



**AGENDA REPORT**  
**April 24, 2018**

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**SUBJECT:**

Employment contract for the County Attorney at the same terms established for the prior County Attorney.

**FISCAL IMPACT:**

Same as the prior contract. No budget changes required.

**DEPT/OFFICE:**

County Attorney Office

**REQUESTED ACTION:**

Approve the attached agreement and authorize the chair to sign.

**SUMMARY EXPLANATION and BACKGROUND:**

The Board appointed a new County Attorney on April 10, 2018. The employment contract completes the process by establishing the terms of employment. There is no increase in cost or significant alteration from the prior County Attorney's contract.

**CLERK TO THE BOARD INSTRUCTIONS:**

Return copy of executed contract to the County Attorney's Office.

**ATTACHMENTS:**

**Description**

- **Contract**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

April 25, 2018

**M E M O R A N D U M**

TO: Frank Abbate, County Manager

RE: Item II.D.1., County Attorney Contract

The Board of County Commissioners, in regular session on April 24, 2018, executed and approved Agreement for the County Attorney at the same terms established for the prior County Attorney. Enclosed is a copy of the Agreement for your action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

/ds

Encl. (1)

cc: Human Resources Director  
County Attorney  
Finance  
Budget

## **AGREEMENT**

**THIS AGREEMENT**, made and entered into by and between the **COUNTY OF BREVARD, FLORIDA**, hereinafter called the "County", by its **BOARD OF COUNTY COMMISSIONERS**, hereinafter called the "Board", and **EDEN BENTLEY**, hereinafter called the "Employee", both of whom understand as follows:

### **WITNESSETH:**

**WHEREAS**, the County desires to retain the services of said Employee as the County Attorney of Brevard County, Florida, as provided in the Brevard County Charter; and

**WHEREAS**, it is the desire of the Board of County Commissioners to provide certain benefits, set certain conditions of employment, and to establish a procedure for the termination of employment by the Board and the Employee; and,

**WHEREAS**, Employee desires to continue employment as County Attorney of said County;

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

### **SECTION 1. DUTIES**

The County herein agrees to employ said Employee as County Attorney of said County to perform the functions and duties specified in the Brevard County Charter and other applicable laws and ordinances and to perform such other legally permissible and proper duties and functions as the Board shall from time to time assign.

## **SECTION 2. TERMS**

A. Nothing in the Agreement shall prevent, limit or otherwise interfere with the right of the Board to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3, paragraphs A, B and C of this Agreement.

B. Nothing in the Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from her position with the County, subject only to the provision set forth in Section 3, paragraph D, of this Agreement.

C. Employee agrees to remain in the exclusive employ of the County and will not become employed by another employer until termination is effected as hereinafter provided or as otherwise mutually agreed by both parties.

## **SECTION 3. TERMINATION AND SEVERANCE PAY**

A. Termination Hearing: The Board and Employee recognize the County Attorney is the head of the legal department for the County. The Employee must maintain the confidence of the Board and discharge fully and properly the duties of her position. The employee shall serve at the will and pleasure of the Board. The Board may terminate the Employee at any time for the convenience of the County but only if a majority of the Board agrees. The Board may terminate the Employee for good cause (as defined in paragraph C, below) if in a public meeting and by a majority of the Board votes to terminate the Employee; however, the Employee shall then be afforded a written notice setting forth the reasons for termination and the Employee shall have ten (10) days from the receipt of said written notice to request a hearing before the Board of County Commissioners of Brevard County, Florida.

B. Termination for the Convenience of the County: In the event Employee is either terminated by the Board for the convenience of the County or is forced to resign during such

time that Employee is willing and able to perform the duties of County Attorney, then and in that event the County agrees to pay Employee a lump sum severance cash payment equal to six (6) months aggregate salary. "For the convenience of the County" as used in this Agreement means where the Employee is terminated by the Board without good cause; where a majority of the Board has lost confidence in the Employee performing the duties of her position; where termination of the Employee is in the best interests of the County as determined solely by the Board; or for any other reason the Board deems appropriate.

C. Termination for Good Cause: In the event the Employee is terminated by the Board for good cause, then and in that event the County shall have no obligation to pay the aggregate severance sum designated in Section 3, paragraph B. "Good Cause" as used in this Agreement means insubordination, willful misconduct which is job related or affects job performance, nonfeasance, misfeasance or malfeasance in the performance of job duties or the conviction of a crime involving moral turpitude. The standard for good cause for dismissal may be established by measuring the conduct and performance of the Employee against the conduct and performance of other County Attorneys considering contemporary standards of employee conduct and performance.

D. Voluntary Resignation: In the event Employee voluntarily resigns her position with the County, the Employee shall give the Board sixty (60) days notice in advance, unless the parties otherwise agree.

#### **SECTION 4. DISABILITY**

If (a) the Employee is permanently disabled or is otherwise unable to performance her duties because of sickness, accident, injury, mental incapacity or health for a period of three (3)

and (b) no reasonable accommodation is possible, to the extent required by state or federal law, the Board shall have the option to terminate this Agreement without payment of the aggregate severance sum designated in Section 3, paragraph B. However, Employee shall be compensated for any accrued sick leave, vacation, holidays and compensatory time, and shall be entitled to the same disability benefits as extended to other County employees.

#### **SECTION 5. SALARY AND EVALUATION**

A. The County agrees to pay Employee for her service rendered pursuant hereto a bi-weekly salary which computes to \$180,952.20 per annum, commencing April 10, 2018. Annual cost of living increases shall be equal to those percentages as approved by the Board for County employees.

B. In addition, the County may increase said base salary and other benefits of Employee in such amounts and to such extent as the Board may determine that it is desirable to do so based on a performance evaluation of the County Attorney. Such evaluation shall be in such form as the Commission deems appropriate.

C. Nothing in this Section shall require the County to increase the base salary or other benefits of the County Attorney. Furthermore, the County's failure to conduct any of the scheduled evaluations shall not constitute non-compliance with a material provision of this Agreement.

#### **SECTION 6. VACATION AND SICK LEAVE**

The County Attorney shall have vacation time that she is currently entitled to as a county employee as of the date this agreement is signed. The County Attorney must use at least half her annual leave every year and may carry over the remainder. All accumulated vacation time will be

paid to the County Attorney when she leaves the County. The County Attorney shall receive the same number of days of sick leave as a general County employee. The County Attorney will be reimbursed for unused sick leave in the same manner as general County employees.

#### **SECTION 7. AUTOMOBILE AND CELL PHONE**

Upon request to the County Manager by the County Attorney, the County shall provide a monthly car allowance in the sum of Four Hundred Dollars (\$400.00) per month for the County Attorney's use of her personal vehicle and Fifty Dollars (\$50.00) per month for use of her personal cell phone for County business or a County cell phone, at her discretion. The County Attorney also has the option to use a County-owned car in lieu of the \$400.00 per month car allowance, upon request made to the County Manager. The choice to change the option from car allowance to use of a County Car or back again, shall be available to the County Attorney at any time during the term of this Agreement.

#### **SECTION 8. DUES AND SUBSCRIPTIONS**

The County agrees to pay the County Attorney's professional dues for membership in the Florida Bar.

#### **SECTION 9. PROFESSIONAL DEVELOPMENT**

The County agrees to pay registration fees and customary travel and meal expenses for the County Attorney's travel to and attendance at in-state Continuing Legal Education eligible seminars online or in the Orlando area, as well as for the semi-annual Florida Association of County Attorneys seminars, for which a maximum of two nights' reasonable lodging expenses will be paid if located more than 100 miles from the County Attorney's Office.

#### **SECTION 10: INDEMNIFICATION.**

A. County shall defend, save harmless, and indemnify the County Attorney against any action for any injury or damage suffered as a result of any act, event, or omission of action that the County Attorney reasonably believes to be in the scope of her duties or function, unless she acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The County may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. The County shall not be liable for the acts or omissions of the County Attorney committed while acting outside the course and scope of his agreed duties or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In such instance, the County Attorney shall reimburse the County for any legal fees and expenses the County has incurred or otherwise paid, for or on his behalf, in connection with the charged conduct.

B. Said indemnification shall extend beyond the termination of employment and the expiration of this Agreement to provide protection for any such acts undertaken or committed in her capacity as Interim-County Attorney, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with the County.

#### **SECTION 11. ATTORNEY'S FEES**

If any litigation is commenced between the parties concerning any provision of this Agreement or the rights and duties of any person in relation thereto, the party prevailing in such litigation will be entitled, in addition to such other relief as may be granted, to reasonable attorney's fees and expenses incurred in connection therewith, including appellate fees and expenses.

#### **SECTION 12. OTHER TERMS AND CONDITIONS OF EMPLOYMENT**

A. The Board shall fix any other terms of employment, as it may determine desirable from time to time, relating to the performance of Employee, provide such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the laws of Florida, or any other applicable law.

B. All provisions of law and regulations and rules of County relating to vacation and sick leave, life insurance, disability benefits, retirement and pension system contributions, holidays and other fringe benefits as they now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of County, in addition to said benefits enumerated specifically for the benefit of Employee, except herein provided.

#### **SECTION 14. GENERAL PROVISIONS**

A. The text herein shall constitute the entire agreement between the parties.

B. The Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

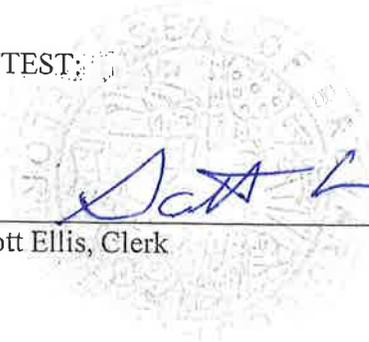
C. The Agreement shall be effective commencing April 10, 2018.

D. Florida law shall govern this Agreement and any litigation that may arise from this Agreement, shall be filed and litigated in Brevard County, Florida.

E. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

**IT WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed this 24 day of April, 2018.

ATTEST:



*Scott Ellis*

Scott Ellis, Clerk

COUNTY OF BREVARD, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

*Rita Pritchett*

Rita Pritchett, Chair

As approved by the Board on Apr. 24 2018

Employee:

*Eden Bentley*

Eden Bentley, Esq.