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City Council Document Tracking Sheet

Meeting Date:	1/18/2012
Sponsor(s):	Emanuel, Rahm (Mayor)
Type:	Ordinance
Title:	Intergovernmental agreement with State Comptroller regarding debt recovery program
Committee(s) Assignment:	Committee on Budget and Government Operations



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

January 18, 2012

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Comptroller, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement with the State Comptroller regarding a debt recovery program.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Rahm Emanuel".

Mayor

ORDINANCE

WHEREAS, the Illinois Office of the Comptroller (the "IOC") and the City of Chicago, Illinois (the "City") share the common goals of collecting debts owed to its respective public bodies; and

WHEREAS, the IOC operates a system, known as the Comptroller's Offset System (hereinafter, "the System"), for collection of debt owed the State of Illinois by persons receiving payments from the State; and

WHEREAS, the Illinois General Assembly specifically provided for the ability of the City to utilize the System when it amended Section 10.05 and added Section 10.05d to the State Comptroller Act [P.A. 97-632; 15 ILCS 405/10.05 and 10.05d] in order for the City to have access to the Local Debt Recovery Program for purposes of collecting both tax and non-tax debts owed to the City; and

WHEREAS, the IOC and the City are empowered under the Illinois Constitution [Ill. Const., Art. VII, Sec. 10], Section 3 of the Intergovernmental Cooperation Act [5 ILCS 220/3], and Section 10.05d of the State Comptroller Act [15 ILCS 405/10.05d] to contract with each other in any manner not prohibited by law; and

WHEREAS, the IOC and the City wish to enter into an intergovernmental agreement in substantially the form attached as Exhibit A (the "Agreement") whereby the IOC and the City will accomplish the above-stated goals; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated in and made a part of this ordinance as though fully set forth herein.

SECTION 2. The Corporation Counsel, or designee, is authorized to execute and deliver the Agreement, and such other documents as are necessary, between the City of Chicago and the Illinois Office of the Comptroller, which Agreement may contain such other terms as are deemed necessary or appropriate by the parties executing the same on the part of the City.

SECTION 3. The Corporation Counsel, or designee, is further authorized, in accordance with the provisions of the Agreement, to renew or extend the term of the Agreement beyond its original termination date, and to execute and deliver the renewed or extended Agreement, and such other documents as are necessary, between the City of Chicago and the Illinois Office of the Comptroller, which renewed or extended Agreement may contain such other terms as are deemed necessary or appropriate by the parties executing the same on the part of the City.

SECTION 4. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of

this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any other provisions of this ordinance.

SECTION 5. This ordinance shall be in full force and effect from and after the date of its passage and approval.

EXHIBIT A TO THE ORDINANCE

**INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN
THE ILLINOIS OFFICE OF THE COMPTROLLER
AND
THE CITY OF CHICAGO
REGARDING ACCESS TO THE COMPTROLLER'S LOCAL DEBT RECOVERY PROGRAM**

This Intergovernmental Agreement ("the Agreement") is hereby made and entered into as of the date of execution by and between the Illinois Office of the Comptroller (hereinafter "IOC") and the City of Chicago (hereinafter "the local unit"), in order to provide the named local unit access to the Local Debt Recovery Program for purposes of collecting both tax and non-tax debts owed to the named local unit. Each of the parties hereto is a "public agency" as defined in Section 2 of the Intergovernmental Cooperation Act [5 ILCS 220/2].

WHEREAS, both the State of Illinois and the local unit have a responsibility to collect debts owed to its respective public bodies;

WHEREAS, IOC operates a system, known as the Comptroller's Offset System (hereinafter, "the System"), for collection of debt owed the State by persons receiving payments from the State;

WHEREAS, the Illinois General Assembly specifically provided for the ability of the local unit to utilize the System when it amended Section 10.05 and added Section 10.05d to the State Comptroller Act [P.A. 97-632; 15 ILCS 405/10.05 and 10.05d];

WHEREAS, IOC and the local unit are empowered under the Illinois Constitution [Ill. Const., Art. VII, Sec. 10], Section 3 of the Intergovernmental Cooperation Act [5 ILCS 220/3], and Section 10.05d of the State Comptroller Act (hereinafter, "the Act") [15 ILCS 405/10.05d] to contract with each other in any manner not prohibited by law;

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises contained herein, the sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

Article I – Purpose

The purpose of the Agreement between the IOC and the local unit is to establish the terms and conditions for the offset of the State's tax and non-tax payments in order to collect tax and non-tax debts owed to the local unit.

Article II – Authority

The authority for State payment offset is granted under Section 10.05 of the Act [15 ILCS 405/10.05] and the authority for entering into this Agreement is granted under Section 10.05d of the Act [15 ILCS 405/10.05d], Section 3 of the Intergovernmental Cooperation Act [5 ILCS 220/3], and Article VII of the Illinois Constitution [Ill. Const., Art. VII, Sec. 10].

Article III – State Payment Offset Requirements and Operations

- A. Legal Requirements. The offset of State payments shall be conducted pursuant to the authority granted in Section 10.05 and 10.05d of the Act [15 ILCS 405/10.05 and 10.05d] and the requirements set forth in this Agreement.

1. Due Process & Notification.

- (a) Before submitting a debt to IOC for State payment offset, the local unit must comply with all of the notification requirements of this Agreement. For purposes of this Agreement, notification of an account or claim eligible to be offset shall occur when the local unit submits to IOC the following information:
 - (i) the name and address and/or another unique identifier of the person against whom the claim exists;
 - (ii) the amount of the claim then due and payable to the local unit;
 - (iii) the reason why there is an amount due to the local unit (i.e., tax liability, overpayment, etc.);
 - (iv) the local entity to which the debt is owed;
 - (v) a copy of the local unit's municipal code and other policies and procedures that indicate the process for providing notice to alleged debtors and the process for adjudicating the debt, provided that such copies will be submitted to IOC prior to submitting the first debts for offset, and whenever the policies and procedures are amended, and not with each individual request; and,
 - (vi) a statement prior to submitting the first debts for offset that no debts shall be submitted to IOC for offset unless the adjudication of such debt is final, whether a hearing was requested by the debtor or not, but no such statement shall be required for each individual debt submitted for offset;
- (b) IOC will not process a claim under the Agreement until notification has been received from the local unit that the debt has been established through notice and opportunity to be heard and that it has been resolved in a final adjudication.

2. Certification.

- (a) The chief officer of the local unit must, at the time the debt is referred, certify that the debt is past due and legally enforceable in the amount stated, and that there is no legal bar to collection by State payment offset.

- (b) Only debts finally determined as currently due and payable may be certified to IOC as a claim for offset.
- (c) The chief officer of the local unit may delegate to a responsible person or persons the authority to execute the statement of the claim required by the Agreement.
- (d) This delegation of authority shall be made on forms provided by the Comptroller and shall contain a signature sample of the person(s) to whom the delegation is made.
- (e) For purposes of this Agreement, "chief officer of the local unit" means the City of Chicago Comptroller.

3. Notification of Change in Status.

- (a) The local unit must notify IOC as soon as possible after receiving notice of a change in the status of an offset claim.
- (b) A change in status may include, but is not limited to, payments received other than through a successful offset, the filing of a bankruptcy petition, or the death of the debtor.

B. Operational Requirements. Upon receiving a data file from the local unit, IOC will perform a match with the local unit's debt file using a debtor's name, address, or other unique identifier. The local unit will receive a weekly file from IOC indicating the matches, at which time the local unit will update its debtor records.

- 1. Technical Requirements. IOC agrees to work with the local unit to facilitate information and data procedures necessary for the implementation of this Agreement. The local unit agrees to adhere to the standards and practices of IOC when transmitting and receiving data. Each signatory shall immediately designate in writing a person who shall, on their behalf, take all steps necessary to ensure that the practices and standards relating to data transmission and collection are developed and executed collaboratively and in an efficient manner. Such persons so designated shall work cooperatively to develop such policies, procedures, processes, forms and documents as are necessary or helpful for the purposes of this Agreement.
- 2. Fee. A fee shall be charged to the debtor in order to recover the cost to IOC for administering the System. The fee shall be per payment transaction and shall be \$15, unless the offset is for an amount less than \$30, in which case the fee shall be for one-half of the amount offset. The fee will be deducted from the payment to be offset prior to issuance to the local unit.
- 3. Offset Notices. IOC will send offset notices to the debtor upon processing a claim under the Act and this Agreement. The notice will state that a request has been made to make an offset against a payment due to the debtor, identify the local unit as the entity submitting the request, provide

the debtor with a phone number made available pursuant to Article III, Paragraph B, Section 6 of the Agreement, and inform the debtor that they may formally appeal the offset by providing a written protest to IOC within sixty (60) days of the notice.

4. IOC Protest Process. If a protest is received, IOC will determine the amount due and payable to the local unit. This determination will be made by a Hearing Officer and will be made in light of all information relating to the transaction in the possession of IOC and any other information IOC may request and obtain from the local unit and the debtor subject to the offset. If IOC requests information from the local unit relating to the offset, the local unit will respond within sixty (60) days of IOC's request. IOC may grant the local unit an additional sixty (60) day extension for time to respond.
5. IOC Hearing Officer. The local unit hereby agrees to provide the Hearing Officer with any information requested in an efficient and timely manner in order to facilitate the prompt resolution to protests filed as a result of this Agreement. For purposes of this Agreement, any decision rendered by the Hearing Officer shall be binding on the local unit and shall be the final determination on the matter. However, any decision shall only concern offsetting of the debt by the IOC and shall not affect the legitimacy or enforceability of any debts owed to the local unit pursuant to judgments resulting from the adjudication of such debts. The Hearing Officer may continue the review of a protest at his/her discretion and will be granted access to the local unit's database in order to assure an equitable resolution.
6. Local Unit Call Center. The local unit hereby agrees to provide a working phone number which IOC will furnish to persons offset under this Agreement. The local unit shall ensure that the phone number is properly staffed in order to provide information about the debt the local unit is offsetting under this Agreement. The chief officer of the local unit shall notify IOC of the phone numbers required by this Section and the Agreement prior to submitting any debts to IOC for State payment offset.
7. Debt Priorities. If a debtor has more than one local unit debt, the debt with the oldest date of delinquency, as determined by the date when the debt was submitted to IOC for offset shall be offset first.
8. Transfer of Payment. The form and frequency of the transfer of payments by IOC to the local unit shall be established by the IOC. Nothing in this section or this Agreement shall limit the ability of either party to modify this Agreement at a later date in order to provide for an alternative method(s) of payment transfer.
9. IOC Refunds. If IOC determines that a payment is erroneous or otherwise not due to the local unit, IOC will process a refund of the offset, and refund the amount offset to the debtor. In the event the refund results in only a partial refund to the debtor, IOC will retain the fee

referenced in Article III, Paragraph B, Section 2 above. The fee will only be refunded to the debtor in the event of a full refund of the offset amount.

10. Local Unit Refunds. The local unit is responsible for refunding monies to the debtor if an offset occurred due to inaccurate debt information or over collection, and the local unit has already received payment from IOC. IOC will only refund monies in the event that a payment has not yet been made to the local unit.

Article IV – Permissible Use of Information

IOC acknowledges that the local unit is providing sensitive information about local debts for the purpose of conducting offsets under the Agreement. As such, IOC will use the information solely in connection with the Local Debt Recovery Program. IOC shall safeguard the local information in the same manner as it protects State debt information.

The local unit acknowledges that IOC is providing sensitive information about State payments for the purpose of conducting offsets under the Agreement. As such, the local unit will use the information solely in connection with the Local Debt Recovery Program. The local unit shall safeguard State information in the same manner as it protects local debt information.

The parties may use information in any litigation involving the parties, when such information is relevant to the litigation.

The parties agree that any information or documentation provided by the local unit to IOC shall remain the property of the local unit and are being provided solely for IOC's inspection and use as part of the Local Debt Recovery Program. If IOC shall receive a request for any records of the local unit that it has accessed pursuant to the Illinois Freedom of Information Act, or for any other purpose, IOC agrees to promptly contact the local unit prior to IOC responding to any request. IOC agrees to release information or documentation only to the extent necessary for compliance with the Freedom of Information Act.

Article V – Term of the Agreement and Modifications

The Agreement becomes effective as of the Effective Date and shall remain in effect until it is terminated by one of the parties. Either party may terminate this Agreement by giving the other party written notice at least thirty (30) days prior to the effective date of the termination. Any modifications to the Agreement shall be in writing and signed by both parties.

Article VI – No Liability to Other Parties

Except for the fees described in Article III, paragraph B, Section 2 above, each party shall be responsible for its own costs incurred in connection with the Agreement. Each party shall be responsible for resolving and reconciling its own errors, but shall not be liable to any other parties for damages of any kind as a result of errors. Each party shall be liable for the acts and omissions of its own employees and agents. The Agreement does not confer any rights or benefits on any third party.

Article VII – Issue Resolution

The parties acknowledge that IOC is ultimately responsible for the development, design and operation of the System. Subject to that understanding, the parties agree to work cooperatively to resolve any matters that arise during the development, design and implementation of the program. If an issue cannot be resolved informally by mutual agreement of staff personnel, then the parties agree to elevate the issue to a senior level manager for resolution of the issue. For purposes of the Agreement, the "senior level managers" are:

1. IOC: Ray Marchiori, Director – Department of Government and Community Affairs
2. Local Unit: Tina Consola – Managing Deputy Director, Department of Finance

Article VIII – Contacts

The points of contacts for this Agreement are:

IOC: Alissa Camp, General Counsel
Illinois Office of the Comptroller
325 West Adams Street
Springfield, Illinois 62704
Phone: 217/782-6000
Fax: 217/782-2112
E-mail: CampAJ@mail.ioc.state.il.us

Local Unit: Keith May, Assistant Corporation Counsel
City of Chicago Law Department
Finance and Economic Development Division
121 North LaSalle Street, Suite 600
Chicago, IL 60602
Phone: 312/744-5817
Fax: 312/744-8538
Email: keith.may@cityofchicago.org

Article IX – Acceptance of Terms and Commitment

The signing of this document by authorized officials forms a binding commitment between IOC and the City of Chicago. The parties are obligated to perform in accordance with the terms and conditions of this document, any properly executed modification, addition, or amendment thereto, any attachment, appendix, addendum, or supplemental thereto, and any documents and requirements incorporated by reference.

By their signing, the signatories represent and certify that they possess the authority to bind their respective organizations to the terms of this document, and hereby do so.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Illinois Office of the Comptroller and the City of Chicago by the following officials sign their names to enter into this reciprocal agreement.

ILLINOIS OFFICE OF THE COMPTROLLER

By: _____
Name: _____
Title: _____

Date: _____

CITY OF CHICAGO

By: _____
Name: Amer Ahmad
Title: Comptroller

Date: _____

APPROVED
Kahn Emanuel
2/15/12
Major

APPROVED
Stephen R. Nathan
CORPORATION COUNSEL

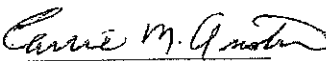
CHICAGO, February 15, 2012

To the President and Members of the City Council:

Your Committee on the Budget and Government Operations, having had under consideration an Ordinance authorizing the execution of an intergovernmental agreement between the State of Illinois Comptroller and the City of Chicago necessary for participation in the Comptroller's Local Debt Recovery Program; and having had the same under advisement, begs leave to report and recommend that Your Honorable Body pass the Ordinance transmitted herewith.

This recommendation was concurred in by a viva voce vote of the members of the Committee.

~~members of the Committee with dissenting vote(s).~~

(Signed) 
Carrie M. Austin
Chairman