



Interoffice Memorandum

AGENDA ITEM

July 30, 2020

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

FROM: Kurt N. Petersen, Manager,
Office of Management and Budget

A handwritten signature in black ink, appearing to read "K.N.P.", is written over the "FROM:" line.

SUBJECT: Discussion Item for August 11, 2020
Orange County Clerk of Courts Funding Agreement – Emergency
Local Contribution for Fiscal Year 2019-20 and Budget Transfer
#20-1186

The Orange County Clerk of Courts, Tiffany Moore Russell, will be discussing her request for one-time funding of \$1.5 million to address a projected funding shortfall needed to keep her Office functioning through the end of the fiscal year ending September 30, 2020. This financial predicament was created after the Florida Clerks of Courts Operations Corporation (CCOC) instructed the Orange County Clerk of Courts to pay the CCOC approximately \$7.7 million from revenues collected by her Office during fiscal year 2019-20 to assist other Clerk Offices across the State due to COVID-19 revenue shortfalls.

Action Requested: Approval of Funding Agreement between Orange County, Florida and the Orange County Clerk of Courts regarding Emergency Local Contribution for Fiscal Year 2019-20 and Budget Transfer #20-1186.

KP/NM/vh

c: Byron W. Brooks, AICP, County Administrator
Randy Singh, Deputy County Administrator

FUNDING AGREEMENT

between

ORANGE COUNTY, FLORIDA *and the* **ORANGE COUNTY CLERK OF COURT**

regarding

Emergency Local Contribution for Fiscal Year 2019-20

This Agreement (“**Agreement**”) is entered into by and between **ORANGE COUNTY, FLORIDA**, a political subdivision of the State of Florida, located at 201 South Rosalind Avenue, Orlando, Florida 32801 (the “**County**”), and the **ORANGE COUNTY CLERK OF COURT**, an officer under the Florida constitution, located at 425 North Orange Avenue, Orlando, Florida 32801 (the “**Clerk**”). Both the County and the Clerk may be individually referred to as “**party**” or collectively referred to as “**parties**.”

RECITALS

WHEREAS, the Clerk is heavily dependent upon statutorily authorized fees, service charges and fines to fund court-related functions and is subject to re-distribution of its revenues to other clerks in the state by the Florida Clerks of Court Operations Corporation (“**CCOC**”); and

WHEREAS, as a result of the COVID-19 global pandemic, the Clerk has experienced historic decreases in revenue this fiscal year while continuing to provide essential services to the public and the judiciary and will be required to process a backlog of jury trials when normal court proceedings resume; and

WHEREAS, as a result of cuts to the Clerk’s budget by the CCOC and the decreases in revenue, the Clerk is experiencing a severe budget shortfall and will be forced to implement workforce reductions despite the need to continue providing such essential services; and

WHEREAS, the Chief Justice of the Florida Supreme Court, acknowledging the fiscal crisis of Court Clerks and their critical role in the operation of the court system, has requested state relief from the Governor of Florida; and

WHEREAS, the Florida Court Clerks and Comptrollers association has also requested state financial relief for the Clerks and such assistance has not been provided to date; and

WHEREAS, the Clerk has requested funding from the County to pay personnel and operating expenses for the remainder of this fiscal year and, to the extent that other funding sources are not available, the County desires to provide a one-time local contribution to prevent job losses and furloughs in the office of the Clerk.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth, the parties agree as follows:

- A. **Incorporation of Recitals.** The above recitals are true and correct and are hereby incorporated into and made part of this Agreement.
- B. **Term.** The effective period of this Agreement shall begin once executed by both parties and shall terminate on **September 30, 2020**.
- C. **County Funding.** Within 15 days of the effective date of this Agreement the County will pay to the Clerk one million five hundred thousand dollars (\$1,500,000) solely for payroll and necessary operating expenses of the office of the Clerk through the end of the fiscal year ending September 30, 2020, subject to, and as an expression condition of the County’s payment, the Clerk’s obligation to rebate and return to the County:

1. any amount of unexpended funds paid hereunder at the termination of this Agreement;
2. an amount equal to any additional funds received by the Clerk or from the State or CCOC for requested budgetary relief for the current fiscal year; and
3. an amount equal to any Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") funds received from the County by the Clerk utilized to offset eligible operating expenditures.

D. **Clerk Use of Funds.** The Clerk shall use the funds solely for routine payroll and necessary operating expenses of the Office of the Clerk for the fiscal year ending September 30, 2020. The Clerk hereby expressly agrees to return to the County any amount of funds paid hereunder identified above in C 1 through 3 above received by the Clerk.

E. **Records.** The Clerk agrees to:

1. Retain all books, records, and accounts related to the performance of this Agreement for a period of five (5) years after termination of this Agreement, unless this Agreement is the subject of litigation, at which point the Clerk shall retain such books, records, and accounts for a period of five (5) years after the conclusion of any such litigation;
2. Open to inspection during regular business hours, the Clerk's books, records, and accounts related to the performance of this Agreement to the County, the County Comptroller and any of their authorized representatives, for the purposes of making audits, examinations, excerpts, and transcriptions; and
3. Permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

F. **Public Records.**

1. Pursuant to Chapter 119, Florida Statutes, the Clerk shall:
 - a. Keep and maintain public records required by law
 - b. Upon request from the County, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the amount set by the County.
 - c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement's term and following completion of this Agreement if the Clerk does not transfer the records to the County.
 - d. Upon completion, or termination, of this Agreement, transfer, at no cost, to the County all public records in possession of the Clerk or keep and maintain public records required by the Clerk to perform the service in accordance with Florida law.
 - e. If the Clerk transfers all public records to the County upon completion of the Agreement, the Clerk shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Clerk keeps and maintains public records upon completion of this Agreement, the Clerk shall meet all applicable requirements for retaining public records in accordance with applicable federal and Florida law.

- f. All records stored electronically shall be provided to the County, upon request from the County, in a format that is compatible with the information technology systems of the County.

IF THE CLERK HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO THE CLERK'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE CLERK SHALL CONTACT THE PROCUREMENT PUBLIC RECORDS LIAISON AT 400 EAST SOUTH STREET, 2ND FLOOR, ORLANDO, FLORIDA 32801, PROCUREMENTRECORDS@OCFL.NET, (407) 836-5897.

2. **Florida Agencies.** As the Clerk is an "Agency" as defined by Section 119.011, Florida Statutes, the Clerk shall comply with its own obligations under Chapter 119, Florida Statutes. The Clerk additionally agrees to cooperate in good faith with the County in the handling of public records created under this Agreement. Notwithstanding anything set forth in any provision of this Agreement to the contrary, the Clerk will not be required to destroy any records in its custody in violation of Chapter 119, Florida Statutes.

G. Non-Discrimination.

1. The Clerk shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, English proficiency, or disability.
2. The Clerk shall not, on the grounds of race, color, creed, national origin, sex, age, English proficiency, or disability, exclude a person from participation in, deny him/her benefits, or subject him/her to discrimination.
3. The Clerk shall adhere to any and all federal implementing regulations and other requirements that the Funding Agency has with respect to nondiscrimination.
4. The Clerk shall ensure that any and all of its subcontractors are bound to the terms of this Non-Discrimination provision.

H. Indemnification.

1. Each party agrees to defend, indemnify, and hold harmless the other party, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorneys' fees) arising from the indemnifying party's own negligent acts or omissions, or those negligent acts or omissions of the indemnifying party's officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this Agreement. The foregoing shall not constitute an agreement by either party to assume any liability of any kind for the acts, omissions, or negligence of the other party, its officers, officials, employees, agents, or contractors.
2. Nothing in this Agreement is intended to act as a waiver of either the County or the Clerk's sovereign immunity pursuant to Section 768.28 of the Florida Statutes, and, notwithstanding anything in this Agreement to the contrary, under no circumstances shall the County or the Clerk be liable to the other, or any third party, under any contract, negligence, strict liability, or other legal or equitable theory for any amounts in excess of those limits per claim and per occurrence set forth for tort liability in Section 768.28 of the Florida Statutes, which limits are hereby made applicable to all manner of claims against the County or Clerk related to this Agreement and are not confined to tort liability.

- I. **Insurance.** Without waiving its right to sovereign immunity as provided in Section 768.28, Florida Statutes, the Clerk may self-insure its liability with coverage limits of \$200,000 per person and \$300,000 per occurrence or such other limited sovereign immunity as set forth by the Florida legislature. A statement of self-insurance shall be provided to the County's Risk Management Division at the following address:

Orange County, Florida
Attention: Risk Management Division
109 E Church Street, Suite 200
Orlando, FL 32801

- J. **Notice.** Notice under this Agreement shall be deemed received by the parties if sent by electronic mail to the following individuals:

To the County:

Randy Singh, Deputy County Administrator
Randy.Singh@ocfl.net

With a copy to:

Kurt Petersen, OMB Manager
Kurt.Petersen@ocfl.net

To the Clerk:

Tiffany Moore Russell, Clerk of the Court
Tiffany.MooreRussell@myorangeclerk.com

With a copy to:

Cathi Balboa, Chief Administrative Officer
Cathi.Balboa@myorangeclerk.com

- K. **Attorneys' Fees and Costs.** The parties shall each bear their own costs, expert fees, attorneys' fees, and other fees incurred in connection with this Agreement and any litigation that arises either directly, or indirectly, from this Agreement.
- L. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement.
- M. **Governing Law.** This Agreement, and any and all actions directly or indirectly associated herewith, shall be governed by and construed in accordance with the internal laws of the State of Florida, without reference to any conflicts of law provisions.
- N. **Jury Waiver.** Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right that party does or might have to a trial by jury in any legal proceeding(s) that may arise either directly, or indirectly, from this Agreement.
- O. **Signatory.** Each signatory below represents and warrants that he or she has full power and is duly authorized by their respective party to enter into and perform under this Agreement. Such signatory also represents that he or she has fully reviewed and understands the above conditions and intends to fully abide by the conditions and terms of this Agreement as stated.

- P. **Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to or shall confer upon any person other than the parties and their respective successors and permitted assigns, any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.
- Q. **Venue.** For any legal proceeding arising out of or relating to this Agreement, each party hereby submits to the exclusive jurisdiction of, and waives any venue or other objection against, the Ninth Circuit Court in and for Orange County, Florida. Should any federal claims arise for which the courts of the State of Florida lack jurisdiction, venue for those actions shall be in the Orlando Division of the U.S. Middle District of Florida.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

BY: *Jerry L. Demings*
for Jerry L. Demings, Mayor
AUG 11 2020

Date: _____

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

BY: *Kate Fried*
Deputy Clerk

ORANGE COUNTY CLERK OF COURTS

By: *Tiffany Moore Russell*
Tiffany Moore Russell

Date: *July 31, 2020*

BCC Mtg. Date: August 11, 2020

AGENDA ITEM

BUDGET TRANSFER REQUEST

CONTROL NO 20-1186
 (To be assigned by OMB)

BCC
 nm

FUND NO 0001 DEPARTMENT(S) Constitutional Officers - Clerk of Courts DATE: 08/11/20

Request the following transfer be made for the reason(s) stated:

	AGENCY	ORGANIZATION	OBJECT	APPR	AMOUNT FROM	AMOUNT TO
NO.	023	0475	9510	MPB	\$1,500,000	
TITLE		Reserves	Reserve for Contingency			
NO.	021	0171	8120	CFT		\$1,500,000
TITLE		Clerk of Courts	Aid to other Government Agencies			
TOTAL:					\$1,500,000	\$1,500,000

JUSTIFICATION (to be completed by OMB): This budget transfer is necessary to transfer \$1.5 million from the General Fund Reserves to the Orange County Clerk of Courts solely to be used for payroll and necessary operating expenses of the office of the Clerk through the end of the fiscal year ending September 30, 2020, as established by the funding agreement regarding Emergency Local Contribution for FY 2019-2020.

RECOMMENDED BY:

Kurt N. Peterson
 Office of Management & Budget

(County Comptroller)

APPROVED / DISAPPROVED

Board of County Commissioners / County Administrator:
