

Leon County Research and Development Authority
Executive Committee Meeting
Knight Administrative Centre
Wednesday, June 26, 2017, 3:00 p.m.

Agenda

1. Call to Order
2. Introduction of Guests
3. Modifications to the Agenda
4. Public Comment
5. Approval of Draft Meeting Minutes, March 29, 2017 (*Attachment A*)
6. Janitorial Services Agreement Second Amendment (*Attachment B*)

Staff requests approval of an amendment to the Janitorial Services Agreement with C&L and Associates to extend the agreement one year until August 31, 2018, increase the fee 3% as provided in the agreement, and provide that the vendor waive any claims it may have against the Authority related to the agreement prior to the date of the amendment.

7. Proposed Bylaws Changes (*Attachment C1, C2, C3*)

Staff requests approval to submit to the Board proposed changes to the Authority Bylaws. The purpose of the changes is to clarify the conditions under which a member may participate in a meeting via electronic means, and the impact of such participation on quorum, discussion, and voting. The changes also address the impact on quorum and voting as a result of abstentions required by Florida Statute.

8. RFP 17-01 Professional Auditing Services Agreement (to be provided as a supplement)

The Audit Committee requests approval of Agreement for Professional Auditing Services procured in accordance with Florida Statute and LCRDA's RFP 17-01.

9. 2017-18 Board Officers Discussion
10. EEP Planning Meeting Update/Discussion
11. Development Update/Discussion:
 - a. Collins Building
 - b. Business Incubator
 - c. Trails

12. Park Planning Meeting Discussion
13. Chair's Report
14. Director of Programs and Communications Report
15. Executive Director's Report
16. New Business
17. Adjourn

Leon County Research and Development Authority
Executive Committee Meeting
Knight Administrative Centre
1736 West Paul Dirac Drive, Tallahassee, FL 32310
Wednesday, March 29, 2017, 3:00pm

Minutes

Members in Attendance: Chair Anne Longman, Vice Chair Eric Holmes, Immediate Past Chair Kristin Dozier, Treasurer Dave Ramsay.

Members Absent: None.

Others in Attendance: Ron Miller, Executive Director; Denise Bilbow, Director of Programs and Communications; Peggy Bielby, Administrative Coordinator, LCRDA; Melissa VanSickle, Broad and Cassel

1. Call to Order

The meeting was called to order by Chair Anne Longman at 3:05pm.

2. Introduction of Guests

None.

3. Modifications to the Agenda

None.

4. Public Comment

None.

5. Approval of Draft Meeting Minutes, November 3, 2016

Kristin Dozier offered a motion to approve the draft minutes. Eric Holmes seconded the motion which passed unanimously.

6. Project Campus

Documents related to this agenda item are confidential pursuant to Ch. 288.075, Florida Statutes. Dave Ramsay disclosed that he recused himself from voting on this item and executed and filed Form 8B Memorandum of Voting Conflict.

Committee discussed Project Campus and directed Ron Miller to negotiate certain changes and additions to the agreements.

7. Avalanche Consent to Mortgage on Leasehold Interest

Kristin Dozier offered a motion to ratify the Chair's approval of an agreement with Avalanche Partnership and Sunshine Community Lender consenting to a mortgage on the leasehold interest on lots 2E and 3E consistent with the requirements under Article 7 of the

Authority's lease agreement with Avalanche; and to ratify the Chair's consent to Broad and Cassel's conflict of interest due to its representation of Sunshine in connection with the mortgage, and representation of the Authority as General Counsel. Dave Ramsay seconded the motion which passed unanimously.

Melissa VanSickle left the meeting at 4:22pm.

8. Audited Financial Statements

Kristin Dozier offered a motion to approve the Audited Financial Statements for the fiscal year ended September 30, 2016. Dave Ramsay seconded the motion which passed unanimously.

9. RFP 17-01 Professional Auditing Services

Kristin Dozier offered a motion to approve RFP 17-01 Professional Auditing Services. Eric Holmes seconded the motion which passed unanimously.

10. HVAC Preventative Maintenance Contract

Kristin Dozier offered a motion to ratify the Chair's approval of a services agreement with Parker Services to provide HVAC preventative maintenance services at an annual cost of \$11,572. Eric Homes seconded the motion which passed unanimously.

11. Purchasing Policy

Dave Ramsay offered a motion to approve the Staff requested changes to policy 11-03 Purchasing Policy. Eric Holmes seconded the motion which passed unanimously.

12. Credit Card Policy

Dave Ramsay offered a motion to approve the Staff requested changes policy 11-15 Credit Card Policy. Kristin Dozier seconded the motion which passed unanimously.

13. Jumpstart Update

Kristin Dozier provided an update on the JumpStart Incubator project.

14. Working with CRTPA and Road Prioritization Discussion

Kristin Dozier provided an update on the CRTPA and Providence Neighborhood discussions.

Kristin Dozier left the meeting at 5:23pm.

15. Chair's Report

None.

16. Director of Programs and Communications Report

Denise Bilbow provided an update on EEP, Entrepreneurs Club, Tech Grant Elevator Pitch night (May 17, 2017), Tech Topics, Science Festival (Oct. 28, 2017), Discovery on Parade, social media/SEO, and strategic partnerships.

17. Executive Director's Report

Ron Miller provided an update on Bing Energy, EEP funding, property manager changes, Tech Grant funds returned, and leasing prospects.

18. New Business

Ron Miller reminded the Committee that he had been directed to issue an RFP for legal services near the conclusion of the current agreement. He indicated that he had begun planning the schedule for the RFP and would begin drafting in April.

Dave Ramsay offered a motion to direct the Executive Director to extend the General Counsel contract for one year, and defer an RFP. Eric Holmes seconded the motion, which passed unanimously.

19. Adjourn

The meeting adjourned at 5:55pm.

**SECOND AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT BETWEEN
C&L ASSOCIATES OF TALLAHASSEE, INC. AND
LEON COUNTY RESEARCH AND DEVELOPMENT AUTHORITY**

THIS SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (the "Second Amendment"), is made as of the 14th day of June, 2017 by and between by and between the Leon County Research and Development Authority, a public Authority created pursuant to Chapter 159, Part V, Florida Statutes, having its principal place of business in Tallahassee, Florida (the "Authority"), and C&L Associates of Tallahassee, Inc., a Florida corporation having its principal place of business in Tallahassee, Florida (the "Contractor").

WITNESSETH

WHEREAS, the Authority and the Contractor have previously entered into a Contract dated August 20, 2015 which commenced September 1, 2015, and expires August 31, 2017 as previously amended (the "Agreement"), whereby the Authority retained the Contractor to perform janitorial services; and

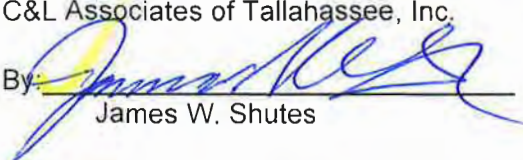
WHEREAS, the parties wish to amend the Agreement in order to extend the term as provided for in the Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, the sufficiency of which is acknowledged, the parties hereby agree as follows:

1. The term of the Agreement shall be extended one year until August 31, 2018.
2. As provided in Exhibit B of the Agreement, the price per square feet per month shall be increased 3% from \$0.0721 to \$0.074263.
3. There exist no claims or potential claims by Contractor against the Authority. Contractor hereby waives, releases and discharges the Authority from all claims that Contractor may have against the Authority arising out of or in connection with the Agreement prior to the date hereof.
4. All other provisions of the Agreement shall remain in full force and effect.
5. This Second Amendment is subject to ratification by the Board of Governors of the Leon County Research and Development Authority.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed on the day and year first written above.

Leon County Research and Development
Authority
By: _____
Anne Longman, Chair

C&L Associates of Tallahassee, Inc.
By: 
James W. Shutes



4827-9195-3480

1736 W. PAUL DIRAC DRIVE • TALLAHASSEE, FL • 32310 • 850-575-0343 •
WWW.LCRDA.ORG

BYLAWS OF
LEON COUNTY RESEARCH AND
DEVELOPMENT AUTHORITY

Adopted March 18, 1981

Amended

March 18, 1981

May 14, 1981

August 18, 1993

October 15, 2002

February 1, 2011

May 10, 2011

January 10, 2013

December 4, 2014

August 4, 2016

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1. ARTICLE I - GOVERNANCE

1.1 Definitions.

- a.) “Authority” shall mean The Leon County Research and Development Authority.
- b.) “Board” shall mean the Board of the Authority.
- c.) “Commission” shall mean the Leon County Commission.
- d.) “Ex-Officio Member” means a person who is a member of the Board by virtue of the office or position they hold. An Ex-Officio Member shall have exactly the same rights as all other members including the right to vote on all matters, unless another applicable statute provides otherwise.
- e.) Whenever the phrase “Florida’s Government in the Sunshine Law” is used it shall refer to Section 286.011, Florida Statutes.
- f.) “Innovation Park” shall mean the Research and Development Park operated by the Authority on property owned by the Florida Board of Trustees of the Internal Improvement Trust Fund in Leon County, Florida and leased to the Leon County Research and Development Authority pursuant to Lease Agreement dated January 28, 1980.
- g.) The use of the masculine gender shall also include the feminine.
- h.) “Affiliated Institution of Higher Education” shall mean Florida State University, Florida Agricultural and Mechanical University, and Tallahassee Community College.
- h.)i.) “Electronic Means” for participating in meetings may include the use of such devices as a speaker telephone or any other communications media that allows the absent member to participate in discussions, and to be heard by other board members and the public during the meeting.

1.2 Identity and Principal Office.

- a.) **Identity.** These are the Bylaws of the Leon County Research and Development Authority, a public body corporate.
- b.) **Principal Office.** The principal office of the Authority shall be at 1736 West Paul Dirac Drive, Tallahassee, FL 32310, or at such other place as may be subsequently designated by the Board.

1.3 Background.

The Leon County Research and Development Authority was created as a public body corporate pursuant to the enactment of 78-402, Laws of Florida, which created the Florida Research and Development Commission and provided for the creation of five-member Research and Development Authorities. The Charter of the Authority was filed with the Secretary of State on October 24, 1978. On July 1, 1979, pursuant to the enactment of 79-101 Laws of Florida, Part V of Chapter 159, Florida Statutes, was created. This amendment expanded the powers of authorities to provide for financing of projects. Section 159.75, Florida Statutes, required any authority established prior to this enactment, to reconstitute itself under the amended statute in order to be able to exercise any power to issue bonds or other debt obligations pursuant to Sections 159.74(6) and (7), Florida Statutes. On December 16, 1980 Ordinance 80-68 was adopted by the Commission. Ordinance 80-68 confirmed the creation and existence of the Authority pursuant to Section 159.704(3), Florida Statutes.

1.4 Purpose.

The Authority was created to promote scientific research and development, in affiliation with, and related to the research and development activities of state-based, accredited institutions of higher education and to foster economic development and the broadening

of the economic base of Leon County in conjunction with institutions of higher education.

1.5 Membership.

- a.) **Members Appointed by the Commission.** The Board shall consist of at least five (5) members who are residents and electors of, or have their principal place of employment in, Leon County, appointed by the Commission pursuant to Section 159.703(3), Florida Statutes. Pursuant to Leon County Board of County Commissioners Resolution 16-19, the number of members appointed by the Commission is seven (7), six (6) of which shall be at-large members. The terms of the members appointed by the Commission shall be for four (4) years. One Board member shall be a member of the Commission who shall serve a term of four (4) years or until such time such appointee ceases to be a member of the Commission.
- b.) **Ex-Officio Members.** The Board shall also include the Mayor of the City of Tallahassee or the Mayor's designee, the President of Florida State University, or the President's designee, the President of Florida Agricultural and Mechanical University, or the President's designee, and the President of Tallahassee Community College, or the President's designee. Each of the members indicated in this paragraph shall serve in an Ex-Officio capacity as defined in Section 1.1(d) herein.
- c.) **Term of Membership.** An Ex-Officio member shall serve for so long as the member serves in his respective position. If the member serves as a designee of a member in Section 1.5(b), the member shall serve as long as he remains a designee, subject to the provisions of Section 1.8(a) herein.
- d.) **Change in Designee.** If the Commission or an Ex-Officio member changes his designee to the Board, notification of such change must be provided in writing to the

Chairman and to the Executive Director within at least ten days of the change. The President of each Affiliated Institution of Higher Education may designate one alternate designee. Any such designation shall be provided in writing to the Chairman and to the Executive Director at least 24 hours prior to an alternate participating in a meeting.

1.6 Meetings

- a.) **Annual Meeting.** The first meeting of the Board in October shall be the Annual Meeting. At the Annual Meeting the Board shall, if not previously adopted, adopt the budget for the current fiscal year and the Chair shall make initial appointments of members to committees.
- b.) **Regular Meetings.** Regular meetings of the Board shall be held not less than quarterly. The Board may dispense with any regular meeting which the Chair in consultation with the Executive Director deems to be unnecessary.
- c.) **Special Meetings.** Special meetings require seventy-two (72) hours advance notice to the public. Special meetings of the Board may be convened in the following manner. Special meetings of the Board may be called at any time by the Chair. A special meeting shall also be called if the Executive Director receives a written request to convene a special meeting to discuss the same subject from three (3) members of the Board. In such event the Chair shall convene a special meeting consistent with the notice provisions of this paragraph.
- d.) **Notice.** All meetings of the Authority shall be publicly noticed in compliance with Florida's Government in the Sunshine Law to ensure full participation of the public. Notice of meetings shall be published in the Florida Administrative Weekly.

1.7 Quorum and Voting.

- a.) **Voting.** Each member of the Board shall have equal voting rights and privileges.
- b.) **Quorum.** A majority of the members of the entire Board who are present and legally entitled to vote shall constitute a quorum; ~~and the~~ The affirmative vote of a majority of the members present and participating via electronic means, and who are legally entitled to vote, shall be necessary for any action taken by the Board. Pursuant to Section 159.703(6), Florida Statutes, the President of each Affiliated Institution of Higher Education or that President's designee shall be present and vote on any action taken by the Board involving the issuance of bonds or the transfer, development, lease or encumbrance of any lands owned by the Trustees of the Internal Improvement Trust Fund and leased to the Authority. In addition, the President of each Affiliated Institution of Higher Education or such President's designee shall be present and vote in the affirmative on any action taken by the Board involving the lease of any Innovation Park lands to a State agency.
- c.) **Voting by Proxy.** Voting by proxy or through any other means shall not be permitted except to the extent provided in Section 1.7(d) herein.
- e.)d.) **Meetings Conducted Via Electronic Means.** Participation via Electronic Means by an absent member in discussion and voting in a meeting of the Board, or a Committee of the Board, shall be permitted only when such absence is due to extraordinary circumstances such as illness. Whether the absence of a member due to any other reason constitutes such an extraordinary circumstance shall be made in the good judgement of the Board in the case of meetings of the Board, or Committees, or in the good judgment of the Executive Committee in the case of meetings of any Committee where the Executive Committee can make such determination before the

meeting of the Committee. If more members are approved to participate via electronic means than can be accommodated by available Electronic Means, then members will be accommodated in the order the requests were received. For the purposes of determining quorum electronic participation is not included.

1.8 Removal and Vacancies.

- a.) **Removal.** Any member serving on the Board may be removed from office by the Commission for misfeasance, malfeasance or willful neglect of duty.
- b.) **Assignment of Membership.** An individual, once designated as a member of the Board, shall not designate anyone else to fulfill his duties as a member of the Board on a fulltime, temporary, or interim basis.
- c.) **Vacancies.** Except as to members who serve Ex-Officio, the Commission shall fill any vacancy for an unexpired term.

1.9 Attendance.

All members of the Board are expected to attend meetings of the Board as well as meetings of committees to which they have been appointed. At each Annual Meeting of the Board, the Executive Director shall present the attendance record of each member of the Board for the prior fiscal year. If a member of the Board fails to regularly attend Board and/or Committee meetings during the year, a recommendation may be made to remove him from the Board unless extenuating circumstances are demonstrated. If such recommendation is approved by the Board then a request in writing shall be forwarded to the Commission for consideration.

1.10 Conflicts of Interests.

Each member of the Board is a public officer who must abstain from voting when a conflict of interest exists pursuant to Chapter 112, Florida Statutes. It is the duty of each

member to make known through verbal and written communication to the Board and the General Counsel when a conflict of interest exists and to refrain from voting and/or participating in actions to be taken on the item for which they have a conflict of interest. For the purpose of this subsection, the term participate means any attempt to influence the decision by oral or written communication. This provision shall not be construed to contravene Section 159.703(6), Florida Statutes.

2. ARTICLE II - OFFICERS

2.1 Officers.

The officers of the Authority shall consist of the Chair, Vice-Chair and Treasurer. The Board may elect additional officers as required or desired.

2.2 The Chair.

- a.) The Chair shall preside at all Board meetings.
- b.) The Chair, Vice Chair or, if the Vice Chair is unavailable, the Chair's designee, shall represent the Authority in all official business.
- c.) The Chair shall maintain oversight of all Board committee activity, including the timely planning, implementation and completion of all Board-directed action. The Chair shall initially appoint members and chairpersons of all committees at the Annual Meeting, and may make or change appointments at any other time as the Chair deems necessary.
- d.) The Chair shall sign all instruments which require his signature.
- e.) The Chair, with the consent of the Board, may appoint other committees or task forces as may be deemed helpful to the Board. Such committees or task forces shall consist of members of the Board and may consist of members of the community with

expertise in particular areas and shall perform such functions and possess such powers as approved by the Board.

2.3 **Vice-Chair.**

The Vice-Chair shall perform the duties of the Chair when the Chair is absent or the position is vacated and have such other responsibilities as may be designated by the Chair.

2.4 **Treasurer.**

- a.) The Treasurer shall serve as the Chair of the Budget Committee.
- b.) The Treasurer shall review the financial records of the Authority, including all funds received and disbursed.
- c.) The Treasurer shall have the responsibility to ensure the Authority's financial accountability and compliance and shall perform such other duties as may be properly required of the Treasurer.
- d.) The Treasurer shall sign all instruments which require his signature.

2.5 **Election, Eligibility, Terms and Removal of Officers.**

- a.) **Election of Officers.** The election of the Officers of the Authority shall occur at the last meeting of the Board each fiscal year, with the term in office to begin October 1 of the next fiscal year. All Officers shall hold office strictly at the pleasure of the Board.
- b.) **Eligibility.** All members of the Board or their designees shall be eligible to be an officer of the Authority.
- c.) **Terms of Office.** The Chair and Vice-Chair shall serve no more than two consecutive terms in office unless additional consecutive terms are approved by the

affirmative vote of a majority of the Board present at a meeting at which a quorum is present at any duly called regular or special meeting of the Board.

- d.) **Removal of Officers.** Any officer may be removed with or without cause at any time by the affirmative vote of a majority of the Board present at a meeting at which a quorum is present at any duly called regular or special meeting of the Board.

3. ARTICLE III - COMMITTEES

3.1 Conduct of Committee Meeting.

Each committee shall have at least three (3) members and shall meet at the call of its Chair. Meetings of any committee, including an advisory committee or task force, may be held at such time and place as such committee Chair may from time to time schedule, so long as they comply with the requirements of Florida's Government in the Sunshine Law. Each committee shall keep minutes and audio recordings of its meetings and report its activities to the Board at the Regular or Special Meeting as required.

3.2 Standing Committees.

There shall be five (5) standing Committees established by the Authority: Audit Committee, Budget Committee, Bylaws Committee, Executive Committee and Investment Advisory Committee. The Committees shall perform the duties listed below, and all other duties assigned by the Chair.

3.3 Audit Committee.

The Audit Committee shall consist of three (3) members of the Board. The Treasurer shall not serve on the committee but is encouraged to attend all meetings of the committee; the Treasurer's attendance shall not be required to conduct a meeting of the committee. The committee shall engage an auditor to conduct the annual audit pursuant to Section 218.39, Florida Statutes, review the Audit Plan, and assist the Board in

fulfilling its fiduciary responsibilities relating to accounting and reporting practices. The committee will receive the audit report and report both the findings and response of the Executive Director to the findings to the Board for approval and make recommendations to the Authority's system of internal controls as warranted. The committee shall also be responsible for ensuring that the annual Financial Audit Report and any response to the Report are filed with the Auditor General's Office and with the Clerk of Court.

3.4 Budget Committee.

The Budget Committee shall assist the Board in assuring the budgetary and financial practices of the Authority are sound and prudent. The Budget Committee shall develop the annual operating budget and present its recommendations to the Board at the first meeting of the Board in October, if not before. The Treasurer shall be the Chair of the Budget Committee.

3.5 Bylaws Committee.

The Bylaws Committee shall review and recommend changes as needed to the Bylaws of the Authority, bylaws of any committees, Charter of the Authority, and any other governing documents on an annual basis. The Bylaws Committee shall meet more frequently if needed. The duties of the Bylaws Committee may be fulfilled by the Executive Committee at the discretion of the Chair.

3.6 Executive Committee.

- a.) **Composition, Meetings and Powers.** The Executive Committee shall at a minimum include the Chair, Vice Chair, Treasurer, and the immediate past Chair if still a member of the Board. The Executive Committee shall meet at the call of the Chair. The Executive Committee shall have the general powers and duties of management of the Authority. The Executive Committee shall establish, review and recommend

changes to the policies of the Authority as needed. The Executive Committee, or in emergency situations the Chair, shall exercise the powers and authority of the Board in between meetings of the Board.

- b.) **Ratification and Notification.** If the Executive Committee or Chair exercises the power of the Board, the committee or Chair shall seek ratification of its actions at the next meeting of the Board. The Executive Director or General Counsel shall notify the Board within 72 hours of any extraordinary actions taken by the Executive Committee or Chair. Extraordinary actions shall include, but are not limited to, termination of the Executive Director, termination or cancellation of contracts, and authorization of expenditures which require Board approval according to the Authority's purchasing policy.
- c.) **Delegation of Powers and Duties.** The Executive Committee, with approval of the Board, may delegate the general powers and duties of management of the Authority and/or Innovation Park to a full-time employee, including the Executive Director as defined in Article VIII, or to any person, firm, or corporation which assumes responsibility by contract.

3.7 **Investment Advisory Committee.**

The Investment Advisory Committee shall assist the Board with review and oversight of the Authority's investment policy, objectives, guidelines and investment performance; provide recommendations to the Board on major investment objectives, strategies and policies; and oversee the Authority's investment consultants and/or fund managers. Authority, composition, and responsibilities of the committee shall be detailed in the committee charter approved by the Board.

4. ARTICLE IV - DELEGATION OF DUTIES

4.1 Delegation of Duties.

No officer of the Authority or Chair of any committee shall delegate any of his duties to any other person or persons, except with the approval of the Board. The Executive Committee may, in case of the absence or inability of any officer to act, delegate the duty of such officer to any Board member whom the Executive Committee may select, and the Executive Committee shall report such selection to the Board within 72 hours.

5. ARTICLE V - OATH OF OFFICE AND FINANCIAL DISCLOSURE

5.1 Oath of Office.

Each member of the Board, before entering upon the member's duties shall take and subscribe the oath or affirmation as required by the Constitution of the State of Florida. The record of such oath or affirmation shall be filed with the Department of State and with the Clerk of the Circuit Court. Each member shall provide a record of such oath or affirmation to the Executive Director before assuming the functions of a member.

5.2 Statement of Financial Interest.

Each member of the Board shall also file a statement of financial interest within thirty (30) days of the date of the appointment in accordance with Section 112.3145, Florida Statutes. Each member shall provide written confirmation to the Executive Director of the submission of the statement of financial interest within thirty (30) days of the date of his appointment.

6. ARTICLE VI - RESOLUTIONS

6.1 Resolutions.

Any action taken by the Board may be authorized by resolution at any regular or special meeting.

7. ARTICLE VII - FINANCES AND FINANCIAL MANAGEMENT

7.1 Finances.

The funds of the Authority shall be deposited in its name with such banks, trust companies, other financial institutions, or as otherwise authorized by law, as the Board may from time to time designate.

7.2 Audit.

An audit of the books and records of the Authority shall be conducted annually by a certified public accountant. When received, the audit report, together with all related documents, shall be reviewed by the Audit Committee and promptly presented to the Board for its consideration.

7.3 Execution of Contracts.

Unless otherwise delegated by policy approved by the Board, only the Chair or the Vice-Chair if the Chair so designates in specific cases, is authorized to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Authority, and only then with the ratification of the Board. All documents executed by the Chair shall be provided promptly to the Executive Director, who serves as the Custodian of Records for the Authority, and to the Board members for their review.

7.4 Checks.

- a.) Checks drawn in amount greater than \$10,000 shall be co-signed by the Chair and Treasurer.
- b.) Checks drawn in amount not more than \$10,000 shall be signed by the Chair, Treasurer, or Executive Director.
- c.) The Vice Chair shall co-sign or sign checks in the absence of the Chair or Treasurer in accordance with the other requirements of this section.

8. ARTICLE VIII - EXECUTIVE DIRECTOR

8.1 Duties and Responsibilities.

Under the supervision of the Board, the Executive Director shall exercise the general powers and duties of management of the Authority and such other duties and responsibilities as assigned by the Board or the Executive Committee pursuant to the Executive Director's employment agreement, or policies of the Authority approved by the Board.

8.2 Custodian of Records.

The Executive Director shall serve as the Custodian of Records for the Authority and be responsible for maintaining all of the records of the Authority at its principal office. The Executive Director shall also be responsible for ensuring and maintaining documentation establishing that each member of the Board has taken the oath or affirmation and has filed a statement of financial interest as set forth in Article V herein.

8.3 Responsibilities to the Board.

The Executive Director shall report to the Board the actions of any Board member or Committee member which in the Executive Director's judgment is in conflict with any applicable state statute, city or county ordinance or Charter, bylaws or policies of the Authority. Such actions must first be reported to the Executive Committee, unless the issue involves the actions of the Executive Committee, or any of its members, in which case the issue shall be reported to the full Board. In the latter circumstance, the Executive Director shall request that three Board members ask for a Special meeting of the full Board consistent with the requirements of Section 1.6(c) herein.

9. ARTICLE IX - PARLIAMENTARY AUTHORITY

9.1 Parliamentary Authority.

Roberts Rules of Order, newly revised (“Robert’s Rules”), shall govern all proceedings of the Board where applicable. When Roberts Rules are in conflict with these Bylaws, the Authority’s Bylaws will control.

10. ARTICLE X- INDEMNIFICATION OF MEMBERS, OFFICERS, EMPLOYEES AND OTHERS

10.1 Indemnification of Members, Officers, Employees and Others.

The Authority shall indemnify, to the full extent provided by law, any person who is named a party to any proceeding due to his service as a member, officer and employee of the Authority, or who serves at the Authority’s written request, against liability and expenses incurred in connection with such proceeding, so long as the person acted in good faith and in a manner he reasonably believed to be in the best interest of the Authority. The Authority shall develop an ongoing plan for risk management and indemnification of members, officers and employees of the Authority and those serving at the Authority’s written request, taking into consideration Federal and State Laws.

This paragraph shall not be construed to apply to any acts of a member, officer or employee of the Authority, or those serving at the Authority’s written request, undertaken prior to the effective date of the adoption of this provision, it being the intent that such acts would be covered by the Bylaws in effect prior to the effective date of adoption of this provision.

11. ARTICLE XI - IMPLEMENTATION AND AMENDMENTS

11.1 Implementation and Amendments

- a.) These Bylaws may be repealed, amended or altered or new Bylaws may be adopted

by a majority vote at any meeting of the Board; however, any proposed amendments shall be distributed to the members at least five (5) working days before the Board meeting at which they are to be considered.

- b.) The Board shall be bound by and conformed to all of these Bylaws, as they exist at the time of their joining the Board, or as they may thereafter be changed or amended.
- c.) These Bylaws shall become effective immediately upon adoption by majority vote of the Board. The Board's interpretation of the Bylaws shall be considered the correct interpretation when reached by majority vote.

12. ARTICLE XII - FISCAL YEAR

12.1 Fiscal Year.

The fiscal year of the organization shall begin on October 1 and end on September 30.

Florida Attorney General Advisory Legal Opinion

Number: AGO 85-40

Date: May 22, 1985

Subject: Voting abstentions and quorums

Mr. Michael Kahn
Town Attorney
Town of Malabar
494 North Harbor City Boulevard
Melbourne, Florida 32935

RE: MUNICIPALITIES--Effect of abstention on quorum and voting requirements

Dear Mr. Kahn:

This is in response to your request for an opinion on substantially the following question:

Do the abstentions required by Ch. 84-357, Laws of Florida, affect the numerical balance of both the quorum present and the majority of the quorum present?

Chapter 84-357, Laws of Florida, amended s. 112.3143, F.S., to add subsection (3), which provides:

"No county, municipal, or other local public officer shall vote in his official capacity upon any measure which inures to his special private gain or shall knowingly vote in his official capacity upon any measure which inures to the special gain of any principal, other than an agency as defined in s. 112.312(2), by whom he is retained. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of his interest in the matter from which he is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357 or an officer of an independent special tax district elected on a one-acre, one-vote basis is not prohibited from voting."

This amendment changes the law with regard to abstention under the circumstances described in the new law. Previously, a public officer was not prohibited from voting in his official capacity on a matter in which he had a personal, private or professional interest and which inured to his special private gain or to the special gain of any principal by whom he was retained, but if such officer voted on such a matter, he was required to file a memorandum within 15 days disclosing the nature of his

interest. See s. 112.3143, F.S. 1983. See generally Op. Comm. Ethics^{2 of 4}, 74-13, Oct. 4, 1974. Any question, however, concerning what constitutes a conflict of interest under the recent legislation must be submitted to the Commission on Ethics. See s. 112.322(3), F.S.

You wish to know whether in those instances in which a member of the governing body of a municipality is prohibited from voting by s. 112.3143(3), as amended, the quorum present is constructively reduced; and as a concomitant, whether the majority of the quorum needed to enact legislation or take other official action would thereby be reduced. For example, in the situation you describe in your letter, where all members of the five member town council are present and two members have a conflict which precludes them from voting, you question whether the quorum "present" would be constructively reduced to three and it would thus require only a vote of two members (a majority of a quorum present) to take official action.

Section 166.041, F.S., establishes a uniform procedure for the adoption and enactment of municipal ordinances and resolutions. See, e.g., AGO's 76-197, 75-173 and 74-371. Subsection (4) of s. 166.041 provides:

"A majority of the members of the governing body shall constitute a quorum. An affirmative vote of a majority of a quorum present is necessary to enact any ordinance or adopt any resolution; except that two-thirds of the membership of the board is required to enact an emergency ordinance. On final passage, the vote of each member of the governing body voting shall be entered on the official record of the meeting. All ordinances or resolutions passed by the governing body shall become effective 10 days after passage or as otherwise provided therein." (e.s.)

This office has previously concluded that this provision provides the minimum, mandatory requirements for the enactment of ordinances and resolutions by a municipality. See AGO's 81-71 and 74-160. Further, subsection (6) of s. 166.041, F.S., provides that the procedures set forth in that statute "shall constitute a uniform method for the adoption and enactment of municipal ordinances and resolutions" and although a municipality may specify additional requirements, "a municipality shall not have the power or authority to lessen or reduce the requirements of this section" Thus, the requirements of subsection (4), which provides that a majority of the governing body shall constitute a quorum and that an affirmative vote of a quorum present shall be necessary to enact an ordinance or resolution, cannot be lessened or reduced by a municipality.

In AGO 74-160, this office concluded that where only four members of a five-member town commission are present at a meeting of such body, the adoption of a resolution requires the affirmative vote of three members irrespective of the fact that one of the members present abstained from voting. That opinion stated that "[t]he fact that one member abstained from voting has no effect on the statutory provision that the adoption of a resolution requires the affirmative vote of a majority of the members present." The conclusion reached in AGO 74-160, however, was premised on the provisions of s. 286.012, F.S., in conjunction with s. 112.3143, F.S., which prior to the 1984 amendments to these statutes did not mandate a

voting abstention in the case of a conflict of interest but rather afforded the officer a choice as to whether to abstain from voting or to vote and file a memorandum within 15 days disclosing the nature of his interest. See also AGO 75-244 which determined that although a member of a downtown development authority under Florida law could abstain from voting on a question in which he was personally interested, he was not disqualified and thus could be counted for purposes of computing a quorum for a vote on that question. The statute prior to the 1984 amendment therefore did not prohibit a public officer from voting in any situation; after the 1984 amendment, a local public officer is prohibited from voting on those measures which inure to his special private gain or which to his knowledge inure to the special gain of any principal by whom he is retained. In light of the 1984 amendment, a question has been raised as to whether in those situations in which a public officer is prohibited from voting, the quorum present is affected.

In 74 C.J.S. *Quorum*, p. 171, it is stated that the word "quorum" "has come to signify such a number of the officers or members of any body as is competent by law or constitution to transact business; such a number of an assembly as is competent to transact its business; such a number of the members of any body as is, when duly assembled, legally competent to transact business; such a number of a body as is competent to transact business in the absence of the other members." And see Black's Law Dictionary 1421 (Rev. 4th ed. 1968) wherein it is stated: "When a committee, board of directors, meeting of shareholders, legislature or other body of persons cannot act unless a certain number at least of them are present, that number is called a 'quorum.' . . . In the absence of any law or rule fixing the quorum, it consists of a majority of those entitled to act." Thus, a quorum is a certain number of a governing or legislative body who are legally entitled to act.

Subsection (4) of s. 166.041, F.S., expressly provides that a majority of the members of the governing body of a municipality shall constitute a quorum. The absence or voting infirmity of the members of the town council would not appear to affect the number of members required to constitute a quorum. Thus where you have a governing body composed of five members, s. 166.041 requires three members to constitute a quorum. The statute goes on to provide that "[a]n affirmative vote of a majority of a quorum present is necessary to enact any ordinance or adopt any resolution" In the scenario you presented all five members are present but two members are prohibited by statute from voting on the matter under consideration. Thus, only three members of the town council are present who are legally entitled to act. Based upon the foregoing definitions of quorum it is my opinion that since s. 166.041, F.S., requires a majority of the members of the governing body to constitute a quorum and an affirmative vote of a majority of a quorum present to enact an ordinance or resolution, the effect of s. 112.3143, F.S. (1984 Supp.), precludes such members who are prohibited from voting from being considered to be part of the quorum for purposes of such matter. Therefore, if the members of a governing body who are legally entitled to vote still constitute a quorum (numerical majority of the entire governing body), then a majority of such a quorum may legally enact any ordinance or adopt any resolution.

To the extent of any inconsistency with previous opinions of this office,

those opinions are modified because of the effect of the change in the law with regard to local public officers qualifications to vote in cases of conflict. The abstention requirement of the amended statute causes a legal infirmity as to the public officer's authority on the matter in question and therefore has the effect, in my opinion, of eliminating that individual from being considered as part of the quorum for purposes of that matter.

In conclusion, I am of the opinion that, unless and until judicially determined otherwise, the abstention requirements of s. 112.3143, F.S. (1984 Supp.), causes the quorum to be composed of only those members of the governing body entitled to vote. The quorum must be a majority of the governing body and a majority of such a quorum entitled to vote is necessary to enact any ordinance or adopt any resolution. Any question as to what constitutes a conflict of interest for purposes of this statute will have to be addressed to the Commission on Ethics.

Sincerely,

Jim Smith
Attorney General

Prepared by:

Craig Willis
Assistant Attorney General

However, a commissioner may send a written report to other commissioners on a subject that will be discussed at a public meeting without violating the Sunshine Law, if prior to the meeting, there is no interaction related to the report among the commissioners and the report, which must be maintained as a public record, is not being used as a substitute for action at a public meeting. AGO 89-23. *And see* AGO 01-20 (e-mail communication of information from one council member to another is a public record but does not constitute a meeting subject to the Sunshine Law when it does not result in the exchange of council members' comments or responses on subjects involving foreseeable action by the council). *Cf.* Inf. Op. to Kessler, November 14, 2007 (procedural rule requiring county commissioner to make a written request to commission chair to withdraw an item from the consent agenda does not violate the Sunshine Law).

If, on the other hand, the report is circulated among board members for comments with such comments being provided to other members, there is interaction among the board members which is subject to s. 286.011, F.S. AGO 90-03. Similarly, in AGO 96-35, the Attorney General's Office concluded that while a school board member may prepare and circulate informational memorandum or position paper to other board members, the use of a memorandum to solicit comments from other board members or the circulation of responsive memoranda by other board members would violate the Sunshine Law. "Such action would be equivalent to private meetings discussing the public business through the use of memoranda without allowing an opportunity for public input." *Id.*

In addition, the Attorney General's Office stated that while it is not a "direct violation" of the Sunshine Law for members to circulate their own written position papers on the same subject as long as the board members avoid any discussion or debate among themselves except at an open public meeting, this practice is "strongly discourage[d]." AGO 07-35. *See also* AGO 01-21 (city council's discussions and deliberations on matters coming before the council must occur at a duly noticed city council meeting and the circulation of position statements must not be used to circumvent the requirements of the statute); AGO 08-07 (city commissioner may post comment regarding city business on blog or message board; however, any subsequent postings by other commissioners on the subject of the initial posting could be construed as a response subject to the Sunshine Law); and Inf. Op. to Jove, January 22, 2009 (posting of anticipated vote on blog).

2. Authorization to conduct public meetings via telephone, video conferencing, computer, or other electronic media

a. State boards

In AGO 98-28, the Attorney General's Office concluded that s. 120.54(5)(b)2., F.S., authorizes *state* agencies to conduct public meetings via electronic means provided that the board complies with uniform rules of procedure adopted by the state Administration Commission. These rules contain notice requirements and procedures for providing points of access for the public. *See* Rule 28-109, F.A.C.

b. Local boards

(1) Meetings

As to *local* boards, the Attorney General's Office has noted that the authorization in s. 120.54(5)(b)2., to conduct meetings entirely through the use of communications media technology applies only to *state* agencies. AGO 98-28. Thus, since s. 1001.372(2)(b), F.S., requires a district school board to hold its meetings at a "public place in the county," a quorum of the board must be physically present at the meeting of the school board. *Id.* *And see* AGOs 09-56 (where a quorum is required and absent a statute to the contrary, the requisite number of members must be physically present at a meeting in order to constitute a quorum), and 10-34 (city may not adopt an ordinance allowing members of a city board to appear by electronic means to constitute a quorum). *Cf.* s. 163.01(18), F.S., authorizing certain entities created by interlocal agreement to conduct public meetings and workshops by means of communications

media technology.

However, if a quorum of a local board is physically present, “the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness[;] . . . [w]hether the absence of a member due to a scheduling conflict constitutes such a circumstance is a determination that must be made in the good judgment of the board.” AGO 03-41.

For example, if a quorum of a local board is physically present at the public meeting site, a board may allow a member with health problems to participate and vote in board meetings through the use of such devices as a speaker telephone that allow the absent member to participate in discussions, to be heard by other board members and the public and to hear discussions taking place during the meeting. AGO 94-55. *And see* AGOs 92-44 (participation and voting by ill county commissioner), and 02-82 (physically-disabled city advisory committee members participating and voting by electronic means).

(2) Workshops

The physical presence of a quorum has not been required where electronic media technology (such as video conferencing and digital audio) is used to allow public access and participation at *workshop* meetings where no formal action will be taken. The use of electronic media technology, however, does not satisfy quorum requirements necessary for official action to be taken. For example, the Attorney General’s Office advised that airport authority members may conduct informal discussions and workshops over the Internet, provided proper notice is given, and interactive access by members of the public is provided. AGO 01-66. Such interactive access must include not only public access via the Internet but also at designated places within the authority boundaries where the airport authority makes computers with Internet access available to members of the public who may not otherwise have Internet access. *Id.* For meetings, however, where a quorum is necessary for action to be taken, the physical presence of the members making up the quorum would be required in the absence of a statute providing otherwise. *Id.* Internet access to such meetings, however may still be offered to provide greater public access. *Id.* *Cf.* AGO 08-65, noting that a city’s plan to provide additional public access to on-line workshop meetings by making computers available at a public library “should ensure that operating-type assistance is available at the library where the computers are located.”

However, the use of an electronic bulletin board to discuss matters over an extended period of days or weeks, which does not permit the public to participate online, violates the Sunshine Law by circumventing the notice and access provisions of that law. AGO 02-32. *And see* Inf. Op. to Ciocchetti, March 23, 2006 (even though the public would be able to participate online, a town commission’s proposed use of an electronic bulletin board to discuss matters that foreseeably may come before the commission over an extended period of time would not comply with the spirit or letter of the Sunshine Law because the burden would be on the public to constantly monitor the site in order to participate meaningfully in the discussion). *Compare* AGO 08-65 (city advisory boards may conduct workshops lasting no more than two hours using an on-line bulletin board if proper notice is given and interactive access to members of the public is provided).

Moreover, there is no apparent authority for the use of electronic media technology to allow board members to remove a workshop or meeting from within the jurisdiction in which the board is empowered to carry out its functions and claim compliance with the Sunshine Law by providing the public electronic access to the remote meeting. Inf. Op. to Sugarman, August 5, 2015.

D. DOES THE SUNSHINE LAW APPLY TO A SINGLE INDIVIDUAL OR TO A MEETING BETWEEN A BOARD MEMBER AND A NONBOARD MEMBER?

Section 286.011, F.S., applies to public boards and commissions, *i.e.*, collegial bodies, and has been applied to meetings of “two or more members” of the same board or commission when discussing some matter which foreseeably will come before the board or commission. Therefore,