

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: September 13, 2011 Consent Regular
 Public Hearing

Department

Submitted By: PALM BEACH COUNTY COMMISSION ON ETHICS

Submitted For: PALM BEACH COUNTY COMMISSION ON ETHICS

I. EXECUTIVE BRIEF

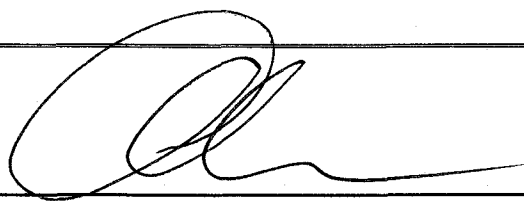
Motion and Title: Staff recommends motion to: Approve a Memorandum of Understanding with the Boca Raton Airport Authority to engage the services of the Palm Beach County Commission on Ethics.

Summary: This Memorandum of Understanding will allow the Boca Raton Airport Authority to engage the services of the Commission on Ethics and its Executive Director. This action addresses the Airport Authority's desire to subject itself to the County's ethics regulations. District 4 (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 Authority 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 Authority 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:  **Date** 08/16/2011
Alan S. Johnson, Executive Director

Approved by: N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
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 Boca Raton Airport Authority.

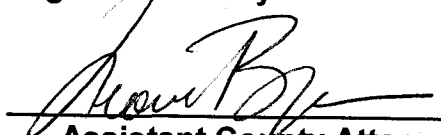
C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

 _____ OFMB SW 8/22/11	 _____ Contract Development and Control 8.30.11 B. wheels
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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 is entered into this _____ day of _____, 2011, between the Boca Raton Airport Authority, a special district existing pursuant to Chapter 2004-468, Laws of Florida, and 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 Boca Raton Airport Authority (the "Authority") as they relate to the implementation of the Palm Beach County Code of Ethics (the "Code of Ethics"). The Code of Ethics is intended to promote honesty, integrity and accountability in local government.

II. Background

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 Authority is not under the jurisdiction of the Commission on Ethics by statute or referendum; however, Authority Members are subject to the Code of Ethics and jurisdiction of the Commission on Ethics by virtue of the definition of "Official" in the Code of 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 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 on ethics and said governmental agency.

The Authority 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 Authority.

The Authority desires to submit to the jurisdiction of the Palm Beach County Commission on Ethics for its Members, 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 Authority 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 Authority.

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 Authority.

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 Authority, any ongoing Authority 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 Authority, 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 Authority.
- 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 Airport Manager or designee shall notify the appropriate civil, criminal, or administrative agencies.
- E) The Commission on Ethics shall have the power to require Members and staff to participate in ethics training on a regular basis
- F) The Commission on Ethics "hotline" will receive complaints related to Authority operations. The Authority 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 Authority 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 Authority Members and employees. 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 Authority 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, Authority employees will in all instances cooperate fully with Commission on Ethics staff regarding issues of employee 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.

c. Interpretation of Code of Ethics

Consistent with the legislative intent of the County Commission and the Commission on Ethics, the following sections of the Code of Ethics require additional construction as applied to the Authority:

- A) Section 2-443(d) shall only be interpreted to prohibit Authority Members and employees or their outside employers or businesses from entering into contracts with the Authority, not the County or the City of Boca Raton; and
- B) Section 2-443(f) shall only be interpreted to prohibit Authority Members and employees from accepting travel expenses from any Authority contractor, vendor, service provider, bidder or proposer, not County or Municipal contractors, vendors, service providers, bidders or proposers.

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 Authority 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 Authority for training.

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 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: 2633 Vista Parkway
West Palm Beach, FL 33411

To Authority: Attn: Airport Manager
3701 FAU Blvd., Suite 205
Boca Raton, Florida 33431

XII. Effective Date

This Memorandum of Understanding and the rights and obligations conferred herein shall become effective upon filing with the Clerk of the Circuit Court of Palm Beach County, Florida.

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:

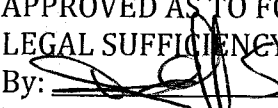
Commission on Ethics: Megan Rogers, staff counsel
Commission on Ethics
2633 Vista Parkway
West Palm Beach, FL 33411
mrogers@palmbeachcountyethics.com
(561) 355-0724

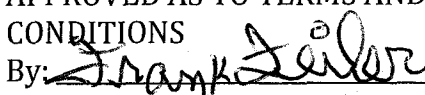
Authority Mr. Ken A. Day, Airport Manager
3701 FAU Blvd., Suite 205
Boca Raton, Florida 33431
ken@bocaairport.com
(561) 391-2202, ext. 211

XIV. Entirety of Agreement

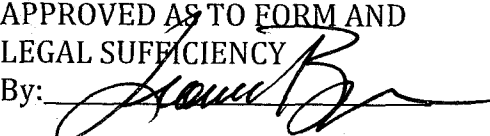
This Memorandum of Understanding represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, written or oral, relating to this Memorandum of Understanding.

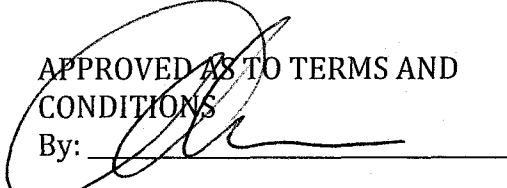
BOCA RATON AIRPORT AUTHORITY

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY
By: 
Dawn M. Meyers, Airport Legal Counsel

APPROVED AS TO TERMS AND
CONDITIONS
By: 
Frank Feiler, Chair

PALM BEACH COUNTY

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY
By: 
ATTEST
Sharon R. Bock, Clerk & Comptroller

APPROVED AS TO TERMS AND
CONDITIONS
By: 
PALM BEACH COUNTY, FLORIDA,
THROUGH ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Clerk

By: _____
_____, Chair

(SEAL)

BOCA RATON AIRPORT AUTHORITY

RESOLUTION 07-39-11

A Resolution of the Boca Raton Airport Authority approving a Memorandum of Understanding with the Palm Beach County Commission on Ethics regarding the application and enforcement of the Palm Beach County Code of Ethics

WHEREAS, the Boca Raton Airport Authority Act, Chapter 2004-468, Laws of Florida (the "Enabling Act"), provides that the Boca Raton Airport Authority (the "Authority") shall have jurisdiction over the operation and maintenance of, and improvements to the Boca Raton Airport;

WHEREAS, the Authority's Members and employees are subject to the State of Florida Code of Ethics for Public Officers and Employees (the "State Code"), which is codified at Chapter 112, Part III, Florida Statutes;

WHEREAS, on December 15, 2009, the Palm Beach County Commission passed Ordinance No. 2009-051, which adopted the Palm Beach County Code of Ethics and made it applicable to county officials and employees;

WHEREAS, on May 17, 2011, pursuant to Charter Amendments approved by referendum, the Palm Beach County Commission repealed Ordinance 2009-051 and adopted a revised Palm Beach County Code of Ethics (the "PBC Ethics Code") that applies to officers and employees of Palm Beach County and the municipalities located therein;

WHEREAS, the Authority finds that it has a substantial and compelling interest in adopting strict ethics rules and requirements designed to eliminate the potential for undue or improper influence on decisions related to airport safety and Authority contracting, particularly given the fact that the Authority's operations and projects are governed by Federal and State grant requirements that incorporate a multitude of ethics-related requirements;

WHEREAS, Airport Legal Counsel has reviewed the PBC Ethics Code, which became effective on June 1, 2011, and determined that:

- the PBC Ethics Code also applies to Authority Members by virtue of the PBC Ethics Code definition of "Official", which includes "members appointed by the board of county commissioners, members of local municipal governing bodies...to serve on...any other board of the county, state, or any regional, local, municipal, or corporate entity;"
- the PBC Ethics Code does not apply to the Authority's employees currently; and
- there are specific issues related to the application of the PBC Ethics Code to Authority Members that require clarification;

WHEREAS, the Palm Beach County Commission on Ethics is charged with administering and enforcing the PBC Ethics Code, and has offered to enter into a Memorandum of Understanding with the Authority to provide required clarification;

WHEREAS, on June 15, 2011, pursuant to Resolution No. 06-33-11, the Authority directed the Airport Manager and Airport Legal Counsel to negotiate a Memorandum of Understanding, and the negotiated Memorandum of Understanding is attached hereto as Exhibit "A."

NOW THEREFORE BE IT RESOLVED BY THE BOCA RATON AIRPORT AUTHORITY, BOCA RATON, FLORIDA, IN PUBLIC MEETING DULY ASSEMBLED, THIS 20th DAY OF JULY 2011, AS FOLLOWS:

1. The foregoing recitals are hereby incorporated into this Resolution as the legislative intent and findings of fact of the Authority.
2. The Authority hereby approves the Memorandum of Understanding.
3. The Chair or Vice-Chair of the Authority is hereby authorized to execute the Memorandum of Understanding on its behalf.
4. The Chair or Vice-Chair of the Authority is hereby authorized to execute this Resolution Number 07-39-11.
5. The Airport Manager, in consultation with Airport Legal Counsel, is hereby authorized to do all things necessary to effectuate the intent of this Resolution No. 07-39-11.

ADOPTED by the Boca Raton Airport Authority, this 20th day of July 2011.

ATTEST:

BOCA RATON AIRPORT AUTHORITY



Harold Ingraham
Secretary & Treasurer



Frank Feiler
Chair