

MEMORANDUM

February 19, 2010

**TO:** County Council

**FROM:** Leslie Rubin, Audit Contract Administrator *LRB*  
Office of Legislative Oversight

**SUBJECT:** Public Hearing/Action – Special Appropriation to the County Government’s FY10 Operating Budget – \$18,000 for Independent Audit Non-Departmental Account

On February 2, 2010, the Council introduced a resolution for an \$18,000 Special Appropriation to the FY10 Independent Audit Non-Departmental Account (NDA) (©1). **The Management and Fiscal Policy Committee meeting as the Audit Committee recommends approval of the Special Appropriation.** A public hearing has been scheduled immediately preceding the Council’s action on the appropriation.

The appropriation will fund additional work by Clifton Gunderson to audit the financial statements of the Montgomery County Union Employees Deferred Compensation Plan for the year ending December 31, 2009. A contract amendment authorizing the additional work is attached at ©3.

**Fiscal Impact: \$18,000**

**Background**

On December 1, 2009, the Council enacted Bill 40-09 requiring a certified public accounting firm under contract with the Council to complete an annual independent audit of each collectively bargained deferred compensation plan established and maintained by the County. The Council’s current external auditor, Clifton Gunderson, submitted a proposal on January 11, 2010 to perform this additional work for \$18,000.

The Management and Fiscal Policy Committee met as the Audit Committee on January 28, 2010 and recommends approval of the \$18,000 Special Appropriation for the Independent Audit NDA to allow Clifton Gunderson to perform this additional audit work. The source of funds designated is the General Fund Reserves.

<b>Attachments</b>	<b>Attached at:</b>
Draft Special Appropriation Resolution	©1
Clifton Gunderson Contract Amendment #3	©3

Resolution No.: \_\_\_\_\_  
 Introduced: \_\_\_\_\_  
 Adopted: \_\_\_\_\_

COUNTY COUNCIL  
 FOR MONTGOMERY COUNTY, MARYLAND

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By: Management and Fiscal Policy Committee meeting as the Audit Committee

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SUBJECT: Special Appropriation to the FY10 Operating Budget  
Montgomery County Government  
Independent Audit Non-Departmental Account, \$18,000

Background

1. Section 308 of the Montgomery County Charter provides that a Special Appropriation: (a) may be made at any time after public notice by news release; (b) must state that the special appropriation is necessary to meet an unforeseen disaster or other emergency or to act without delay in the public interest; (c) must specify the revenues necessary to finance it; and (d) must be approved by no fewer than six members of the Council.
2. The Management and Fiscal Policy Committee meeting as the Audit Committee requests a Special Appropriation to provide additional contractual auditing services in the Independent Audit Non-Departmental Account (NDA).

<u>Department</u>	<u>Personnel</u> <u>Costs</u>	<u>Operating</u> <u>Expenses</u>	<u>Capital</u> <u>Outlay</u>	<u>Total</u>	<u>Source</u> <u>of Funds</u>
Independent Audit Non-Departmental Account	--	\$18,000	--	\$18,000	General Fund Reserves

3. Montgomery County Code § 33-146B authorizes the County Government to establish and maintain a deferred compensation plan for employees covered by a collective bargaining agreement. Under the law, the union certified representative assumes the duties of the Board of Investment Trustees, the Chief Administrative Officer, and the County with respect to any collectively bargained plan.
4. The County established a deferred compensation plan for County Government employees who are bargaining unit members – the Montgomery County Union Employees Deferred Compensation Plan (MCUEDCP). The MCUEDCP is administered by a six member Board of Trustees made up of two representatives each from the Fraternal Order of Police, Montgomery County Lodge 35; Municipal and County Government Employees Organization, UFCW Local 1991; and the International Association of Firefighters Local 1664.

5. On December 1, 2009, the Montgomery County Council enacted Bill 40-09, adding Montgomery County Code § 33-146C and requiring a certified public accounting firm under contract with the Council to complete an annual independent audit of each collectively bargained plan established and maintained by the County.
6. The Council currently has a contract with Clifton Gunderson LLP (“Auditor”), an independent certified public accounting firm, to undertake the annual audit of the County Government’s financial statements and the financial statements of the County Government employee retirement plans. In order to comply with Montgomery County Code § 33-146C, the Management and Fiscal Policy Committee meeting as the Audit Committee recommends that the Council amend its contract with Clifton Gunderson to add the audit of the financial statements of the Montgomery County Union Employees Deferred Compensation Plan as additional work.
7. The Auditor has agreed to perform this additional work for a fee of \$18,000.
8. On January 26, 2010, the Management and Fiscal Policy Committee meeting as the Audit Committee reviewed the proposed scope of audit work and recommends a special appropriation to the Independent Audit NDA in the amount of \$18,000 to provide these additional contractual auditing services. The source of the funds will be General Fund reserves.
9. The public was notified by a news release.

Action

The County Council for Montgomery County, Maryland, approves the following action:

1. The FY10 Operating Budget of the Montgomery County Government is amended, and a special appropriation is approved as follows:

<u>Department</u>	<u>Personnel Costs</u>	<u>Operating Expenses</u>	<u>Capital Outlay</u>	<u>Total</u>	<u>Source of Funds</u>
Independent Audit Non-Departmental Account	--	\$18,000	--	\$18,000	General Fund Reserves

2. The County Council declares that this action is necessary to act without delay in the public interest.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council

**CONTRACT AMENDMENT #3  
CONTRACT NUMBER 8031000103AB**

This Amendment is entered into between Montgomery County, Maryland, on behalf of the County Council for Montgomery County, Maryland (“Council”), and Clifton Gunderson LLP, 11710 Beltsville Drive, Suite 300, Calverton, MD 20705 (“Contractor” or “Auditor”).

**BACKGROUND**

1. The Council and the Auditor entered into Contract No. 8031000103AB on April 24, 2008. Contract No. 8031000103AB was extended through Contract Amendment #2 on April 29, 2009. The current contract term expires on July 23, 2010.
2. Section 315 of the Montgomery County Charter states “The Council shall contract with, or otherwise employ, a certified public accountant to make annually an independent post audit of all financial records and actions of the County, its officials and employees.” The Montgomery County Code Section 33-51(c) indicates that an independent audit of the retirement system will be completed annually by the firm of certified public accountants under contract with the Council.
3. Montgomery County Code § 33-146B authorizes the County Government to establish and maintain a deferred compensation plan for employees covered by a collective bargaining agreement. Under the law, the union certified representative assumes the duties of the Board of Investment Trustees, the Chief Administrative Officer, and the County with respect to any collectively bargained plan.
4. The County established a deferred compensation plan for County Government employees who are bargaining unit members – the Montgomery County Union Employees Deferred Compensation Plan (MCUEDCP). The MCUEDCP is administered by a six member Board of Trustees made up of two representatives each from the Fraternal Order of Police, Montgomery County Lodge 35; Municipal and County Government Employees Organization, UFCW Local 1991; and the International Association of Firefighters Local 1664.
5. On December 1, 2009, the Montgomery County Council enacted Bill 40-09, adding Montgomery County Code § 33-146C and requiring a certified public accounting firm under contract with the Council to complete an annual independent audit of each collectively bargained plan established and maintained by the County.
6. Under Article I, Paragraph C, Additional Work, of Contract No. 8031000103AB, the Council may amend the contract to add additional work within the general scope of the contract. To comply with Montgomery County Code § 33-146C, OLO staff, acting as the designated audit contract administrator on behalf of the Council, asked Clifton Gunderson LLP to submit a proposal for completing an independent audit of the financial statements of the Montgomery County Union Employees Deferred Compensation Plan for the year ending December 31, 2009, which Clifton Gunderson submitted on January 11, 2010.
7. The additional work is within the general scope of the contract.

## CHANGE

1. Article I. "Scope of Work", Paragraph A., Basic Work is amended by adding the following subparagraph 12:
  - 12) **Montgomery County Union Employees Deferred Compensation Plan Basic Financial Statements Audit** – The Contractor must audit the financial statements of the Montgomery County Union Employees Deferred Compensation Plan for calendar year 2009. The audit must be performed in accordance with *Government Auditing Standards*. The Contractor must prepare:
    - An Independent Auditors' Report to express opinions on whether the financial statements fairly present, in all material respects, the financial position of the deferred compensation plan, and
    - An Independent Auditors' Report on Compliance and Internal Control Over Financial Reporting Based on an Audit of Financial Statements in Accordance with *Government Auditing Standards*.
2. Article I. "Scope of Work", Paragraph A., subparagraph 10, Management Letters is amended by changing the total number of management letters required under the contract from two (2) to three (3) and by adding the following subparagraph c:
  - 10) **Management Letters** – At the completion of the annual audit, the Contractor must submit three (3) management letters to the Council related to the:
    - c. Basic financial statements of the Montgomery County Union Employees Deferred Compensation Plan.
3. Article II. "Deliverables", is amended by adding the following paragraph G:
  - G. The Contractor must provide up to 20 copies of the following deliverables by April 30, 2010:
    - 1) Independent Auditors' Report to express opinions on the basic financial statements of the Montgomery County Union Employees Deferred Compensation Plan, and
    - 2) Independent Auditors' Report on Compliance and Internal Control Over Financial Reporting of the Montgomery County Union Employees Deferred Compensation Plan Based on an Audit of the Financial Statements in Accordance with *Government Auditing Standards*.
    - 3) Management Letter related to the audit of the financial statements of the Montgomery County Union Employees Deferred Compensation Plan.

4. Article III. "Contractor Responsibilities", Paragraph A, is amended by adding the following:

The key personnel specified in the Contractor's Proposal dated January 11, 2010 must complete the items in Article I. "Scope of Work", Paragraph A, subparagraphs 10c and 12. Key personnel include the Engagement Partner-In-Charge, Quality Review Partner, Audit Manager, and Senior Audit Associate.

5. Article V. "Payments", Paragraph A., is amended by adding the following subparagraph 6:

6) **Payment for Subparagraphs 10c, 12** – The County will pay the Contractor a fixed fee not to exceed \$18,000 for audit services performed under this portion of the Contract. The County will pay the Contractor on a monthly basis for work completed during the month, on the condition that the Contract Administrator determines, in his or her sole discretion, that the Contractor is making satisfactory progress toward completing all auditing services. The Independent Audit Non-Departmental Account is the source of funds. The Contractor's fixed fee for this service is set forth in the Contractor's January 11, 2010 Quotation to Provide Professional Services addressed to Duchy Trachtenberg, Chair of the Management and Fiscal Policy Committee. The Contractor's January 11, 2010 Quotation to Provide Professional Services is made a part of this contract as Attachment F to this Contract. The Contract Administrator is responsible for approving invoices and paying the Contractor for services satisfactorily performed under this portion of the Contract.

6. The Contract is amended by adding the new Article IVa:

**ARTICLE IVa. SOURCE OF RECORDS FOR AUDIT  
OF MCUEDCP FINANCIAL STATEMENTS**

A. **Access to Montgomery County Union Employees Deferred Compensation Plan Records and Staff.** In a November 16, 2009 letter to the Chair of the County Council's Management and Fiscal Policy Committee, the Board of Trustees of MCUEDCP agreed to an external auditing firm, under contract with the County Council, performing an audit of the MCUEDCP using the same manner, processes, and standards as are used when conducting the audits of the County's other accounts and plans.

Accordingly, the Montgomery County Union Employees Deferred Compensation Plan will be the source of records for this work. The Montgomery County Union Employees Deferred Compensation Plan should provide the Contractor access to its records and reasonable access to its staff for the purposes of interviews and verification of items within the terms of the contract. The Contractor must report any problems receiving access to MCUEDCP's records and staff to the Contract Administrator as soon as practicable.

**B. Montgomery County Union Employees Deferred Compensation Plan Support.** The Montgomery County Union Employees Deferred Compensation Plan should provide limited, temporary space to examine records and documents during the audit, and the capability to view on-line documents. The Montgomery County Union Employees Deferred Compensation Plan should also:

- 1) Provide contact information for the predecessor auditor and authorize the predecessor auditor to speak with Clifton Gunderson regarding the predecessor auditor's work performed for the Montgomery County Union Employees Deferred Compensation Plan,
  - 2) Draft its financial statements, both in preliminary and final forms,
  - 3) Type confirmation requests and other correspondence requesting information from outside entities,
  - 4) Provide access to on-line documents, which should be used to the fullest extent possible by the Contractor, and retrieve and replace source documents located in Montgomery County Union Employees Deferred Compensation Plan Offices, and
  - 5) Type and reproduce the annual report.
7. Article VIII, Contract Documents and Priority of Documents is amended to include a new item 6 as follows: "(6) January 11, 2010 Quotation to Provide Professional Services addressed to Duchy Trachtenberg, Chair of the Management and Fiscal Policy Committee (Attachment F).

#### **EFFECT**

1. Existing Contract terms remain in effect unless specifically changed by this Amendment.
2. This Amendment is entered into prior to the expiration of the Contract.
3. This Amendment is entered into on the date of signature by the President of the County Council for Montgomery County, Maryland.
4. No goods or services are to be provided pursuant to this Amendment until it is signed by the President of the County Council for Montgomery County, Maryland.

**(Signature Page Follows)**

**WITNESS**

**Clifton Gunderson LLP**

BY: \_\_\_\_\_  
Keith Novak, Partner  
Clifton Gunderson LLP

DATE \_\_\_\_\_

**Montgomery County, Maryland**

BY: \_\_\_\_\_  
Nancy Floreen, President  
Montgomery County Council

DATE \_\_\_\_\_

**Approved to as to form and legality:**

BY: \_\_\_\_\_  
Walter Wilson  
Assistant County Attorney

DATE \_\_\_\_\_