

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: August 20, 2019 [X] Consent [] Regular [] Public Hearing

Department: Palm Beach County Commission on Ethics

Submitted by: Palm Beach County Commission on Ethics

Submitted for: Palm Beach County Commission on Ethics

I. EXECUTIVE BRIEF

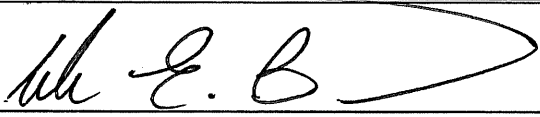
Motion and Title: Staff recommends **motion to approve:** a Memorandum of Understanding (MOU) with the Delray Beach Downtown Development Authority and Palm Beach County to engage the services of the Palm Beach County Commission on Ethics retroactive and in effect from July 14, 2019 through September 30, 2022.

Summary: The Delray Beach Downtown Development Authority (Delray Beach DDA) agreed to subject itself to the jurisdiction and authority of the Commission on Ethics and its Executive Director. This MOU identifies the roles and responsibilities of the Commission on Ethics and the Delray Beach DDA 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 4 and 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 effective June 1, 2011. The Commission on Ethics Ordinance allows government entities to retain the services of the Commission on Ethics, subject to ultimate approval by the Board of County Commissioners. The Delray Beach DDA and the Commission on Ethics have determined that it will serve the public interest to enter into this MOU.

Attachment:

- 1. Memoranda of Understanding (Three (3) originals)

Recommended by: 
Mark E. Bannon, Executive Director

7/29/2019
Date

Approved By: 
Todd J. Bonlarron, Assistant County Administrator

8/5/19
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	*	*	*	_____	_____
No. ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes _____ No _____
 Does this item include the use of federal funds? 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 and is dependent upon the number of opinions, inquiries, and complaints completed.**

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

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

Luc R 7/20/19
 OFMB ^{KD} BR 7/29
 7/29 ASD 7/29

Ann S. Jacobson 7/30/19
 Contract Dev. and Control

B. Legal Sufficiency:

Leonard Berger
 Leonard Berger,
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

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 August, 2019, between the Delray Beach Downtown Development Authority, a special district established by the City of Delray Beach as authorized by §163.370(2)(a), 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 (BCC) 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 ("Delray Beach DDA") as they relate to the implementation of the Palm Beach County Code of Ethics (Code of Ethics) and the Palm Beach County Lobbyist Registration Ordinance (Lobbyist Registration Ordinance). The Code of Ethics and the Lobbyist Registration Ordinance are intended to promote honesty, integrity and accountability in local government. To support this goal the Delray Beach DDA 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 Delray Beach DDA's operations.

II. Background

As a dependent district, the Delray Beach DDA is not under the jurisdiction of the Commission on Ethics by statute or referendum. However, §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 Delray Beach DDA 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 BCC, 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 Delray Beach DDA.

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

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 Delray Beach DDA.

a. Effective Date and Term

The terms of this Memorandum of Understanding shall become effective on July 14, 2019 and will remain in effect until September 30, 2022 following the date of execution by the BCC. Either party may terminate this agreement with ninety days (90) written notice to the other party. Upon notice of termination by the Delray Beach DDA, any ongoing Delray Beach DDA investigations being conducted by the Commission on Ethics pursuant to this Memorandum of Understanding shall continue until completed. The Delray Beach DDA 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.

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, Code of Ethics Ordinance and Lobbyist Registration Ordinance in regard to the Delray Beach DDA, including:

- A) The Commission on Ethics shall have the authority to (1) review, interpret, render advisory opinions and enforce the Code of Ethics and Lobbyist Registration Ordinance, (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 Delray Beach DDA.
- 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 an internal rule,

regulation or policy governing a Delray Beach DDA staff member or director, the Executive Director or designee shall also notify the Executive Director of the DDA.

- E) The Delray Beach DDA agrees to have all board members, directors and staff participate in ethics training within 90 days of the effective date of this MOU. All newly hired or appointed board members, directors or staff shall participate in ethics training within 90 days of appointment or hiring.
- F) The Commission on Ethics "hotline" will receive complaints related to Delray Beach DDA operations. The Delray Beach DDA will support and assist the Commission on Ethics in publicizing the "hotline" and encouraging the reporting of Code of Ethics or Lobbyist Registration 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 Delray Beach DDA 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 Delray Beach DDA 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, Delray Beach DDA board members, directors and staff will in all instances cooperate fully with the Commission on Ethics by timely providing records requested by Commission on Ethics staff.
- 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, the Delray Beach DDA 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 §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 Delray Beach DDA 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 Delray Beach DDA for training. Regarding option B (Event option) for the avoidance of doubt, the cost of a complaint that 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 one hundred fifty-two dollars and fifty cents (\$2436.25).

In the event Option B is selected, any judicial appeal, whether interlocutory or after final hearing, shall be billed at the hourly rate as provided in Option A below.

Option A: Hourly []

Director	\$93.00
General Counsel	\$75.00
Investigator	\$45.00
Administrative	\$40.00

Option B: Event []

Advisory opinion	\$225.00
Complaint (sworn/non-sworn) Matters	
Inquiry through Legal Sufficiency finding	\$350.00
Investigation through Probable Cause hearing	\$1,250.00
Probable Cause hearing to settlement or final hearing	\$836.25
Total costs from Inquiry through settlement or final hearing	\$2436.25

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 or 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, Suite 450
West Palm Beach, FL 33401

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

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:
COE General Counsel
300 N. Dixie Highway, Suite 450
West Palm Beach, FL 33401
Ethics@palmbeachcountyethics.com
(561) 355-1915

Delray Beach DDA:
Laura Simon, Executive Director
85 SE 4th Avenue, Suite #108
Delray Beach, FL 33483
lsimon@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: _____
(printed name) _____, Clerk

By: _____
Mack Bernard, Mayor

[SEAL]

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: *Leonard W. Berger*
Leonard W. Berger
Chief Assistant County Attorney

By: *Mark E. Bannon*
Mark E. Bannon, Executive Director
Commission on Ethics

ATTEST:

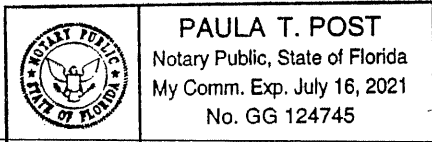
DELRAY BEACH DOWNTOWN DEVELOPMENT AUTHORITY

By: *Mavis Benson*
Mavis Benson, Secretary

By: *Peter Arts*
Peter Arts, Chair

STATE OF FLORIDA
COUNTY OF PALM BEACH

Sworn to (or affirmed) and subscribed before me this 22 day of July, 2019, by Mavis Benson, Delray Beach DDA Secretary, who is personally known to me, or who has produced _____ as identification, and Peter Arts, Delray Beach DDA Chair, who is personally known to me, or who has produced _____ as identification.



By: *Paula T. Post*
Notary Public

Print name of Notary Public, or affix commission stamp above