

COUNTY ATTORNEY EMPLOYMENT AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into by and between MANATEE COUNTY (hereinafter "County"), a political subdivision of the State of Florida, and WILLIAM E. CLAGUE (hereinafter "Attorney").

WHEREAS, Florida Statutes § 125.01(1)(b) and Manatee County Code § 2-2-31, as may hereafter be amended or renumbered, provide for the appointment, by contract, of a County Attorney by the Board of County Commissioners; and

WHEREAS, the Attorney has 24 years of experience practicing local government law, including five years of private practice and 17 years of practice in the Manatee County Attorney's Office, to include 2 years as Chief Assistant County Attorney; and

WHEREAS, the Attorney shall serve as County Attorney as provided herein, and shall receive all the benefits provided herein for so long as he remains County Attorney for Manatee County.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

1. LICENSURE

The Attorney is and shall remain duly authorized to practice law in the State of Florida.

2. ATTORNEY-CLIENT RELATIONSHIP

Pursuant to and in accordance with Chapter 2-2, Article II1/2 of the Manatee County Code of Ordinances (as amended from time to time, the "Ordinance") and this Agreement, the Attorney shall be responsible for representing, and is hereby authorized to represent, the Board of County Commissioners as its County Attorney, and to provide legal services, including management and participation in all litigation and other such legal services required to protect the interests of the County, including rendering of legal advice and the performance of other legal and administrative responsibilities as described elsewhere herein, to the Board of County Commissioners, and to such other departments and agencies of County Government that the Board of County Commissioners, with the consent of the Attorney, may from time to time authorize and direct.

3. DUTIES

Pursuant to and in accordance with the Ordinance and this Agreement, the duties, responsibilities and authority of the Attorney shall include, without limitation:

- a. Managing and supervising the Office of the County Attorney.
- b. Coordinating with the County Administrator and various departments and offices under her jurisdiction, regarding all matters affecting or implicating legal issues in the overall county administration including, without limitation, budgetary, personnel and procurement matters.
- c. Providing legal advice and counsel to, and legal representation of, the Board of County Commissioners, and, at the request of the Board of County Commissioners, the departments and agencies of the County.
- d. Advising and providing recommendations to the Board of County Commissioners regarding the need for all counsel to be retained to provide legal representation in specified matters.
- e. Supervising, monitoring or coordinating, as appropriate, the representation, services and work of outside attorneys employed pursuant to paragraph d. above.
- f. Providing supervision, monitoring and coordination for the operations of the Risk Management Division housed within the County Attorney's Office as they relate to workers' compensation, general and property liability and safety, together with administration of the Self Insurance Ordinance (Chapter 2-2, Article VII of the Manatee County Code of Ordinances).
- g. Such other duties as the Board of County Commissioners may assign with the concurrence of the Attorney.

4. ETHICS

Nothing herein contained shall be construed as requiring the Attorney to render legal services in any particular circumstances where, in the professional discretion and judgment of the Attorney, the rendering of such legal services would (i) violate applicable ethical standards including the provisions of the Rules Regulating The Florida Bar, or (ii) create a direct conflict of interest between the County and the Attorney.

5. EMPLOYEE BENEFITS

The Attorney shall be a full time employee of the County and, except as qualified by or inconsistent with the terms of this Agreement, shall be entitled to the benefits and prerogatives of County employees generally, including, without limitation, those pertaining to holidays, vacation, sick leave and compensatory time, retirement and pension system

contributions, core life and health insurance benefits, long term disability benefits and working conditions on the same basis as other employees of the County; provided, however, effective upon assuming the role of County Attorney Designate pursuant to Section 19.b, and throughout his tenure as County Attorney, the Attorney shall be entitled to the following benefits, regardless of whether such benefits are made available to County employees in general:

- a. Attorney shall be permitted to enter the Florida Retirement System's DROP program, as established by Florida Law and County policy, and to enjoy the benefits thereof pertaining to retirement.
- b. Upon termination of his employment for any reason, voluntary or involuntary, in addition to other benefits, the Attorney shall be entitled to receive payment his total accumulated unused sick leave in accordance with the County's personnel policies. The Attorney is a "key employee" for purposes of administration of Family Medical Leave Act policies.
- c. The Attorney shall be permitted to accrue 475 hours of unused vacation time at the rate provided by the Manatee County Personnel Policy. Accrued unused vacation hours in excess if that amount at the end of any calendar year shall be deducted from the Attorney's vacation time balance and transferred into the Attorney's sick leave account in accordance with the County's personnel policy. Such unused vacation time up to 475 hours shall be paid to the Attorney when he leaves the employment of the County.
- d. In addition to the Attorney's base salary (and not as a deduction therefrom) and as further incentive to retain the services of the Attorney, the County shall contribute seven and one-half percent (7.5%) of the Attorney's annual base salary (but not to exceed the maximum annual contribution allowed under Section 457 of the Internal Revenue Code), to the Attorney's deferred compensation account maintained by the County's 457 Plan provider, which sum shall be payable in 26 pro rata installments each pay period. Additional contributions by the Attorney to his deferred compensation account in accordance with the Internal Revenue Code shall not affect or reduce the payments to be made by the County pursuant to this paragraph.
- e. At the request of the Attorney, the Board of County Commissioners shall pay the premiums for and otherwise provide to the Attorney a long term disability insurance policy covering the Attorney, as such

plans are established by programs under the auspices of The Florida Bar or other bar or professional associations of which the Attorney is a member, to provide for payments to the Attorney of a sum that, when added to the core long term disability benefit provided to county employees generally, shall equal two thirds (2/3) of the Attorney's then existing annual salary, payable in installments during his disability. Said policy shall remain in full force and effect as long as the Attorney is employed with the County.

The County agrees to make available to the Attorney such other benefits as they now exist, and may be amended from time to time, which are provided for other regular full-time employees of the County. These benefits will include, but not be limited to, cafeteria plan options and contributions to the Florida Retirement System in the Senior Management Class, as that class may be defined by FRS from time to time.

6. OUTSIDE ACTIVITIES

It is recognized that the Attorney will necessarily devote considerable time outside normal business hours to the business of the County, consistent with his position as County Attorney and his responsibilities as a professional. Nothing herein shall prohibit the Attorney from devoting his own time to other professional pursuits, to include teaching, with the consent of the Board of County Commissioners. Provided, however, none of the aforementioned activities shall interfere with the full and proper performance of the Attorney's duties as County Attorney.

7. BASE SALARY

Effective upon assuming the role of County Attorney Designate pursuant to Section 19.b, the base annual salary of the Attorney shall be \$187,000, and shall be payable bi-weekly in the same manner as other County employees. (This represents a roughly ten percent (10%) increase to the Attorney's current salary as Chief Assistant County Attorney, and reflects the assumption of the additional responsibilities of the Attorney pursuant to this Agreement.)

8. SALARY INCREASES

The Attorney's base pay shall automatically be increased each October 1 in the same percentage as salary increases accorded by law to the County Commissioners; provided, however, that the Attorney may be awarded additional increases in compensation from time to time by vote of the Board of County Commissioners in recognition of meritorious performance of his duties.

9. PROFESSIONAL DUES, FEES AND SUBSCRIPTIONS

The County agrees to pay, to the extent permitted by law, the dues, fees and subscriptions necessary for the Attorney's continuing membership in The Florida Bar, for continuing legal education, for board certification, and for his membership or participation in such professional organizations and associations as the Attorney may deem necessary or advantageous to the performance of his duties hereunder.

10. WORK PRODUCT

The work product of the Attorney, including all documents and other results of professional legal services performed and rendered by the Attorney for the County, shall be the exclusive property of the County. Upon termination of this Agreement or termination of the employment of the Attorney, all of such work product, documents and other results shall be peacefully surrendered by the Attorney to the County. The Attorney may retain electronic copies of such work product to the extent allowed by Chapter 119, Florida Statutes.

11. TERMINATION/RESIGNATION

Recognizing the confidential relationship that will exist between the Attorney and the County in performance and rendition of professional legal services by the Attorney for the County, and the necessity for trust and confidence between the parties, this Agreement and the employment of the Attorney by the County may be terminated as follows:

- a. (1) At the will of the Board of County Commissioners, in which case the Attorney may be removed, after written notice given four weeks in advance, by an affirmative vote of not less than four (4) members of the Board of County Commissioners at a public meeting wherein the Attorney has the opportunity to be present.
- (2) In the event the Attorney is terminated under this provision and is willing and able to perform the duties of the County Attorney, then, and in that event, the County shall pay the Attorney a severance lump sum equal to twenty (20) weeks of his then current aggregate salary, together with all other benefits to which he is entitled upon termination, including payment for all unused vacation time and sick leave as stated herein, and any and all other benefits ordinarily paid to County employees upon termination.
- b. In the event the Attorney is unable to perform his duties as a result of illness or other casualty or calamity which prevents the Attorney from undertaking his responsibilities, he may resign and shall

receive a lump sum payment equal to twenty (20) weeks of his then current aggregate salary, together with all other benefits to which he is entitled upon termination, including payment for all unused vacation time and sick leave as stated herein, and any and all other benefits ordinarily paid to County employees upon termination.

- c. In the event the Attorney shall voluntarily resign his position in good standing, he shall be entitled to a lump sum payment equal to the Attorney's aggregate salary for one (1) month and, in addition, payment of all unused vacation time and sick leave as stated herein, and any and all other benefits ordinarily paid to County employees upon separation from employment.
- d. The parties may terminate this Agreement on such other terms as they mutually agree.

12. TERMINATION FOR CAUSE

This Agreement and the employment of the Attorney may be terminated by the County "for cause" upon a presentation, after reasonable notice to the Attorney, at a meeting of the Board of County Commissioners, at which the Attorney has the opportunity to participate, which establishes that:

- a. The Attorney is no longer duly qualified and licensed to practice law in the State of Florida, or
- b. The Attorney has been convicted or adjudged guilty of a felony or any serious misdemeanor involving the moral turpitude of the Attorney, or
- c. The Attorney is elected or appointed to a public office, or
- d. The Attorney is guilty of misconduct as defined in Section 443.036 (29), Florida Statutes.

If this Agreement is terminated "for cause" as defined herein, the County shall not pay the severance sum described in paragraph 11a., but shall be obligated to pay all other accrued benefits as stated herein.

13. AUTOMOBILE

The Attorney's duties require that he use his automobile from time to time during employment with the County in various matters and at unscheduled times. In lieu of providing him with the unrestricted use of an automobile, the Attorney shall have and receive an automobile allowance of \$450.00 per month, payable in a manner to be determined by the Clerk of the

Circuit Court. For all out-of-county travel, the Attorney shall be reimbursed in the same manner as other county employees when operating leased or privately-owned vehicles or utilizing commercial carriers and for meals and lodging.

14. LIFE INSURANCE

In addition to the disability, health, and core life insurance herein agreed to, the County shall pay the premiums for and otherwise provide to the Attorney a term life insurance policy in the amount of two hundred fifty thousand dollars (\$250,000.00), with said policy to remain in full force and effect as long as the Attorney is employed with the County. Said policy shall be placed with a life insurer possessing an A.M. Best Company, Inc. Financial Strength Rating of "A" or better.

15. REMEDY/INDEMNIFICATION

The County specifically agrees that because the Attorney is a full-time employee of the County, the sole remedy available to the County for any error, omission, negligence, malpractice or the like, of the Attorney is termination of his employment. To the fullest extent permitted by law, the County shall indemnify the Attorney for judgments entered against the Attorney related to his official acts on behalf of the County; provided, however, that the Attorney shall not be indemnified for intentional wrongful acts.

16. SEVERABILITY

If any provision or portion of this this Agreement is held unconstitutional, invalid or unenforceable for any reason, all remaining portions of this Agreement shall be deemed severable, shall not be affected, and shall remain in full force and effect.

17. SURVIVAL OF OBLIGATIONS

Any obligation set forth herein, the performance of which would naturally survive the termination of this Agreement, shall so survive.

18. SENIOR MANAGEMENT

The County Attorney shall be designated as a Senior Management position for purposes of the Florida Retirement System.

19. TERM; TRANSITION

- a. This Agreement shall become effective on August 11, 2020, and shall continue in effect until terminated by either party or by mutual agreement.

- b. The outgoing County Attorney (Mitchell O. Palmer) has notified the Board of his intended retirement, with a final day in office of January 29, 2021. On December 28, 2020, the Attorney shall begin employment in a transition status as "County Attorney Designate", while working with the outgoing County Attorney. On January 30, 2021, the Attorney shall cease from transition status and shall automatically assume the office of the County Attorney. All compensation, benefits and duties of the County Attorney Designate shall be as provided for in this Agreement, except that the County Attorney Designate, while in transition status, shall be subordinate to the outgoing County Attorney. Notwithstanding the foregoing, upon the outgoing County Attorney resigning or taking an extended leave of absence from his position prior to January 29, 2021, the Attorney shall assume the office of the County Attorney.

20. AMENDMENTS

This Agreement may be amended in writing, duly executed by both parties.

[signature page to follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be fully executed in duplicate this 11th day of August, 2020.

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

CHAIRPERSON

ATTEST: ANGELINA COLONNESO
CLERK OF CIRCUIT COURT AND COMPTROLLER

BY: _____
Deputy Clerk

WILLIAM E. CLAGUE
ATTORNEY

STATE OF FLORIDA
COUNTY OF MANATEE

ACKNOWLEDGED before me this ____ day of _____, 2020, by William E. Clague, who is:

_____ personally known to me, or who
_____ produced _____ as identification.

Notary Public, State of Florida at Large
Printed Name: _____
My Commission Expires: _____
Commission No. _____