

INTERNAL OPERATING PROCEDURES

OF

**THE HOUSING FINANCE AUTHORITY OF
PALM BEACH COUNTY, FLORIDA**

Adopted September 12, 2014

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and
March 13, 2020**

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ARTICLE I: INTRODUCTION AND EFFECTIVE DATE

The Housing Finance Authority of Palm Beach County (the “Authority”) is a public body corporate and politic of the State of Florida, created in accordance with Chapter 159, Part IV, Florida Statutes (the “Act”). Pursuant to the Act, the Board of County Commissioners of Palm Beach County, Florida (the “BOCC”) created the Authority by Ordinance 79-3, as amended, now codified as Section 2-191 et seq. of the Palm Beach County Code of Ordinances (the “Ordinance”).

The following Internal Operating Procedures are intended to generally govern the manner in which the business of the Authority may be conducted. These Internal Operating Procedures shall be updated as necessary to be in compliance with the Act and other applicable federal, State and local law.

EFFECTIVE DATE: September 12, 2014 as revised – May 12, 2017.

[End of Article I]

ARTICLE II: ADDITIONAL DOCUMENTS

In addition to the requirements set forth herein, the Authority shall comply with and observe all laws, rules, regulations, policies and procedures set forth in the Act; the Ordinance; the Palm Beach County Code of Ethics (the “County Ethics Code”); the Code of Ethics for Public Officers and Employees encoded in Part III of Chapter 112, Florida Statutes, as may be amended and supplemented (the “State Ethics Code”); the Florida Sunshine Law encoded in Section 286.011, Florida Statutes, as may be amended and supplemented (the “Sunshine Law”); the Florida Public Records Law encoded in Chapter 119, Florida Statutes, as may be amended and supplemented (“Public Records Law”); the Uniform Special District Accountability Act encoded in Sections 189.06 through 189.069, Florida Statutes, as may be amended and supplemented, such other sections of the Florida Statutes and the Palm Beach County Code of Ordinances (the “Code of Ordinances”) as may be applicable to the Authority and its members (each a “Member”) and any other documents, rules, regulations, laws, policies and orders prescribed by the BOCC or the Florida Statutes.

If any provision of these Internal Operating Procedures is found to be in conflict with federal law, state law or the Code of Ordinances, the provisions of said federal law, state law or Code of Ordinances shall prevail over the conflicting provision in these Internal Operating Procedures.

[End of Article II]

ARTICLE III: AMENDMENTS

Amendments to these Internal Operating Procedures shall be by resolution approved by a majority of the Members of the Authority present and, unless otherwise provided in such amendment, shall take effect immediately upon approval; provided, however, that amendments that require the approval of the BOCC shall not take effect until approved by the BOCC.

[End of Article III]

ARTICLE IV: OFFICERS

4.01. Chairperson

- a. Appointment: In June of every year the then Vice Chairperson shall be the chairperson nominee submitted pursuant to Section 2-184 of the Ordinance to the BOCC for approval as the new Chairperson. Upon approval by the BOCC, such Chairperson shall serve a one (1) year term to the Authority, with the effective date of such term commencing on the date of approval by the BOCC; provided, that no Member shall be nominated as Chairperson if his or her term as a Member would expire prior to the scheduled expiration of such persons term as Chairperson.
- b. Term limits: No Member may serve more than one (1) consecutive complete one (1) year term as Chairperson.
- c. Duties:
 - (i) *Presiding over meetings*: The Chairperson shall preside over all meetings of the Authority.
 - (ii) *Signatures*: Unless otherwise provided by resolution of the Authority, the Chairperson shall execute all documents approved and authorized by the Authority on behalf of the Authority.

4.02. Temporary Chairperson

In the event that the Chairperson is absent or otherwise unable to perform his or her duties, the Vice Chairperson shall perform such duties. In the event that the Chairperson and Vice Chairperson are both absent or otherwise unable to perform their duties, any other Member shall perform such duties; provided, however, that in the event the duties include execution of a document that requires attestation by the Secretary, the Secretary shall not sign as temporary Chairperson. In each instance in which the term "Chairperson" is used herein, such term shall apply to a temporary Chairperson if a temporary Chairperson is needed.

4.03. Vice Chairperson

- a. Appointment: In June of every year, the Members shall elect a new vice chairperson (the "Vice Chairperson") by vote of a majority of the Members present, to serve for a one (1) year term, with the effective date of such term commencing on the same date as the new Chairperson's term commences. Any Member can nominate any Member other than him or herself for consideration in the election of the Vice Chairperson provided that any Member who has not previously served as Chairperson will take priority over any Member who has previously served as Chairperson; provided, that no Member shall be appointed Vice Chairperson if his or her term as a Member would expire prior to the scheduled expiration of such person's term as Vice Chairperson.

- b. Term limits: No Member may serve more than one (1) consecutive complete term as Vice Chairperson.
- c. Duties: The Vice Chairperson shall perform the duties of the Chairperson in the Chairperson's absence in accordance with Section 4.02 above.

4.04. Secretary

- a. Appointment: In June of every year, the Members shall elect a secretary (the "Secretary") by vote of a majority of the Members present, to serve for a one (1) year term, with the effective date of such term commencing as provided in such vote.
- b. Term limits: There is no limitation on the number of consecutive terms a Member may serve as Secretary; provided, however, that by vote of a majority of the Members present, term limits for Secretary may be imposed.
- c. Duties:
 - (i) *Minutes*: The Secretary, or other party designated by the Secretary, shall ensure that the minutes of each Authority meeting have been properly recorded and are put into written form accurately reflecting the actions of the Authority and the events that transpired at the meeting for which the minutes are prepared.
 - (ii) *Attestation*: The Secretary shall attest to the signature of the Chairperson and to the seal on any documents to be executed by the Authority requiring such attestation. In the event that the Secretary is not available for such attestation, an Assistant Secretary, if any, or any other Member of the Authority, other than the person signing as Chairperson, may attest to the signature of the Chairperson and to the seal.
 - (iii) *Disbursements and wire transfers*: The Secretary shall be the primary contact for the confirmation of disbursements and wire transfers initiated by the Executive Director or other person authorized by Authority. Should the Secretary not be available for confirmation the Chairperson or Vice Chairperson shall be alternates.

4.05. Assistant Secretary

The Authority may appoint an Assistant Secretary or Assistant Secretaries should it deem such appointment to be useful in the furtherance of the activities and purposes of the Authority. Said Assistant Secretary shall perform the duties and obligations of the Secretary in the absence of the Secretary, unless limitations shall be imposed by the Authority at the time of such appointment, and shall perform other duties and obligations

as may be determined by the Authority at the time of such appointment. Assistant Secretaries are not required to be Members.

[End of Article IV]

ARTICLE V: STAFF/PROFESSIONALS

5.01. Executive Director

The administrative, operational and program oversight functions of the Authority may be handled and coordinated by an executive director (“Executive Director”). If the Authority determines it appropriate to have an Executive Director, such Executive Director may be an employee of the Authority, an independent contractor, or an employee of the County and shall be selected by the Authority pursuant to a Request for Qualifications or other selection process deemed desirable and meeting the legal requirements for such selection. The Executive Director, if any, serves at the pleasure of the Authority in the furtherance of the Authority’s purposes.

5.02. Administrative Assistant to the Executive Director

The Executive Director may, at the Authority’s option, receive ministerial assistance in the execution of his or her duties from an administrative assistant (the “Administrative Assistant”). Such Administrative Assistant may be an employee of the Authority, an independent contractor or an employee of the County and shall be selected by the Authority and serve at the pleasure of the Authority.

5.03. General Counsel

The Authority may employ legal counsel or retain the services of an independent law firm that serves as general counsel (the “General Counsel”) to the Authority pursuant to a contract between the Authority and the General Counsel. The General Counsel provides legal assistance and advice in connection with Sunshine Law matters, Florida Ethics Code and County Ethics Code matters, the Act, the Ordinance and other legal aspects of the operations and functions of the Authority; reviews legal documents and program documents of the Authority to ensure that the Authority’s interests are protected in connection with bond and other transactions of the Authority; drafts legal documents for the Authority as may be requested by the Authority; and performs other tasks and duties as directed by the Authority.

5.04. Other Professionals

The Authority may employ or enter into contracts with financial advisors, accountants, auditors, attorneys, including, but not limited to, bond counsel and disclosure counsel and other professionals as it deems necessary, provided that the selection of such parties is completed in compliance with the requirements of the Ordinance, if applicable, and applicable law. The duties and responsibilities of such professionals and the terms of their engagements shall be determined by the Authority at the time such party is engaged. Contracts with professionals should be reviewed periodically as may be required.

[End of Article V]

ARTICLE VI: FISCAL POLICIES AND BUDGET

6.01. Fiduciary Responsibility

All of the Members and employees and, to the extent applicable in the performance of their services for the Authority, professional staff, of the Authority have a fiduciary responsibility to the citizens of the County to safeguard the Authority's assets and use such assets to further the purposes of the Authority.

6.02. Financial Records, Reports and Audits

- a. Accounting Method: The Authority's official financial records and reports shall be prepared and maintained by its accountant, or such other party designated by vote of the majority of the Members present, and shall be reported in accordance with Generally Accepted Accounting Principles and in compliance with federal law, state law, including, but not limited to, the Uniform Local Government Financial Management and Reporting Act encoded in Part III, Chapter 218, Florida Statutes (the "Reporting Act"), Section 189.068, Florida Statutes, and the Code of Ordinances.
- b. Financial Statements and Reports:
 - (i) *Monthly*: A monthly reconciliation for the Authority's general fund, with respect to income received and payments made from such accounts shall be submitted to the Authority's accountant by its Executive Director, financial advisor or other party appointed by the Authority to do so; provided, however, that the Authority may waive this requirement by vote of the majority of the Members present.
 - (ii) *Quarterly*: Quarterly financial reports shall be provided to the Authority within 60 days of the end of each quarter. This report shall summarize financial and performance data for the preceding quarter, including, but not limited to, a comparison of actual expenditures and revenues to budgeted expenditures and revenues. This report shall be prepared by the Authority's Executive Director, financial advisor or other party appointed by the Authority to do so; provided, however, that the Authority may waive this requirement by vote of the majority of the Members present.
 - (iii) *Annually*: The Authority's accountants shall prepare an annual financial statement for submission to the County in accordance with the Reporting Act and the requirements of the County. The County's Comprehensive Annual Financial Report includes the audit of the Authority's general fund and fulfills all of the Authority's reporting requirements under the Reporting Act based on the information submitted to the County pursuant to this section.

- c. Audits: The Authority's financial records shall be audited annually, at the end of the Authority's fiscal year, by an independent auditor.

6.03. Fiscal Year

The Authority's fiscal year shall be from October 1 through September 30.

6.04. Budget

The Authority shall adopt an annual budget (the "Budget") by written resolution adopted by vote of the majority of the Members present, on or prior to the beginning of the fiscal year for which the Budget is prepared.

- a. Preparation: The Authority's Executive Director, financial advisor or other party appointed to do so by the Authority, shall prepare a budget and submit it directly to each Member of the Authority for review on or prior to August 31 of each year to give each Member sufficient time to consider the budget prior to the budget approval by the Authority. The budget shall be balanced, that is, the total of the estimated receipts, including balances brought forward, shall equal the total of the appropriations and reserves. The appropriation division of the budget shall include itemized appropriations for all expenditures authorized by law, contemplated to be made, or incurred for the benefit of the Authority during the said year. The budget shall be prepared and adopted in accordance with Section 189.016, Florida Statutes.
- b. Changes: Budget changes shall be approved by written resolution adopted by vote of the majority of the Members present.

6.05. Use/Management of Monies; Travel

- a. Use of Surplus Funds: The use of surplus monies shall be in accordance with the Authority's Policies and Procedures for the Use of Surplus Funds effective September 12, 2014, as may be amended and supplemented, attached hereto as "**Appendix A.**"
- b. Permissible Expenditures: All expenditures of Authority funds shall be made in furtherance of the purposes of the Authority. In addition to the use of surplus funds as set forth under Section 6.05(a) above, Authority funds may be expended, without specific prior approval of the Authority unless otherwise provided for below, but subject to approval prior to reimbursement for or payment of such expenditure pursuant to the procedures set forth in Section 6.05(d) below, in amounts standard and reasonable for the particular item, for the payment of:
 - (i) regular periodic payment of employees, including benefits therefor, and professional staff, whether on a contract basis or otherwise, provided that such regular payments were initially approved by the Authority;
 - (ii) regular periodic payment, such as purchase or rental payment installments or standard county reimbursement, of operational facilities and equipment,

provided, however, that such regular payments were initially approved by the Authority;

- (iii) administrative costs;
 - (iv) pre-payment of or reimbursement for permitted travel expenses incurred by employees and Members of the Authority in the discharge of their duties, as approved by the Authority, including, but not limited to, attending conferences and workshops relating to housing finance authorities and their financial programs, and to other persons authorized by vote of the majority of the Members present to incur travel expenses to be reimbursed by the Authority. Members may attend up to two educational conferences/sessions annually without the need to seek prior board consideration as long as the conference/session is on the list of approved conferences/sessions attached hereto as “**Appendix M**”;
 - (v) advertisements and public notices;
 - (vi) payment of regulatory fees and costs;
 - (vii) educational materials with an individual cost of less than \$100.00; and
 - (viii) such other items as may be approved by the Authority prior to such expenditure, or, if approval cannot be obtained prior to the expenditure due to time constraints, ratified by the Authority after such expenditure is made, and are permissible under the Act, the Ordinance and other applicable law.
- c. Deposits: All monies coming to the Authority, whether through good faith deposits, bond issuance fees, compliance monitoring fees, donations, or any other sources, shall be deposited in an account or accounts held by a financial institution in the State of Florida designated by the Authority (the “Authority’s Banking Institution”). Such monies of the Authority shall be invested pursuant to Section 6.05(e) below.
- d. Disbursements: All disbursements from the Authority’s accounts shall be for “Permissible Expenditures” as set forth in Section 6.05(b) above and shall be paid upon compliance with the following:
- (i) *Form of Request*: Requests for disbursement shall be made as follows:
 - A. Contract Professionals: Requests for disbursements to the Authority’s contract professionals for payment of their services shall be in the form of an invoice submitted to the Executive Director, or other party appointed by the Authority for such purpose, by such party.
 - B. Authority Operational Facilities and Staff Salaries: Requests for reimbursements for operational facilities and staff salaries paid for and/or provided by the County shall be submitted to the Executive Director, or other party appointed by the Authority for such purpose,

in the form established therefor by the County. Payments for owned or leased operational facilities shall be made pursuant to agreements entered into therefor, including, but not limited to, leases, mortgages or installment contracts. Payments to staff employed directly by the Authority shall be made as agreed upon by the Authority and such employee.

- C. Travel: All travel must be by a usually traveled route. If a person travels by an indirect route for personal convenience, any extra costs will be at the traveler's expense. An extended stay of one day before and/or one day after the normal conference travel period may be approved in advance by the Authority board if it is not reasonable or practical to arrive or depart on the same day as the event.

Commercial air travel: Persons requesting travel by commercial airlines are required to compare airfares before booking flights. Commercial air travel will be by the most economical class, either tourist or coach, available at a reasonable flight time. Expenses for common carrier transportation that are in excess of the rates for the most economical class will be the responsibility of the traveler and must be reimbursed by the traveler, unless justified. Justification may include family emergency or unexpected schedule changes by the common carrier. If the traveler combines personal travel with conference travel documentation of the comparable airfare for flights occurring during the period of conference travel at the time of booking must be provided.

The executive director is authorized to use the Authority's Credit Card for payment of a traveler's airline reservation/ticket. Other air travel related reimbursable costs include mileage to and from the traveler's home to the airport, airport parking fees, taxi/shuttle to and from the airport and conference hotel, and baggage fees limited to two (2) bags. Non-reimbursable air travel expenses include fees & tips given to porters or baggage carriers, flight insurance, seat selections, meal/drink services, entertainment, and any/all incidentals.

Personal car mileage reimbursement or rental car travel in Florida only: The traveler may be reimbursed for either actual mileage, including bridge/toll road fees, at the then current federal rate, or the car rental may be reserved and paid for through the executive director with the use of the Credit Card and will include purchase of loss damage waiver and supplemental liability insurance. The intermediate car rental rate will be reimbursed unless the need for a

larger car has been documented and approved by the Authority board.

Lodging: Travelers will be reimbursed at the standard (or overflow hotel rate if applicable) conference hotel rate plus an amount for meal allowances as follows:

Breakfast \$7 - when travel begins before 6 a.m. and extends beyond 8 a.m.

Lunch \$11- when travel begins before 12 noon and extends beyond 2 p.m.

Dinner \$22 - when travel begins before 6 p.m. and extends beyond 8 p.m.

On the first or last day of travel, if travel begins prior to 6 am and ends after 8 pm, traveler's may receive up to \$40 per day.

The executive director may use the Credit Card to reserve for any Person attending an authorized conference the hotel room and pay for one night's stay if required by the hotel. The Credit Card may also be used to pay for the remainder of the hotel stay, but it may be necessary to obtain a credit card authorization form from the hotel in order to do so if the Executive Director is not attending that conference. Please verify the hotel's payment policy when booking the room. Non-reimbursable lodging expenses include gratuities, phone calls, mini- bar, room or laundry service, hotel restaurant or bar, spa/gym, locker/safe rental, salon, movies, etc. A meal allowance will not be paid for any meal included in a conference registration fee, provided by a hotel or conference host, or otherwise gratuitously provided.

Cancellations/Overpayments: The traveler shall be personally responsible for any travel expenses (but not their conference registration fee) when the traveler does not attend the conference due to personal reasons as determined by the Authority board.

Reimbursements: Requests for reimbursements to reimburse Members, employees or other persons for travel expenses, educational materials or any other "Permissible Expenditures" shall be submitted to the Executive Director, or other party appointed by the Authority for such purpose, in the form attached hereto as "**Appendix B**," as may be amended and supplemented (the "Request for Reimbursement"), accompanied by the appropriate documentation of such expenditure, including, but not limited to, receipts, bills, cancelled checks or invoices for such expenditure. Credit card statements are not a preferred form of documentation and the Authority may reject such form of documentation if the

amount requested for reimbursement as indicated on the credit card statement is greater than amounts customarily charged for such item. If documentation of an individual single expenditure amounting to less than twenty-five dollars (\$25.00) is unavailable, the Member requesting reimbursement for such expenditures shall submit to the Executive Director, or other party appointed by the Authority for such purpose, as documentation thereof for purposes of the Request for Reimbursement, a Certification of Expenditure in the form attached hereto as “**Appendix C,**” as may be amended and supplemented, certifying as to the amount, nature and validity of such expenditure. Requests for Reimbursement by a Member for multiple expenditures in an aggregate amount in excess of fifty dollars (\$50.00) for which documentation is unavailable shall be denied to the extent that the amount requested exceeds \$50.00, regardless of the inclusion of a Certification of Expenditure, provided, however, that the Authority may determine to waive this limit if good cause can be shown by the requesting party as to why documentation of the expenditure is not available. All requests for travel reimbursement shall be for amounts and purposes permissible under 112.061, Florida Statutes, which is incorporated herein by reference, as it may be amended. Any questions regarding the interpretation and application of 112.061, Florida Statutes should be directed to the Authority’s General Counsel. Notwithstanding the foregoing, (a) the mileage allowance shall be the greater of (i) those rates published on the United States General Services Administration website, or (ii) the mileage allowance set forth in Section 112.061(7)(d), Florida Statutes,, and (b) the Authority may approve reimbursement for lodging or overnight travel within 50 miles of a Member’s residence if the circumstances necessitating such overnight travel are fully explained by the Member (e.g., late night or early morning job responsibilities or excessive travel time because of traffic conditions).

D. Miscellaneous: Requests for disbursements for administrative costs, other than operational facilities, staff salaries and fees payable to the Authority’s contract professionals, but including, but not limited to, pre-paid travel expenses, advertisements, regulatory fees and costs not otherwise reimbursed pursuant to Section 6.05(d)(i)(C) above, shall be included on the General Fund Disbursement prepared by the Executive Director, or other party appointed by the Authority for such purpose, pursuant to Section 6.05(d)(ii) below, with the appropriate supporting documentation, including, but not limited to, receipts, invoices or bills.

(ii) *Processing and Payment of Request:* The Executive Director, or other party appointed by the Authority for such purpose, shall compile all Requests for

Reimbursement or disbursement submitted in accordance with Section 6.05(d)(i)(A-D) above and review such requests for completion, accuracy and appropriateness. If the Executive Director, or other party appointed by the Authority for such purpose, determines that such requests are reasonable, properly documented, permissible expenditures and within the amount budgeted for such expenditure, the Executive Director, or other party appointed by the Authority for such purpose, shall itemize all requests on the General Fund Disbursement form attached hereto as “**Appendix D,**” as may be amended and supplemented, and submit such General Fund Disbursement Form, with all individual requests for reimbursement attached thereto, to the Secretary and Chairperson and to the proper person at the Authority’s Banking Institution, who shall confirm such disbursement with the Secretary or Chairperson before remitting such funds to the parties and in the amounts identified on such General Fund Disbursement Request. Copies of the paid requisitions with invoices shall be sent via e-mail to the Members and accountants, and a copy of the requisition only shall be included as a consent agenda item of the next meeting.

If the Executive Director, or other party appointed by the Authority for such purpose, determines, in his or her reasonable judgment, that a Request for Reimbursement is unreasonable, impermissible, incomplete or in excess of the amount permitted therefor in the Authority’s budget, the Executive Director, or other party appointed by the Authority for such purpose, shall complete a “Denial of Request” in the form attached hereto as “**Appendix E,**” as may be amended and supplemented, send it to the party requesting or having received disbursement and submit a copy thereof to the Authority at the meeting immediately following such submission, unless the request was submitted less than 10 calendar days prior to such meeting, in which case it shall be submitted to the Authority at the following meeting. The Authority shall review such Denial of Request at the meeting at which it is presented and shall either affirm or override the action of the Executive Director, or other party appointed by the Authority for such purpose.

- e. Investments: Authority funds shall be invested in accordance with the Authority’s investment policy as attached hereto as “**Appendix F**”.
- f. Credit Card Procedure: The Authority authorized on March 10, 2017 entering into a credit card account with an entity of its Authorized Banking Institution with a credit limit of \$10,000. Credit card purchases shall be limited to Permissible Expenditures as determined by the Executive Director and confirmed by the Secretary or Chairperson.

[End of Article VI]

ARTICLE VII: MEETINGS

7.01. Conduct

Meetings of the Authority shall be conducted in accordance with Robert's Rules of Order. The rules established for "informal meetings" in Robert's Rules of Order as set forth in "Appendix G" hereto and incorporated by reference herein, as may be amended and supplemented, shall be observed by the Authority.

7.02. Public Nature

All meetings of the Authority shall be held in compliance with the Sunshine Law.

7.03. Date, Time and Location of Meetings

The Authority shall hold regularly scheduled meetings once a month, on the second Friday of each month or such other day as shall be determined by vote of the majority of the Members present (the "Regular Meetings"), provided, however, that the Authority may opt to (i) cancel a Regular Meeting if there is no business before the Authority or a quorum will not be present and (ii) by vote of the majority of the Members present, reschedule a particular Regular Meeting to another date and time to ensure the presence of a quorum, provided that the Authority shall announce such change at the Regular Meeting immediately prior to such rescheduled meeting. Subject to availability, all meetings of the Authority shall be held in Room 4-790-Palm Beach County Airport Center Complex, located at 100 Australian Avenue, West Palm Beach, Florida. If the Room 4-790 is unavailable for any particular meeting, the location for that meeting shall be held in Room 1-470 of the Airport Center Complex or any available County facility location, and if no such alternate location is available, at such place within the County determined by the Executive Director, or other party appointed by the Authority for such purpose, in his or her reasonable discretion, taking into consideration cost for use of such location, accessibility of such location for members of the public, and the general needs of the Authority. If the Authority determines that another meeting location would be more appropriate or desirable, the Authority shall, by vote of a majority of the Members present, establish a new meeting location within the County, taking into consideration availability, cost for use of such location, accessibility of such location for members of the public, and the general needs of the Authority.

7.04. Special Meetings

Special meetings of the Authority may be held upon the prior call by the Chairperson or at the request or upon the approval of any three Members of the Authority, when matters of the Authority that do not rise to the level of an emergency must be addressed prior to the next Regular Meeting of the Authority, provided that such meetings be properly noticed as set forth in 7.06(b) below.

7.05. Emergency Meetings

Emergency meetings may be held upon the prior call of the Chairperson or at the request or upon the approval of any three Members of the Authority when the Chairperson or such Members reasonably believe that a matter poses an immediate danger to the public health, safety, or welfare and requires immediate action by the Authority, provided that such

meetings be properly noticed as set forth in 7.06(c) below. The Chairperson shall, at the commencement of an emergency meeting, state the purpose of the meeting and the Members shall enter a finding that such purpose constitutes an emergency into the record of such meeting. Any action taken at an emergency meeting shall be ratified by the Authority at its next Regular Meeting.

7.06. Notice

- a. Regular Meetings: Notice of all Regular Meetings for the year shall be published in the Palm Beach Post, or other comparable publication of general circulation in Palm Beach County, and posted to the Authority's website at the beginning of each year, at least 7 calendar days prior to the first meeting of the applicable year, provided, however, that in the event there is any change in day or location of Regular Meetings, notice of such change shall be published in the Palm Beach Post, or other comparable publication of general circulation in Palm Beach County, and posted to the website at least 7 calendar days prior to the first affected meeting.
- b. Special meetings: Notice of each special meeting shall be published in the Palm Beach Post, or other comparable publication of general circulation in Palm Beach County, and posted to the Authority's website at least 7 calendar days prior to such meeting. In addition to posting, the office of the Executive Director, or other party appointed by the Authority for such purpose, shall, at least 48 hours prior to the scheduled time of the special meeting, send written notice, via messenger, e-mail, facsimile or mail, to each of the Members of the Authority that such meeting has been called. This notice requirement may be waived, in writing, by Members of the Authority with respect to any special meeting. The attendance of a Member at the special meeting shall constitute a waiver of such notice.
- c. Emergency meetings: Notice of emergency meetings shall be made as soon as practicable in the manner most likely to advise the public of such meeting under the circumstances. In addition to public notice, the office of the Executive Director, or other party appointed by the Authority for such purpose, shall, at least 24 hours prior to the scheduled time of the emergency meeting, send written notice, via messenger, e-mail, facsimile or mail, to each of the Members of the Authority that such meeting has been called. This notice requirement may be waived, in writing, by Members of the Authority with respect to any emergency meeting. The attendance of a Member at the emergency meeting shall constitute a waiver of such notice, unless the Member announces, at the commencement of the meeting, his or her objection to the notice.
- d. Notice Content: Meeting notices shall include the date, time and location of the meeting. Notices for all meetings other than Regular Meetings shall include a statement identifying the purpose for such meeting. In addition, all meeting notices should contain language substantially as follows:

**“Should any person decide to appeal any decision made by
the Housing Finance Authority with respect to any matter**

considered at the meeting referenced herein, he or she will need a record of the proceedings, and for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act, persons with disabilities needing special assistance accommodations to participate in this proceeding should contact [NAME], no later than five (5) days prior to the hearing at telephone number (561) 233-3656 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers at (800) 955-8771 (TDD) or (800) 955-8700 (VOICE) for assistance.”

7.07. Agendas

An official agenda shall be prepared by the Executive Director or other party appointed by the Authority for such purpose, to determine the order of business to be conducted for all Regular Meetings and special meetings in accordance with the following:

- a. Submission of Items: The Executive Director or other party appointed by the Authority for such purpose, shall include on the agenda all items that constitute “Old Business” based on the prior meeting. The Executive Director, financial advisor, Authority’s General Counsel and bond counsel, and any other party so authorized by the Authority, may submit items for the consent agenda and the “New Business” portion of the agenda as they deem necessary. Members of the public may request that an item of business be placed on the agenda by submitting such request and the reason therefor, in writing, at least two (2) weeks prior to the meeting at which they would like such item to be considered, provided, however, that the Executive Director or other party appointed by the Authority for such purpose may, in his or her reasonable discretion, extend or waive this deadline. The Executive Director or other party appointed by the Authority for such purpose, in consultation with the Chairperson, the financial advisor and/or Authority’s General Counsel, as necessary, shall determine whether such request is an appropriate item for placement on the agenda and consideration by the Authority.
- b. Support materials: Any party wishing to have materials or information included in the agenda packet for an upcoming meeting shall submit such materials to the Executive Director or other party appointed by the Authority for such purpose, at least 10 calendar days prior to the meeting (or such longer period as may be determined by the Executive Director or other party appointed by the Authority for such purpose). The Executive Director or other party appointed by the Authority for such purpose, in consultation with the Chairperson, the financial advisor and/or Authority’s General Counsel, as necessary, shall determine whether such materials are appropriate for placement in the agenda packet.

- c. Delivery of Agenda: The Executive Director or other party appointed by the Authority for such purpose, shall post to the Authority website and send a completed agenda packet for Regular Meetings, including the order of business, minutes of the prior meeting and all support documentation, exhibits and other materials to be included therewith, to each Member of the Authority via such electronic means as the that the Executive Director or other party appointed by the Authority for such purpose deems appropriate or, at the request of any Member, via regular U.S. Mail, no later than seven (7) calendar days prior to the meeting for which the agenda has been prepared. The Executive Director, or other party appointed by the Authority for such purpose, shall send agendas for special meetings and emergency meetings to the Members of the Authority via facsimile, e-mail, courier or overnight delivery, as appropriate, as soon as practicable after such meeting has been called and as far in advance prior to the meeting as possible.
- d. Format: Agendas for Regular Meetings shall include, but not be limited to, the following:
- I. Call to Order
 - a. Roll Call
 - b. Establishment of Quorum
 - II. Public comment on Agenda Items
 - III. Agenda Approval
 - a. Additions, Deletions, Substitutions
 - b. Adoption
 - IV. Consent Agenda
 - a. Approval of Minutes of Prior Meeting (date to be provided)
 - b. Approval of Revised Minutes of Prior Meeting
 - c. Approval of any General Fund Disbursements
 - d. Approval of absences from prior meeting
 - e. [other items of business which do not need to be discussed by the Authority and which are to be voted on as a group]
 - V. Old Business
 - a. [any individual items previously discussed by the Authority for which final action has not been taken]
 - VI. New Business
 - a. [any items that need to be discussed by the Authority but have not been previously discussed]
 - VII. Other Matters
 - a. Matters of the Members of the HFA [to promote the public discussion of matters relating to Authority business, to

encourage the dissemination of information, and to request the preparation of proclamations, resolutions, reports and legal documents to be given formal consideration at the next Regular Meeting]

- b. Matters of the Executive Director [to disseminate information to, and make requests of, the Authority]
- c. Matters of the Professionals [to disseminate information to, and make requests of, the Authority]
- d. Matters from the Public
- e. Next Regularly Scheduled Meeting Date: _____
- f. [Any special meeting scheduled]

VIII. Adjournment

7.08. Public Participation

The opportunity for participation by the public in Authority meetings shall be weighed against the Authority's need to conduct orderly and efficient meetings.

- a. Opportunity to Speak: Members of the public who wish to address the Authority with respect to a topic or matter relevant to the agenda or the business of the Authority shall, when the Chairperson announces the "Public Comment" and "Matters of the Public" sections on the agenda, indicate to the Authority that they wish to speak. All persons addressing the Authority shall state their name, organization, if applicable, and the purpose for their appearance. Members of the public will not be permitted to appear before the Authority to discuss matters for which final action has already been taken by the Authority, provided, however, that the Authority may waive this restriction if, in its reasonable judgment, it determines by vote of a majority of the Members present that such item should be open to further discussion and comment.
- b. Proper Decorum of Public Participants: All remarks shall be addressed to the Authority as a body and not to any individual Member thereof. No person other than the Members of the Authority and the person having the floor shall enter into the discussion without the permission of the Chairperson. No question shall be directed to the Authority's professional staff except through the Chairperson.

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Authority shall be barred from further audience before the Authority by the Chairperson, unless permission to continue or again address the Authority is granted by vote of the majority of the Members present. The Authority reserves the right to prohibit any party from appearing before the Authority, by vote of a majority of the Members present, if the party is, or has been in the past, disruptive, disrespectful or otherwise disorderly. The Chairperson shall state, for recording in the minutes of such meeting, the reason for which such party was prohibited from speaking.

No person, except Members of the Authority or their professional staff, shall be permitted beyond the area established for members of the public to speak. Any person who goes beyond this area shall be subject to removal from the meeting.

- c. Time Limits: After being recognized by the Chairperson, a party addressing the Authority shall be subject to the following time limitations:
 - (i) General: Each person will be permitted to address the Authority for a maximum of five (5) minutes, exclusive of time taken by Authority Members to pose questions to the party speaking (the “Time Limit”). The Chairperson may curtail irrelevant or repetitious comments.
 - (ii) Extension of Time Limit: The Authority may, by vote of a majority of the Members present, taking into consideration the relevance of the subject matter to the Authority and the amount of time for which a quorum will remain available, in its discretion, permit a party to speak for a period of time beyond the Time Limit upon the request of such person, provided that the Chairperson shall acknowledge the extension of the Time Limit and state the reasons for which such extension was granted for inclusion in the minutes.
 - (iii) Reduction of Time Limit: In the event that the Authority has limited time remaining for availability of a quorum it may, by vote of a majority of the Members present, either (a) further limit the Time Limit to permit as many people as possible to appear before the Authority during the time available, or (b) allow representatives of groups or factions to address the Authority, rather than all members of such groups or factions; provided that the Chairperson shall announce the reduction in the Time Limit or the allowing of representatives prior to hearing any members of the public, and shall state the reasons therefor to be included in the minutes.
- d. Miscellaneous Presentations: In addition to public participation during the “Public Comment” and “Matters of the Public” portions of the agenda, the Authority may, in its sole and reasonable discretion, request or permit public participation of any nature, including, but not limited to, public participation relating to project presentations by persons requesting funding from the Authority, which participation shall take place during the old or new business portion of the agenda, as applicable. The Time Limit shall not apply to such presentations and the Authority shall establish parameters for such presentations, including, but not limited to, subject matter and length, at the time such presentation is requested or permission to give such a presentation is granted.

7.09. Minutes

- a. General: Each meeting shall be recorded by an electronic recording device capable of playback. The Executive Director or other party appointed by the Authority for such purpose shall prepare the minutes of each meeting, written on a summary basis, rather than verbatim.
- b. Information to be Included: Information reflected in the Minutes shall include, but not be limited to:
- (i) date, time and location of the meeting,
 - (ii) the names of all persons present, including Members of the Authority, its professional staff and members of the public,
 - (iii) the names of all Authority Members absent from the meeting indicating such absence,
 - (iv) the text of each motion discussed by the Authority, including the name of the person making the motion and the name of the person who seconded such motion,
 - (v) the results of votes on each motion, including number of “ayes” and “nays” and, if the motion was voted on with a roll call vote, the names of the persons voting “aye” and the names of the persons voting “nay,”
 - (vi) summary of each item discussed by the Authority, its professional staff and members of the public,
 - (vii) description of any action taken by the Authority, including, but not limited to, motions passed or defeated, resolutions adopted, and directives given to professional staff, or a notation that no action was taken after discussion of an item,
 - (viii) findings or statements of the Chairperson or Members of the Authority required to be recorded in the minutes, including, but not limited to, finding of need for an emergency meeting and waivers, limitations or extensions of public participation Time Limits and the reason therefor,
 - (ix) time of adjournment, and
 - (x) any other information that the Executive Director, the Chairperson or a majority of the Members of the Authority present at the time such decision is made deems pertinent.
- c. Approval of Minutes: The Executive Director, or other party appointed by the Authority for such purpose, shall submit the minutes prepared for each meeting to the Authority by inclusion of such minutes in the agenda package for the Regular Meeting next succeeding the meeting for which the minutes were taken. A copy of such agenda package including the minutes shall be submitted to County Administration. The Authority shall approve such minutes at a Regular Meeting. Any corrections, revisions or modifications to the minutes presented for approval should be pointed out by the Authority at this time with a request that the appropriate changes be made. The Executive Director, or other party appointed by the Authority for such purpose, shall ensure that all such changes are made to the minutes and that the revised minutes are presented no later than the following

Regular Meeting for approval. Upon approval of such minutes by the Authority, the minutes shall become a public record.

- d. Minutes of Meetings other than Regular Meetings: In addition to all requirements for minutes of meetings herein otherwise provided, minutes of any meetings other than Regular Meetings shall include the manner and method by which the meeting was called, by which Members were notified of such meeting, or, alternatively, waiver of notice by any Member, and by which public notice was given of such meeting.

7.10. Quorum

No action of the Authority shall be taken without the presence of a quorum. Should no quorum be present within fifteen (15) minutes after the hour appointed for the meeting in question, the Chairperson may adjourn the meeting. The names of the Members present and the action of the Chairperson to recess the meeting shall be recorded in the minutes for that meeting.

7.11. Conflicts of Interest and Disclosure

- a. Participation in discussion and voting: No Member of the Authority shall participate in the discussion of or vote on a matter for which the Member knows he or she has a conflict of interest as defined in the Act, the State Ethics Code, the County Ethics Code and the Ordinance (a "Conflict of Interest"), an analysis of which is attached hereto as "**Appendix H**" and is incorporated by reference herein.
- b. Disclosure:
 - (i) *of Contact*: Authority Members shall make verbal disclosure of communications outside of Authority meetings with persons having business before the Authority in accordance with the policy adopted by the Authority in its Resolution dated November 9, 2007, attached hereto as "**Appendix I**," as may be amended and supplemented.
 - (ii) *of Conflict*: Authority Members having a Conflict of Interest shall, if they are aware, prior to a meeting of the Authority, that the subject of the conflict will be considered at such meeting, record the nature of such conflict in a memorandum in the form attached hereto as "**Appendix J**," as may be amended and supplemented (the "Memorandum of Voting Conflict"), and file such Memorandum of Voting Conflict with the Executive Director or other party appointed by the Authority for such purpose, who shall immediately provide all other Members of the Authority with such Memorandum of Voting Conflict, read such Memorandum of Voting Conflict publicly at the next meeting after the form is filed and incorporate the Memorandum of Voting Conflict in the minutes of the meeting at which such disclosure was made. If a Member is unaware that an item for which such Member has a Conflict of Interest will be addressed

at a meeting prior to such meeting, or otherwise does not become aware of the Conflict of Interest until such meeting, such Member shall verbally disclose the nature of the conflict at the meeting immediately upon the commencement of the discussion on such item. Within 15 calendar days after the meeting at which such disclosure is made, such Member shall file a Memorandum of Voting Conflict with the Executive Director, or other party appointed by the Authority for such purpose, who shall read such Memorandum of Voting Conflict publicly at the next meeting after the form is filed and incorporate the Memorandum of Voting Conflict in the minutes of the meeting at which such disclosure was made.

- c. Prohibited Conflicts of Interest: Certain business and contractual relationships between Authority Members and persons or entities doing business with the Authority are prohibited entirely, regardless of whether disclosure is made, as more specifically described in “**Appendix H**” hereto. In those situations, Members must either sever the business/contractual relationship or may no longer serve as a Member of the Authority.

7.12. Voting

- a. Abstention: No Member of the Authority who is present at any meeting of the Authority may abstain from voting in regard to any decision, except when, with respect to such Member, there is, or appears to be, a possible Conflict of Interest. In such cases, said Member shall comply with the disclosure requirements of Section 7.11(b) above.
- b. Change of Vote: Any Member of the Authority may change his or her vote before the next item of business is called for consideration, or before a recess or adjournment is called, whichever is first.
- c. Tie Votes: A tie vote shall result in the failure of the motion.

7.13. Attendance by Telephone or Other Electronic Means.

If a quorum of the Authority (or any committee thereof) is physically present, the Chairperson or other officer of the Board (or committee thereof) presiding over the meeting may permit a Member who cannot physically attend (a) for personal health reasons or (b) because a quarantine has been imposed or recommended by a governmental authority that would preclude such Member for attending, to participate in discussion and vote by telephone conference or other interactive means, but only if the means of communication will allow the absent Member to participate in discussions, to be heard by other Members and the public, and to hear discussions taking place during the meeting. The appearance of a Member by telephone or electronic device shall constitute physical attendance by that Member for all purposes other than counting towards a quorum.

[End of Article VII]

ARTICLE VIII: RESTRICTION ON DUAL OFFICE HOLDING

Pursuant to the Florida law, Authority Members are prohibited from holding certain positions with other governmental entities, as more specifically set forth in Attorney General Opinion 2012-35 attached as “**Appendix K**” hereto.

[End of Article VIII]

ARTICLE IX: COMMITTEES

The Authority may, by vote of the majority of the Members present, establish standing committees which shall continue in existence until dissolved by vote of the majority of the Members present. The membership of the committee, the specific purpose for the committee, and the expectations of the Authority with respect to what the committee shall accomplish, along with pertinent deadlines and timeframes, shall be clearly established at the time the committee is created. All meetings of committees must be conducted and noticed in accordance with the Sunshine Law.

Whenever the Authority deems it necessary or desirable that the Authority should be represented at meetings, conferences or other occasions involving other governmental entities, agencies, officials or groups, or non-governmental organizations, departments or agencies, the Chairperson or a majority of the Members present may designate Members of the Authority, including him or herself, to represent the Authority at such meetings, conferences or other occasions. Such representatives shall have no power to act for or on behalf of the Authority unless previously so authorized. Such representative(s) shall report to the Authority with regard to such meeting, conference or other occasion at the meeting immediately following such event. While in attendance at such meetings, conferences or other occasions, Authority Members are prohibited from discussing matters of the Authority with each other in any way that would constitute a violation of the Sunshine Law.

[End of Article IX]

ARTICLE X: OFFICIAL ACTIONS

10.01. Action

All actions of the Authority shall be taken by motion, resolution or directive.

10.02. Motions

All action taken by motion shall be recorded in the minutes of the meeting at which such action was taken in accordance with Section 7.09(b) above.

10.03 Resolutions

All action taken by resolution shall be recorded in a resolution document to be prepared by the Authority's General Counsel, or bond counsel, as applicable, and, if adopted in verbal form, a written form thereof shall be presented to the Authority and executed by the Chairperson at the meeting following its adoption. The Authority, in its sole discretion, may implement a numbering system whereby all resolutions of the Authority shall be numbered consecutively, by year and appropriate number. The Executive Director or other party appointed by the Authority for such purpose, shall maintain a log of all Resolutions, including date adopted, number (if such numbering system is implemented) and subject.

10.04. Directives

The Authority may, during a Regular Meeting, direct its staff and professionals to perform certain tasks for the benefit of the Authority, including, but not limited to, the preparation of reports, documents or statistical information relating to Authority business; attending meetings on behalf of the Authority; and seeking out information relevant to Authority business.

[End of Article X]

ARTICLE XI: DOCUMENT RETENTION

11.01 Public Records.

The Executive Director shall be the “Custodian of public records” of the Authority for purposes of Chapter 119, Florida Statutes.

11.02 Document Retention.

The Authority’s records shall be maintained in accordance with the policies and procedures established by the State of Florida, Department of State, Division of Library and Information Services and the retention schedule established thereby, as well as the Electronic Recordkeeping rules set forth in Rule 1B-26.003 of the Florida Administrative Code, as may be amended and supplemented.

Notwithstanding the foregoing, any records of the Authority related to tax exempt bonds issued by the Authority shall be retained for at least three (3) years after the final redemption of such bonds, or such longer period as may be required by the documentation relating to a specific issue of bonds.

The Authority may amend, revise, repeal or otherwise alter its document retention policy to be consistent with any changes in the Internal Revenue Code of 1986, as amended, or the regulations promulgated thereunder, or on the advice of the Authority’s bond counsel.

11.03 Official Internet Website.

The Executive Director shall be responsible for maintaining the Authority’s official internet website as required by Section 189.069, Florida Statutes. The address and e-mail address for each Authority Board Member posted on such website shall be the mailing address and e-mail address of the Authority. The Executive Director shall promptly forward to each Authority Board Member any correspondence or e-mail addressed or directed to such Authority Board Member.

11.04 E-Mails Sent to or from Personal E-Mail Addresses.

Any e-mail received by or sent from the personal e-mail address of an Authority Board Member that relates to the business of the Authority should be assumed to be a public record. Any such e-mail will be automatically saved by the Executive Director if the Executive Director is either an addressee of or copied (cc or bcc) on such e-mail. Any such e-mail as to which the Executive Director is not an addressee or copied shall be forwarded by the Authority Board Member to the Executive Director or to the General Counsel of the Authority promptly upon receipt. Under no circumstances shall an Authority Board Member delete an e-mail that relates to the business of the Authority unless the Executive Director is an addressee or copied, or it has been forwarded to the Executive Director or General Counsel.

[End of Article XI]

**ARTICLE XII: POST ISSUANCE TAX COMPLIANCE
POLICIES AND PROCEDURES**

The Authority's Post Issuance Tax Compliance Policies and Procedures for Multifamily Financing are attached hereto as "**Appendix L**". The Authority may amend, revise, repeal or otherwise alter these policies and procedures to be consistent with any changes in the Internal Revenue Code of 1986, as amended, or the regulations promulgated thereunder, or on the advice of the Authority's bond counsel.

[End of Article XII]

APPENDIX A

POLICY FOR THE USE OF SURPLUS FUNDS

HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA

POLICIES, PROCEDURES AND PROCESS FOR LOAN APPLICATIONS USING SURPLUS FUNDS

I. INTRODUCTION

The Housing Finance Authority of Palm Beach County (the “Authority”) is authorized under the Housing Finance Authority Law encoded in Part IV, Chapter 159, Florida Statutes (the “Act”) to use its surplus funds, if any, for certain purposes in furtherance of the intent of the Act. The Authority will consider providing financing for those projects that meet the goals of the Authority and comply with applicable state and local law.

The Authority has adopted the following guidelines to set forth the general requirements and procedures which apply to the financing of eligible projects (the “Guidelines”). The Authority may elect to provide financing for any project only if the party requesting such financing (the “Applicant”) has satisfied the general requirements set forth in these Guidelines, provided, however, that the Authority may, in its sole discretion, waive specific provisions of these Guidelines where good cause is shown. The Authority may amend these policies to be consistent with any changes in the Act or other applicable law, without further approval from the Board of County Commissioners of Palm Beach County. In addition, these Guidelines may be amended, revised, repealed or otherwise altered by the Authority, at any time, with or without notice, at any regular or special meeting of the Authority. The Authority reserves the right to impose additional requirements with respect to any particular project. **Compliance with these Guidelines by an Applicant does not create any right by an Applicant to a commitment or any assurance that the Authority can or will provide the requested financing.**

II. POLICY

In accordance with the Act, it is the policy of the Authority to make loans of surplus funds:

A. To:

- (i) Lending institutions (as defined in Section 159.603(5), Florida Statutes).
(Section 159.608(5), Florida Statutes)

- (ii) Make loans directly to eligible persons who otherwise cannot borrow from conventional lending sources.
(Section 159.608 (8), Florida Statutes)
- (iii) Not-for-profit corporations under 501(c)(3) of the Internal Revenue Code of 1986, as amended.
(Section 159.608(10)(a), Florida Statutes)
- (iv) For-profit corporations
(Sections 159.608(3) & (10)(b), Florida Statutes)

B. To be used by borrowers who are eligible for loans pursuant to Section II(A) for:

- (i) *With respect to lending institutions:* making new mortgage loans (to for-profit or not-for-profit developers) for the acquisition, construction, reconstruction or rehabilitation of “qualifying housing developments” (which include improvements, buildings and other real and personal property designed or intended for the primary purpose of providing safe, decent and sanitary residential rental housing for four or more families, at least 60% of which occupants are (a) elderly (65 or older) and/or (b) have incomes that do not exceed 150% of the median income for Palm Beach County).
(Sections 159.603(6) & 159.608(5), Florida Statutes)
- (ii) *With respect to eligible persons or families:* to finance the purchase, construction or rehabilitation of, or to refinance, single-family residences; provided that (a) the purchase price of such residence does not exceed the purchase price limits for Palm Beach County as mandated by federal law for tax-exempt single-family bond programs, and (b) the loan be secured by a first or subordinate mortgage made to the Authority.
(Section 159.608(8), Florida Statutes)
- (iii) *With respect to not-for-profit and for-profit corporations:* for the development of affordable housing.
(Sections 159.608(3) & (10), Florida Statutes)

The borrower cannot subsequently loan the proceeds to another party for the development of affordable housing. A joint venture comprised of a combination of not-for-profit entities and for-profit entities is eligible for a loan of surplus funds for the development of affordable housing.

As used herein, “affordable housing” shall mean:

- Ownership or rental residential units
- For households with incomes from 60% to 150% of area median income (“AMI”)

- Maximum purchase or rental price of a residential unit shall be as set forth in the current Palm Beach County’s “Workforce Housing Program Sale and Rental Prices” available from the Planning Division.
- C. Only for use in connection with projects located within Palm Beach County, Florida, in an area where the Applicant has demonstrated, to the Authority’s satisfaction, a need exists for the project as proposed.

III. PROCEDURES

Prospective Applicants are encouraged to contact the Authority’s Executive Director prior to submission of an application to discuss the Applicant’s proposed project and related financing, and to obtain current policy and procedure directives.

A. NOT-FOR-PROFIT/FOR-PROFIT DEVELOPER APPLICANTS:

- (i) Application Submission: Not-for-Profit and for-profit developers applying for a loan shall complete the Developer Application form attached hereto as **Exhibit A** (the “Developer Application”) and submit three (3) copies of a written proposal to: Housing Finance Authority of Palm Beach County, Florida, 100 Australian Avenue, Suite 410, West Palm Beach, FL 33406, Attn: Executive Director. In addition, a PDF file copy of such application shall be sent via e-mail to the Authority’s Executive Director at “dbrandt@pbcgov.com”. Developer Applications must be submitted by the first day of the month to be considered at the Authority’s meeting for that particular month.
- (ii) Application Review & Screening by Professional Staff: The Authority’s professional staff will review the Developer Application to ascertain whether (i) the Applicant has supplied a complete Developer Application and (ii) the Developer Application is in compliance with applicable state and local (if applicable) laws and regulations and Authority requirements as set forth in these Guidelines.

Applications that are complete, meet the Authority’s requirements as set forth in these Guidelines and are in compliance with state and local laws and regulations will be forwarded to the Authority for consideration. A report on the Developer Application may be prepared by the Authority’s professionals for inclusion in the agenda package for any meeting during which the Developer Application will be considered by the Authority. A favorable recommendation by the Authority’s professional staff does not ensure Authority approval of such Developer Application.

THE AUTHORITY IS UNDER NO OBLIGATION TO ACCEPT ANY APPLICATION OR TO MAKE LOANS TO ANY APPLICANT.

- (iii) Authority Consideration:
- (a) At one or more regularly scheduled meetings, the Authority will review and consider applications and make a determination based on any and all factors it deems relevant, with an emphasis on the following factors:
 - 1. Readiness to proceed, including site control, governmental approvals and financial commitments.
 - 2. Amount requested.
 - 3. Term of loan requested.
 - 4. Interest rate requested for loan.
 - 5. Repayment structure.
 - 6. Lien Priority
 - 7. Leveraging of Authority funds, including other private lending sources and other governmental soft funding (such as FHFC PLP, SAIL, SHIP, HOME, CWHIP, RRLP, CDBG, county/city/CRA commitments applied for or received).
 - 8. Geographic targeting -- such as priority to unincorporated County, County designated target areas, Glades area.
 - 9. Neighborhood impact of proposed development, including other redevelopment/infrastructure improvements by others.
 - (b) The Applicant may also be asked to submit additional information or materials that the Authority or its professionals think will be helpful to the Authority in making its determination on the Developer Application.
 - (c) The Authority reserves the right to implement a formal scoring process at any time to review and rank Developer Applications using whatever factors the Authority deems appropriate.
 - (d) Credit Underwriting Process: If the Authority determines that an Application warrants further consideration, the Authority may require that the Applicant undergo a credit underwriting process. Any and all expenses incurred by the Authority in connection with such credit underwriting process shall be borne by the Applicant, regardless of whether the Applicant's Application is approved.
- (iv) Authority Decision on Application: Upon making its decision, the Authority will notify the Applicant of its determination on the Developer

Application. If the Authority determines to submit the Developer Application to credit underwriting or to make a loan to the Applicant, the Applicant may be required to enter into a Memorandum of Agreement with the Authority pursuant to which the parties will agree to move forward with the loan process or, if applicable, credit underwriting process, in accordance with the terms and provisions set forth therein.

- (v) Good Faith Deposit: Pursuant to the terms of the Memorandum of Agreement, if required by the Authority, the Applicant must, within five (5) days of execution thereof, submit a “Good Faith Deposit” of \$10,000 to the Authority to cover expenses of the Authority related to credit underwriting and the preparation and finalization of loan documents. The “Good Faith Deposit” will be held by the Authority until either (1) loan closing at which time it will, at the Applicant's option, be returned to the Applicant or applied to the Authority’s costs as more particularly described in paragraph (vi) below, (2) there has been an abandonment/withdrawal by the Applicant, of its Developer Application or (3) the Applicant and the Authority have determined that they cannot agree on mutually acceptable terms governing the loan. If any of the events in (2) or (3) shall have occurred, the Authority shall be entitled to the “Good Faith Deposit” to pay actual expenses incurred by the Authority. Any amount remaining after the payment of these costs will then be returned to the Applicant, however, if the actual expenses incurred by the Authority exceed the amount of the “Good Faith Deposit,” the Applicant will be responsible for payment of the excess.
- (vi) Loan Documents: Applicants whose Developer Applications have been accepted shall enter into a loan agreement and other related documents with the Authority with terms mutually acceptable to the Applicant and Authority.
- (vii) Fees and Expenses: On or prior to the disbursement of funds for any loan granted, Applicants shall pay all expenses of the Authority relating thereto, including, but not limited to, fees of its Credit Underwriter and General Counsel.

B. LENDING INSTITUTIONS

- (i) Proposal Submission: Lending institutions interested in obtaining loans from the Authority for the making of loans to for-profit and not-for-profit developers for development of qualified housing developments should submit three (3) copies of a written proposal to: Housing Finance Authority of Palm Beach County, Florida, 100 Australian Avenue, Suite 410, West Palm Beach, FL 33406, Attn: Executive Director. In addition, a PDF file copy of such proposal shall be sent via e-mail to the Authority’s Executive Director at “dbrandt@pbcgov.com”. Such proposals must be submitted by the first day of the month to be considered at the Authority’s meeting for that particular month.

- (ii) Proposal Content: Proposals should contain information, to the extent available, regarding:
 - a. The lending institution (including, but not limited to, type of institution, institution’s capitalization/size, experience, services offered)
 - b. Requested loan terms (including, but not limited to, amount, interest rate, maturity, repayment structure, security, restrictions on use of loan proceeds)
 - c. Potential projects to be financed with loan proceeds and/or proposed criteria therefore (including, but not limited to location, type, size, development status)
 - d. Potential borrowers of such loan proceeds and/or proposed criteria therefore (including, but not limited to, type of entity, prior experience, creditworthiness)
- (iii) Proposal Review: The Authority and its professional staff will review such proposals on a case-by-case basis and make determinations as to whether to grant such loans based on various factors, including, but not limited to availability of funds, feasibility of proposed loan program and timeliness of program. **The Authority is under no obligation to accept any proposal or to make loans to any lending institution regardless of the nature of the proposal.**

C. ELIGIBLE PERSONS OR FAMILIES

The Authority reserves the right to further develop its policy on the application process for individual persons or families seeking loans for the financing of the purchase, construction or rehabilitation of or refinancing of single family residences. In the interim, persons interested in such loans may contact Authority to obtain information regarding the Authority’s then-current policy.

IV. TIME FRAMES FOR MEETING MILESTONES

In connection with the making of Surplus Fund Loans pursuant to the Surplus Fund Regulations, the Authority has determined that the following timeframes represent reasonable deadlines for the indicated milestones:

- 1. Application Submission/Review:
Applications for Surplus Fund Loans (“Applications”) are to be submitted by the first day of the month to be included on the agenda for consideration at the Authority’s meeting for that month. All applications received after the first of the month will be included for consideration on the Authority’s agenda for the meeting for the following month. If for some reason the meeting at which the Application is to be considered in accordance with the preceding sentences is cancelled, Applications will be considered at the next regularly scheduled Authority meeting.

2. Approval for Credit Underwriting/Assignment of Credit Underwriter:
The Authority anticipates that a preliminary determination on an Application (“Preliminary Approval”) will be made at the meeting during which it is first considered and, if Preliminary Approval is given. If the Authority determines that a credit underwriting report is required, such Application will be submitted for credit underwriting and a credit underwriter will be assigned.
3. Memorandum of Agreement (“MOA”) provided to approved Applicants:
Applicants will receive a Memorandum of Agreement from the Authority’s General Counsel within 7 days from the date of Preliminary Approval.
4. Submission of Executed MOA and Good Faith Deposit:
Applicants shall submit an executed MOA, accompanied by the good faith deposit, to the Authority within 15 days from the date of Preliminary Approval.
5. Credit Underwriter Engagement Letter:
If applicable the Credit Underwriter will receive a Credit Underwriter Engagement Letter within 7 days from the date of Preliminary Approval.
6. Executed Credit Underwriter Engagement Letter:
If applicable the Credit Underwriter shall submit an executed Engagement Letter to the Authority within 30 days from the date of Preliminary Approval.
7. Credit Underwriting Commencement:
If applicable the Applicant shall provide the Credit Underwriter with the Credit Underwriter’s required up-front payment/deposit, if any, and the credit underwriting process shall commence, within 45 days from the date of Preliminary Approval.
8. Due Diligence Items:
If applicable the Applicant shall provide all due diligence items as requested from the Credit Underwriter in a timely matter so that the Credit Underwriting Report can be delivered to the Authority.
9. Final Determination:
Once a final determination has been made by the Authority as to whether it will commence with negotiation of loan documents (“Loan Approval”) the Applicant shall have 120 days to conclude such negotiations and close on the loan, including meeting any conditions or requirements (example: pre-sale/lease requirements) of closing. In addition, the borrower must begin making substantial draws on the loan within 60 days following loan closing.

A graphic depiction of the above-described timeline is set forth on Exhibit B attached hereto. Applicants who fail to meet the deadlines set forth in items #5 through #9 above

risk termination of their Preliminary Approval or Loan Approval, as the case may be, and rejection of their Application.

It is entirely within the Authority's discretion to modify or revise any of the above deadlines with respect to any Applicant, either by accelerating such deadline or extending such deadline, as it deems appropriate with respect to the circumstances of each Applicant.

The credit underwriting process will be completed approximately 30 days from receipt of the last to be received of all third party reports such as appraisals, environmental reports, pre-construction analysis, financials, etc. It is the responsibility of the Applicant to pay for and provide all third party reports requested by the Credit Underwriter. Upon notification to the Authority by the Credit Underwriter that an Applicant has not provided requested items in a timely manner the Authority may determine to terminate Preliminary Approval of the Application and reject the Application.

V. GENERAL LOAN TERMS

Unless otherwise approved by the Authority each loan (other than down payment assistance second mortgage loans) shall i.) have a term of no more than 36 months; ii.) be secured by a first mortgage on real estate owned by the borrower with a value not less than the maximum amount of proceeds to disbursed, or in the alternative a pledge of a future revenue source not less than the maximum loan amount; and iii.) as determined by the Authority upon preliminary approval of a loan application. Interest shall be payable monthly or upon principal repayment if a revolving loan.

There shall be a late charge equal to 5% of any past due payment. The late charge shall be applied only to the interest portion of any payment due and not received within 15 days of the due date, and both principal and interest if not paid within 30 days of the due date.

VI. LOBBYING

Applicants are hereby advised that lobbying of any Authority Members by a "lobbyist" concerning any project under consideration is prohibited. Violation of this prohibition shall result in rejection/disqualification of an Application. Lobbying shall mean seeking to influence the decision of an Authority Member by seeking to encourage the approval, denial or modification of an Application. "Lobbyist" shall mean any person who is employed and receives payment, or who contracts for economic consideration for the purpose of lobbying; or any person who represents an organization, association or other group for the purpose of lobbying, but shall not include an employee of the Applicant whose primary duties are not to lobby.

VII. ADDITIONAL GUIDELINES

The Authority reserves the right to amend, revise, repeal or otherwise alter the aforesaid Guidelines with or without notice.

VIII. EFFECTIVE DATE

These Guidelines and the policies set forth herein shall be effective for applications taken after October 12, 2018.

APPENDIX B

REQUEST FOR REIMBURSEMENT FORM

**HOUSING FINANCE AUTHORITY
OF PALM BEACH COUNTY, FLORIDA**

MEMO

TO: Authority Members
FROM: Executive Director [or other party appointed by Authority]
RE: Request for Reimbursement Form

Attached please find the Request for Reimbursement form to be completed by Authority Members requesting reimbursement for travel expenses, educational materials or any other “permissible expenditures.” A sample completed form has been attached hereto as “Exhibit A” for your convenience. The Request for Reimbursement form should be submitted to the Executive Director, or other party appointed by the Authority for that purpose, accompanied by the appropriate documentation of each expenditure, including but not limited to receipts, bills, cancelled checks or invoices for such expenditure. Credit card statements are not a preferred form of documentation and the Authority may reject such form of documentation if the amount requested for reimbursement as indicated on the credit card statement is greater than amounts customarily charged for such item.

If documentation of an individual expenditure amounting to less than twenty-five dollars (\$25.00) is unavailable, you may submit the Certification of Expenditure in the form attached hereto as “Exhibit B” as documentation of such expenditure.

Requests for Reimbursement for expenditures in an aggregate amount in excess of fifty dollars (\$50.00) for which documentation is unavailable shall be denied to the extent that the amount requested exceeds \$50.00, regardless of the inclusion of a Certification of Expenditure, provided, however, that you may request that the Authority waive this limit if good cause can be shown as to why documentation of the expenditure is not available.

All requests for reimbursement shall be consistent with 112.061, Florida Statutes.

REQUEST FOR REIMBURSEMENT FORM

Date of Request:					
Party Requesting Reimbursement:					
<u>Date of Expenditure</u>	<u>Type of Expenditure</u>	<u>Purpose of Expenditure</u>	<u>Payee of Expenditure</u>	<u>Amount of Expenditure</u>	<u>Form of Documentation of Expenditure Attached</u>
TOTAL REIMBURSEMENT REQUESTED					

I hereby certify that the expenditures listed above are true and accurate expenditures incurred in connection with valid Authority business on the dates and for the purposes set forth above and that the items and amounts requested are consistent with the requirements and limitations set forth in 112.061, Florida Statutes or, if applicable, the Authority’s Operating Policies.

Signature of Requester: _____
Date: _____

Exhibit A
Sample Request for Reimbursement

Date of Request:					
Party Requesting Reimbursement:					
<u>Date of Expenditure</u>	<u>Type of Expenditure</u>	<u>Purpose of Expenditure</u>	<u>Payee of Expenditure</u>	<u>Amount of Expenditure</u>	<u>Form of Documentation of Expenditure Attached</u>
04/12/2008	Registration Fee	NALHFA Conference Registration Fee	NALHFA	\$250.00	cancelled check
05/11/2008	Airfare	Air Travel to NALHFA Conference in Los Angeles, CA	Northwest Air	825.00	invoice/ticket
05/11/2008	Taxi	Ground transportation at NALHFA Conference	Yellow Cab Co.	23.00	Certification of Expenditure
05/11/2008	Meal	Dinner at NALFA Conference	Big City Diner	19.00	receipt
05/12/2008	Meal	Lunch at NALFA Conference	Rosalita's	8.00	receipt
05/11/2008 to 05/12/2008	Hotel	Hotel for NALHFA Conference	Sheraton	209.00	receipt
06/01/2008	Professional Literature	Idiot's Guide to Public Financing	Barnes & Noble	21.00	receipt
TOTAL REIMBURSEMENT REQUESTED				\$1,355.00	

I hereby certify that the expenditures listed above are true and accurate expenditures incurred in connection with valid Authority business on the dates and for the purposes set forth above and that the items and amounts requested are consistent with the requirements and limitations set forth in 112.061, Florida Statutes.

Signature of Requestor: _____
Date: _____

APPENDIX C

CERTIFICATION OF EXPENDITURE

I, the undersigned, do hereby certify to the Housing Finance Authority of Palm Beach County, Florida, that:

- (a) On _____, 20__, I expended \$_____ for _____
_____ (the "Expenditure"),
- (b) The Expenditure was validly made and incurred by me in connection with Authority business,
- (c) The amount of the Expenditure indicated herein is the true and accurate amount made and incurred by me for such Expenditure,
- (d) The Expenditure is permitted by and in compliance with 112.061, Florida Statutes, or, if applicable, the Authority's Internal Operating Policies, and
- (d) I was not provided with, or for other reasons do not have, a receipt, invoice, cancelled check or other form of documentation for the Expenditure.

By: _____
Printed Name: _____
Date: _____

APPENDIX D

GENERAL FUND DISBURSEMENT

Date:	
To: [contact person], c/o U.S. Bank National Association, Corporate Trust Department	
From: _____, Executive Director [or other party appointed by the Authority] Housing Finance Authority of Palm Beach County, Florida	
Re: General Fund Disbursement #__-20__	
The following Invoices/Reimbursement Requests are presented for payment, with supportive documentation attached:	
<u>PAYEE</u>	<u>AMOUNT</u>
TOTAL GENERAL FUND DISBURSEMENT:	\$

APPENDIX E

DENIAL OF REQUEST FOR DISBURSEMENT

Date: _____

To: _____

From: _____, Executive Director [or other party appointed by the Authority]

Please be advised that I am in receipt of your Request for Disbursement dated _____, requesting reimbursement in a total amount of \$ _____, a copy of which is attached hereto (the "Request"). The following items included on the Request, totaling \$ _____, will not be reimbursed:

Date of Expenditure	Type of Expenditure	Purpose of Expenditure	Payee of Expenditure	Amount of Expenditure
TOTAL AMOUNT				

The items indicated above are not being reimbursed due to (circle all that apply):

Insufficient/Improper Documentation

Unreasonable Expense (i.e. amount paid is unreasonable for item)

Impermissible/Unauthorized Expense

Not in Compliance with 112.061, Florida Statutes

Amount in Excess of Budgetary Limitations for Such Expenditure

Other: _____

The remaining items on the Request, in the total amount of \$ _____ will be reimbursed as requested. You may resubmit your Request for the items that have been denied upon remedying the above-noted deficiencies.

APPENDIX F

INVESTMENT POLICY

The Housing Finance Authority of Palm Beach County, Florida (“Authority”) is a public body corporate and politic, created under the laws of the State of Florida and is a special district of the State of Florida, Section 218.415 of the Florida Statute provides for local government investment policies. The investment policy below is in accordance with said statute.

1. **SCOPE.** This Investment Policy shall apply to the separate funds of the Authority in excess of amounts needed to meet current short term expenses. This Investment Policy shall not apply to funds related to the issuance of bonds or other debts where there are indentures or agreements by the Authority relating to the investment of said funds.

2. **INVESTMENT OBJECTIVES.** The first objective of all investments shall be the safety of the capital of Authority. The second of all investments shall be the liquidity of Authority Funds. The third objective of all investments shall be investment income to the Authority. Investments in furtherance of housing programs of the Authority need not meet any of all or the foregoing objectives.

3. **PRUDENT PERSON RULE.** Investments should be made with judgment and care under circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived from the investments.

4. **AUTHORIZED INVESTMENTS.** Funds shall be invested in the following identified investments and may be divested from such investments at prevailing market prices or market rates:

- A. The Local Government Surplus Trust Fund or any intergovernmental investment pool authorized pursuant to the Florida Interlocal Cooperation Act as provided in Section 163.01.
- B. Securities Exchange Commission registered money market funds with the highest credit quality rating from a nationally organized rating agency.
- C. Savings accounts in state certified qualified public depositories, as defined in Section 280.02.
- D. Direct obligations of the U.S. Treasury.

- E. Certificates of deposit in state certified qualified public depositories, as defined in Section 280.02.
- F. Federal agencies and instrumentalities.

The securities listed in the foregoing lettered subparagraphs shall be invested to match investment maturities with known cash needs and anticipated cash-flow requirements.

The Authority has established separate accounts pursuant to Section 4 (A) above with the Clerk & Comptroller of Palm Beach County for participation in the Palm Beach County investment pool, and with the State Board of Administration for participation in the Local Government Surplus Funds Trust Fund. Transfers of monies shall be made from or to such accounts with and solely through its Authorized Banking Institution. Such transfers shall be initiated by the Executive Director and confirmed pursuant to respective terms of the participant acknowledgement or authorization form.

In furtherance of its housing programs the Authority has from time to time and may in the future provide funding for and acquire an interest in (1) first or second mortgage loans, or in mortgage backed securities relating thereto, made to certain eligible persons or families in Palm Beach County, (2) custodial receipts (also known as “interest only strips” or “excess interest portions”) which represents a percentage of the interest paid on a mortgage backed security, or a subordinate series of bonds, in lieu of a cash contribution to an Authority single family mortgage revenue bond issue, and (3) any other loan made in conjunction with a qualified housing development as defined under Chapter 159, Part IV, Florida Statutes.

5. **RISK AND DIVERSIFICATION.** Investments shall be diversified to the extent practicable to control the risk of loss resulting from over concentration of assets in a specific maturity, issuer, instrument, dealer or bank through which financial instruments are bought and sold.

6. **PERFORMANCE MEASUREMENT AND REPORTING.** The Executive Director of the Authority shall review the monthly statements of the funds, investments and securities of the Authority to determine the performance and status of said funds, investments and securities, and notify the Authority of any transfer of funds among its investment accounts. The Executive Director shall make periodic reports on the amount and value of said funds, investments and securities and the amount of earned income thereon, together with the compliance thereof with the applicable provisions of this Policy. This report shall be submitted by the Executive Director to the Authority at least annually or more often as the Authority or Financial Advisor deems advisable.

7. **WAIVERS.** The Authority by action specifically taken with a quorum, present and voting at a meeting thereof may waive provisions of the Policy to the extent authorized by law.

APPENDIX G

ROBERT'S RULES OF ORDER FOR INFORMAL BOARD MEETINGS

Informal Meetings:

Informal meetings are specifically designed for boards and committees whose membership is under 12. They are called “informal” because the rules are less formal than the rules for larger bodies. The person presiding is usually seated and can make motions, discuss motions, and vote on motions. The members do not have to rise to address the chair, and the members can often discuss ideas before they make a motion. However, even though an informal meeting has a more relaxed approach, members should still follow an agenda and limit discussion to the subject of the meeting. If these techniques are not practiced, time is wasted and things do not get accomplished. The two most common types of informal meetings are *board* and *committee* meetings.

Board Meetings (Under 12 Members)

In board meetings, business is conducted in largely the same way as in other deliberative assembly meetings. All boards must transact business in a properly called meeting. For example, members must be notified of the meeting in advance, and a quorum must be present. The secretary keeps the minutes of the board meeting. The minutes are accessible only to members of the board, unless the board votes to release them to the general membership or two thirds of the general membership votes to have them released and read to all members.* At board meetings, the executive committee (if one exists) should report to the board what it has been doing since the last board meeting.

The formality of the rules in board meetings is determined by the size of the board. *Robert's Rules of Order* sets the dividing line between large and small boards as 12 members. Large boards operate under the same rules as other deliberative assemblies. Small boards can use more relaxed procedures, which differ from the procedures of large boards in several aspects. In meetings of small boards:

- Members do not have to stand up and obtain the floor before speaking. They can speak while seated.
- Motions do not need to be seconded.†

* Does not apply to Authority meetings. These rules apply only to the extent that they do not conflict with the Act, the Ordinance, the Florida Sunshine Law, the Florida Public Records Law or other provisions of the Florida Statutes or Palm Beach County Code of Ordinances as may be applicable.

† However, it is the custom and practice of the Authority to have motions seconded.

- Members can speak any number of times, and there is usually no motion to close the debate.
- Members can discuss a subject while no motion is pending.
- When all the members know what they are voting on, having a formal motion before voting is not necessary. (However, for the sake of having a clear record in the minutes of the issue being voted on, putting the discussion in the form of a formal motion before taking a vote is always best. By doing so, there is no question about what everyone is voting on.)
- Unless they agree by unanimous consent, members must vote on proposed board actions just like other assemblies. However, a vote can be taken by a show of hands, which is often more convenient than other ways of voting.
- The chairman doesn't have to stand up to put a question to a vote.
- The chairman can enter into the discussion and usually remains seated while conducting the meeting. He or she usually makes motions and votes (unless board custom dictates otherwise).

If a board meeting ever disintegrates into chaos, or a lack of order prevents business from being accomplished, a wise presiding officer returns to the formal rules of conducting a meeting and advises the members that parliamentary rules are in place. (Examples of parliamentary rules are getting recognition from the chair before speaking, making a main motion before beginning to speak, observing the formal rules of debate, and stating the question before taking a vote.)

ROBERT MCCONNELL PRODUCTIONS, ROBERT'S RULES OF ORDER, Chapter 16 (2001).

APPENDIX H

MEMORANDUM

TO: Housing Finance Authority of Palm Beach County, Florida

FROM: Morris G. (Skip) Miller, Authority General Counsel

RE: Palm Beach County Code of Ethics Ordinance and Florida Code of Ethics for Public Officers and Employees – Voting Conflicts and Acceptance of Gifts

DATE: Friday, March 22, 2013

The recent amendments to the Palm Beach County Code of Ordinances relating to the Authority have changed in several important respects the rules you are subject to as Authority Members. Therefore, David Brandt asked us to update the Memorandum we provided you dated Tuesday, March 29, 2011 explaining the Palm Beach Code of Ethics Ordinance, the extent to which it applies to the Authority and the Authority Members in the areas of voting conflicts and acceptance of gifts, and what obligations it imposes on Authority Members over and above the requirements of the Florida Code of Ethics for Public Employees and Officers. This Memorandum updates and replaces in its entirety our prior memorandum on this subject.

This is only intended to be a summary of these laws. Detailed explanations of the laws referred to are available from the Florida Commission of Ethics, in the case of state law, and from the Palm Beach Commission on Ethics, in the case of Palm Beach County law.

A. VOTING CONFLICTS

1. Fla. Stat. §112.3143(3)(a)

Pursuant to Fla. Stat. §112.3143(3)(a), Authority Members, as local public officers, cannot vote on any measure which would inure to the special private gain or loss of:

- a. the Authority Member;
- b. any principal by whom he or she is retained;
- c. the parent organization or subsidiary of a corporate principal by which he or she is retained;
- d. a relative; or
- e. a business associate

Pursuant to Fla. Stat. §112.3143(4), an Authority Member cannot participate in any matter which would inure to the Authority Member's special private gain or loss; which the Authority Member knows would inure to the special private gain or loss of any principal by whom he or she is retained (which is generally interpreted to include an employer) or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would

inure to the special private gain or loss of a relative or business associate of the Authority Member, without first disclosing the nature of his or her interest in the matter. As used in the statutes, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the Authority Member or at the Authority Member's direction.

The memorandum of voting conflict must be filed with the Authority prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the Authority, and shall be read publicly at the next Authority meeting. If the conflict is unknown or not disclosed prior to the meeting, the Authority Member must orally disclose the conflict at the meeting when the conflict becomes known. A written memorandum of voting conflict must then be filed with the Authority within 15 days after the oral disclosure. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the Authority, and shall be read publicly at the next Authority meeting.

The written memorandum is Form 8B of the Florida Commission on Ethics – Written Memorandum of Voting Conflict for County, Municipal and other Local Public Officials. Form 8B is required to be filed with the Authority for inclusion in the minutes. Form 8B is attached as Appendix J hereto.

2. Palm Beach County Code of Ethics Ordinance

§2-443(a) of the Palm Beach County Code of Ethics expands the requirement to abstain from voting, not participate in discussion and declare the nature of the conflict, so that it applies to the following persons or entities, many of which are not included in the list for which abstention, etc. is required under state law:

- (1) Himself or herself;
- (2) A member of his or her household, including a domestic partner and his or her dependents, or the employer or business of any of these people;
- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
- (4) An outside employee or business of his or hers, or of his or her spouse or domestic partner, or someone who works for such outside employer or business;
- (5) A customer or client of the official or employee;
- (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner – "substantial" for these purposes shall mean at least ten thousand dollars (\$10,000.00) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
- (7) A nongovernmental civic group, union, social, charitable, or religious organization of which he (or his or her spouse or domestic partner) is an officer or director.

Please note that while the Florida Code of Ethics permits an Authority Member with a conflict as described above to participate in the discussion, provided that the appropriate disclosure is made, the Palm Beach County Code of Ethics is more restrictive and prohibits an Authority Member from participating in the discussion.

The Palm Beach County Code of Ethics also requires that the Authority Member file a copy of Form 8B with the Palm Beach County Commission on Ethics at the same time it is filed with the Authority.

B. GIFT LAW.

1. Fla. Stat. §112.3148

As a result of the amendment to the Palm Beach County Code of Ordinances, Authority Members are no longer required to file annual financial disclosure statements pursuant to Fla. Stat. §112.3145. Therefore, Authority Members are no longer subject to the limitations on the receipt of gifts set forth in Fla. Stat. §112.3148.

2. Palm Beach County Code of Ethics Ordinance

The limitations on the receipt of gifts in §2-442 of the Palm Beach County Code of Ethics. are summarized as follows:

(a) Gifts from Vendors and Lobbyists.

(1) No Authority Member, or any other person on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any vendor, lobbyist, or any principal or employer of a lobbyist, who lobbies the Authority.

(2) No lobbyist, vendor, or principal or employer of a lobbyist who lobbies the Authority shall knowingly give, directly or indirectly, any gift with a value greater than one hundred dollars (\$100) in the aggregate for the calendar year to a person who the vendor, lobbyist, or principal knows is an Authority Member. The term vendor also includes any person or entity that, because of the nature of their business, may respond to an invitation to bid, request for proposal or other procurement opportunity that has been published by the Authority.

(3) No Authority Member or any other person or business entity on his or her behalf, shall knowingly solicit a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies the Authority, where the gift is for the personal benefit of the Authority Member, another Authority Member, or an official, or any relative or household member of the Authority Member.

(4) No person or entity shall offer, give, or agree to give an Authority Member a gift, and no Authority Member shall accept or agree to accept a gift from a person or entity, because of:

- (i) An official public action taken or to be taken, or which could be taken;
 - (ii) A legal duty performed or to be performed or which could be performed; or
 - (iii) A legal duty violated or to be violated, or which could be violated by any official or employee.
- (b) Other Gifts.

Any Authority Member who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.

(1) *Personal Gifts.* Authority Members are not required to report gifts in excess of one hundred dollars (\$100) so long as those gifts are given to the Authority Member by a personal friend or co-worker and the circumstances demonstrate that the motivation for the gift was the personal or social relationship rather than an attempt to obtain the goodwill or otherwise influence the Authority Member in the performance of his or her official duties. Factors to be considered in determining whether a gift was motivated by a personal or social relationship may include but shall not be limited to: whether the relationship began before or after the Authority Member obtained his or her office or position; the prior history of gift giving between the individuals; whether the gift was given in connection with a holiday or other special occasion; whether the donor personally paid for the gift or sought a tax deduction or business reimbursement; and whether the donor gave similar gifts to other officials or employees at or near the same time. If the personal friend or co-worker is a vendor, lobbyist or principal or employer of a lobbyist that lobbies the Authority, then the Authority Member shall not accept a gift in excess of \$100.

(2) *All other gifts.* All Authority Members who receive any gift in excess of one hundred dollars (\$100) (single gift, not aggregate), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics for the period ending September 30 of each year. Authority Members who do not receive a gift in excess of one hundred dollars (\$100) during a given reporting period are not required to file an annual gift disclosure report.

(c) Definition of Gift. “Gift” means the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources, §112.3148, Florida Statutes and the Florida Administrative Code. A “gift” may include (but is not limited to):

- (1) real property or the use thereof;
- (2) tangible or intangible personal property or the use thereof;
- (3) a preferential rate or terms on a transaction not available to others similarly situated;

- (4) forgiveness of a debt;
- (5) transportation not in relation to officially approved governmental business, lodging or parking;
- (6) food or beverage;
- (7) dues, fees and admission tickets to events;
- (8) plants and flowers;
- (9) personal services for which a fee is normally charged by the provider; and
- (10) any other thing or service having an attributable value.

Please note that in the case of a gift such as meals or admission tickets to events, additional meals or tickets provided to a spouse or other individual on behalf of the Authority Member would be considered part of the gift to the Authority Member, and the total value of all meals or admission tickets provided would have to be included in any calculation of value.

(d) Exceptions. The following are not treated as “gifts”:

- (1) Political contributions specifically authorized by state or federal law;
- (2) Gifts from relatives, domestic partners, and dependents named on the official’s or employee’s latest federal income tax return, or one’s household member;
- (3) Awards for professional or civic achievement;
- (4) Materials such as books, reports, periodicals or pamphlets which are solely informational or of an advertising nature;
- (5) Gifts solicited or accepted by Authority Members on behalf of the Authority in performance of their official duties for use solely by the Authority for a public purpose;
- (6) Publicly advertised offers for goods or services from a vendor under the same terms and conditions as are offered or made available to the general public;
- (7) Inheritance or other devise; or
- (8) Registration fees and other related costs associated with educational or governmental conferences or seminars and travel expenses either properly waived or inapplicable pursuant to §2-443(f), provided that attendance is for governmental purposes, and attendance is related to their duties and responsibilities as an Authority Member;

(e) Accepting travel expenses.

No Authority Member shall accept, directly or indirectly, any travel expenses including, but not limited to, transportation, lodging, meals, registration fees and incidentals from any contractor, vendor, service provider, bidder or proposer of the Authority, as applicable. The provisions of this subsection shall not apply to travel expenses paid by other governmental entities or by organizations of which the Authority is a member if the travel is related to that membership.

C. CONFLICT OF INTEREST PROVISION IN FLORIDA HOUSING FINANCE AUTHORITY LAW

159.606 Conflicts of interest; disclosure.—No member or employee of a housing finance authority shall acquire any interest, direct or indirect, in any qualifying housing development or in any property included or planned to be included in such a development, nor shall a member or employee have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any qualifying housing development. If any member or employee of a housing finance authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any qualifying housing project, the member or employee shall immediately disclose the same in writing to the housing finance authority. Such disclosure shall be entered upon the minutes of the housing finance authority. Failure so to disclose such interest shall constitute misconduct in office.

History. —s. 6, ch. 78-89; s. 890, ch. 95-147.

Please let me know if you have any questions.

APPENDIX I

**AUTHORITY RESOLUTION REGARDING
DISCLOSURE POLICY**

A RESOLUTION OF THE HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA (THE “AUTHORITY”) DECLARING THE AUTHORITY’S POLICY REQUIRING MEMBERS OF THE AUTHORITY TO DISCLOSE CONTACTS WITH ANY PARTY COMING BEFORE THE AUTHORITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the members of the Authority (the “Members”) are subject to ethical standards imposed by the State of Florida Code of Ethics for Public Officers and Employees set forth in Part III, Chapter 112 of the Florida Statutes; Section 286.011, Florida Statutes; the Palm Beach County Code of Ethics set forth in Section 8 of the Administrative Code of Palm Beach County, Florida and the Florida Housing Finance Authority Law (the “Act”) encoded in Part IV, Chapter 159 of the Florida Statutes (collectively, “Established Ethical Standards”); and

WHEREAS, the Established Ethical Standards require Members to publicly disclose potential conflicts of interest in certain situations as well as provide annual disclosure of their financial interests, including, but not limited to, contractual relationships, sources of income and property ownership, but do not require Members to disclose contact they have had with any party coming before and/or doing business with the Authority outside of Authority meetings; and

WHEREAS, the Authority is committed to establishing and maintaining high ethical standards; and

WHEREAS, it is in the best interests of the Authority and the citizens that it serves to establish standards higher than those imposed by the Established Ethical Standards in connection with the disclosure of contact between Members and any party appearing before the Authority.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSING FINANCE AUTHORITY OF PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. The recitals set forth above are adopted by the Authority as the findings of the Authority and are incorporated herein.

SECTION 2. The Authority is authorized and empowered by the Act and Palm Beach County Ordinance No. 79-3 enacted February 6, 1979, as amended by Ordinance No. 91-7 enacted on January 22, 1991, Ordinance No. 98-53 enacted on October 20, 1998, Ordinance No. 01-016 enacted on January 22, 2001, and Ordinance No. 2002-022 enacted on May 21, 2002 (collectively, the “Ordinance”) to adopt this Resolution and this Resolution is adopted and such actions are to be taken pursuant to the provisions of the Act and the Ordinance.

SECTION 3. At each Authority meeting, any Member who has had contact outside of such meeting with any party, other than a professional retained by the Authority appearing in the capacity for which professional has been retained, appearing before the Authority at such meeting shall publicly disclose the date, mode of communication and nature of such contact at the time of the party's appearance (the "Disclosure Policy").

SECTION 4. Upon credible evidence, as determined by a majority of the Members, that a Member has failed to make the disclosure required by the Disclosure Policy, the Executive Director shall report such violation to the County Attorney's Office.

SECTION 5. All resolutions, or parts thereof, of the Authority in conflict herewith are, to the extent of such conflict, hereby modified to the extent of such conflict.

SECTION 6. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 9th day of November, 2007.

HOUSING FINANCE AUTHORITY OF PALM
BEACH COUNTY, FLORIDA

By: /s/ _____
Chairperson

ATTEST:

/s/ _____
Secretary

APPENDIX J

FORM OF MEMORANDUM OF VOTING CONFLICT

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, _____, hereby disclose that on _____, 20_____:

(a) A measure came or will come before my agency which (check one)

_____ inured to my special private gain or loss;

_____ inured to the special gain or loss of my business associate, _____;

_____ inured to the special gain or loss of my relative, _____;

_____ inured to the special gain or loss of whom _____ by whom I am retained; or

_____ inured to the special gain or loss of _____ which

is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Date Filed

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

APPENDIX K

**Florida Attorney General
Advisory Legal Opinion**

Number: AGO 2012-35

Date: November 15, 2012

Subject: Dual Office Holding, housing authority

The Honorable Ira J. Raab (Retired)
Justice, New York State Supreme Court
9452 Lantern Bay Circle
West Palm Beach, Florida 33411-5169

RE: DUAL OFFICE-HOLDING - SPECIAL DISTRICTS - HOUSING
AUTHORITIES - HOUSING FINANCE AUTHORITIES - DEPENDENT SPECIAL
DISTRICTS - MUNICIPALITIES - housing authority and housing
finance authority members as officers for purposes of dual
office-holding prohibition. Art. II, s. 5(a), Fla. Const.; Part
I, Ch. 421, Fla. Stat.; Part IV, Ch. 159, Fla. Stat.

Dear Justice Raab:

You have requested my opinion on substantially the following
question:

Does simultaneous service on the West Palm Beach Housing
Authority and the Housing Finance Authority of Palm Beach County
violate the dual office-holding prohibition of the Florida
Constitution?

In sum:

Simultaneous service on the West Palm Beach Housing Authority
and the Housing Finance Authority of Palm Beach County would
violate the dual office-holding prohibition of the Florida
Constitution as service on either of these would represent
holding an office within the scope of Article II, section 5(a),
Florida Constitution.

According to your letter, you have been appointed to the West
Palm Beach Housing Authority and the Housing Finance Authority
of Palm Beach County, but have not accepted either appointment.

You are concerned that simultaneous service on both agencies may violate Florida's constitutional dual office-holding prohibition contained in Article II, section 5(a), Florida Constitution, and have requested direction from this office.

Article II, section 5(a), Florida Constitution, provides that:

"No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, . . . constitutional convention, or statutory body having only advisory powers."

This provision of the Florida Constitution prohibits a person from simultaneously holding more than one "office" under the state, county, or municipal governments and applies to both elected and appointed offices.[1]

The Constitution does not contain a definition of the terms "office" or "officer" for purposes of the dual office-holding prohibition. However, Florida courts and this office have advised that it is the nature of the powers and duties of a particular position that determines whether it is an "office" within the scope of the dual office-holding prohibition or an "employment" outside the scope of the provision.[2] The Florida Supreme Court has stated that an office "implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office[.]"[3] The term "office" encompasses the idea of tenure, duration, and duties in exercising a portion of the sovereign power, conferred or defined by law and not by contract, whereas an "employment" does not "comprehend a delegation of any part of the sovereign power." [4] Unquestionably service on the governing body of a governmental entity, such as a city or county, constitutes an office.[5] The issue for resolution here is whether your simultaneous service by appointment to the Palm Beach County Housing Finance Authority and the West Palm Beach Housing Authority represents an appointment to office which violates the dual office-holding prohibition of the Florida Constitution.

The dual office-holding prohibition refers only to state, county, and municipal offices. It is not applicable to independent special district officers serving on governmental entities created by law to perform a special and limited governmental function. The Florida Attorney General's Office has concluded that there was no violation of the dual office-holding

prohibition when a state, county, or municipal officer also served as an officer of an independent special district.[6] In a Florida Supreme Court advisory opinion from 1994, the Court reiterated that special district officers are not included within the dual office-holding prohibition. In *In re Advisory Opinion to the Governor - Dual Office-Holding*,[7] the Court concluded that a member of a community college district board of trustees was an officer of a special district created to perform the special governmental function of operating a community college and was not a state, municipal, or county officer within the meaning of Article II, section 5(a), Florida Constitution. Thus, this office concluded that the dual office-holding prohibition did not keep a state, county, or municipal officer from serving on a community college board of trustees.

Although membership on the board of trustees of a community college district was determined to constitute a special district office and thus to be outside the parameters of Article II, section 5(a), Florida Constitution, the Florida Supreme Court in *In re Advisory Opinion to the Governor - School Board Member - Suspension Authority*[8] rejected the designation of school board members as district officers. In that case, the Governor had requested that the Court determine whether school board members could be suspended under the constitutional provisions governing county officers or whether a suspension should be accomplished under the statutory provisions governing district officers. The Court concluded that school board members are county officers who have equivalent powers and authority to that of county commission members although their power is exercised in different local governmental spheres. As county officers, therefore, school board members are precluded from simultaneously holding another state, county, or municipal office.

The Supreme Court was advised that the Florida Attorney General's Office had previously considered school board members to be special district officers and outside the scope of Article II, section 5(a) of the Florida Constitution. Thus, a determination by the Court that school board members were county officers could result in potential dual office-holding violations for school board members who had relied on previously issued Attorney General Opinions. In response, the Court held that "[w]ith regard to those individuals who may be holding dual offices because of the attorney general's opinion 84-73, we conclude that this [*i.e.*, the Court's] opinion should be prospective in application. This prospective application should apply only until such time as the term of one of the dual

offices expires." [9]

In light of the Florida Supreme Court's approach to the determination of an office, this office has cautioned that the nature and character of a district or authority must be reviewed to determine whether the governmental entity is an agency of the state, county or municipality so that its officers may be considered state, county or municipal officers for purposes of dual office-holding. In a situation very like the one you have presented, this office, in Attorney General Opinion 84-90, considered whether a member of the Volusia County Health Facilities Authority was a county officer. Although the health facilities authority was created and organized under Part III, Chapter 154, Florida Statutes, as a public body corporate and politic, it was created by county ordinance or resolution following a finding of necessity by the local governing body. The Volusia County governing body appointed the authority members, could exercise the power to remove the members, and was authorized to abolish the authority at any time. This office concluded under these facts that the authority was an instrumentality of the county and that its officers were actually county officers. Thus, the constitutional prohibition against dual office-holding precluded the mayor from also serving on the governing body of the county health facilities authority.

Similarly, in Attorney General Opinion 08-61, this office concluded that membership on the Volusia Growth Management Commission constituted an office for purposes of the constitutional dual office-holding prohibition. The commission was designated a dependent special district and was created by county charter to review comprehensive plan amendments. The council's budget was approved and funded by the county. The commission was made up of voting members appointed by the municipalities located within the county as well as by the county and included nonvoting members appointed by a number of other governmental entities. The commission's determinations of consistency were binding on the submitting governmental agency and actions of the council appeared to this office to be an exercise of the sovereign powers of the state. The opinion concluded that the Volusia Growth Management Commission appeared to be a part of county government and its members would be county officers. [10]

The Housing Finance Authority of Palm Beach County (the authority) is designated a dependent special district by the Division of Community Development. [11] Information supplied to

the division by the authority indicates that Palm Beach County is the local governing authority which appoints the members of the authority.[12] Enabling documents for the housing finance authority are a series of county ordinances.[13] The "Florida Housing Finance Authority Law," Part IV, Chapter 159, Florida Statutes, provides statutory authority for this entity and indicates that the purpose for adoption of Part IV, Chapter 159, Florida Statutes, is

"[t]he financing, acquisition, construction, reconstruction, and rehabilitation of housing and of the real and personal property and other facilities necessary, incidental, and appurtenant thereto are exclusively public uses and purposes for which public money may be spent, advanced, loaned, or granted and are governmental functions of public concern." [14]

In addition, in its "finding and declaration of necessity" for adoption of this legislation, the statute states that "[t]he Congress of the United States has . . . found and determined that housing may be financed by means of obligations issued by any state or local governmental unit . . . and has thereby provided a method to aid state and local governmental units to provide assistance to meet the need for housing." [15] The law specifically provides that

"[t]he county for which the housing finance authority is created may, at its sole discretion, and at any time, alter or change the structure, organization, programs, or activities of any housing finance authority, including the power to terminate such authority, subject to any limitation on the impairment of contracts entered into by such authority and subject to the limitations or requirements of this act." [16]

Among the powers of each housing finance authority is the power to "[c]reate or assist in creating corporations that qualify as not-for-profit corporations under s. 501(c)(3) of Internal Revenue Code of 1986, as amended, and under the laws of this state, and that are engaged in acquiring, constructing, reconstructing, or rehabilitating qualifying housing developments." [17] The authority itself is legislatively declared to "constitute a public body corporate and politic, exercising the public and essential governmental functions" described in the act. [18] The authority can sue and be sued; [19] own real and personal property; [20] borrow money through the issuance of bonds; [21] and purchase or make loans and take assignments of mortgage loans and promissory notes. [22] County housing authorities can also "own, maintain, operate, control,

and capitalize a limited-purpose savings and loan association to provide low-cost loans and related services to eligible persons to obtain affordable housing[;]"[23] and make loans or grant surplus funds of the authority to corporations that qualify as not-for-profit corporations to support the development of affordable housing.[24] Authorities are authorized to issue revenue bonds and may issue refunding bonds to pay, retire, or refund the bonds issued by another housing finance authority.[25]

Based on the substantial powers and duties imposed on a county housing finance authority set forth in Part IV, Chapter 159, Florida Statutes, as well as the county's role in appointing its members and enacting ordinances controlling the actions of such an authority, it is my opinion that a member of the Housing Finance Authority of Palm Beach County is a county officer for purposes of Florida's dual office-holding prohibition.[26]

Similarly, the West Palm Beach Housing Authority is designated a dependent district under the control of the City of West Palm Beach. The housing authority is created pursuant to Part I, Chapter 421, Florida Statutes, by approval of a city resolution. The purpose of Florida's "Housing Authorities Law," Part I, Chapter 421, Florida Statutes, is to address the existence of unsanitary or unsafe dwelling accommodations for low income Floridians through

"[t]he clearance, replanning and reconstruction of the areas in which insanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income, including the acquisition by a housing authority of property to be used for or in connection with housing projects or appurtenant thereto, are exclusively public uses and purposes for which public money may be spent and private property acquired and are governmental functions of public concern." [27]

Housing authorities are constituted by the Legislature as public bodies corporate and politic.[28] Commissioners of a municipal housing authority are appointed by the mayor of the controlling municipality with the approval of the governing body.[29] Commissioners may be removed by the mayor "[f]or inefficiency or neglect of duty or misconduct in office[.]"[30]

Among the powers extended to a municipal housing authority by Part I, Chapter 421, Florida Statutes, is the power to invest funds and issue bonds;[31] to prepare, carry out, acquire,

lease, and operate housing projects;[32] to lease or rent houses, lands, buildings, or structures "embraced in any housing project" and to establish rents for those properties.[33] A housing authority is also authorized within its area of operation to investigate living conditions and housing conditions for purposes of improving these conditions and can conduct examinations and investigations and issue subpoenas.[34] The statutes authorize a housing authority to create for-profit or not-for-profit corporations, limited liability companies, or other similar business entities in which the housing authority may hold an ownership interest.[35]

Recognizing the substantial powers and duties exercised by a commissioner of a municipal housing authority under Part I, Chapter 421, Florida Statutes, and the relationship of these entities to the municipality, it is my opinion that the commissioners of a municipal housing authority are municipal officers and subject to the dual office-holding prohibition set forth in Article II, section 5(a), Florida Constitution.[36]

Thus, in answer to your question, it is my opinion that simultaneous service on the West Palm Beach Housing Authority and the Housing Finance Authority of Palm Beach County would violate the dual office-holding prohibition of the Florida Constitution as service on both of these would represent holding dual offices within the scope of Article II, section 5(a), Florida Constitution.

Sincerely,

Pam Bondi
Attorney General

PB/tgh

[1] See, e.g., Ops. Att'y Gen. Fla. 69-2 (1969), 80-97 (1980), 94-66 (1994), and 08-15 (2008).

[2] See *State ex rel. Holloway v. Sheats*, 83 So. 508 (Fla. 1919); Ops. Att'y Gen. Fla. 99-34 (1999) (membership on the Florida State Fair Authority constitutes an office for purposes of Art. II, s. 5[a], Fla. Const.) and 91-80 (1991) (insurance fraud investigator is "office" for purposes of dual office-holding prohibition).

[3] *State ex rel. Holloway v. Sheats, id.* at 509 (term "office" embraces the idea of tenure, duration, and duties in exercising some portion of the sovereign power, conferred or defined by law and not by contract; and employment does not authorize the exercise in one's own right of any sovereign power or any prescribed independent authority of a governmental nature). See also *State ex rel. Clyatt v. Hocker*, 22 So. 721 (Fla. 1897).

[4] *Id.*

[5] See Ops. Att'y Gen. Fla. 72-348 (1972) and 74-73 (1974).

[6] See, e.g., Ops. Att'y Gen. Fla. 08-06 (2008) (mosquito control district); 02-49 (2002); 02-83 (2002) (water control district); and 02-22 (2002) (fire protection district).

[7] 630 So. 2d 1055, 1058 (Fla. 1994).

[8] 626 So. 2d 684 (Fla. 1993).

[9] *Id.* at 690.

[10] And see Op. Att'y Gen. Fla. 91-79 (1991) (Fort Walton Beach Area Bridge Authority, dependent special district within the county, determined to be an instrumentality of the county for dual office-holding purposes). Cf. Op. Att'y Gen. Fla. 90-91 (1990), concluding that the Hillsborough County Hospital Authority, created by special act with all powers of a body corporate, whose members are appointed by the Hillsborough County Commission which possesses the power to fill vacancies on the authority, remove members for misfeasance, malfeasance or willful neglect of duty, and approve the authority's budget, was a county agency. And see Inf. Op. to the Honorable Bob Starks, dated March 25, 1997, stating that the Sanford Airport Authority, created by special act of the Legislature as a dependent special district to the municipality, was an agency of the city and thus subject to the dual office-holding prohibition.

[11] See Division of Community Development Special District Information Program, Official List of Special Districts Online.

[12] And see s. 159.605(1), Fla. Stat. Enabling documents for the housing finance authority are a series of county ordinances.

[13] See Palm Beach County Ordinances 79-3, 91-7, 98-53, 01-016, and 02-22.

[14] Section 159.602(3), Fla. Stat.

[15] Section 159.602(4), Fla. Stat.

[16] Section 159.604(3), Fla. Stat.

[17] Section 159.605(2)(b)4., Fla. Stat.

[18] Section 159.608, Fla. Stat.

[19] Section 159.608(1), Fla. Stat.

[20] *Id.* at (2).

[21] Section 159.608(4), Fla. Stat

[22] Section 159.608(3), Fla. Stat. *And see* Ops. Att'y Gen. Fla. 09-17 (2009) (Housing Finance Authority of Palm Beach County may loan funds to for-profit developers for development of qualifying housing or construction, purchase, reconstruction, or rehabilitation of qualifying housing under provisions of Part IV, Ch. 159, Fla. Stat., if such housing fulfills purposes of the act) and 00-14 (2000) (Housing Finance Authority of St. Johns County authorized by s. 159.608[3], Fla. Stat., to make mortgage loans to individuals for purchase of qualifying housing developments, such as a small apartment complex to be rented to low-income families or individuals).

[23] Section 159.608(9), Fla. Stat. *But see* Op. Att'y Gen. Fla. 90-64 (1990) (housing authorities created pursuant to Ch. 159, Fla. Stat., not authorized to establish, wholly own, and operate state-chartered savings bank).

[24] Section 159.608(10)(a), Fla. Stat.

[25] Section 159.612(1), Fla. Stat. *And see* Op. Att'y Gen. Fla. 96-73 (1996) (Housing Finance Authority of Monroe County is an agency or subdivision of state and, as agency that may employ professional service consultants, it falls within scope of Consultants' Competitive Negotiation Act and must follow requirements of that act when developing real property; further, authority must comply with s. 255.20, Fla. Stat., in those cases where authority owns the public building, structure, or other public construction work).

[26] *And see* Op. Att'y Gen. Fla. 09-48 (2009).

[27] Section 421.02(3), Fla. Stat.

[28] Section 421.08, Fla. Stat.

[29] Section 421.05(1), Fla. Stat.

[30] Section 421.07, Fla. Stat.

[31] Section 421.08(5), Fla. Stat.

[32] *Id.* at (2).

[33] Section 421.08(4), Fla. Stat.

[34] *Id.* at (6) and (7).

[35] Section 421.08(8)(a), Fla. Stat.

[36] *Compare* Op. Att'y Gen. Fla. 99-49 (1999), in which this office advised that a commissioner of a county housing authority, appointed by the Governor and subject to removal by the Governor "in the same manner and for the same reasons as other officers appointed by the Governor," was not subject to the dual office-holding prohibition as he or she was an officer of an independent special district; *and compare* Op. Att'y Gen. Fla. 96-73 (1996) (Housing Finance Authority of Monroe County is an agency or subdivision of state and, as agency that may employ professional service consultants, it falls within scope of Consultants' Competitive Negotiation Act and must follow requirements of that act when developing real property; further, authority must comply with s. 255.20, Fla. Stat., in those cases where authority owns the public building, structure, or other public construction work).

APPENDIX L

Housing Finance Authority of Palm Beach County, Florida Post Issuance Compliance Policies and Procedures Multifamily Financing

Introduction

The Housing Finance Authority of Palm Beach County, Florida (the “**Authority**”), issues multifamily housing bonds under Section 142(d) of the Internal Revenue Code of 1986, as amended, (the “**Code**”) and single family housing bonds under Section 143 of the Code. This procedure addresses multifamily federal tax compliance. The proceeds of the multifamily housing bonds are loaned to conduit borrowers that use the proceeds to acquire and construct or rehabilitate apartment buildings for rental housing for low income or mixed income tenants. In the documents the conduit borrower executes at issuance of the related bonds, the borrower covenants to operate its financed project in accordance with the requirements of the Code. The borrower will generally want to ensure compliance in order to avoid having the interest on the bonds lose its tax-exempt status, because the bond documents require the borrower to indemnify the Authority for its damages in such case. However, compliance with the requirements of the Code remains first the responsibility of the issuer. It is the issuer that must respond to a tax audit of the bonds and the issuer could be sued by bondholders along with the conduit borrower if interest on an issue of bonds is declared taxable.

The Internal Revenue Service expects conduit issuers such as the Authority to have policies and procedures in place designed to assure compliance with the requirements of the Code. Form 8038 now asks if certain of these procedures are in place. If the Authority has such policies and procedures in place, the Authority and its borrowers may fare better on a bond audit or if the Authority determines to apply for a voluntary closing agreement (“VCAP”) on an issue.

Policy:

The Authority has developed and implemented these procedures designed to assure compliance with the requirements of the Code in respect of its bond issues.

Multifamily Procedures:

- The Executive Director is the official of the Authority responsible for maintaining both arbitrage and exempt-facility rule compliance by the Authority and monitoring and requiring compliance with related covenants by conduit borrowers;
- The Authority will require that its bond counsel draft the bond documents to be entered into by each conduit borrower to include written provisions to assure that any bonds that become non-qualified following issuance because of noncompliance with a tax requirement are remediated;
- The Land Use Restriction Agreement for each Project will require the conduit borrower to provide the Executive Director with an annual certificate regarding the conduit borrower's compliance with its tax covenants in the Land Use Restriction Agreement and other bond documents and copies of any reports filed by the conduit borrower with the IRS relating to such compliance. Such annual certificate will confirm that the conduit borrower's procedures for dealing with non-qualified bonds incorporated into the bond documents are still in effect and have not been amended or, if they have been amended, include a copy of such amended procedures. Any non-compliance at a Project will be addressed in accordance with its Land Use Restriction Agreement;
- The loan agreement for each Project will include a requirement that the conduit borrower provide a final allocation of proceeds certificate at project completion to be delivered to the bond trustee or fiscal agent and the Executive Director;

- The bond documents shall require the approval of the Authority if the Project is not to be built or operated as described in such documents. Such approval will be subject to a review of federal tax implications, and if any amount is to be used for property that is not to be available for use by all tenants on the same basis, or if the scope of the project changes, approval will be subject to a favorable opinion of the Authority's bond counsel.
- The bond documents will require rebate compliance to be undertaken by each conduit borrower, with reporting on an annual or at least every 5-year basis to the bond trustee or fiscal agent and the Executive Director depending on the agreement with the conduit borrower;
- The Executive Director will be the officer of the Authority primarily responsible for responding to all IRS enforcement actions;
- The Executive Director shall be the officer of the Authority responsible for carefully maintaining physical (or where appropriate electronic) records received by the Authority, with respect to each bond issue for at least six years following the final maturity or redemption of the bond issue and any refunding issue refinancing such bonds. Records to be maintained include:
 - closing transcript and any subsequent amendments or correspondence and certifications concerning the same
 - project completion certificates
 - all annual filings received
 - correspondence from the trustee or fiscal agent
 - rebate reports

- all agreements relating to investment and hedge and credit enhancement to which the Authority is a party
 - correspondence with the IRS or SEC
 - low income compliance information including certifications and rent rolls received.
- Each conduit borrower shall agree to take such action as may be necessary for the Authority to comply with the Remedial Action Rule Written Procedures attached as the Addendum hereto.

**ADDENDUM
TO APPENDIX L**

**REMEDIAL ACTION RULE WRITTEN PROCEDURES FOR EXEMPT FACILITY
BONDS UNDER SECTION 142 OF THE CODE AND SECTION 1.142-2 OF THE
REGULATIONS**

(a) **General Rule.** If less than 95 percent of the net proceeds of an issue of exempt facility bonds are actually used to provide an exempt facility, and for no other purpose, the issue will be treated as meeting the use of proceeds requirement of Section 142(a) of the Code if the issue meets the conditions of paragraph (b) of this Addendum A and the Authority takes the remedial action described in paragraph (c) of this Addendum A. In order that this requirement can be met (and for other reasons) the Borrower is required by the Loan Agreement and the Land Use Restriction Agreement for the Bonds to notify the Authority upon completion or abandonment of the Project so that the use of proceeds can be reviewed and confirmed and any required remedial action can be taken on a timely basis. In addition, the Land Use Restriction Agreement requires that the Project be used in accordance with requirements of Section 142(d) of the Code throughout the Qualified Project Period and provides ways to address temporary noncompliance with certain provisions as permitted in applicable federal tax regulations and substantial reporting, indemnification and other requirements on the Borrower to assure the Authority knows of and can remediate noncompliance on a timely basis.

(b) **Reasonable Expectations Requirement.** In order to take the remedial action described in paragraph (c) of this Addendum A, the Authority must have reasonably expected on the issue date of the issue of exempt facility bonds that 95 percent of the net proceeds of the issue would be used to provide an exempt facility and for no other purpose for the entire term of the bonds (disregarding any redemption provisions). To meet this condition, the amount of the issue must have been based upon reasonable estimates about the cost of the facility, provided by the Borrower and reasonably relied upon by the Authority.

The requirement set forth in this paragraph (b) was satisfied at closing of the issue of the Bonds described in the Arbitrage and Rebate Agreement to which this Addendum A is attached.

(c) **Redemption or Defeasance.**

(1) *In General.* The requirements of this paragraph (c) are met if all of the nonqualified portion of the Bonds (the “nonqualified bonds”) are redeemed on the earliest call date after the date on which the failure to properly use the proceeds occurs. Proceeds of tax-exempt Bond (other than certain proceeds described in paragraph (d)(1) of this Addendum A) must not be used for this purpose. If the Bonds are not redeemed within 90 days of the date on which a failure to properly use proceeds occurs, a defeasance escrow must be established for those Bonds within 90 days of that date.

(2) *Notice of Defeasance.* The Authority must provide written notice to the Commissioner of Internal Revenue of the establishment of a defeasance escrow within 90 days of the date the escrow is established.

(3) *Special Limitation.* The establishment of a defeasance escrow does not satisfy the requirements of this paragraph (c) if the period between the issue date of the Bonds and the first call date is more than ten and one half (10.5) years.

(4) *Special Rule for Dispositions of Personal Property.* For dispositions of personal property exclusively for cash, the requirements of this paragraph (c) are met if the Borrower expends the disposition proceeds within six (6) months of the date of the disposition to acquire replacement property for the same qualifying purpose as the project for which the Bonds were issued under Section 142 of the Code.

(5) *Definition of Disposition Proceeds.* Disposition proceeds means any amounts (including property, such as an agreement to provide services) derived from the sale, exchange, or other disposition of property (other than investments) financed with the proceeds of an issue of bonds (in this case, the Bonds).

(d) When a Failure to Properly Use Proceeds Occurs.

(1) *Proceeds Not Spent.* For net proceeds that are not yet spent, a failure to properly use proceeds occurs on the earlier of the date on which the Borrower reasonably determines that the financed facility will not be completed or the date on which the financed facility is placed in service.

(2) *Proceeds Spent.* To the extent the regulatory remedial action rules apply in this case, for net proceeds that are spent, a failure to properly use proceeds occurs on the date on which an action is taken that causes the proceeds of the Bonds not be used for the qualifying purpose for which the Bonds was issued.

(e) Nonqualified Bonds.

(1) *Amount of Nonqualified Bonds.* For purposes of this Addendum A, the “nonqualified bonds” are a portion of the outstanding Bonds in an amount that, if the remaining Bonds were issued on the date on which the failure to properly use the proceeds occurs, at least 95 percent of the net proceeds of the remaining Bonds would be used to provide an exempt facility. If no proceeds have been spent to provide an exempt facility, all of the outstanding Bonds are nonqualified bonds.

(2) *Allocation of Nonqualified Bonds.* Allocations of nonqualified bonds must be made on a pro rata basis, except that the Authority may treat any portion of the Bonds as the nonqualified bonds so long as -

(i) The remaining weighted average maturity of the issue of the Bonds, determined as of the date on which the nonqualified bonds are redeemed or defeased (determination date), and excluding from the determination the nonqualified bonds redeemed or defeased by the Authority to meet the requirements of paragraph (c) of this Addendum A, is not greater than

(ii) The remaining weighted average maturity of the Bonds, determined as of the determination date, but without regard to the redemption or defeasance of

any portion of the Bonds (including the nonqualified bonds) occurring on the determination date.

APPENDIX M

To: Housing Finance Authority

From: Executive Director

RE: December 9, 2016 regular meeting – conferences agenda
item

Dated: December 1, 2016

The Authority at the November 18, 2016 meeting passed a motion to allow members to attend two housing conferences a year without the need to seek prior board consideration as long as these sessions were on a list previously approved from time to time by the board. The initial recommendations from staff and board members for the Authority to consider include:

National Association of Local Housing Finance Agencies – Annual Conference – April 26-29 – San Francisco, CA - <http://www.nalhfa.org/events/EventDetails.aspx?id=838246>

Florida Association of Local Housing Finance Authorities – Annual Educational Conference – July 12-15 – Atlantic Beach, FL - <http://flalhfa.com/>

Florida Housing Coalition - Annual Conference – September 10-13 – Orlando, FL - <http://www.flhousingconference.org/>

Smith's Annual Affordable Housing Finance Conference – March 23/24 – New Orleans, LA - <http://www.smithsresearch.net/HousingConference.htm>

National Housing & Rehabilitation Association – Annual Meeting – February 22-25 – Bonita Springs, FL - <https://www.housingonline.com/events/nhra-annual-meeting-2017/>

Novogradac - 2017 Affordable Housing Conference – May 18-19 – San Francisco, CA - <https://www.novoco.com/events/novogradac-2017-affordable-housing-conference>

Affordable Housing Finance - Live Housing Developers Conference – May 9-11 – Arlington, VA - http://www.housingfinance.com/news/registration-opens-for-ahf-live-housing-developers-forum_o

National Organization of Black County Officials – Annual Conference – <http://nobco.org/inc/>