

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
SITTING AS THE ENVIRONMENTAL CONTROL BOARD

AGENDA ITEM SUMMARY

Meeting Date: January 24, 2012 Consent Regular
 Ordinance Public Hearing
 Workshop

Department:
Submitted by: COUNTY ATTORNEY
For: PALM BEACH COUNTY ENVIRONMENTAL CONTROL OFFICE

I. EXECUTIVE BRIEF

Motion and Title: Staff Recommends Motion to Approve: a memorandum of agreement with the Department of Health ("Department") to delegate the duties and responsibilities of the Environmental Control Officer ("ECO") to the Department's local legal office.

Summary: Chapter 77-616, Laws of Florida ("Special Act"), as amended, authorizes the Board of County Commissioners of Palm Beach County, sitting as the Environmental Control Board, to appoint an ECO. Pursuant to the Special Act, the ECO may be either an attorney or an engineer. The purpose of this memorandum of agreement is to officially delegate the duties and responsibilities of the ECO to the Department's legal office. Countywide (GDB)

Background and Justification: The Special Act authorizes the Board of County Commissioners of Palm Beach County to appoint an ECO, whose duties include enforcing the provisions of the Environmental Control Act in cooperation with the County Health Director. This memorandum of agreement will effectively delegate the duties and responsibilities of the ECO to an attorney within the Department's legal services office.

Attachments: Memorandum of Agreement

Recommended by: James R. DeSantis for Denise Niven 1/10/12
 DEPARTMENT DIRECTOR Date

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	~ 0 ~ * see below				
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____

Budget Account No.: Fund _____ Department _____ Unit _____ Object _____
Reporting Category _____

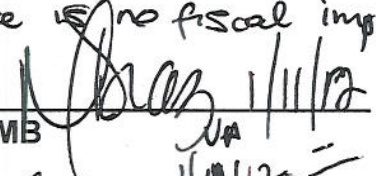
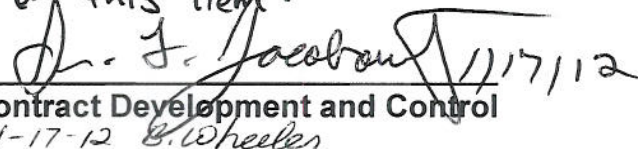
B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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


* There is no fiscal impact on this item.

OFMB 1/11/12 1/17/12

Contract Development and Control
1-17-12 B. Wheeler

B. Legal Sufficiency:



Assistant County Attorney

C. Other Department Review:

Department Director

MEMORANDUM OF AGREEMENT
ENVIRONMENTAL CONTROL OFFICER SERVICES

This Memorandum of Agreement (“Agreement”) is entered into this _____ day of January, 2012, between the State of Florida, Department of Health, Palm Beach County Health Department, hereinafter referred to as the “**Department**,” and Palm Beach County (hereinafter referred to as the “**County**,” to have the Department’s local legal office perform the duties and responsibilities of the Environmental Control Officer.

THE PARTIES AGREE:

I. Delegation of Duties

All duties and responsibilities of the Environmental Control Officer, as provided in Chapter 77-616, as amended, Palm Beach County Environmental Control Act and Chapter 59-1698, as amended, Palm Beach County Child Care Act, are hereby delegated to the General Counsel for the Department, or his/her successor or designee.

II. Department Responsibilities

The Department Agrees to:

A. Be responsible for all the duties, functions and responsibilities as outlined in Section 7 of Chapter 77-616, as amended and Section 10 of Chapter 59-1698, as amended. The Responsibilities include:

1. Enforcement of Chapter 381 and 386 Florida Statutes, as amended, Palm Beach County Ordinance 78-5, as amended, the Rules and Regulations Governing Child Care in Palm Beach County and the Rules and Regulations Governing Family Day Care Facilities in Palm Beach County, as amended, and any State or County statute, law, ordinance, rule, or regulation promulgated as a

result thereof, in cooperation with the Palm Beach County Health Department Director.

2. Provision of legal assistance and representation to the Palm Beach County Health Director, Health Department Staff, the Environmental Control Board, the Environmental Control Hearing Board, the Child Care Advisory Council, the Child Care Facilities Board, the Environmental Appeals Board and any other County boards or agencies which may benefit from the Environmental Control Officer's expertise, regarding the amendment and enactment of any State or County laws, ordinances, rules and/or regulations promulgated as set forth in paragraph II.A.1 above.
3. Conduct investigations and institute legal proceedings, to include any Circuit Court actions, to abate violations of the Environmental Control Act, the Child Care Special Act and all laws, ordinances and/or rules adopted and promulgated in accordance with the laws of the State of Florida and Palm Beach County.
4. Institute or defend any appeal which may be filed in county, circuit, state or federal court, as a result of any decision of the Environmental Control Board, the Environmental Control Hearing Board, the Child Care Facilities Board, the Child Care Advisory Council, the Environmental Appeals Board and/or any county, circuit, state or federal court.
5. Perform all administrative duties as required under the Environmental Control and Child Care Acts. Such duties shall include:
 - i. Provision of a Paralegal to assist with the administrative responsibilities required under the above-named Acts to act as the "Clerk" to the Environmental Control Hearing Board, the Environmental Appeals Board and the Child Care Advisory Council.

- ii. Designation of a member(s) of Department staff to act as administrative staff to the Environmental Control Hearing Board, the Child Care Advisory Council and the Environmental Appeal Board.
- iii. Appointment of an official records custodian for the Environmental Control Hearing Board, the Child Care Advisory Council and the Environmental Appeals Board.
- iv. Assistance in the preparation and submission and of all agenda items for any matter which must be presented before the Board of County Commissioners concerning issues which fall within the scope of this Memorandum of Understanding. Such matters include, but are not limited to, board appointments, rules and ordinance revisions and workshop issues.

B. The list of duties and responsibilities as described in Section II.A above is not exhaustive and does not limit the Department from performing such other duties as may arise in the course of its legal representation as the Environmental Control Officer as set forth in the Environmental Control Act.

III. The **County** Agrees to:

Compensate the Department in the amount budgeted by the Palm Beach Board of County Commissioners in providing the above stated services. Notwithstanding the Termination provision in Paragraph IV.C. below, the County's performance and obligation to pay under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners. The County shall advise the Department within thirty (30) days of finalizing its budget if it failed to appropriate funds for this Agreement.

IV. The County and The Department Mutually Agree:

A. Indemnification.

The Department as a State agency and the County as a sub-division of the State each agree to be responsible to the limits set forth in Section 768.28 Florida Statutes for its own negligent acts which result in suit or claims and agrees to be liable to the limits set forth in Section 768.28, Florida Statutes, for any damages proximately caused by said acts or omissions. Nothing herein shall be construed as a waiver of sovereign immunity or consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any Agreement against the Department or County respectfully arising out of this agreement.

B. Effective Date

The term of this Agreement shall commence on the date of execution and will renew each year on the anniversary date of such agreement, unless terminated earlier by the parties hereto in accordance with Paragraph IV.C. below.

C. Termination

This Agreement may be terminated with or without cause with no less than three (3) months' notice in writing by either party. Waiver of breach of any provisions of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

D. Relationship.

Nothing herein shall create or be construed to create an employer-employee, agency, joint venture, or partnership relationship between the parties.

E. Equal Opportunity Provision

The County and Department agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status, familial status, sexual

orientation and/or gender identity or expression, be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

F. Renegotiation or Modification

Modifications of provisions of this Agreement shall only be valid when they have been reduced to writing and duly signed by both parties.

F. Official Representatives

(1) For the Department:

Chief Legal Counsel
Palm Beach County Health Department
800 Clematis Street
West Palm Beach, Florida 33402
Telephone: (561) 671-4007
Fax: (561) 837-5195

(2) For the County:

County Attorney
Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601,
West Palm Beach, Florida 33401
Telephone: 561-355-2225
Fax: 561-355-4398

H. All Terms and Conditions Included

This Agreement contain all the terms and conditions agreed upon by the parties. There are no provisions, terms, conditions, or obligations other than those contained herein, and the Agreement shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of the Agreement is found to be illegal or unenforceable, the remainder of the Agreement shall remain in full force and effect and such term or provision shall be stricken.

I. Remedies


This Agreement shall be construed and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County.

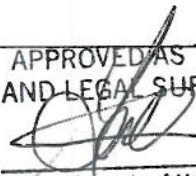
J. Interlocal Agreement

As an Interlocal Agreement pursuant to Part 1 of Chapter 163, Florida Statutes, this Agreement shall be filed with the Clerk of the Circuit Court of Palm Beach County.

(REMAINDER OF PAGE LEFT BLANK INTENTIONALLY)

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS SITTING AS THE PALM BEACH COUNTY ENVIRONMENTAL CONTROL BOARD	STATE OF FLORIDA DEPARTMENT OF HEALTH PALM BEACH COUNTY HEALTH DEPARTMENT
SIGNED BY:	SIGNED BY: 
NAME: Shelley Vana	NAME: Alina Alonso, MD
TITLE: Chair	TITLE: Director
DATE:	DATE: 12/16/11

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
BY 
County Attorney