



AGENDA ITEM 6 B

EXECUTIVE DIRECTOR CONTRACT AMENDMENTS

TYPE OF ITEM: Approval

STATEMENT OF ISSUE

The recent program audit conducted by the FDOT Office of Inspector General identified an issue related to the Executive Director's car allowance. The finding was as follows:

Issue 5c - Car Allowance

CRTPA received reimbursements for a car allowance via the Executive Director's payroll compensation. The car allowance was not supported by adequate documentation to confirm its allowability.

Title 2 CFR 200.431(f) states:

That portion of automobile costs furnished by the entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.

As reflected in the Executive Director's Employment Agreement, monthly car allowance of \$250 was included as part of the Executive Director's benefits package. However, supporting documentation for the car allowance (e.g. car mileage log) could not be provided by the agency to verify its allowability. Per the employment agreement, the Executive Director was not required to maintain documentation to segregate personal (unallowable) and business (allowable) portions of the car allowance.

We recommend the district require CRTPA to:

- *Implement board review of the Executive Director's car allowance to determine if any portion of the car allowance is utilized for personal use;¹*
- *Revise the Executive Director's Employment Agreement to include additional documentation requirements for car allowance², such as mileage log, to distinguish business and personal usage; and*

¹ Title 2 CFR 200.431(f) Compensation-fringe benefits, Automobiles

- *Alternatively, consider eliminating the car allowance portion from the Employment agreement to avoid its administrative burden.*

At the February 8 CRTPA Executive Committee Meeting, members voted to recommend approval of the Employment Agreement Amendment.

Attachment 1 provides an amendment to the Employment Agreement eliminating the car allowance. As discussed that the December 18, 2018 CRTPA meeting, the current amount of the car allowance (\$3,000 per year) will be added to the Executive Director’s base salary.

RECOMMENDED ACTION

Option 1: Approve the Employment Agreement Amendment

Option 2: As desired by the Committee

ATTACHMENT

Attachment 1: Proposed Employment Agreement Amendment

² Title 2 CFR 200.403 Factors affecting allowability of costs

Amendment to Employment Agreement

THIS Amendment to EMPLOYMENT AGREEMENT (Agreement), is made and entered into on this _____ day of _____, 2016, by and between the Capital Region Transportation Planning Agency (CRTPA), and David Gregory Slay (Slay), collectively known as the “parties”.

WITNESSETH:

WHEREAS, the CRTPA employed Slay as the Executive Director of the CRTPA on _____; **and**

WHEREAS, the CRTPA provided certain benefits with said employment, and to establish certain conditions of employment of Slay; **and**

WHEREAS, the parties agree that the duties and responsibilities of Slay as the Executive Director of the CRTPA, at a minimum, shall be those duties and responsibilities as provided for in section 339.175, Florida Statutes, the CRTPA Interlocal Agreement and the CRTPA By-laws; **and**

WHEREAS, Slay accepted the position of the Executive Director and to provide said duties to the CRTPA; **and**

WHEREAS, the parties have agreed to modify the agreement with this amendment; **and**

WHEREAS, the parties agree that this amendment to the agreement shall supersede and replace the agreement in its entirety.

NOW, THEREFORE, the parties, intending to be legally bound, for good and valuable consideration, the sufficiency of which is hereby acknowledged, agree as follows:

1. RECITALS.

The above recitals are true and correct and form a material part of this amendment to the Agreement.

2. EMPLOYMENT OF EXECUTIVE DIRECTOR

- a) The CRTPA agreed to employ Slay as the Executive Director of the CRTPA commencing on _____ 2016. The parties further agree that should

this agreed to start date need modification, that Slay and the Chair of the board, in writing may modify said start date and that this employment agreement shall otherwise be in full force and effect.

- b) Slay shall serve at the pleasure of the CRTPA Board (Board), as modified by the terms of this agreement.
- c) The Executive Director is a Senior Management position.

3. COMPENSATION AND BENEFITS

- a) ~~The agreed to starting annual salary is one hundred five thousand (\$105,000). One hundred eight thousand dollars (\$108,000.00).~~
- b) Upon employment, Slay shall be subject to a ninety (90) day probationary period. During this probationary period, the Board, in its sole discretion, may terminate Slay and Slay shall have no recourse against the Board due to said termination.
- e) After twelve (12) months of employment, the parties agree that Slay shall be given a performance review by the Board and the Board shall perform an annually evaluation each year, thereafter.
- d) Each year, the Board, in October, shall determine if a COLA is appropriate, dependent upon the availability of funds and approval by the CRTPA Board.
- e) Slay shall receive an annual benefits allowance called Flex Bucks to help pay for benefits.
- f) As a Senior Manager, Slay will receive a cash supplement of \$60 biweekly to offset the cost of optional fringe benefits such as life and health insurance.
- g) ~~Slay shall receive a two hundred and fifty dollar (\$250.00) monthly car allowance.~~
- h) The CRTPA shall provide a cellular telephone to Slay for use related to the duties and responsibilities associated with employment by the CRTPA.
- i) ~~The parties agree that Slay shall have a City Hall parking space at no charge to Slay.~~
- j) The CRTPA shall make available to Slay the choice of the City of Tallahassee or Leon County payment, benefits or pension plan. Slay shall make the decision in the normal course of business upon employment by the CRTPA.

4. HOUSING AND MOVING EXPENSES

- a) **Housing.** Upon execution of this agreement, the CRTPA will pay for one (1) trip to Tallahassee to search for a home as well as a round-trip transportation and meals (for 3 days) for Slay and one other person.
- b) **Moving Expenses.**
 - 1) Upon execution of this agreement, the CRTPA will pay for reasonable moving expenses of Slay's normal household goods to Tallahassee. The CRTPA requires three written binding bids. The low bid shall prevail

unless there is a compelling reason not to accept the low bid, in the sole discretion of the CRTPA.

- 2) If Slay is terminated for cause or leaves the position within one year of employment with the CRTPA, all moving expenses shall be reimbursed by Slay back to the CRTPA. If Slay is terminated without cause no reimbursement is required. The parties further agree that the CRTPA is authorized to withhold any final paychecks to Slay, to satisfy the provisions of this section.

5. DUTIES AND RESONSIBILITES OF THE EXECUTIVE DIRECTOR

- a) Slay, as Executive Director shall be responsible only to the CRTPA Board. Slay shall report directly to the CRTPA Board for all matters regarding the administration and operation of the CRTPA and any additional personnel as deemed necessary. CRTPA staff will report directly to the Executive Director and serve at the pleasure of the Executive Director.
- b) The Executive Director shall have authority to:
 - 1) Approve expenditures for the normal operations of staff not to exceed \$5000;
 - 2) Approve routine staff travel;
 - 3) Hire, fire, assign duties to and evaluate CRTPA staff, subject to review and concurrence of the Chairperson;
 - 4) Sign routine communications with local, state and federal agencies, except in those instances when the signature of the chair is required.
 - 5) Any other duties and responsibilities provided for in section 339.175, Florida Statutes, as amended, the CRTPA Interlocal Agreement and By-Laws, as amended.
- c) The Executive Director, or designee, is responsible for the CRTPA meeting minutes and all notices and agendas for all meetings.
- d) The Executive Director shall also perform such other and additional duties as are necessary to carry out the objectives and functions of the CRTPA and the directives from the CRTPA membership.
- e) The Executive Director shall perform any and all duties as directed by the CRTPA board or the Chair of said Board.

6. TERM

This agreement, upon execution shall remain in effect unless and until terminated as provided herein.

7. TERMINATION OF THIS CONTRACT

The CRTPA may terminate this contract as set forth below:

A. WITHOUT CAUSE

- 1) The CRTPA, upon a majority vote of its Board members, may terminate this contract without cause at any time, for any or no reason. If the CRTPA terminates the employment of Slay pursuant to this section, the CRTPA agrees to provide Slay two (2) months' severance pay, which shall be paid, based on Slay's salary at the time of termination. If Slay is terminated without cause, the CRTPA shall owe Slay no additional compensation other than the regular compensation due him for all time worked through and including the date of termination and any accrued annual and sick leave, shall also be paid to Slay, to the extent, it is compliant with, and allowed by, existing personnel policies. The payment(s) shall occur in the same manner and means, as if Slay were employed by the CRTPA.
- 2) If the CRTPA exercises its right to terminate without cause, it shall provide written notice of such termination to the Slay. The termination shall be effective on the date of the notice.
- 3) The parties agree that the CRTPA has not waived any rights to terminate Slay without cause, and should the CRTPA exercise its right pursuant to this section, that no additional right or causes of action shall accrue.

B. WITH CAUSE

In the event the CRTPA decides to terminate this contract for cause, the CRTPA shall not owe Slay any compensation other than the regular compensation due him for all time worked through and including the date of termination, and any accrued annual and sick leave, to the extent, it is compliant with, and allowed by, existing personnel policies. The payment(s) shall occur in the same manner and means, as if Slay were employed by the CRTPA.

The CRTPA's determination of cause shall be final and conclusive. "Cause" is defined as:

- 1) Misfeasance or malfeasance in the performance of Slay's duties and responsibilities.
- 2) A plea agreement, a plea or *nolo contendere*, or a conviction of a felony or misdemeanor, whether or not adjudication is withheld, involving moral turpitude.
- 3) Unsatisfactory performance based on Annual Evaluation criteria where Slay failed to meet reasonable written performance goals and objectives agreed to by the CRTPA board, as a body, in a duly called meeting.

- 4) Abandonment, excessive absenteeism or tardiness and general dereliction of duties, including but not limited to alcohol or drug related activities and abuse in the workplace or in private life.
- 5) Misrepresentation of Credentials, certifications and general competency as provided through written instruments or communications relied upon by CRTPA in making the job selection.

8. RESIGNATION.

Slay agrees that should he decide to resign from his position as Executive Director, that he shall give the CRTPA not less than ninety (90) days written notice.

The parties agree that the Board may elect to accept Slay's written notice and allow for an immediate separation. If the Board elects to allow for an immediate separation, all payment(s) shall occur in the same manner and means, as if Slay were employed by the CRTPA, for those ninety (90) days.

9. EVALUATION OF PERFORMANCE

The CRTPA shall review and evaluate the performance of Slay annually or as otherwise provided herein, and shall provide the evaluation to Slay, in writing.

10. OUTSIDE EMPLOYMENT

Slay shall be a full time employee of the CRTPA. Slay shall not engage in any other outside employment without the express written permission of the CRTPA.

11. GOVERNING LAWS.

The laws of the State of Florida shall solely govern the validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the Parties to this Agreement.

12. VENUE.

The venue for any action in connection with this Agreement shall be any court of competent jurisdiction in Leon County, Florida.

13. REMAINING PROVISIONS.

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid or void, the remaining provisions shall continue to be effective.

14. TRUTH AND ACCURACY.

The truth and accuracy of each recital clause set forth above is acknowledged by the parties.

15. ORIGINAL COPIES.

Multiple copies of this Agreement may be fully executed by all parties, each of which shall be deemed to be an original.

16. ENTIRE AGREEMENT.

This Agreement incorporates and includes all prior and contemporaneous negotiations, correspondence, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understanding concerning the subject matter of this Agreement that are not contained herein. No deviation from the terms hereof shall be predicated upon any prior representation or agreements, whether oral or written. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

By: _____

Betsy Barfield
Chair, CRTPA

By: _____

David Gregory Slay

Witness:

(Print Name)

(Print Name)

Witness:

(Print Name)

(Print Name)

DRAFT