

## **EMPLOYMENT AGREEMENT**

**THIS AGREEMENT**, made and entered into this 6<sup>th</sup> day of September, 2012, by and between the City of Gainesville, Florida, hereinafter called the "City" and Nicolle Shalley, hereinafter also called "City Attorney", both of whom understand as follows:

### **WITNESSETH:**

**WHEREAS**, Nicolle Shalley has been continuously employed as an attorney with the City of Gainesville since August 14, 2006 and currently holds the full-time, regular position of Senior Assistant City Attorney with the City Attorney's Office for the City of Gainesville;

**WHEREAS**, Ms. Shalley is qualified and competent to serve as the City Attorney, and is ready, willing and able to perform the duties of City Attorney consistent with the following terms and conditions; and

**WHEREAS**, Ms. Shalley is a member in good standing of the Florida Bar; she is further qualified and competent to render professional legal services and she is ready, willing and able, consistent with the Code of Professional Responsibility promulgated by the Supreme Court of the State of Florida, to provide professional legal service consistent with the terms and conditions which follow; and

**WHEREAS**, Ms. Shalley and the City of Gainesville feel it would be mutually beneficial to enter into a contract of employment setting forth agreements and understandings which:

1. provide inducement for the City Attorney to accept such employment with the City;
2. make possible full work productivity by assurances to the City Attorney with respect to future security;
3. establish the basis, framework and context for the relationship which shall exist between the City and the City Attorney; and
4. provide a just means of terminating the City Attorney's services at such time as the

City Commission may desire to terminate such employment;

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

**Section 1. Duties.**

The City Commission hereby agrees to employ Nicolle Shalley as the City Attorney of the City of Gainesville to perform duties and functions of said position as specified in the City Charter, Code of Ordinances, and job description, if any, and such other lawful duties as the City Commission may from time to time assign the City Attorney.

**Section 2. Term.**

This Agreement shall be of a continuing nature, provided, however, that:

A. The City Attorney shall hold office at the will of the City Commission, and nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Commission to terminate the services of the City Attorney at any time, subject only to the provisions set forth in Section 4 of this Agreement.

B. Nothing in this Agreement shall prevent, limit, or interfere with the right of the City Attorney to resign at any time from her position with the City, subject only to the provisions set forth in Section 4 of this Agreement.

C. The City Attorney shall report for duty as City Attorney for the City of Gainesville on October 1, 2012. Because Ms. Shalley was employed as an attorney with the City of Gainesville immediately preceding her appointment to City Attorney, August 14, 2006, the date she first became employed by the City, shall be the City Attorney's leave progression date for the purposes of computing benefits.

**Section 3. Salary and Related Matters.**

A. The City Agrees to pay the City Attorney for her services rendered pursuant hereto

an annual base salary of \$159,000.00, payable in equal installments at the same time as other employees of the City are paid. The City agrees to increase said base salary and/or benefits of the City Attorney in such amounts and to such extent as the City Commission and the City Attorney may determine that it is desirable to do so. The City Attorney's performance, salary, and benefits shall be reviewed after the conclusion of every fiscal year by the City Commission. The performance objectives and review procedures should be established at the beginning of the fiscal year for the next review period. Any salary increases will be based on the City Attorney's performance in the prior fiscal year and become effective on the first Monday of the first full pay period of the next calendar year.

B. The City shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of the City Attorney, provided such terms and conditions are not inconsistent with the provisions of this Agreement, the City Charter, or any other law.

C. All provisions of the City Charter and the Code, and regulations and rules of the City relating to fringe benefits and working conditions as they now exist or hereafter may be amended, including without limitation, health insurance and disability retirement benefits, also shall apply to the City Attorney as they would to other management employees of the City hired on August 14, 2006, except as herein provided.

D. The City Attorney shall be entitled to the rights described in said Human Resource Policy L-3 except as modified as follows. Upon commencement of employment as City Attorney, the City Attorney shall receive 82.24 hours of PTO. Beginning with the ninth (9<sup>th</sup>) pay period after commencement of employment as City Attorney, the City Attorney shall accrue PTO at the rate of 10 hours 28 minutes per pay period or the rate of accrual per pay period applicable to

City Attorney's leave progression date, whichever is greater. The maximum number of PTO hours that can be accrued (carryover cap) is 372 hours, adjusted as otherwise provided in Policy L-3. The City Attorney is not eligible to earn administrative leave.

Upon termination of employment, unused and accrued PCLB is forfeited and not compensable under any circumstances, except pension credited service for PCLB unused and accrued on or before September 30, 2012, if applicable, unless otherwise generally allowed for management employees of the City hired on City Attorney's leave progression date.

E. The City Attorney shall have the option of utilizing either the City's contractual medical provider or her personal physician for a yearly physical exam and EKG, provided that, in the latter case, the monetary exposure for the City shall not exceed \$250. If a personal physician is utilized, City Attorney will be required to submit any bills for the services provided through any available insurance coverage before requesting reimbursement from the City for non-covered deductibles or co-insurance payments. The scope of the examination will be that of a "Type A" physical examination as described in the City's contract with Family Practice Medical Group or an examination of a similar scope with any successor provider. Services provided by a personal physician other than those listed under Type A above shall not be subject to reimbursement under this paragraph.

F. The City shall provide or pay for term life insurance, in an amount equal to approximately two (2) times the salary of the City Attorney up to a maximum of \$250,000 subject to cost limitations described below. The mechanism through which this coverage may be provided can include coverage under the City's group plan, purchasing (or reimbursing premium payments) for individual supplemental term life policies, reimbursement of increased premium costs associated with an increase in coverage under the City Attorney's personal term life policy,

or a combination thereof. The choice of the mechanisms used shall be at the discretion of the City guided by, first providing the amount of coverage and second, the cost involved. The cost to the City of paying for, or reimbursing, annual term life premium payments above and beyond that which is provided under the City's group plan (presently \$100,000) shall not exceed that amount which would be paid for such coverage for the City Attorney under the City's voluntary term life plan, based upon the rates in place March 1 each year. The parties understand that, in accordance with law, a portion of the life insurance provided, and the amount of premium payments or reimbursement, may constitute a taxable benefit to the City Attorney.

**Section 4. Termination and Severance Pay.**

A. In the event the City Attorney's employment is terminated by virtue of her resignation, she shall inform the City Commission in writing and shall give the City Commission two (2) months written notice in advance, unless the parties otherwise agree.

B. In the event the City Attorney is terminated for cause as so stated by at least four (4) members of the City Commission, at the time of termination, the City shall have no obligation to provide any severance pay, but accrued and unused PTO shall be paid for. It is understood and agreed that the City Commission will be the sole judge as to the effectiveness and efficiency with which the City Attorney performs her employment, and whether cause exists for the termination of such. By way of illustration, but not limitation, the following are some examples of situations the parties agree could reasonably be deemed "cause" warranting denial of severance pay: gross negligence in the handling of City affairs; willful violation of the provisions of law; willfully disregarding a direct order or demand of the City Commission or a policy of the City; conduct unbecoming a City Attorney; pleading guilty or *nolo contendere* to, or being found guilty by a jury or court of a misdemeanor involving physical violence, theft, driving under the influence of

alcohol or drugs or possession or sale of drugs, or a felony, regardless of whether or not adjudication is withheld and probation imposed.

C. In the event the City Attorney's employment is terminated under any other circumstances during such time as the City Attorney is willing and able to perform the duties of City Attorney, then the City Attorney shall be entitled to severance pay in the amount equal to 20 weeks' salary less appropriate deductions for federal withholding and other applicable taxes.

D. If termination of employment occurs under any other circumstance, i.e., death or disability, or the City Attorney is unable, or anticipated to be unable, to perform the duties of her position due to a physical or mental impairment for a period of 90 consecutive days, or 180 days out of the next 365 days, then the parties may agree to terminate the City Attorney and pay the City Attorney, effective the last day of her employment, an amount, less appropriate deductions for federal withholding and other appropriate taxes up to a maximum of 12 weeks' salary at her current rate of pay, in addition to any accrued and unused PTO and any other benefits to which she is entitled.

E. Any severance pay provided to the City Attorney by the City shall not exceed an amount greater than 20 weeks of salary, provided, however, the City Attorney is prohibited from receiving any severance pay from the City if the City Attorney's employment is terminated by the City Commission for misconduct, as defined in Florida Statute Section 443.036(30).

**Section 5. Dues and Subscriptions.**

The City agrees to pay for the professional dues and subscriptions of the City Attorney necessary for her continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for her continued professional participation, growth, and advancement, and for the good of the City. The total expenditure for

dues and subscriptions may be limited by the amount specifically approved and appropriated in the City's Annual Financial and Operating Plan Budget.

**Section 6. Bonding.**

The City shall bear the full cost of any fidelity or other bonds required of the City Attorney under any law or ordinance.

**Section 7. Vehicle.**

The City agrees to provide the City Attorney the option of choosing either a City-provided vehicle for her use in performing the duties of her employment and for commuting and de minimus personal use or a \$450.00 monthly car allowance.

**Section 8. Retirement.**

A. The City agrees to execute all necessary agreements provided by the International City Management Association Retirement Corporation (ICMARC) or similar City approved providers for participation in any such retirement plans sponsored by the City. The City Attorney will decide the percentage of her base salary that she desires to have contributed/deferred to such plans and the City will implement her decision to the extent allowed by law by, among other things, deducting appropriate equal proportionate amounts each pay period; provided, however, if the City Attorney elects to participate in the City of Gainesville Employees Pension Plan, then the City shall be under no obligation to make any additional financial contribution to ICMARC or similar plans other than those funds the City Attorney authorizes to be deducted from her base salary for the purpose of contributing to such ICMARC or similar City approved provider plans. The City agrees to transfer ownership of said funds to succeeding employers upon the City Attorney's termination, if such is in accordance with the plan provisions and legal requirements in effect at that time.

B. The City Attorney is presently a vested member of the City of Gainesville Employees Pension Plan and the City of Gainesville Employees' Disability Plan and may continue to participate in such plans in accordance with their terms, which shall apply to the City Attorney as they would to other management employees of the City hired on August 14, 2006.

**Section 9. General Provisions.**

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

B. If any provision, or any portion thereof, contained in this Agreement is held 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.

C. Except as otherwise provided herein, the terms and conditions of employment described in this Agreement shall be effective October 1, 2012.

**IN WITNESS WHEREOF**, the City has caused this Employment Agreement to be signed and executed on its behalf by its Mayor, and duly attested to by its Clerk of the Commission, and the City Attorney has signed and executed this Employment Agreement, both in duplicate on the respective dates under each signature.

CITY OF GAINESVILLE

\_\_\_\_\_  
CRAIG LOWE, MAYOR

DATED: \_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_

KURT LANNON  
CLERK OF THE COMMISSION

DATED: \_\_\_\_\_

\_\_\_\_\_  
NICOLLE SHALLEY, CITY ATTORNEY

DATED: \_\_\_\_\_