



TPA EXECUTIVE COMMITTEE MEETING AGENDA

DATE: **Thursday, September 19, 2024**
TIME: **2:00 p.m.**
PLACE: **301 Datura Street, West Palm Beach, FL 33401**

Members of the public can [join the meeting](https://PalmBeachTPA.org/Meeting) in person or virtually at: PalmBeachTPA.org/Meeting.

Please call 561-725-0800 or e-mail info@PalmBeachTPA.org for assistance joining the virtual meeting.

1. REGULAR ITEMS

- A. Call to Order and Roll Call
- B. Modifications to the Agenda
- C. General Public Comments

Members of the public are invited to offer comments or questions as follows:

- A written comment may be submitted at PalmBeachTPA.org/Comment-Form at any time prior to the commencement of the relevant agenda item.
- A verbal comment may be provided by a virtual attendee using the raise hand feature in the Zoom platform.
- A verbal comment may be provided by an in-person attendee submitting a comment card available at the welcome table.

Note that the Chair may limit comments to 3 minutes or less depending on meeting attendance.

- D. Comments from the Chair and Member Comments

2. ACTION ITEMS

- A. MOTION TO RECOMMEND Amendment to the TPA Executive Director Contract Term

Peer Metropolitan Planning Organization Executive Director contracts have either no term or a reoccurring term. TPA General Counsel has prepared a memo and draft options to amend the Executive Director's contract term for consistency with industry standards.

3. ADMINISTRATIVE ITEMS

- A. Adjournment

Chelsea S. Reed, Mayor
TPA Chair
City of Palm Beach Gardens

Maria Marino, Vice Mayor
TPA Vice Chair
Palm Beach County

Michael J. Napoleone, Mayor
At Large Member
Village of Wellington

Yvette Drucker, Deputy Mayor
At Large Member
City of Boca Raton

Christy Fox, Commissioner
At Large Member
City of West Palm Beach


NOTICE

This is a meeting of the Palm Beach MPO doing business as the Palm Beach Transportation Planning Agency. In accordance with Section 286.0105, *Florida Statutes*, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings, and that, for such purposes, they 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. Public participation is solicited without regard to race, color, national origin, age, sex, religion, disability or family status. Persons who require a printed copy of the agenda package, require special accommodations under the Americans with Disabilities Act or require translation services for a meeting (free of charge) must call 561-725-0800 or send email to Info@PalmBeachTPA.org at least five business days in advance. Hearing impaired individuals are requested to telephone the Florida Relay System at #711.



MEMORANDUM

TO: Chairman and Members, Executive Committee

FROM: Milton R. Collins, TPA General Counsel 

SUBJECT: Amendment to Executive Director's Employment Agreement

DATE: September 19, 2024

In its July 2024 meeting, the TPA Executive Committee discussed Executive Director Valerie Neilson's Employment Agreement (the "Agreement"). The discussion centered on the duration and severance clauses. Regarding the former, the Agreement provides for a three (3) year appointment (now in its final year), with a one-time option to renew for two (2) additional years. The Agreement contains a finite 2027 end date, provided the TPA makes an affirmative decision to renew in 2025. It is uncommon and inconsistent with peer Metropolitan Planning Organizations (MPOs) to have an Executive Director agreement with a specified duration but without a recurring renewal. As it relates to severance, the Agreement contains industry standard provisions providing for a payout when termination is effectuated without cause and prohibiting payment when termination occurs for cause.

To remain consistent with peer MPOs, the TPA may either modify the term of the Agreement to provide for successive renewals or omit the duration clause altogether. An omission of the duration clause would be consistent with Florida labor law, as the Executive Director position is at will, which means the person serving in the role may be terminated at any time, with or without cause. In other words, irrespective of the length of the Agreement, the Executive Director may be terminated at any time, so its duration is illusory.

Attached for your consideration are two options relative to amending the Executive Director's Agreement. The first option provides for three (3) year duration with successive automatic renewals. The second option provides for continued employment without a term. Both options maintain the at-will employment status.

OPTION A: AMENDMENT TO EMPLOYMENT AGREEMENT – NO TERM

WHEREAS, the TPA entered into an employment agreement with the Executive Director to fulfill the duties of the Palm Beach TPA Executive Director position on July 21, 2022 (the "Employment Agreement"); and

WHEREAS, the TPA and Executive Director desire to amend the aforementioned Employment Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the parties agree as follows:

1. Recitals. Each and all of the foregoing recitals be and the same are hereby incorporated in this Agreement.

2. Section 1. Term, of the Employment Agreement is amended as follows:

1. TERM

a. Initial Term. This Agreement shall commence on the Effective Date and shall remain in effect until terminated by the Governing Board or the Director as provided herein. The Director acknowledges that employment with the TPA is on an at-will basis, and that the Director shall serve at the pleasure of the TPA. Nothing in this Agreement shall prevent, limit, and/or otherwise interfere with the right of the Governing Board to terminate the Director at any time, subject to the terms of Section 7 herein.

b. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Director to resign at any time from the position, subject only to the provisions set forth in Section 7(c) of this Agreement.

~~a. The TPA hereby employs Valerie Neilson as its Executive Director, and Valerie Neilson hereby accepts such employment, for a period of three (3) years beginning on August 1, 2022, and expiring on July 29, 2025 (herein: the "Initial Term").~~

~~b. Renewal. Upon completion of the Initial Term specified in Section 1.a above, including any extensions, the TPA shall have the option to renew this Agreement for one subsequent two (2) year term, unless either party provides ninety (90) day advance written notice of intent not to renew the Agreement for a subsequent term. In the event either party gives notice of nonrenewal pursuant to this Section 1.b, this Agreement will expire at the end of the Initial Term. The effect of this renewal provision is that the TPA and the Director shall have an ongoing agreement for a total five (5) year Agreement.~~

3. Section 7, Termination and Severance Pay, of the Employment Agreement is amended as follows:

7. TERMINATION AND SEVERANCE PAY.

a. Termination of Director for Cause. The TPA may terminate the Director “for cause.” In the event that the TPA terminates the Director for cause as set forth above, the Director shall receive no severance payment from the TPA. In the event the TPA terminates the Director for cause then the Director will be given a written copy of the particulars and shall have the right to appear in public before the Governing Board and present evidence and argument concerning said allegations. After such hearing, if a majority of the entire Governing Board finds there is cause to terminate the Director and terminates the Director, then the Director shall not be entitled to severance pay. Said hearing shall be held within sixty (60) days of the notice of termination, unless the TPA and the Director agree to a later date.

* * *

b. Termination of Director without Cause and for TPA’s Convenience. The TPA, by a majority of the entire Governing Board membership at a properly noticed meeting, may terminate the employment of Director without cause by directing written notice of termination to Director by certified U.S. mail, return receipt requested and postage prepaid or by hand delivery to the Director. Such termination may be accomplished without a disciplinary hearing other than for name clearing purposes.

In the event of such termination while the Director is ready, willing and able to perform the duties of TPA Executive Director, and although the TPA does not need cause for termination as provided in sub-section b., the TPA shall pay Director a sum equal to 20 weeks of severance pay (*i.e.*, calculated based on the then current annual rate of pay) that the Director would earn for employment pursuant to this Agreement. Consistent with Section 215.425, Florida Statutes (2022), as used in this Section 7.b., the term “severance pay” means the actual or constructive compensation, including salary, benefits, or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated. The term does not include compensation for:

* * *

c. Termination by Director. In the event that the Director voluntarily resigns ~~before the expiration of the term of the Agreement~~, the Director shall provide the TPA with ninety (90) days written notice of such resignation. Upon receipt of such notice, the TPA may, at its option, require the Director to terminate employment at an earlier date than set forth in the resignation notice, but the Director shall be entitled to receive the remaining salary and benefits provided for herein during the aforesaid ninety (90) day

notice period. The Director may terminate employment with the TPA by directing *written* notice of termination to the Chairman of the Governing Board by personal, hand delivery or by certified U.S. mail, return receipt requested and postage prepaid. In the event of such termination, the Director shall not be entitled to receive the severance pay. The Director agrees to give at least sixty (60) calendar days written notice from the date of dispatch of the afore-mentioned notice prior to termination, unless the Governing Board waives all or part of said time period. If the Director gives less than sixty (60) calendar days' notice of her intent to terminate employment, the TPA shall be entitled to retain as liquidated damages any sums that would otherwise be due to the Director as termination compensation or severance pay under Section 5. of this Agreement. This section shall survive the termination of this Agreement.

* * *

4. Interpretation. In interpreting this amendment to the Employment Agreement, underlined words indicate additions to existing text, and ~~stricken through~~ words include deletions from existing text.

5. Effective Date. This Agreement shall become effective after approval by the TPA Governing Board and execution of this Amendment by both parties.

OPTION B: AMENDMENT TO EMPLOYMENT AGREEMENT – 3 YEAR TERM

WHEREAS, the TPA entered into an employment agreement with the Executive Director to fulfill the duties of the Palm Beach TPA Executive Director position on July 21, 2022 (the "Employment Agreement"); and

WHEREAS, the TPA and Executive Director desire to amend the aforementioned Employment Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the parties agree as follows:

1. Recitals. Each and all of the foregoing recitals be and the same are hereby incorporated in this Agreement.

2. Section 1. Term, of the Employment Agreement is amended as follows:

1. TERM

a. Initial Term. The TPA hereby employs Valerie Neilson as its Executive Director, and Valerie Neilson hereby accepts such employment, for a period of three (3) years beginning on August 1, 2022, and expiring on July 29, 2025 (herein: the "Initial Term").

b. Renewal. In the event either party to this Agreement does not give written notice to the other party at least one hundred twenty (120) days prior to the expiration date of the Initial Term, this Agreement shall be extended for three (3) years on the same terms and conditions as set forth in this Agreement. Thereafter, the term of this Agreement shall continue for successive three-year periods unless either party provides written notice to the other party at least one hundred twenty (120) days prior to the expiration date of the then current period of the Agreement. In the event either party provides written notice of non-renewal at least one hundred twenty (120) days prior to the expiration date of the Initial Term or renewal, the Agreement will expire, and Director shall only be compensated for eligible accrued benefits to date, based on the limitations and conditions detailed herein.

~~Upon completion of the Initial Term specified in Section 1.a above, including any extensions, the TPA shall have the option to renew this Agreement for one subsequent two (2) year term, unless either party provides ninety (90) day advance written notice of intent not to renew the Agreement for a subsequent term. In the event either party gives notice of nonrenewal pursuant to this Section 1.b, this Agreement will expire at the end of the Initial Term. The effect of this renewal provision is that the TPA and the Director shall have an ongoing agreement for a total five (5) year Agreement.~~

3. Section 7, Termination and Severance Pay, of the Employment Agreement is amended as follows:

7. TERMINATION AND SEVERANCE PAY.

a. Termination of Director for Cause. The TPA may terminate the Director “for cause.” In the event that the TPA terminates the Director for cause as set forth above, the Director shall receive no severance payment from the TPA. In the event the TPA terminates the Director for cause then the Director will be given a written copy of the particulars and shall have the right to appear in public before the Governing Board and present evidence and argument concerning said allegations. After such hearing, if a majority of the entire Governing Board finds there is cause to terminate the Director and terminates the Director, then the Director shall not be entitled to severance pay. Said hearing shall be held within sixty (60) days of the notice of termination, unless the TPA and the Director agree to a later date.

* * *

b. Termination of Director without Cause and for TPA’s Convenience. The TPA, by a majority of the entire Governing Board membership at a properly noticed meeting, may terminate the employment of Director without cause by directing written notice of termination to Director by certified U.S. mail, return receipt requested and postage prepaid or by hand delivery to the Director. Such termination may be accomplished without a disciplinary hearing other than for name clearing purposes.

In the event of such termination while the Director is ready, willing and able to perform the duties of TPA Executive Director, and although the TPA does not need cause for termination as provided in sub-section b., the TPA shall pay Director a sum equal to 20 weeks of severance pay (*i.e.*, calculated based on the then current annual rate of pay) that the Director would earn for employment pursuant to this Agreement. Consistent with Section 215.425, Florida Statutes (2022), as used in this Section 7.b., the term “severance pay” means the actual or constructive compensation, including salary, benefits, or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated. The term does not include compensation for:

* * *

c. Termination by Director. In the event that the Director voluntarily resigns before the expiration of the term of the Agreement, the Director shall provide the TPA with one hundred twenty (120) ~~ninety (90)~~ days written notice of such resignation. Upon receipt of such notice, the TPA may, at its option, require the Director to terminate employment at an earlier date than set forth in the resignation notice, but the Director

shall be entitled to receive the remaining salary and benefits provided for herein during the aforesaid one hundred twenty (120) ~~ninety (90)~~ day notice period. The Director may terminate employment with the TPA by directing *written* notice of termination to the Chairman of the Governing Board by personal, hand delivery or by certified U.S. mail, return receipt requested and postage prepaid. In the event of such termination, the Director shall not be entitled to receive the severance pay. The Director agrees to give at least one hundred twenty (120) ~~sixty (60)~~ calendar days written notice from the date of dispatch of the afore-mentioned notice prior to termination, unless the Governing Board waives all or part of said time period. If the Director gives fewer than one hundred twenty (120) ~~less than sixty (60)~~ calendar days' notice of her intent to terminate employment, the TPA shall be entitled to retain as liquidated damages any sums that would otherwise be due to the Director as termination compensation or severance pay under Section 7.5 of this Agreement. This section shall survive the termination of this Agreement.

* * *

4. Interpretation. In interpreting this amendment to the Employment Agreement, underlined words indicate additions to existing text, and ~~stricken through~~ words include deletions from existing text.

5. Effective Date. This Agreement shall become effective after approval by the TPA Governing Board and execution of this Amendment by both parties.