

STATE OF INDIANA

BEFORE THE BOARD OF CLARK COUNTY COMMISSIONERS

RESOLUTION NO. 8-2011

**A RESOLUTION APPROVING MEDIATION AGREEMENT
DATED SEPTEMBER 2, 2011, AND AUTHORIZING ENTRY
OF MANDATE JUDGMENT PERTAINING THERETO**

WHEREAS, this Board of Clark County Commissioners (this "Board"), is a party to a Petition for Order for Mandate of Funds and Injunctive Relief filed by the Clark County Sheriff in the Clark Circuit Court under Case No. 10C01-1108-MI-080; and,

WHEREAS, the parties to such action were ordered to attend mediation by the court; and,

WHEREAS, duly authorized representatives of this Board Council attended mediation on September 2, 2011; and,

WHEREAS, a Memorandum of Understanding and a Memorandum of Agreement Regarding Cross-Claim were entered into subject to approval by this Board at a public meeting in accordance with Indiana law; and,

WHEREAS, copies of said Memoranda are attached herewith and made a part hereof as marked Exhibit "A" and Exhibit "B", respectively; and,

WHEREAS, this Board now desires to fully compromise and settle the said Petition for Mandate of Funds in accordance with the terms and conditions set forth in the attached Memoranda; and,

WHEREAS, it is in the best interests of the citizens of Clark County to avoid further litigation in this matter thereby saving the taxpayers unnecessary attorney fees and litigation expenses.

NOW, THEREFORE, BE IT RESOLVED by this Board of Clark County Commissioners that the terms and conditions of the Memoranda attached hereto as Exhibit "A" and Exhibit "B", respectively, are hereby approved, and the President of this Board

shall be, and is hereby, authorized to execute an Agreed Order/Judgment in this matter in the form attached hereto as Exhibit "C".

So Resolved by this Board of Clark County Commissioners at its regular meeting on September 29, 2011.

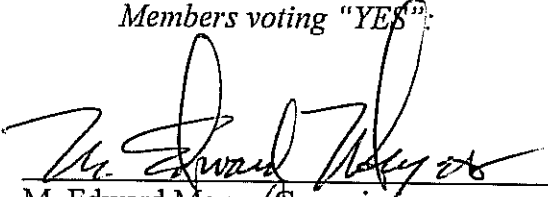
Members voting "NO":

M. Edward Meyer, Commissioner

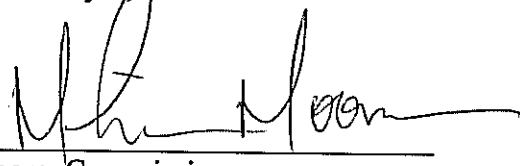
Mike Moore, Commissioner

Les Young, Commissioner

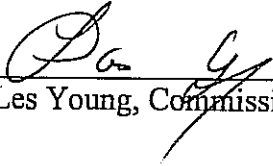
Members voting "YES":



M. Edward Meyer, Commissioner

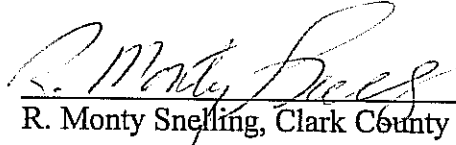


Mike Moore, Commissioner



Les Young, Commissioner

Attested by:



R. Monty Snelling, Clark County Auditor

MEMORANDUM OF UNDERSTANDING

It is the intent of the Clark County Council President to recommend to the full Clark County Council (the "Council") that it vote upon the following mediation proposal to resolve the Sheriff's claims in Cause No. 10C01-1108-MI-080, which action is pending in the Clark Circuit Court 1 (the "lawsuit"):

1. The Sheriff of Clark County, Danny Rodden (the "Sheriff"), proposes that the Council agree to enter into an Agreed Judgment in the sum of \$2,200,000.00, which sum will permit the Sheriff to continue to operate the Clark County Jail and provide police protection to the citizens of Clark County through the end of the calendar year 2011.
2. If the Council is willing to approve in a public meeting the Sheriff's proposal set forth in paragraph 1, then the Sheriff will agree in exchange to dismiss the lawsuit in its entirety with prejudice.
3. The Sheriff understands that the Council must meet in a public meeting to consider his proposal set forth herein and vote on whether to approve or deny his proposal.
4. In accordance with the Indiana Open Door Law, the Sheriff understands that nothing in this Memorandum of Understanding will be binding upon the Council unless and until such time that a majority of the Council votes in a public meeting to approve the Sheriff's mediation proposal.
5. The Council President will take the Sheriff's mediation proposal to the full Council at its next public meeting, which is scheduled on September 12, 2011.
6. The parties understand and agree that this Memorandum of Understanding is confidential and shall remain confidential until such time that the full Council meets on September 12, 2011 to consider and vote on this Memorandum of Understanding in its public meeting.
7. If the Council votes to approve this Memorandum of Understanding at a public meeting, then the parties agree that the Agreed Judgment will be funded through judgment funding bonds in accordance with Indiana law.

Kevin Vissing
Clark County Council President

Danny Rodden
Sheriff Danny Rodden

9-2-11
Date

9-2-2011
Date

MEMORANDUM OF AGREEMENT REGARDING CROSS-CLAIM

It is the intent of the Clark County Council President and the Clark County Commissioner who is executing this Memorandum of Agreement to recommend to the full Clark County Council (the "Council") and the full Clark County Commissioners (the "Commissioners") that they vote upon the following mediation proposal to resolve the Clark County Commissioners' (the "Commissioners") cross-claim in Cause No. 10C01-1108-MI-080, which action is pending in the Clark Circuit Court 1 (the "lawsuit"):

1. In light of the Memorandum of Agreement between the Sheriff of Clark County and the Clark County Council, the Commissioners will dismiss their cross-claim.
2. The Council will continue to act upon the Commissioners' EDIT plan concerning the Building Authority for payments yet due. Action on the EDIT plan for the Building Authority will occur on a monthly basis.
3. The Commissioners EDIT plan will be amended to pay against an outstanding Life Springs claim if and to the extent the Council is able to reduce the sum allocated by the Commissioners in the EDIT plan for the costs of the 2012 reassessment.
4. The parties understand that both the Commissioners and the Council must meet in a public meeting to consider this Memorandum of Agreement set forth herein and vote on whether to approve or deny it.
5. In accordance with the Indiana Open Door Law, the parties executing this Memorandum understand that nothing in this Memorandum of Understanding will be binding upon either the Council or the Commissioners unless and until such time that a majority of the Council and the Commissioners vote in a public meeting to approve this Memorandum.

Kevin Vessing
Clark County Council President

Dee G
Clark County Commissioner

9-2-11
Date

9-2-11
Date

Richard Payne
Richard Payne, Mediator

9/2/11
Date

Robert Lewis
Council Attorney 9-2-11

EXHIBIT
"B"

IN THE CIRCUIT COURT FOR CLARK COUNTY
STATE OF INDIANA

SHERIFF DANNY RODDEN,
Petitioner

v.

CLARK COUNTY COUNCIL and
CLARK COUNTY COMMISSIONERS,
Respondents

Case No. 10C01-1108-MI-080

AGREED ORDER/JUDGMENT

This matter comes before the Court and pursuant to a request of the parties for the Court to approve an agreed order/judgment for the payment of monies pursuant to settlement agreement reached at mediation; and comes now the Petitioner, Sheriff Danny Rodden (the "Sheriff"), in person and by counsel, Michelle L. Cooper; and comes also the Respondent, Clark County Council (the "County Council"), by its President, Kevin Vissing, in person and by counsel, R. Scott Lewis; and comes also the Respondent, Clark County Commissioners (the "County Commissioners"), by its President, M. Edward Meyer, in person and by counsel, C. Gregory Fifer; and the parties hereby advise the Court that they agree and stipulate as follows:

1. That on the 15th day of August, 2011, the Sheriff filed a Verified Petition for Order for Mandate and Injunctive Relief against the County Council and the County Commissioners in the above-captioned cause-of-action.
2. That on the 17th day of August, 2011, the Court entered a Preliminary Injunction and Order for Mediation and Other Supplemental Orders in this matter.
3. The parties through their duly authorized representatives met in mediation on September 2, 2011, and reached a Memorandum of Understanding, a copy of which is attached herewith and made a part hereof as marked Exhibit A, which said Memorandum was made

EXHIBIT
"C"

subject to final approval by the County Council and County Commissioners in the manner provided by Indiana law.

4. Thereafter the County Council held a properly advertised public meeting on the 12th day of September, 2011, during which the Council adopted a Resolution approving the Memorandum of Understanding and authorized its President and attorney to execute this Agreed Order/Judgment on behalf of the Council. A copy of such Resolution is attached herewith and made a part hereof as marked Exhibit B.

5. Thereafter the County Commissioners held a properly advertised public meeting on the ____ day of September, 2011, during which the County Commissioners adopted a Resolution approving the Memorandum of Understanding authorizing its President and attorney to execute this Agreed Order/Judgment on behalf of the County Commissioners. A copy of such Resolution is attached herewith and made a part hereof as marked Exhibit C.

6. At the time that the mandate was filed, and at all times subsequent thereto, there were no funds appropriated from which the mandate or the terms of the Memorandum of Understanding could have been satisfied. Furthermore, at the time that the mandate was filed, and at all times subsequent thereto, the County lacked sufficient otherwise unobligated funds from which this Agreed Order/Judgment could be satisfied. As such, this Agreed Order/Judgment shall constitute a judgment for which an order of mandamus of payment of the amount of Two Million Dollars (\$2,000,000) should properly be entered in accordance with the provisions of Ind. Code § 34-55-12-1.

7. At the time of entry of this Agreed Order/Judgment, neither the Commissioners nor the County Council have sufficient unobligated funds, in reserves or otherwise, available from which the payments required herein could be satisfied by special or

additional appropriation of the County Council.

8. Any significant delay in payment of the amount of Two Million Dollars (\$2,000,000) pursuant to the provisions of Ind. Code § 34-55-12-1(b) would so unduly hinder the operation of the Clark County Sheriff's Department and Clark County Jail as to jeopardize the public safety and welfare of the citizens of Clark County.

9. Upon entry of this Agreed Order/Judgment, the County Council shall therefore promptly take the actions necessary to fully pay the amount of Two Million Dollars (\$2,000,000) set forth herein through the issuance of judgment funding bonds in accordance with the provisions of Ind. Code § 5-1-8-1.

10. The Clark County Sheriff shall have judgment, jointly and severally, against the Clark County Council and Clark County Commissioners in the amount of Two Million Dollars (\$2,000,000) and such judgment shall be subject to the mandamus provisions with respect to the payment thereof in accordance with the provisions of Ind. Code § 34-55-12-1.

11. Upon receipt of the funds pursuant to this Agreed Order/Judgment, the Sheriff shall file a satisfaction of the Agreed Order/Judgment herein.

12. The parties jointly request that the Court approve this Agreement Order/Judgment and enter it into the record of the proceedings in this cause in its entirety.

And the Court having read such stipulation and having been otherwise duly advised in the premises, now hereby finds that the foregoing Agreement Order/Judgment shall be approved by the Court and ordered into effect by the Court as a legally binding judgment.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. The stipulations and agreement of the parties set forth above are hereby approved in their entirety.

2. The Clark County Sheriff shall have judgment, jointly and severally, against the Clark County Council and Clark County Commissioners in the amount of Two Million Dollars (\$2,000,000) and such judgment shall be subject to the mandamus provisions with respect to the payment thereof in accordance with the provisions of Ind. Code § 34-55-12-1.

3. Upon entry of this Agreed Order/Judgment, the County Council shall therefore promptly take the actions necessary to fully pay the amounts set forth herein through the issuance of judgment funding bonds in accordance with the provisions of Ind. Code § 5-1-8-1.

4. The portion of the Clark County tax rate necessary to fully pay the judgment funding bonds to be issued in order to satisfy this Agreed Order/Judgment shall not be considered in computing the Clark County tax rate limits in accordance with the provisions of Ind. Code 6-1.1-18-3(b)(5).

5. Upon receipt of the funds pursuant to this Agreed Order/Judgment, the Sheriff shall file a satisfaction of the Agreed Order/Judgment herein.

6. The parties shall be, and are hereby, ORDERED to take all actions as necessary to carry out the obligations of the foregoing agreement.

SO ORDERED this _____ day of _____, 2011.

**DANIEL E. MOORE, JUDGE
CLARK CIRCUIT COURT**

Read and approved for the
CLARK COUNTY COUNCIL:

By: _____
Kevin Vissing, President

R. Scott Lewis, Attorney No. 18756-49
530 E. Court Avenue
Jeffersonville, IN 47130
(812) 282-6820
Attorney for the Clark County Council

Read and approved for the
CLARK COUNTY COMMISSIONERS:

By: _____
M. Edward Meyer, President

C. Gregory Fifer, Attorney #8121-98
APLEGATE FIFER PULLIAM, LLC
428 Meigs Avenue
Jeffersonville, IN 47131-1418
(812) 284-9499
Attorney for the Clark County Commissioners

Read and approved for the Clark County Sheriff:

By: _____
Danny Rodden, Sheriff

Michelle L. Cooper, Attorney No. 21583-18
Attorney for the Clark County Sheriff
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46024
(317) 684-5000