



MEMORANDUM

AGENDA ITEM #10a

DATE: JANUARY 3, 2011
TO: COUNCIL MEMBERS
FROM: STAFF
SUBJECT: AGREEMENT BETWEEN SFRPC AND OSTERHOLT CONSULTING, INC.

Attached is the Agreement between the South Florida Regional Planning Council and Osterholt Consulting, Inc. providing for Interim Executive Director services.

Recommendation

Approval of the attached Agreement.

**AGREEMENT BETWEEN THE SOUTH FLORIDA REGIONAL PLANNING
COUNCIL AND OSTERHOLT CONSULTING, INC. PROVIDING FOR
INTERIM EXECUTIVE DIRECTOR SERVICES**

THIS IS AN AGREEMENT, made and entered into this ___ day of _____, 2010, 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 OSTERHOLT CONSULTING, INC., hereinafter referred to at "INTERIM EXECUTIVE DIRECTOR"

WITNESSETH:

WHEREAS, the SFRPC was created pursuant to Section 186.501, F.S., as amended and known as the "Florida Regional Planning Council Act"; and

WHEREAS, Section 186.505, F.S., provides that the SFRPC may employ, engage 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, F.S.; 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 independent contractor relationship which shall exist between the SFRPC and OSTERHOLT CONSULTING, INC. through its designee, Jack Osterholt, as Interim Executive Director; and

WHEREAS, this agreement is the culmination of discussions, negotiations and agreements as to the engagement by the SFRPC of OSTERHOLT CONSULTING, INC. as an independent contractor 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 hiring, firing and evaluating the Interim Executive Director to the Executive Committee of the SFRPC and, therefore, the term "SFRPC" shall be defined and interpreted to mean the Executive Committee in this agreement unless later modified by formal action of the SFRPC subsequent hereto; and

WHEREAS, OSTERHOLT CONSULTING, INC., shall name Jack Osterholt as its designee to perform all duties, responsibilities and functions of the INTERIM EXECUTIVE DIRECTOR under the terms of this Agreement; and

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 agreement with each other as follows:

ARTICLE I
TERMS AND CONDITIONS – THE SFRPC

- 1.0 The SFRPC agrees as follows:
- 1.1 To engage OSTERHOLT CONSULTING, INC. as an independent contractor to serve as the INTERIM EXECUTIVE DIRECTOR of the SFRPC for the terms 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 INTERIM EXECUTIVE DIRECTOR by existing SFRPC rules of existing agreements as they may be amended from time to time.
- 1.2 To pay and to compensate the INTERIM EXECUTIVE DIRECTOR the sum of Five Thousand Three Hundred Fifteen Dollars and 96/100 (\$5315.96) on a bi-weekly basis hereinafter for the term of this employment agreement, payable in accordance with the regularly scheduled method of compensation for other SFRPC employees.
- 1.3 To pay and to reimburse the INTERIM EXECUTIVE DIRECTOR for any SFRPC-related travel or other reasonable out-of-pocket expenses in accordance with SFRPC policies, subject to INTERIM EXECUTIVE DIRECTOR providing receipts or other appropriate documentation evidencing such expenses. Reimbursements to the INTERIM EXECUTIVE DIRECTOR shall be made at cost, without increase for profit and/or overhead.
- 1.4 To provide INTERIM EXECUTIVE DIRECTOR with an SFRPC-issued cellular telephone, which shall be used solely for SFRPC business.
- 1.5 To honor and to conform in all ways possible with the terms, conditions and provision of the Florida Regional Planning Council Act, and other applicable rules and regulations affecting State of Florida employees as the same may now apply or as may be applicable in the future, as amended, as well as the ethical consideration imposed upon the INTERIM EXECUTIVE DIRECTOR.
- 1.6 That in the event that the SFRPC chooses to remove OSTERHOLT CONSULTING, INC. as INTERIM EXECUTIVE DIRECTOR, it shall follow the provisions set forth hereinafter under the heading "Term and Termination".
- 1.7 This SFRPC recognizes that OSTERHOLT CONSULTING, INC. and its personnel are engaged in other business activities, and SFRPC accordingly agrees that OSTERHOLT CONSULTING, INC. reserves the right to reasonably limit its availability to perform services pursuant this Agreement, subject to the provisions of Section 2.5.

ARTICLE II
TERMS AND CONDITIONS – THE INTERIM EXECUTIVE DIRECTOR

- 2.0 OSTERHOLT CONSULTING, INC. agrees as follows:
- 2.1 To appoint and designate B. JACK OSTERHOLT to serve as Interim Executive Director in accordance with the terms, conditions and provisions contained in the Florida Regional Planning Council Act as set forth in Chapter 186, F.S., or as otherwise set forth in this Agreement.
- 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 provide SFRPC with an invoice that shall precede the bi-weekly payment as detailed in Section 1.2 of this Agreement.
- 2.4 To appoint and to designate such other qualified professional staff, as may be necessary and proper in connection with the discharge of his functions as the INTERIM EXECUTIVE DIRECTOR of the SFRPC. The hiring and/or termination of any SFRPC employees by INTERIM EXECUTIVE DIRECTOR shall be subject to the expressed approval of the SFRPC Executive Committee.
- 2.5 That the position of INTERIM EXECUTIVE DIRECTOR is not and cannot be an hourly type employment. It is a "Job Basis" form of employment. Hence, the INTERIM EXECUTIVE DIRECTOR shall do 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, as well as such other rules, regulations and ethical considerations imposed upon the State of Florida employees. This shall include INTERIM EXECUTIVE DIRECTOR's physical presence at the SFRPC facilities on a regular basis.
- 2.6 That INTERIM EXECUTIVE DIRECTOR shall not have signing authority for checks issued by the SFRPC, and that INTERIM EXECUTIVE DIRECTOR shall not sign any loan-related documents on behalf of the SFRPC.
- 2.7 INTERIM EXECUTIVE DIRECTOR shall complete and submit to the SFRPC Executive Committee a weekly time sheet to insure that the SFRPC can document the INTERIM EXECUTIVE DIRECTOR's time charges by project providing SFRPC with such other reasonable documentation as may be required for billings

to any granting agencies.

- 2.8 Notwithstanding Section 1.7 of this Agreement, OSTERHOLT CONSULTING, INC. agrees that it shall not enter into any new client relationships with third parties during the term of this Agreement. OSTERHOLT CONSULTING, INC. shall be permitted to retain and continue any client relationships existing at the commencement of this Agreement.

ARTICLE III

TERM AND TERMINATION

- 3.0 The initial term of this Agreement shall be seven (7) months ("Initial Term"), or until the new Executive Director is hired, installed and oriented at the SFRPC. This Agreement shall commence on _____ and shall terminate on _____, unless otherwise provided for herein. However, the parties hereto further agree that this Agreement may be extended upon mutual written consent of the parties at the end of the Initial Term for an additional term agreed to by the parties.
- 3.1 In the event the INTERIM EXECUTIVE DIRECTOR elects to voluntarily terminate this Agreement, he shall provide the SFRPC with not less than forty-five (45) days written notice to the Chair of the Governing Body of the SFRPC indicating his intention to discontinue his independent contractor relationship with the SFRPC as its INTERIM EXECUTIVE DIRECTOR, consistent with the Florida Regional Planning Council Act.
- 3.2 In the event the SFRPC terminates the engagement of the INTERIM EXECUTIVE DIRECTOR as provided for hereinafter, the SFRPC shall continue to pay to the INTERIM EXECUTIVE DIRECTOR all compensation earned to the date of termination as well as any severance pay, if any, which would otherwise be payable to her in accordance with the terms and conditions of this Agreement.

ARTICLE IV

INDEPENDENT CONTRACTOR

- 4.0 This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the OSTERHOLT CONSULTING, INC. is an independent contractor under this Agreement and not the SFRPC's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The OSTERHOLT CONSULTING, INC. shall retain sole and absolute discretion in the judgment of the manner and means of carrying out OSTERHOLT CONSULTING, INC. activities and responsibilities hereunder. OSTERHOLT CONSULTING, INC. agrees that it is a separate and independent

enterprise from the SFRPC, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between OSTERHOLT CONSULTING, INC. and the SFRPC and the SFRPC will not be liable for any obligation incurred by OSTERHOLT CONSULTING, INC., including but not limited to unpaid minimum wages and/or overtime premiums.

ARTICLE V
MISCELLANEOUS

- 5.0 This Agreement shall not inure to the benefit of, nor be enforceable by, any third party.
- 5.1 It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements 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.
- 5.2 It is further agreed that no modification, amendment or alternation 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.
- 5.3 This document shall be executed in at least three (3) counterparts, each of which shall be deemed to be a duplicate original.
- 5.4 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.
- 5.5 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 reasonable attorney's fees.
- 5.6 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 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 Chair and secretary, authorized to execute same by SFRPC action on the ___ day of _____, 2010 and OSTERHOLT CONSULTING, INC., through its designee, B. JACK OSTERHOLT.

SFRPC

By: _____
JOSEPH SCUOTTO, Chair

ATTEST:

HEATHER CARRUTHERS, Secretary

Approved as to legal form by the General Counsel
for the South Florida Regional Planning Council:

Samuel S. Goren, Esq.

OSTERHOLT CONSULTING, INC.

By: _____
B. JACK OSTERHOLT

ATTEST:

(Print name)

STATE OF FLORIDA
COUNTY OF BROWARD

BEFORE ME, personally appeared, JOSEPH SCUOTTO, Chairman of the South Florida Regional Planning Counsel, 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 on behalf of the SFRPC.

WITNESS my hand and official seal, this ____ day of _____ 2010.

My Commission Expires:

Notary Public

STATE OF FLORIDA
COUNTY OF BROWARD

BEFORE ME, personally appeared, B. JACK OSTERHOLT, on behalf of OSTERHOLT CONSULTING, INC., 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 on behalf of the SFRPC.

WITNESS my hand and official seal, this ____ day of _____ 2010.

My Commission Expires:

Notary Public