



BOARD SPECIAL MEETING AGENDA

July 12, 2018
2:30 p.m.

ELC Main Office
10 SE Central Parkway, Suite 200, Stuart

*** Items require action**

Mission: Partnering with parents, providers and communities to ensure quality early learning experiences through programmatic and financial support.

Vision: Building Blocks for Educational Success

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|--|-----------|------------|----------------|
| I. Call to Order, Pledge of Allegiance, Roll Call, Determination of Quorum | 2:30-2:31 | PAGES | Brandon Tucker |
| II. Announcements and Additions/Deletions to Agenda | 2:31-2:32 | | Brandon Tucker |
| III. Adoption of Agenda * | 2:32-2:33 | | Brandon Tucker |
| IV. New Business * A. CEO Employment Agreement * 1. Revised Draft Employment Agreement, M. Powers * 2. Action Item 2018-19.01 - Authorized Bank Signer * | 2:33-3:15 | 1 – 7 8 | Brandon Tucker |
| V. Chairman’s Comments | 3:15-3:19 | | Brandon Tucker |
| VI. Board Member Comments | 3:19-3:22 | | Brandon Tucker |
| VII. Public Comments | 3:22-3:25 | | Brandon Tucker |
| VIII. Adjournment | 3:25 | | Brandon Tucker |

Public comments may be offered at every Early Learning Coalition of Indian River, Martin & Okeechobee Counties Board of Director’s or committee meeting. We welcome the opportunity as part of our continuing effort to improve our responsiveness to the needs of the children, families, and community we serve. To present comment, interested parties are asked to complete a Public Comment Card available at the sign-in table, deliver such to the Chair in advance to the Call to Order, and be present during the public comment period. All interested parties are asked to indicate whether the comment is related to the business associated with the specific agenda before the Board/Committee or if the comment is intended for consideration by the Board/Committee at a future meeting. All comments are limited to 3 minutes unless otherwise waived by a majority action of the members present.

EMPLOYMENT AGREEMENT

Chief Executive Officer

THIS EMPLOYMENT AGREEMENT herein after referred to as the "Agreement," is made and entered into on the last date signed below by and between the **Early Learning Coalition of Indian River, Martin and Okeechobee Counties, Inc.**, a Florida corporation, herein after referred to as the "ELCIRMO," and **Marsha Powers**, hereinafter referred to as the "Chief Executive Officer or CEO."

Preliminary Statement

WHEREAS ELCIRMO and Chief Executive Officer desire to enter into this Agreement which sets forth the terms and conditions of Chief Executive Officer's employment;

NOW, THEREFORE, in consideration of the mutual covenants set forth below, ELCIRMO and Chief Executive Officer agree to the following:

1. Employment: ELCIRMO hereby employs the Chief Executive Officer, and Chief Executive Officer agrees to serve ELCIRMO, on the terms and conditions set forth below. Except as otherwise provided in this Agreement, Chief Executive Officer's employment shall be subject to the employment policies and practices of ELCIRMO.
2. Term of Agreement: The Term of Chief Executive Officer's employment pursuant to this Agreement shall commence on July 16, 2018, for a period of 3 years until July 16, 2021, unless terminated sooner in accordance with Section 6 below ("Term").
3. Position and Duties: The Chief Executive Officer of ELCIRMO shall have such duties, authority, and responsibilities as are normally associated with and appropriate for such position and as are set forth in the Bylaws of ELCIRMO **and delineated in the CEO job description.**
4. Accountability:
 - 4.1 Chief Executive Officer will report directly to the Chairman of the Board, or designee(s), and the full Board.
 - 4.2 Yearly performance evaluations will be conducted by the Chairman of the Board, or designee(s), and the full Board.
5. Compensation and Related Matters:
 - 5.1 Base Salary: During the Term of her employment, ELCIRMO shall pay to Chief Executive Officer a Base Salary of \$92,500 annually. Base Salary shall be paid in equal installments in accordance with ELCIRMO's usual and customary payroll practices on a bi-weekly basis. The Base Salary **may** be increased by mutual agreement of ELCIRMO and Chief Executive Officer if this Agreement is renewed as provided in Section 2 above. Chief Executive Officer elects to forego eligibility for a base salary increase until the date on which her term ends on the Martin County School Board or December 1, 2020, whichever is sooner.
 - 5.2 Bonus: In addition to the Annual Salary, CEO **may** receive additional compensation based on the satisfactory performance of duties (a "Performance Bonus") at the discretion of ELCIRMO by its Board of Directors. The Performance Bonus may be

paid by ELCIRMO in one lump sum payment or installments. CEO **may** also be entitled to and **may** participate in the "merit bonus" as described in the Employee Personnel Handbook of ELCIRMO (the "Merit Bonus") that is comparable to other officers and employees of ELCIRMO, **subject to board approval**. As described in said Employee Personnel Handbook, the equal percentage given to each employee is based solely on the availability of funding at the end of each fiscal year and employees must be in good standing with ELCIRMO.

- 5.3 **Benefit Plans and Arrangements:** **Commencing after the first year of employment**, CEO shall at all times, during the Term, be enrolled by ELCIRMO in a **retirement plan, as described in said Employee Personnel Handbook**. Retirement plan benefits shall be paid to CEO throughout the Term at a rate which is no less than five percent (5%) of CEO's Annual Salary, with matching options by ELCIRMO of up to two percent (2%) of CEO's Annual Salary. Notwithstanding the foregoing, ELCIRMO's annual contribution to CEO in the **retirement plan** shall not exceed seven percent (7%) of CEO's Annual Salary. CEO shall also receive and be paid throughout the Term full health insurance benefits (including dental benefits if available). Notwithstanding any contrary provision herein, including but not limited to termination of this Agreement or employment of CEO as may be set forth in this agreement, CEO shall be entitled to and receive all **retirement plan** benefits and assets that have accrued or been paid to CEO under this Agreement. The CEO agrees to forego health insurance and dental insurance offered by and provided by ELCIRMO until the end of her term on the Martin County School Board or December 1, 2020, whichever is sooner.
- 5.4 **Expenses:** ELCIRMO shall promptly reimburse Chief Executive Officer for all reasonable and customary expenses incurred by Chief Executive Officer in performing services for ELCIRMO, including all expenses of travel while away from home on business or at the request of and in the service of ELCIRMO, provided that such expenses are incurred and accounted for by Chief Executive Officer in accordance with the policies and procedures established by ELCIRMO.
- 5.5 **Paid Time Off (PTO):** For each year during the Term, at the commencement of each year, CEO shall be entitled to 160 hours of paid time off ("PTO") from CEO's duties under this Agreement **and usage subject to Board Chair written approval**. PTO shall not include weekends or holidays. CEO shall be entitled to carry-over any unused or unapplied PTO from a prior year during the Term, subject to an annual carry-over limitation of One Hundred Twenty (120) hours.
- 5.6 **Holiday Leave:** The Chief Executive Officer shall be entitled to the maximum allowable holidays as obtains for regular full-time employees as outlined in the Personnel Policies and Procedures Handbook.
- 5.7 **Ancillary Matters:** Chief Executive Officer shall be permitted to attend and handle Martin County School Board matters during the work day so long as the attention to and/or handling of said matters does not materially impact the duties of the Chief Executive Officer. **In the event of a voting conflict, CEO shall mindful of the voting conflict found in Section 112.3143(3)(a), Florida Statutes. CEO shall comply with requirements in Section 112.313(15), Florida Statutes, and shall abstain from voting on any matter which may come before the Martin County School Board involving ELCIRMO, and comply with the steps detailed in the voting conflict statute should such a measure arise (i.e., orally declare your interests, abstain from the vote, and**

timely file a CE Form 8B memorandum of voting conflict).

Chief Executive Officer has been appointed to serve on the Marjory Stonemason Douglas High School Public Safety Commission shall be permitted to handle matters during the work day so long as the attention to and/or handling of said matters does not materially impact the duties of the Chief Executive Officer.

(i) Chief Executive Officer (CEO) agrees that during the duration of this Agreement, CEO will provide ELCIRMO no less than sixty (60) days advance notice should CEO decide to file as a candidate for or otherwise seek re-election to public, municipal or political office, including, but not limited to the Martin County School Board. The notice shall set forth the date when CEO will file for candidacy or otherwise pursue election or re-election, and this date shall be deemed the effective date of CEO's resignation from employment with ELCIRMO. During said sixty or more-day period, CEO shall continue to be employed by ELCIRMO under the terms of this agreement. Upon the date provided in CEO's written notice, this Agreement shall terminate.

6. Termination:

Chief Executive Officer's employment pursuant to this Agreement may be terminated under the following circumstances:

- 6.1 Death or Disability: In the event CEO dies or becomes disabled during the Term, CEO's employment and this Agreement shall terminate on the date of death or on the date CEO becomes "disabled" (as defined below), at which time ELCIRMO shall be obligated under this Agreement to pay CEO (or CEO's named beneficiary, heirs or estate) any amounts set forth herein. For purposes of this Agreement, CEO shall be considered "disabled" when, as the result of physical or mental injury or illness, CEO becomes physically or mentally incapable of fulfilling the duties, responsibilities and obligations of CEO under this Agreement for a period of more than ninety (90) consecutive days. CEO shall owe no duties to ELCIRMO under this Agreement following the date of death or following the first day that CEO became physically or mentally incapable of fulfilling the duties hereunder.
- 6.2 By ELCIRMO with Cause: ELCIRMO may terminate the Term of Chief Executive Officer's employment for "Cause" upon written notice to the Chief Executive Officer. For purposes of this Agreement, ELCIRMO shall have "Cause" to terminate Chief Executive Officer's employment upon any of the following events:
- (i) Chief Executive Officer's conviction of, plea of nolo contendere to, or indictment for (which indictment is not discharged or otherwise resolved within 12 months) any felony, or any crime involving moral turpitude, or any crime which is likely to result in material injury to ELCIRMO,
 - (ii) Chief Executive Officer's breach of a fiduciary duty relating to the Chief Executive Officer's employment with ELCIRMO, including but not limited to an act of fraud, theft or dishonesty, or
 - (iii) Chief Executive Officer's material breach of this Agreement.
- 6.3 By ELCIRMO Without Cause: ELCIRMO may terminate the Term of Chief Executive Officer's employment other than for Cause at any time upon ninety (90) days prior written notice from the **Chair** of the Board.

- 6.4 By Chief Executive Officer: If CEO elects to resign employment with ELCIRMO, for any reason, CEO shall give ELCIRMO no less than **sixty (60)** days written notice of CEO's resignation from employment with ELCIRMO. During said sixty or more-day period in the preceding sentence, CEO shall continue to be employed by ELCIRMO under the terms of this Agreement. Such resignation by CEO shall not be considered a breach of this Agreement. Upon the effective date of CEO's resignation, this Agreement shall terminate.
7. Compensation in the Event of Termination: In the event Chief Executive Officer's employment pursuant to this Agreement terminates prior to the end of the Term of this Agreement, ELCIRMO shall pay Executive Officer compensation as set forth below:
- 7.1 Death or Disability: In the event of CEO 's death, ELCIRMO shall: (1) pay CEO any accrued but unpaid Base Salary and vacation due Chief Executive Officer as of the date of death; and (2) reimburse for appropriately submitted expenses which have been incurred, but have not been paid by ELCIRMO, as of the date of death. In the event of CEO 's disability, ELCIRMO shall: (1) pay CEO a cash payment equal to six (6) months of CEO 's then current Annual Salary, with said cash payment being paid in equal installments over a period of six months following CEO 's disability, in accordance with the payroll practices for other officers and employees of ELCIRMO; (2) continue to pay for CEO 's health insurance and related benefits for a period of 3 months from date of disability; and (3) reimburse CEO for all reimbursable expenses submitted to ELCIRMO under the terms of this Agreement.
- 7.2 By ELCIRMO Without Cause: In the event that Chief Executive Officer's employment is terminated by ELCIRMO without cause, ELCIRMO shall pay Chief Executive Officer a cash payment equal to six (6) months of base salary which is in effect on the date of the Chief Executive Officer's termination. This cash payment shall be made payable in equal installments in accordance with ELCIRMO's usual and customary payroll practices, commencing on the first payday following Chief Executive Officer's termination. Within thirty (30) days of the date of termination of Chief Executive Officer's employment, ELCIRMO shall also pay Chief Executive Officer a lump sum equal to the sum of:
- (i) any accrued but unpaid Base Salary and vacation due Chief Executive Officer as of the date of termination of employment, and
 - (ii) reimbursements for appropriately submitted expenses which have been incurred, but have not been paid by ELCIRMO, as of the date of termination.
- 7.3 By ELCIRMO for Cause: In the event that ELCIRMO terminates Chief Executive Officer's employment for Cause all compensation or benefits to which Chief Executive Officer may otherwise be entitled shall cease on the date of termination, except for
- (i) any accrued but unpaid Base Salary due Chief Executive Officer as of the date of termination of employment, and
 - (ii) reimbursements for appropriately submitted expenses which have been incurred, but have not been paid by ELCIRMO, as of the date of termination.
- 7.4 By Chief Executive Officer: In the event that Chief Executive Officer resigns from employment all compensation or benefits to which Chief Executive Officer may otherwise be entitled shall cease on the effective date of resignation, except for

- (i) any accrued but unpaid Base Salary due Chief Executive Officer as of the date of resignation of employment, and
- (ii) reimbursements for appropriately submitted expenses which have been incurred, but have not been paid by ELCIRMO, as of the date of resignation.

8. Non-Solicitation and Non-disparagement:

8.1 Non-solicitation of Employees: While employed by ELCIRMO or any affiliate of ELCIRMO and for a period of six months thereafter, Chief Executive Officer shall not directly or indirectly, for herself or for any other person, firm, corporation, partnership, ELCIRMO or other entity, solicit, attempt to employ or enter into any contractual arrangement with any employee or former employee of ELCIRMO or any Benefited Person, unless such employee or former employee has not been employed by ELCIRMO or other Benefited Person for a period in excess of six (6) months.

8.2 Non-disparagement: While employed by ELCIRMO or any affiliate of ELCIRMO and after Chief Executive Officer's employment terminates, Chief Executive Officer shall not disparage, or denigrate, either orally or in writing, ELCIRMO, any Benefited Person, or any of their officers or directors, to or in the presence of any person or entity, unless compelled to do so by subpoena or other legal mandate. ELCIRMO likewise shall not disparage, or denigrate, either orally or in writing, the Chief Executive Officer to any prospective employer or third party after Chief Executive Officer's employment terminates unless compelled to do so by subpoena or other legal mandate.

9. Hold Harmless & Indemnification: ELCIRMO shall hold harmless and fully indemnify (including but not limited to judgments, attorney's fees and costs) the Chief Executive Officer for any and all actions, causes of action, inactions, issues and/or matters related to ELCIRMO, its agents, directors, employees, members, officers and/or successors in interest brought against, naming and/or implicating Chief Executive Officer which arose prior to, during or subsequent to this Agreement.

10. Sunshine Law: While employed by ELCIRMO or any affiliate of ELCIRMO the Chief Executive Officer shall comply with the requirements of Florida's Government in the Sunshine Law, Florida Statute 286.011 et. Seq., and any other laws of the State of Florida applicable to ELCIRMO.

11. Tangible Items: All files, records, documents, manuals, books, forms, reports, memoranda, studies, data, calculations, recordings, or correspondence, in whatever form they may exist, and all copies, abstracts and summaries of the foregoing, and all physical items related to the business of ELCIRMO or any Benefited Person, whether of a public nature or not, and whether prepared by Chief Executive Officer or not, are and shall remain the exclusive property of ELCIRMO or any Benefited Person, and shall not be removed from their premises, except as required in the course of Chief Executive Officer's employment by ELCIRMO, without the prior written consent of ELCIRMO. Chief Executive Officer shall promptly return such items on the termination of Chief Executive Officer's employment with ELCIRMO to the Chairman of the Board or at any earlier time upon the request of ELCIRMO.

12. Severability: ELCIRMO and Chief Executive Officer agree that if, in any action before any court or agency legally empowered to enforce this Agreement, any term, restriction,

covenant, or promise is found to be unreasonable or otherwise unenforceable, then such term, restriction, covenant, or promise shall be modified to the extent necessary to make it enforceable. **Invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provisions.**

13. **Notice.** For purposes of this Agreement, notices, demands and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when received if delivered in person, or by overnight courier or if mailed by United States registered mail, return receipt requested, postage prepaid, to the following addresses:

If to Chief Executive Officer:

Name and Address: Marsha Powers
 615 SW Overlook Drive
 Stuart, FL 34994

If to ELCIRMO:

Name and Address: Early Learning Coalition of Indian River, Martin and Okeechobee Counties, Inc.
 Attn: Board of Directors
 10 SE Central Parkway, Suite 400
 Stuart, FL 34994

Either party may change its address for notices in accordance with this Section by providing written notice of such change to the other party.

14. **Governing law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, with venue in Indian River, Martin and Okeechobee Counties, Florida.
15. **Benefits; Binding Effect:** This Agreement shall be for the benefit of and binding upon the parties and their respective heirs, personal representatives, legal representatives, successors and assigns.
16. **Attorney Fees:** In the event of litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred from the non-prevailing party.
17. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties, and all prior understandings, agreements or undertakings between the parties concerning Chief Executive Officer's employment or the other subject matters of this Agreement are superseded in their entirety by this Agreement.
18. **Amendment:** This Agreement may be amended or modified only in writing, signed by all Parties.

Also, an addendum will be included **at the next scheduled board meeting** that will address the performance standards and expectations for the Chief Executive Officer.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective July 12, 2018 and signed as dated below.

Chairperson

Chief Executive Officer

Date

Date

Witness

Date



Early Learning Coalition of IRMO

ACTION ITEM

Action Item: 2018-19.01

Date: 7/12/18

Subject: Authorized Bank Signature

Background Information

Due to the resignation of Migdalia Rosado, effective July 20, 2018 and the hiring of new CEO, Marsha Powers, it is recommended that Marsha Powers, CEO, be authorized as a bank signatory, effective with her first date of employment.

Authorizations and Purchasing Limits

The Chief Executive Officer is authorized to enter into any contract on behalf of ELCIRMO. Disbursements of \$3,000 or less allows any one authorized signatory to approve expenditure. Monthly recurring expenses regardless of dollar amount, i.e., rent, provider payments require one authorized signatory to approve the expenditure. Disbursements greater than \$3,000 or non-recurring items requires two authorized signatories approve the expenditure.

Budget Considerations

N/A

Supporting Documentation Included

N/A

Proposed Action

It is recommended the Board authorize Marsha Powers, CEO, as a bank signatory, effective with her first date of employment, and remove Migdalia Rosado effective July 21, 2018.