

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 7/16/13 Consent Regular
 Ordinance Public Hearing

Department: County Administration

Submitted By:

Submitted For: Commission on Ethics

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve a Memorandum of Understanding (MOU) with the Delray Beach Downtown Development Authority and Palm Beach County for the services of the Palm Beach County Commission on Ethics.


Summary: The Delray Beach Downtown Development Authority agreed to subject itself to the jurisdiction and authority of the Commission on Ethics. This MOU identifies the roles and responsibilities of the Commission on Ethics and the Delray Beach Downtown Development Authority in implementing the Palm Beach County Code of Ethics, and establishes a schedule of fees to be paid by the Agency to the County in exchange for services. As required by the Commission on Ethics Ordinance, all fees paid under this agreement must be used to fund Commission on Ethics operations. The MOU is subject to final approval of the Board of County Commissioners. District 7 (LB)

Background and Justification (or Policy Issues): Palm Beach County Voters approved a countywide referendum bringing cities and municipalities under the jurisdiction of the Commission on Ethics, effective June 1, 2011. The Commission on Ethics Ordinance allows other government entities to retain the services of the Commission on Ethics, subject to ultimate approval by the Board of County Commissioners. The Delray Beach Downtown Development Authority and the Commission on Ethics have determined that it will serve the public interest to enter into this MOU.

Attachments:

- (3) Original Memoranda of Understanding

Recommended by: _____
Department Director Date

Approved By:  _____
County/Deputy/Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>*</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
No. ADDITIONAL FTE POSITIONS (Cumulative)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

Is Item Included In Current Budget? Yes _____ No X

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

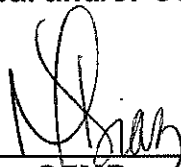
B. Recommended Sources of Funds/Summary of Fiscal Impact:

* Fiscal impact is indeterminable at this time.

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

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



 OFMB
 5/21/13
 7/13/13
 7/13



 Contract Dev. and Control
 7/5/13

B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:

 Department Director

**Memorandum of Understanding between the
Delray Beach Downtown Development Authority and the
Palm Beach County Commission on Ethics**

This Memorandum of Understanding (MOU) is entered into this ____ day of _____, 2013, between the Delray Beach Downtown Development Authority, a special district established by the City of Delray Beach as authorized by §189.4041 and 189.404, Florida Statutes, 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 Delray Beach Downtown Development Authority ("DBDDA") 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 DBDDA 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 DBDDA's operations as limited by Florida and federal laws.

II. Background

In response to several high profile prosecutions of Palm Beach County and West Palm Beach City Commissioners, the Palm Beach County Commission adopted 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 Special District of the State of Florida, the Delray Beach Downtown Development Authority is not under the jurisdiction of the Commission on Ethics by statute or referendum. However, anticipating that local special districts would want to take advantage of the oversight, training and advisory functions of the Commission on Ethics, §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 duty 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 DBDDA 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 DBDDA.

The DBDDA 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 the DBDDA 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 DBDDA.

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 DBDDA.

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 three (3) years. Either party may terminate this agreement with thirty days (30) written notice to the other party. Upon notice of termination by the DBDDA, any ongoing DBDDA investigations being conducted by the Commission on Ethics pursuant to this Memorandum of Understanding shall continue until completed. The DBDDA agrees to pay all fees pursuant to section IV of this MOU for such ongoing investigations through the conclusion of all administrative and/or judicial proceedings. This provision shall survive termination of this MOU.

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 DBDDA, 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 complaints 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 DBDDA relating to or arising out of DBDDA employment, membership on the DBDDA board, or any other DBDDA activities.
- 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 §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 DBDDA staff member or director, the Executive Director or designee shall also notify the Delray Beach City Council and the Chairman of the DBDDA.
- E) The Commission on Ethics shall have the power to require directors and staff to participate in ethics training on a regular basis upon reasonable notice and mutually agreeable time and place.
- F) The Commission on Ethics "hotline" will receive complaints related to DBDDA operations. The DBDDA 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 §112.3188(2) and §112.324, Florida Statutes.
- I) The Commission on Ethics and its staff shall be considered "an appropriate local official" for purpose of whistleblower protection provided by §112.3188(1), Florida Statutes.
- J) The Commission on Ethics may recommend remedial actions and may provide prevention and training services to DBDDA 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 DBDDA 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, DBDDA 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 §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.
- P) Notwithstanding anything in this Agreement to the contrary, nothing contained herein shall grant the Commission on Ethics any powers, rights or responsibilities in excess of those expressly granted in the Florida Statutes or which are in violation of any Florida or United States law, and the Florida or United States Constitution. The DBDDA acknowledges that Palm Beach County, through its Commission on Ethics is authorized to impose more stringent standards of conduct and disclosure requirements than provided for by general law pursuant to section 112.326, Florida Statutes.

IV. Provision for fees

As authorized by §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 DBDDA 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 DBDDA 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 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
Attorney	\$40
Investigator	\$45
Administrative	\$40

Option B: Event

Advisory opinion	\$ 200
Complaint (inquiry through legal sufficiency finding)	\$ 300
Complaint (investigation through probable cause hearing)	\$ 1,000
Complaint (probable cause hearing to settlement or final hearing)	\$ 750

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 §768.28, Florida statutes.

VII. Controlling Law

This Memorandum of 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: 300 N. Dixie Highway, 4th Floor
West Palm Beach, FL 33401

To DBDDA: 85 SE 4th Avenue, Suite 108
Delray Beach, FL 33483

and

David A. Beale, Esquire
55 SE 2nd Avenue, Suite 301
Delray Beach, FL 33444

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
300 N. Dixie Highway, 4th Floor
West Palm Beach, FL 33401
Ethics@palmbeachcountylethics.com
(561) 355-1959

Delray Beach Downtown Development Authority:
Marjorie Ferrer, Executive Director
85 SE 4th Avenue, Suite #108
Delray Beach, FL 33483
mferrer@downtowndelraybeach.com
(561) 243-1077

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:
Sharon R. Bock, Clerk & Comptroller

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

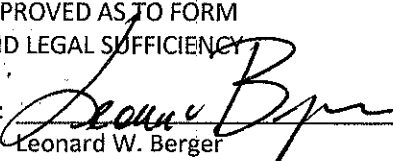
By: _____
Clerk


By: _____
Steven Abrams, Mayor

[SEAL]

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

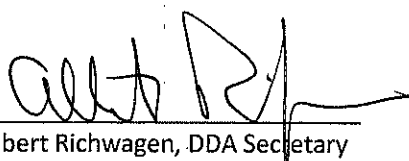
APPROVED AS TO TERMS AND CONDITIONS

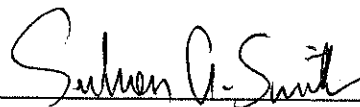
By: 
Leonard W. Berger
Chief Assistant County Attorney

By: 
Steven P. Cullen, Executive Director
Commission on Ethics

ATTEST:

DELRAY BEACH DOWNTOWN DEVELOPMENT
AUTHORITY

By: 
Albert Richwagen, DDA Secretary

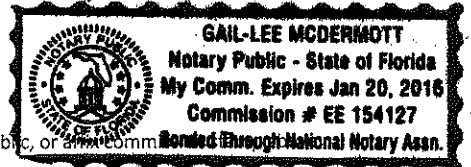
By: 
Seabron A. Smith, DDA Chair

[SEAL]

STATE OF FLORIDA
COUNTY OF PALM BEACH

Sworn to (or affirmed) and subscribed before me this 26 day of June, 2013, by Albert Richwagen, DDA Secretary, who is personally known to me, or _____ who has produced _____ as identification, and Seabron A. Smith, DDA Chair, who is personally known to me, or _____ who has produced _____ as identification.

By: Gail-Lee McDermott
Notary Public



Print name of Notary Public, or affix comm