



# MEMORANDUM

AGENDA ITEM #III.J

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DATE: SEPTEMBER 10, 2012

TO: EXECUTIVE COMMITTEE MEMBERS

FROM: JAMES F. MURLEY, EXECUTIVE DIRECTOR

SUBJECT: EXECUTIVE DIRECTOR ANNUAL REVIEW

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In the contract between the Council and the Executive Director, Section 1.9.3 (page 4) states that the Council, through the Executive Committee, will conduct an annual review of the Executive Director on or before the October meeting.

At this time, no salary modification is being requested.

Recommendation

Assess the Executive Director's performance.

**AGREEMENT BETWEEN THE  
SOUTH FLORIDA REGIONAL PLANNING COUNCIL  
AND  
JAMES F. MURLEY  
PROVIDING FOR EMPLOYMENT  
AS EXECUTIVE DIRECTOR**

THIS IS AN AGREEMENT, made and entered into this 7th day of November, 2011, by and between the SOUTH FLORIDA REGIONAL PLANNING COUNCIL, a body corporate and politic and an agency of the State of Florida, hereinafter referred to as "SFRPC" and JAMES F. MURLEY, hereinafter referred to a "EXECUTIVE DIRECTOR".

**WITNESSETH:**

WHEREAS, the SFRPC was created by interlocal agreement pursuant to Section 163.01, Florida Statutes, as amended, known as the "Florida Interlocal Cooperation Act of 1969" and supported by all applicable Florida Statutes, including but not limited to Section 186.501, Florida Statutes, as amended, and known as the "Florida Regional Planning Council Act", and

WHEREAS, Section 186.505, Florida Statutes, provides that the SFRPC may employ and compensate such personnel, consultants and technical and professional assistants as it deems necessary to exercise the powers and perform the duties set forth in accordance with Chapter 186, Florida Statutes; and

WHEREAS, the SFRPC has indicated its interest in entering into this Agreement for the purposes of establishing the basis, framework and context for the relationship which shall exist between the SFRPC and JAMES F. MURLEY as EXECUTIVE DIRECTOR; and

WHEREAS, this Agreement is the culmination of discussions, negotiations and agreements as to the employment by the SFRPC of JAMES P. MURLEY in conformity with the Florida Regional Planning Council Act; and

WHEREAS, the governing body of the SFRPC has, by majority vote, delegated the power and authority of recommending to the Council the hiring, firing and evaluating the Executive Director to the Executive Committee of the SFRPC, and therefore, the terms "SFRPC" shall be

defined and interpreted to mean the Executive Committee in this Agreement unless later modified by form action of the SFRPC subsequent hereto;

NOW THEREFORE, in consideration of the promises, the mutual covenants, conditions, provisions and undertakings herein contained, and for other good and valuable considerations, the parties do mutually covenant and agree with each other as follows:

## ARTICLE I

### TERMS AND CONDITIONS - THE SFRPC

1.0 The SFRPC agrees as follows:

1.1 To employ JAMES F. MURLEY as the EXECUTIVE DIRECTOR of the SFRPC for the term hereinafter referred to, consistent with the terms, conditions and covenants of the Florida Regional Planning Council Act and other applicable, professional and ethical requirements imposed upon the EXECUTIVE DIRECTOR by existing SFRPC Rules or existing agreements as they may be amended from time to time.

1.2 To pay and to compensate the EXECUTIVE DIRECTOR the sum of ONE HUNDRED SIXTY THOUSAND DOLLARS AND 00/100 (\$160,000) per annum unless otherwise modified in accordance with paragraph 1.8.3, hereinafter for the term of this Employment Agreement, payable in accordance with the regularly scheduled method of compensation for other SFRPC employees, in addition to such other fringe benefits, including but not limited to, health and medical insurance, retirement payments and other accoutrements of employment as more specifically set forth herein.

1.3 To provide EXECUTIVE DIRECTOR with an automobile allowance in the amount of SEVEN HUNDRED FIFTY DOLLARS AND 00/100 (\$750) per month as and for the reimbursement for the reimbursable mileage and automobile expenses of the EXECUTIVE DIRECTOR for performing services in and on behalf of the SFRPC.

1.4 To provide the EXECUTIVE DIRECTOR with the financial equivalent of the full and complete health, medical and related insurance for him and his dependents which are otherwise provided to regularly employed SFRPC employees.

1.5 To provide the EXECUTIVE DIRECTOR with sick leave accrual otherwise applicable to SFRPC employees and based upon policies existing from time to time and adopted by the governing body of the SFRPC.

1.6 To provide EXECUTIVE DIRECTOR with an SFRPC-issued cellular telephone, which shall be used solely for SFRPC business.

1.7 Effective October 1, 2011, and each subsequent fiscal year start date thereafter, the Executive Director's annual leave account will be credited with two hundred forty (240) hours, exclusive of paid holidays. No annual leave hours may be carried over from September 30<sup>th</sup>.

1.8 The SFRPC will contribute an amount comparable to the employee contribution in the State of Florida, Department of Administration, Florida Retirement System ("FRS") for the EXECUTIVE DIRECTOR, subject to FRS guidelines.

1.9 To provide increases in compensation to the EXECUTIVE DIRECTOR on the following basis:

1.9.1 Merit Increases: At the option of the Executive Committee of the SFRPC, to provide a merit increase to the EXECUTIVE DIRECTOR on an annual basis coinciding with the annual adoption of the budget from the date of employment hereof, subject to a vote of the Governing Body of the SFRPC of not less than a majority of the members present at a regular meeting or a special meeting called for that purpose.

1.9.2 Cost of Living Increases: At the option of the Executive Committee of the SFRPC of the SFRPC to annually adjust the existing salary based upon cost of living increases if otherwise provided to State of Florida employees, subject to a vote of

the Governing Body of the SFRPC of not less than a majority of the members present at a regular meeting or a special meeting called for that purpose.

1.9.3 To annually review and evaluate the EXECUTIVE DIRECTOR based upon performance standards, attached hereto as Exhibit "A" and incorporated herein, and as may be amended from time to time by the Governing Body of the SFRPC or the Executive Committee of the SFRPC with the delegated function of performing such evaluation and review, subject to a vote of the Governing Body of the SFRPC of not less than a majority of the members present at a regular meeting or a special meeting called for that purpose.

1.10 Subject to the approval of the Executive Committee, to pay for and on behalf of the EXECUTIVE DIRECTOR professional dues, seminars, fees and charges incurred by the EXECUTIVE DIRECTOR as a professional land planner and a member of such organizations which have a specific relationship with the SFRPC and the job duties and functions set forth herein.

1.11 To honor and to conform in all ways possible with the terms, conditions and provisions of the Florida Regional Planning Council Act, and other applicable rules and regulations affecting State of Florida employees as the same may not apply or as may be applicable in the future, as amended, as well as the ethical considerations imposed upon the EXECUTIVE DIRECTOR.

1.12 That in the event the SFRPC chooses to remove JAMES F. MURLEY as the EXECUTIVE DIRECTOR, it shall follow the provisions set forth hereinafter under the heading "Termination".

## ARTICLE II

### TERMS AND CONDITIONS - THE EXECUTIVE DIRECTOR

2.0 JAMES F. MURLEY agrees as follows:

2.1 To become the EXECUTIVE DIRECTOR of the SFRPC in accordance with the terms, conditions and provisions contained in the Florida Regional Planning Council Act as set forth in Chapter 186, Florida Statutes.

2.2 To fulfill the obligations and responsibilities provided for in the Florida Regional Planning Council Act and to perform all functions as the Chief Administrative Official of the SFRPC in a professional and respectable fashion and with the full decorum required and demanded of such officials generally in the South Florida Region, and elsewhere in the State of Florida as well as those impositions and requirements, both ethical and practical, as may be applicable to professional planners in the State of Florida.

2.3 To hire and to designate such other qualified professional staff, as may be necessary and proper in connection with the discharge of his functions as the EXECUTIVE DIRECTOR of the SFRPC.

2.4 That the position of EXECUTIVE DIRECTOR is not and cannot be an hourly type employment. It is a "Job-Basis" form of employment. Hence, the EXECUTIVE DIRECTOR shall do any and all things necessary and required to be available to the SFRPC, its agents, servants and employees during the course of this Agreement consistent with good and respectable management, requirements and as otherwise dictated and provided by the Florida Regional Planning Council Act and the Code of Professional Responsibility for certified planners, as well as such other rules, regulations and ethical considerations imposed upon State of Florida employees.

2.5 To act as an exempt, non-civil service employee of the SFRPC and to be an employee at will.

2.6 That EXECUTIVE DIRECTOR shall not engage in any other concurrent employment during the term of this Agreement, or use the executive director position to solicit any independent clients for any private entity.

### ARTICLE III

#### TERM

3.0 This Agreement shall commence on the 7th day of November, 2011, (the "Commencement Date") and shall terminate on the 6th day of November, 2014 ("Termination

Date"). However, the parties hereto further agree that this Agreement may be renewed upon mutual written consent of the parties, subject to confirmation by the full SFRPC Board, for an additional three (3) year term at its natural termination.

3.1 In the event the EXECUTIVE DIRECTOR elects to voluntarily terminate this Employment Agreement, he shall provide the SFRPC with not less than thirty (30) days written notice to the Chairman of the Governing Body of the SFRPC indicating his intention to discontinue employment as the EXECUTIVE DIRECTOR, consistent with the Florida Regional Planning Council Act.

3.2 In the event the EXECUTIVE DIRECTOR voluntarily resigns his position with the SFRPC, he shall be compensated for all earnings and compensation to the date of voluntary termination, in addition to any and all other health, medical and related insurance and governmental benefits otherwise provided as stated in the SFRPC personnel policies at the execution hereof or as may, from time to time, be later amended.

3.3 In the event the SFRPC elects to terminate this Employment Agreement prior to the expiration hereof, the SFRPC shall comply with the terms, conditions and provisions contained herein for termination which sets forth the specific procedures and benefits payable to the EXECUTIVE DIRECTOR.

3.4 Notwithstanding the foregoing, in the event the SFRPC terminates the employment of the EXECUTIVE DIRECTOR as provided for hereinafter, the SFRPC shall continue to pay to the EXECUTIVE DIRECTOR all compensation earned to the date of termination as well as all severance payments required under 4.3.1.

#### ARTICLE IV

##### TERMINATION

4.0 The parties hereto mutually covenant and agree as follows:

4.1 That the employment of the EXECUTIVE DIRECTOR shall be at the will of the Governing Body of the SFRPC, and that no civil service status, tenure or related

accoutrement shall be applicable to this type and kind of employment set forth in this Agreement.

4.2 By virtue of this acknowledgement, the parties have voluntarily and knowingly entered into and executed this Agreement on the basis of complying solely with the terms, conditions and provisions of this Employment Agreement.

4.3 This agreement may be terminated by either party for convenience. If EXECUTIVE DIRECTOR seeks to terminate this Agreement for convenience, he shall provide SFRPC with thirty (30) days prior written notice of his intention to terminate. If SFRPC seeks to terminate this Agreement for convenience, it shall provide EXECUTIVE DIRECTOR with thirty (30) days prior written notice of its intention to terminate, subject to Section 4.4. The notice provision herein shall not apply to termination for cause as outlined in subsection 4.5 herein.

4.4 If it be the will and pleasure of the Governing Body of the SFRPC to terminate the employment of the EXECUTIVE DIRECTOR, the SFRPC shall, by not less than a majority vote, adopt a motion or resolution terminating the services of the EXECUTIVE DIRECTOR based upon this Agreement. Upon approval of such motion or resolution, Executive Director shall be entitled to severance pay as follows:

4.4.1 If the motion or resolution is adopted on or prior to December 31, 2011, the SFRPC shall provide the EXECUTIVE DIRECTOR with a lump sum severance payment in the amount equivalent to EXECUTIVE DIRECTOR's full compensation through December 31, 2011. This payment shall include the full payment of the EXECUTIVE DIRECTOR's annual salary, car allowance, health insurance and retirement contributions through December 31, 2011.

4.4.2 If the motion or resolution is adopted on or after January 1, 2012, the SFRPC shall provide the EXECUTIVE DIRECTOR with a lump sum severance payment in the pro rata amount equivalent to three (3) months of EXECUTIVE



DIRECTOR's annual compensation as set forth in Article 1 of this Agreement.

This payment shall include the three (3) month pro rata equivalent of EXECUTIVE DIRECTOR's annual salary, car allowance, health insurance and retirement contributions for the period covered by the severance pay. This provision is subject to the SFRPC receiving an opinion from the Attorney General's Office regarding Ch. 2011-143, Laws of Florida, opining favorable with respect to the severance package for this subsection outlined herein.

4.5 The EXECUTIVE DIRECTOR may be terminated immediately for cause or because of his conviction of any criminal act. In the event the EXECUTIVE DIRECTOR is terminated pursuant to this sub-section, SFRPC shall have no obligation to pay the aggregate severance benefit designated in this section. For purposes of this Agreement, "cause" shall include, but shall not be limited to, malfeasance, misfeasance, gross negligence, and gross mismanagement of the SFRPC's funds or operations, as may be determined by a majority of the SFRPC Board.

4.6 The Parties agree that a material negative change in the SFRPC budget, as determined by the SFRPC's governing board, shall not constitute a constructive termination pursuant to this Section. In the event of such a change which results in a reduction of compensation for all SFRPC employees, EXECUTIVE DIRECTOR agrees to have his compensation, as set forth in Section 1.2 of this Agreement, reduced proportionally in accordance with all other SFRPC employees.

## ARTICLE V

### MISCELLANEOUS

5.0 It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreement or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this

document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

5.1 It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and with equal dignity herewith.

5.2 This document shall be executed in at least three (3) counterparts each of which shall be deemed to be a duplicate original.

5.3 This Agreement is executed and is to be performed in the State of Florida, and shall be governed by and construed in accordance with the laws of the State of Florida.

5.4 In connection with any litigation arising out of this Agreement, including any administration, trial level, or appellate proceedings, the prevailing party shall be entitled to recover all costs incurred, including a reasonable attorneys' fee.

5.5 If any clause, section or other part or application of this Agreement shall be held by any Court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and so not affecting the validity of the remaining portions or applications remaining in full force and effect.

THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the parties hereto have made and executed this Employment Agreement on the respective dates under each signature: THE SOUTH FLORIDA REGIONAL PLANNING COUNCIL, through its Governing Body, signing by and through its Chairman and Secretary, authorized to execute same by SFRPC action on the 7 day of NOVEMBER, 2011 and JAMES F. MURLEY.

SFRPC:

SOUTH FLORIDA REGIONAL PLANNING COUNCIL

BY: [Signature]

ATTEST:

[Signature]  
Secretary

Approved as to legal form by General Counsel  
for the SOUTH FLORIDA REGIONAL  
PLANNING COUNCIL

[Signature] 11/7/11  
SAMUEL S. GOREN, ESQUIRE  
GOREN, CHEROF, DOODY & EZROL, P.A.  
3099 E. Commercial Boulevard, Suite 200  
Fort Lauderdale, FL 33308

EXECUTIVE DIRECTOR:

BY: [Signature]

JAMES F. MURLEY

STATE OF FLORIDA

COUNTY OF BROWARD

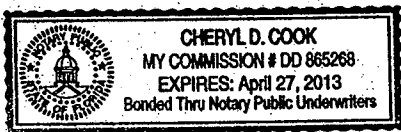
BEFORE ME, personally appeared, SUZANNE GUNZBURGER, Chair of the South Florida Regional Planning Council, to me well known to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that she executed said Agreement for the purposes therein expressed on behalf of the SFRPC.

WITNESS my hand and official seal, this 7<sup>th</sup> day of November, 2011.

BY: 

Notary Public

My Commission Expires:



STATE OF FLORIDA

COUNTY OF BROWARD

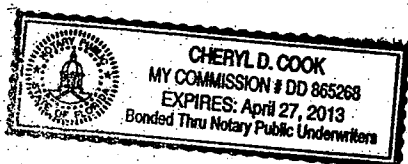
BEFORE ME, personally appeared, JAMES F. MURLEY, to me well known to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that he executed said Agreement for the purposes therein expressed.

WITNESS my hand and official seal, this 7<sup>th</sup> day of November, 2011.

BY: 

Notary Public

My Commission Expires:



## EXHIBIT "A"

### PERFORMANCE STANDARDS - EXECUTIVE DIRECTOR

General Responsibilities: Direct the activities of the South Florida Regional Planning Council staff. Establish the Council work program and complete the work program in a timely manner. Manage the operation of the agency.

Objectives of the position:

1. Anticipate emerging issues within the region and articulate an agency mission statement which reflects these emerging issues.
2. Set long and short-term agency objectives that are responsive to the agency mission.
3. Assure that the organization is staffed and structured for effective mission accomplishment.
4. Maintain effective communication with all Council Members and member unit local governments.
5. Implement an objective performance agreement system by which Regional Planning Council staff will be assessed.
6. Ensure the statutory responsibilities of the agency are carried out in a timely and complete manner.
7. Develop and maintain good organizational relationships with other relevant organizations.
8. Assist all Council officers in performing their duties.
9. Prepare an adequate annual budget and operate the agency within that budget.

An agency work program will be prepared. At the end of the appraisal period, the record of progress will provide a measure of whether the Director met, failed to meet or exceeded expectations.