

CLERK OF THE BOARD EMPLOYMENT AGREEMENT

THIS AGREEMENT is made this ____ day of July, 2018 by and between the **ALBEMARLE COUNTY BOARD OF SUPERVISORS**, hereinafter “Employer” and **CLAUDETTE K. BORGERSEN**, hereinafter “Employee.”

RECITALS

- R-1** Employee was appointed as the Clerk of the Board of Supervisors (hereinafter, “Clerk”) on September 7, 2016; and
- R-2** Pursuant to Employer’s Rules of Procedure, Employee was re-appointed as Clerk at Employer’s organizational meetings on January 4, 2017 and again on January 3, 2018; and
- R-3** Employer now desires to continue to engage the services of Employee as Clerk under the direction of the Employer, pursuant to the authority vested in Employer by Sections 15.2-512 and 15.2-1538 of the *Code of Virginia* (1950), as amended, and the terms and conditions of this Employment Agreement.

TERMS AND CONDITIONS

For reasons set forth above and in consideration of the mutual promises of the parties, Employer and Employee agree as follows:

1. Employment

Employer employs Employee as the Clerk of the Board of Supervisors of Albemarle County and Employee accepts and agrees to this employment under the terms and conditions of this Agreement.

2. Terms of Employment

Employee’s terms of employment with Employer are as follows:

- A. Term.** This Agreement shall remain in full force from the date of this Agreement until Employer terminates Employee, Employee is deemed terminated, or Employee resigns, as provided in this Agreement.
- B. Exclusive Employment.** At all times, Employee shall be in the exclusive employ of Employer and devote all of her working time, attention, knowledge, and skills solely to the interests of Employer. Employer shall be entitled to all of the benefits arising from or incident to all work and services of Employee. The term *working time* does not include any time while Employee is on annual leave.
- C. Performance.** Employee shall diligently exercise her powers and perform her duties established in Section 3 in a professional manner, in compliance with all applicable State and Federal laws, and in good faith. Employee’s performance shall also be in compliance with the policies in the County’s Personnel Policies applicable to County employees generally.
- D. Right of Employer to Balance Its Needs With Employee’s Professional Development.** Employer reserves the right to determine whether Employee is devoting the appropriate amount of time to professional development and may review and direct Employee to balance the amount of time deemed necessary for her professional development against the other needs of Employer.
- E. County Residence Required.** Employee maintain a permanent residence in Albemarle County. *Permanent residence* means Employee’s purchase or lease of a residential dwelling unit and the occupancy of that dwelling no less than 75% of the time during an average work week while in the active employment of the County.

F. **End of Employment by Termination or Resignation.** Employee's employment by Employer may end as follows:

1. **Right of Employer to Terminate.** The Employee acknowledges that, pursuant to Section 15.2-513 of the *Code of Virginia* (1950), as amended, she may be removed or suspended at the pleasure of Employer. The right of Employer to terminate includes the right to do so if Employee is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity, or health for a period of 12 successive weeks. Employer's action to terminate Employee shall be by the affirmative vote of a majority of those members of Employer present and voting in an open meeting.
2. **Other Acts When Employee Deemed Terminated.** Employee is deemed terminated in the following circumstances:
 - a. **Employee's Resignation at Request of Employer.** If Employee resigns following a closed meeting of Employer at which a majority of the members present request in writing that she resign, then Employee shall be deemed terminated on the date of the Board's request for purposes of Section 8.
 - b. **Employer's Failure to Comply with Terms of Agreement; Deemed Terminated at Option of Employee.** If Employer fails to comply with any provision of this Agreement that benefits Employee, the matter is not resolved within 30 days after written notice from Employee requesting Employer to comply is received by Employer and the County Attorney, and after a closed meeting discussion between Employer and Employee the matter remains unresolved, then Employee may, at her option, be deemed terminated on the date of the closed meeting discussion for purposes of Section 8. This subsection does not apply if Employee expressly consents to Employer's noncompliance.
 - c. **Employer Reduces Compensation and Benefits; Deemed Terminated at Option of Employee.** If Employer reduces Employee's compensation or other financial benefits in a greater percentage than a corresponding reduction for all other comparable level employees of Employer, or for a reason not related to budget reductions caused by the adverse fiscal circumstances of the County, then Employee may, at her option, be deemed terminated on the effective date of the reduction for purposes of Section 8.
3. **Right of Employee to Resign.** Employee may resign at any time, provided that she gives written notice to Employer at least 45 days prior to the effective date of the resignation, unless Employer and Employee agree to a different effective date.

G. **Employee's Rights and Benefits if Employer Terminates Employee, Employee is Deemed Terminated, or Employee Resigns at the Request of Employer.** If Employer terminates Employee, Employee is deemed terminated, or Employee resigns at the request of Employer, Employee's rights to benefits and compensation shall be governed under Section 8.

H. **Governing Law.** This Agreement and the employment of Employee shall be subject to all applicable provisions of the *Code of Virginia* (1950), as amended.

3. **Powers and Duties of Employee**

Employee shall exercise the following powers and perform the following duties:

- A. **Statutory Powers and Duties.** The statutory powers and duties set forth in Section 15.2-1538 of the *Code of Virginia* (1950), as amended, and any other powers and duties set forth in any other sections of the *Code of Virginia* (1950), as amended.

- B. Powers and Duties Imposed by Ordinance or Other Action of the Employer.** The powers and duties delegated or imposed: (i) by the Albemarle County Code; or (ii) any duly adopted motion, resolution, or uncodified ordinance of Employer.

4. Compensation

Effective July 1, 2018, Employer shall pay Employee, and Employee accepts from Employer, an annual salary of \$58,641, payable in installments as provided for County employees generally.

- A. Increase Based on Market Adjustment for the Position.** If Employer determines that, following Employee's annual performance evaluation, Employee's performance is satisfactory, Employer may consider increasing Employee's annual salary. Employee may submit to Employer before May 1 of each year a survey of the market for comparable clerk positions and localities to assist Employer's decision to consider a market adjustment to Employee's annual base salary.
- B. Increase Based on Cost of Living Adjustment for All County Employees.** In addition or in the alternative to the increase provided in Section 4(A), in the event that all full-time County staff receive a cost of living pay adjustment during the fiscal year, Employee shall receive the same cost of living adjustment, provided Employer determines that Employee's performance is satisfactory.

5. Benefits

Employer shall provide the following benefits to Employee:

- A. Virginia Retirement System.** Employee shall be enrolled in the Hybrid Retirement Plan under the Virginia Retirement System. The Employer will contribute the Employer's portion and the Employee will contribute the Employee's portion as provided under the Hybrid Retirement Plan.
- B. Leave.** Employee shall be entitled to and accrue all forms of leave at the rate provided to full-time permanent County employees under the County's Personnel Policy Manual.
- C. Long Term Disability.** Employee will receive long-term disability insurance provided by the Hybrid Retirement Plan under the Virginia Retirement System.
- D. Other Benefits.** Employer shall provide to Employee all other benefits that are provided to all full-time permanent County employees under the County's Personnel Policy Manual. These benefits include, but are not limited to, medical insurance, dental insurance, and the Voluntary Early Retirement Incentive Program (VERIP) when Employee meets VERIP eligibility requirements. This Agreement shall be subject to all applicable provisions of the *Code of Virginia* (1950), as amended, the Albemarle County Code, and any policies adopted from time to time by Employer, including the provisions of County Personnel Policy Manual, relating to leave, retirement, and life insurance contributions, holidays, and other benefits not specifically addressed in this Agreement.

6. Dues, Memberships, Education, and Meetings

Employer shall budget and pay the following for Employee:

- A. Dues and Subscriptions in Associations and Organizations.** Employer shall budget and pay for the professional dues and subscriptions of Employee necessary for her continuation and full participation in state and local associations and organizations necessary and desirable for her continued professional participation, growth, and advancement, and for the good of Employer.
- B. Travel Expenses.** Employer shall budget for and pay the travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other

functions for Employer, including but not limited to the annual conference of state and local clerk organizations of which Employee is a member.

- C. **Professional Development Expenses.** Employer shall budget and pay for the travel and subsistence expenses of Employee's conferences and seminars that are necessary for her professional development and for the good of Employer.

7. **Performance Evaluations**

Employer and Employee shall participate in performance evaluations as follows:

- A. **Annual Performance Evaluation.** Employer shall conduct an annual performance evaluation of Employee on or before May 31, or as soon thereafter as reasonably possible, of each year that this Agreement is in effect. The evaluation shall be in accordance with the reasonable criteria developed by Employer. The criteria may be changed from time to time by Employer, in consultation with Employee. Employer shall provide Employee with a written summary of the Employer's evaluation of Employee's performance and provide Employee an adequate opportunity to discuss the evaluation.
- B. **Employee's Annual Goals and Objectives.** Employer shall annually establish goals and performance objectives which it determines necessary for the Employer's proper function.
- C. **Interim Performance Evaluations.** Employer and Employee shall meet at any time during the term of this Agreement to discuss Employee's performance if either Employer or Employee requests to meet for that purpose.

8. **Compensation and Benefits Upon Severance**

If Employer terminates Employee pursuant to Section 2(F)(1), or Employee is deemed terminated pursuant to Section 2(F)(2) (collectively, "severance"), the following apply:

- A. **Compensation.** Employer shall pay for the continuation of all compensation provided in Section 4 for the current month in which the severance occurs, and for 6 additional months, payable in installments as provided for County employees generally.
- B. **Accrued Leave.** Employer shall compensate Employee for all annual leave credited and earned up to the date of severance as provided in the County's Personnel Policy Manual.
- C. **Exception for Termination for Cause or Voluntary Resignation.** If Employer terminates Employee for cause or if Employee voluntarily resigns, Employer shall have no obligation to compensate Employee under Sections 8(A) and (B) and shall be obligated to compensate Employee only for work performed and accrued unused annual leave, and provide other compensation and benefits only up to the date of termination or voluntary resignation as provided in the County's Personnel Policy Manual. *Cause* exists for Employer to terminate Employee under this subsection if Employee is convicted of any illegal act involving personal gain to her or which causes damage to the reputation of the County or Employer, her conviction of a felony, an act of willful negligence, or her commission of any act which involves moral turpitude.

9. **Other Terms and Conditions**

The following terms and conditions apply:

- A. **Liability Insurance.** Employer shall provide full liability insurance, in an amount at least equal to that provided for other County employees, to cover Employee against any loss from tort, professional liability claim, demand, or other legal action, whether groundless or otherwise, arising

out of an alleged act or omission occurring in the performance of Employee's duties as Clerk, subject to any exceptions or exclusions under the insurance policy provided for other County employees.

- B. Amendments.** Any amendment to this Agreement shall be mutually agreed upon, stated in writing, and executed by Employer and Employee.
- C. Failure to Enforce Not a Waiver.** The failure of either Employer or Employee to enforce, or to delay in enforcing, any term or condition of this Agreement, shall not be deemed to be a waiver of that party's right to enforce the term or condition.
- D. Severability.** The terms and conditions of this Agreement are severable. In the event any term or condition is held to be invalid by any competent court, this Agreement shall be interpreted as if the invalid term or condition was not part of the Agreement.
- E. State or Federal Laws.** Any rights, benefits, and protections provided by State or Federal laws to Employee are not affected by this Agreement.
- F. Notices.** Any notice required by this Agreement to be provided to Employer shall be in writing and delivered to the Chair of the Board of Supervisors, County of Albemarle, 401 McIntire Road, Charlottesville, Virginia, 22902. Any notice required by this Agreement to be provided to Employee shall be in writing and delivered to Employee at her permanent residence.
- G. Nonappropriation.** The financial obligations of Employer under this Agreement are subject to, and dependent upon, appropriations being made from time to time by Employer.
- H. Entire Agreement.** This Agreement is the entire agreement between the parties. There are no inducements, promises, terms, conditions, or obligations made or entered into by either Employer or Employee other than those contained in this Agreement.

IN WITNESS THEREOF, the Albemarle County Board of Supervisors has caused this Agreement to be signed and executed on its behalf by its Chair and the Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

ALBEMARLE COUNTY BOARD OF SUPERVISORS

Ann H. Mallek, Chair
Albemarle County Board of Supervisors

COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF _____, to wit:

The foregoing Employment Agreement was acknowledged before me this _____ day of July, 2018, by Ann H. Mallek, Chair.

Notary Public

My Commission expires:_____

Registration No._____

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

Claudette K. Borgersen

COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF _____, to wit:

The foregoing Employment Agreement was acknowledged before me this _____ day of July, 2018, by
Claudette K. Borgersen.

Notary Public

My Commission expires:_____

Registration No._____

Approved as to form only:

County Attorney