

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: October 4, 2011 [X] Consent [] Regular
[] Public Hearing

Department

Submitted By: PALM BEACH COUNTY COMMISSION ON ETHICS

Submitted For: PALM BEACH COUNTY COMMISSION ON ETHICS

I. EXECUTIVE BRIEF

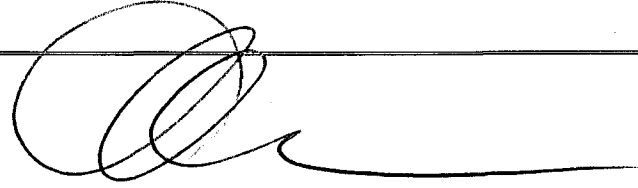
Motion and Title: Staff recommends motion to: Approve a Memorandum of Understanding with the Lake Worth Community Redevelopment Agency to engage the services of the Palm Beach County Commission on Ethics.

Summary: This Memorandum of Understanding will allow the Lake Worth Community Redevelopment Agency (Lake Worth CRA) to engage the services of the Commission on Ethics and its Executive Director. This action addresses the Lake Worth CRA's desire to subject itself to the County's ethics regulations. District 7 (LB)

Background and Justification: Palm Beach County voters approved a countywide referendum bringing cities and municipalities under the jurisdiction of the commission on ethics and the ethics codes. As an independent special district, the Lake Worth CRA is not currently under the jurisdiction of the Commission on Ethics by statute or referendum; however, Section 2-258 of the Commission on Ethics ordinance states as follows: *The commission on ethics may be empowered to review, interpret, render advisory opinions, and enforce the county's code of ethics or similar ordinances, rules or regulations duly adopted by the county or other local or municipal government, or any commission, bureau, district or other governmental entity located in the county, pursuant to agreements or memoranda of understanding between the commission on ethics and said governmental agency.* The Lake Worth CRA and the Commission on Ethics have determined that it will serve the public interest to enter into this Memorandum of Understanding in order to accomplish the foregoing goals. This agreement will remain in effect for one year.

Attachments:

Memorandum of Understanding

Recommended by:  Alan S. Johnson, Executive Director Date: 09/16/2011

Approved by:  N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	*	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes ___ No ___

Budget Account No.: Fund ___ Department ___ Unit ___ Object ___

Reporting Category _____

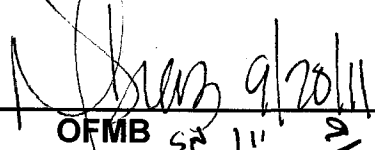

B. Recommended Sources of Funds/Summary of Fiscal Impact:

* Fiscal impact is indeterminable at this time. This is dependent upon the number of Advisory Opinions and Complaints requested by the Lake Worth CRA.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

 OFMB 9/20/11 Contract Development and Control 9/23/11

B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:



 Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into this ____ day of _____, 2011, between the Lake Worth Community Redevelopment Agency, a special district established by the City of Lake Worth as authorized by Section 163.370(a), and Palm Beach County, a political subdivision of the State of Florida, by and through the Palm Beach County Board of County Commissioners for the services of the Palm Beach County Commission on Ethics.

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to clearly identify the roles and responsibilities of the Palm Beach County Commission on Ethics ("Commission on Ethics") and the Lake Worth Community Redevelopment Agency ("Lake Worth CRA") as they relate to the implementation of the Palm Beach County Code of Ethics. The Palm Beach County Code of Ethics is intended to promote honesty, integrity and accountability in local government. To support this goal the Lake Worth CRA submits to the jurisdiction of the Palm Beach County Commission on Ethics and seeks to hire the Commission on Ethics to conduct investigations, hear complaints and process advisory opinions. In particular, this MOU is intended to have the Commission on Ethics exercise the authority, functions and powers granted by the Commission on Ethics ordinance as to the CRA's operations.

II. Background

In response to several high profile prosecutions of Palm Beach County and West Palm Beach City Commissioners, the Palm Beach County Commission a county code of ethics, effective May 1, 2010. Since then, Palm Beach County voters approved a countywide referendum bringing cities and municipalities under the jurisdiction of the commission on ethics and the ethics codes, effective June 1, 2011. As a dependant-taxing district, the Lake Worth CRA is not under the jurisdiction of the commission on ethics by statute or referendum. However, anticipating that local taxing districts would want to take advantage of the oversight, training and advisory functions of the Commission on Ethics, Section 2-258 of the commission on ethics ordinance states as follows:

The commission on ethics may be empowered to review, interpret, render advisory opinions, and enforce the county's code of ethics or similar ordinances, rules or regulations duly adopted by the county or other local or municipal government, or any commission, bureau, district or other governmental entity located in the county, pursuant to agreements or memoranda of understanding between the commission of ethics and said governmental agency.

The Lake Worth CRA and the Commission on Ethics have determined that it will serve the public interest to enter into this Memorandum of Understanding in order to accomplish the foregoing goals.

III. Agreement

The Commission on Ethics, subject to approval by the Board of County Commissioners, is authorized to negotiate agreements or memoranda of understanding with special districts and other public officers and entities, allowing the Commission on Ethics to exercise any and all authority, functions and powers

set forth in the Commission on Ethics Ordinance for the benefit of the public entity, in this case the Lake Worth CRA.

The Lake Worth CRA seeks to submit to the jurisdiction of the Palm Beach County Commission on Ethics and to hire the Commission on Ethics to conduct investigations, hear complaints and process advisory opinions in order to promote honesty, integrity and accountability in government.

The Commission on Ethics and CRA recognize that given the knowledge, experience, and ability of the staff of the Commission on Ethics in conducting investigations and interpreting the Palm Beach County Code of Ethics, the Commission on Ethics is in the best position to expeditiously and economically fulfill these services for the CRA.

This Memorandum of Understanding authorizes the Commission on Ethics to exercise the authority, functions and powers granted by the commission on ethics ordinance over the operations of the Lake Worth CRA.

a. Effective Date and Term

This Memorandum of Understanding shall take effect upon execution by the Board of County Commissioners. This Memorandum of Understanding will then be in effect for one (1) year. Either party may terminate this agreement with ninety days (90) written notice to the other party. Upon notice of termination by the CRA, any ongoing CRA investigations being conducted by the Commission on Ethics pursuant to this Memorandum of Understanding shall continue until completed.

The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

b. Responsibilities and Duties

The Commission on Ethics shall exercise any and all authority, functions and powers provided for in the Commission on Ethics ordinance and Code of Ethics ordinance in regard to the Lake Worth CRA, including:

- A) The Commission on Ethics shall have the authority to (1) review, interpret, render advisory opinions and enforce the Code of Ethics, (2) investigate legally sufficient complains within the jurisdiction of the Commission on Ethics and conduct public hearings as provided by the Commission on Ethics ordinance; and 3) develop and deliver training programs and ensure that effective and meaningful training experiences are delivered in a timely and efficient manner.
- B) The Commission on Ethics shall have the power to conduct investigations and receive full and unrestricted access to the records of the board of directors and staff of the Lake Worth CRA.

- C) In the case of a refusal to obey a request for documents or for an interview, the Commission on Ethics shall have the power to subpoena witnesses, administer oaths, and require the production of records in a manner consistent with section 162.08 Florida Statutes. The Commission on Ethics shall not interfere with any ongoing criminal investigation or prosecution of the State Attorney or the U.S. Attorney for the Southern District of Florida.
- D) Where the Commission on Ethics suspects a possible violation of any state, federal or local law, or rule, regulation or policy, the Executive Director or designee shall notify the appropriate civil, criminal, or administrative agencies. In the case of a possible violation of a rule, regulation or policy governing a Lake Worth CRA staff member or director, the Executive Director or designee shall also notify the Lake Worth City Council and the Chairman of the CRA.
- E) The Commission on Ethics shall have the power to require directors and staff to participate in ethics training on a regular basis
- F) The Commission on Ethics "hotline" will receive complaints related to Lake Worth CRA operations. The Lake Worth CRA will support and assist the Commission on Ethics in publicizing the "hotline" and encouraging the reporting of ethics violations by local citizens, officials and employees.
- G) The Commission on Ethics may exercise any of the powers contained in the Commission on Ethics Ordinance upon its own Initiative
- H) All records held by the Commission on Ethics and its staff related to an active preliminary investigation are confidential and exempt from disclosure in a manner consistent with the provisions in s. 112.3188(2) and s. 112.324, Florida Statutes.
- I) The Commission on Ethics and its staff shall be considered "an appropriate local official" of the CRA for purpose of whistleblower protection provided by s. 112.3188(1), Florida Statutes.
- J) The Commission on Ethics may recommend remedial actions and may provide prevention and training services to Lake Worth CRA directors and staff. The Commission on Ethics may follow up to determine whether recommended remedial actions have been taken.
- K) The Commission on Ethics shall monitor the costs of investigations undertaken.
- L) The Commission on Ethics will provide an invoice for services rendered under this Memorandum of Understanding. The CRA agrees to provide payment to Palm Beach County within thirty (30) days of receiving an invoice.
- M) As part of its obligation under this Memorandum of Understanding, CRA staff will in all instances cooperate fully with Commission on Ethics staff regarding issues of staff and vendor training and in timely providing records requested by staff investigators.

- N) In any case in which the Commission on Ethics determines that the complaining party filed a frivolous or groundless complaint as defined in s. 57.105 Florida Statutes, or a complaint with malicious intent and with the knowledge that the complaint contains one or more material false allegations, or with reckless disregard for whether the complaint contains material false allegations, the commission shall order the complaining party to pay any cost and attorneys fees incurred by the Commission on Ethics and or the alleged violator.
- O) The Commission on Ethics will maintain a website and all required databases including gift reports, voting conflict disclosures, outside employment waivers, final orders and advisory opinions.

IV. Provision for fees

As authorized by sect. 2-258 of the code of ethics, this Memorandum of Understanding shall include a provision for fees to be paid to the Commission on Ethics from the Lake Worth CRA in exchange for such benefits at a rate established by the Commission on Ethics. The fee schedule adopted pursuant to this Memorandum of Understanding is as indicated. These rates are fixed for the term of the contract and subject to change thereafter. There will be no cost to the CRA for training. Appeals will be billed on an hourly basis only at a rate of forty dollars (\$40) per hour. Regarding option B (Event option) for the avoidance of doubt, the cost of a complaint which proceeds through multiple phases will be the sum of the phases completed. For example, a complaint through final hearing or settlement would cost two thousand fifty dollars (\$2,050).

Option A: Hourly []

Director	\$89.00
Attorney	\$40.00
Investigator	\$45.00
Administrative	\$40.00

Option B: Event

Advisory opinion	\$ 200.00
Complaint (inquiry through legal sufficiency finding)	\$ 300.00
Complaint (investigation through pc hearing)	\$ 1,000.00
Complaint (pc to settlement or final hearing)	\$ 750.00

V. Delegation of Duty

Nothing contained herein shall be deemed to delegate the constitutional or statutory duties of state, county, or municipal officers.

VI. Liability

The parties to this Memorandum of Understanding and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions and negligence of the other party. Further,

nothing herein shall be construed as a waiver of sovereign immunity by either party, pursuant to Section 768.28, Florida statutes.

VII. Controlling Law

This Memorandum or Understanding shall be interpreted and construed according to, and governed by, the laws of the State of Florida. Any and all legal action necessary to enforce the Memorandum of Understanding will be held in Palm Beach County.

VIII. Remedies

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise of any right, power or remedy hereunder shall preclude any other of further exercise thereof.

IX. Severability

In the event any term or provision of this Memorandum of Understanding is determined by a court of competent jurisdiction to be illegal or otherwise invalid, such provision shall be construed or deleted and shall not affect the remaining portions of this Memorandum of Understanding and the remainder shall be construed to be in full force and effect.

X. Amendment

This Memorandum of Understanding shall not be modified or amended except by written agreement duly executed by the parties hereto.

XI. Notice

Each party shall furnish to the other such notice, as may be required from time to time, pursuant to this Memorandum of Understanding, in writing, posted in the U.S. mail or by hand delivery, or by overnight delivery service and addressed as follows:

To Commission on Ethics: 2633 Vista Parkway
West Palm Beach, FL 33411

To Lake Worth CRA: 29 South J Street, Unit 1
Lake Worth, FL 33460

and

David N. Tolces, Esquire
GOREN, CHEROF, DOODY & EZROL, P.A.
3099 East Commercial Boulevard, Suite 200
Ft. Lauderdale, FL 33308

XII. Effective Date

This Memorandum of Understanding and the rights and obligations conferred herein shall become effective upon execution by the Palm Beach County Board of County Commissioners.

XIII. Point of Contact

For purposes of fulfilling the duties and responsibilities of this Memorandum of Understanding, the points of contact will be as follows:

Commission on Ethics:
Megan Rogers, Staff Counsel
2633 Vista Parkway
West Palm Beach, FL 33411
ethics@palmbeachcountyethics.com
(561) 355-0724

To Lake Worth CRA:
Joan Oliva, Executive Director
29 South J Street, Unit 1
Lake Worth, FL 33460
joliva@lakeworth.org
(561) 493-2550

XIV. Entirety of Agreement

This Memorandum of Understanding represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, written or oral, relating to this Memorandum of Understanding.

ATTEST

PALM BEACH COUNTY, FLORIDA, THROUGH
ITS BOARD OF COUNTY COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller

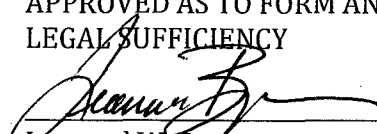
By: _____
Clerk

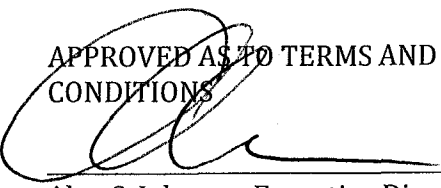
By: _____
_____, Chair

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: 
Leonard W. Berger,
Assistant County Attorney

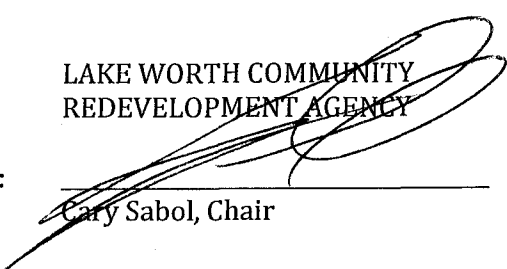
By: 
Alan S. Johnson, Executive Director
Commission on Ethics

ATTEST:

APPROVED AS TO TERMS AND
CONDITIONS

LAKE WORTH COMMUNITY
REDEVELOPMENT AGENCY

By: 
Joan Oliva, Executive Director

By: 
Cary Sabol, Chair

(SEAL)

STATE OF FLORIDA
COUNTY OF PALM BEACH

Sworn to (or affirmed) and subscribed before me this 18TH day of August, 2011, by **Joan Oliva, Executive Director**, who is personally known to me, or who has produced _____ as identification and **Cary Sabol, Chair**, who is personally known to me or who has produced _____ as identification.



EMILIA THEODOSSAKOS
MY COMMISSION # DD 967672
EXPIRES: July 4, 2014
Bonded Thru Budget Notary Services

Emilia Theodossakos

Signature of Notary Public

EMILIA THEODOSSAKOS

Print name of Notary Public, or affix commission stamp above