rights regarding the payment of the amounts demanded by the County to fund the countywide Inspector General Program.

101. There is a real and present controversy concerning the lawfulness of the County's actions regarding the funding for the Inspector General Program.

102. There exists a bona fide actual present and practical need for a declaration regarding these issues since the County sent invoices to the Municipalities on October 10, 2011, demanding payment from each Municipality.

WHEREFORE, the Municipalities respectfully request that this Court enter a judgment declaring that:

- a. Municipal residents are entitled to pay a single fee for the Inspector General's services, rather than a county fee and a municipal fee for these services;

- b. The Municipalities shall not be required to pay an additional share of the expenses for the Inspector General Program over and above the county taxes already expended for this Program;
- c. Any and all expenses relating to the Inspector General Program shall be paid for solely by the County;
- d. Any efforts by the County to charge the Municipalities for the expenses of the Inspector General Program are unlawful and unenforceable; and
- e. 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.

**COUNT IV – DECLARATORY RELIEF**  
**(UNLAWFUL CONFLICT WITH GENERAL LAW)**

103. The Municipalities reallege and incorporate by reference paragraphs 1 through 50 as if fully stated in this count.

104. The Florida Constitution authorizes municipalities to “exercise any power for municipal purposes except as otherwise provided by law.” Art. VIII, Sec. 2(b), Fla. Const.

105. Under Chapter 166 of the Florida Statutes, the Municipal Home Rule Powers Act, Municipalities are expressly empowered to exercise any power for municipal purposes, except when expressly prohibited by law.

106. Budgeting and the appropriation of taxes collected by municipalities are home rule activities or powers which may be exercised only by municipal corporations under Chapter 166, Florida Statutes.

107. In particular, Section 166.241, Florida Statutes, provides the statutory framework for municipalities to adopt and amend their budgets.

108. Pursuant to the Florida Constitution and the Municipal Home Rule Powers Act, municipalities retain the exclusive right to budget for and appropriate funds as each municipality finds necessary in responsible operation of municipal government.



109. Pursuant to Fla. Stat. 166.241, only the governing body of a municipality can budget for and appropriate funding to carry out the services and programs for its citizens. The County does not have the authority to compel the Municipalities to budget for and appropriate funds for a County program.

110. The County's requirement that the Municipalities budget for and appropriate funds for the Inspector General Program is unlawful and unenforceable given that it takes the authority to control municipal budgets and the appropriation of funds away from the Municipalities.

111. The County's Charter and Section 2-429(1) of the Implementing Ordinance impose a payment obligation on the Municipalities and require that the Municipalities budget for and appropriate the necessary monies to cover this amount without regard to what municipal programs will lose funding or face budget cuts as a result.

112. The Municipalities' loss of budgetary control is compounded by the fact that Section 8.3 of the County's Charter and Section 2-429.1(2) of the Implementing Ordinance allow the BCC to increase the funding base for the Inspector General Program.

113. Neither the County's Charter or the Implementing Ordinance permit the Municipalities to participate in the decision to increase the funding base.

114. The Implementing Ordinance provides that the Municipalities are bound by the decision of the BCC and must appropriate funds accordingly if the funding base is increased.

115. Sections 2-429(6) and 2-429.1(c) of the Implementing Ordinance also give the BCC the authority to approve the Inspector General's budget and any supplemental budget requests that may be submitted during the course of a fiscal year.

116. The Implementing Ordinance does not permit the Municipalities to participate in the decision on whether to approve the Inspector General's budget or any supplemental budget requests.

117. The Implementing Ordinance provides that the Municipalities are bound by the decision of the BCC and must budget for and appropriate funds accordingly once the Inspector General's budget or supplemental budget requests have been approved.

118. The County's requirement that the Municipalities pay for costs associated with the Inspector General Program also is unlawful and unenforceable given that it constitutes a pledge of the Municipalities' full faith and credit beyond the current fiscal year in violation of the Florida Constitution.

119. Specifically, the County requires that the Municipalities commit taxpayer dollars to the Inspector General Program in perpetuity. The payment obligation is mandatory and extends beyond the term of a fiscal year.

120. The County's actions have created a fixed charge against the Municipality's future ad valorem revenues, which will impair the rights and authority of future municipal legislatures to avoid tax increases.

121. The Municipalities are in doubt as to their rights regarding the lawfulness of the County's mandatory requirement that they budget and appropriate funds for the Inspector General Program.

122. There exists a bona fide actual present and practical need for a declaration regarding these issues since the County sent invoices to the Municipalities on October 10, 2011, demanding payment from each Municipality and the Municipalities have refused to pay these invoices or have paid under protest.

123. There is a real and present controversy concerning the legality of the County's actions because the mandatory funding provisions of the County Charter and Implementing Ordinance unconstitutionally usurps municipal home rule powers and conflicts with general law.

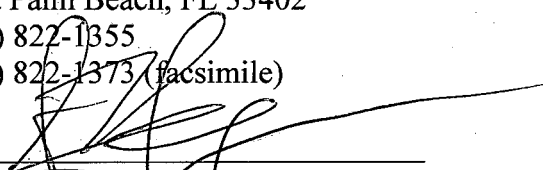
WHEREFORE, the Municipalities respectfully request that this Court enter a judgment declaring that:

- a. The Municipalities are not required to pay the expenses associated with the Office of Inspector General;
- b. The Office of Inspector General shall be funded solely by the County;
- c. Any efforts by the County to require the Municipalities to budget for and 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.

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent, via e-service this 30<sup>th</sup> day of July, 2013 to the following: [marty.alexander@hklaw.com](mailto:marty.alexander@hklaw.com), Martin Alexander, Esquire, Holland & Knight, LLP, 222 Lakeview Avenue, Suite 1000, West Palm Beach, FL 33401 and [Nathan.adams@hklaw.com](mailto:Nathan.adams@hklaw.com), Nathan A. Adams, IV, Esquire, Holland & Knight, LLP, Post Office Drawer 810, Tallahassee, FL 32302, Counsel for Clerk & Comptroller Sharon R. Bock, [amcmahon@pbcgov.org](mailto:amcmahon@pbcgov.org), Andrew J. McMahon, Esquire, Chief Assistant County Attorney, Palm Beach County Attorney's Office, and [pmugaver@pbcgov.org](mailto:pmugaver@pbcgov.org), Philip Mugavero, Esquire, Assistant County Attorney, Palm Beach County Attorney's Office, Attorneys for Palm Beach County, 300 N. Dixie Highway, Suite 359, West Palm Beach, FL 33401, [hpeterson@mypalmbeachclerk.com](mailto:hpeterson@mypalmbeachclerk.com), Hampton C. Peterson, Esquire, General Counsel for Clerk and Comptroller, Sharon R. Bock, 301 N. Olive Ave., 9<sup>th</sup> Floor, West Palm Beach, FL 33401.

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