

**WEST PALM BEACH
COMMUNITY REDEVELOPMENT AGENCY AUDIT
Part 1
(Managed by Redevelopment Management Associates)**



WEST PALM BEACH

Internal Audit

Audit No. 19-01
June 22, 2020

**City of West Palm Beach
Internal Auditor's Office**

Beverly Mahaso, Chief Internal Auditor, Esq., CIA, CFE

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Executive Summary

COMMUNITY REDEVELOPMENT AGENCY AUDIT

Part 1- AUD19-01

JUNE 22, 2020



OVERVIEW

- Community Redevelopment Areas are established by local governments to carry out redevelopment activities that include reducing or eliminating blight, improving the economic health of an area, and encouraging investments.
- The WPB CRA works with residents, property owners, businesses, developers and other community organizations to foster redevelopment within the CRA Districts.
- The primary funding source available to the WPB CRA consists of Tax Increment Revenues, as well as other funding sources, such as intergovernmental fund transfers. From Fiscal Year 2014-2019, the CRA revenues totaled about \$193 million.

SUMMARY FINDINGS

1. **Staff Assigned to the CRA:** The CRA Board approved the concept of utilizing a contractor to provide professional staffing of the CRA, thereby shifting the recruitment and staffing to the contracted firm, RMA. It is important to ensure that the CRA is receiving the contractual benefits agreed upon. We found 3 (25%) of the 12 employees reviewed did not meet the minimum qualifications for the positions that they filled at the time they were assigned.
2. **Monitoring Purchases:** According to the P-Card Policy, P-Cards are issued to City employees, however we found that an average of two RMA employees were issued P-Cards. We found that 76% of purchases were not allocated to a project code and some purchases were not in compliance with the P-Card policy. RMA management did not review the purchases to ensure that the purchases were appropriate and/or allocated to projects or programs. Further, the Procurement Card Reviewer signed and authorized most of the statements without ensuring that purchases were appropriate and allocated to projects. While RMA employees may have had valid reasons for the purchases made, this should have been clearly documented at the time of purchase.
3. **Comprehensive Oversight Over CRA Activities:** RMA employees, acting as CRA staff, placed heavy reliance on project managers and Finance, and did not have comprehensive project management procedures to independently and comprehensively account for all the CRA projects and funds.
4. **Contract Procurement:** RMA was awarded a second contract in September 2018 wherein supporting documentation did not clearly indicate that: 1. New competitive bids were required to obtain a new contract, and 2. The Commissioners were being asked to waive this requirement. We found that there is not enough information provided that clearly states what specific procurement requirements have not been met. The procurement of the first contract was assessed by the PBC Inspector General's Office and they recommended reviewing the contract.

SUMMARY RECOMMENDATIONS

1. City Administration should ensure that contractual provisions designed to protect the CRA and ensure that it is adequately staffed, are adhered to by having a separate recruitment entity review the assigned resources and providing the results to the CRA board.
2. City Administration should work with the Finance Department to ensure that CRA funds are properly safeguarded by:
 - Adhering to contractual provisions regarding reimbursement of expenses and eliminating the use of City P-Cards.
 - Requiring RMA to submit invoices specifying the related project or program.
 - Requiring written approvals of purchases.
 - Establishing clear criteria for purchases based on CRA needs, historical purchases, and the P-Card policy.
 - Establishing a process for Finance to review invoices and ensure that requests include receipts, justification, and identify the specific CRA project or program and purchases not meeting the criteria should not be reimbursed.
 - Ensuring that valid purchases are allocated to the appropriate projects.
3. City Administration should ensure efficient and effective management of the CRA by:
 - Requiring RMA to establish procedures to comprehensively track all activities.
 - Requiring RMA to independently maintain and track information related to CRA activities.
 - Evaluating project management software and identifying a cost-effective, comprehensive project management software.
4. City Administration should ensure transparency in the procurement process and equitable treatment of vendors, by ensuring that documentation clearly specifies the request and states the specific exceptions to the Procurement Code.



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June 22, 2020

Audit Committee
City of West Palm Beach
401 Clematis Street
West Palm Beach, Florida

RE: West Palm Beach Community Redevelopment Agency Audit Part 1, AUD19-01

Dear Audit Committee Members:

Attached is the City of West Palm Beach's Internal Auditor's Office report on the City's Community Redevelopment Agency (CRA) audit.

We thank the staff at Redevelopment Management Associates and the Finance Department staff for their time, assistance, and cooperation during this audit.

Respectfully Submitted,

s/ Beverly Mahaso
Chief Internal Auditor

cc: Keith James, Mayor
Faye Johnson, City Administrator

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Background

Community Redevelopment Area State Policy:

Community Redevelopment Areas are dependent districts established by local governments for the purpose of carrying out redevelopment activities that include reducing or eliminating blight, improving the economic health of an area, and encouraging public and private investments within a Community Redevelopment Area. Community Redevelopment Areas are governed by Florida State Statutes (Chapter 163, Part III), however all Community Redevelopment Area activities are locally financed and are thus overseen by local government entities and not the State.

Community Redevelopment Areas in the City of West Palm Beach:

The City Commission, through adoption of Ordinance No. 1805-84, created the West Palm Beach Community Redevelopment Agency (CRA). Chapter 163, Part III, Florida Statutes, as amended (“Redevelopment Act”) authorizes a municipality to create a CRA after finding that there existed blighted areas within the municipality. Pursuant to the Redevelopment Act, the governing body of a municipality may declare itself the CRA Board of Commissioners (“CRA Board”), in which case all the rights, powers, duties, privileges, and immunities vested by F.S. Chapter 163, Part III, in the CRA will be vested in the governing body of the municipality. The City Commission has chosen this option and functions as the CRA Board. All final policy decisions and fiscal approvals are provided by the CRA Board, but strong consideration is given to the comments and recommendations of the CRA Advisory Board, also known as the CRAAB.

The CRA consists of two separate Redevelopment Districts – the City Center Community Redevelopment Area, more commonly known as the Downtown CRA, and the Northwood/Pleasant City Community Redevelopment Area. The mission of the CRA states, “To address slum and blighted conditions, improve the economic health and vitality of the districts, and improve the quality of life through strategic public investment in the geographic boundaries of the two districts”. The CRA works in collaboration with residents, property owners, businesses, developers and other community organizations to foster redevelopment within the CRA Districts.

CRA Funding:

The primary funding source available to the CRA consists of Tax Increment Revenues. Tax Increment Revenues are a unique tool available to cities and counties for redevelopment activities and are used to leverage public funds to promote private sector activity in the targeted redevelopment areas. The taxable value of all real property in the redevelopment areas is determined as of a fixed date, also known as the “base-year” value. Contributing taxing authorities continue to receive ad valorem tax revenues (property tax revenues) based on the base-year value. Revenues generated from the base-year value are available for general government purposes. However, ad valorem

revenues from increases in real property value, referred to as “Tax Increment,” are deposited into the Community Redevelopment Agency Trust Fund and dedicated to the redevelopment areas. The Tax Increment Revenues provide the majority of the CRA funds, however, the CRA also obtains funding from other sources such as intergovernmental fund transfers. The following table provides revenues for the CRA from all sources.

CRA Revenues							
Area	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019	Totals FY14-FY19
Downtown/ City Center CRA	\$22,272,649	\$26,299,657	\$27,063,234	\$29,812,944	\$32,864,997	\$35,957,742	\$174,271,223
Northwood/ Pleasant City CRA	\$2,393,514	\$2,545,762	\$2,923,925	\$3,206,518	\$3,776,266	\$4,255,600	\$19,101,585
Total	\$24,666,163	\$28,845,419	\$29,987,159	\$33,019,462	\$36,641,263	\$40,213,342	\$193,372,808

CRA Management and Staffing Contracts:

Up until 2013, the CRA was managed and staffed by the City of West Palm Beach. In 2013, a competitively bid contract to manage and staff the WPB CRA was awarded to Redevelopment Management Associates (RMA) for a three-year term to commence on January 1, 2014 for the amount of \$41,000 per month from January 1 – February 28, 2014 and increased to \$78,000 per month on March 1, 2014, for the remainder of the agreement. This monthly fee was subject to a 2.5% increase, effective October 1st of each year. Per the contract, the City of West Palm Beach had the option to extend the term for up to two additional years by the execution of a written amendment to the contract. After the extensions, the first contract was set to terminate on December 31, 2018.

However, in September 2018, a new contract was entered into with an effective date of October 1, 2018, and it was not competitively bid. This contract, like the prior contract, is currently in effect for three years with the option to extend for an additional two years through the execution of a written amendment. The compensation for this contract is \$99,750 per month and is subject to a 3% increase, effective October 1st of each year, which comes to a cost of about \$6.4 million over five years.

Statement of Scope

The scope of the audit was from January 2014 through December 2019 (audit period) which is the period of time since the City outsourced the management and staffing of the CRA to RMA. Where possible, testing was conducted on 100 percent of the population using data analytic tools. All other testing was conducted based on random samples or available data as indicated in the findings.

Due to significant challenges in obtaining data, this audit was divided into two parts. This first part of the audit was focused on the transition from City employees operating the CRA to outsourcing to a contractor. This included an assessment of the day-to-day operations of the CRA as managed by RMA. Auditing standards indicate that disclosures should be provided when there are limitations or uncertainties with the reliability or validity of evidence. As such, we note that there were uncertainties with the reliability or validity of some resumes provided as discussed in the staffing finding.

The second part of the audit will be focused on assessing the management of CRA activities and projects designed to reduce or eliminate blight, improving the economic health of an area, and encouraging public and private investments.

Statement of Objectives

The objectives of the first part of this audit were to:

- a. Determine whether the CRA was adequately staffed and had sufficient oversight over day-to-day operations; and
- b. Determine whether CRA funds were used for CRA activities and properly accounted.

Statement of Methodology

The methodology used to meet the audit objectives included the following:

- Interviews and inquiries of personnel from the management and staffing firm as well as City employees and management;
- Reviews of contracts, policies, regulations, strategic plans, and annual plans;
- Analyses of staffing, purchases, and financial records;
- Data analysis on records provided; and
- Reviews of related reports.

Based on the disclosures provided in the scope, we note that we based our assessments and conclusions on documents that we found to be sufficiently reliable.

Statement of Auditing Standards

We conducted this audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Conclusions and Summary of Findings

We concluded that there were opportunities to improve internal controls and management and oversight of the CRA operations. Specifically:

1. We found that some RMA employees assigned to the City's CRA did not meet minimum qualifications for the positions they filled.
2. We found that there was inadequate oversight over the purchases made on City P-Cards such that p-cards were issued to non-City employees, purchases were not allocated to projects, purchases did not have sufficient justifications, and some purchases were not permissible under the P-Card policy.
3. RMA employees, acting as CRA staff, did not have comprehensive, documented and/or established project management processes and procedures, that would have allowed them to independently provide comprehensive information on all CRA activities and the associated public funds.
4. The second contract with RMA did not go through a competitive bidding process, though it was approved by the Commissioners. We found that the supporting documents did not clearly indicate that a). a new competitive bidding process was required to obtain a new contract, and b). the Commissioners were being asked to waive this requirement. The procurement of the first contract was assessed by the Palm Beach County Inspector General's Office and the report has been attached.

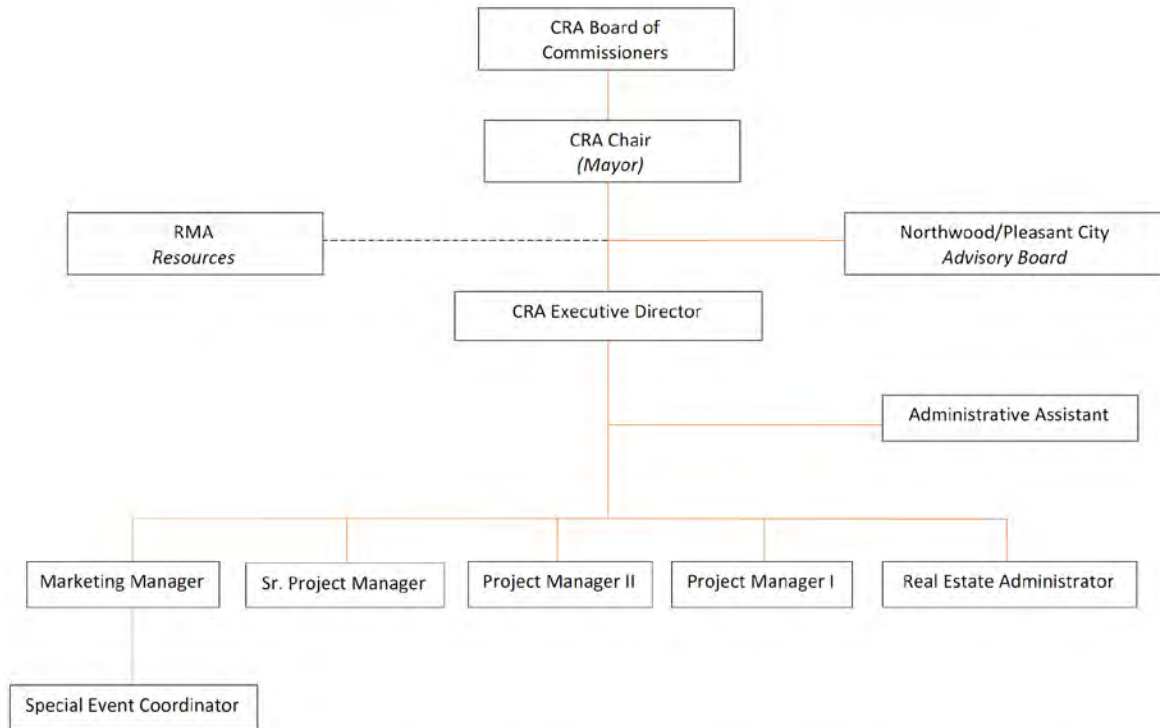
Noteworthy Accomplishments

We acknowledge that the CRA under RMA's management has been instrumental in improving various streetscapes and increasing community engagement through marketing and special events such as Bowties and Bourbon, the Heart and Soul Festival, and BBQ, Blues and Brews. We commend the Finance Department for taking immediate corrective action and deactivating the P-Cards.

CRA Organization Chart

WEST PALM BEACH CRA ORGANIZATIONAL CHART

May 6, 2020



Additional Access & Contractual Resources: Urban Design; Project Engineering; Construction Manager; Marketing Director Support; Project Management; Economic Development

Source: Provided by RMA. The Executive Director position is vacant and an Interim Executive Director has been assigned.

Opportunities for Improvement

1. Staff Assigned to the CRA

Auditing standards indicate that disclosures should be provided when there are limitations or uncertainties with the reliability or validity of evidence. As such, we provide the following disclosures.

Over the course of audits, multiple attempts are made to obtain the data necessary to complete the review. Further, auditors follow up with audit clients to ensure that the data obtained is accurate. During the audits, we notify the audit client when we identify potential concerns and we provide sufficient information to facilitate a candid discussion. We followed this process and advised RMA management of our concerns that three individuals did not meet the minimum requirements for the positions they filled at the time they were hired. RMA management advised us that we did not have the correct/accurate resumes. Subsequently, RMA provided resumes for two of the three individuals that we identified as not meeting minimum qualifications. A comparison of the resumes indicated that the latter resumes had been significantly modified/alterd. We acknowledge that individuals update their resumes, however, we found significant changes in work experience, changes in titles, and elimination of work experience. As such, we were uncertain of the reliability or validity of the resumes that were provided after we disclosed our concerns to RMA. We did not take issue with updated resumes or biographies provided by RMA before we disclosed our concerns to RMA. We also noted that two RMA employees are very close relatives of one of the RMA principal partners. Of the two relatives, one of them was in our sample and did not meet the minimum requirements for the position.

We note that our assessments and conclusions for the findings were based on evidence that we deemed to be sufficiently reliable.

Condition

We reviewed a random sample of 12 RMA employees, who were assigned to CRA positions for various lengths of time ranging from 2 months to 6 years. 3 (25%) of the 12 employees did not meet the minimum qualifications for the positions that they filled at the time they were assigned. We reached out to the City's HR Recruitment Division, to obtain the minimum qualifications for the CRA positions prior to outsourcing to RMA and compared them to RMA's minimum qualifications in order to determine the necessary competencies of the people filling the positions and confirm our conclusions. Specifically, we found the following concerns at the time the individuals were hired by RMA:

- **Real Estate Administrator – Full Time \$150/hour¹**

RMA's contract required a Real Estate Administrator position at the CRA. We found that one RMA employee filled this position for the CRA. We reviewed RMA's job description used to fill the position and found that it was for an Assistant Real Estate Manager which appears to be a lower position than the contractual Real Estate

¹ RMA's contract is a fixed-rate contract paid in equal monthly payments. However, it includes a schedule of hourly fees in the event additional services are requested. We used the figures from this schedule to provide some valuation context for RMA staff.

Administrator position. We compared RMA's job description to the City's CRA Real Estate Administrator job description and found that:

- RMA required one license as compared to the City's requirement of two licenses;
- RMA required two to four years of experience as compared to the City's requirement of 8 years of experience; and
- Even under RMA's lowered standards, the person did not meet the minimum requirements due to insufficient and unrelated experience for the Assistant Real Estate Manager position (i.e. Site Planner, Landscape Designer, Project Coordinator).
- **Project Manager – Full Time \$95/hour**
 - Insufficient/Unrelated Experience for the Project Manager position (i.e. restaurant supervisor, forensic lab intern);
 - The degree listed was unrelated to the CRA position.
- **Senior Project Manager – Full Time \$155/hour**
 - Insufficient/Unrelated Experience for the Senior Project Manager position (i.e. sales consultant, restaurant manager, account executive)

Criteria

A critical component of RMA's agreement is to provide professional staffing for the CRA. RMA's Agreement for Management and Staffing in relevant part states that RMA will provide all services necessary to operate, staff, and manage the CRA; and RMA shall provide additional staff as needed with expertise in project management. RMA's contract subsequently states in relevant part that, RMA shall provide the following staffing services:

1. Executive Director,
2. Senior Project Manager,
3. Project Manager II,
4. Project Manager I or Coordinator,
5. Marketing Manager,
6. Real Estate Administrator, and
7. Administrative Assistant.

We note that RMA was contractually obligated to fill the three positions discussed above.

Cause

The CRA Board approved the concept of utilizing a contractor to provide professional staffing of the CRA in place of City employees, thereby shifting the recruitment and staffing to the contracted firm. We note that in RMA's 2013 response for qualifications, RMA held itself out as "redevelopment specialists with proven expertise in the successful management and administration of...CRAs." RMA stated that it had a "team of technical experts" that would "share their expertise as needed." Ultimately, RMA was selected to provide professional staffing and management of the CRA.

Effect

One of the key provisions of RMA's contract was to provide adequate professional staffing

and management at a fixed monthly rate (currently \$102,742.50/month). Considering that these are public funds, it is imperative to ensure that the CRA is receiving the contractual benefits agreed upon.

Recommendation 1

The contract states that, “The City reserves the right to require RMA to replace any employees assigned to the Services who are not acceptable to the City in its sole discretion.”

Based on this provision, we recommend that City Administration, as administrators of the CRA’s management and staffing contract, should ensure that contractual provisions designed to protect the CRA and ensure that it is adequately staffed, are adhered to by:

- Having a separate recruitment entity, such as the City’s HR Recruitment Division, fully scrutinize and vet the education, certifications, and experience of the individuals identified by the management firm to fill positions and determine whether they meet minimum requirements; and
- Providing the results to the CRA Board.

City Administration should also review the contract and ensure that contractual obligations are met. In the event that contractual obligations are not met, all necessary action should be taken.

Responses from Administration can be found on page 16.

Responses from RMA can be found on page 17.

2. Monitoring Purchases

Condition

The City's Procurement Card Policy states that employees who have regular status with the City are eligible to obtain a purchasing card (P-Card). RMA's contracts did not grant regular City employee status to RMA employees. RMA's contracts clearly stated that some expenditures were subject to reimbursement and administrative fees and other expenditures could be paid for directly by the City. The contracts did not mention P-Cards. Based on our review, we found that an average of two RMA employees were issued P-Cards with monthly spending limits of \$10,000 per card and the majority of purchases were placed on an administrative assistant's P-Card.

Inadequate Oversight of Purchases

From 2014 through 2019, there were about 1,040 P-Card transactions totaling about \$253,000. Based on our review, we found insufficient oversight of purchases made as follows:

- **Allocating Expenses:** We found that about 790 (76%) transactions were not allocated to a project code. We note that the CRA is driven by projects and programs that would require proper allocation of transactions to monitor funds.
- **Evidence of Review:** We received 76 monthly statements related to the transactions to determine whether purchases were appropriate and authorized, and found that:
 - About 72 (95%) statements did not contain evidence of review or approvals by a member of RMA management prior to being submitted to Finance's Procurement Card Reviewer,
 - About 7 (9%) statements were not signed by Finance's Procurement Card Reviewer who was responsible for authorizing and approving purchases for the CRA, and
 - About 11 (14%) statements were not signed by the card holder.
- **Analysis of Receipts:** We analyzed the receipts attached to the 76 monthly statements and based on our assessment we estimate that:
 - About 290 (28%) purchases were not permissible under the P-Card purchasing policy,
 - About 400 (38%) purchases did not contain sufficient information to determine whether they were permissible under the P-Card purchasing policy or it was not clear whether or not the policy permitted the purchases,
 - About 570 (55%) purchases did not have 1. An explanation/justification as to what specific project required the purchase or 2. The explanation or justification provided was insufficient to determine why the purchase was made, the public purpose, and/or identification of the specific project that required the purchase, and
 - About 60 (6%) purchases did not have receipts.
- **Contractual Expenses:** Based on our analysis, we found that about 440 purchases fell within reimbursable expense categories listed in the RMA contracts, specifically the Administrative Expenses and the Pass Thru Expenses. As such,

RMA could have generated invoices to the City and provided supporting documentation and/or identification of the related project, event, or activity.

Criteria

The City's P-Card policy states that P-Card holders must be permanent employees who have passed probation. We note that the purpose of the P-Card policy, in relevant part, is to ensure that the City bears no legal liability from the inappropriate use of P-Cards and to provide disciplinary action if the P-Cards are misused. Therefore, issuance of P-Cards to non-City employees would be contrary to the policy.

RMA's contracts with the City authorized RMA to invoice the City for Administrative Expenses and Pass Thru Expenses, with the appropriate supporting documentation, and to add a 5% administration fee for Pass Thru Expenses. Neither contract mentioned the use of P-Cards by RMA employees for expenses. We note the following provisions in RMA's contracts:

- Paragraph 3.3 Administrative Expenses. The City shall reimburse RMA for direct, out of pocket expenses incurred by RMA for photocopy charges, material production charges, mileage, long distance telephone and other similar charges. Notwithstanding the foregoing, the City shall not pay mileage for employees commuting to and from City Hall or for consultants traveling to City Hall whose services are included in the Fee. Administrative expenses shall be invoiced no more than once per month and shall include appropriate back up documentation as reasonably requested by the City. The City shall reimburse or pay directly for any travel expenses approved by the City for RMA employees to attend conferences or trade shows on behalf of the City or CRA.
- Paragraph 3.4 Pass Thru Expenses. Upon prior written authorization from the City Administrator, the City or CRA may request RMA to purchase items related to the activity RMA is undertaking including but not limited to ordering, preparing or printing marketing materials, decorations, signs, banners, social media placement and event invitations or other materials identified as part of a project, event or activity. A five percent (5%) administration fee will be added to all such pass thru expenses and will be invoiced separately from the monthly fee.

Cause

We found that the above conditions occurred as a result of not adhering to the contracts and issuing P-Cards without providing proper oversight.

Once the P-Cards were issued, RMA management did not review the purchases to ensure that the purchases were appropriate and/or allocated to the correct projects or programs. We were advised that RMA's project managers are responsible for ensuring that purchases are allocated to the specific projects. In addition, the Procurement Card Reviewer signed and authorized most of the statements even though purchases were not allocated to project codes, there were some missing receipts, and some purchases were not permissible under the P-Card policy. As such, we found that this combination of control breakdowns resulted in the above conditions.

We also note that RMA management and RMA employees may not have been familiar with their contracts or the City's P-Card policy regarding permissible purchases, approvals, and documentation requirements.

Effect

As stewards of public funds, it is important to remain fiscally conservative and responsible. When P-Cards are issued, there is an inherent risk that public funds may be misused, misappropriated, or lack a clear public purpose. This risk is greater when controls are lacking to monitor purchases. In this case, a breakdown of controls resulted in P-Cards being issued to non-City employees and without adequate oversight over purchases. For example, we identified purchases for:

1. Award luncheons/banquets and applications for awards (over \$4,000),
2. Gift Cards (over \$2,000), and
3. Work pants and shirts for RMA Employees (over \$2,500).

While RMA employees may have had valid reasons for the purchases made, it is difficult to validate purchases without identifying the projects that required the purchases, providing full justification or explanations regarding the purchases, and having a clear public purpose. We note that this should be done at the time the purchases are made.

Recommendation 2

City Administration, as administrators of the CRA contract, should work with the Finance Department to ensure that CRA funds are properly safeguarded by:

- Adhering to contractual provisions regarding reimbursement of expenses and eliminating the use of City P-Cards;
- Requiring the management and staffing firm to submit invoices for expenses with supporting documentation and identification of the specific project, program or activity;
- Requiring written authorizations and approvals of purchases;
- Ensuring that clear criteria for valid purchases is established which can be based in part on CRA needs, historical purchases made on City P-Cards, as well as the City's general P-Card policy;
- Establishing a process for Finance to review the invoices and ensure that requests include receipts, justification for the purchases, and identify the specific CRA activity for the purchase; purchases not meeting the established requirements should not be reimbursed; and
- Ensuring that valid purchases are allocated to the appropriate projects.

We note that this structure places the burden on the management and staffing firm to ensure that purchases are appropriate and are eligible for reimbursement, while simultaneously decreasing the risk to the CRA of inappropriate purchases.

Responses from Administration can be found on page 16.

Responses from RMA can be found on page 17.

3. Comprehensive Oversight Over CRA Activities

Condition

RMA was hired to manage the CRA at a current cost of about \$1.2 million per year. However, RMA employees, acting as CRA staff, did not have comprehensive project management procedures to independently and comprehensively account for all the CRA projects and funds.

We requested a list of all projects/programs managed or administered by RMA to include budget to actuals, staffing, basic project descriptions, and dates. We found that RMA placed heavy reliance on the City's Finance Department such that RMA could not independently confirm budget information for CRA activities. RMA advised that it did not maintain its own budget and finance information for CRA activities. Rather, all budget and finance information resided with the City's Finance Department. Thus, when we requested budget information, RMA advised us to consult with the Finance Department. Similarly, RMA placed heavy reliance on its project managers and advised that project managers were responsible for developing their own management procedures and providing updates to management. While we acknowledge RMA employees' efforts to provide the information; ultimately, they were unable to independently and comprehensively provide the information requested. RMA management advised that to produce the information requested would be a cumbersome, manual process requiring significant resource hours that would potentially require additional billable hours to the City and/or deferment of some CRA activities. We also note that RMA advised that they only work on projects and programs based on the approved Five-Year Strategic Finance Plan. Finally, we note that there is no requirement to use project management software, however, project management software is designed to address these types of issues in a more efficient manner.

Criteria

RMA was hired to manage the CRA. Specifically, RMA's management and staffing agreement states in relevant part that:

- RMA shall provide day-to-day management of the operations and activities of the CRA with the support and resources of the firm (RMA).
- RMA shall manage the CRA budget and coordinate budget and expenditures with the CRA Treasurer.
- RMA shall prepare the CRA budget and finance plan(s) for CRA-Board approval.

Cause

RMA provided a number of reasons for the conditions stated above including:

- All projects and programs are tied to the approved strategic finance plan.
- Project management systems are not required and have not been utilized.
- RMA relies on the City's Finance Department to manage and track all funds received and disbursed.

- RMA's project managers are responsible for managing their projects.

We note that this may be problematic when considering our findings related to P-Card purchases that were not allocated to specific projects or programs.

Effect

CRA revenues have totaled about \$193 million during the time that RMA employees have managed the CRA. In the absence of comprehensive, accurate records that are maintained regularly, it is difficult to independently and readily provide comprehensive information for all CRA activities and the associated public funds. This may erode transparency and accountability, thereby raising concerns related to equitable treatment that does not marginalize individuals, business owners, or entire communities that are relying on CRA redevelopment efforts.

Recommendation 3

City Administration, as administrators of this CRA contract, should ensure efficient and effective management of the CRA by:

- Requiring the management and staffing firm to establish procedures to comprehensively track all activities,
- Requiring the management and staffing firm to independently document, maintain, and track all CRA activities including budget information, and
- Evaluating project management software and identifying a cost-effective system that can provide comprehensive:
 - Budget Management
 - Resource Management
 - Time Management
 - Contract Management
 - Projections
 - Reminders
 - Reporting
 - Scheduling

Responses from Administration can be found on page 16.

Responses from RMA can be found on page 17.

4. Contract Procurement

Condition

First Contract: After a competitive bidding process, the City entered into an agreement with RMA to staff the CRA with an initial term of three years that was extended by an additional two years, for a total of five years, thereby exhausting all available extensions. The contract was executed in December 2013 and was scheduled to expire in December 2018. However, in 2016, the Palm Beach County Inspector General's Office (IG) issued Investigative Report No. 2016-0002 that included a review of the procurement process for this contract. We reviewed the IG report and the City's procurement documents related to this contract. We found that the IG report was sufficiently reliable to provide an independent assessment of the procurement process for this first contract. A copy of the IG report including the related documents can be found in the Attachments section of this report. We note that the IG report recommended reviewing the contract and taking appropriate action. Thus, we focused our efforts on assessing the procurement of the second contract.

Second Contract: We reviewed the documents related to the second contract with RMA and found that in September 2018, a new contract was executed between the City and RMA without going through a competitive bidding process and was approved by the Commissioners. We found that the contract value after five years was about \$6.4 million to a single vendor. This contract was brought before the City Commissioners for approval in August 2018, as Resolution No. 242-18, which did not meet the Procurement Code requirements. Specifically, the requirements not met were placing an RFP/RFQ for vendors to competitively bid on the contract. We found that the supporting documents did not clearly indicate that 1. New competitive bids were required to obtain a new contract, and 2. The Commissioners were being asked to waive this particular requirement. We acknowledge that it is within the Commissioners discretion to waive procurement requirements, however, requests made to Commissioners should be clear and transparent, particularly in high-dollar contracts to single vendors.

Criteria

- City Procurement Code Sec. 66-93(i) limits goods and service contracts to terms of three years with the right to extend the term for up to two additional years for a total of five years. At the exhaustion of all extensions, a new competitive bid request must be issued, unless this requirement is waived by the Commissioners.
- City Procurement Code Sec. 66-94, requires commissioner approval for certain contracts that have not fulfilled the requirements of the Procurement Code. If departments use this process, they can bypass the Procurement Department entirely and submit their requests to the Commissioners. We note that when contracts are flagged under Procurement Code Section 66-94(a)(3), it means that the contract has not met the procurement code requirements, thus the department is asking the Commissioners to waive the procurement code requirements in order to issue the contract. However, we believe that the documents should specify what Procurement Code requirements have not been met.

Cause

We found that there is not enough information provided that clearly states what specific procurement requirements have not been met. For this particular contract, the Agenda Cover Memorandum (Memo) that provides background information on the Commissioner's agenda item states that "the commission may consider a new agreement pursuant to City of West Palm Beach Code of Ordinances, Section 66-94(a)(3)." There is no additional clarifying information, thus it is not clear that this is the Procurement Code Section that requires Commission approval for contracts that have not fulfilled the procurement requirements.

The specific language of Section 66-94(a)(3) states, "Contracts where the requirements of this chapter have not been fulfilled." We also note that this Code section does not state the specific requirements that have not been met. In addition, the Memo with the background information does not state the specific procurement requirements that have not been met.

Effect

The Procurement Code was set up to promote the equitable treatment of all parties interested in doing business with the City and to ensure transparency in the procurement process. Thus, it is important to ensure that the process remains transparent and exceptions to the requirements are fully disclosed.

Recommendation 4

City Administration should ensure transparency in the procurement process and equitable treatment of vendors interested in doing business with the City by:

- Reviewing the Procurement Code and requiring written justification for contracts not meeting the procurement code, particularly those falling under Procurement Code Section 66-94.
- Revising the agenda cover memorandum or its equivalent such that it provides a description of the procurement code requirements and specifies what requirements are not being met, particularly where Commission approval is required.

Responses from Administration can be found on page 16.

Responses from RMA can be found on page 17.

Response from City Administration

Administration agrees with the four recommendations. The target implementation date is October 5, 2020. However, Administration would like to note the transition of the CRA Executive Director from a contract employee to a City Employee as it relates to the handling of the audit responses.

The CRA Board will have a discussion of the two candidates at their special meeting on June 15th. Their selection should be made hopefully by the end of the month. The new CRA Director will be tasked with administering the CRA contract and implementation of the four recommendations.

Finance Management agrees with recommendation 2. The Finance Department will work with City Administration to establish processes to ensure adherence to contractual provisions regarding reimbursement of expenses and the use of City P-Cards; proper review of invoices; that purchases are valid and allocated to appropriate projects; the requirement for written authorizations and approvals of purchases; requiring contractors to submit invoices for expenses with proper documentation, and identifying the specific project, program, or activity. Additionally, the Finance Department has since deactivated all P-Cards previously issued to RMA staff.

Target Implementation Date:

All recommendations will be implemented by 10/05/2020.

Response from RMA (Contractor)



REINVENTING YOUR CITY

May 26, 2020

City of West Palm Beach
Beverly Mahaso, Internal Auditor
401 Clematis Street
West Palm Beach, Florida 33401

RE: RMA Response to West Palm Beach Community Redevelopment Agency Audit Part 1, AUD 19-01

Dear Ms. Mahaso,

Attached is RMA's response to the City of West Palm Beach's Internal Auditors office report on the City's Community Redevelopment Agency (CRA) audit.

We appreciate the opportunity to respond to the draft report, as well as your communication with us in an effort to address some of the audit statements and RMA's responses.

Respectfully,

Kim Briesemeister
Principal

Chris Brown
Principal

Cc: Keith James, Mayor
Faye Johnson, City Administrator
Kelly Shoaf, Commission President
Robert Meyers, Esq.

REDEVELOPMENT MANAGEMENT ASSOCIATES (RMA) RESPONSE TO DRAFT AUDIT REPORT

May 26, 2020

Introduction:

Redevelopment Management Associates (“RMA”) received a document on May 19, 2020 entitled “West Palm Beach Community Redevelopment Agency Audit, Part 1” (“Draft Report”), labeled as Audit No. 19-01. Per the City Code, although the City Community Redevelopment Agency is technically the “auditee”, RMA has standing to respond to the Draft Report as the firm was selected to manage the operations of the CRA during the audit’s timeframe. Moreover, much of the commentary included by the auditor reflects on the performance of RMA while serving in this capacity for the CRA. Consequently, RMA was entitled to a copy of the draft audit report to review and offer comments regarding factual information before the report is finalized and released. The City Code gives RMA the right to respond in writing indicating the reasons for agreeing or disagreeing with the audit’s preliminary findings and recommendations. To the extent to which RMA agrees with the findings and recommendations contained in the Draft Report, the response should include plans for implementing solutions to the problems identified in the Draft Report and a timetable to complete such activities. The internal auditor was asked to include the full text of the response in the final report. The City Code further requires the City’s audit committee to review and approve the internal audit report at a public meeting before the final audit report is issued. Once the final audit report is approved, the report will be forwarded to the city commission.

Preliminary Statement:

RMA appreciates the fact that on a regular basis the Internal Audit Department staff reached out to RMA in an effort to address some of the City’s concerns and RMA consistently responded to such requests in a timely manner. As noted in the Draft Report, RMA prides itself for expertise in managing and staffing community redevelopment agencies throughout South Florida and has an exemplary record in field, having received countless awards and recognition for its activities on behalf of community redevelopment agencies. Although the Draft Report contains a Noteworthy Accomplishments Section, the identified accomplishments do not accurately reflect the significant successes that the City of West Palm Beach Community Redevelopment Agency has achieved since 2014 when RMA took over the management and operations of the City’s CRA.

In addition, RMA has some reservations about some of the verbiage used in the Draft Report, which can be seen as an attempt to tarnish the firm’s stellar reputation. Although the Report is supposed to focus on factual information that may or may not evidence areas of concern, the internal audit inserts subjective statements, which are of no real value and draw conclusions not supported by the facts, such as an assertion that RMA was unresponsive in addressing requests from the Audit Department.

Organization of Response:

RMA understands that the scope of the audit was to determine whether the CRA was adequately staffed with sufficient RMA oversight and whether CRA funds were used for CRA activities and properly accounted. The general conclusion is that were opportunities for RMA to improve its management of day-to-day CRA operations, inappropriate P-card purchases and insufficient procedures to comprehensively account for activities for which it was responsible.

RMA's response will focus on the three main findings presented in the Draft Report: 1) Some RMA employees assigned to the City's CRA did not meet minimum qualifications for the positions they filled; 2) There was inadequate oversight over the purchases made on City P-cards such that p-cards were issued to non-City employees, purchases were not allocated to projects, purchases did not have sufficient justifications and some purchases were not permissible under the P-card policy and 3) RMA employees, acting as CRA staff, did not have comprehensive, documented and/or established project management procedures that would have allowed RMA to independently and comprehensively account for all CRA activities.

Opportunities for Improvement:

This section of the audit outlines areas where the audit deems the CRA operations deficient. RMA responses address each section separately as follows:

1) Staff assigned to the CRA

This section discusses the staff RMA assigned to the CRA and the auditor's assessment of the qualifications of those staff members. The original request from audit was for all job descriptions and resumes for each CRA position from 2014 – 2020. Many resumes on file were from the time of hire or were outdated. The Report acknowledges that resumes are updated, and, in some instances, the auditor requested updated resumes, which, obviously, had to be modified by RMA but only at the behest of the auditor.

Of the thirty-seven resumes and job descriptions provided, the auditor only identified three resumes as not meeting minimum qualifications. Specifically, the Draft Report focuses on the full-time positions of Real Estate Administrator, Project Manager and Senior Project Manager. The Draft Report also notes that two RMA employees are close relatives to one of the RMA principal partners. This claim of "nepotism" will be addressed in the response as well.

RMA Response:

RMA's approach to providing staffing services is based on a tiered staffing structure whereby the employees operating within city hall who are assigned to daily operations, are supported by RMA employees with varying degrees of expertise from the home office. This approach gives the CRA access to a wide variety of staffing resources and additional team members that would not be available in a typical staff structure. This audit does not recognize the unique tiered staffing structure, and attempts to match all in-house CRA positions, to RMA or city job descriptions and qualifications, failing to acknowledge the collective skill set of all RMA employees who are available to the CRA.

Although the RMA contract does not require minimum qualifications for each staff position, the interview and hiring process conducted by RMA followed general hiring procedures including seeking minimum qualifications for each position. At all times, a combination of in-house and home office staff met or exceeded minimum requirements, even though not contractually obligated to do so.

Real Estate Management/Administrator position

The Reports cites that RMA only requires one license whereas the City requires two licenses. These credentials are irrelevant for the individuals assigned to the CRA since the staff members were not buying property under any license for the CRA. In the same vein, the City requires eight years of experience while RMA only requires four years of experience. It must be understood this is not a typical or single purpose real estate position, rather the position entails a combination of real estate activity including but not

limited to generally overseeing all CRA real estate assets, property management, property acquisition, maintenance, renovations, and project management. This particular employee's experience with site planning, landscape design and project coordination was dismissed and deemed insufficient and irrelevant by the audit, whereas that very experience is critical to the daily assignments for the position. The audit also does not recognize one of the firm's Principals, Chris Brown, holds a real estate brokerage license exceeding the qualifications that the audit contends is necessary for this position. The audit also does not recognize that the CRA has distinct legal requirements and procedures for acquiring and disposing of real estate, none of which would be found within the city's job descriptions because those requirements are for a city department, as opposed to a CRA, a distinct governmental entity operating under Chapter 163 of the Florida Statutes.

Project Manager and Senior Project Manager

The other examples provided by the auditor state that a Project Manager and a Senior Project Manager had insufficient /unrelated experience, however, the audit discounts the years of marketing and project management training conducted in-house by the most Senior RMA Marketing and Management staff. The audit's focus on the unrelated work experiences employees had prior to being hired by RMA is simply irrelevant and does not recognize the necessary experiences the employees gained during their tenure with RMA, nor does audit take into account the skill sets of the employees at the time they were assigned to CRA projects. The audit also casually dismisses seemingly unrelated experience and deems it insufficient whereas RMA connects the experience with past employers to current project management activity. For example, the Project Manager had supervisory experience in the restaurant industry. Although seemingly an unrelated industry, those supervisory skills are relevant due to the general nature of project management roles and responsibilities. Similarly, the Senior Project Manager, who holds an MBA, was an account executive and held a manager's position, both of which are relevant to Project Management. Irrespective of the past positions held by the Project Managers, the one-on-one, the tutelage and in-house training by Senior RMA employees prepared these two employees for the positions they were assigned to in the CRA.

Contractual Requirements

In summary, the City's contract with RMA does not require any established or minimum criteria for staff positions. When the Request for Qualifications was advertised in 2013, the City's purpose was to seek a firm that would provide the day-to-day management of the operations and activities of the CRA with the support and resources of the firm. The minimum requirements set forth in the RFQ was for the proposer to be experienced in administration of CRAs and/or business development districts and possess the knowledge, skills and professional backgrounds of key personnel available. RMA's response to this section of the RFQ is offered for emphasis in that it offered a cadre of employees with diverse backgrounds who could meet the goals and objectives of managing and operating the City's CRA.

Initially, in 2014, RMA presented a core team which included a CRA Director and Project Manager and supplemented the existing city employees. Over time, a full team composition was provided through RMA including an Executive Director, Senior Project Manager, Administrative Assistant, Project Manager II, Project Manager I, Marketing Manager, Real Estate Administration, Special Event Coordinator and part time, limited and combined services of an Urban Designer, Project Engineer, Construction Manager, and Marketing Director. In addition, a finance management consultant was utilized to work with the City's Finance Department and the CRA for budgeting and CRA regulatory compliance.

It should be noted that the original agreement and the extension gives the City the right to require RMA to replace any employees assigned to the Services who are not acceptable to the City in its sole discretion. With the recent exception of the Executive Director who served the City and CRA for six years, the City has never expressed any dissatisfaction with the employees RMA assigned to the City's CRA.

Moreover, consistent with the contractual term (Standard of Care) and the firm's commitment to excellence in the field, the standard of care for all services performed or furnished by RMA under this agreement are and have been consistent with the care and skill ordinarily used by members of RMA's profession practicing under similar circumstances or at the same time and in the same locality.

RMA vehemently disagrees with the assessment and affirms that the skill sets of the assigned employees met the requirements associated with managing the CRA's assets and projects.

Interactions Related to Updating Resumes and Job Descriptions

From October 2019 to the present, there were constant demands by the Audit Department for RMA to provide resumes, job descriptions, and other related information, often with a short turnaround time. On several occasions, the auditor directed RMA to modify/alter the resumes to add or delete information from the information previously provided the City. In one exchange between RMA and the auditors in March of 2020, the auditors requested in reviewing one of the resumes, RMA was requested "to make the necessary changes that reflect her professional experience." ¹

Over thirty-seven resumes and job descriptions were the subject of the audit, many of which were in storage and had to be retrieved. RMA continued to provide data and resumes, as well as updated information as requested. During a final exchange related to this aspect of the audit, RMA's controller requested an extension of a few more days for production of material due to internal workload including an IRS deadline.²

RMA finds it disconcerting and intimidating to be subject to short turnaround times, and ultimately threaten to "write up a finding", to coerce RMA to produce the requested information when, in fact, RMA was collecting the information as quickly as possible.

On several occasions, audit staff directed RMA to "update" the resumes to add or delete information from the information previously provided the City. It was clear that there was a back and forth approach to provide documentation to the auditor, and that the need to provide the appropriate and updated information was a goal of the firm. In one exchange, RMA's Controller made it clear that there was a need to review these documents internally as a firm prior to issuing them to the auditor. ³

¹ *Per a January 7, 2020 e mail from audit: could you be so kind in forwarding me the Job descriptions/requirements for each CRA position (City of WPB CRA) currently and previously held for the years 2014 to present (2020). I will be needing these forwarded to me by Thursday, January 9. March 3, 2020: if this was not her last role, could she please make the necessary changes that reflect her professional experience.*

² *Per a January 27 e mail from audit: Due to our own deadlines, I won't be able to extend more time to produce the documentation that I've requested. However, if you have any of the documentation that I am missing from my request below (even if has not been updated) I'll take it, otherwise we will have to write it up as a finding as it is not available/existent. Please let me know*

³ *Per an email from RMA Controller to the auditor on January 21, 2020: With regards to the resumes – I have the majority (please see attached) but the others are in an off-site storage facility and I need more time to access them. In addition, I need more time to review the job descriptions with Kim. These files were produced prior to my employment and I want to ensure that I am sending you the applicable documents*

During one of those exchanges, an incomplete resume was forwarded to the auditor and it was not realized until later during a phone call to review the preliminary inquiries. At that time, the Principals stated they had not reviewed the resume in question. After the information about the change in the resume was discussed with the auditor, the Controller who forwarded the resume spoke to the employee and sent the following e mail to the auditor for clarification. ⁴

There appears to have been an undefined set of criteria when the firm was to provide updates to resumes, when modifications could be introduced, or when perceived errors on resumes could be updated.

Employment of Relatives

The claim that the auditor found upon its further research that two RMA employees are close relatives of a Principal is inaccurate. Actually, RMA divulged this information the auditors, as it had nothing to conceal, but the Draft Report states that the auditors discovered this information on their own. The Principal the audit refers to in this section is Kim Briesemeister. For some context, one of the close relatives of Ms. Briesemeister is Sarah Blake who has worked for RMA since 2014 and married Ms. Briesemeister's son in February 2020. Ms. Blake was hired by RMA as a marketing coordinator under the Marketing Director of the firm who personally trained her. After two years in marketing, she was trained in Project Management and worked dual roles for multiple consulting clients and was assigned to the West Palm Beach CRA in 2018 as a Project Manager and did not at the time of the assignment, or currently, report directly to Ms. Briesemeister.

A second relative of the principal is Jessica Mulder, (the principal's daughter). Ms. Mulder has worked for RMA as the Creative Director (out of Los Angeles) and has no direct contact with the City's CRA directly but is a considered a resource along with the rest of the home office team.

To a limited extent, RMA recognizes as a City contractor that it is bound by the ethics rules enumerated in state law and in Palm Beach County, but such rules would not necessarily preclude the firm from hiring relatives. Moreover, RMA would not be in violation of the state's restrictions on the employment of relatives (see F.S. 112.335) because the positions the principal's relatives occupy at RMA do not trigger the limitations enumerated in the law.

⁴ Per email from controller to the auditor on May 11, 2020: *I am attaching Sarah Blake's current resume for your files per your request for updated resumes for her and Allison Justice. I believe that I sent you an earlier version that was still being updated while Sarah had reached out to me for guidance with respect to a former employer, Smokey Bones. In 2019 the firm apparently overhauled their job/position titles and she was asking for the best way to be consistent. However, in my desire to provide you with a timely response, which I know is so important in audits, I did not check that the resume she sent me was the one for publication, which we did not realize until your call with Kim and Chris last week.*

2) Monitoring Purchases

The Report states that p-cards were issued to non-City employees, purchases were not allocated to projects and either lack justification or were not permissible expenditures under p-card policy.

RMA Response:

To address the p-card expenditures, one needs an understanding of how the CRA and RMA are required to operate within the framework of Chapter 163 (the "CRA Statute") of the CRA statute, as well as the Agreement with the City.

The operations of the City's CRA and RMA's management structure are governed by state law, the CRA Bylaws and the RMA Management Contract, all which impact the manner in which RMA accounts for its purchases and expenditures. The CRA Statute mandates that all CRAs must operate according to the provisions set forth in Chapter 163, Part III of the Florida Statutes. The use of CRA funds is tied to the CRA Plan and those expenditures must adhere to this plan and state law. In addition to state law, the CRA Bylaws define how the management of the Agency will address oversight related to the financial operation of the Agency. Finally, the RMA Management Contract requires operational procedures for managing and overseeing the Agency, as well as mandating the utilization of City departments for certain operational processes and procedures.

This audit does not recognize the confluence of the significance of these statutory and contractual requirements in terms of the effects these standards have on CRA operations. Although RMA provides staffing services, the firm is required to follow the city and CRA administrative procedures and processes per the contract. Per the RMA Agreement for Management and Staffing Res. No. 242-18, the Parties agree by virtue of Paragraph 1.9 of the Agreement that the City provide administrative support to RMA as follows in subparagraphs (a) and (c).

a) Procurement. RMA **shall** utilize the services of the City's Procurement Division with respect to purchasing goods, services or issuing competitive selection opportunities for CRA activities; and

c) Financial. The City and CRA Treasurer provide financial services to the CRA which **shall** include management of the CRA fiscal accounts, risk management, annual audit, and other fiscal services in accordance with City policies and agreement.

In other words, the CRA relies on the CRA Treasurer who is the City's Finance Department for management of the CRA fiscal accounts. Neither the CRA nor RMA has a separate or independent financial operation to manage CRA expenditures. The CRA staff and the City's finance department work closely together under the City's financial rules and regulations to provide transparency and employ procedures that safeguard public funds; however, their operations cannot be independently assessed.

RMA's contract does not specifically address P-cards, nor does it prohibit the use of P-cards should the city determine that providing access to p-cards is desirable. The process for the issuance of P-Cards was followed in accord with City regulations. All approvals were obtained and submitted for the auditor's review. The RMA contract does not provide for an alternative structure for P-Card access.

Not only did RMA have the right to use P-cards, and attempted to follow the rules with respect to the utilization of these cards, the abovementioned expenditures criticized by the auditor are in fact consistent with the City's P-card policies. Purchases on the procurement card must have clearly defined public purpose and a public purpose is defined as having

an objective which directly improves and/or maintains services that the City provides to the public, OR a benefit improving and/or maintaining public safety, general welfare or security. (See City Purchasing Card Policies).

Although there are a large number of p-card transactions that are identified as lacking justification or some other deficiency, there are only three examples in the Report that are specifically detailed, to enable RMA and CRA staff to respond to auditor's findings of questionable P-card purchases.

1) Awards luncheons

Expenditures for awards most definitely constitutes a public purpose and, therefore, are in line with the City's P-card Purchasing Policies. In fact, Florida's ethics laws consider awards in recognition for public service as exempt from the gift rules because such awards serve a public purpose (See F.S. 112.312(14)(b)(4)).

2) Gift cards

Insofar as the Gift Cards are concerned, the CRA made these purchases for restaurants along Clematis Street as part of a marketing campaign run by the City's Community Events Department, the DDA and the CRA during road construction. P-cards are generally not permitted for gift cards, but the Administration signed off on these CRA P-card purchases, recognizing restaurants in this area were adversely impacted during a major construction project. As a result, the CRA was given permission to buy gift cards for these businesses considering the exceptional circumstances created by the City.

3) Work pants and shirts

Work pants and shirts purchases were the result of a contract the CRA had with a firm (NCCI) to run a Clean and Green program within the Historic Northwest. NCCI hired individuals from the community, and the CRA provided the equipment including uniforms. Pants were purchased from Amazon and Walmart and shirts were provided by the City's warehouse.

While the auditor questions these expenditures, they are well within the operation of the Agency and were done according to CRA rules and regulations.

CRA Expenditures

Per the CRA Bylaws, the payments and verification of receipts and documentation, as well as managerial approval, fall under the CRA Treasurer, or the City's Finance Department. The Bylaws state as follows:

The Treasurer shall keep the financial records of the CRA's operating budget; and shall keep full and accurate accounts of receipts and disbursements of the CRA; shall have custody of all operating funds of the CRA and shall render semi-annual budget reports to the CRA; shall assist the CRA in the preparation of a proposed budget; shall make and file all financial reports and statements necessary to be made and filed by the CRA pursuant to the provisions of Chapter 163, Part III, Florida Statutes, and shall file such reports and statements with the Secretary of the CRA, and with all appropriate State and local government agencies.

Allocating Expenses

The audit stated 76% of P-card transactions were not allocated to a project code. Per attachment A, all statements provided by the CRA to the Finance Department have a spreadsheet attached that identifies a project number and an explanation of the purchase. The document also includes a bank statement and the associated receipts for purchases. It is unclear why the audit does not consider the data supplied by the CRA when reaching its findings about failing to properly allocate purchases. To further confirm that the data was provided to the auditor, a second document was produced by the acting CRA Executive Director to summarize the submission of documentation regarding project codes and descriptions.

The audit indicates there was not adequate evidence of review in reaching its findings about the P-card purchases by the CRA. This finding states that approval by RMA management prior to submittal to the Finance Department is necessary and also criticizes the Agency for a Finance Department reviewer. The Procurement Card Reviewer is not under the CRA or RMA's purview. Both the CRA and RMA understand that the independent verification of financial transactions is important to ensure a separation of the department making the expenditure from the review department. As noted above, the CRA staff produced a document with expense details signed by a CRA staff member.

Analysis of Receipts

The Draft Report stated 28% or 38% of purchases were deemed either not permissible or lacked sufficient detail to make a determination and 55% did not have justification or explanation. Other than the three examples cited above, the Draft Report did not provide detail regarding the impermissible expenditures, making it impossible to respond to this finding.

Purchases without Receipts

As previously stated, the CRA creates a spreadsheet of expenditures, attaches the bank statements, and receipts and sends the documentation to the Finance Department. At that point, the original receipts no longer reside in the CRA office. Although the CRA scans the documents, the source of the financial data is the CRA's treasurer (the City Finance Director).

RMA's contracts clearly stated that some expenditures were subject to reimbursement and administrative fees and other expenditures could be paid for directly by the City. As indicated in a prior section of the Response, the contracts made no mention of P-cards.

Admin Expenses/Pass Thru Expenses

The RMA contract allows for a provision where certain expenditures can be processed through RMA and reimbursed with a 5% administration fee. It makes financial sense for the CRA to procure goods or services through an established city approved process, such as through a P-card, rather than paying a consultant 5% to make the purchase. The pass thru provision is in the contract simply to allow for RMA to assist on an as-needed basis when other purchase options are not available. To create a separate purchasing system within the CRA could potentially lead to procurement and financial conflicts.

In summary, RMA and the CRA complied with the City purchasing practices in accordance with the law and offered ample justifications for the few clearly defined disputed purchases. As noted above, the CRA provided the financial records, statements and spreadsheets. The audit does not differentiate between the use of P-cards for some CRA purchases and the reimbursable expenses RMA is entitled to under the Agreement.

3. Lack of Comprehensive Oversight over CRA Activities

The Draft Report contends that RMA employees, acting as CRA staff, did not have comprehensive project management procedures to independently and comprehensively account for all the CRA projects and found that RMA placed heavy reliance on the City's Finance Department. As is noted in the Draft Report, RMA was hired to manage the CRA. Specifically, RMA's management and staffing agreement states in relevant part that:

- RMA shall provide day-to-day management of the operations and activities of the CRA with the support and resources of the firm (RMA).
- RMA shall manage the CRA budget and coordinate budget and expenditures with the CRA Treasurer.
- RMA shall prepare the CRA budget and finance plan(s) for CRA-Board approval.

RMA Response:

The criticism of RMA for relying on the Finance Department for support is unfounded and inconsistent with the responsibilities and duties of the respective parties when the City and RMA enter into an agreement for RMA to manage the City's CRA. The contract calls for the City to provide administrative support to RMA including, but not limited to administrative support procurement legal, engineering, planning and financial support. In the case of financial support, the City and the CRA Treasurer (the Finance Director) shall provide financial services to the CRA which shall include management of the CRA fiscal accounts, risk, management, annual audit and other fiscal services in accordance with city policies and agreement.

RMA is tasked in the Agreement, among its many duties, to perform daily operations and administration: provide day to day management of the operations and activities of the CRA with the support and resources of the firm; provide all staffing necessary to operate and perform the CRA activities; review existing CRA planning documents and suggest revised strategies and revisions for consideration by the CRA Board; shall utilize city administrative processes and procedures including the procurement process, contract database, agenda items and other administrative systems; manage the budget and coordinate budget expenditures with the CRA treasurer; and ensure all records are maintained in accordance with public records laws. Once again, the Agreement envisions a close relationship between the CRA and the City's Finance Director. In fact, the Scope of Services include a section on Finance wherein the RMA shall prepare the CRA budget and finance plans for CRA Board approval. Financial plan preparation will be through work authorizations as requested by the City's finance director. Further, RMA shall coordinate with and provide all information required by the CRA treasurer, which it has done to the best of its abilities and consistent with its contractual obligations.

The overall assessment in Finding 3 is inaccurate. It appears this generalization of RMA's inability to engage in comprehensive oversight of CRA activities is tied to a request for single document that was not provided to the satisfaction of the auditors.

RMA has repeatedly stated that all the information requested by audit resides with the CRA or the finance department, not RMA. Furthermore, the data does not reside in a single sourced document as requested, nor does it need to be for everyday CRA operations and standard operating procedures of the Agency. The CRA staff acknowledges and understands that providing transparent and easily accessible information related to CRA projects and programs is mandatory and that has been the standard practice of the Agency. It is not, however, the responsibility of the contractor to create a duplicative set of documents, or to blend multiple sources of data.

It is also important to note that RMA's monitoring and oversight function is tied to a 5 -Year Strategic Finance Plan and Annual Report which acts as the Governing Oversight Document for CRA activities. The CRA annually produces a detailed

“5-Year Strategic Finance Plan” to act as the statutorily required document to track all CRA activities and related budget appropriations over an expanded period. The document is highly transparent and accessible. The 5-Year Strategic Finance Plan acts as the basis for short and long- term financial planning that the CRA Board uses annually to allocate funding and manage projects and programs. All CRA activities and expenditures are managed through this document. The 5-Year Strategic Finance Plan, which provides detailed and comprehensive information related to the CRA activities, has been submitted to underwriters to issue CRA bonds (structured debt) over the last 15 years. The document demonstrates project management stability.

The CRA must also comply with Florida State Statute Chapter 163. Part III, which requires the CRA to submit an Annual Report by March 30, each year as a regulatory reporting requirement. This has been successfully submitted since the inception of the CRA.

In summary, RMA has undertaken the necessary oversight responsibilities in its contracted managerial capacity to review and monitor all CRA activities in accordance with state law, the CRA’s Five-Year Plan and the assistance of the City’s CRA Treasurer. It is not the responsibility of RMA to independently confirm budget information for CRA activities, as that responsibilities rests in-house with the City’s Finance Department.

Draft Report Recommendations

The Report contains a number of recommendations clustered around the Report’s three main sections. The following is a summary of the recommendations and RMA’s assessment of them and whether RMA has the ability and authority under the Agreement with the City to act on these recommendations to arrive at solutions on its own or in conjunction with the City.

Group 1 Recommendations

The contract states that, “The City reserves the right to require RMA to replace any employees assigned to the Services who are not acceptable to the City in its sole discretion.”

Based on this provision, we recommend that City Administration, as administrators of the CRA’s management and staffing contract, should ensure that contractual provisions designed to protect the CRA and ensure that it is adequately staffed, are adhered to by:

- Having a separate recruitment entity, such as the City’s HR Recruitment Division, fully scrutinize and vet the education, certifications, and experience of the individuals identified by the management firm to fill positions and determine whether they meet minimum requirements; and
- Providing the results to the CRA Board.

RMA response:

RMA understands that the Agreement allows the City to find replacement personnel if City is dissatisfied with the performance of RMA employees assigned to the CRA. It should be noted that with the exception of one personnel change, the City has never exercised its option to replacement RMA employees working for the CRA with one exception.

RMA realizes that staffing the CRA is a legitimate concern of the City, but the City has no authority to interfere with the recruitment and selections process established by RMA, a private company. Moreover, RMA should not be required to mirror the minimum qualifications set by the City for position within its government. If such minimum qualifications are essential to the City, then they should be identified in the solicitation documents and contracts the parties sign.

RMA takes no issue with informing the CRA Board of personnel decisions it makes with respect to the RMA Management Contract.

City Administration should also review the contract and ensure that contractual obligations are met. In the event that contractual obligations are not met, all necessary action should be taken.

RMA Response:

RMA agrees that the City should exercise its oversight role to ensure that RMA is meeting its contractual obligations and take the necessary steps to enforce these obligations.

Group 2 Recommendations

City Administration, as administrators of the CRA contract, should work with the Finance Department to ensure that CRA funds are properly safeguarded by:

- Adhering to contractual provisions regarding reimbursement of expenses and eliminating the use of City P-Cards;
- RMA Response: RMA has adhered to the contractual provisions regarding reimbursement of expenses throughout the term of the contract. If the City revokes the CRA and RMA's access to the P-cards systems, the City will have to find a reasonable alternative for efficiently procuring goods and services on behalf of the CRA. This recommendation seems unreasonably burdensome and at odds with the City's rationale for utilizing a P-card system. Requiring the management and staffing firm to submit invoices for expenses with supporting document and identification of the specific project, program or activity.

RMA Response:

RMA submits that it has provided proper documents for expenses it has incurred on behalf of the CRA during the term of the Agreement.

- Requiring written authorizations and approvals of purchases;

RMA Response:

This recommendation is too general. As a result, RMA is unable to comment on this recommendation.

- Ensuring that clear criteria for valid purchases is established which can be based in part on CRA needs, historical purchases made on City P-Cards, as well as the City's general P-Card policy.
- RMA Response: RMA agrees that the CRA can produce a list of expenses generally associated with CRA activities and seek approval from the CRA Board. If, however, the City rescinds the ability of CRA staff to use a P-card such a list would be difficult to prepare.
- Establishing a process for Finance to review the invoices and ensure that requests include receipts, justification for the purchases, and identify the specific CRA activity for the purchase; purchases not meeting the established requirements should not be reimbursed;

RMA Response:

To reiterate, RMA believes it has supplied such information over the years to the City to justify its CRA expenditures as the CRA's management consultant.

- Ensuring that valid purchases are allocated to the appropriate projects.

RMA Response:

RMA takes the position that this is already being done but needs the audit to elaborate in greater detail why the materials prepared in support of purchases is not sufficient.

Group 3 Recommendations

City Administration, as administrators of this CRA contract, should ensure efficient and effective management of the CRA by:

- Requiring the management and staffing firm to establish procedures to comprehensively track all activities.

RMA Response:

RMA is willing to work with the auditors, the City and/or the CRA Board to establish more comprehensive tracking procedures for activities, but such costs for software or other systems would have to be incurred by the CRA.

- Requiring the management and staffing firm to independently document, maintain, and track all CRA activities including budget information

RMA Response:

RMA was not retained by the City for the purposes of independently maintaining and tracking this information

- Evaluating project management software and identifying a cost-effective system that can provide comprehensive budget, resource, time and contract management; projections; reminders; reporting and scheduling.

RMA Response:

The CRA Board needs to decide if budget management is going to part of the CRA operation. If this is the City's prerogative the bylaws and the RMA contract must be amended. In summary, RMA will not assume budget management responsibilities without the city's finance department.

Conclusion:

To a large degree, RMA is perplexed by many of the auditor's statements. Each section contains criteria that RMA was expected to realize in connection with its CRA responsibilities. The first criteria mentioned in the Draft Response and found on page seven was that RMA was tasked with providing professional staffing for the CRA. The response offered by RMA clearly proves it fulfilled this obligation by supplying the professional expertise and experience dictated by the Agreement and the demands of managing, operating and staffing the CRA in an effective and professional manner. The second set of criteria cited by the auditor on page ten is related to P-cards purchases. RMA's response reveals that it had the proper authorization from the City to use P-Cards and acted consistently with the City P-card policies. Furthermore, the auditor confuses the use of P-cards with other reimbursable expenses to which RMA was entitled but did not exploit, and which are spelled out in the Agreement. The final set of criteria specified by the Draft Report on page twelve suggests that RMA was not effectively managing the day-to-day activities of the CRA because RMA was not comprehensively tracking CRA projects and funds. As the Response demonstrates, RMA successfully managed CRA operations and activities, and worked collaboratively with the City's Finance Department, as permitted under the Agreement, to track and manage CRA funds and activities. Under the Agreement, the City was required to conduct performance evaluations, and to the extent to which these reviews were undertaken, there was never a finding that

RMA had any performance issues managing the CRA. Additionally, based on RMA's exceptional performance from outset, the City extended its relationship with RMA in 2018.

In conclusion, RMA's outstanding work for the City's CRA has been distorted to some degree by the findings in the Draft Response. RMA acknowledges that during the audit period some minor and insignificant mistakes may have occurred within the operations of the CRA. However, to the extent to which RMA was responsible for these errors, the City never brought these matters to RMA's attention until it commenced this audit in 2019. Had the City exercised its right to evaluate the performance of the contractor more frequently, issues which are of concern to the auditor, and are the subject of this report, could have been handled by the City, the CRA and RMA in a more constructive manner and that promotes the effectiveness of the CRA staff without needlessly placing blame on RMA. RMA respectfully requests that the Internal Audit Department revises the Draft Report and produces a final audit taking into account this Response and accurately reflecting RMA's role and responsibilities as a City contractor.

Auditor's Comments

I. Background Information

The purpose of the internal audit function is to ensure the existence of strong governance, appropriate risk management, effective internal controls, and efficient operations while also ensuring accountability and transparency. To that end, audits provide objective, independent assessments that can be utilized by those responsible for governance, risk management, and internal controls and the public. As such, audits are conducted through systematic, disciplined, risk-based strategies rooted in auditing standards. It is critical for audits to remain independent and free from undue influence, thus there are instances where the auditee may not agree with the auditor's findings.

It is important to note that auditors are required to report the conditions as identified. During the course of an audit, auditors take the necessary steps to confirm the accuracy of the information provided. If the auditor is advised that the information provided is not accurate, then the auditee is required to provide the accurate information if it is available. If after multiple attempts the requested information is not available, then the auditor will disclose this as a scope limitation in the report. Auditors typically provide the auditee with multiple opportunities to provide accurate information prior to drafting findings. Even after drafting findings, if there are legitimate records that can be substantiated, the auditor will accept them to ensure that the conclusions drawn are accurate and underlying issues are identified. However, additional scrutiny of the records is conducted to ensure that records were not created or altered for the purpose of addressing the issues in the findings. This procedure ensures that the audits meet auditing standards.

As related to the CRA Audit, both the auditors assigned to the audit followed the above procedures.

II. Responsiveness of RMA Employees

The auditor disagrees with RMA's assertion that RMA consistently responded to requests in a timely manner or that RMA was subjected to short turnaround times. The CRA audit began under the first auditor in January 2019 and has continued with a second auditor. As noted in the report, the audit had to be split into two parts due to challenges in obtaining the requested information in a timely manner. Both auditors experienced challenges in obtaining requested information even after multiple requests to various personnel including the former Executive Director.

The two auditors who have been assigned to the CRA audit noted that there were many delays in obtaining information. When auditees are unable to provide requested information, it is considered a scope limitation within the audit that must be disclosed. A scope limitation is a strong statement in an audit report. As such, auditors do their best to obtain the information needed to complete the review. This may include requesting access into systems or retrieving archived records in order to obtain the information needed. In the January 2020 emails referenced by RMA, the auditor made several attempts to obtain the information that was outstanding, and the auditor continued to accept documents through April 21, 2020, about three months after the emails where the auditor stated the deadlines.

RMA's Response to the Staffing Finding

It is important to note that RMA is a contractor that was hired to provide professional staffing and was contractually required to provide specific staff that would be assigned daily to the City's CRA and be housed at City Hall. The report indicates that the auditor's staffing finding was based on a random sample of 12 individuals, of which 3 of the individuals assigned to work daily from City Hall did not meet RMA's minimum requirements and they filled positions that RMA was contractually obligated to fill.

Random sampling is a common methodology when conducting audits. The auditor did not assess the qualifications of those individuals who were not in the sample and did not draw any conclusions about their qualifications.

Real Estate Administrator Position

The RMA principals stated that they believe that the credentials required in the City's CRA Real Estate Administrator position are "irrelevant because the RMA employees were not buying property under any license for the CRA." However, the auditor found that the City's job description contained the same credential and minimum requirements dating back to 2005 which is the time that one of the RMA principals was the CRA's Executive Director for the City (2004 - 2013).

Further, the distinction that RMA alleges regarding the City's job description being a "requirement for a City department as opposed to a CRA operating under Chapter 163 of the Florida Statute" is not factual. The auditor found that:

1. The City's job description that was reviewed was specific to the CRA as indicated in the title: "CRA Real Estate Administrator" and it was the same when the RMA principal was managing the City's CRA as the Executive Director under the same statute.
2. The City's Human Resources Department confirmed that the CRA Real Estate Administrator job description was specific to the CRA and not any other City department.

The auditor noted that the position title in the City's job description states "CRA Real Estate Administrator" and matched the specific position title required in RMA's staffing contracts with the City. The auditor did not find a staffing requirement in the RMA contracts for an "Assistant Real Estate Manager" which is the job title advertised by RMA for the City's CRA Real Estate Administrator. Further, Chris Brown was not assigned to the City's CRA as the contractually required CRA Real Estate Administrator located at City Hall on a daily basis.

The auditor reiterates that the individual who filled the required position was assessed under RMA's job description which had lower minimum requirements. Even under the lower requirements, the individual's work experience did not meet the minimum requirements.

Project Manager and Senior Project Manager Positions

It is important to note that when conducting audits, the timely provision of accurate information and records is necessary to assess the conditions and formulate a conclusion.

Self-reported information from auditees is subject to even more scrutiny to ensure its accuracy and authenticity, particularly when provided after findings are drafted. Auditors make multiple requests for documents and information and ask for clarification in order to be certain that the conclusions formed are based on reliable and accurate information. Documents and records including edits, revisions, or updates provided are accepted by the auditor, provided that the auditor finds that they are reliable and accurate.

The auditor advised that the context of the March 2020 email that RMA referenced was that the auditor noted that there appeared to be a gap in work history between the time that the individuals ended their previous employment and the time the individuals joined RMA. The auditor needed RMA to confirm that there was no other work history in that timeframe or provide an updated resume with the additional work history prior to the individuals joining RMA, in order to ensure that the auditor assessed all work experience of the individuals. The auditor did not take issue with changes made to documents provided by RMA since the audit began in January 2019 through April 21, 2020 which is after the March 2020 email. This includes changes, updates, or revisions to resumes or job descriptions.

On April 22, 2020, the auditor sent RMA preliminary inquiries which contained the details and specifics of the findings. On April 23, 2020, the auditor met with RMA employees including management and the Finance Department's Procurement Card Reviewer. During that meeting, RMA employees advised the auditor that the resumes provided for the three individuals in the staffing inquiry were not accurate. The auditor advised RMA that if there were inaccuracies, RMA was welcome to provide the correct resumes. Several hours after the April 23, 2020 meeting, RMA provided the auditor with two resumes for the Project Manager and Senior Project Manager. The auditor reiterates and acknowledges that resumes are updated and takes no issue with this, however, the two resumes presented on April 23, 2020 had significant changes and raised uncertainties with the reliability and/or validity of the resumes. On April 27, 2020, another meeting was held with the auditor, the chief auditor, and the two RMA principals. At that meeting, RMA was advised that the auditor could not rely on the resumes provided on April 23, 2020, due to concerns related to the reliability and validity of the information presented. Ms. Breisemeister reviewed the resumes during the meeting and acknowledged that they were not correct and for the auditor to get rid of them. Ms. Breisemeister then advised that she was actively reaching out to the Project Manager about the resume that was provided to the auditor on April 23, 2020. On May 11, 2020, RMA sent the auditor yet another version of the Project Manager's resume.

The auditor reiterates that the Staffing finding was based on documents that the auditor deemed to be sufficiently reliable. The auditor's findings and conclusions did not discount any experience of the individuals or tutelage provided, rather, the auditor made repeated requests for accurate information to ensure that all work experience was provided and assessed.

Employment of Relatives

The auditor defers to the contract administrators and the City Attorney's Office to assess

whether or not RMA was in violation of any State, County, or Municipal rules or regulations as related to the employment of relatives. The purpose of the audit was to disclose the information to the responsible parties and raise awareness.

It should be noted that RMA's response stated that Jessica Mulder "has no direct contact with the City's CRA directly." However, during the audit, an RMA principal provided a document listing contractual in-house staff and additional support staff assigned to the City's CRA. The document listed Jessica Mulder as one of the additional support staff. The document states, "NOTE: The list of Additional Support Staff is not inclusive of all RMA employees who have contributed staff time and resources over the years outside the scope of the contract." The auditor was also provided with a biography for Jessica Mulder in response to the auditor's request for resumes of all RMA staff assigned to the City's CRA.

III. RMA's Response to Monitoring Purchases

The auditor disagrees with RMA's assertion that RMA had "the right to use P-cards" and that the "expenditures criticized by the auditor are in fact consistent with the City's P-card policies." The auditor defers to the results in the report and the many exceptions identified.

The auditor reiterates that there were breakdowns in controls between RMA and the City's Finance Department and the audit assessed the roles and responsibilities of both parties. RMA's assertion that all approvals were obtained for P-Cards is not factual. The audit did not take issue with the approvals; however, the auditor will address approvals as follows. Approval documents were provided for the RMA employees who were issued P-Cards. However, there was no documented approval for the former Executive Director's P-Card from 2014 through June 2018. At the time of review, this was not a material issue because the current P-Cards in use, including the former Executive Director's current P-Card, had approvals and most purchases were being made by RMA's administrative assistants.

Examples of Purchases in the Report

Generally, examples given in the Effect of the finding are provided to highlight the importance of correcting the issues identified. Specifically, the purchase of gift cards on P-Cards is prohibited under the City's P-Card policy. RMA's assertion that "the CRA was given permission to buy gift cards" is not factual. Rather, the auditor found documentation from an RMA employee who made gift card purchases and the RMA employee stated, "I understand gift card purchases are not allowed on the P-Card." The RMA employee acknowledged the accident and reached out to Finance about the gift card purchases. The auditor notes that generally, Finance's Procurement Card Reviewer signed the statements, while the RMA manager generally did not sign the statements. As stated in the finding, this was part of the breakdown in controls from both parties and the examples provided illustrate this issue.

Similarly, the purchases of award luncheons/banquets and the applications for awards were provided to illustrate purchases made where clear justification should have been provided at the time of purchase, particularly when the cost of applying for the awards was up to about \$300 for a single application and award luncheons and banquets were

up to about \$100 per ticket. The auditor notes that these purchases were not presented in the report as violations of Florida statute 112.312 which prohibits acceptance of gifts by public officers and employees, nor were they analyzed under the gift exception as referenced by RMA. These purchases were made by RMA employees to apply for awards and attend award luncheons and banquets. The evidence provided did not indicate that these were gifts to RMA employees because the purchases were made by RMA employees and were paid for on City P-Cards.

Finally, the work pants and shirts were listed for similar reasons in that they did not all have clear explanations or justifications at the time of purchase. Again, as stated in the report, the auditor notes that RMA employees may have had explanations or justifications for all purchases, but this should have been documented at the time of purchase.

Allocating Expenses

The auditor notes that this issue was discussed on multiple occasions with both RMA staff and the Finance Department staff due to the breakdown in controls from both parties. The auditor reiterates that 76% of the purchases were not allocated to projects within the system, whether or not indicated on the spreadsheets. The auditor reviewed the spreadsheets provided; however, the spreadsheets are not linked to the ERP System, Oracle. Thus, allocations noted on spreadsheets would not be automatically uploaded into the system as that is not the process. The process is that the system defaults all purchases to the general operating expense budget line and the P-Card users must manually re-assign the purchases to the correct budget line each month.

The other issue with the spreadsheets was that in many cases the spreadsheets did not provide enough information to determine the specific project that required the purchase. For example, some of the descriptions were: marketing, marketing/generator, marketing graphic design, marketing surveys, with no further explanation. As such, these descriptions would not be sufficient to independently confirm with certainty the specific project, activity, or program related to the purchases.

Analysis of Receipts

The auditor notes that all receipts provided by RMA, the Finance Department, and archives were reviewed. Had the controls been effective, missing receipts could have been identified by an RMA manager or by the Procurement Card Reviewer. Again, this was a breakdown of controls from both parties.

Admin Expenses/Pass Thru Expenses

The auditor disagrees with RMA's assertion that: 'it makes financial sense for the CRA to procure goods or services through an established city approved process, such as through a P-card, rather than paying a consultant 5% to make the purchase.' During the audit, the auditor found that about 440 (42%) of the purchases were consistent with the contractual reimbursement provisions, of which about 175 (17%) of the purchases were consistent with the Pass Thru Expenses that would have been subject to the 5% administrative fee.

Thus, the 5% administrative cost may not outweigh the benefit of requiring RMA to follow the contractual provisions and take the steps necessary to ensure that purchases are reimbursable.

IV. RMA's Response to Lack of Comprehensive Oversight Over CRA Activities

The auditor reiterates the need for comprehensive information that would assist decision makers and ensure transparency and accountability of public funds. The auditor notes that this issue is not limited to the CRA. In other audits, the auditors have found that the City maintains vast amounts of data, however, the data is typically stored in multiple systems that do not communicate with one another. Thus, in order to obtain comprehensive information, one would have to review multiple systems some of which contain inconsistent information. We note that the City is actively trying to address this issue, however, in the interim, a project management system such as Smartsheet would help address the issue as related to the CRA.

V. RMA's Conclusion

The auditor notes that it is important for all parties to understand their respective contractual obligations as this helps ensure that all parties are adhering to the contract. The auditor disagrees with RMA's conclusions and notes that there was no confusion between P-Card purchases and reimbursable expenses on the auditor's part. The auditor performed separate analyses of the purchases under the P-Card policy, the contractual agreements, and the purchase order requirements. During the audit, the auditor found that part of the cause was that RMA staff may not have understood the contract and/or the P-Card policy. At one point the former City Administrator wrote to the former CRA Executive Director and stated, "I really need you and your staff to understand and abide by our Pcard policy. If you need to get your staff trained on it, I can have Melanie work with you to set that up. I do not expect to have to have this conversation again."

In order to enhance performance, it is important for all parties to take ownership and responsibility of their operations and be proactive. The auditor notes that the finding related to maintaining comprehensive information was not limited to maintaining budget information, but also discussed the roles of RMA's project managers, RMA as a contractor, and the Finance Department. The auditor notes that the issue was not unique to RMA, and similar comments have been made in other audits related to maintaining comprehensive information that is easily accessible to ensure transparency and accountability of public funds.

The auditor agrees that performance evaluations should have been completed of the consultant periodically. Thus far, there has been no evidence provided that performance evaluations were performed of RMA. This issue was not limited to the CRA's consultant, but was a City-wide issue that is discussed in more detail in the Consulting and Professional Services Audit.

As with all audits, this audit was designed to assess the effectiveness of the governance structure, risk management, and internal controls surrounding the CRA. The audit presented opportunities for improvement which will require responsible parties to take

ownership of their operations and implement corrective action. The auditor commends the proactive steps already taken by Finance such as deactivating the P-Cards and encourages RMA and Finance, as stewards of public funds, to continuously strive towards improving operations in the most efficient and effective method possible.

Attachment A – PBC Inspector General (IG) Report

Auditor's Comment – The auditor is reproducing the Palm Beach County Inspector General's Investigative Report in its entirety. The IG report has not been modified or edited. It is reproduced here with permission from the Inspector General's Office and the understanding that the report will be reproduced in its entirety.



John A. Carey
Inspector General

OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY



Inspector General
Accredited

"Enhancing Public Trust in Government"

Investigative Report

2016-0002

West Palm Beach Public Records

September 28, 2016

Insight – Oversight – Foresight



John A. Carey
Inspector General

OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

INVESTIGATIVE REPORT CASE NUMBER: 2016-0002

DATE ISSUED: SEPTEMBER 28, 2016



Inspector General
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"Enhancing Public Trust in Government"

WEST PALM BEACH PUBLIC RECORDS EXECUTIVE SUMMARY

WHAT WE DID

On September 18, 2015, the Office of Inspector General (OIG) received complaints involving the City of West Palm Beach's (City) Director of Communications, Elliot Cohen.¹

The complaints alleged that (1) Mr. Cohen disclosed "classified and confidential information"² relating to the City Police Department and other local and federal agencies to the public. The complaints also alleged that (2) Mr. Cohen used his position at the City, as well as, City time and resources to conduct his private business (Cohen Publicity). The complaints further alleged that (3) Mr. Cohen had a "side job" with City contractor Redevelopment Management Associates (RMA). After requesting and receiving further information from the City regarding the first two of these allegations, the OIG initiated an investigation.

WHAT WE FOUND

As to **Allegations (1), (2), and (3)**, the information obtained and reviewed by the OIG **supports** the allegations. The OIG

found that Mr. Cohen disclosed "exempt" and "confidential and exempt" information. We concluded that Mr. Cohen had an obligation to ensure that "exempt" and "confidential and exempt" information was redacted before he disclosed the records. In addition, Mr. Cohen should have done an analysis of exempt information regarding criminal investigations to determine whether disclosure would have impeded an ongoing investigation or allowed a suspect to avoid apprehension or escape detention or put police/informants in danger. Additionally, we found that Mr. Cohen did use his position, government assigned office space, desk, computer, desk phone, and cell phone to conduct his Cohen Publicity business. Finally, we found that Mr. Cohen, doing business as Cohen Publicity, had a contract with City contractor RMA before, during, and after the City let RFQL 12-13-407 and awarded the contract to RMA.

Information obtained regarding **Allegation (3)** as it relates to F.S. § 112.313(7)(a) was **referred** to the State Attorney's Office and the Florida Commission on Ethics for any actions they deem appropriate (as well as any other matters of interest within this report). The Palm Beach County (PBC) Commission on Ethics (COE) dismissed a complaint (C15-021) against Mr. Cohen on April 7, 2016 after concluding that no

¹ Mr. Cohen resigned from his position effective August 19, 2016.

² While the complaint used the term "classified and confidential information," § 119.071 Florida Statutes uses the terms "exempt" and "confidential and exempt," which will be used throughout the report.

probable cause existed to believe that Mr. Cohen had a relationship with RMA that violated § 2-443(d) of the PBC Code of Ethics.

Based on the information obtained during this investigation, the OIG developed three additional allegations.

Allegation (4) that Mr. Cohen misused his official public office or employment to solicit business for Cohen Publicity. **Allegation (5)** that RMA did not properly disclose its business relationship with Mr. Cohen (Cohen Publicity) to the City during the procurement process for RFQL 12-13-407. **Allegation (6)** that RMA did not properly disclose it was employing Mr. Cohen (Cohen Publicity) after it was awarded the above contract by the City.

As to **Allegation (4)**, it was *referred* to the PBC COE, the State Attorney's Office, and the Florida State Commission on Ethics for any actions they deem appropriate. As to **Allegations (5)**, and **(6)**, the information obtained and reviewed by the OIG *supports* the allegations. The OIG found that RMA had a contract with Mr. Cohen (Cohen Publicity) that began prior to RFQL 12-13-407 being let and the contract with Mr. Cohen (Cohen Publicity) continued for over eight months after RMA was awarded the contract for RFQL 12-13-407. We also found that RMA failed to properly disclose its contractual relationship with Mr. Cohen (Cohen Publicity) both during the proposal period and after being awarded the contract as required.

Based on our supported findings in **Allegations (3)**, **(5)**, and **(6)**, and particularly that RMA did not disclose its business relationship with Mr. Cohen (Cohen Publicity) as required, we

consider the entire amount the City has spent to date on the RMA Contract, **\$3,205,611.78³** to be questioned costs⁴.

WHAT WE RECOMMEND

The OIG recommends that the City:

1. Take appropriate personnel actions.
2. Take appropriate action to ensure that City employees adhere to General Administration, Chapter 1, Policy 1-2, Public Records Requests.
3. Revise written policies and procedures on outside employment requiring employees to obtain approval for leave or work schedule adjustment prior to performing outside employment during the official business day. They should be clearly communicated to City employees and documented.
4. Establish internal controls that accurately represent actual hours worked by exempt City employees.
5. Review the City's contract with RMA in light of the findings and information provided within this report and take appropriate action.

The responses to this report from the City, Mr. Cohen, and RMA are attached. A summary of these responses with our related comments begin on page 33.

³ Information provided by the City.

⁴ Questioned costs can include costs incurred pursuant to a potential violation of a provision of law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds, and/or a finding that such costs are not supported by adequate documentation, and/or a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable in amount. As such, not all questioned costs are indicative of potential fraud or waste.

BACKGROUND

On September 4, 2015, City of West Palm Beach (City) Director of Communications Elliot Cohen forwarded a public records request (PRR) he received from the media to the City Information Technology (IT) Department. An IT Computer Operator gathered the records (over 2,200 pages of emails) relevant to the request, and provided them to Mr. Cohen as he requested.

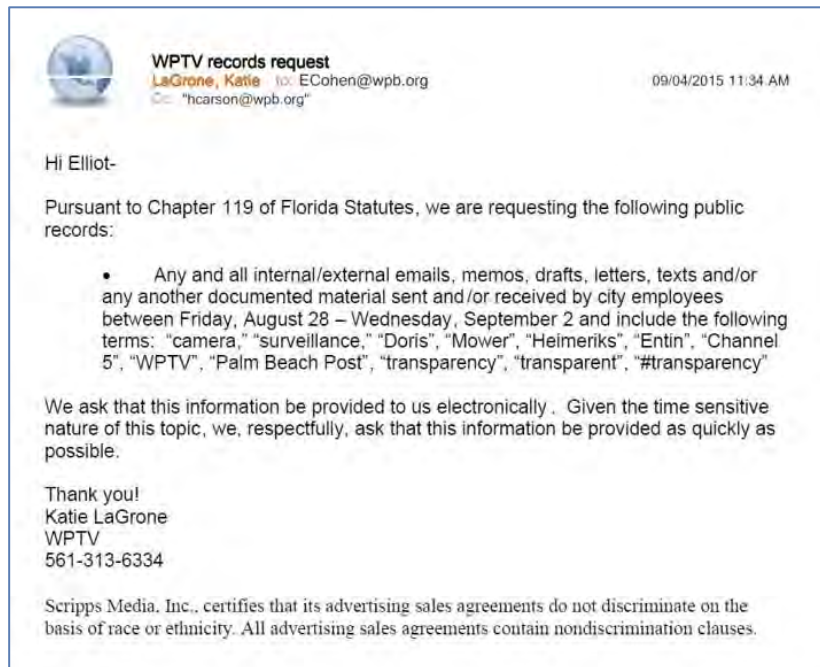
On September 8, 2015, Mr. Cohen posted the records on the City's official website.

"Exempt" and "confidential and exempt" records from the City Police Department, Palm Beach County Sheriff's Office, and federal law enforcement agencies were included in this disclosure. The records were subsequently removed from the website, but not before they were available for access by the public. The City's practice of posting PRRs and responses to PRRs on its website ceased after this incident came to light.

On September 18, 2015, the Office of Inspector General (OIG) received complaints involving Mr. Cohen. It was alleged that Mr. Cohen posted "classified and confidential information" on the City's website. The complaints also alleged that Mr. Cohen used his position at the City, as well as, City resources to conduct his private business (Cohen Publicity). The complaints further alleged that Mr. Cohen had a "side job" with City contractor Redevelopment Management Associates (RMA).

On September 28, 2015, the OIG requested the City conduct an inquiry into the first two allegations, respond to additional questions, and provide related information to our office. Based on our analysis of the information received from the City, the OIG initiated an investigation.

Due to the number of individuals mentioned in this report, **Attachment A** is provided listing all individuals mentioned by name and title.



ALLEGATIONS AND FINDINGS

During the course of our investigation, we conducted 32 interviews. We reviewed hundreds of thousands of pages of records from the City including: calendar appointment records, cell phone records, Commissioner records, computer logon/logoff records, emails with selected attachments (for six City employees), Ethics Officer records, land line phone records (for two City employees), ordinances, parking records, personnel files, policies and procedures, procurement records, PRR records, time & attendance records, videos, and web history. We also reviewed records from Cohen Publicity to include: billing statements, cell phone records, contracts, County Business Tax receipt, and emails. Additionally, we reviewed Mr. Cohen's personal Sunpass records, Town of Miami Lakes emails to/from Mr. Cohen, as well as, records from RMA including: contract with Cohen Publicity, emails to/from Mr. Cohen, payment history to Mr. Cohen, and work product from Mr. Cohen.

Allegation (1):

City of West Palm Beach Director of Communications Elliot Cohen improperly disclosed "exempt" and "confidential and exempt" information. If supported, the allegation would constitute a violation of § 119.071 Florida Statute; City of West Palm Beach General Administration, Chapter 1, Policy 1-2, Public Records Requests, A2-4, D1, and D3; City of West Palm Beach, Chapter 1, Computer Policy, Policy 1-28, Computer Hardware/Software, Networks and Communications Policy, 7.11; City of West Palm Beach Employee Handbook, Employee Relations, Code of Conduct, Performance, j).

Finding:

The information obtained **supports** the allegation based on the OIG review of records and witness interviews. Mr. Cohen was not interviewed due to the referral to the State Attorney's Office in **Allegation (3)**.

We found that Mr. Cohen released a Social Security Number ("confidential and exempt" under § 119.071(5)(a)5), information regarding the City's security systems or emergency plans ("confidential and exempt" under § 119.071(3)), active criminal and intelligence information ("exempt" under § 119.071(2)(c)), information regarding confidential informants ("exempt" under § 119.071(2)(f)), and documents that reveal the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime ("exempt" under § 119.071(2)(j)1).

Standards

"Florida's Public Records Law, Ch. 119, F.S., provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. In the absence of a statutory exemption, this right of access applies to all materials

made or received by an agency in connection with the transaction of official business which are used to perpetuate, communicate or formalize knowledge.”⁵

Section 119.071 F.S. details records/information which are “exempt” or “confidential and exempt” from public records request disclosure.

From the City’s October 26, 2015 response⁶ to the OIG’s September 28, 2015 Management Inquiry:

“The City follows the dictates of Florida Statute Chapter 119 when providing access to public records. The City of West Palm Beach has adopted a comprehensive Public Records Policy, Policy 1-2, and the West Palm Beach Police Department has adopted Standard Operating Procedure II-17. Both policies require that exempt and confidential information be redacted prior to producing records in response to a public records request.”

Chronology of Events Regarding the Public Records Release

Between Friday August 28, 2015 and Wednesday, September 2, 2015, Mr. Cohen gave several media interviews regarding the City’s surveillance cameras. Mr. Cohen gave information to the media that he later retracted.

On September 2, 2015 at 4:01PM, Hazeline Carson [City Clerk⁷] sent an email to Venice Johnson [Deputy City Clerk-at the time] and Jomekeyia McNeil [Deputy Clerk], “Good afternoon, Per Elliot Cohen, any public records request that comes to this office regarding the IT department or the security cameras are to be sent directly to him. He is creating a public records site on the City’s home page to post this information. Thanks.”

On September 4, 2015 at 11:34AM, Mr. Cohen received an email (pictured on page 3) from Katie LaGrone [WPTV Reporter] CC: Ms. Carson.

On September 4, 2015 at 12:31PM, Mr. Cohen forwarded Ms. LaGrone’s email to Renato Nardoni [Interim Director of IT-at the time] and Christine Brevik [Assistant Director of IT-at the time], “Here is another email records request. Please send the results when completed.”

⁵ From 2015 Sunshine Law Manual (page 52), found at [http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9UPM53/\\$file/2015SunshineLawManual.pdf](http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9UPM53/$file/2015SunshineLawManual.pdf).

⁶ **Attachment B.**

⁷ Per General Administration, Chapter 1, Policy 1-2, Public Records Requests, the City Clerk is the “Custodian of Public Record”.

On September 4, 2015 at 1:18PM, Mr. Cohen forwarded Ms. LaGrone's email to Rita Sackmann [City Computer Operator] without comment; however, the body of Ms. LaGrone's email had been edited to remove everything but the search items being requested⁸ (for reference, see original email on page 3).



On September 4, 2015 at 1:31PM, Ms. Brevik forwarded Mr. Cohen's 12:31PM email to Ms. Sackmann, "Rita, Please let me know when completed."

On September 4, 2015 at 1:47PM, Ms. Brevik replied to Mr. Cohen's 12:31PM email CC: Mr. Nardoni and Ms. Sackmann, "Elliot, Rita will begin working on the email request. It is my understanding that the Clerk's office is responsible for 'memos, drafts, letters, texts and/or any other documents'. Is that your understanding?" Ms. Brevik informed us, "Mr. Cohen contacted her [Ms. Sackmann] directly and said she was supposed to turn it over directly to him, which she did. And that [conversation] happened without my knowledge."

On September 4, 2015 at 1:48PM, Mr. Cohen responded to Ms. Brevik CC: Mr. Nardoni and Ms. Sackmann, "yes. Spoke to rita. You guys are just emails."

On September 4, 2015 at 3:13PM, Mr. Cohen forwarded Ms. LaGrone's unedited 11:34AM email to Ms. Carson, "I'm taking care of this also."

On September 4, 2015 at 4:05PM, Ms. Sackmann sent an email [the TO: portion of the email is blank] BCC: Mr. Cohen, "Hi Elliot...I also have the CDs if you need them." The email contained two file attachments, one of which was titled ECohen-LaGrone.pdf.

On September 8, 2015 at 11:40AM, a software package, WordPress, was used by "ecohen" to edit the City's #transparency webpage to add a download link to a file titled LaGrone.pdf.

On September 8, 2015 at 11:45AM, Mr. Cohen responded to Ms. LaGrone's September 4, 2015 11:34AM email, "Katie, The records you've requested are available for download at <http://bit.ly/WPBprr> Thx."

⁸ We found multiple instances, in addition to this request, where Mr. Cohen would cut and paste only the information being requested and only send that to whomever he was asking to gather the information. At times, enough information was removed so it was no longer obvious that it was a public records request.

On Friday September 11, 2015 at 3:24PM, WordPress was again used by “ecohen” to edit the City’s #transparency webpage to remove the download link to the file titled LaGrone.pdf.

Actions that were Undertaken During the Gathering of the Emails

It should be noted that from the time Ms. Sackmann was notified of the LaGrone PRR (September 4, 2015 at 1:18PM) until she emailed Mr. Cohen the results (September 4, 2015 at 4:05PM, an elapsed time of **2 hours 47 minutes**), Ms. Sackmann had to conduct 2 keyword searches⁹ of 4 separate databases,¹⁰ for a total of 8 searches, to identify the 1,073 emails containing 2,224 pages. She then had to copy those 2,224 pages of emails to a separate location, convert them to pdf format, and compile them into a single file. Ms. Sackmann told us that the entire time was taken up processing Mr. Cohen’s request. She stated, “We don’t know how to redact, we don’t know what needs to be dract [redacted]... we haven’t, we weren’t trained on that type of...” Ms. Sackmann said that even if she would have been responsible to perform redaction, there would have been no time for her to do it prior to her emailing Mr. Cohen the resulting file. “There’s no way. Absolutely, no way.”

Dorritt Miller, Deputy City Administrator, a 25 year City employee, the last 17 of which have been in City Administration, stated with regard to requests involving the IT department, “They would extract the information give it to you on a CD or a thumb drive and then it’s taken to the respective departments to get it redacted.” She was asked if IT would have been the one to take it to the various departments and she said, “it would have gone back to Hazel [Carson] or whomever it is...based on state law you can actually redact your personal email...that is the normal practice.”

Susan Stone, Systems Administrator, who has worked in the City IT department for 20 years and has conducted similar keyword searches of City emails, without knowledge of the timeframe of the LaGrone PRR, indicated a request of this nature could take 2-3 days. She stated the searches can take so long that she will sometimes start them prior to going home for the day and let them run overnight.

Additionally, Danielle Davila, Police Services Supervisor, was later required to redact the 2,224 pages in a subsequent public records request after the LaGrone PRR was removed from the City’s website. Ms. Davila stated **it took her 40 hours to do the redaction.**

Based on witness statements and documents reviewed, it has been determined that the records could not have been identified, copied, converted, REVIEWED, AND REDACTED in the 2 hours 47 minutes it took Ms. Sackmann to fulfill Mr. Cohen’s

⁹ The LaGrone PRR was for a search of 12 keywords. The City’s email software, Lotus Notes, would not permit a search of this many keywords without failing. Ms. Sackmann conducted a search of the first eight keywords and then had to conduct a second search of the remaining four keywords.

¹⁰ The way Lotus Notes was configured at the City, it requires at least one database for each month. For both August and September 2015, there were two databases for each month, thus requiring a total of four databases to be searched.

request. It will later be demonstrated that with Mr. Cohen's training and experience, he should have realized that the records provided back to him by IT could not have been properly reviewed and redacted in only 2 hours and 47 minutes.

City's Response to the Release of Public Records

In the City's October 26, 2015 response to the OIG, Jeffrey Green, City Administrator, wrote, "The release of exempt and confidential information was due to a break down in application of the City of West Palm Beach Public Records policy."

Mayor Muoio told us regarding Mr. Cohen, "I just don't think it was on the front of his mind to consider redaction, that's not something he's responsible for, he gets the records, he puts them out. I don't see why that would even enter, you know, his thought process." She also said, "Everybody was doing their job and it just went wildly out of control...to some extent we decided to be more open and more transparent and really make it, information available to the public. Obviously, we should have redacted them but there was no point of responsibility."

Mr. Cohen's Employment/Background/Experience Dealing with Sensitive Public Records Requests

Mr. Cohen was the Public Information Officer (PIO) for the City from January 18, 2005 to September 2, 2005. He served as the Director of Media Relations for the Broward County Sheriff's Office (BSO) from September 12, 2005 to February 15, 2008. During his tenure at BSO, his office was responsible for handling PRRs. He was rehired by the City as PIO

on May 14, 2012 and was promoted to Director of Communications (his position during the timeframe covered by this investigation) on November 25, 2012. When the LaGrone PRR came in, it is reasonable to assume that based on Mr. Cohen's background and experience he should have expected that the first two key words being searched for, "camera" and "surveillance," would result in emails related to the Police Department which may include "exempt" or "confidential and exempt" information.



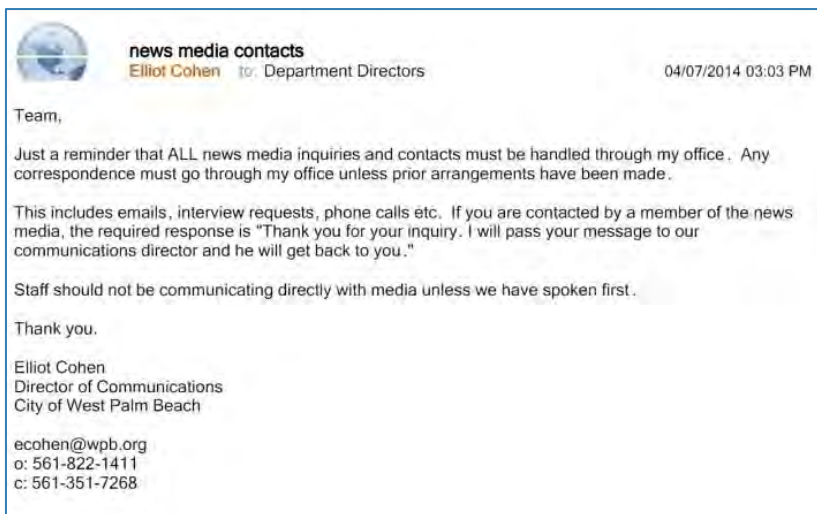
City Public Records Policy

Custodian of Public Record – the City Clerk has custody of all official City documents, such as ordinances, resolutions and contracts, and all records in accordance with applicable laws regarding records retention.

Public Records Request Database – the database is a tool that will help in determining the cost related to the request, tracking the request to ensure a response is provided in a timely manner, and determining if the City Clerk's Office or City Attorney's Office should handle the request.

Redact – concealment from a copy of an original public record or from an electronic image that is available for public viewing, that portion of the record containing exempt information.

Standards and Procedures, A.4 states, "Requests from media organizations, e.g. newspapers, television stations, and radio stations, shall be coordinated with the City's Public Information Officer." **OIG Comment:** The policy states "coordinated with the City's Public Information Officer" NOT "handled" or "executed" by the City's Public Information Officer. Ms. Carson, who has 12



years experience being the Custodian of Public Record for multiple municipalities, told us that when she first started with the City in September 2012, Mr. Cohen told her that "he would take care of all media requests" for PRRs. Ms. Carson expected that he would enter them into the database. She asked Mr. Cohen, "Do you use the database?" Ms. Carson told us in the affirmative that he said "he puts them in himself." After the release of the LaGrone PRR, Ms. Carson was told by the Mayor any media PRR will go through her [Ms. Carson's] office.

Standards and Procedures, A.2c & 3b, requires entry into the City's Public Records Request Database if the request will take 5 days or more (2c) or if it is a "Complex Request" – "Requests of such nature that assembling documents may involve much research ... review and/or redaction of information is necessary, or exemptions may exist" (3b). **OIG Comment:** This is the type of request Mr. Cohen received in the LaGrone PRR by nature of the specific terms to be queried and the span across multiple City departments, including the Police Department. As such, it was a "complex

request.” However, the LaGrone PRR was not entered into the City’s Public Records Request Database as required by City policy.

Exemptions and Confidential Records, D.1 states, “Requests for documents which may contain information that is exempt from disclosure under Florida law may be delayed until the records can be reviewed and redacted as necessary by the Custodian of the Records.” OIG Comment: As a result of Mr. Cohen’s actions, he circumvented City policy for review and redaction by the custodian of the records.

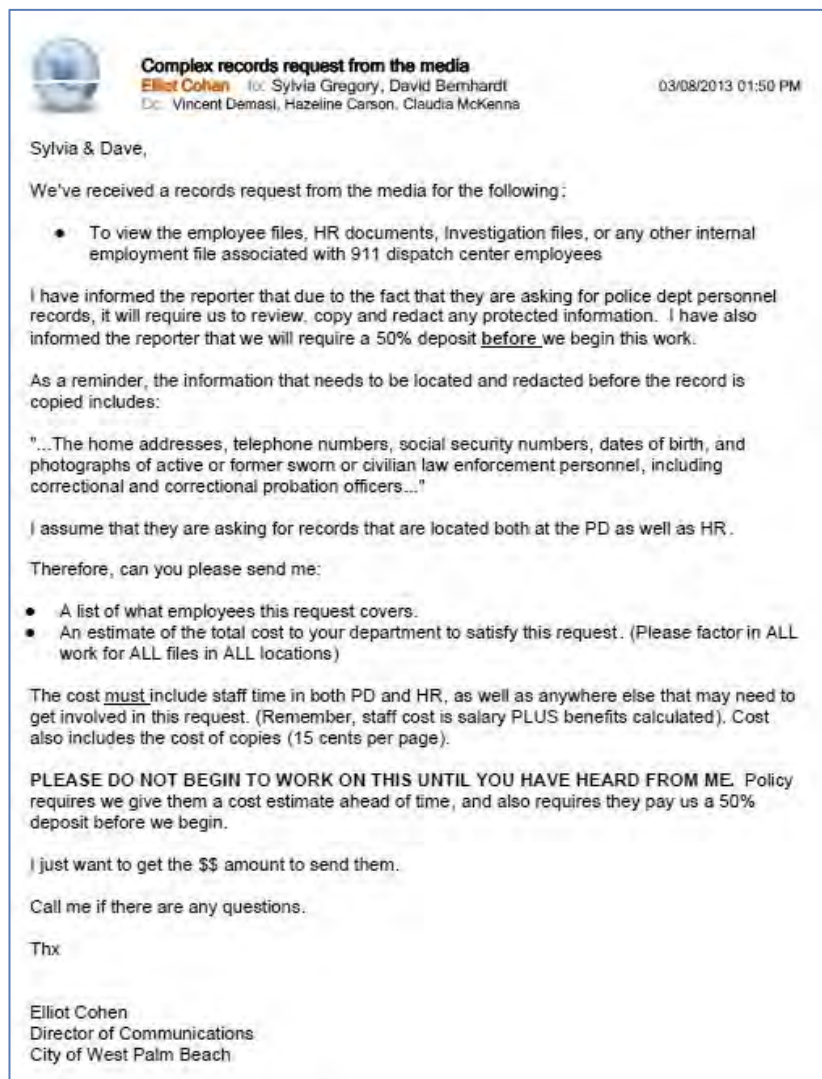
Exemptions and Confidential Records, D.3 provides examples of records that may be confidential and/or exempt from disclosure under the Public Records Act. They include, but are not limited to:

- Active criminal and intelligence information (119.071(2)(c)).
- Information regarding confidential informants (119.071(2)(f)).
- Social Security Numbers (119.071(4)).
- Information regarding the City’s security systems or emergency plans (119.071(3)).
- Information regarding victims of crime – some limitation to exemption (119.071(2)).

It should be noted that there were additional aspects of the City’s PRR Policy that Mr. Cohen did not follow with the LaGrone PRR. As example, charging for public records and waiting until a 50% deposit is collected prior to proceeding with the request. Neither of these policy requirements were followed.

Analysis of Mr. Cohen’s Actions

Mr. Cohen circumvented the process. He excluded the Custodian of Public Record, thereby assuming the responsibilities of the Custodian of Public Record. We reviewed thousands of Mr. Cohen’s emails, including many related to media PRR. It is clear

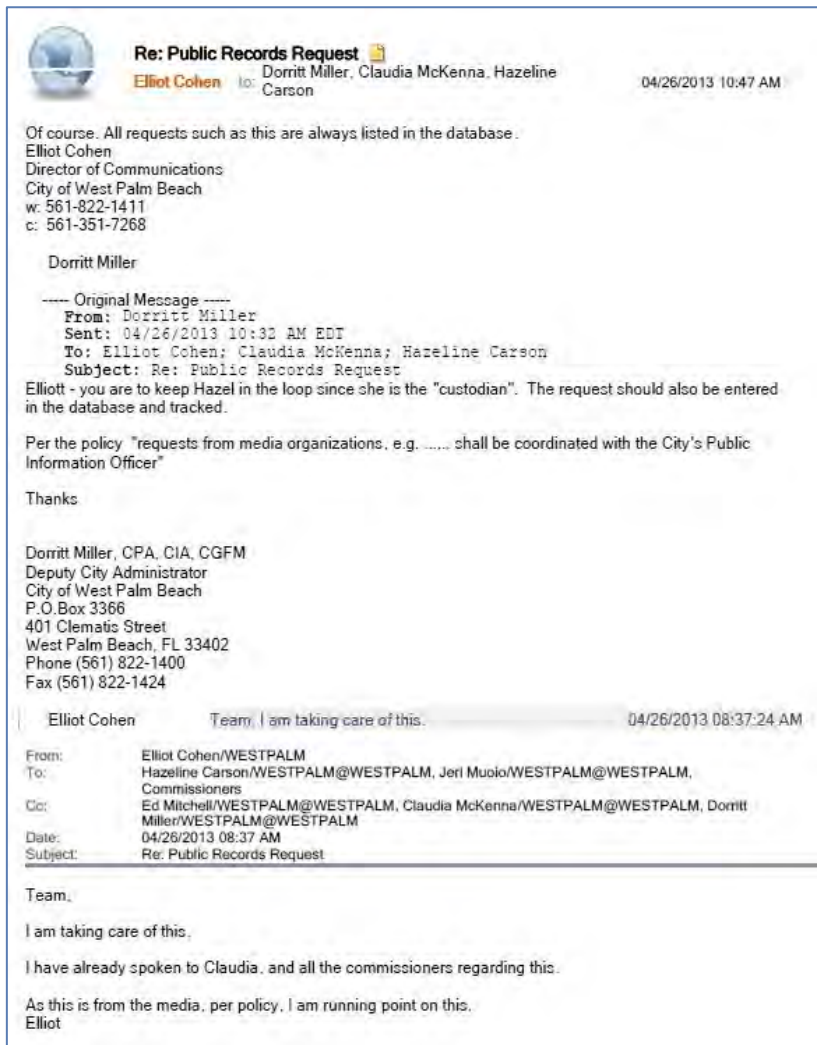


through these emails that Mr. Cohen was aware of the City's PRR policy. For example, a March 8, 2013 email sent to Sylvia Gregory [Compensation and Employment Manager-at the time], David Bernhardt [Police Captain] demonstrates Mr. Cohen's knowledge of: the need for review and redaction (due to the nature of the request); specific information needing redaction¹¹; providing the PRR requestor with a cost estimate; and, collection of 50% estimated deposit before beginning the work. Additionally, Mr. Cohen instructs the recipients of this email, **"PLEASE DO NOT BEGIN TO WORK ON THIS UNTIL YOU HAVE HEARD FROM ME."**

One month later, Mr. Cohen received PRR processing instructions via email from Ms. Miller.

On April 26, 2013 at 8:37AM, Mr. Cohen replied to all parties, "Team, I am taking care of this. I have already spoken to Claudia, and all the commissioners regarding this. As this is from the media, per policy, I am running point on this."

On April 26, 2013 at 10:32AM, Ms. Miller replied to this email to Mr. Cohen, Claudia McKenna [City Attorney-at the time], and Ms. Carson, "Elliot – you are to keep Hazel in the loop since she is the 'custodian'. The request should also be entered in the database and tracked. Per the policy 'requests from media organizations, e.g. shall be coordinated with the City's Public Information Officer' Thanks"



On April 26, 2013 at 10:47AM, Mr. Cohen replied to Ms. Miller, Ms. McKenna, and Ms. Carson, "Of course. All requests such as this are always listed in the database."

We asked Ms. Miller why she sent this email and she replied that it "must have been that Hazel must have said this is not happening and this was a reminder to her...to him

¹¹ The quote in the center of Mr. Cohen's email is a citation from § 119.071(4)(d)2.a.I, Florida Statutes.

that it needs to be done... So there was a conversation and now remember that I said to him it needs to be there for tracking mechanism to make sure we actually comply with the public records request because we do have some guidelines and timeliness as well to make sure it's being done."

Our investigation disclosed that at no time did Mr. Cohen enter media PRR into the City's Public Records Database. The PRR discussed in the above April 26, 2013 emails was entered into the City's database, but not by Mr. Cohen. Furthermore, the LaGrone PRR of September 4, 2015 was never entered into the City's database – by anyone.

The City's PRR Policy has not changed since December 2009. It states that media PRR requests "shall be coordinated with the City's Public Information Officer." However, this has not been the case at least since Ms. Carson became the City Clerk in September 2012. Ms. Carson told us that after she began, Mr. Cohen told her that he will "handle" all media PRR requests. In doing so, Mr. Cohen usurped Ms. Carson's position and responsibilities as "Custodian of Public Record." In the case with the LaGrone PRR, Mr. Cohen did not "coordinate" with the City Clerk as required by policy. Instead, he told her he was "taking care of this." Mr. Green told us, "If it [the LaGrone PRR] had come from the Clerk's office, then the process would have followed through the way we had it set up." He also said, "Records need to come through the Clerk's office, everybody is supposed to follow that process. And if it would had been followed that way, we wouldn't had a problem." Mr. Green told the media "The breakdown probably wouldn't have happened had the clerk been handling the request, since 'it's really the clerk's function.'"¹² The manner in which Mr. Cohen failed to follow the policy in the processing of the LaGrone PRR has been the norm, not the exception, at least since Ms. Carson became the City Clerk in September 2012.



Both the current Director of IT and the Computer Operator who processed the City public records requests for e-mails (LaGrone PRR) stated the Department has never been responsible for redacting emails they provide to Mr. Cohen for media requests. This is of particular concern since this is not the first time Mr. Cohen has released PRR and; therefore, other instances of improper release of "exempt" or "confidential and exempt" records are a possibility.

¹² From <http://www.mypalmbeachpost.com/news/news/wpb-mayor-blames-process-breakdown-for-release-of-/nnf5Y/>, posted September 15, 2015, updated September 16, 2015.

Damage Caused by the Improper Release of the “Exempt” and “Confidential and Exempt” Information

Some of the sensitive law enforcement information released involved active investigations the City Police Department was working with other local and federal agencies. The damage related to on-going investigations, include identifying information of law enforcement personnel and confidential informants. Department representatives reported concern for the safety of those individuals exposed by the improper release of information. Additionally, they reported that some law enforcement agencies were directed to no longer communicate with City Police Department officers via email concerning police operations.

Corrective Actions Reported by the City to Address the City’s PRR Process

In its October 26, 2015 response to our request for information, the City outlined the following changes in its PRR process:

1. Media records requests will be processed directly through the City Clerk’s office;
2. All e-mails compiled by the City’s IT Department will be sent to the primary department responding to the public record request. The primary responding department will review the records and will be responsible for redacting any confidential and exempt information;
3. The Police Department will be the primary department in any search that deals with any police matters;
4. Police e-mails will be stored on a server not connected with the City of West Palm Beach’s main server; and
5. The City will continue to review its public records policy to see if any additional changes can be made to further protect exempt and confidential information.

Allegation (2):

City of West Palm Beach Director of Communications Elliot Cohen used his position at the City, as well as, City time and resources to conduct his private business, Cohen Publicity. If supported, the allegation would constitute a violation of City of West Palm Beach General Administration, Chapter 1, Computer Policy, Policy 1-28, Computer Hardware/Software, Networks and Communications Policy, 7.20; City of West Palm Beach Employee Handbook, Employee Relations, Code of Conduct, Integrity and Honesty, o).

Finding:

The information obtained **supports** the allegation based on the OIG review of records and witness interviews. Mr. Cohen was not interviewed due to the referral to the State Attorney’s Office in **Allegation (3)**.

On April 21, 2006, Mr. Cohen filed documents with the Florida Department of State Division of Corporations registering a fictitious name for his business – Cohen Publicity.

On January 9, 2013, Elliot Cohen signed, as President of Cohen Publicity, a professional services contract with RMA to provide “public relations & marketing guidance and support in accordance with a mutually agreed upon marketing plan.” This contract states,



“Independent Contractor [Cohen Publicity] agrees to be available upon reasonable notice for teleconference calls during regular business hours.” The contract further states, “Client [RMA] acknowledges a pre-existing personal and financial relationship with the City of West Palm Beach. RMA, its principles and/or representatives serve as the leadership for the City of West Palm Beach Community Redevelopment Agency. RMA has a longterm relationship with the elected leadership of the City of West Palm Beach.”

On February 2, 2015, Elliot Cohen signed, as President of Cohen Publicity, a professional services contract with the Town of Miami Lakes to provide “Communications, Public Relations and Marketing Support.” The contract states, “Client [Town of Miami Lakes] warrants there exists no business, contractual or personal relationship between Client and the municipal government of the City of West Palm Beach, Florida nor between Client and any of the elected officials of the City of West Palm Beach, Florida that has not been disclosed prior to the execution of this contract.”



Chronology of Events Regarding Mr. Cohen Using City Resources to Conduct his Cohen Publicity Business

On March 30, 2015, Mr. Cohen’s vehicle entered the City’s parking garage at 9:11AM. At 9:18AM, Mr. Cohen utilized the City’s biometric system¹³ to punch in¹⁴ for work. He

¹³ A biometric scanner is used to scan a City employee’s finger print into KRONOS. For “exempt employees”, as Mr. Cohen, one “punch in” would automatically credit the employee for working an eight hour day.

logged in¹⁵ to his City computer at 9:59AM. At 10:02AM, there was an internal phone call on Mr. Cohen's City desk phone that lasted 7 minutes and 52 seconds. At 10:41AM, Mr. Cohen received a call on his Cohen Publicity cell phone¹⁶ from the Town of Miami Lakes. The call lasted 27 minutes and 29 seconds. At 11:08AM, there was an internal phone call on Mr. Cohen's City desk phone that lasted 2 minutes and 20 seconds. Mr. Cohen's vehicle exited the City's parking garage at 7:36PM. Mr. Cohen billed Miami Lakes \$131.25 for 45 minutes for "Client conference call – Client conference call / working on court decision talking points" on this date.

On April 1, 2015, Mr. Cohen's vehicle entered the City's parking garage at 8:33AM. At 12:55PM, Mr. Cohen received an email at his Cohen Publicity email address, from Nicole Lesson [Town of Miami Lakes Communications Manager and Public Information Officer] *"This is the statement the Mayor wrote himself."* At 1:02PM, Mr. Cohen received a call on his Cohen Publicity cell phone from the Town of Miami Lakes. The call lasted 52 seconds. At 1:05PM a call was placed from Mr. Cohen's City desk phone to the Town of Miami Lakes. The call lasted 40 minutes and 16 seconds. Mr. Cohen's vehicle exited the City's parking garage at 6:02PM. Mr. Cohen billed Miami Lakes \$131.25 for 45 minutes for "Client conference call – Client conference call / discussion on how to handle post-verdict Mayor interviews" on this date.

City of West Palm Beach Detail Report by Extension							
Detail Report by Extension				From 03/07/2014 through 03/06/2016			
Date	Time	Duration	Cost Facility	Call Type	Phone Number	Location	Account / Matter
Data Source: City Hall (1) (Continued)							
Extension: 1411 - Cohen, Elliot (Continued)							
04/01/2015	13:05	0:40:16	0.00 2 WAYS	LD	1-305-364-6100	OUTBOUND	

On April 13, 2015, Mr. Cohen's vehicle entered the City's parking garage at 10:59AM. At 11:05AM, Mr. Cohen utilized the City's biometric system to punch in for work. At 12:42PM a call was placed from Mr. Cohen's City desk phone to the Town of Miami Lakes. The call lasted 48 seconds. At 12:54PM, an email was sent from Mr. Cohen's Cohen Publicity email address to Ms. Lesson, *"Nicole, here are some small edits to what you put together..."* Mr. Cohen's vehicle exited the City's parking garage at 7:19PM.

On June 2, 2015, Mr. Cohen's vehicle entered the City's parking garage at 7:53AM. At 7:56AM, Mr. Cohen utilized the City's biometric system to punch in for work. At 2:44PM, an email was sent from Mr. Cohen's City email address. At 3:14PM a call was placed from Mr. Cohen's City desk phone to Ms. Lesson. The call lasted 5 minutes and 14 seconds. Mr. Cohen's vehicle exited the City's parking garage at 6:28PM.

¹⁴ From the Time Detail clock ring sheet for Mr. Cohen as provided by the City from their KRONOS time and attendance system. This report titles this column as "in punch", we will use the more common phrase "punch in".

¹⁵ The information provided by City IT regarding Mr. Cohen's computer access describes this action as "Login", we will use the phrase "logged in".

¹⁶ (561) 676-4949 is shown as the contact phone number on the Cohen Publicity website and the registration for said site.

On July 2, 2015, Mr. Cohen's vehicle entered the City's parking garage at 9:55AM. At 2:19PM, Mr. Cohen utilized the City's biometric system to punch in for work. At 2:31PM a call was placed from Mr. Cohen's City desk phone to the City of Pahokee. The call lasted 1 minute and 39 seconds. At 2:33PM another call was placed from Mr. Cohen's City desk phone to the City of Pahokee. This call lasted 3 minutes and 1 second. At 3:17PM, an email was sent from Mr. Cohen's Cohen Publicity email address to Chandler Williamson [City of Pahokee City Manager] "Subject: Contacting you at the request of WPB Deputy Admin Dorritt Miller". [the body of this email when Mr. Cohen solicits business for Cohen Publicity will be discussed in [Allegation \(4\)](#)] At 3:23PM a call was placed from Mr. Cohen's City desk phone. The call lasted 1 minute and 9 seconds. Mr. Cohen's vehicle exited the City's parking garage at 6:49PM.

On July 29, 2015, Mr. Cohen's vehicle entered the City's parking garage at 8:31AM. At 8:37AM, Mr. Cohen utilized the City's biometric system to punch in for work. At 6:02PM, an email was sent from Mr. Cohen's Cohen Publicity email address to Mr. Williamson, "Subject: Follow up email". [the body of this email will also be discussed in [Allegation \(4\)](#)] Mr. Cohen's vehicle exited the City's parking garage at 6:42PM.

Mr. Green stated regarding Mr. Cohen's use of government property, "Yeah, we've looked into that. Government property, he didn't use, as far as I can tell, his email account, or his computer, his phone." He stated, "Kimberly Rothenberg, the City Attorney, spent time going through that. We had all the emails printed out. We had all the phone records pulled. As far as we can tell, that didn't happen. To be honest, we looked at the dates he billed his clients." He concluded, "We couldn't, we didn't find anything related to government property that he was using."

Chronology of Events Regarding Client Meetings During the City's Official Business Day¹⁷

For the following five client meetings that we identified, which occurred during the City's official business day, we reviewed all City records that were available to us, including: appointment calendars, emails, time and attendance, and parking records. We also reviewed Mr. Cohen's Cohen Publicity: emails and phone records. Records show that for each day; Mr. Cohen was paid for eight hours of work with no leave taken; he did not have any City related appointments before or after the official business day; and, available parking records indicate that Mr. Cohen did not return to the parking garage after client meetings. Additionally, the City's October 26, 2015 response to our Management Inquiry did not provide any documentation that conflicts with our findings. Furthermore, the manner in which the City tracks exempt employee work hours precludes anyone from determining actual hours worked.

On Wednesday, March 13, 2013 at 5:32PM, an email was sent from Mr. Cohen's Cohen Publicity email address to Sharon McCormick [RMA Director of Marketing] and Kim Briesemeister [RMA Managing Member], subject: "Thurs [March 14, 2013] agenda".

¹⁷ Per West Palm Beach General Administration, Chapter 4, Policy 4-6, Work Schedule Policy, Official Business Day is defined as "any day Monday through Friday from 8:00 a.m. to 5:00 p.m."

The email starts out, *"Team, I have two main topics I would like to cover in the morning."*
The email ends with, *"See ya' in the morn!"*

On Thursday, March 14, 2013 at 10:58PM, an email was sent from Mr. Cohen's Cohen Publicity email address to Ms. Briesemeister, Christopher Brown [RMA Principal-in Charge] and Ms. McCormick, subject: "Summary of todays meeting", "Team, Attached is a summary of what was decided today. Please review it and alert me to any changes/errors...I think today was critical to setting up our process. We're now in a position to really get humming. ec" OIG comment: these two emails indicate a meeting took place the morning of March 14, 2013. Time and attendance records reflect that he was paid eight hours.

On Thursday, March 14, 2013 at 11:14AM, Mr. Cohen received an email at his Cohen Publicity email address from Alicia Alleyne [RMA Project & Marketing Coordinator] "Hi all, How is your schedule for Tuesday [March 19, 2013] @ 130p for about 30-45 mins to meet with Jeremy. He's going to give us a crash course in our new RMA website, for editing/updating/uploading etc. Elliot, Jeremy said it is not a wordpress site but you will be able to insert text directly. Thanks, Alicia" At 4:54PM, a reply to Ms. Alleyne's email was sent from Mr. Cohen's Cohen Publicity email address, "I will be there Tues [March 19, 2013] @ 1:30pm thx ec"

On Tuesday, March 19, 2013, time and attendance records reflect that he was paid eight hours. Mr. Cohen had a scheduled appointment on his calendar from 1:30PM – 2:30PM, subject "web meeting" [see above stated RMA appointment].

On Saturday, January 10, 2015, an email was sent from Mr. Cohen's Cohen Publicity email address to Diana Young [Town of Miami Lakes Community Affairs Manager] "Let's get together Monday [January 12, 2015] @ 3pm."

On Sunday January 11, 2015, Ms. Young replied to Mr. Cohen's email, "Okay, let's shoot for 3pm. If anything changes I will let you know. You will be coming to our Town Hall, located at 6601 Main Street, Miami Lakes, Florida 33014."

On Monday, January 12, 2015, Mr. Cohen's vehicle entered the City's parking garage at 8:53AM. At 9:01AM, Mr. Cohen utilized the City's biometric system to punch in for work. *At 1:32PM, an email was sent from Mr. Cohen's City email address to David Townsley [Palm Beach County Convention Center Director of Event Technology] "Sure. I am free between now and 2:45 on my cell."* Mr. Cohen's vehicle exited the City's parking garage at 1:37PM. Telephone records for Mr. Cohen's City cell phone identified his location between the hours of 2:35PM and 5:14PM as Dade County, including Miami Gardens, Miami, and Hialeah. Mr. Cohen billed Miami Lakes \$350.00 for two hours for a "Client meeting" on this date.

On Wednesday, January 21, 2015, Mr. Cohen's vehicle did not enter the City parking garage, nor did he utilize the City's biometric system to punch in for work. He was paid

for eight hours worked.¹⁸ At 10:21AM, Mr. Cohen received a call on his Cohen Publicity cell phone from Ms. Lesson. The call lasted 7 minutes 22 seconds. Telephone records for Mr. Cohen's City cell phone identified his location between the hours of 1:59PM and 5:56PM as Broward and Dade County, including Pompano, Coral Springs, Tamarac, Sunrise, and Miami Lakes. Mr. Cohen billed Miami Lakes \$525.00 for three hours for a "Client meeting" on this date.

On Thursday, February 5, 2015, Mr. Cohen's vehicle entered the City's parking garage at 9:33AM. At 9:40AM, Mr. Cohen utilized the City's biometric system to punch in for work. At 2:05PM, Mr. Cohen received a call on his Cohen Publicity cell phone from Ms. Lesson. The call lasted 38 seconds. At 2:09PM, a call was placed from Mr. Cohen's Cohen Publicity cell phone to Ms. Lesson. The call lasted 9 minutes and 52 seconds. At 4:28PM, another call was placed from Mr. Cohen's Cohen Publicity cell phone to Ms. Lesson. This call lasted 5 minutes and 25 seconds. Mr. Cohen's vehicle exited the City's parking garage at 5:40PM. Mr. Cohen billed Miami Lakes \$87.50 for 30 minutes for "Client communication / emails / phone calls" on this date.

On Tuesday, March 10, 2015, Mr. Cohen's vehicle entered the City's parking garage at 8:29AM. At 10:00AM, Mr. Cohen utilized the City's biometric system to punch in for work. At 2:23PM, Mr. Cohen received a call on his Cohen Publicity cell phone from the Town of Miami Lakes. The call lasted 6 minutes and 25 seconds. At 2:44PM, Mr. Cohen received a call on his Cohen Publicity cell phone from Ms. Lesson. The call lasted 3 minutes and 39 seconds. Mr. Cohen's vehicle exited the City's parking garage at 5:16PM. *At 7:30PM, Mr. Cohen received an email at his Cohen Publicity email address, from Ms. Lesson, "My call with the reporter went fine, she said she only was extending an opportunity for Slaton to comment since Pizzi did. Let's see if info is correct in the story. See below. Have a good night and will see you tomorrow [March 11, 2015]."*

On Wednesday, March 11, 2015, Mr. Cohen's vehicle entered the City's parking garage at 8:40AM. Mr. Cohen did not utilize the City's biometric system to punch in for work. He was paid for eight hours worked. Mr. Cohen had a scheduled appointment on his calendar from 12:00PM – 4:00PM for "ML" [Miami Lakes]. Mr. Cohen's vehicle exited the City's parking garage at 12:08PM. At 12:48PM, Mr. Cohen received a call on his Cohen Publicity cell phone from Ms. Lesson. The call lasted 52 seconds. Telephone records for Mr. Cohen's City cell phone identified his location between the hours of 3:20PM and 4:47PM as Palm Beach, Broward and Dade County, including Hialeah, Parkland, Pompano Beach, and Boca Raton. Mr. Cohen billed Miami Lakes \$350.00 for two hours for a "Client meeting" on this date.

¹⁸ Authorized City personnel may override the system to indicate that an employee either did not punch in or was working offsite.

Cohen Publicity emails, phone calls, meetings occurring M-F 8-5 non-Holiday, non-Leave (2013 – 2015) and client payments						
	Phone calls		Emails		Meetings	Payments
	#	duration	sent/rec'd	sent		
RMA	167	10:01:59	125	65	2	\$ 9,159.00
Town of Miami Lakes	43	3:15:02	40	9	3	\$ 5,400.00

We asked the Mayor when Mr. Cohen is working in the office if he is he working for her or is he working for RMA? She replied, "When he's working in the office, he's working for me." She was asked if he was working for any of his clients then? Mayor Muoio answered, "Not that I was aware of." We asked her if that would that be acceptable to her? She responded, "No." Mayor Muoio was then asked if he was doing work for one of his clients RMA or whoever in the office, would that not be acceptable to her? She replied, "I would not expect that that would occur."

OIG Comment/Conclusion

The fluidity, at times, in which Mr. Cohen intermingled his working for the City and his Cohen Publicity business during the City's official business day, using City resources, and whether in or out of his City office space is troubling. We could not with reasonable assurance determine whether he was or was not working for his Cohen Publicity business while being paid by the City. Taxpayers may recognize that many public servants work outside employment. They do not expect to subsidize public servants in their outside employment by the use of government time or resources.

Additionally, taxpayers expect public officials to be good stewards of their dollars, including those surrounding personnel costs (time paid to public servants to work a day's wage for a day's pay). Controls are usually in place to account for small dollar items, like office supplies, so it seems prudent to have adequate controls for the time of highly paid public officials.

There are several types of internal controls both government and private sector employers use to account for employees' time. While no standard exists, the following represents some of the controls often used in accounting for employee time: written policy, work schedules, timesheets/logs, electronic time/attendance software, individual calendars kept with access to supervisors/second parties, project plans with objectives and milestones, on-sight observance, checking in and out verbally or by e-mail with a supervisor/second party (evidence of approval by an authorized official), and completed tasks. We suggest the City consider implementing more of these controls.

Allegation (3):

City of West Palm Beach Director of Communications Elliot Cohen had a contractual relationship with City contractor Redevelopment Management Associates. If supported, the allegation could constitute a violation of F.S. § 112.313(7)(a) and would constitute a violation of City of West Palm Beach Code of Ordinances, Chapter 2, Article VII, Division 2, § 2-513(a).

Finding:

The information obtained **supports** the allegation based on the OIG review of records and witness interviews. Mr. Cohen was not interviewed due to the referral to the State Attorney's Office in **Allegation (3)**. **However, on April 7, 2016, during the PBC COE executive session, Mr. Cohen argued before the commission that his contract with RMA was suspended in June 2013, not cancelled.**

None of the exemptions to F.S. § 112.313(7)(a) as noted in F.S. § 112.313(12) are relevant to the contractual relationship between Mr. Cohen (Cohen Publicity) and RMA.

As mentioned in the previous allegation, Mr. Cohen / Cohen Publicity had a contract with RMA from January 9, 2013 through September 4, 2014 to provide "public relations & marketing guidance and support in accordance with a mutually agreed upon marketing plan."

On December 16, 2013, when RMA signed its contract with the City, Mr. Cohen came into conflict with F.S. § 112.313(7)(a), which states, "No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee". Similarly, City Code of Ordinances § 2-513(a), which states, "The mayor, members of the city commission, and all department heads or directors of the city shall not solicit, accept, nor be employed, directly or indirectly, by any person, firm or corporation having any contractual relation with, or rendering any services to the city, or any department or agency thereof."

Mr. Green told us that he was unaware of Mr. Cohen's contract with RMA until the fall of 2015. Mr. Green stated that he did not view Mr. Cohen's work with RMA as a conflict. He said, "From my standpoint, it would be a conflict if he was doing work for RMA on jobs that we, the City, assigned RMA to accomplish."

Mayor Muoio stated that she was aware that Mr. Cohen has done work for RMA and she did not view his relationship as a conflict. She stated, "As long as he doesn't work on anything related to the City. They have multiple clients and if he works for some other city that's not a conflict." She added, "As long as he continues to do the work I expect him to do as his supervisor and he's there when I need him...then I'm ok with that."

Norman Ostrau¹⁹, City Ethics Officer, told us that during a discussion following the improper records release (in the fall of 2015), “He [Mr. Cohen] never told the Mayor, or Jeff [Green], or anybody. Specifically, that he had the contract [with RMA]. He told me that. And they [Muio and Green], said that also.” Mr. Ostrau stated, “The contract, in my mind was a violation, just the contract having was a violation of the code.” He continued, “It really is a State violation so it should have gone up to the State...Because the State says it’s an absolute prohibition to have any contractual relationship with anybody doing business with your agency. There’s an absolute prohibition. There is no exemption under the thing. If you have a contractual relationship, you either got to get rid of the contractual relationship or leave your agency. So, there is no exemption to it.”

Information obtained regarding **Allegation (3)** as it relates to F.S. § 112.313(7)(a) was **referred** to the State Attorney’s Office and the Florida Commission on Ethics for any actions they deem appropriate (as well as any other matters of interest within this report). PBC COE dismissed a complaint (C15-021) against Mr. Cohen on April 7, 2016 after concluding that no probable cause existed to believe that Mr. Cohen had a relationship with RMA that violated § 2-443(d) of the PBC Code of Ethics.

ADDITIONAL ALLEGATIONS AND FINDINGS

Based on the information obtained during this investigation, the OIG developed three additional allegations and they will be presented with numbers consecutive to those made by our complainants.

Allegation (4):

City of West Palm Beach Director of Communications Elliot Cohen misused his official public office or employment to solicit business for Cohen Publicity. If supported, the allegation would constitute a violation of Palm Beach County Code of Ordinances, Chapter 2, Article XIII, § 2-443(a).

The OIG will make no finding in this allegation as it was referred to the PBC COE for its review. Mr. Cohen was not interviewed due to the referral to the State Attorney’s Office in **Allegation (3)**. During our document review related to **Allegation (2)**, we identified the following information relative to this allegation:

¹⁹ OIG Comment – it is important to note Mr. Ostrau’s background prior to becoming the City’s Ethics Officer. He spent 7 years as the Chairman of Ethics and Elections for the Florida Legislature and 11 years as Broward County’s Deputy County Attorney. He has also served as the Chairman of the State Ethics Commission and as the Director of the Public Ethics Academy at Florida Atlantic University.

On July 2, 2015, at 3:17PM, an email was sent from Mr. Cohen's Cohen Publicity email address to Mr. Williamson, "Subject: Contacting you at the request of WPB Deputy Admin Dorritt Miller".

Chandler,

Congratulations on your new position with the City of Pahokee.

I am the Director of Communications in the Mayor's Office at the City of West Palm Beach and Dorritt Miller has asked that I reach out to you.

I've had a chance to do a short review of your city's communications efforts, and I would be happy to meet with you to talk about creating some successful tactics and strategies to reach best your residents and (sometimes more importantly) keep your Mayor and Commission feeling informed.

I have designed and implemented several successful strategies here in West Palm Beach (city newsletters for residents, employee communications, positive news coverage, and more.) I handle all the city's crisis communications (and would be happy to provide references). I am responsible for the city's social media outreach as well. Under my watch West Palm Beach has tripled the number of people receiving news from the city via social media. In effect, I run a small internal news bureau here at the city that specializes in getting city news directly to residents.

It's always critical that residents know all the good work their city is doing on their behalf, and it's even more important that both residents and Commissioners stay informed.

My complete background can be seen on LinkedIn:
<https://www.linkedin.com/in/elliottcohen>

As an independent consultant, I work with other cities on various communications efforts. I would like to suggest we meet to talk about how I would be able to improve Pahokee's communications efforts. I offer turnkey government communications solutions from the design and maintenance of city newsletters to new websites, to press releases and news media coverage and more. I also can provide video production services to promote the city on social media, your government station and elsewhere. As I have learned, the best way to serve a city such as Pahokee is to make communications as low-maintenance as possible so city leadership can focus on bigger issues. My job is to make sure your residents know about those bigger issues.

I can be reached at this email, or at the cell number below. Again, congratulations on your new position. I look forward to the possibility of helping to design and implement a fresh new communications plan for the city.

Elliot Cohen
cohenpublicity
PR / Video Production/ Crisis Management / Marketing
www.cohenpublicity.com
561-676-4949

On July 29, 2015, at 6:02PM, an email was sent from Mr. Cohen's Cohen Publicity email address to Mr. Williamson, "Subject: Follow up email".

Chandler,

I am following up on my earlier email. I know you have been contacted by others recommending my experience in government communications.

For the purposes of clarity, allow me to further expand on my intent. I became aware of your new position during a city meeting, but after a review of the Pahokee's communications I believe I may be able to help the city as part of my outside work as a government communications expert.

I work as a consultant for several clients including several cities in South Florida. My work is both for immediate crisis management as well as for longer term public relations and communications. Rest assured my work is done with the knowledge and blessing of the city.

I completely understand the financial pressures felt this time of year when preparing next year's budget. That is why I structure my services to be very affordable while providing significant benefits.

Let's get together and talk about how your elected officials and residents can benefit from some basic PR strategies.

Look forward to speaking with you.

Elliot Cohen
561-676-4949

On July 29, 2015 at 6:17PM, Mr. Williamson forwarded the above two emails to Ms. Miller. Mr. Williamson questioned Mr. Cohen's contact and stated "I don't believe these were your intentions for the City of Pahokee."

During an interview, Ms. Miller told us, "I never recommended anybody to them [Pahokee] ok. This is what happened now that you've mentioned about it...We had a meeting, City Manager's Association, where he [Chandler Williamson] said to me he would like, he's trying to do a lot of work in Pahokee, he would to have me be like a mentoring or partner with some city like West Palm Beach. He said to me that if we could help. And he talked about HR best practices oh I said absolutely let me know what you need because we could share services." She further stated, "Now, I had a department head meeting and so it came up where I said ok now we have a big city here and we have lot of resources and we have this guy out in Pahokee he's trying to get some work done he wants to build his city. And we could be like a sister to them a brother to them and so I told him that he could come over here or we could help him with policies and procedures whatever. And so, the meeting ended and it was the intent that we could help him with different policies whatever it is."

Ms. Miller's comment to City department heads intent was for City staff to assist the new Pahokee City Manager, not for anyone to solicit private business.

On July 29, 2015 at 9:35PM, Ms. Miller forwarded Mr. Williamson's email to Mr. Green.

Ms. Miller told us that she met with Mr. Green the next morning, July 30, 2015, regarding Mr. Cohen's emails to Mr. Williamson. She stated that they went to see the Mayor to discuss this issue. While in the meeting, Mr. Green was the one who brought it up to the Mayor.

Mr. Green told us he remembered talking to Ms. Miller about this issue stating "She was concerned whether that would be a conflict or not. Didn't come to any conclusion on it." He said, "She was concerned about it...I didn't have a concern about it because we had talked previously and I knew he was going to solicit business from other cities." He was asked if he talked to the Mayor about this, and he replied "I can't recall."

Allegation (5):

Redevelopment Management Associates did not disclose its business relationship with Elliot Cohen (Cohen Publicity) to the City of West Palm Beach Procurement Official during the procurement process for RFQL 12-13-407. If supported, the allegation would constitute a violation of City of West Palm Beach Code of Ordinances, Chapter 2, Article VII, Division 2, § 2-513(b) and Attachment C, Item 2, in the bid proposal package.

Finding:

The information obtained **supports** the allegation based on the OIG review of records and witness interviews.

As previously mentioned in **Allegations (2)** and **(3)**, Cohen Publicity and RMA entered into a contract in January 2013 that lasted into September 2014.

Standards

City Code of Ordinances § 2-513(b) states, "No person, firm or corporation having any contractual relation with, or rendering any services to the city, or any department or agency thereof, shall employ, directly or indirectly, the mayor, any member of the city commission, or any department head or director of the city. ***No persons, firm or corporation which has the mayor, member of the city commission, or department head or director as an employee, shall be eligible to be considered to have a contractual relation with or to render for any consideration, services to the city.***" [emphasis added]

On October 3, 2013 at 4:25PM, RMA submitted its response to RFQL 12-13-407, Administration of Community Redevelopment Agency (CRA) and City Redevelopment Activities. As part of its proposal, respondents



were required to complete and sign Attachment C, Representations and Disclosures. Item 2 of this form is pertinent to this allegation.

"Conflict of Interest. Proposer has disclosed any actual, apparent or potential conflicts of interest that are present or could develop with respect to providing services under this solicitation any parties to this solicitation or any third parties. Proposer has identified the name of any officer, director, employee or agent who is also an employee or official of the City of West Palm Beach or the West Palm Beach Agencies. Further, Proposer has disclosed the name of any City official or employee or Official who owns, directly or indirectly, interest of ten percent (10%) or more in the Proposer's firm or any of its affiliates or team members."

Ms. Briesemeister, RMA Managing Member, signed Attachment C on October 2, 2013 without disclosing any "actual, apparent or potential conflicts of interest" as required.

OIG interview of Kim Briesemeister, Redevelopment Management Associates Managing Member

During our interview, Ms. Briesemeister was asked about her relationship with Mr. Cohen and if it was personal, she replied, "we had a business relationship." She was asked if she informed the City that Mr. Cohen worked for RMA and she said, "I had told, I believe, the City Manager [Green] and I had asked Elliot to make sure that whatever his outside authorization was, was in place. So yes, I believe I did mention it to the, I believe I mentioned this to the Mayor as well. But, I believe Elliot was the one that was communicating with them directly." Ms. Briesemeister was asked when this conversation with Mr. Green and the Mayor took place, and she replied, "That would have been before I resigned." She continued, "Somewhere in February March 2013 that I would have said something. But again I said to Elliot make sure you have your outside employment authorization in place...That would have been in February."

Ms. Briesemeister was asked if she told anyone else with the City about her business relationship with Mr. Cohen when she submitted her proposal. She replied, "No, because when the RFQ was out, there was a 'cone of silence'²⁰ so I couldn't talk to anybody in the City. Because as soon as the City issues the bid, there can be no communication between a potential respondent of which obviously we were one and anybody in the City. That's the 'cone of silence'."

Ms. Briesemeister stated there were no communications either emails or telephone calls with Mr. Cohen (during the 'cone of silence'), and she said, "That's correct, from whatever time that bid went out." She was asked if there were any personal, face to face conversations with Mr. Cohen, she replied, "No, that would have been a violation of the 'cone of silence'." Ms. Briesemeister was asked if anyone from her firm had contact with Mr. Cohen and she replied, "No, the same thing. Our firm was on notice and we would have told our employees that you cannot communicate with anybody."

²⁰ According to the City's procurement personnel, the Prohibited lobbying ordinance is synonymous with 'cone of silence' as used by Ms. Briesemeister.

On January 9, 2013, Elliot Cohen signed, as President of Cohen Publicity, a professional services contract with RMA. Section 7: Term and Termination of the Cohen Publicity / RMA contract states, "The term of this Agreement shall commence on the date hereof. Either party may terminate this contract on 30 days' written notice; otherwise, the contract shall remain in force."

On June 21, 2013 at 3:37PM, an email was sent from Mr. Cohen's Cohen Publicity email account to Ms. Briesemeister at her RMA email account, "Kim, As you know, I've been doing some occasional press release writing for you. In anticipation of the start of the public process next week to discuss the future of the City of West Palm Beach CRA, I think it is best to hold off on that kind of work until the city completes its process of possibly selecting a firm to run the CRA. As you know, I have no role in making any decisions, nor do I have any control in any selection process. I am not paid by the CRA, and I am not involved in the awarding of any contracts, nor in the drafting of any RFQ. I don't have any role in deciding the future of the CRA. However, until the process is over, it's probably best to put it on hold. Thanks. Elliot"

During two sworn interviews with the PBC COE investigator, Mr. Cohen stated "In June [2013] when they started that conversation [to outsource staffing of the CRA] I actually suspended my relationship with RMA" (December 10, 2015 interview) and that he "suspended it [his contract with RMA] in June of 2013 and then it was terminated at the end of the summer of 14." (January 26, 2016 interview) **On April 7, 2016, during the PBC COE executive session, Mr. Cohen argued before the commission that his contract with RMA was suspended in June 2013, not cancelled.**

On September 4, 2014 at 4:33PM, an email was sent from Mr. Cohen's Cohen Publicity email account to Ms. Briesemeister at her RMA email account subject: Termination of our contract, "Kim, After much consideration I would like to propose we terminate the current arrangement we have for PR...I would propose that we terminate the current arrangement of a monthly retainer, and instead work on a case-by-case basis."

City's Expressed Intent for Propriety and Openness

On August 29, 2013, Mayor Muoio sent a memo to the West Palm Beach CRA Staff and Procurement Staff. The memo discussed the impending "RFQ process regarding the restructure of the Community Redevelopment Agency." It reminds and admonishes staff regarding any discussion about the procurement solicitation for administration of the CRA Agency. The Mayor wrote, "I also remind you that you may not have contact with any member of the CRA Board, any potential proposer, nor any officer, employee, sub-contractor, representative or lobbyist of any potential proposer, regarding any matter related to the procurement solicitation." Mr. Cohen was in receipt of this memo.

In a video interview with a local reporter, which was "published" on September 4, 2013²¹ Mayor Muoio responded to the reporter's statement, "There's concern that it's already a done deal, that Ms. Briesemeister's company is going to get the job." She replied, "I

²¹ <http://www.youtube.com/watch?v=BrqjDYGW2OE>

know that. I know that there's concern. I guess I would like to assure people that we are going to do this in the most transparent way and the fairest way possible. And whoever is the most qualified and has the most potential to give us what we want will get the contract."

RMA, Mr. Cohen, and Mayor Muoio not disclosing the contractual relationship between RMA and Mr. Cohen and Mr. Cohen's involvement in the procurement process was contrary to the City's expressed intent for transparency. If procurement officials would have been notified of the contractual relationship between RMA and Mr. Cohen, they would have raised conflict of interest issues.

Consequences of Not Disclosing Mr. Cohen's Business Relationship with RMA

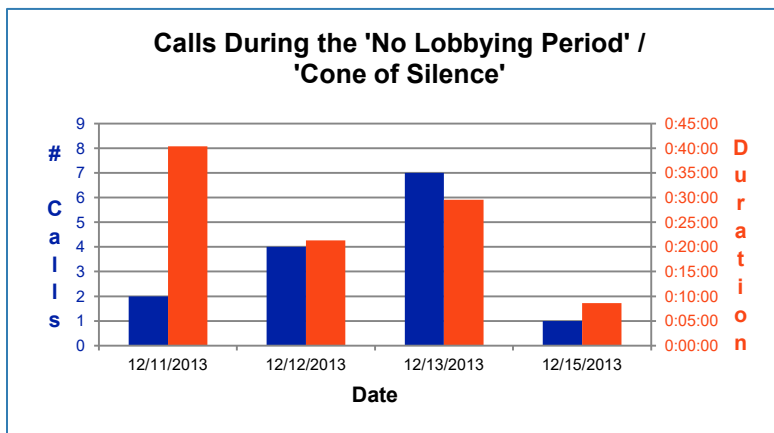
Had City procurement officials been made aware of Mr. Cohen's business relationship with RMA, steps would have been taken to investigate and take appropriate actions. Since these officials were not aware of this relationship, Mr. Cohen was included in the selection process.

Between August 20, 2013 and December 16, 2013, Mr. Cohen sent, received, and was copied on several emails pertaining to the selection process. He attended private meetings with City officials, to include procurement officials, where the selection process was discussed and decisions were made. His involvement included input regarding those who would sit on the proposal evaluation committee:

On October 4, 2013 at 3:42PM, Josephine Grosch [City Senior Purchasing Agent] sent an email to Mr. Cohen's City email address and Christopher Roog [City Director of Economic Development], "Elliot & Chris, Attached please find the proposal list. Please advise your recommended elevation [sic] committee list. Please aware that The Urban Group has submitted their proposal, so they will not be permitted to be on the committee. Since we have 6 proposers, are you still target next Friday for evaluation meeting? It seems rush since we don't have the committee list yet." (this was not public knowledge)

During the no lobbying period, which ran from September 4, 2013 (the advertised time) until December 16, 2013 (completed procurement),²² 14 telephone calls lasting a total of 99 minutes occurred between Ms. Briesemeister's cell phone and Mr. Cohen's Cohen Publicity cell phone. Five of these calls were initiated by Ms. Briesemeister

and nine were initiated by Mr. Cohen. According to Ms. Briesemeister's statements to us, she had no contact with Mr. Cohen during this time period.



On October 7, 2013 at 4:08PM, Ms. Grosch sent an email to Mr. Cohen's City email address, Mr. Roog, and Mr. Green CC: Festus Hayden [City Procurement Official-at the time]²³ and the selection committee members, subject: "CRA Committee List", "Dear All, Anyone call or approach to you regarding CRA evaluation, please refer all the calls to Procurement. Anyone ask who is on the CRA Committee, please refer to Procurement as well."

OIG interview of Josephine Grosch, City Senior Purchasing Agent

Ms. Grosch told us that during the procurement for the Administration of CRA (RFQL 12-13-407), she was unaware of Mr. Cohen's contract with RMA. She was asked knowing now about Mr. Cohen's relationship with RMA, would that have been a problem during the procurement process. She said, "Yes, would be a problem. Because if he worked for the RMA, then it wouldn't be a fair..." Ms. Grosch told us, "I don't like to let people know who's my selection [committee], I don't like proposers [to] know who's my selection committee. The reason for that is avoid, they solicit our selection committee." She said she would not have wanted Mr. Cohen to know who the selection committee members were prior to it becoming public knowledge much less want him to participate in the selection of those members. Ms. Grosch was asked what else would she have done and she said, "I would tell my supervisor Jeff Green [Director of Finance-at the time].²⁴ Hey, I believe there's a conflict [of] interest Elliot [Cohen] has in this project. He shouldn't be the one knowing about this project info." Ms. Grosch also said, "If I knew he was working with RMA? I would recommend that Elliot shouldn't be copied on everything."

²² As defined in the City of West Palm Beach Code of Ordinances Chapter 66, Article I, § 66-4(b), Completed procurement means the occurrence of the following: the city has executed a contract for the goods, services, or construction procured; and any appeals regarding the procurement have been resolved; or the city has determined that such goods, services, or construction are no longer needed and no further procurement solicitation will be issued.

²³ Festus "Frank" Hayden became the Procurement Official on September 23, 2013. On November 10, 2014, his position title was changed to Director of Procurement.

²⁴ The Procurement Official position reported to the Director of Finance, Mr. Green, and had been vacant from July 5, 2013 until September 23, 2013 when it was filled by Mr. Hayden. Due to this vacancy, Ms. Grosch reported to Mr. Green until Mr. Hayden began as the Procurement Official.

Ms. Grosch was asked about the proposal's Attachment C and whether or not RMA mentioned its contract with Cohen. She replied, "The proposer need[s] to tell the City, right, with a statement...RMA never mentioned it." Ms. Grosch was asked what would be some of the actions that she thought should have been taken? She responded, "I would report to my supervisor that I am aware there is a, that Elliot was this proposer's employee." Ms. Grosch was asked if this would also lend itself to the potential of an unfair advantage? "Yeah, looking back now he was copied on everything – yes." She was asked if this gave RMA an unfair advantage? She responded, "The perception is yes."

OIG interview of Frank Hayden, City Procurement Official-at the time

Mr. Hayden, explained to us what a conflict of interest is, "It's like you have an unfair advantage. In terms of the other folks who will [be] playing the game." He was asked if the onus is on the proposer to disclose to him if they have a conflict? Mr. Hayden said, "Yes...The onus is upon you [the proposer] to bring it to my attention...You can either do it by email or you can pick up the phone and give me a call." He said if a possible conflict was noted, "Then it would be on our benefit that we'd have to investigate into that. And if it is a conflict in terms of that, then we should remove whatever that conflict is."

Mr. Hayden was asked if he was made aware that an employee with the City had a contract with one of the firms? He said, "No. I was not made aware of that." He continued, "No. I did not. Never heard that." Mr. Hayden was asked if he knew during the procurement process that Mr. Cohen had a contract with RMA? He responded, "No sir...and yes, based on what you're saying to me, him having this information [the names of the selection committee members] could be viewed as a conflict of interest because now he has knowledge that nobody else who is proposing for this project has knowledge of." He said, "I would view it as a conflict of interest no matter what his contract was with the company." Mr. Hayden was asked if he felt that Mr. Cohen should have, if RMA did not, disclosed this contractual relationship? He replied, "Yes...He added, "as I said to both of you before, process is important to me. Integrity within your process is important. And when the slightest thing implies that you don't have a fair process, excuse my language, it pisses me off." Mr. Hayden was asked what if you were told that during the cone of silence period there was contact between Mr. Cohen and RMA? He stated, "Then I'd move past anger and be truly pissed. And it's not about Elliot. It is about, you have to have integrity in terms of what you do. People are not gonna want to come play in your sandbox if the sandbox is filthy and dirty."

Mr. Hayden was asked if by not disclosing the contractual relationship between Mr. Cohen and RMA and then RMA was awarded the contract, what happens then? He said, "It would depend, in my opinion, what weight the non disclosure had on whether or not this firm was awarded the contract." He continued, "So, hypothetically, it would require us to do some investigation and if the investigation turned out that having this contract with this City employee at the time that they were awarded the contract gave them an unfair advantage over everybody else, then as far as I'm concerned, the contract would have to be terminated."

OIG interview of Geraldine Muoio, City Mayor

When we spoke with Mayor Muoio, we inquired about the large amount of effort they put into having transparency regarding the outsourcing of the CRA. She replied, "Outsourcing was a new approach to take and people were generally skeptical of the approach so I wanted to make sure that everybody knew what was going on and how we were approaching it." During our interview with Mayor Muoio we asked, when she first become aware of the contract between RMA and Mr. Cohen? Mayor Muoio said, "I can't really say, I really don't remember when I first knew it. I knew that he had outside work. I knew that he had done some work for them [RMA] but I can't exactly tell you when I knew." We asked, if she knew prior to the posting of the LaGrone PRR in the Fall of 2015. She replied, "I knew prior to when we contracted with RMA." The Mayor was asked, if this would be in 2013. She said, "So, I knew that [Mr. Cohen] had worked with them [RMA] before that. I knew that he stopped working with them as we were going through the procurement process as we would have expected him to do. And then, I know that after that he had another contract with them." We asked, how she knew that he stopped working for them? She said, "He told me." We inquired if she asked for any kind of proof and she replied that she did not. We inquired if she asked to see the contract at that time? She said, "No."



We inquired if she had any discussions with Ms. Briesemeister about Mr. Cohen's relationship with RMA or what he was doing. The Mayor said, "No." We queried whether she asked Ms. Briesemeister if Mr. Cohen put his contract on hold during this time period, and she replied, "No." We asked her if she had a conversation about

Mr. Cohen's contract with RMA with anybody and she replied, "No." Mayor Muoio was asked, if there came a time when she spoke with the City's Ethics Officer, Mr. Ostrau about the relationship between Mr. Cohen and RMA and she did not recall.

OIG interview of Norman Ostrau, City Ethics Officer

Mr. Ostrau, who interviewed Mr. Cohen in the fall of 2015 after the press published his contract with RMA, was asked who would have had knowledge of Mr. Cohen working for RMA? Mr. Ostrau said, "Who he told? He said 'nobody'." After speaking to Mr. Cohen, Mr. Ostrau said he spoke to Mr. Green and then the Mayor came in where they were speaking and he spoke to both of them. Mr. Ostrau was asked when he told the Mayor and Mr. Green that Mr. Cohen worked for RMA, neither one of them had any knowledge of this fact. Mr. Ostrau said, "That's what they said." Mr. Ostrau stated, "They [RMA] had an obligation to disclose if they had any relationship prior to this...they [RMA] have

an affirmative obligation.” Mr. Ostrau concluded, “After I had the general discussion with him [Mr. Cohen], I went to the Mayor and said I think they’re both messed up and I think something should be done. Then that was it, for me.”

Allegation (6):

Redevelopment Management Associates did not properly disclose its business relationship with Elliot Cohen (Cohen Publicity) to the City of West Palm Beach once it was awarded the contract for RFQL 12-13-407. If supported, the allegation would constitute a violation of City of West Palm Beach Code of Ordinances, Chapter 2, Article VII, Division 2, § 2-513(b) and the Agreement for Management and Staffing of the West Palm Beach Community Redevelopment Agency and West Palm Beach Redevelopment Activities, No Conflicts, 19.3.

Finding:

The information obtained **supports** the allegation based on the OIG review of records and witness interviews.

As previously discussed in **Allegations (2), (3), and (5)**, Cohen Publicity and RMA entered into a contract in January 2013 that lasted into September 2014.

On December 16, 2013, the Agreement for Management and Staffing of the West Palm Beach Community Redevelopment Agency and West Palm Beach Redevelopment Activities (Contract) was signed by the Mayor for the City and Mr. Brown for RMA.

Standards

City Code of Ordinances § 2-513(b), states “***No person, firm or corporation having any contractual relation with, or rendering any services to the city, or any department or agency thereof, shall employ, directly or indirectly, the mayor, any member of the city commission, or any department head or director of the city.*** No persons, firm or corporation which has the mayor, member of the city commission, or department head or director as an employee, shall be eligible to be considered to have a contractual relation with or to render for any consideration, services to the city.” [emphasis added]

The Contract, Section 19 **NO CONFLICTS**, 19.3 “***RMA represents that it does not employ, directly or indirectly, the mayor, members of the city commission or any official, department director, head of any City agency, or member of any board, committee or agency of the City.***” [emphasis added] Section 19.9 of the Contract discusses how RMA must notify the City of all potential conflicts of interests or any events described in Section 19.

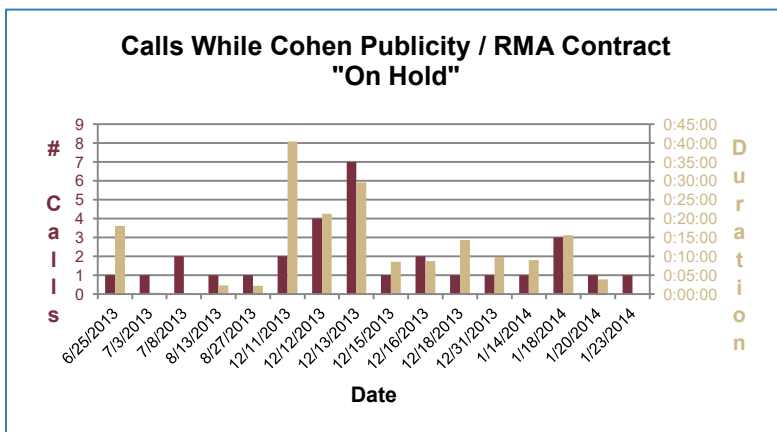
Contact between Mr. Cohen and RMA while their contract was “on hold”

As previously discussed in **Allegation (5)**, on June 21, 2013, Mr. Cohen told RMA principal, Ms. Briesemeister, via email regarding Cohen Publicity’s contract with RMA,

that he wanted to "...until the city completes its process of possibly selecting a firm to run the CRA...it's probably best to put it on hold." Additionally, Ms. Briesemeister told us that "we had a business relationship" when asked about her relationship with Mr. Cohen.

On January 31, 2014, a series of emails was sent between Mr. Cohen's Cohen Publicity email account and Ms. Briesemeister and Mr. Brown discussing moving forward with their contractual agreement, culminating with Ms. Briesemeister saying, "I'm saying again as much as we want you to start again, your boss (Jeff) [Green] has to agree." Mr. Cohen responded by saying, "That's great, because he knows and says it's perfectly fine."

There were 30 phone calls lasting over 3 hours between Mr. Cohen's Cohen Publicity cell phone and either Ms. Briesemeister or Ms. McCormick that occurred after June 21, 2013 and prior to January 31, 2014 while the contract between Cohen Publicity and RMA was "on hold."



Mr. Ostrau told us "RMA had an affirmative obligation to let us [the City] know at the time that they entered the contract that they had an employment relationship with him [Mr. Cohen]. They never did. They never said anything." Mr. Ostrau continued, "So, if it was ongoing it would have been an absolute violation and at that time if he had a contractual relationship it would not only be a violation of that [County Ethics code] but also the State Ethics code 112.313(7)." Mr. Ostrau said he reviewed the file containing RMA's contract with the City and he said "I asked the attorneys in the office if anybody had gotten, when they did the contract, if they had any disclosures cause I pulled the contract." There were not any disclosures.

Based on our supported findings in [Allegations \(3\)](#), [\(5\)](#), and [\(6\)](#), and particularly that RMA did not disclose its business relationship with Mr. Cohen (Cohen Publicity) as required, we consider the entire amount the City has spent to date on the RMA Contract, **\$3,205,611.78** to be questioned costs.

RECOMMENDATIONS

The OIG recommends the following:

1. Take appropriate personnel actions.

2. Take appropriate action to ensure that City employees adhere to General Administration, Chapter 1, Policy 1-2, Public Records Requests.
3. Revise written policies and procedures on outside employment requiring employees to obtain approval for leave or work schedule adjustment prior to performing outside employment during the official business day. They should be clearly communicated to City employees and documented.
4. Establish internal controls that accurately represent actual hours worked by exempt City employees.
5. Review the City's contract with RMA in light of the findings and information provided within this report and take appropriate action.

QUESTIONED COSTS

Questioned Costs: \$3,205,611.78

RESPONSE FROM MANAGEMENT

Pursuant to Article XII, Section 2-427 of the Palm Beach County Code, on September 15, 2016, the City, Elliot Cohen, and RMA were provided the opportunity to submit a written explanation or rebuttal to the findings as stated in this Investigative Report within ten (10) calendar days. On September 21, 2016, the City provided its written response. On September 26, 2016, written responses were provided by Mr. Cohen and RMA. All responses, in their entirety, are attached to this report.

The following addresses the City's response to our recommendations

OIG Recommendation #1: Take appropriate personnel actions.

City's Response, in part: "...the City has determined that no personnel actions are necessary."

OIG Comment: Since Mr. Cohen resigned from his position before this report was issued and the City deems no other personnel actions are necessary, we will close this recommendation.

OIG Recommendation #2: Take appropriate action to ensure that City employees adhere to General Administration, Chapter 1, Policy 1-2, Public Records Requests.

City's Response, in part: "Elliott [sic] Cohen did not review the records but believed that the documents were public records that were reviewed and redacted as required. The release of exempt and confidential information was due to a break down in application of the City of West Palm Beach Public Records policy."

OIG Comment: The “break down in application of the City of West Palm Beach Public Records policy” was due to Mr. Cohen circumventing said policy. In doing so, Mr. Cohen assumed the responsibilities of the Custodian of Public Records which would include the redaction process. Additionally, evidence provided in our report demonstrated that due to Mr. Cohen’s experience in dealing with PRRs, he should have known IT was not responsible for reviewing or redacting. The 2 hours 47 minutes it took Mr. Cohen to receive the LaGrone PRR file from IT (1,073 emails containing 2,224 pages) would have been insufficient time for anyone to review and redact this material.

City’s Response, in part (continued): “The City believes that no further changes are needed at this time. The City will, however, continue to review its public records policy to see if any additional changes can be made to further protect exempt and confidential information.”

OIG Comment: On page 13 of this report, we acknowledge four corrective actions reported by the City to address its PRR process and that the City will continue to review.

OIG Recommendation #3: Revise written policies and procedures on outside employment requiring employees to obtain approval for leave or work schedule adjustment prior to performing outside employment during the official business day. They should be clearly communicated to City employees and documented.

City’s Response, in part: “The City has many checks and balances to assure that employees are working during City work hours...Supervisors are expected to manage their employees in such a manner as to ensure they are expending at least 40 hours per week performing work for the City...The City does not believe that any additional changes to its policies are needed at this time.”

OIG Comment: We agree with the City that supervisors should be expected to manage their employees and have adequate internal controls in place to account for employee time. However, in this particular case, we did not find evidence of sufficient accounting. This contributed to an environment where Mr. Cohen could fluidly move from his City employment to his personal Cohen Publicity work during the “official business day” using City resources paid for by taxpayer dollars.

We urge the City to reconsider our recommendation.

OIG Recommendation #4: Establish internal controls that accurately represent actual hours worked by exempt City employees.

City’s Response, in part: The City provides a description of some of its controls to monitor employee time and states, “The City is comfortable with the controls it already has in place to monitor the actual hours worked by exempt employees.”

OIG Comment: Similar to our comments regarding Recommendation #3, in this particular case we did not find evidence of sufficient controls in place to account for Mr. Cohen's (an exempt employee) time. We could not find nor could the City provide us with sufficient evidence that Mr. Cohen routinely worked 80 hours per pay period.

We urge the City to reconsider our recommendation.

OIG Recommendation #5: Review the City's contract with RMA in light of the findings and information provided within this report and take appropriate action.

City's Response, in part: "The City will review what weight (if any) the non-disclosure had on RMA being awarded the contract. In the event the City determines that it did not have a material effect on the contract award, then no further action will be taken."

OIG Comment: We accept the City's response as a concurrence with our recommendation and will follow-up on its implementation.

The following addresses Mr. Cohen's response²⁵ to our findings
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Mr. Cohen's comments prior to addressing the findings in our report:

Mr. Cohen's Response, in part: "...a request to the OIG to review all the documents and transcripts in their entirety...was denied by the OIG...The OIG cites county ordinances as justification for the refusal, but ignore the question of fundamental fairness of the process."

OIG Comment: Section 2-423(10) of Palm Beach County, Florida – Code of Ordinances, Chapter 2 – Administration, ARTICLE XII – INSPECTOR GENERAL, as well as, § 112.3188(2) and § 119.0713(2)(b), F.S. provides legal requirements related to OIG "confidential and exempt" information. "Fairness" in this case must be measured within these legal standards.

Mr. Cohen's Response, in part: "...the OIG and the City of West Palm Beach have been fighting for several years in court...over the city's refusal to pay what the OIG claims is the city's share of money to fund the OIG office."

OIG Comment: Several municipalities are involved in a lawsuit against Palm Beach County over the County ordinance's OIG funding language. The OIG is not a party to this lawsuit or involved in any funding disputes between the County and some of the municipalities.

²⁵ Reference to page numbers by Mr. Cohen in the OIG Draft report will not match the page numbers in this OIG Final report as Mr. Cohen only received the pages containing the allegations against him, as required by the IG Ordinance.

Mr. Cohen's Response, in part: "At no time was Mr. Cohen interviewed or given an opportunity to provide further information. Mr. Cohen was never afforded the choice to waive any privilege in the interest of providing information."

OIG Comment: Since some of the allegations have been referred to the State Attorney's Office for possible criminal investigation, Mr. Cohen was not interviewed. During the course of our investigation, Mr. Cohen provided, via subpoena, hundreds of pages of documents/evidence. Contrary to Mr. Cohen's assertion, he was afforded the opportunity to provide additional information and or documents as well as respond to the allegations which he took advantage of in his attached written response.

OIG supported finding to Allegation #1: Elliot Cohen improperly disclosed "exempt" and "confidential and exempt" information.

Mr. Cohen's Response, in part: "...the city, which is the only legal entity responsible for...making the determination if any city policy violation occurred..."

OIG Comment: The OIG has authority to determine whether any city policy violations occur. Section 2-422 of Palm Beach County, Florida – Code of Ordinances, Chapter 2 – Administration, ARTICLE XII – INSPECTOR GENERAL states, "The inspector general shall initiate, conduct, supervise and coordinate investigations designed to detect, deter, prevent and eradicate fraud, waste, mismanagement, misconduct, and other abuses by elected and appointed county and municipal officials and employees." Section 2-423(2) states, "The inspector general shall conduct investigations and audits in accordance with applicable laws, rules, regulations, policies and past practices." Therefore, Mr. Cohen incorrectly asserts that the City "is the only legal entity responsible for...making the determination if any city policy violation occurred..."

Mr. Cohen is correct in stating the City is responsible "for enforcing all city policies." He is also correct in that the City's October 26, 2015 response to our Management Inquiry stated that the release of the confidential and exempt information was a "break down in application of the City of West Palm Beach Public Records policy." From our further investigation, we concluded the root cause of the "break down" was Mr. Cohen not following the written policy.

Mr. Cohen's Response, in part: "...the city...determined a year ago there was no violation of policy. A third party OIG opinion a year after the fact and expressed in this report does not change that determination."

OIG Comment: The OIG is not a "third party," but an "independent" investigative office as described in Section 2-422 of Palm Beach County, Florida – Code of Ordinances, Chapter 2 – Administration, ARTICLE XII – INSPECTOR GENERAL. As mentioned in our report and above in our response to the City, the "break down in application of the City of West Palm Beach Public Records policy" was due to Mr.

Cohen circumventing said policy. In doing so, Mr. Cohen assumed the responsibilities of the Custodian of Public Records which would include ensuring the records were redacted before they were released.

OIG supported finding to Allegation #2: Elliot Cohen used his position at the City, as well as, City time and resources to conduct his private business, Cohen Publicity.

Mr. Cohen's Response in part: Mr. Cohen quotes the City's October 26, 2015 report: "Based on the information reviewed, there has been **no evidence found to support the allegation** that Elliot Cohen is operating a private business during 'his City work hours.'" [emphasis added by Mr. Cohen] Mr. Cohen addresses some of the issues regarding his time and attendance. He did not address the issues of abuse of his position and use of City resources for his personal business (Cohen Publicity).

OIG Comment: We investigated and supported the allegation that Mr. Cohen used City resources during the City's "official business day," as defined by West Palm Beach General Administration Chapter 4, Policy 4-6, to conduct his private business, Cohen Publicity. Neither the City nor Mr. Cohen provided any information to show that his supervisor approved an alternate work schedule in writing as required by the City's policy. Furthermore, as mentioned in our report and reiterated in our response to the City regarding Recommendations #3 and #4, we did not find evidence of sufficient controls in place by the City to account for Mr. Cohen's work time.

OIG supported finding to Allegation #3: Elliot Cohen had a contractual relationship with City contractor Redevelopment Management Associates.

Mr. Cohen's Response, in part: "Following an investigation by the Commission [Palm Beach County on Ethics] and a probable cause hearing before Commissioners, 'the Commission concluded no probable cause exists to believe any violation occurred.'"

OIG Comment: The COE investigated and ruled on the County Code of Ethics. We investigated § 112.313(7)(a), F.S., as well as, City of West Palm Beach Code of Ordinances, Chapter 2, Article VII, Division 2, § 2-513(a). Due to our supported finding, we have made a referral to the State Attorney's Office for possible criminal investigation and the Florida Commission on Ethics for any actions they deem appropriate regarding § 112.313(7)(a), F.S.

OIG Allegation #4: Elliot Cohen misused his official public office or employment to solicit business for Cohen Publicity.

Mr. Cohen's Response: "No action was taken on this matter. No work was performed."

OIG Comment: We did not make a determination on this allegation as it was referred to the PBC COE, State Attorney's Office for possible criminal investigation, and the Florida Commission on Ethics for any actions they deem appropriate.

The following addresses RMA's response to our findings

OIG supported finding to Allegation #5: Redevelopment Management Associates did not disclose its business relationship with Elliot Cohen (Cohen Publicity) to the City of West Palm Beach Procurement Official during the procurement process for RFQL 12-13-407.

RMA's Response, in part: "During the timeframe in question, the parties had no ongoing business relationship...the consulting agreement was suspended by mutual consent...Accordingly, the parties had no understanding or agreement resembling a current or ongoing business relationship when the CRA procurement was under review by the City..."

OIG Comment: The contract between RMA and Mr. Cohen (Cohen Publicity) signed on January 9, 2013 continued until terminated on September 4, 2014. As a result of Mr. Cohen's email to Ms. Briesemeister, they agreed to put any work performed by Cohen for RMA "on hold" until the selection process ended. However, having an ongoing contract with work "on hold," was still an ongoing contract that was in effect during the time RMA responded to the RFQL, as well as, throughout the entire procurement process. Indeed, Mr. Cohen argued before the COE that the contract was maintained in effect throughout the procurement process, albeit "suspended." On her own accord and without consulting, or even informing, the City procurement officials (as required by Attachment C to the RFQL), Ms. Briesemeister determined this relieved RMA from its responsibility to disclose its business relationship with Mr. Cohen. The RFQL, General Terms and Conditions, Ethics Requirements, allows for "Any affected party may seek a conflict of interest opinion from the State of Florida Ethics Commission and/or Palm Beach County Ethics Commission regarding conflict of interest provisions." There is no evidence that RMA sought an opinion from either entity. During our interview with the City Ethics Officer (whom Ms. Briesemeister neither consulted nor informed about this issue) he stated, "They [RMA] had an obligation to disclose if they had any relationship prior to this...they [RMA] have an affirmative obligation."

OIG supported finding to Allegation #6: Redevelopment Management Associates did not properly disclose its business relationship with Elliot Cohen (Cohen Publicity) to the City of West Palm Beach once it was awarded the contract for RFQL 12-13-407.

RMA's Response, in part: "...the only reason the relationship was resumed in the spring of 2014 was based on assurances RMA received from Cohen indicating the City Manager (Cohen's superior) had no objections to the parties restarting their relationship...any business relationship that took effect after the CRA contract was signed had been approved by the City Manager."

OIG Comment: The Agreement for Management and Staffing of the West Palm Beach Community Redevelopment Agency and West Palm Beach Redevelopment Activities does not give Mr. Green as the City Manager nor any other City employee the authority to waive RMA's obligation to disclose under 19.3 or 19.9 of their agreement. Moreover, Mr. Green as the City Manager nor any other City employee has the authority to waive RMA's obligation to adhere to the requirement of the City of West Palm Beach Code of Ordinances, Chapter 2, Article VII, Division 2, § 2-513(b).

RMA's assertion regarding "antilobbying violations"

RMA's assertion, in part: "It is curious to note that there are no allegations of contact between Cohen and RMA until December 11, 2013...The records show that Cohen (as a representative of the City) had contacted Briesemeister on December 11th to advise her that the Mayor would be recommending RMA for award of the CRA contract...Moreover, the City had been in contact with Briesemeister before December 11, 2013...the City Manager, and Assistant City Attorney Suzanne Payson had frequent discussions with RMA regarding a potential agreement between the two parties during the months of November and December 2013."

OIG Comment: As a point of fact, neither our Draft report nor our Final report contains an allegation of prohibited lobbying. Because RMA has addressed this issue, we will comment. The City of West Palm Beach Code of Ordinances Chapter 66, Article I, § 66-8 - Prohibited lobbying, states:

"No person, firm, corporation, or others *representing such* person, *firm*, or corporation *shall contact* or lobby the mayor, the city commissioner, *city staff*, or evaluation committee member in person, *by telephone*, in writing, by e-mail, or any other means of communication, *regarding the procurement of* goods, *services*, or construction *from the time the intent to procure such* goods, *services*, or construction *is advertised to the time of completed procurement*.²⁶ *The only permissible contact regarding a procurement solicitation shall be with the procurement official or with the evaluation committee at a duly noticed public meeting.*" [emphasis added]

RFQL 12-13-407 was posted on the City's Procurement website on September 4, 2013 which would be the start of the no lobbying period as defined by "the time the intent to procure such goods, services, or construction is advertised." December 16, 2013, was the date the City had an executed contract which would be the end of the no lobbying period as defined by "Completed procurement means the occurrence of

²⁶ As defined in the City of West Palm Beach Code of Ordinances Chapter 66, Article I, § 66-4(b), Completed procurement means the occurrence of the following: the city has executed a contract for the goods, services, or construction procured; and any appeals regarding the procurement have been resolved; or the city has determined that such goods, services, or construction are no longer needed and no further procurement solicitation will be issued.

the following: the city has executed a contract for the goods, services, or construction procured." Many of these contacts admitted to by RMA in its response appear to be in conflict with the City's Prohibited lobbying ordinance.

This Investigation has been conducted in accordance with the ASSOCIATION OF INSPECTORS GENERAL Principles & Quality Standards for Investigations.

ATTACHMENT A

Individuals Mentioned in this Report

Individual	Title
Alleyne, Alicia	RMA Project & Marketing Coordinator
Bernhardt, David	City Police Captain
Brevik, Christine	City Assistant Director of IT-at the time
Briesemeister, Kim	RMA Managing Member
Brown, Christopher	RMA Principal-in Charge
Carson, Hazeline "Hazel"	City Clerk
Cohen, Elliot	City Director of Communications
Davila, Danielle	City Police Services Supervisor
Green, Jeffrey	City Administrator
Gregory, Sylvia	City Compensation and Employment Manager-at the time
Grosch, Josephine	City Senior Purchasing Agent
Hayden, Festus "Frank"	City Procurement Official-at the time
Johnson, Venice	City Deputy City Clerk-at the time
Kummerlen, Bryan	City Chief of Police
LaGrone, Katie	WPTV Reporter
Lesson, Nicole	Town of Miami Lakes Communications Manager and Public Information Officer
McCormick, Sharon	RMA Director of Marketing
McKenna, Claudia	City Attorney-at the time
McNeil, Jomekeyia	City Deputy Clerk
Miller, Dorritt	City Deputy City Administrator
Muoio, Geraldine "Jeri"	City Mayor
Nardoni, Renato	City Interim Director of IT-at the time
Ostrau, Norman	City Ethics Officer
Roog, Christopher	City Director of Economic Development
Rothenberg, Kimberly	City Attorney
Sackmann, Rita	City Computer Operator
Stone, Susan	City Systems Administrator
Townsley, David	PBC Convention Center Director of Event Technology
Williamson, Chandler	City of Pahokee City Manager
Young, Diana	Town of Miami Lakes Community Affairs Manager



City Administration
401 Clematis Street
West Palm Beach FL 33401
Office: 561-822-1400
Fax: 561-822-1424

October 26, 2015

Attention: Evangeline Rentz – Intake Manager
Office of the Inspector General
Palm Beach County
P. O. Box 16568
West Palm Beach, FL 33416-6568

Dear Ms. Rentz:

Issue 1

What process does the City of West Palm Beach use to ensure that confidential and exempt information is not released to the public in response to a public records request?

The City follows the dictates of Florida Statute Chapter 119 when providing access to public records. The City of West Palm Beach has adopted a comprehensive Public Records Policy, Policy 1-2, and the West Palm Beach Police Department has adopted Standard Operating Procedure II-17. Both policies require that exempt and confidential information be redacted prior to producing records in response to a public record request. A copy of each policy is attached for your record.

Did Mr. Cohen cause the City to release confidential and exempt information relating to the West Palm Beach Police Department and other local and federal agencies? If so, what has been done to correct any deficiencies in your process to ensure that the release of confidential and exempt information does not occur again?

The City Clerk is the custodian of all official City documents and each department head or his/her designee is a Custodian of Public Records. See Policy 1-2, Definitions. Any City employee who receives a public records request should comply as soon as practicable by either referring the request to a department supervisor or providing review and/or a copy of the information requested. See Policy 1-2(B)(5). Records which are exempt shall not be produced or copied in response to a public records request. See Policy 1-2(D)(2).

Requests from media organizations, e.g. newspapers, television stations, and radio stations shall be coordinated with the City's Public Information Officer. See Policy 1-2(A)(4). In practice, once the department has compiled the records responsive to a public records request and redacted exempt or confidential information, the responding department would provide the records to Elliot Cohen who would disseminate the records to the media. In the request that gave rise to

this inquiry, the media requested e-mail communications directly from Elliot Cohen. Once the I.T. department completed compiling the e-mails, it provided the records to Elliot Cohen without review for redaction by the police department. Elliot Cohen was not required to review, and did not review the records, but believed that the documents were public records that were reviewed and redacted by the departments as required by the City's public records policy.

The release of exempt and confidential information was due to a break down in application of the City of West Palm Beach Public Records policy. Elliot Cohen requested documents responsive to a media records request, received documents, and released the documents supplied. Of the over 2000 e-mails produced, some contained confidential information that should have been reviewed and redacted prior to release.

Based on the City's existing policies, all e-mails are to be considered public records and should not be regarded as private communications and any documents containing confidential and exempt information are required to be redacted prior to being released. In this case, the protected information was included in public e-mails and was not redacted prior to release. To address the break down in the City's process, the City made the following changes:

1. Media records requests will be processed directly through the City Clerk's office;
2. All e-mails compiled by the City's Information Technology Department will be sent to the primary department responding to the public records request. The primary responding department will review the records and will be responsible for redacting any confidential and exempt information;
3. The Police Department will be the primary department in any search that deals with any police matters;
4. Police e-mails will be stored on a server not connected with the City of West Palm Beach's main server; and
5. The City will continue to review its public records policy to see if any additional changes can be made to further protect exempt and confidential information.

Issue 2

Is Mr. Cohen operating a private business during his City work hours?

Based on the information reviewed, there has been no evidence found to support the allegation that Elliot Cohen is operating a private business during "his City work hours." Mr. Cohen is an exempt employee of the City of West Palm Beach. The regular work schedule for employees in business offices open to the public is Monday through Friday from 8:00 a.m. to 5:00 p.m. However, Elliot Cohen does not work a regular work schedule but rather works a flexible work schedule with the approval of the Mayor and City Administrator.

As an exempt employee, Elliot Cohen is required to be available whenever needed. His day could start well before 8:00 a.m. or stretch well beyond 5:00 p.m. For example in December of 2014, Elliot Cohen was on vacation from December 22nd through December 29th. However,

during that time Elliot Cohen was available to administration and responded to inquiries including requests from Deputy City Administrator Dorritt Miller and Mayor Muoio. He also works on Holidays, weekends, and while taking sick and vacation time. Additionally, Elliot Cohen's phone records reveal work related calls made as early as 6:45 a.m. and as late as 10:45p.m. Similarly, his e-mails reflect correspondence as early as 6:37a.m. and as late as 10:33 p.m. He places and receives e-mail and phone calls on the weekend, holidays, and while taking vacation and sick days.

What process and procedures are in place to ensure that Mr. Cohen is not performing work for his private business during his City work hours?

The City has implemented policies to limit use of City phone and e-mail use for personal reasons. City's computer policy allows for limited personal use of e-mail and internet access provided that the use concurs with an employee's personal time, that is lunch breaks, before or after work, or on weekends, and in accordance with individual departmental rules, if any. See Policy 1-28(a)(10). However, no personal commercial activity is permitted. The City's telephone policy states that City telephones are to be used primarily for business purposes. See Policy 1-42(B). The City's Cellular Device and Stipend Policy states that City rules prohibit excessive use of City time for personal business. See Policy 1-44 (I)(A). It further specifies that City issued cellular devices are to be used solely for City business. Personal phone calls are not allowed except in emergencies. See Policy 1-44(IV)(C).

In addition to written standards, the City has many checks and balances to assure that employees do not work for private business during City work hours. The City's information technology managers review electronic communications activity and analyze usage patterns. The City also investigates allegations of misuse of time when the allegations are made or misuse is suspected. Additionally, all City employees who engage in outside employment are required to complete the Commission on Ethics Employee Conflict of Interest Waiver where the employee declares under oath that the outside employment will not interfere or otherwise impair the employee's independent judgment or the full and faithful performance of his public duties.

Finally, Mayor Muoio reviews Elliot Cohen's work. Mayor Muoio is satisfied with the work performance of Elliot Cohen and stated that he is available when needed and completes all tasks given in a timely manner.

What actions has the City taken to investigate whether Mr. Cohen is operating his private business during his City work hours, such as: reviewing his e-mails, cell phone records, work activities, etc.?

To date, the City has performed interviews and reviewed records summarized as follows:

- 1) Interviews were conducted with Ren Nardoni , Elliot Cohen, Jeff Green, and Mayor Muoio.

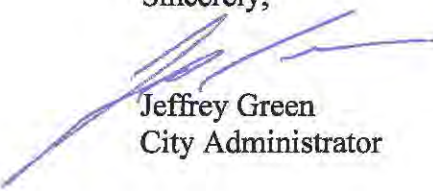
- 2) Reviews of Elliot Cohen's City e-mails from January 2015 to September 2015, including the specific dates listed in the Miami Lakes billing records; City phone and time records going back approximately one year; Commission on Ethics Employee Conflict of Interest Waiver; and Town of Miami Lakes invoices were conducted.

Any other information you believe would assist in our review of these allegations.

After reviewing the Miami Lakes billing records it appears that Elliot Cohen billed 26 hours for work that was performed Monday through Friday from January through April 2015. Three of those entries were for meetings with the client that likely occurred between the hours of 8:00 a.m. and 5:00 p.m. The client meetings occurred on January 12, 2015; January 21, 2015 and March 11, 2015. Even if one were to assume that all 26 hours were between 8:00 a.m. and 5:00 p.m. (hereinafter referred to as "regular work hours"), Elliot Cohen performed at least 43 hours of work for the City outside the regular work hours for January through April 2015. The 43 hours only accounts for actual calls made and for attendance at Commission Meetings. It does not take into consideration work that was done before or after regular work hours, such as work on the State of the City Address done by Elliot Cohen on January 19, 2015, Martin Luther King's Birthday.

The City is currently considering changes in policy that would prohibit exempt employees who are director or above from performing any work for an outside employer during regular work hours.

Sincerely,



Jeffrey Green
City Administrator



City Administration
401 Clematis Street
West Palm Beach FL 33401
561-822-1400
Fax: 561-822-1424

September 21, 2016

Mr. John Carey, Inspector General
Office of Inspector General
Palm Beach County
P.O. Box 16568
West Palm Beach, FL 33416-6568

Re: OIG Case No. 2016-0002

Dear Mr. Carey:

We are in receipt of your report draft on OIG Case Number 2016-002. We wish to provide to you the following comments regarding your recommendations:

Recommendation 1 – Take appropriate personnel actions.

Response:

After reviewing your report, the City has determined that no personnel actions are necessary.

Recommendation 2 – Take appropriate action to ensure that City employees adhere to General Administration, Chapter 1, Policy 1-2 Public Records Requests.

Response:

As discussed, in our letter to you dated October 26, 2015, the City explained its public records policy and the changes it made as a result of the improper release of exempt or confidential information.

The City Clerk is the custodian of all official City documents and each department head or his/her designee is a Custodian of Public Records. See Policy 1-2, Definitions. Any City employee who receives a public records request should comply as soon as practicable by either referring the request to a department supervisor or providing review and/or a copy of the information requested. See Policy 1-2(B)(5). Records which are exempt shall not be produced or copied in response to a public records request. See Policy 1-2(D)(2).

Requests from media organizations, e.g. newspapers, television stations, and radio stations shall be coordinated with the City's Public Information Officer. See Policy 1-2(A)(4). In practice, once the department had compiled the records responsive to a public records request and redacted exempt or confidential information, the responding department would provide the records to the City's PIO who would disseminate the records to the media. In the request that

gave rise to this inquiry, the media requested e-mail communications directly from Elliot Cohen. Once the I.T. department completed compiling the e-mails, it provided the records to Elliot Cohen without review for redaction by the police department. Elliott Cohen did not review the records but believed that the documents were public records that were reviewed and redacted as required.

The release of exempt and confidential information was due to a break down in application of the City of West Palm Beach Public Records policy.

Based on the City's existing policies, all e-mails are to be considered public records and should not be regarded as private communications and any documents containing confidential and exempt information is required to be redacted prior to being released. In this case, the protected information was included in public e-mails and was not redacted prior to release. To address the break down in the City's process, the City made the following changes in October 2015:

1. Media records requests are now processed directly through the City Clerk's office;
2. All e-mails compiled by the City's Information Technology Department are sent to the primary department (via the City Clerk's office) responding to the public records request. The primary responding department will review the records and will be responsible for redacting any confidential and exempt information;
3. The Police Department is the primary department in any search that deals with any police matters;
4. The IT department is currently planning for an email migration from Lotus Notes to Microsoft Office 365. As part of this planning, the City will create a separate email domain for the Police Department or other architecture that is compliant with FDLE/CJIS requirements. In addition, since October, 2015, the IT department has required all employees with access to systems storing police related data to complete all CJIS certification requirements

The City believes that no further changes are needed at this time. The City will, however, continue to review its public records policy to see if any additional changes can be made to further protect exempt and confidential information.

Recommendation 3 – Revise written policies and procedures on outside employment requiring employees to obtain approval for leave or work schedule adjustment prior to performing outside employment during the official business day. They should be clearly communicated to City employees and documented.

Response:

The City has many checks and balances to assure that employees are working during City work hours. Exempt employees are required to biometrically scan their finger into the City's Kronos time system each day that they are at work for the City. Supervisors are expected to manage their employees in such a manner as to ensure they are expending at least 40 hours per week performing work for the City. They accomplish this through a variety of different means

including project plans with objectives and milestones, on-sight observations, and the use of project calendars.

It should be noted that because of the nature of city operations, many exempt employees are asked to perform services during hours outside the standard work week. As a result, many of the City's exempt employees put in much more than 40 hours during a standard work week. As such, the City gives supervisors discretion as to how best schedule these employees.

The City does not believe that any additional changes to its policies are needed at this time.

Recommendation 4 – Establish internal controls that accurately represent actual hours worked by exempt City employees.

Response:

The City is comfortable with the controls it already has in place to monitor the actual hours worked by exempt employees. As discussed in our letter dated October 26, 2015, the City currently has policies to limit use of City phone and e-mail use for personal reasons. The City's computer policy allows for limited personal use of e-mail and internet access provided that the use concurs with an employee's personal time, that is lunch breaks, before or after work, or on weekends, and in accordance with individual departmental rules, if any. See Policy 1-28(a)(10). However, no personal commercial activity is permitted. The City's telephone policy states that City telephones are to be used primarily for business purposes. See Policy 1-42(B). The City's Cellular Device and Stipend Policy states that City rules prohibit excessive use of City time for personal business. See Policy 1-44 (I)(A). It further specifies that City issued cellular devices are to be used solely for City business. Personal phone calls are not allowed except in emergencies. See Policy 1-44(IV)(C).

The City's information technology managers review electronic communications activity and analyze usage patterns. The City also investigates allegations of misuse of time when the allegations are made or misuse is suspected. Additionally, all City employees who engage in outside employment are required to complete the Commission on Ethics Employee Conflict of Interest Waiver where the employee declares under oath that the outside employment will not interfere or otherwise impair the employee's independent judgment or the full and faithful performance of his public duties.

As discussed in response number 3 above, in addition to written standards, the City has many checks and balances to assure that employees are working during City work hours. Exempt employees are required to biometrically scan their finger into the City's Kronos time system each day that they are at work for the City. Supervisors are expected to manage their employees in such a manner as to ensure they are expending at least 40 hours per week performing work for the City. They accomplish this through a variety of different means including project plans with objectives and milestones, on-sight observations, and the use of project calendars.

It should be noted that because of the nature of city operations, many exempt employees are asked to perform services during hours outside the standard work week. As a result, many of the

City's exempt employees put in much more than 40 hours a week. As such, the City gives supervisors discretion as to how best schedule these employees.

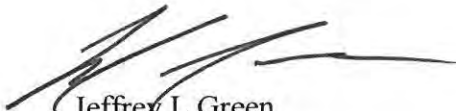
Recommendation 5 – Review the City's contract with RMA in light of the findings and information provided within this report and take appropriate action.

Response:

The City will review what weight (if any) the non-disclosure had on RMA being awarded the contract. In the event the City determines that it did not have a material effect on the contract award, then no further action will be taken. The initial term of the existing contract with RMA is set to expire on December 31, 2016. Prior to that date the City will decide whether to extend this contract or to terminate it and do a new RFP process.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey L Green', with a stylized flourish extending to the right.

Jeffrey L Green
City Administrator

September 26, 2016

Jeff Himmel, Director of Investigations
Office of Inspector General
PO Box 16568
West Palm Beach, FL 33416
E: inspector@pbcgov.org

Re: Response to draft report 2016-002

Pursuant to the opportunity afforded by ordinance, below is a response to draft report 2016-002.

It should be noted for the record that the OIG report relies on selected excerpts from interviews and documents to support its case. While the legal system requires all evidence be provided to both sides, a request to the OIG to review all the documents and transcripts in their entirety in order to prepare a comprehensive response and ensure excerpts were portrayed in their proper context was denied by the OIG (see attached emails). The OIG cites county ordinances as justification for the refusal, but ignores the question of fundamental fairness of the process.

It should also be noted that the OIG and the City of West Palm Beach have been fighting for several years in court and continue to fight each other in a court of law over the city's refusal to pay what the OIG claims is the city's share of money to fund the OIG office. This dispute has spilled into the public arena.

It should finally be noted that despite numerous assurances from the Inspector General himself to city staff that his office would contact Mr. Cohen and offer him a chance to provide information, Mr. Cohen was never contacted by the OIG for the purposes of gathering information. He was never afforded an opportunity to provide evidence, documents or testimony prior to this report. At no time was Mr. Cohen interviewed or given an opportunity to provide further information. Mr. Cohen was never afforded the choice to waive any privilege in the interest of providing information.

Finding (1):

A PRIOR REVIEW ALREADY FOUND NO VIOLATION

It is regretful that any improper information was released, but the city, which is the ***only*** legal entity responsible for enforcing all city policies and making the determination if any city policy violation occurred **determined a year ago there**

was no violation of policy. A third party OIG opinion a year after the fact and expressed in this report does not change that determination.

Following an internal investigation, and detailed in a letter to the OIG dated October 26, 2015 the city informed the OIG the resulting release of information was a **“break down in the City’s process.”** (OIG Attachment B)

There is no evidence that any improper information was intentionally released.

The media request was handled by the PIO office, per city policy. City of West Palm Beach General Administration Policy 1-2, entitled “Public Records Request” signed into effect December 3, 2009 was the policy in effect September 2015. It clearly states “requests from media organizations, e.g. newspapers, television stations, and radio stations, ***shall be*** [emphasis added] coordinated with the City’s Public Information Officer.”

The OIG report states previous instances demonstrate “Mr. Cohen’s knowledge of: the need for review and redaction.” (OIG pg. 8) The issue was not whether anyone knew the emails required review. The issue was who was responsible for doing the reviewing.

The OIG report itself quotes West Palm Beach Mayor Jeri Muoio as saying redaction was **“not something [Mr. Cohen was] responsible for.”** (OIG pg. 5)”

The break down in process occurred in the IT department. For many years, media email requests were handled by one individual in the IT department. The IT department would process the request, send it to any relevant department for redaction and provide the redacted information. It was not the practice for the PIO to review the material. The PIO is not qualified or required to determine what information should be redacted.

For example, if a request included emails from the legal department, it was up to city attorneys to review the information and determine what was considered privileged information. A PIO is not qualified or expected to make such legal determinations.

The individual who had been handling email requests left the city IT department, and the break down occurred when his replacement was not properly trained or supervised under a new IT director as to how to handle the requests.

Finding (2)

A PRIOR REVIEW – AND THE OIG - FOUND NO VIOLATIONS

OIG EXCLUDED RECORDS SHOWING ADDITIONAL CITY-RELATED WORK

The city, which is the **only** legal entity responsible for enforcing all city policies and making the determination if any city policy violation occurred **determined a year ago there was no violation of policy. A third party OIG opinion a year after the fact and expressed in this report does not change that determination.**

The OIG itself admits it “could not with reasonable assurance determine” (pg. 18) if any city policy had been violated.

City policy **does not prohibit** personal calls on city office phones. Infrequent non-city related calls are allowed.

Following an internal investigation in 2015, and detailed in a letter to the OIG dated October 26, 2015 the city stated:

“Based on the information reviewed, there has been **no evidence found to support the allegation** that Elliot Cohen is operating a private business during “his City work hours.” (OIG Attachment B)

FLEX HOURS PERMITTED

The October 26, 2015 letter further states:

“Elliot Cohen does not work a regular work schedule but rather works a flexible work schedule with the approval of the Mayor and City Administrator. As an exempt employee, Elliot Cohen is required to be available whenever needed. His day could start well before 8:00 a.m. or stretch well beyond 5:00 p.m. For example, in December of 2014, Elliot Cohen was on vacation from December 22nd through December 29th. However, during that time Elliot Cohen was available to administration and responded to inquiries including requests from Deputy City Administrator Dorritt Miller and Mayor Muoio. He also works on Holidays, weekends, and while taking sick and vacation time.” (OIG Attachment B)

A MORE ACCURATE REVIEW OF TIME SPENT

The OIG report reconstructs several timelines that give the impression of something improper. Included in the OIG reconstruction is a review of **personal** cell phone records. ***(It should be noted that nothing prohibits the making or receiving of personal calls on a personal cell phone during the work day).***

What the OIG has excluded for the same period of time are the **city** cell phone records that document when city-related business was taking place. **These records were provided to the OIG. The OIG’s motive for excluding these records is unclear.** Although noted again is the fact that the OIG and City of West Palm Beach continue to fight each other in a multi-year legal battle during which the city has refused to fund the OIG’s office.

The OIG itself admits it “could not with reasonable assurance determine whether he was or was not working for his Cohen Publicity business while being paid by the city (pg.18).”

The OIG raises the issue of “time paid to public servants to work a day’s wage for a day’s pay” (OIG pg. 18) Yet a more thorough review, which includes a review of Mr. Cohen’s ***city cell phone records*** indicates numerous examples of public work conducted on behalf of taxpayers before and after regular business hours, on weekends, while on vacation, during holidays and out sick. Exempt employees ***receive no additional compensation or overtime*** for work done outside regular business hours. Therefore, a more complete review of ***all available records*** portrays a vastly different picture.

Below is a list of calls related to ***city*** business conducted before and after regular business hours, on weekends, while on vacation, during holidays and while on sick leave. The representative time period (March, 2015 – July 2015) corresponds to the weeks/months in 2015 detailed by the OIG. (Other phone records were not available during the limited ten-day window provided to respond to the OIG report.)

<u>Date</u>	<u>Time</u>	<u>Number</u>	
March 25, 2015	5:34pm	AFTER HOURS	city department director
March 25, 2015	5:39pm	AFTER HOURS	city vendor
March 26, 2015	8:58am	ON VACATION	News media call
March 26, 2015	8:59am	ON VACATION	city department director
March 26, 2015	10:57am	ON VACATION	city hall
March 26, 2015	1:25pm	ON VACATION	city hall
March 26, 2015	1:54pm	ON VACATION	city attorney
March 26, 2015	1:56pm	ON VACATION	city hall
March 26, 2015	3:13pm	ON VACATION	city hall
March 26, 2015	3:14pm	ON VACATION	Mayor’s Chief of Staff
March 26, 2015	3:37pm	ON VACATION	city administrator
April 6, 2015	1:17pm	OUT SICK	News media call
April 6, 2015	2:59pm	OUT SICK	WPB Fire Rescue
April 6, 2015	3:01pm	OUT SICK	News media call
April 6, 2015	4:32pm	OUT SICK	city hall
April 6, 2015	4:33pm	OUT SICK	city hall
April 6, 2015	4:35pm	OUT SICK	News media call
April 6, 2015	4:38pm	OUT SICK	city hall
April 6, 2015	4:47pm	OUT SICK	city voicemail
April 6, 2015	4:50pm	OUT SICK	city voicemail
April 6, 2015	6:26pm	OUT SICK	
		AFTER HOURS	News media call
April 7, 2015	9:04pm	AFTER HOURS	News media call
April 7, 2015	9:08pm	AFTER HOURS	mayor
April 8, 2015	7:43am	BEFORE HOURS	city voicemail

April 8, 2015	7:53am	BEFORE HOURS	city department director
April 8, 2015	5:01pm	AFTER HOURS	city administrator
April 8, 2015	6:09pm	AFTER HOURS	All Aboard Florida rep
April 8, 2015	6:23pm	AFTER HOURS	city department director
April 8, 2015	8:24pm	AFTER HOURS	city administrator
April 8, 2015	8:28pm	AFTER HOURS	All Aboard Florida rep
April 8, 2015	8:29pm	AFTER HOURS	All Aboard Florida rep
April 8, 2015	8:30pm	AFTER HOURS	All Aboard Florida rep
April 8, 2015	9:09pm	AFTER HOURS	All Aboard Florida rep
April 8, 2015	9:14pm	AFTER HOURS	All Aboard Florida rep
April 8, 2015	9:28pm	AFTER HOURS	city administrator
April 10, 2015	7:28am	BEFORE HOURS	News Media call
April 14, 2015	6:54pm	AFTER HOURS	city department director
April 14, 2015	6:56pm	AFTER HOURS	city voicemail
April 14, 2015	6:58pm	AFTER HOURS	city administrator
April 14, 2015	7:37pm	AFTER HOURS	city department director
April 15, 2015	7:52am	BEFORE HOURS	News media call
April 15, 2015	7:54am	BEFORE HOURS	News media call
April 15, 2015	7:56am	BEFORE HOURS	News media call
April 15, 2015	5:11pm	AFTER HOURS	News media call
April 15, 2015	5:12pm	AFTER HOURS	city hall
April 15, 2015	5:14pm	AFTER HOURS	News media call
April 15, 2015	5:35pm	AFTER HOURS	city voicemail
April 16, 2015	5:29pm	AFTER HOURS	city department director
April 17, 2015	6:28pm	AFTER HOURS	city vendor
April 20, 2015	7:58am	BEFORE HOURS	city TV station employee
April 20, 2015	7:59am	BEFORE HOURS	city hall
April 21, 2015	7:38am	BEFORE HOURS	Mayor's chief of staff
April 21, 2015	7:53am	BEFORE HOURS	Mayor's chief of staff
April 21, 2015	5:21pm	AFTER HOURS	News media call
April 21, 2015	5:40pm	AFTER HOURS	News media call
April 21, 2015	6:09pm	AFTER HOURS	News media call
April 21, 2015	6:16pm	AFTER HOURS	News media call
April 21, 2015	7:13pm	AFTER HOURS	mayor
April 21, 2015	7:58pm	AFTER HOURS	mayor
April 21, 2015	9:08pm	AFTER HOURS	city administrator
April 21, 2015	9:14pm	AFTER HOURS	city administrator
April 21, 2015	9:16pm	AFTER HOURS	city department director
April 21, 2015	9:26pm	AFTER HOURS	city department director
April 21, 2015	9:42pm	AFTER HOURS	city administrator
April 22, 2015	7:40am	BEFORE HOURS	mayor
April 22, 2015	7:44am	BEFORE HOURS	city administrator
April 22, 2015	7:45am	BEFORE HOURS	city department director
April 22, 2015	7:46am	BEFORE HOURS	city administrator
April 22, 2015	7:55am	BEFORE HOURS	city voicemail
April 22, 2015	7:58am	BEFORE HOURS	city voicemail
April 22, 2015	6:31pm	AFTER HOURS	city voicemail

April 22, 2015	6:52pm	AFTER HOURS	city attorney
April 22, 2015	6:55pm	AFTER HOURS	city attorney
April 23, 2015	5:02pm	AFTER HOURS	city vendor
April 23, 2015	6:44pm	AFTER HOURS	mayor
April 23, 2015	7:10pm	AFTER HOURS	mayor
April 23, 2015	7:21pm	AFTER HOURS	city department director
April 23, 2015	7:24pm	AFTER HOURS	city department director
April 23, 2015	7:46pm	AFTER HOURS	News media call
April 23, 2015	7:54pm	AFTER HOURS	city administrator
April 23, 2015	10:51m	AFTER HOURS	News media call
April 23, 2015	10:55pm	AFTER HOURS	News media call
April 24, 2015	5:23pm	AFTER HOURS	city administrator
April 24, 2015	6:41pm	AFTER HOURS	city vendor
April 27, 2015	11:14pm	AFTER HOURS	News media call
April 29, 2015	5:02pm	AFTER HOURS	city commissioner
April 29, 2015	5:26pm	AFTER HOURS	News media call
April 29, 2015	5:27pm	AFTER HOURS	News media call
April 29, 2015	5:30pm	AFTER HOURS	city commissioner
April 29, 2015	5:59pm	AFTER HOURS	News media call
May 1, 2015	5:25pm	AFTER HOURS	Asst. city administrator
May 1, 2015	6:45pm	AFTER HOURS	Asst. city administrator
May 4, 2015	11:08am	ON VACATION	city department director
May 4, 2015	11:11am	ON VACATION	News media call
May 4, 2015	11:13am	ON VACATION	city department director
May 4, 2015	11:45am	ON VACATION	city hall
May 4, 2015	11:52am	ON VACATION	city hall
May 4, 2015	12:28pm	ON VACATION	News media call
May 4, 2015	12:32pm	ON VACATION	News media call
May 5, 2015	11:20am	ON VACATION	city voicemail
May 5, 2015	11:24am	ON VACATION	city hall
May 5, 2015	11:27am	ON VACATION	city hall
May 5, 2015	11:28am	ON VACATION	city hall
May 5, 2015	11:32am	ON VACATION	city hall
May 5, 2015	12:50pm	ON VACATION	city voicemail
May 5, 2015	1:39pm	ON VACATION	city hall
May 5, 2015	1:40pm	ON VACATION	city hall
May 5, 2015	1:44pm	ON VACATION	city hall
May 5, 2015	1:45pm	ON VACATION	city hall
May 5, 2015	1:49pm	ON VACATION	city department director
May 5, 2015	2:32pm	ON VACATION	News media call
May 5, 2015	3:02pm	ON VACATION	city department director
May 5, 2015	3:03pm	ON VACATION	city hall
May 5, 2015	3:04pm	ON VACATION	city department director
May 5, 2015	3:30pm	ON VACATION	city voicemail
May 5, 2015	3:40pm	ON VACATION	city hall
May 5, 2015	3:51pm	ON VACATION	city hall
May 5, 2015	4:53pm	ON VACATION	News media call
May 5, 2015	4:54pm	ON VACATION	News media call

May 5, 2015	4:55pm	ON VACATION	News media call
May 5, 2015	5:25pm	ON VACATION	city hall
May 6, 2015	7:12pm	AFTER HOURS	mayor
May 7, 2015	7:01pm	AFTER HOURS	News media call
May 8, 2015	5:54pm	AFTER HOURS	CRA employee
May 10, 2015	10:47pm	AFTER HOURS	city voicemail
May 11, 2015	5:04pm	AFTER HOURS	News media call
May 12, 2015	6:12pm	AFTER HOURS	News media call
May 13, 2015	5:12pm	AFTER HOURS	city department director
May 13, 2015	5:34pm	AFTER HOURS	mayor
May 14, 2015	5:04pm	AFTER HOURS	city administrator
May 19, 2015	7:13am	BEFORE HOURS	city voicemail
May 19, 2015	7:42am	BEFORE HOURS	city hall
May 19, 2015	6:18pm	AFTER HOURS	city administrator
May 20, 2015	7:55am	BEFORE HOURS	city hall
May 21, 2015	6:08pm	AFTER HOURS	DDA
May 22, 2015	7:25am	BEFORE HOURS	DDA
May 22, 2015	7:34am	BEFORE HOURS	police PIO
May 22, 2015	7:50am	BEFORE HOURS	city administrator
May 22, 2015	7:59pm	AFTER HOURS	police PIO
May 22, 2015	8:12pm	AFTER HOURS	police PIO
May 22, 2015	8:14pm	AFTER HOURS	city administrator
May 22, 2015	8:21pm	AFTER HOURS	police PIO
May 27, 2015	6:07pm	AFTER HOURS	city voicemail
May 28, 2015	7:48am	BEFORE HOURS	city hall
May 28, 2015	7:59am	BEFORE HOURS	city staff
May 28, 2015	5:05pm	AFTER HOURS	All Aboard Florida rep
May 28, 2015	5:12pm	AFTER HOURS	Mayor's chief of staff
May 28, 2015	5:36pm	AFTER HOURS	News media call
May 29, 2015	5:02pm	AFTER HOURS	Mayor's chief of staff
May 29, 2015	5:15pm	AFTER HOURS	Mayor's chief of staff
June 1, 2015	6:16pm	AFTER HOURS	city department director
June 1, 2015	6:31pm	AFTER HOURS	State Attorney staff
June 1, 2015	7:02pm	AFTER HOURS	State Attorney staff
June 2, 2015	5:55pm	AFTER HOURS	mayor
June 2, 2015	6:05pm	AFTER HOURS	News media call
June 2, 2015	6:07pm	AFTER HOURS	mayor
June 2, 2015	6:49pm	AFTER HOURS	DDA

June 3, 2015	5:39pm	AFTER HOURS	All Aboard Florida rep
June 8, 2015	7:29pm	AFTER HOURS	city voicemail
June 9, 2015	5:07pm	AFTER HOURS	News media call
June 9, 2015	5:22pm	AFTER HOURS	city commissioner
June 9, 2015	5:31pm	AFTER HOURS	city commissioner
June 9, 2015	7:20pm	AFTER HOURS	city administrator
June 9, 2015	7:21pm	AFTER HOURS	police PIO
June 9, 2015	10:51pm	AFTER HOURS	News media call
June 9, 2015	10:52pm	AFTER HOURS	News media call
June 9, 2015	10:54pm	AFTER HOURS	News media call
June 9, 2015	10:56pm	AFTER HOURS	News media call
June 9, 2015	11:10pm	AFTER HOURS	News media call
June 10, 2015	7:36am	BEFORE HOURS	PBSO
June 10, 2015	7:37am	BEFORE HOURS	PBSO
June 10, 2015	6:10pm	AFTER HOURS	News media call
June 11, 2015	5:58pm	AFTER HOURS	city vendor
June 11, 2015	6:00pm	AFTER HOURS	city vendor
June 23, 2015	6:07pm	AFTER HOURS	city attorney
June 23, 2015	6:42pm	AFTER HOURS	All Aboard Florida rep
June 26, 2015	7:30am	BEFORE HOURS	city hall
July 3, 2015	9:27am	HOLIDAY	city staff
July 3, 2015	10:09am	HOLIDAY	city department director
July 3, 2015	10:15am	HOLIDAY	city staff
July 3, 2015	10:45am	HOLIDAY	city department director
July 3, 2015	10:49am	HOLIDAY	city department director
July 3, 2015	10:49am	HOLIDAY	city department director
July 3, 2015	11:02am	HOLIDAY	city department director
July 3, 2015	11:29am	HOLIDAY	city staff
July 3, 2015	12:05pm	HOLIDAY	city department director
July 6, 2015	9:27am	AFTER HOURS	city department director
July 6, 2015	8:25pm	AFTER HOURS	All Aboard Florida rep
July 8, 2015	10:30am	OUT SICK	city department director
July 8, 2015	10:33am	OUT SICK	News media call
July 8, 2015	10:35am	OUT SICK	News media call
July 8, 2015	11:08am	OUT SICK	city department director
July 8, 2015	11:17am	OUT SICK	Asst city administrator
July 8, 2015	11:21am	OUT SICK	city voicemail
July 8, 2015	11:24am	OUT SICK	city voicemail
July 8, 2015	11:27am	OUT SICK	city voicemail
July 9, 2015	8:45am	OUT SICK	city hall
July 9, 2015	2:03pm	OUT SICK	city voicemail
July 9, 2015	2:12pm	OUT SICK	News media call
July 9, 2015	2:26pm	OUT SICK	News media call
July 9, 2015	4:14pm	OUT SICK	city department director

July 9, 2015	4:15pm	OUT SICK	city hall
July 11, 2015	9:48am	WEEKEND	city voicemail
July 11, 2015	9:54am	WEEKEND	All Aboard Florida rep
July 11, 2015	10:00am	WEEKEND	News media call
July 13, 2015	9:25am	OUT SICK	New media call
July 13, 2015	9:37am	OUT SICK	News media call
July 13, 2015	9:39am	OUT SICK	city department director
July 13, 2015	11:37am	OUT SICK	city voicemail
July 13, 2015	11:40am	OUT SICK	city hall
July 13, 2015	11:42am	OUT SICK	city hall
July 13, 2015	11:43am	OUT SICK	city hall
July 13, 2015	11:57am	OUT SICK	city hall
July 13, 2015	1:41pm	OUT SICK	city hall
July 13, 2015	1:42pm	OUT SICK	city administrator
July 13, 2015	1:44pm	OUT SICK	News media call
July 13, 2015	1:46pm	OUT SICK	Mayor's chief of staff
July 13, 2015	1:47pm	OUT SICK	city department director
July 13, 2015	1:49pm	OUT SICK	city hall
July 13, 2015	1:50pm	OUT SICK	city hall
July 13, 2015	1:52pm	OUT SICK	city department director
July 13, 2015	1:53pm	OUT SICK	Mayor's chief of staff
July 13, 2015	1:56pm	OUT SICK	city department director
July 13, 2015	1:57pm	OUT SICK	News media call
July 13, 2015	2:14pm	OUT SICK	city hall
July 13, 2015	3:59pm	OUT SICK	News media call
July 14, 2015	6:04pm	AFTER HOURS	city voicemail
July 14, 2015	6:24pm	AFTER HOURS	city administrator
July 16, 2015	5:08pm	AFTER HOURS	News media call
July 16, 2015	5:39pm	AFTER HOURS	city administrator
July 20, 2015	6:28pm	AFTER HOURS	News media call
July 21, 2015	5:21pm	AFTER HOURS	Call with city staff
July 21, 2015	6:23pm	AFTER HOURS	city administrator
July 23, 2015	6:53pm	AFTER HOURS	News media call
July 23, 2015	6:56pm	AFTER HOURS	All Aboard Florida rep
July 23, 2015	7:33pm	AFTER HOURS	News media call
July 23, 2015	7:34pm	AFTER HOURS	News media call
July 24, 2015	7:45am	BEFORE HOURS	mayor
July 24, 2015	7:56am	BEFORE HOURS	city administrator
July 25, 2015	9:33am	WEEKEND	mayor
July 25, 2015	11:28am	WEEKEND	city department director

A more comprehensive review of ***all records*** related to time spent working clearly indicates **Mr. Cohen's work days frequently began before the traditional work day and stretched into the evening hours. He consistently worked early mornings, nights, weekends, while out sick, during holidays or on vacation.**

Viewed in the context of the city's permission to work flex hours, the OIG's observations are incomplete and the OIG's conclusions are not supported once **all evidence** is examined.

In addition, the OIG's own timeline seems to prove Mr. Cohen remained at City Hall after regular business hours on multiple occasions.

According to the OIG report, on March 30, 2015 Mr. Cohen exited the city garage at 7:36pm. This followed an after-hours City Commission meeting that ended after 7 p.m. that evening.

According to the OIG report, on April 13, 2015 Mr. Cohen exited the city garage at 7:19 p.m. This followed another after-hours City Commission meeting that ended after 7 p.m. that evening.

According to the OIG's own report, Mr. Cohen also remained at city hall after regular business hours on February 5, 2015, March 10, 2015, April 1, 2015, June 2, 2015, July 2, 2015, and July 29, 2015.

Finding (3):

**THIS MATTER WAS ALREADY CLEARED BY
THE PALM BEACH COUNTY COMMISSION ON ETHICS**

**THE PALM BEACH COUNTY COMMISSION ON ETHICS FOUND NO PROBABLE
CAUSE AND DISMISSED THE CASE**

Matters concerning work for Redevelopment Management Associates were thoroughly investigated by the Palm Beach County Commission on Ethics.

Following an investigation by the Commission and a probable cause hearing before Commissioners, "the Commission concluded **no probable cause exists to believe any violation occurred.**" (PBC CoE, C15-021)

The complaint was dismissed. A copy of the dismissal order is attached.


Finding (4):

NO WORK WAS PERFORMED

No action was taken on this matter. No work was performed.

Attachments:

Re:2016-002 Inbox X

**Elliot Cohen** Sep 16 (8 days ago) Reply

to LCAllen, inspector, bcc: me

Mr. Allen,

I am in receipt of your draft report. In light of the allegations being made by your office, and in order to properly prepare a response, I request copies of all evidence that is part of this case.


In addition, while your report contains only selected excerpts from the interviews conducted, in order to properly prepare a response and to ensure the selected portions have been portrayed in their proper context, it would be necessary to obtain the entire transcripts of the interviews conducted. I request those transcripts as well. It is impossible to adequately respond to allegations when I am unable to see the evidence. This is a bedrock principle of the legal system. I would hope, suspect and assume your office would be governed by the same fundamental principles of fairness since you do operate as a quasi-legal investigative agency granted the same subpoena powers and other authorities as your legal counterparts.

As I am the subject of the report, and clearly entitled to view it before it becomes a public document, I am not prohibited under Florida public records laws. I would also be entitled to view the evidence upon which it is based before that also becomes public.

While your office has had an entire year to review the requested material, the principles of Due Process demand an extension to the 10 day deadline be provided in order to properly review all the material. I request such an extension. I request 60 days be provided from the date of receipt of all the requested material in order to be afforded enough time to adequately review all the material and prepare a proper response. Again, given the allegations being made by your office, the principles of Due Process and fairness require such an accommodation be provided.

Given the nature of this matter, and the time limitations, I request all the requested material be provided as quickly as possible and preferably by the close of business today. I also request the items be provided in electronic format if they already exist in that format, and that any fees associated with this request be waived in the interest of due process.

Your immediate response is required.




[Click here to Reply](#), [Reply to all](#), or [Forward](#)

People (2)

lcallen

lcallen@pbogov.org



Show details

8.64 GB (8%) of 100 GB used

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Last account activity: 0 minutes ago

[Details](#)

RE: Re:2016-002

Inbox



People (2)



Leo Allen C.

to me, Jeff

Sep 16 (8 days ago)

Reply

Leo Allen C.

lcallen@pbcgov.org



Show details

Mr. Cohen,

The OIG's process is controlled by County Ordinance. Per Section 2-423 of the Ordinance (Palm Beach County, Florida – Code of Ordinances, Chapter 2 – Administration, ARTICLE XII. – INSPECTOR GENERAL),

"The inspector general's records related to active audits, investigations and reviews are confidential and exempt from disclosure, as provided by Florida Statutes, § 112.3188(2) and ch. 119."

Per Section 2-427,

"The inspector general shall publish and deliver finalized reports and recommendations to the board or the appropriate municipality, and to the county commission on ethics. Notwithstanding any other provision of this article, whenever the inspector general determines that it is appropriate to publish and deliver a report or recommendation which contains findings as to the person or entity being reported on or who is the subject of the recommendation, the inspector general shall provide the affected person or entity a copy of the findings. Such person or entity, who is the subject of a finding or recommendation resulting from an investigation or review, shall have ten (10) calendar days to submit a written explanation or rebuttal of the findings before the report or recommendation is finalized. In the case of an audit, such person or entity shall have twenty (20) calendar days to submit a written explanation or rebuttal of the audit findings or before the report or recommendation is finalized. The inspector general shall grant reasonable extensions of time for providing a written explanation or rebuttal upon written request. Such timely submitted written explanation or rebuttal shall be attached to the finalized report or recommendation. The requirements of this subsection shall not apply in matters subject to the State of Florida Whistle-blower's Act, or when the inspector general, in conjunction with the state attorney or U.S. Attorney, determines that supplying the affected person or entity with such report will jeopardize a pending criminal investigation."

Per § 119.0713(2)(b), F.S.

The audit report of an internal auditor and the investigative report of the inspector general prepared for or on behalf of a unit of local government becomes a public record when the audit or investigation becomes final. An audit or investigation becomes final when the audit report or investigative report is presented to the unit of local government. Audit workpapers and notes related to such audit and information received, produced, or derived from an investigation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the audit or investigation is complete and the audit report becomes final or when the investigation is no longer active. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

As you can see from the ordinance, our records are "confidential and exempt from disclosure" until our report is finalized. The ordinance requires us to provide "Such person or entity, who is the subject of a finding or recommendation resulting from an investigation or review, shall have ten (10) calendar days to submit a written explanation or rebuttal of the findings before the report or recommendation is finalized." At the expiration of the ten calendar days, and the IG has reviewed and commented on any responses, our report will be finalized and published.

I have shared your request for an extension with the IG and he has denied an extension of time.

You are neither required nor compelled to respond, but if you voluntarily choose to do so, please forward your response to Jeff Himmel, Director of Investigations, on or before September 26, 2016, as mentioned in the letter emailed to you yesterday.

Leo C. Allen, Jr.

Office of Inspector General

Palm Beach County

PO Box 16568

West Palm Beach FL 33416-6568

Office: (561) 233-2350

Hotline: (877) 283-7068

Fax: (561) 233-2375



Palm Beach County Commission on Ethics

Commissioners

Michael S. Kridel, Chair
Clevie Headley, Vice Chair
Michael F. Loffredo
Judy M. Pierman
Sarah L. Shullman

Executive Director
Mark E. Bannon

In Re: Elliot Cohen

C15-021

Public Report Finding No Probable Cause and Order of Dismissal

Complainant, J. Mark Dougan, filed the above referenced complaint on September 23, 2015, alleging that Respondent, Elliot Cohen, City of West Palm Beach Communications Director, violated §2-443(d) of the Palm Beach County Code of Ethics by entering into a prohibited contractual relationship with a vendor of the City of West Palm Beach.

Pursuant to §2-258(a)¹ of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On April 7, 2016, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, Report of Investigation, and Probable Cause Determination. After oral statements by the Advocate and Respondent, the Commission concluded no probable cause exists to believe any violation occurred.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Elliot Cohen, is hereby **DISMISSED**.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on April 7, 2016.

By:

Michael S. Kridel, Chair

¹ Section 2-258. Powers and duties. (a) The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the:
(1) County Code of Ethics;

The Historic 1916 Palm Beach County Courthouse

300 North Dixie Highway, Suite 450, West Palm Beach, FL 33401 561.355.1915 FAX: 561.355.1904



REINVENTING YOUR CITY

September 26, 2016

Jeff Himmel, Director of Investigations
Palm Beach County Office of Inspector General
PO Box 16568
West Palm Beach, FL 33416

Subject: RMA's Response to Palm Beach Office of Inspector General
("OIG") Draft Investigative Report Case No. 2016-0002

Dear Mr. Himmel:

Redevelopment Management Associates has reviewed the Palm Beach Office of Inspector General Draft Investigative Report OIG Case Number 2016-0002, dated September 15, 2016 (the "OIG Report") and hereby provides this response in accordance with Article XII, Section 2-427 of the Palm Beach County Code.

SUMMARY RESPONSE

The bulk of the OIG Report addresses allegations of RMA's failure to disclose its business relationship with Elliott Cohen ("Cohen") to the City of West Palm Beach in connection with RFQL 132-13-407. The Report contends that RMA had a legal duty to disclose its relationship with Cohen once the City awarded the CRA contract to RMA. Further, the Report claims that the company's relationship with Cohen should have been reported by RMA to the City in the Representations and Disclosures Section of the RFQL because this relationship created an actual, apparent or potential conflict of interest. Finally, the Report alleges that RMA engaged in prohibited lobbying when company personnel communicated with the City prior to the completed procurement.

As to the alleged failure to disclose, RMA strongly disagrees with the OIG's conclusion. During the timeframe in question, the parties had no ongoing business relationship. In fact, as early as June 2013 (nearly three months before the advertisement date of September 4, 2013) the consulting agreement was suspended by mutual consent until the spring of 2014. More significantly, the only reason the relationship was resumed in the spring of 2014 was based on assurances RMA received from Cohen indicating the City Manager (Cohen's superior) had no objections to the parties restarting their relationship. Accordingly, the parties had no understanding or agreement resembling a current or ongoing business relationship when the CRA procurement was under review by the City and any business relationship that took effect after the CRA contract was signed had been approved by the City Manager.

As to the unreported conflict of interest charge, RMA would have had no reason to disclose a prior business relationship as a conflict of interest based on the City's definition of this term. A proposer is only

required to identify the name of any officer, director, employee or agent of the proposer who is also an employee or official of the City of West Palm Beach. Admittedly, Cohen was employed by the City when RMA submitted its proposal on October 13, 2013, but he did not have any of the enumerated relationships with the proposer necessitating disclosure by RMA.

Finally, as to the assertion that RMA contacted or lobbied City officials or employees while the anti-lobbying period was in effect, it is not supported by the evidence. As evidence of improper contact, the Report identifies phone calls between Cohen and Kim Briesemeister (“Briesemeister”), Managing Member of RMA. However, the only purported contact between them began on December 11, 2013 and ended on December 15, 2013. The initial phone call on December 11th was placed by Cohen on behalf of the City to Briesemeister advising her that the Mayor had selected her company to manage the West Palm Beach CRA. The other concern with respect to highlighting these phone calls and not presenting them in the proper context is the fact that the Report does not identify other phone calls between City officials and RMA predating December 11, 2013 (possibly as early as November 2013) when the City Manager’s Office and the City Attorney’s Office were in regular contact with RMA for purposes of negotiating an agreement.

The purpose of the “no contact or no lobbying provision” is to preclude the proposer from attempting to influence the procurement process by contacting or lobbying the decision-makers. Since the “no contact” language is not meant to cover contacts initiated by City staff and RMA would have had no reason to lobby the City once it was advised it was recommended for award and was in the negotiation stage, RMA complied with both the “no contact” and anti-lobbying rules throughout this process.

RMA’S RESPONSE TO OIG FINDINGS

NONDISCLOSURE OF BUSINESS RELATIONSHIP

As a City employee and its Director of Communications, Cohen was authorized to engage in outside employment as of May 18, 2012 when he received permission from the Mayor Muoio. On January 9, 2013, Cohen Publicity signed a professional services agreement with RMA to provide general public relations services and marketing for the company. From February 2013 to June 2013, Cohen Publicity was paid a total of \$5,159 for these services. In an email from Cohen to Briesemeister dated June 21, 2013, Cohen suggested that the parties should suspend their relationship due to the fact the City would be discussing the future of its CRA and may be selecting an outside firm to run the CRA.¹ He further advised her in this email that he would have no involvement whatsoever in deciding the future of the CRA or playing a role in the selection process.

Based on this email, Cohen Publicity did not perform any additional services for RMA until May of 2014. At the time RMA submitted its proposal on October 13, 2013, it accurately stated it had no business relationship with Cohen Publicity. The business relationship disclosure provision contained in Section 2-513(b) of the City Code disqualifies a firm seeking to do business with the City if the firm employs a City official or City employee. In order to violate the section, there must be a showing that

¹ This email is contained in the OIG file.

the City official is employed by the proposer and there is employment relationship during the procurement process.

The business relationship disclosure provision operates in the present tense and only captures current relationships. In the instant case, Cohen was never employed by RMA, as he was retained as an independent contractor to provide professional services.² Assuming for the sake of argument that the definition of employment could be extended to incorporate the type of work performed by Cohen for RMA, he most certainly was not employed by the RMA from September 2013 to December 2013, warranting disclosure to the City. The records reflect the fact that from the date of advertisement through the date of award, Cohen performed no work for RMA, was not entitled to receive his monthly retainer, nor did he receive any form of compensation from RMA. It should be noted that utilization of Cohen's professional services was resumed many months after the selection of RMA to manage the CRA.³ Therefore, RMA was not compelled to either disclose a prior business relationship at the time its submitted its proposal or disclose this relationship once the contract was awarded.

It should also be noted that RMA proceeded with extreme caution once it was awarded the CRA contract in terms of its relationship with Cohen. Before agreeing to resume its consulting agreement with Cohen, RMA, in an email dated January 31, 2014, raised the issue whether RMA's selection as the CRA Administrator would affect RMA's re-engaging of Cohen. Cohen assured Briesemeister that the City Manager was perfectly fine with the parties renewing their relationship.⁴ Therefore, based on Cohen's representations that the City Manager had approved this arrangement, Cohen provided RMA with professional services for a brief time in 2014 for work unrelated to the City of West Palm Beach or the West Palm Beach CRA.

The nature of the relationship between Cohen and RMA was also examined by the Palm County Commission on Ethics ("Ethics Commission") when it considered whether Cohen violated Section 2-443(d) of the Palm Beach Ethics Code.⁵ The Ethics Commission found that Cohen and RMA had no prohibited contractual relationship in either early 2013 when the consulting agreement commenced or in the spring of 2014 after the parties resumed their relationship. As a result of this finding, the Ethics Commission dismissed the complaint against Cohen on April 7, 2016.⁶

CONFLICT OF INTEREST

Attachment C of the solicitation required all proposers to sign the attachment indicating they have no conflict of interest in the present or that could develop with respect to providing services under this

³ Cohen was paid a total of \$4,000 between the months of May and August 2014 for work commenced in 2014.

⁴ See January 31, 2014 email exchange between Briesemeister and Cohen.

⁵ Section 2-443(d) states in pertinent part as follows: "No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business."

⁶ Public Order Finding No Probable Cause and Order of Dismissal – C15-021 In Re; Elliot Cohen

solicitation.⁷ Presumably, a conflict of interest is also created if an officer, director, employee or agent of the proposer is an employee or official of the City of West Palm Beach. RMA's understanding with Cohen was that his professional services entailed promoting RMA as a separate entity and he would not take on any assignments involving the City of West Palm Beach or the CRA.⁸ Given that his duties with the City included servicing the public relations and marketing efforts for the City, there was no overlap between his public duties for the City of West Palm Beach and his consulting work for RMA. Moreover, Cohen did not participate in the selection of RMA as a City contractor and his position with the City did not include contract oversight or contract enforcement for the CRA. Consequently, based on the scope of his consulting work for RMA in early 2013 and in the spring of 2014, his responsibilities with the City, and the fact that the parties severed their relations during the CRA solicitation, there would have been no legal basis for RMA to disclose an actual or potential conflict of interest because no such conflict of interest ever existed between RMA and any City officials or employees. Furthermore, there would have been no reason for RMA to have identified Cohen as a City employee who also held a position as an officer, director, employee or agent of RMA because he never held any of these positions with the company as a professional consultant.

ANTILOBBYING VIOLATIONS

The OIG Report cites evidence of impermissible contact and/or lobbying between RMA and Cohen by referring to 14 calls placed between Briesemeister and Cohen beginning on December 11, 2013 and ending on December 15, 2013. The inference drawn from this information is that RMA must have violated Section 66-8 of the City Code by contacting or lobbying City officials or staff during the ongoing procurement process and that such contact was tied to this procurement.

If the premise is accepted that the contact was related to the CRA procurement, it is important to take into account Ms. Briesemeister's statement when she was interviewed by the Office of Inspector General.⁹ Although Briesemeister refers to the anti-lobbying rule as a "Cone of Silence" she was intimately familiar with its purpose and understood the consequences of violating this provision. It is curious to note that there are no allegations of contact between Cohen and RMA until December 11, 2013. The December 11, 2013 date is significant because Briesemeister received an email from Eliot Kleinberg of the Palm Beach Post at 11:24 a.m. on that day advising her that Mayor Muoio had selected RMA as the CRA contractor.¹⁰ The records show that Cohen (as a representative of the City) had contacted Briesemeister on December 11th to advise her that the Mayor would be recommending RMA for award of the CRA contract. Therefore, since the initial Cohen contact regarding this procurement was initiated by the City and it was simply to inform the company of the Mayor's choice, it would seem grossly unfair to enforce the "no contact" rule against RMA when all Briesemeister did was accept Cohen's phone call. Moreover, the City had been in contact with

⁷ See Attachment C Representations and Disclosures, Item 2 of the RFQL

⁸ Cohen sworn statement given to Palm Beach County Ethics Commission Investigator on December 10, 2015 and included in Memorandum of Inquiry C 15-021

⁹ OIG undated interview – excerpts included in draft report date September 15, 2016

¹⁰ Email chain from Reporter Kleinberg to Briesemeister dated December 11, 2013, with a follow up emails on December 13th

Briesemeister before December 11, 2013, when the Mayor instructed City staff to commence negotiations with RMA.¹¹ Based on the Mayor's authority to direct negotiations, the City Manager, and Assistant City Attorney Suzanne Payson had frequent discussions with RMA regarding a potential agreement between the two parties during the months of November and December 2013.

Returning to the December 11-15 timeframe, there is no denying that additional calls were placed during this four-day period, but they were related to process and procedure and to gain an understanding of when final action would be taken regarding the contract award to CRA. Given RMA's interest in this matter, RMA was alerted to the special city commission meeting set for December 16, 2013.¹² At this meeting, the City Commission approved RMA as the administrator for the West Palm Beach CRA.

Not only is there no showing of RMA's intentionally breaching the no contact rule, there is no evidence that the company sought to exert influence over the City's decision-makers by attempting to lobby them. When the City-initiated calls were placed as early as November 2103, RMA was under the impression that all of the critical players had indicated their preference for RMA and the only remaining entity to finalize the contract was the City Commission. Although it was unnecessary, RMA could have lobbied the City Commission at the December 16th meeting because it was a duly-notice public meeting and would not have violated the anti-lobbying rules. All things considered, RMA principally adhered to "no contact" and anti-lobbying provisions throughout this process and only engaged in contact with City staff after it had been informed that the City wished to enter into negotiations as a precursor to its selection as the CRA Administrator.

CONCLUSION

RMA, in response to the OIG Report acted appropriately and in good faith during the procurement process for RFQL 12-13-407 as it had no duty to disclose a non-existent business relationship; did not have to report or identify a conflict of interest because no such conflict was ever created between RMA and City staff and complied with the City's "no contact" and "anti-lobbying rule" during this solicitation. Moreover, RMA urges the OIG to take notice of the findings of the Palm Beach County Commission on Ethics regarding its interpretation of contractual relationships between the parties. Under the circumstances, RMA respectfully requests that the OIG drafts a Final Report which incorporates this response.

RMA'S RESPONSE TO OIG DRAFT INVESTIGATIVE REPORT NO. 2016-0002

SEPTEMBER 26, 2016

¹¹ The City Manager contacted RMA as early as November 2013 (after the November City Commission Meeting) to advise the company that the City wished to enter into negotiations. These negotiations took place regularly throughout the month of November and into the month of December.

¹² City of West Palm Beach Special Commission Meeting of December 16, 2013

EXHIBIT LIST

- Exhibit "A": Kleinberg (Palm Beach Post) Emails to Briesemeister dated December 11th and December 13th
- Exhibit "B": December 16, 2013 City of West Palm Beach Special Commission Meeting
- Exhibit "C": Palm Beach County Commission on Ethics Memorandum of Inquiry
C 15-021 – Elliot Cohen
- Exhibit "D": January 31, 2014 Email Regarding City Manager Approval of Resuming Agreement
- Exhibit "E": Emails between City Staff and RMA Beginning November Regarding Negotiations

Alicia Alleyne

From: Kleinberg, Eliot (CMG-WestPalm) <EKleinberg@pbpost.com>
Sent: Wednesday, December 11, 2013 11:24 AM
To: Kim Briesemeister
Subject: CRA

Ms. Briesemeister: We're being told Mayor Muoio has selected RMA. Looking for reaction from you. Thanks.

Eliot Kleinberg

Staff Writer

The Palm Beach Post 2751 S. Dixie Highway, West Palm Beach, Fla. 33405

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Eliot_Kleinberg@pbpost.com www.palmbeachpost.com

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Alicia Alleyne

From: Kim Briesemeister
Sent: Friday, December 13, 2013 5:14 PM
To: richard.pinsky@akerman.com
Subject: FW: WPB CRA

From: Kleinberg, Eliot (CMG-WestPalm) [mailto:EKleinberg@pbpost.com]
Sent: Friday, December 13, 2013 5:07 PM
To: Kim Briesemeister
Subject: RE: WPB CRA

Got it. thanks

Eliot Kleinberg

Staff Writer

The Palm Beach Post 2751 S. Dixie Highway, West Palm Beach, Fla. 33405

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From: Kim Briesemeister [mailto:kim@rma.us.com]
Sent: Friday, December 13, 2013 5:05 PM
To: Kleinberg, Eliot (CMG-WestPalm)
Subject: RE: WPB CRA

Everyone at RMA is honored to have been selected to begin providing redevelopment services to the West Palm Beach Community Redevelopment Agency. The rigorous selection process established by the City allowed the opportunity for entities like RMA to put their best foot forward and demonstrate why we each believe we are the best choice. A great deal of effort went into our response and coming in first certainly validates the hard work of the entire RMA staff. Regarding Jon Ward, Jon is one of the best urban redevelopment professionals in the business and RMA is proud to have him on our team. RMA thoroughly vetted Jon's entire background and career and as a result enthusiastically invited Jon to RMA. West Palm Beach is not Ft Pierce, and while each community has its unique set of redevelopment challenges, John and RMA are 100% focused upon how best to maximize the current and exciting growth spurt taking place in West Palm Beach.

From: Kleinberg, Eliot (CMG-WestPalm) [mailto:EKleinberg@pbpost.com]
Sent: Friday, December 13, 2013 4:21 PM
To: Kim Briesemeister
Subject: RE: WPB CRA

Ok thanks.

Eliot Kleinberg

Staff Writer

The Palm Beach Post 2751 S. Dixie Highway, West Palm Beach, Fla. 33405

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Eliot_Kleinberg@pbpost.com www.palmbeachpost.com

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Contents of this e-mail may be confidential and proprietary. Use discretion when forwarding.

From: Kim Briesemeister [<mailto:kim@rma.us.com>]

Sent: Friday, December 13, 2013 4:21 PM

To: Kleinberg, Eliot (CMG-WestPalm)

Subject: RE: WPB CRA

Yes Elliot, let me get out of meetings and I'll send you a response in a bit.

From: Kleinberg, Eliot (CMG-WestPalm) [<mailto:EKleinberg@pbpost.com>]

Sent: Friday, December 13, 2013 2:03 PM

To: Kim Briesemeister

Subject: WPB CRA

Ms. Briesemeister: trying again to see if you want to give us a comment, or "no comment" on your selection by West Palm Beach.

Also, you saw we obtained the dollar figures and contract. We wanted to see if you want to comment on that.

Also, can you or Mr. Ward respond to what's described in this news article from Fort Pierce? Can you say if you told West Palm Beach officials of the circumstances of Mr. Ward's departure from that post?

<http://www.tcpalm.com/news/2013/jul/16/fort-pierce-urban-redevelopment-director-3-staff/?print=1>

Eliot Kleinberg

Staff Writer

The Palm Beach Post 2751 S. Dixie Highway, West Palm Beach, Fla. 33405

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**City of West Palm Beach
Special City Commission**

AGENDA

December 16, 2013

11:00 A.M.

IN ACCORDANCE WITH THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT (ADA), PERSONS IN NEED OF A SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHALL, WITHIN THREE DAYS PRIOR TO ANY PROCEEDING, CONTACT THE CITY CLERK'S OFFICE, 401 CLEMATIS STREET, WEST PALM BEACH, FLORIDA 33401, {(561) 822-1210}

MAYOR

☐ **GERALDINE MUOIO**

CITY COMMISSION

☐ **PRESIDENT KEITH JAMES**

☐ **COMMISSIONER KIMBERLY MITCHELL**

☐ **COMMISSIONER ISAAC ROBINSON, JR.**

☐ **COMMISSIONER SYLVIA MOFFETT**

☐ **COMMISSIONER SHANON MATERIO**

ADMINISTRATION

☐ **CITY ADMINISTRATOR JEFFREY L. GREEN**

☐ **CITY ATTORNEY CLAUDIA M. MCKENNA**

☐ **CITY CLERK – HAZELINE F. CARSON**

CALL TO ORDER:

INVOCATION:

PLEDGE OF ALLEGIANCE:

CIVILITY AND DECORUM: The City of West Palm Beach is committed to civility and decorum by its officials, employees and members of the public who attend this meeting. The City Code, Secs. 2-31(8), 2-31(18) and 2-31(22), provides in pertinent part:

- Officials shall be recognized by the Chair and shall not interrupt a speaker.
- Public comment shall be addressed to the City Commission as a whole and not to any individual on the dais or in the audience.
- Displays of anger, rudeness, ridicule, impatience, lack of respect and personal attacks are strictly prohibited.
- Unauthorized remarks from the audience, stamping of feet, whistles, yells and similar demonstrations shall not be permitted.
- Offenders may be removed from the meeting.

RESOLUTION:

1. **Resolution No. 361-13 approving an Agreement for Administration of the West Palm Beach Community Redevelopment Agency and West Palm Beach Redevelopment Activities between the City and Redevelopment Management Associates, LLC; and**

Resolution No. 362-13 approving an Interlocal Agreement between the City and the West Palm Beach Community Redevelopment Agency providing for the funding of staffing for the CRA and the Agreement for Administration; and

Resolution No. 363-13(F) authorizing the appropriation or transfer of City Funds in Fiscal Year 2013/2014 to amend the General Fund to provide funding for the administration of the CRA.

RESOLUTION NO. 361-13: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING AN AGREEMENT FOR ADMINISTRATION OF THE WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY AND WEST PALM BEACH REDEVELOPMENT ACTIVITIES BETWEEN THE CITY AND REDEVELOPMENT MANAGEMENT ASSOCIATES, LLC; PROVIDING FOR AN EFFECTIVE DATE; AND OTHER PURPOSES.

RESOLUTION NO. 362-13: A RESOLUTION OF THE WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF WEST PALM BEACH AND THE WEST PALM BEACH COMMUNITY

REDEVELOPMENT AGENCY FOR FUNDING FOR THE ADMINISTRATION OF THE WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY AND WEST PALM BEACH REDEVELOPMENT ACTIVITIES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

RESOLUTION NO. 363-13(F): A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE APPROPRIATION OR TRANSFER OF CITY FUNDS IN FISCAL YEAR 2013/2014 IN ACCORDANCE WITH SECTION 4.03 OF THE CITY CHARTER OF THE CITY OF WEST PALM BEACH, FLORIDA, FOR THE PURPOSE OF AMENDING THE GENERAL FUND TO PROVIDE FUNDING FOR THE ADMINISTRATION OF THE COMMUNITY REDEVELOPMENT AGENCY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Agenda Cover Memorandum No.: 19688

Staff Recommended Motion:

Approve Resolutions No. 361-13, Resolution No. 362-13 and Resolution No. 363-13(F).

Background:

CONTRACT FOR ADMINISTRATION

The City issued Request for Qualifications No. 12-13-207 seeking submittals of qualifications from firms interested in providing redevelopment, management and consulting services to the CRA, including the management of all activities and operations of the CRA. The City received proposals from six firms and a selection committee met on November 1, 2013 to hear presentations from each of the proposers. The Selection Committee selected three finalists, Redevelopment Management Associates, CH2M Hill and The Urban Group. On November 5, 2014, the City Commission heard presentations from the three firms. At that meeting, the City Commission directed the Mayor to negotiate with RMA and CH2M Hill and RMA was selected.

Redevelopment Management Associates will operate, administer and manage the CRA starting January 1, 2014. There will be a transition period from January 1 to February 28, 2014 during which time the City will maintain and pay the salaries of the existing CRA employees. RMA will provide the following transition team from January 1, 2014 to February 28, 2014: full time Executive Director, part time Senior Project Manager, and support staff including part time Marketing Coordinator and part time combined services including Urban Designer, Planning, Economic Development, Project Engineering and Construction Management services. Starting March 1, 2014, RMA shall provide the following staffing services: full time Executive Director, full time Administrative Assistant, part time Senior Project Manager, full time Project Manager II, part time Project Manager I or Coordinator, full time Marketing Manager, part time Special Event Coordinator, part time Real Estate Administrator, part time/limited combined services of Urban Designer, Project Engineer, Construction Manager, Marketing Director.

The City shall pay RMA the total fixed sum, including overhead and profit, of \$41,000.00 per month for January 1 – February 28, 2014. Commencing March 1, the fee

will increase to \$78,000.00 per month (the "Fee"). For services outside of the Scope of Services in the Agreement, such as assistance with bond and long term financing projections, and public/private partnership negotiations, these services will be assigned by work authorization based upon the hourly rates or a fixed lump sum.

Resolution No. 361-13 approves the contract with RMA for a term of three years with the right to renew for two additional years.

INTERLOCAL FOR FUNDING

Article V of the By-laws of the West Palm Beach Community Redevelopment Agency, as amended and restated February 11, 2008, provides that an interlocal agreement between the City and CRA shall provide for staff support and services by the City for the CRA as deemed necessary to undertake and carry out redevelopment activities and projects in the CRA's redevelopment areas.

Resolution No. 362-13 approves an interlocal agreement between the City and the CRA pursuant to which the CRA will fund those services related to the administration and management of CRA projects and activities provided by RMA to CRA under the City contract.

Resolution No. 363-13(F) appropriates funds in the City budget for the RMA contract.

2. **Resolution No. 353-13 approving and authorizing the submission of the City's Consolidated Annual Performance and Evaluation Report (CAPER) for fiscal year 2012-2013 to the U.S. Department of Housing and Urban Development (HUD) and authorizing the execution and submission of any related documents.**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING THE CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER) FOR FISCAL YEAR 2012-2013; AUTHORIZING THE MAYOR TO EXECUTE ALL RELATED DOCUMENTS; AUTHORIZING AND DIRECTING THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT TO SUBMIT THE CAPER FOR FISCAL YEAR 2012-2013 TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR REVIEW AND APPROVAL; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Agenda Cover Memorandum No.: 19687

Staff Recommended Motion:

Approve Resolution No. 353-13.

Background:

The City of West Palm Beach is a recipient of federal funds through the Community Development Block Grant (CDBG) Program, the HOME Investment Partnerships (HOME) Program and the Housing Opportunities for Persons With AIDS (HOPWA)

Program. As a condition for receipt of such funds, the City must comply with federal regulations pertaining to the submission of an annual progress report entitled Consolidated Annual Performance and Evaluation Report (CAPER) to the U.S. Department of Housing and Urban Development (HUD) Miami Field Office.

The CAPER formally reports to HUD the progress that the City has made in carrying out its Consolidated Plan and Action Plan. The CAPER must include programmatic, financial, geographic and demographic data. It must also include the actions that the City has taken to affirmatively further fair housing and Section 3 concerns. The CAPER must be submitted to HUD within 90 days after the close of the City's program year, or December 27, 2013.

Upon receipt of the CAPER, the HUD Miami Field Office will review the document for compliance matters, progress made towards goals, and accuracy of information. Once reviewed, HUD will issue its determination in writing to the City. A notice to the public was published in the Palm Beach Post Newspaper on November 15, 2013 pertaining to the availability of the CAPER for public review and comment.

Attached is Resolution No. 353-13 which (1) Approves the Consolidated Annual Performance and Evaluation Report Program Year 2012, (2) Authorizes the Mayor to execute all related documents; and (3) Authorizes and directs the Department of Housing and Community Development to submit the CAPER for program year 2012 to the U.S. Department of Housing and Urban Development for its review and approval.

Fiscal Note:

No fiscal impact.

ADJOURNMENT:

NOTICE: IF ANY PERSON DECIDES TO APPEAL ANY DECISION OF THE CITY COMMISSION AT THIS MEETING, THAT PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND FOR THAT 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. THE CITY OF WEST PALM BEACH DOES NOT PREPARE OR PROVIDE SUCH A RECORD.

Minutes of the City of West Palm Beach
Special City Commission Meeting Held on December 16, 2013

The City Commission of the City of West Palm Beach met in special session on Monday, December 16, 2013 at 11:03 a.m., at City Hall, with the following persons present:

Mayor Geraldine Muoio; President of the Commission Keith James; Commissioner Shanon Materio; Commissioner Kimberly Mitchell; Commissioner Sylvia Moffett; Commissioner Isaac Robinson Jr.; City Administrator Jeff Green; City Attorney Claudia McKenna; City Clerk Hazeline Carson.

CIVILITY AND DECORUM: The City of West Palm Beach is committed to civility and decorum by its officials, employees and members of the public who attend this meeting. The City Code, Sections 2-31(8), 2-31(18) and 2-31(22), provides in pertinent part:

- Officials shall be recognized by the Chair and shall not interrupt a speaker.
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RESOLUTION:

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Resolution No. 363-13(F) authorizing the appropriation or transfer of City Funds in Fiscal Year 2013/2014 to amend the General Fund to provide funding for the administration of the CRA.

Mayor Muoio stated that she is looking forward to the new organizational structure of the CRA and thinks it will put the City in a better place. She stated that approximately eight or nine months ago, Ms. Briesemeister, the former CRA Executive Director, spoke to her and former City Administrator Ed Mitchell recommending that they look at the CRA differently and to take a different approach. Mayor

Muoio stated that she thinks that the model being presented will bring a variety of personnel to help with the critical goals outlined in the City's five year plan. She went on to state that our CRA has been one of the most successful in the State and that this will put us on the cutting edge of what CRA agencies are supposed to be doing. She also noted that they will address some of the questions raised by the press and in the newspaper regarding travel expense, health care and a federal housing project. She advised that the City considered what was proposed with an open mind. Every bidder was considered carefully and after the presentations to the City Commissioners, selections were narrowed down to two bidders. Both presented and were interviewed by her and City Administrator Green and RMA was selected as the best choice for the City. Mayor Muoio asked Mr. Green to address questions raised in the newspaper.

City Administrator Jeff Green explained the travel as set out in the contract and read the language into the record. He advised that the contract does provide for mileage reimbursement if an RMA consultant travels on behalf of the CRA for related business.

Mayor Muoio stated that all expenses will be approved by the Finance Director through the approval process.

Commissioner Materio asked if a request by the City for a RMA employee to attend a conference have to be presented to the City Commission for approval.

Mr. Green responded that the budget has been approved for travel and training, so it would not be presented to the City Commission.

Commissioner Moffett mentioned long distance telephone calls and because of the use of cell phones, asked to strike language mentioned in the contract.

Commissioner Mitchell stated that they may have to set up conference calls and may have to make long distance calls from a landline.

Mayor Muoio addressed the issue with the housing project ran by Mr. Ward. She said we are not hiring Mr. Ward, but RMA.

Commissioner James asked that a presentation of the business case be made for making this move. He wanted to know the fiscal impact for justifying this decision.

Mayor Muoio stated that the City is contracting for personnel for the budget allotted; additional money is not being spent. She also stated that Mr. Green has a list of positions that this will buy and they are positions we do not currently have.

Mr. Green explained the basic business concept for the funds. He stated that the budget is approximately \$960,000.00 which is approximately \$80,000.00 a month that funds nine positions, including benefits. He said this plan gives the City a more flexible organization and the ability to

get specialized services for less than what it currently costs.

Commissioner Mitchell said she has reviewed the documents, but would like to have a conversation about measurements. She noted that they are looking at a different model and she wants to ensure that it will work for the taxpayers and community.

Commissioner Robinson expressed concern about the seven people who are still working for the CRA. He questioned where they would fit within the new organizational structure.

Mayor Muoio said the CRA Board has laid out the strategic plan which details what is being worked on, as well as the frame work moving forward. She went on to state that the current employees will be assumed into the organization. She stated that they are buying flexibility. She also stated that there may be times when those employees are working full time and there may be times when they are part time. She also said that it is not a traditional organization and will provide for the needs required.

Mr. Green said that the current employees will be offered fulltime employment with RMA.

Commissioner Materio stated that they need to have benchmarks in place to make sure the strategic plan is being followed. She feels that RMA has more full time talent to add to the full time talent already employed.

Commissioner Moffett expressed concerns about the salary for the current employees.

Mr. Green stated that he is not sure if all employees will earn the same salaries; however, all salaries will be reviewed and current employees will be offered competitive salaries.

Mayor Muoio suggested regular reports be submitted from RMA to the CRA Board for review of what has been accomplished.

Commissioner James commented on the contract stating that the City did not select RMA, as a formal vote was not taken. He feels that this should be removed from the contract.

City Attorney Claudia McKenna stated that the contract is between the City and RMA and as part of the Whereas clause it states that they are okay with the Mayor's choice.

Commissioner James expressed concern about 1.2A which states that RMA is designating an employee as an Executive Director of the CRA. He stated that he would like a face to face introduction. He feels this is premature because he is unsure as to whether this individual is acceptable to the City.

Ms. McKenna stated that selecting an Executive Director is an

operational function. She further stated that RMA has to provide the City with someone who will serve as the Executive Director and the City has the sole discretion to say whether that is a good choice. She said this person has not yet been identified, but RMA has had discussions with the Mayor and Mr. Green about a selection.

Commissioner James stated that he feels it is more appropriate for the City Commission as a body to make the decision of who the Executive Director will be.

Ms. McKenna stated that the contracting body is the municipal corporation. She then stated that the Charter provides that the Mayor shall supervise and direct the operations of the department's divisions and agencies of the City. Historically, a City employee has served as the Executive Director of the CRA which has been selected by the Mayor.

Mayor Muoio stated that they will not identify a director at this time. She further stated that the City Commission will have the opportunity to meet whomever RMA selects.

Commissioner Materio stated that she thought the Statute was clear on the CRA's purview. She said if they are approving a contract, she feels that they should all participate in selecting the CRA Director. She also feels that they should have been able to participate in making the final selection.

Commissioner Mitchell agrees that the CRA Statute is clear on the role of the CRA Board. She feels that the CRA Board is distinct from the City and suggested removing language from the contract relating to the selection of the Executive Director so that they can move forward with a vote. She then noted that the City Commission wants the right to decide on who the Executive Director for the CRA will be.

Mayor Muoio stated that the CRA employees are employees of the City and the CRA enters into an Interlocal Agreement with the City to provide for the CRA implementation.

Ms. McKenna read a portion of the Statute governing employees of the CRA relating to the employment of agency employees.

Commissioner Materio stated that there is a section of the Statute that is not being read. She then stated that she is not comfortable with approving this contract and would like an opinion from Mr. Lewis or the Commission's attorney. She requests the contract be denied until such time as an opinion is received.

Commissioner James wanted to know why the contract is between the City and RMA as oppose to the CRA and RMA.

Mayor Muoio stated that the City hires the personnel for the CRA according to an Interlocal Agreement it has with the City.

Ms. McKenna advised that the CRA cannot take any action inconsistent

with the City's Charter. She said that the City's Charter controls the departments, divisions and agencies of the City. She said in 1992 when the City decided to move to a strong Mayor form of government, the policy decision made by the voters was that there would be one person accountable for City business. She also said that City business includes CRA business, even though it is an agency that is allowed to be created by Statute. She stated that from 1984 forward when the CRA was established, one of the first resolutions adopted was that the City would staff the CRA; however, that changed in 1992 when the City became a strong Mayor form of government. She said the Commission can seek a Charter change to have the CRA structure separate and apart from the City.

Commissioner James stated that the Charter did not contemplate outsourcing the management of one of the departments.

Mayor Muoio stated that this gives us an opportunity to do something innovative and creative. She believes they should move forward. She further asked that the language in dispute can be removed from the contract.

Commissioner Materio agrees with removing that language from the contract. She stated that for purposes of clarification for the future, she wants an opinion from the Commission's General Counsel.

Motion was made by Commissioner Materio, seconded by Commissioner Robinson, to request the Commission's General Counsel for an opinion on the City's Special Districts; and thereafter it was voted as follows: Ayes: Commissioners James, Materio, Mitchell, Moffett and Robinson. Motion therefore carried unanimously.

Commissioner Mitchell stated that the CRA did not make the decision to hire Ms. Briesemeister; it was the purview of the Mayor. The Commission only discussed the salary.

Ms. McKenna stated that the Commission is not approving a contract for administration of the CRA, but for staffing. She said the Mayor will continue to administer the day to day operations of the CRA. She also said that the principals of RMA will direct their employees. We are not hiring RMA to administer the CRA.

Commissioner James stated that in Section 1.1 of the contract it states that RMA shall provide all services necessary to operate, administer and manage the CRA.

Ms. McKenna responded that the word "administer" should be removed from the contract because RMA will administer their staff as they will be staffing the functions needed to achieve the CRA's objectives.

There was discussion on a performance matrix, quarterly review, measurable goals, objectives and standards, incorporating language in the contract on benchmarks, the task list, and a work plan.

Commissioner Materio asked if there is a legal way to approve the contract to start doing business with RMA, but gives the Commission flexibility to make changes.

Mayor Muoio stated that the contract allows for changes. In addition, the contract can be voided within thirty (30) days for cause.

Commissioner Materio spoke about having a CRA Board meeting within thirty (30) days after details are ironed out.

Mayor Muoio recommended approving the contract with the understanding that they will come back to the Commission within thirty (30) days with a 90 day plan or 120 day plan showing the Commission what will happen and with the benchmarks and timelines as they relate to the City's five year plan. She said if the timeline needs to be changed, we need to advise RMA on what has to change and bring it forward to the CRA Board.

Commissioner James spoke about Section 3.3 relating to the administration expenses. He asked if there was a cap on the administrative expenses.

Mr. Green advised that the CRA currently pays for the administration expenses.

Commissioner James asked about a 5% administrative fee noted in Section 3.4 for expenses and asked to negotiate a lower fee.

Mr. Green responded that the original request was for 10%. He said that a 5% administrative fee is typical for these type contracts.

Public comments were made by Curt Thompson and Sandy Matkivich.

Mayor Muoio stated that the City has had one of the best CRAs in the State of Florida for the past eight years. She said this contract with RMA gives the City a chance to take it to the next level.

Commissioner Mitchell stated that the contract with RMA allows them to hire a CRA director in house that will make the staffing decisions. She also noted the CRA will be able to utilize the same people and add personnel while taking the model in a different direction. The City will not risk losing money because they are spending less money on the new CRA initiative. Commissioner Mitchell feels that approving the contract is the right decision as RMA is the best choice. She noted that the Mayor has taken responsibility of the decision and the City Commissioners will provide guidance.

RESOLUTION NO. 361-13: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING AN AGREEMENT FOR ADMINISTRATION OF THE WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY AND WEST PALM BEACH REDEVELOPMENT ACTIVITIES BETWEEN THE CITY AND REDEVELOPMENT MANAGEMENT

**ASSOCIATES, LLC; PROVIDING FOR AN EFFECTIVE DATE;
AND OTHER PURPOSES.**

Motion was made by Commissioner Mitchell, seconded by Commissioner Moffett, to approve Resolution No. 361-13.

Commissioner Robinson commented on the timeline for the historic northwest area. He also said that he was worried about what will happen to the current staff.

Mayor Muoio stated that it is difficult to get tasks done without approving the contract.

Commissioner Moffett stated that she is optimistic because the task sheet reflects that RMA will be involved throughout the year.

Commissioner James stated that he is not in favor of approving the contract until he sees the revised language.

Mayor Muoio suggested adding to the motion to take out "administration" and the phrase "the CRA will designate an Executive Director acceptable to the City".

There was further discussion on amendments to the contract and when to bring it back.

A revised motion was made by Commissioner Mitchell to approve Resolution No. 361-13 with the following amendments to the contract: in Section 1.1 strike the word "administration"; amend the Section that describes the fulltime CRA Director position in RMA's contract to come back to this body at a later date; language should be included that within 30 days or less, the Commission will reconvene with RMA to look at the tasks currently in our plan for dialogue and discussion on how we prioritize and benchmarks; also for the first year to have quarterly review and interaction with RMA in order to give different direction and twice yearly thereafter. Commissioner Moffett seconded the motion with the amendments.

Commissioner Robinson asked if the entity agrees with the recommendations.

Kim Briesemeister, of RMA, stated that they have not been able to talk to the Commission for four months and a lot of things they talked about today would have been resolved. She stated that accountability is important to them. She advised that the tasks are listed on the wall at the CRA and includes details of how the tasks will be completed. This can be made available to the Commission in any format. She also noted that this is an ongoing initiative and changes monthly requiring them to have meetings every two to three months tracking whether or not benchmarks are being met. She noted that they will be able to work through the operational concerns.

Commissioner James asked Ms. Briesemeister if a decision to approve

the contract in January 2014 will adversely affect their plans.

Ms. Briesemeister responded that there has been a tremendous amount of time that has lapsed. She said the CRA has continued to operate; however, their inability to function as the management team will compound the situation. She also noted that there is nothing addressed today that if the contract is approved, could not be worked out immediately.

Commissioner Mitchell agreed with Ms. Briesemeister. She urged the City Commission to support the contract so that RMA can begin working on projects.

Mayor Muoio stated that she has built an excellent team of administrators and leaders of the City and she feels strongly that RMA is another excellent decision which will make the City stronger. She said the issues discussed will be addressed in the contract.

Commissioner James explained his reluctance to approve the contract because of the need for the revised language. He feels that the contract should be revised and presented to the City Commission on January 6, 2014.

Mayor Muoio asked if additional questions can be addressed and amendments made at a later date, if they were to move forward today with the amendments that have been proposed.

Ms. McKenna responded that the contract can be amended; however, it requires the agreement of both parties. She stated that Ms. Briesemeister advised that she is amenable to addressing the issues raised. She noted that the benchmark document will be an exhibit to the base agreement which will be prepared within the next thirty (30) days for Commission approval. She said the base contract will be amended to make clear that this is a professional staffing agreement and the staff that RMA designates is going to be required to carry out the day to day tasks of the CRA activities that are required to achieve the identified projects in the strategic finance plan. She also said that RMA will provide the staff for the Executive Director position. She said that Paragraph 14 will be amended to take out the word "periodically" and to add "quarterly."

Commissioner James referred to Section 15.1 regarding termination upon thirty (30) day notice for cause and would like a more specific definition of what constitutes cause.

Ms. McKenna stated that she will look at that, but typically contracts are left more open ended.

Mayor Muoio asked for additional comments and received none.

Thereafter it was voted as follows: Ayes: Commissioners Materio, Mitchell and Moffett. Nays: Commissioners James and Robinson. The motion therefore carried 3-2.

RESOLUTION NO. 362-13: A RESOLUTION OF THE WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF WEST PALM BEACH AND THE WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY FOR FUNDING FOR THE ADMINISTRATION OF THE WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY AND WEST PALM BEACH REDEVELOPMENT ACTIVITIES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Motion was made by Commissioner Mitchell, seconded by Commissioner Moffett, to approve Resolution No. 362-13; and thereafter it was voted as follows: Ayes: Commissioners Materio, Mitchell and Moffett. Nays: Commissioners James and Robinson. Motion therefore carried 3-2.

RESOLUTION NO. 363-13(F): A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE APPROPRIATION OR TRANSFER OF CITY FUNDS IN FISCAL YEAR 2013/2014 IN ACCORDANCE WITH SECTION 4.03 OF THE CITY CHARTER OF THE CITY OF WEST PALM BEACH, FLORIDA, FOR THE PURPOSE OF AMENDING THE GENERAL FUND TO PROVIDE FUNDING FOR THE ADMINISTRATION OF THE COMMUNITY REDEVELOPMENT AGENCY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Motion was made by Commissioner Mitchell, seconded by Commissioner Moffett, to approve Resolution No. 363-13; and thereafter it was voted as follows: Ayes: Commissioners Materio, Mitchell and Moffett. Nays: Commissioners James and Robinson. Motion therefore carried 3-2.

2. Resolution No. 353-13 approving and authorizing the submission of the City's Consolidated Annual Performance and Evaluation Report (CAPER) for fiscal year 2012-2013 to the U.S. Department of Housing and Urban Development (HUD) and authorizing the execution and submission of any related documents.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WEST PALM BEACH, FLORIDA, APPROVING THE CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER) FOR FISCAL YEAR 2012-2013; AUTHORIZING THE MAYOR TO EXECUTE ALL RELATED DOCUMENTS; AUTHORIZING AND DIRECTING THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT TO SUBMIT THE CAPER FOR FISCAL YEAR 2012-2013 TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR REVIEW AND APPROVAL; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Mayor Muoio asked if there were questions on this item.

Commissioner Materio asked Deputy City Administrator Miller if she has been having conversations with HUD, not necessarily regarding the CAPER. She also asked if they could schedule a workshop in thirty (30) days to discuss specific issues with HUD.

Ms. Miller responded, yes they have been having conversations with HUD. She said they will request that a HUD representative be present at the workshop.

Public comment was made by Curt Thompson.

Commissioner Materio stated that she believes that it is important to ensure that the finances are executed so that they are distributed to the appropriate end user.

Motion was made by Commissioner Materio, seconded by Commissioner Robinson, to approve Resolution No. 353-13.

Commissioner Robinson stated that he has reviewed previous CAPER's and asked that documents with a due date from a state or federal entity be received by the Commission thirty (30) days prior in a draft form.

Mayor Muoio stated that the Commission received the CAPER the first time on November 22, 2013 and again a week later.

Thereafter it was voted as follows: Ayes: Commissioners James, Materio, Mitchell, Moffett and Robinson. Motion therefore carried unanimously.

ADJOURNMENT:

There being no further business to come before the Commission, the meeting was adjourned at 1:00 p.m.

APPROVED:


PRESIDING OFFICER

ATTEST:


CITY CLERK

EXHIBIT C

PALM BEACH COUNTY COMMISSION ON ETHICS REPORT OF INVESTIGATION

To: Mark E. Bannon, Executive Director
From: Anthony C. Bennett, Chief Investigator
Re: C15-021 – Elliot Cohen, Communications Director, City of West Palm Beach

The information provided in the Memorandum of Inquiry and Legal Sufficiency Determination, including all documentary and other evidence from the initial inquiry, is incorporated by reference into this Investigative Report.

- Investigation

I began this investigation by obtaining additional background information on West Palm Beach Communications Director Elliot Cohen via the City of West Palm Beach (City) website (www.wpb.org), as well as the website for the City's Community Redevelopment Agency (CRA) (www.wpb/Departments/CRA.org), and the website for the business entity Cohen Publicity (www.cohenpublicity.com).

On the City's website, I found Elliot Cohen's biography and was able to verify that he is the current City Communications Director. I also found information regarding the business entity Cohen Publicity listing Respondent's biography, as well as listing him as the contact person. This information was verified during a sworn statement given by Respondent on December 10, 2015. There was no listing of current or past clients on the Cohen Publicity webpage.

On December 31, 2015, Respondent forwarded a signed copy of the written contractual agreement between Redevelopment Management Associates and Cohen Publicity based on a request I made on December 28, 2015. According to Respondent, a verbal agreement was made as of December 1, 2012. A written agreement (the Agreement) was signed for Redevelopment Management Associates (RMA) on January 5, 2013 and by Respondent on January 9, 2013 respectively. This Agreement described an "Independent Contractor – Client Relationship." RMA is listed as "the Client" and Cohen Publicity is listed as "the Independent Contractor." In Section 3 of the Agreement it states, "The Client shall pay the Independent Contractor on a monthly retainer basis at the agreed upon rate of \$1,000.00 per month."

In Section 7 of the document, titled "Term and Termination," it states, "Either party may terminate this contract on 30 days' written notice; otherwise the contract shall remain in force." "In the event of termination, and provided that Independent Contractor is not in material breach of its obligations hereunder, the Independent Contractor shall be entitled to keep all monies already paid." The Agreement was signed by both parties on January 5, 2013 and January 9, 2015 respectively.

I researched information about RMA by reviewing their website (www.RMA.us.com). It stated RMA was formed in 2009 with its principal members being Kim Briesmeister and Christopher J. Brown. They describe their entity on this website as the most experienced full service consulting and management firm in the State of Florida specializing in repositioning and redeveloping places for cities, counties and CRA's nationwide. There was no listing of the West Palm Beach CRA on the RMA website. There was also no listing of Cohen Publicity or Elliot Cohen on the RMA website.

Next, I researched information regarding the relationship between the CRA and RMA. I went to the City CRA website. It listed Mr. Jon Ward as the Executive Director. Several board members and advisory board members were listed on the website, Respondent's name was not listed. In the CRA Overview Section, it stated the CRA operations had been outsourced to another entity in 2013. The entity listed was RMA, Pompano Beach, FL. CRA Executive Director Jon Ward's listed his current occupation as Executive Director of the City of West Palm Beach CRA for RMA in his biography found on the LinkedIn website (www.linkedin.com). Based on that information, I contacted Executive Director Jon Ward for an interview.

- Interview: Jon Ward, CRA Director:

On Thursday, January 7, 2016, at 11:00 am, I conducted a sworn audio recorded interview with Mr. Jon Ward, Executive Director of the West Palm Beach Community Development Agency, at City Hall – 401 Clematis Street, West Palm Beach, FL 33401. Below are the details of that interview:

Prior to questioning, Mr. Ward clarified his actual position as Executive Director of the West Palm Beach CRA. He stated approximately two (2) years ago the City elected to outsource the management of their CRA. Through a bid process, RMA, which is his actual employer based in Pompano Beach, FL won the bid to manage that agency. He advised he is a Senior Redevelopment Associate with RMA. He is employed by RMA to run the West Palm Beach CRA. He stated he currently serves as a consultant under contract to run the CRA, but is considered an employee of RMA. He stressed he is not a City employee but an RMA employee as he receives his paycheck directly from RMA.

Mr. Ward stated he has been the Executive Director of the CRA since January 2, 2014. His duties include being in charge of all agency administration, all building projects, initiatives, budgeting, hiring, firing, and all daily activities performed by the agency. He advised he would have knowledge of all contracts held by the agency, to include individual contracts. He stated he is the approving authority that moves the contracts from the agency to the Mayor for final approval. City Mayor (Geraldine) Moulo has the final approval authority over CRA contracts.

Mr. Ward advised the CRA's purpose is to look at certain blighted areas within the city and propose ways to revitalize these areas. This includes rebuilding areas that may be considered slum areas, with the goal of economic development which would bring jobs to that area and ultimately help the overall community. He stated the CRA uses a bid process to hire qualified individuals to physically rebuild the identified areas. The CRA does not do the building; they are responsible for the area planning and finding solutions for the area prior to the building.

Mr. Ward gave the example of the (CRA) currently buying the Sunset Lounge, a defunct business located on 8th Street and Henrietta Street. The plan is to revitalize the property as a cultural destination for the community. They will use CRA funds to buy it, an architect will be hired to create remodeling plans, and a contractor will be hired to complete the work.

Mr. Ward stated he was hired by RMA in Pompano Beach where he worked on a separate four (4) month project. When that project ended, he was hired as the Executive Director for the CRA. Ward stated the City made the decision to privatize the CRA, and entered into a contract with RMA. Although the employees he supervises are City employees, he is still considered a contracted employee of RMA. He stated he participated with RMA in preparing documents and attending public meetings prior to formally taking over the CRA, so he has extensive knowledge on the process it took to get contract and the overall relationship between the City and RMA. He stated the contract between RMA and City was approved by the City Council in December 2013 and took effect on January 2, 2014.

Mr. Ward stated his office is located in city hall and he reports to the Mayor of West Palm Beach and also responds to the direction of RMA owners Kim Briesmeister and Chris Brown, but they do not have any direct involvement in the day-to-day activities of the CRA. He does speak to the RMA owners once or twice every month to discuss relevant information. They will become involved if there is a specific problem or he needs to consult with someone regarding an issue or challenge. Mr. Ward stated his conversations only pertain to City and RMA business and he is not involved in other RMA contractual business.

Mr. Ward stated he knew Respondent as the Director of Communications for the City and said Respondent's office is down the hall on the same floor as his office. He stated his interaction with Respondent is exclusively business. Ward stated Respondent works with him and the CRA on public relations issues and to communicate CRA information to the media as City Communications Director. This is not done by Respondent under separate contract or by a separate company, but as a City employee. Ward stated that when projects are being completed by the CRA where there is public interest, Respondent would be involved in the informational meetings so that the information could be shared with the public through the press, social media, video pieces and other avenues.

Ward again reiterated that Respondent is acting under his title as Communications Director when this work is completed.

Mr. Ward said he was not familiar with the Company Cohen Publicity and that he only learned of its existence during the course of this investigation. He assumed the owner to be Elliot Cohen based on the name of the company, but had no other knowledge of the company itself. Ward stated Cohen Publicity unequivocally does not have any current or former contracts with the CRA. By him being the CRA Executive Director since the first day it was contracted out, he has knowledge of all CRA contracts. Cohen Publicity has no contractual relationship with the CRA. All work done by Respondent for the CRA was completed under Respondent's Communications Director's authority.

Mr. Ward stated he did not know if Cohen Publicity or Respondent had any direct contracts with RMA. If Respondent's company did have such contracts, he would not have been involved in the processing or approving of any contract with RMA. Mr. Ward stated he had heard that Respondent has done work for RMA in the past, but he was not aware of any of the details of that work or the time the work was completed. His knowledge of the previous work was through word of mouth only.

Mr. Ward had no other information to add.

The interview was completed Thursday, January 7, 2016 at 11:16 am

To get clarification of the timeline as to when Respondent began the RMA Agreement, suspended the Agreement and subsequently completed the additional work for RMA, I contacted him again for a second interview.

- **Second Interview, Elliot Cohen, Respondent:**

On Tuesday, January 26, 2016, at 2:15 pm, I conducted a second sworn audio recorded interview with Respondent at City Hall – 401 Clematis Street, West Palm Beach, FL 33401. Respondent requested that he also be allowed to record this interview, to which I agreed. Below are the details of that interview:

Respondent identified himself as the current Director of Communications for the City of West Palm Beach. I explained to Respondent the purpose of this second interview was to clarify the timeline he had given in the first interview in regard to a contract held between him/his company and RMA.

Respondent confirmed he initially secured a contract with RMA in January of 2013. The contract was between RMA and Cohen Publicity (the business entity created by Respondent). Respondent stated he "suspended" the contract in June of 2013 and it was terminated at the end of the summer of 2014. Respondent advised the he suspended the RMA contract in June of 2013 in writing via email.

Respondent again stated he did some work for RMA in the summer of 2014. I asked him if this work was done under a new contract or the same contract. He stated the work was completed under the same contract and there was no new contract written. He then stated it was done more on an "informal" basis in which RMA contacted him to do the work and they did not resume the previous original contract. Again he said it was verbally agreed upon between the two parties that he would do the work.

Mr. Cohen was asked how much was he paid under the contract. He stated he was not sure and needed to formally review the contract. He then said he believed it was \$1,000 a month, but was not sure without reviewing the contract. I showed him the emailed copy of the contract that he sent to me. He verified that it was a copy of the original contract and then verified the pay amount was \$1,000 per month. I asked if he received this payment from January of 2013 (the date when the contract was signed) through each month. He stated he did not receive the money consistently every month, but only if he had done work for RMA. He advised he would need to verify the months he was paid. I asked if he received any payments from RMA after June of 2013 for work completed outside of the work done in the summer of 2014. He advised that he was not sure and he would have to check.

Respondent stated he contacted RMA at some point in 2014 and asked them if they wanted to continue the relationship. He stated he did not receive an answer from them for several months. Then in the summer of 2014, they made a verbal agreement to complete video work over the course of the summer. He stated he was paid a "couple of thousand dollars" for the work. He stated he believed the checks were made out by RMA to Cohen Publicity. Respondent stated outside of the previous work done for RMA under the contract of 2013 and the work done in the summer of 2014, he had not done any other work for RMA from that point to the present.

Respondent then went over the timeline again, stating the initial contract was started in January of 2013, and then he suspended it in June of 2013 once he realized RMA would be bidding on the CRA contract. In June of 2013, he sent notification to RMA that he would be suspending the contractual relationship between them and Cohen Publicity. In December of 2013, RMA was offered the CRA contract and started in January of 2014. He did additional work for RMA in the summer of 2014. He reiterated the work he did for RMA was for them exclusively and that there was no private work done for the City or CRA. He stated his role under his companies agreement with RMA was to promote them solely as a private entity.

Respondent stated the contract had a termination clause but did not have a termination date. He stated he had nothing else to add to the interview at this point.

The interview was completed Tuesday, January 26, 2016 at 2:23 pm

On February 11, 2016, I contacted RMA and requested a copy of all contractual documents between them and Cohen Publicity or Elliot Cohen. I also requested copies of all payments made to either or both Cohen Publicity and Elliot Cohen.

On March 7, 2016 Ms. Alicia Alleyne, RMA Director of Administration sent an email to me and Ms. Briesmeister containing copies of the signed contract between RMA and Cohen Publicity, an itemized list of payments made to Cohen Publicity from RMA, and a cancelled check from RMA to Cohen Publicity. The email was added to the file as supporting documentation.

The attached contract, (the Agreement) was four (4) initialed pages which outlined the terms of service to be provided to RMA from Cohen Publicity. The last page was signed by Elliot Cohen on January 9, 2013 and the second signature, which was illegible, was signed on January 5, 2013 (under the signature, the words "For RMA" was written). The Agreement appeared to mirror the agreement provided by Responded earlier in the investigation. It was added into the file as supporting documentation.

The next email attachment, titled "Redevelopment Management Associates, LLC Payments to Cohen Publicity", listed the dates, check numbers and monetary amounts that were paid to Cohen Publicity between February of 2013 and August of 2014. The spreadsheet is listed the following:

Redevelopment Management Associates, LLC Payments to Cohen Publicity			Public Relations & Video Services related to Old Pompano Redevelopment		
Date for Services	Check Number	Amount	Date for Services	Check Number	Amount
RMA Public Relations Services & Marketing			05/20/14	2163	\$2,000
02/11/13	1559	\$1,159	06/03/14	2169	\$1,000
03/20/13	1597	\$1,000	08/27/14	2244	\$1,000
04/08/13	1615	\$1,000	Total		\$4,000
05/21/13	1677	\$1,000			
06/13/13	1690	\$1,000			
Total		\$5,159	Grand Total for both jobs		\$9,159

Based on the information provided, Respondent was paid a total \$5,159 between the months of February and June of 2013. Respondent was also paid a total of \$4,000 between the months of May and August of 2014. The total

amount paid to Respondent by RMA was \$9,159. This information is also consistent with a detailed payment record report provided by RMA, which also lists dates, check numbers and total amounts paid to Cohen Publicity between 2013 through 2014. RMA also provided a copy of a signed check written August 2014, made out to Cohen Publicity for the amount of \$1,000. The check number is #2244, which is listed on both of the provided payment record documents. All of these documents have been added to the file.

On February 9, 2016, I requested Respondent provide a copy of the documentation he referred to in his second taped statement, in which he stated he notified RMA that he was suspending the relationship due to a conflict. On February 12, 2016, Respondent forwarded an email with an attachment that shows a copy of an email written by "Elliot" to "Kim." Based on the information already learned, "Elliot" is the Respondent in this case and used an email address which matches the email address used by Cohen Publicity. "Kim" is Kim Briesmeister, one of the coowners of RMA and the email address this information was forwarded to is consistent with the email address used by Ms. Briesmeister that is on file.

In the content of email, Respondent writes the following:

"In anticipation of the start of the public process next week to discuss the future of the City of West Palm Beach CRA, I think it is best to hold off on that kind of work until the city completes its process of possibly selecting a firm to run the CRA.

As you know, I have no roles in making any decisions, nor do I have any control in any selection process. I am not paid by the CRA, and I am not involved in the awarding of any contracts, nor in the drafting of any RQO. I don't have any role in deciding the future of the CRA.

However, until the process is over, it's probably best to put it on hold.

Elliot"

This email was sent to Ms. Breismeister by Respondent on Friday, June 21, 2013 at 3:37 pm. A copy has been added into the file documents.

- **Summary of the allegations in the Complaint**

Complainant alleges that Respondent may have acted in violation of §2-443(d), *Contractual relationships*, while a salaried employee of the City and working for RMA as an independent contractor under the banner of his own public relations company, Cohen Publicity.

The Complaint references a second job by Respondent with the City of Miami Lakes at \$150 per hour. Since the City of Miami Lakes has no contractual relationship with the City of West Palm Beach, and is another governmental entity, there is no violation of §2-443(d), *Contractual relationships* by Respondent for employment with the City of Miami Lakes.

Complaint states Respondent works his salaried job for the City in conjunction with his second job with his public relations company. Based on information gathered, Respondent does not work traditional hours. He is subject to call outs and other mandatory City work situations where he is required to respond during off hours. Per statements from Respondent's supervisor, Mayor Muoio, he is allowed to utilize a "flex time" system. Respondent stated during his interviews, that he works for his personal public relations company on his personal time and does not mix the two. Although the allegation was made, Complainant provided no relevant documentation to dispute both the statement of Mayor Muoio or Respondent relative to his working hours or schedule. Likewise, there is no substantial information indicative of a violation of COE §2-443(a), *Misuse of public office or employment* by Respondent.

However, there is substantial evidence to believe Respondent may have violated §2-443(d), *Contractual relationships*, from June 2014 through August 2014, by entering into a contractual relationship with RMA. During Respondent's interview on December 10, 2015, he referenced Commission on Ethics (COE) RQO 10-038 OE

(January 26, 2011) as authority he used to justify his contractual relationship with RMA. Within the RQO, he highlighted below section of the opinion:

"IN SUM, based on the facts you have submitted, the commission has determined that even working as a sub-contractor for a company with contracts for electrical services with the City of Boynton Beach creates enough "privity" of contract to establish an indirect contractual relationship with the City. Therefore, such a relationship violates the ethics rules under §2-443(c) *Prohibited contractual relationships*. Based on the facts presented, Mr. Ellis cannot sub-contract for electrical work for the City while he is a Chief Electrician for the City of Boynton Beach."

- **Analysis**

Respondent's analysis of this advisory opinion RQO 10-038 was incorrect. RQO 10-038 advises that the petitioner is not permitted to sub-contract work for a City when he is a City employee. In Respondent's situation, although RMA is not a City, they are under contract with the City where Respondent is employed and are classified a "vendor". The Code in §2-443(d), prohibits employees from entering into contracts with vendors of City that they are employed with. Respondent does not meet the special circumstances which would allow him to provide services to RMA as he is not a "sole source" provider, the contract completed in an emergency situation, nor does any other exception apply in this situation.

Respondent ultimately notified RMA in writing that he was going to suspend the contract in June of 2013. Then, by re-establishing his outside working relationship with RMA, in essence he entered into a new agreement with RMA for the work completed between the dates of June through August of 2014. According to Respondent's own statement given Thursday, January 7, 2016 at 11:16 am, "He contacted RMA at some point in 2014 and asked them if they wanted to continue the relationship. They made a verbal agreement to complete video work."

Code of Ethics §2-443(d), states "*No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable...(emphasis added).*" RMA, while under contract with the City of West Palm Beach to administer it's CRA is identified as a vendor for the municipality.

- **Applicable law**

The following sections of the PBC Commission on Ethics ordinance are relevant to this investigation:

Section 2-254. *Creation and jurisdiction.*

The Palm Beach County Commission on Ethics (hereinafter "commission on ethics") is hereby established. The jurisdiction of the commission on ethics shall extend to *any person required to comply with the countywide code of ethics...* (Emphasis added)

Sec. 2-256. *Applicability of code of ethics ordinance.*

The countywide code of ethics ordinance shall be applicable to all persons and/or entities within the jurisdiction of said ordinance and shall apply to the members and staff of the commission on ethics.

Sec. 2-258. *Powers and duties.*

(a) The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the:

(1) Countywide Code of Ethics;

The following sections of the PBC Code of Ethics are relevant to this investigation:

Sec. 2-442. *Definitions*

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid.... The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the

board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.

Outside employer or business includes:

- (1) Any entity, other than the county, the state, or any other federal regional, local, or municipal government entity, ***of which the official or employee is a member, official, director, proprietor, partner, or employee, and from which he or she receives compensation for services rendered*** or goods sold or produced. For purposes of this definition, "compensation" does not include reimbursement for necessary expenses, including travel expenses. (Emphasis added)

Sec. 2-443. Prohibited conduct

- (d) ***Contractual relationships.*** No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to Section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable.

(e) Exceptions and waiver

- (5) Notwithstanding any provision to the contrary, subsection (d) shall not be construed to prevent an employee from seeking part-time employment with an outside employer who has entered into a contract for goods or services with the county or municipality as applicable provided that:
 - f. The employee has obtained a conflict of interest waiver from the chief administrative officer and the employee's department head of the county or municipality based on a finding that no conflict exists. The employee shall submit the request for waiver in writing and under oath. The request for the waiver shall be signed by the employee under oath or affirmation on an approved form provided by the commission on ethics. The document shall contain written acknowledgment of compliance with the provisions of subsection (5)a. through (5)e. of this subsection, together with such pertinent facts and relevant documents that support such waiver. A waiver under this subsection must be approved by both the employee's supervisor and chief administrative officer of the county or municipality. The county or municipality shall record such waiver in the employee's personnel file and shall submit a copy of the waiver and all related documents to the commission on ethics. The commission on ethics in its discretion may elect to review, comment on, or investigate any waiver. The commission on ethics review or investigation shall not delay an employee's ability to take the part time employment

• **Additional documents submitted to the File**

1. Letter from the PB Office of Inspector General addressed to Mr. Jeffery Green. (2 pages)
2. Email to PB OIG from "JD". (2 pages)
3. Respondent emails – multiple. (6 pages)
4. RQO's (10-038) - provided by Respondent. (3 pages)
5. Conflict of Interest Waiver. (1 pages)
6. Cohen Publicity / RMA signed contract (provided by Respondent). (4 pages)
7. COE Sworn Interview Form – 1/7/2016. (2 pages)
8. Contract Suspension email – with envelope. (1 page)
9. WPB CRA website information. (2 pages)
10. RMA website information. (3 pages)
11. Misc. CRA articles and information. (8 pages)

12. Jon Ward LinkedIn profile. (5 pages)
13. Respondent news articles provided by Complainant. (5 pages)
14. Emails provided by Complainant. (5 pages)
15. Emails and payment information provided by RMA. (5 pages)
16. COE Sworn Interview Form – 1/26/2016. (2 pages)
17. Cohen Publicity / RMA signed contract (provided by RMA). (4 pages)

- **Summary of Investigation findings**

The investigation into this matter by COE staff revealed Respondent may have violated PBC Code of Ethics §2-443(d). Based on the information given to COE staff by Complainant and information uncovered during the investigation, the facts support a possible violation of code section 2-443(d), *Contractual relationships*. From June of 2014 through August of 2014, Respondent received a total of \$4,000 from RMA for contractual work that was provided through Respondent's personal company, Cohen Publicity.

Although the Code allows for established contracts to remain in effect after an entity becomes a vendor of a municipality, Respondent may have violated the Code once he formally suspended the contractual relationship and then re-established said relationship.

End of Investigation

Submitted by:



Anthony C. Bennett
PB County Commission on Ethics

3/23/16
Date

Reviewed by:

AKB
(Initials)

3/23/16
Date

Alicia Alleyne

From: elliot@cohenpublicity.com
Sent: Friday, January 31, 2014 1:49 PM
To: Kim Briesemeister; CHRISTOPHER BROWN
Subject: RE: Looking to Hire RMA

That's great, because he knows and says it's perfectly fine.

Elliot Cohen

cohenpublicity

PR / Video Production / Crisis Management / Marketing
www.cohenpublicity.com
561-676-4949

----- Original Message -----

Subject: RE: Looking to Hire RMA
From: Kim Briesemeister <kim@rma.us.com>
Date: Fri, January 31, 2014 1:41 pm
To: CHRISTOPHER BROWN <christopher.brown0@icloud.com>, "elliot@cohenpublicity.com" <elliot@cohenpublicity.com>

How can you not Love this guy? Ok, ok, lets talk, but I'm saying again as much as we want you to start again, your boss (Jeff) has to agree.

From: CHRISTOPHER BROWN [<mailto:christopher.brown0@icloud.com>]
Sent: Friday, January 31, 2014 1:37 PM
To: elliot@cohenpublicity.com
Cc: Kim Briesemeister
Subject: Re: Looking to Hire RMA

Dear Mayor: we don't use pr firms only word of mouth. It's better. But if you think your better than word of mouth bring your words and your mouth to RMA this Saturday. We assure you that we will give you adequate time. CB

Sent from my iPhone

On Jan 31, 2014, at 1:25 PM, elliot@cohenpublicity.com wrote:

Dear RMA management team,

I am the mayor of a large city in the state of Florida, and I am seeking a company to run my Community Redevelopment Agency.

I have heard positive things about RMA, and would like to hire you, however your website hasn't had any new PR/news items in over six months, and I haven't seen RMA mentioned in any recent news clippings.

Are you still in business? It's hard to tell from your site. You really need someone who can concentrate on promoting your business to mayors like myself.

I would suggest you connect with whoever had been doing such a stellar job keeping RMA in the news months ago, and resume your efforts.

I understand all the obstacles have been taken care of, and they are ready to move forward!

Respectfully,

Elliot Cohen
Mayor of the town of "Let's Get Going-ville"

:)

Alicia Alleyne

From: Kim Briesemeister
Sent: Tuesday, December 3, 2013 5:38 PM
To: 'jgreen@wpb.org'
Subject: Draft #2 CRA Contract
Attachments: Continuing Services Contract WPB; Draft Dec 3 2013.doc; Copy of Copy of Work Plan.xlsx

Jeff, per your request, please find the revisions to the contract you requested including:

- Term of agreement was revised
- Cancellation provision revised
- Insurance section removed to make room for WPB specific requirements
- Signature Block needs to be added for the City
- TBD Fixed Fee Increase

Also attached is a revised "Work Plan" which is the Scope of Services as well as the Exhibit For Work Authorization #1. I also highlighted the "exhibits" in the text so if legal would like to make changes they can easily find them in the document.

Tomorrow I will forward the revised fee proposal.

Have a good night.

Alicia Alleyne

From: Kim Briesemeister
Sent: Monday, December 9, 2013 11:54 AM
To: 'SPayson@wpb.org'; Chris Brown; jgreen@wpb.org
Cc: 'NURcheck@wpb.org'; 'BMurray@wpb.org'
Subject: RE: Matter No. 13757

Good morning Jeff,

I called and left you a message to review the contract Suzanne sent. We're fine with the revised format but need to clarify a few sections of the document and Scope. Please call when you are available.

Thanks,

Kim

Kim Briesemeister
3109 E. Atlantic Blvd., Suite B
Pompano Beach FL 33062
RMA.us.com
965.695.0754

-----Original Message-----

From: SPayson@wpb.org [mailto:SPayson@wpb.org]
Sent: Friday, December 06, 2013 2:51 PM
To: Kim Briesemeister; Chris Brown
Cc: JGreen@wpb.org; NURcheck@wpb.org; BMurray@wpb.org
Subject: RMA: Matter No. 13757

Kim and Chris - attached is the City's proposed draft of the agreement for your review. If you have any questions regarding the business terms, feel free to discuss those directly with Jeff. And let me know if you have any issues regarding the contract. We look forward to working with you to finalize this.

Thanks

(See attached file: RMA CRA Consulting Agreement 120613.doc)

Suzanne Payson
Assistant City Attorney
401 Clematis Street
West Palm Beach, FL 33401
(561) 822-1369

----- Forwarded by Suzanne Payson/WESTPALM on 12/06/2013 02:48 PM -----

From: Jeffrey Green/WESTPALM
To: Suzanne Payson/WESTPALM
Date: 12/06/2013 09:08 AM
Subject: Fwd: Revised Scope

Sent from my iPhone

Begin forwarded message:

> From: "Kim Briesemeister" <kim@rma.us.com>
> Date: December 6, 2013 8:48:52 AM EST
> To: "jgreen@wpb.org" <jgreen@wpb.org>
> Cc: "Kim Briesemeister" <kim@rma.us.com>, "Chris Brown"
> <chris@rma.us.com>
> Subject: Revised Scope
>
> Jeff,
> Please find the revised scope per your request. I believe there are a
> few
items we need to discuss and clarify, I look forward to hearing from you.
>
> Kim

Attachment B – Governor’s Executive Order and Related Documents

Auditor’s Comment: The following is the Governor’s Executive Order Related to the IG Report. Documents referenced have been attached. It should be noted that pages marked as confidential are no longer confidential as confirmed by the Florida Commission on Ethics.

STATE OF FLORIDA

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NUMBER 2020E-06

WHEREAS, the State of Florida Commission on Ethics has issued Final Order and Public Report No. 19-011; and

WHEREAS, the Governor accepts the findings, conclusions, and recommendations of the Commission on Ethics Final Order and Public Report No. 19-011, In re Elliot Cohen; and

WHEREAS, Elliot Cohen was at all times material hereto the Director of Communications for the City of West Palm Beach, and as such was subject to the provisions of the Code of Ethics for Public Officers and Employees, Part III of Chapter 112, Florida Statutes, and subject to the jurisdictions of the Commission on Ethics; and

NOW, THEREFORE, I, RON DESANTIS, Governor of Florida, in obedience to my constitutional duty to take care that the laws be faithfully executed, and pursuant to the Constitution and laws of the State of Florida, issue this Executive Order, effective immediately, declaring that:

1. Elliot Cohen violated section 112.313(6), Florida Statutes, by misusing his official public office or employment to solicit business for Cohen Publicity, violated section 112.313(7)(a), Florida Statutes, by maintaining a contractual relationship with a business entity subject to the regulation of, and doing business with, Cohen's agency, the City of West Palm Beach and violated section 112.313(8), Florida Statutes, by soliciting business for his private company after learning through his public position that the City of Pahokee had asked for guidance in the areas of human resources and communications.

2. A civil penalty in the amount of \$4,500 for the violation of sections 112.313(6), 112.313(7)(a) and 112.313(8), Florida Statutes, is hereby imposed against Cohen, which shall be satisfied within thirty (30) days of the date of this order. Payment must be submitted with a written statement under oath by Cohen that the penalty amount was not paid with public funds and will not be reimbursed with public funds.



RON DESANTIS

GOVERNOR

DATE: February 11, 2020

By:

Joseph Jacquot
GENERAL COUNSEL

On behalf of and by the authority of Governor Ron DeSantis

ATTEST:

Laurel M. Lee
Laurel M. Lee
SECRETARY OF STATE

2020 FEB 11 PM 4:07

Guy W. Norris
Chair
Kimberly Bonder Rezanka
Vice Chair
Jason David Berger
Daniel Brady, Ph.D.
Antonio Carvajal
JoAnne Leznoff
F. Shields McManus
William "Willie" N. Meggs
Garrett Richter



State of Florida
COMMISSION ON ETHICS
P.O. Drawer 15709
Tallahassee, Florida 32317-5709

325 John Knox Road
Building E, Suite 200
Tallahassee, Florida 32303

Virilindia Doss
Executive Director

C. Christopher Anderson, III
*General Counsel/
Deputy Executive Director*

(850) 488-7864 Phone
(850) 488-3077 (FAX)
www.ethics.state.fl.us

"A Public Office is a Public Trust"

March 13, 2019

The Honorable Ron DeSantis
Governor, State of Florida
The Capitol, 400 S. Monroe St.
Tallahassee, Florida 32399-0001

Re: Complaint No. 16-192, In re ELLIOT COHEN

Dear Governor DeSantis:

The Florida Commission on Ethics has completed a full and final investigation of a complaint involving Elliot Cohen, who served as the Director of Communications for the City of West Palm Beach. Pursuant to Section 112.324(8), Florida Statutes, we are reporting our findings and recommending appropriate disciplinary action to you in this case. Enclosed are copies of our final order and of our file in this matter. As we have found pursuant to a stipulation that Mr. Cohen violated the Code of Ethics in the manner described by our order, we recommend that you impose a civil penalty upon him in the amount of \$4,500 (four thousand and five hundred dollars), a penalty he has agreed to be subjected to and to pay. If we may be of any assistance to you in your deliberations, please do not hesitate to contact us. We would appreciate your informing us of the manner in which you dispose of this matter. For information regarding collection of the civil penalty, please contact the Office of the Attorney General, Ms. Elizabeth A. Miller, Assistant Attorney General.

Sincerely,

A handwritten signature in cursive script, appearing to read "Virilindia Doss", is written over a horizontal line.

Virilindia Doss
Executive Director

VAD/gps

Enclosures

cc: Mr. Mark Herron, Attorney for Respondent
Ms. Elizabeth A. Miller, Commission Advocate
Mr. John Carey, Complainant

DATE FILED

MAR 13 2019

COMMISSION ON ETHICS

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re ELLIOT COHEN,)	
)	Complaint No. 16-192
)	
Respondent.)	
)	
_____)	Final Order No. 19-011

FINAL ORDER AND PUBLIC REPORT

The State of Florida Commission on Ethics, meeting in public session on March 8, 2019, adopted the Joint Stipulation of Fact, Law, and Recommended Order entered into between the Advocate for the Commission and the Respondent in this matter.

In accordance with the Stipulation, which is attached hereto and incorporated by reference, the Commission finds that the Respondent, who served as Director of Communications for the City of West Palm Beach, violated Section 112.313(6), Florida Statutes, by misusing his official public office or employment to solicit business for Cohen Publicity, violated Section 112.313(7)(a), Florida Statutes, by maintaining a contractual relationship with a business entity subject to the regulation of, and doing business with, the Respondent's agency, the City of West Palm Beach, and violated Section 112.313(8), Florida Statutes, by soliciting business for his private company after learning through his public position that the City of Pahokee had asked for guidance in the areas of human resources and communications.

For the violations, in accordance with the Stipulation, the Commission hereby recommends a civil penalty in the total amount of \$4,500, a penalty which the Respondent has agreed to be subjected to and to pay.

ORDERED by the State of Florida Commission on Ethics meeting in public session on
March 8, 2019.

March 13, 2019
Date Rendered



Guy W. Norris
Chair, Florida Commission on Ethics

cc: Mr. Mark Herron, Attorney for Respondent
Ms. Elizabeth A. Miller, Commission Advocate
Mr. John Carey, Complainant

JAN 11 2019

RECEIVED

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

CONFIDENTIAL

In re: Elliot Cohen,
Respondent.

Complaint No. 16-192

JOINT STIPULATION OF FACT, LAW, AND RECOMMENDED ORDER

Respondent, Elliot Cohen, and the Advocate for the Florida Commission on Ethics enter into this Joint Stipulation of Fact, Law, and Recommended Order with respect to the above-styled Complaint. Subject to acceptance by the Commission on Ethics, the parties agree that they enter into this stipulated settlement in lieu of further hearings in this cause. The parties stipulate as follows:

STIPULATED FINDINGS OF FACT

1. At all times material to this Complaint, Respondent served as the Director of Communications for the City of West Palm Beach and, therefore, is subject to the provisions of the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes.

2. On October 6, 2016, a sworn Complaint was filed with the Commission on Ethics alleging that Respondent violated the Code of Ethics.

3 Pursuant to Section 112.322, Florida Statutes, the Executive Director of the Commission on Ethics found that the Complaint was legally sufficient and on October 13, 2016, ordered a preliminary investigation of the Complaint for a probable cause determination of whether Respondent had violated the Code of Ethics. The Report of Investigation was released on August 22, 2018.

4. On December 12, 2018, the Commission on Ethics found probable cause to believe Respondent had violated Sections 112.313(6), 112.313(7)(a), and 112.313(8), Florida Statutes.

The allegations are:

- I. Respondent violated Section 112.313(6), Florida Statutes, by misusing his official public office or employment to solicit business for Cohen Publicity.
 - II. Respondent violated Section 112.313(7)(a), Florida Statutes, by maintaining a contractual relationship with a business entity subject to the regulation of, and doing business with, Respondent's agency, the City of West Palm Beach.
 - III. Respondent violated Section 112.313(8), Florida Statutes, by soliciting business for his private company after learning through his public position that the City of Pahokee had asked for guidance in the areas of human resources and communications.
5. Respondent admits the facts as set forth in the Report of Investigation which is specifically incorporated by reference in this Joint Stipulation as to Allegations I, II, and III.

STIPULATED CONCLUSIONS OF LAW

6. Respondent is subject to the provisions of Part III, Chapter 112, Florida Statutes, the Code of Ethics for Public Officers and Employees.
7. The Commission on Ethics has jurisdiction over the Complaint as filed in this proceeding and over Respondent.
8. Respondent admits all of the allegations as set forth in paragraph four (4) of the Stipulated Findings of Fact, above.
9. Respondent violated Section 112.313(6), Florida Statutes, by misusing his official public office or employment to solicit business for Cohen Publicity.
10. Respondent violated Section 112.313(7)(a), Florida Statutes, by maintaining a contractual relationship with a business entity subject to the regulation of, and doing business with, Respondent's agency, the City of West Palm Beach.
11. Respondent violated Section 112.313(8), Florida Statutes, by soliciting business for his private company after learning through his public position that the City of Pahokee had asked for guidance in the areas of human resources and communications.

12. Respondent enters into this Stipulation with the understanding of the seriousness of the allegations and gives his assurance that this proceeding has affected the manner in which he conducts himself as a public official in a positive way.

STIPULATED RECOMMENDED ORDER

13. The Advocate accepts Respondent's admission in this proceeding.

14. The Advocate and Respondent have entered into this Joint Stipulation and urge the Commission on Ethics to approve it in lieu of further hearings in this cause.

15. Therefore, the parties request and the Advocate recommends that:

(a) The Commission on Ethics approve this Joint Stipulation, embodying the stipulations, admissions, and recommendations of the parties;

(b) The Commission on Ethics enter a Final Order and Public Report finding that Respondent violated Sections 112.313(6), 112.313(7)(a), and 112.313(8), Florida Statutes, and recommending:

A civil penalty of:

\$1,500 for Allegation I,

\$1,500 for Allegation II,

\$1,500 for Allegation III,

For a total civil penalty of \$4,500.

FURTHER STIPULATIONS

16. Respondent and the Advocate stipulate and covenant that they have freely and voluntarily entered into this Joint Stipulation of Fact, Law, and Recommended Order with full knowledge and understanding of its contents. Respondent and the Advocate further stipulate and covenant that this Joint Stipulation constitutes the full agreement of the parties and that there are no oral or written understandings between the parties other than those contained in this Stipulation

of Fact, Law, and Recommended Order.

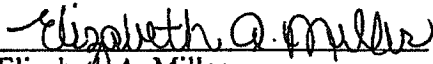
17. Respondent and the Advocate stipulate and covenant that, in consideration of the provisions of this Joint Stipulation of Fact, Law, and Recommended Order, they accept and will comply with the above-referenced Final Order and Public Report of the Commission on Ethics.

18. Respondent and the Advocate stipulate that this Joint Stipulation of Fact, Law, and Recommended Order is submitted to the Commission on Ethics for its consideration and ratification. In the event that it is not approved by the Commission on Ethics as written, this document shall be of no purpose and effect and shall not be deemed an admission by Respondent.

19. Effective upon approval of this Joint Stipulation of Fact, Law, and Recommended Order by the Commission on Ethics, Respondent waives all time, notice, hearing rights, requirements, and entitlements, as to all subsequent hearings in this proceeding.

Signed, dated and entered into:

this 11th day of January, 2019.


Elizabeth A. Miller
Advocate for the Florida
Commission on Ethics
Florida Bar No. 578411
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-1050


Signed, dated and entered into:

this ____ day of _____, 2019.

Mark
Herron

Digitally signed by Mark Herron
DN: cn=Mark Herron, o=Messer
Caparello, ou,
email=mherron@flawda.com, c=US
Date: 2019.01.10 10:53:38 -0500

Mark Herron, Esq.
Messer Caparello
Florida Bar No. 199737
2618 Centennial Place
Tallahassee, FL. 32308
(850) 222-0720


Elliot Cohen
Respondent

REPORT OF INVESTIGATION



Consolidated Complaint Number 16-192

NOTICE CONCERNING CONFIDENTIALITY

This report of investigation concerns an alleged violation of Chapter 112, Part III, Florida Statutes, or other breach of public trust under provisions of Article II, Section 8, Florida Constitution. The Report and any exhibits may be confidential (exempt from the public records law) pursuant to Section 112.324, Florida Statutes, and Chapter 34-5, F.A.C., the rules of the Commission on Ethics. Unless the Respondent has waived the confidentiality in writing, this report will remain confidential until one of the following occurs: (1) the complaint is dismissed by the Commission; (2) the Commission finds sufficient evidence to order a public hearing; or (3) the Commission orders a public report as a final disposition of the matter.

STATE OF FLORIDA
COMMISSION ON ETHICS
Post Office Drawer 15709
Tallahassee, Florida 32317-5709

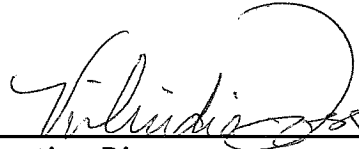
REPORT OF INVESTIGATION

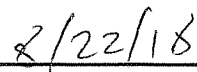
TITLE: ELLIOT COHEN
Former Director of Communications
West Palm Beach, Florida

COMPLAINT NO: 16-192

INVESTIGATED BY: 
A. Keith Powell

Distribution: Commission on Ethics
Respondent
Advocate
File

Releasing Authority: 
Executive Director


Date

* * * *

**REPORT OF INVESTIGATION
COMPLAINT NO. 16-192**

(1) Mr. John Carey, Inspector General for the Palm Beach County Office of the Inspector General (OIG) in West Palm Beach alleges that then-City of West Palm Beach Director of Communications, Elliot Cohen, violated the Code of Ethics for Public Officers and Employees.

(2) The complaint alleges that the Respondent or his company contracted with a business entity, Redevelopment Management Associates, LLC (RMA), while that entity was doing business with the City of West Palm Beach. The complaint also alleges that the Respondent attempted to solicit business for his private company, Cohen Publicity, from the City of Pahokee after learning—through his public position—that the City of Pahokee had asked the City of West Palm Beach for guidance in the areas of human resources and communications. The complaint alleges that although the City of West Palm Beach did not intend for the Respondent to solicit private business from the City of Pahokee, he indicated in his communication with the City of Pahokee that he was acting in his private capacity at the request of the City of West Palm Beach's Deputy City Administrator, and with the "knowledge and blessing" of the City of West Palm Beach.

(3) The Executive Director of the Commission on Ethics noted that based upon the information provided in the complaint, the above-referenced allegations were sufficient to warrant a preliminary investigation to determine whether the Respondent violated Section 112.313(6), Florida Statutes (Misuse of Public Position), Section 112.313(7)(a), Florida Statutes (Conflicting Employment or Contractual Relationship), and Section 112.313(8), Florida Statutes (Disclosure or Use of Certain Information).

(4) Investigative Report 2016-0002 released by the OIG on September 28, 2016, indicates that during the course of their investigation they conducted 32 interviews and reviewed hundreds of thousands of pages of City records, including calendar appointment records, cell phone records, Commissioner records, computer logon/logoff records, land line phone records, ordinances, parking records, personnel files, policies and procedures, procurement records, public records requests records, time and attendance records, videos, and web history. They also reviewed records from Cohen Publicity, the Respondent's business, including billing statements, cell phone records, contracts, County Business Tax receipts, and e-mails. Additionally, they reviewed Mr. Cohen's personal Sunpass records, as well as records from RMA, including its contract with Cohen Publicity, e-mails to/from Mr. Cohen, payment history for Mr. Cohen, and work product from Mr. Cohen.

(5) Mr. Cohen served as the Public Information Officer (PIO) for the City of West Palm Beach from January 18, 2005, to September 2, 2005, when he left the City's employ to become the Director of Media Relations for the Broward County Sheriff's Department. He was rehired by the City as PIO on May 14, 2012, and was promoted to Director of Communications on December 25, 2012. Mr. Cohen resigned from the City's employ in August 2016.

The allegation that the Respondent or his company contracted with Redevelopment Management Associates while that entity was doing business with the City of West Palm Beach

(6) On April 21, 2006, Mr. Cohen filed documents with the Florida Department of State, Division of Corporations, registering the fictitious name Cohen Publicity for his business. On January 9, 2013, Mr. Cohen signed a professional services contract with RMA as President of Cohen Publicity to provide "public relations & marketing guidance and support in accordance with mutually agreed upon marketing plan." The contract states, "Independent Contractor [Cohen Publicity] agrees to be available upon reasonable notice for teleconference calls during regular business hours." Records reflect that on December 16, 2013, RMA entered into its contract with the City of West Palm Beach to take over the operation of the CRA. On September 4, 2014, Mr. Cohen e-mailed Ms. Briesemeister indicating he wished to terminate his contract with RMA—which had him on a monthly retainer and instead work with the company on a "case-by-case basis."

(7) The Respondent stated by telephone that Cohen Publicity was never incorporated, rather, he registered the name with the Florida Department of State, Division of Corporations as a "Fictitious Name." Cohen Publicity was a sole proprietorship, he advised, and all payments he received from RMA were placed in his personal bank account. Mr. Cohen maintains that the City Administrator was aware of his outside employment and said he believed his outside consulting would not create a conflict with his public position so long as he did not work on any City-related projects.

(8) Ms. Kim Briesemeister, RMA's Managing Member, formerly served as the CRA's part-time Director from 2009 until she resigned in August 2012. RMA was formed in 2009. Ms. Briesemeister advised OIG investigators that she believed she had informed West Palm Beach City Administrator Jeff Green of the Respondent's relationship with RMA, and that she asked the Respondent to be certain that any outside work authorization required of him was in place before he contracted with her company. She added, "I believe I mentioned it to the Mayor as well," indicating to OIG that these conversations would have taken place in February or March 2013, just after the Respondent signed the agreement with RMA. Once she submitted her proposal to the City in response to the City's Request for Qualifications (RFQ) to operate the CRA, she said, there was a "cone of silence" required by the City that prohibited her from speaking to anyone at the City until the selection was made. Because of the prohibition, Ms. Briesemeister told OIG that neither she nor anyone associated with RMA had any contact with the Respondent during the RFQ process.

(9) City Senior Purchasing Agent Josephine Grosch, and City Procurement Official Frank Hayden, each told OIG investigators that RMA never mentioned its relationship with the Respondent to the City, despite being required by RFQ documents to disclose relationships with businesses owned by city employees.

(10) On June 21, 2013, the Respondent sent an e-mail to Ms. Briesemeister at RMA. The Respondent wrote, "Kim, as you know, I've been doing some occasional press release writing for you. In anticipation of the start of the public process next week to discuss the future of the City of West Palm Beach CRA, I think it is best to hold off on that kind of

work until the city completes its process of possibly selecting a firm to run the CRA. As you know, I have no role in making any decisions, nor do I have any control in any selection process. I am not paid by the CRA, and I'm not involved in the awarding of any contracts, nor in the drafting of any RFQ. I don't play any role in deciding the future of the CRA. However, until the process is over, it's probably best to put it on hold. Thanks. Elliot."

(11) In two separate sworn conversations with OIG, the Respondent indicated he "suspended" his relationship with RMA during the City's RFQ process, but the contract was not cancelled.

(12) The OIG found that between August 20, 2013, and December 16, 2013, the Respondent sent, received, and was copied on several e-mails pertaining to the City's selection process of a firm to manage the CRA. He attended private meetings with City officials, including procurement officials, where the selection process was discussed and decisions were made. His involvement included being part of the process to choose those who would sit on the proposed RFQ evaluation committee.

(13) There were 30 phone calls totaling over 3 hours between the Respondent's personal cell phone with either Ms. Briesemeister or Ms. McCormick (Director of Business Attraction and Marketing for RMA) between June 21, 2013, and January 31, 2014, while the contract between Cohen Publicity and RMA was allegedly on hold.

(14) On January 31, 2014, a series of e-mails were sent between the Respondent, Ms. Briesemeister and Mr. Christopher Brown (Principal/Real Estate Broker with RMA) discussing them moving forward with their contractual agreement. The e-mails culminated with Ms. Briesemeister saying, "I'm saying again as much as we want you to start again, your boss (Jeff) has to agree." Mr. Cohen responded, "That's great, because he knows and says it's perfectly fine."

(15) RMA payment records for the Respondent indicate that on February 11, 2013, he was paid \$1,159, on March 20, 2013, he was paid \$1,000, on April 8, 2013, he was paid \$1,000, on May 21, 2013, he was paid \$1,000, and on June 13, 2013, he received his final payment during the year of 2013 from RMA in the amount of \$1,000. The next payment from RMA to the Respondent was May 20, 2014, in the amount of \$2,000, followed by a \$1,000 payment on June 3, 2014, and a \$1,000 payment on August 27, 2014. The Respondent's contract called for him to be paid \$1,000 per month to be on retainer with RMA.

(16) City Administrator Green informed OIG investigators that he was unaware of the Respondent's contract with RMA until the fall of 2015. However, Mr. Green stated he did not view the Respondent's work with RMA as a conflict because the Respondent was not working with RMA specifically on any City projects.

(17) During the no-lobbying "cone of silence" period, which ran from September 4, 2013, through December 16, 2013, OIG identified 14 telephone calls lasting a total of 99 minutes between Ms. Briesemeister's cell phone and the Respondent's Cohen Publicity cell phone.

Five of these calls were initiated by Ms. Briesemeister, and nine were initiated by the Respondent.

(18) Mayor Geraldine Muoio told OIG investigators she was aware of the Respondent's work with RMA but she did not view the relationship as a conflict. She stated, "As long as he doesn't work on anything related to the City. They [RMA] have multiple clients and if he works for some other city that's not a conflict." She added, "As long as he continues to do the work I expect him to do as his supervisor and he's here when I need him . . . then I'm ok with that."

The allegation that the Respondent attempted to solicit business for his private company, Cohen Publicity, from the City of Pahokee after learning—through his public position—that the City of Pahokee asked the City of West Palm Beach for guidance in the areas of human resources and communications

(19) On July 2, 2015, an e-mail was sent from the Respondent's Cohen Publicity e-mail account to Mr. Chandler Williamson, congratulating Mr. Williamson on his new position with the City of Pahokee as the City Manager. In the e-mail he wrote, "I am the Director of Communications in the Mayor's Office at the City of West Palm Beach and Doritt Miller has asked that I reach out to you." Ms. Miller is the Deputy City Administrator. A copy of this communication is appended as page six of the complaint.

(20) On July 29, 2015, Mr. Cohen sent a follow-up e-mail from the same account to Mr. Williamson. A copy of this communication is appended as page six and seven of the complaint.

(21) Fifteen minutes after receipt of the follow-up e-mail from the Respondent, Mr. Williamson forwarded both e-mails to Ms. Miller, West Palm Beach Deputy City Administrator, questioning Mr. Cohen's contact. He wrote, "I don't believe these were your intentions for the City of Pahokee."

(22) Mr. Cohen advised that he learned of Mr. Williamson's request for assistance during a City meeting with Ms. Miller and other City staff. He recalled that Ms. Miller indicated during the meeting that Mr. Williamson was looking for assistance with his position in Pahokee. He said he took her statement as an invitation to contact Mr. Williamson and offer his services through Cohen Publicity. He maintains that Ms. Miller's comments were not clearly stated to indicate she meant for staff to offer assistance to Mr. Williamson through only official City relations and not in a private capacity.

(23) Ms. Miller told OIG investigators that she never recommended anyone to contact the City of Pahokee to offer assistance in a private capacity. She explained that she attended a meeting of the Florida City Managers' Association where she met Mr. Williamson. She said Mr. Williamson told her that he was trying to do work for Pahokee, and he would like to have her and the City of West Palm Beach serve as a mentoring partner with him and the City of Pahokee. She recalled he asked if she could help. She said, "I had a department head meeting and so it came up where I said ok now we have this big city here and we have lots of resources and we have this guy out in Pahokee, he's trying to get some work done, he wants to build his city. And we could be like a sister city to them, a brother to them, and so

I told him [Williamson] that he could come over here or we could help him with policies and procedures whatever. And so, the meeting ended and it was the intent that we could help him with different policies whatever it is."

(24) On July 29, 2015, Ms. Miller forwarded Mr. Williamson's e-mail with attachments to City Administrator Green. She told OIG that she met with Mr. Green the following morning, July 30, 2015, regarding the Respondent's e-mails to Mr. Williamson. Together, she said they met with Mayor Jeri Muoio to discuss the issue.

(25) Mr. Green told OIG investigators that he recalled discussing the matter with Ms. Miller concerning whether it would be a conflict. He said they, "didn't come to any conclusion on it." He added, "She [Ms. Miller] was concerned about it. . . . I didn't have a concern about it because we [he and Mr. Cohen] had talked previously and I knew he was going to solicit business from other cities." Mr. Green said he could not recall if he ever spoke to the Mayor about this matter.

END OF REPORT OF PRELIMINARY INVESTIGATION