

EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of January, 2018, by and between the City of Gainesville, Florida, hereinafter called the "City" and Omichele D. Gainey, hereinafter also called "Clerk of the Commission" or "Clerk", both of whom understand as follows:

WITNESSETH:

WHEREAS, Omichele D. Gainey has been continuously employed with the City of Gainesville since May 25, 2015 and currently holds the full-time, regular position of Executive Assistant for the City of Gainesville;

WHEREAS, Omichele D. Gainey is qualified and competent to serve as the Clerk of the Commission, and is ready, willing and able to perform the duties of Clerk of the Commission consistent with the following terms and conditions; and

WHEREAS, Omichele D. Gainey 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 Clerk to accept such employment with the City;
2. make possible full work productivity by assurances to the Clerk with respect to future security;
3. establish the basis, framework and context for the relationship which shall exist between the City and the Clerk; and
4. provide a just means of terminating the Clerk'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 Omichele D. Gainey as the Clerk of the Commission for 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 Clerk.

Section 2. Term.

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

A. The Clerk 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 Clerk 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 Clerk 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 Clerk shall report for duty as Clerk for the City of Gainesville on January 18, 2018. Because Ms. Gainey was employed with the City of Gainesville immediately preceding her appointment to Clerk, the date she last became employed by the City, or May 25, 2015, shall be the Clerk's leave progression date for the purposes of computing benefits.

Section 3. Salary and Related Matters.

A. The City Agrees to pay the Clerk for her services rendered pursuant hereto an annual base salary of \$93,000.00, 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 Clerk in such amounts and to such extent as the City Commission and the Clerk may determine that it is desirable to do so. The Clerk'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 will be established by mutual agreement of the Clerk and City Commission at the beginning of the fiscal year for the next review period. Any salary increases will be based on the Clerk's performance of the established performance objectives and review procedures 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 Clerk, 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, policies, 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 Clerk as they would to other management employees of the City hired on May 25, 2015, except as herein provided.

D. The Clerk shall be entitled to the rights described in Human Resources Policy L-3 except as modified as follows. Upon commencement of employment as Clerk, the Clerk shall receive 82.25 hours of PTO. Beginning with the ninth (9th) pay period after commencement of employment as Clerk, the Clerk shall accrue PTO at the rate of 10 hours 28 minutes per pay period or the rate of accrual per pay period applicable to Clerk's leave progression date, whichever is greater. The maximum number of PTO hours that can be accrued (carryover cap) is 560 hours, adjusted as otherwise provided in Policy L-3. The Clerk is not eligible to earn administrative leave.

Upon termination of employment, unused and accrued PCLB is forfeited and not

compensable under any circumstances unless otherwise generally allowed for management employees of the City hired on Clerk's leave progression date.

E. The Clerk 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, Clerk 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 the Clerk term life insurance under the City's group plan, in an amount equal to approximately two (2) times the salary of the Clerk up to a maximum of \$250,000. The parties understand that, in accordance with law, a portion of the life insurance provided, and the amount of premium payments, may constitute a taxable benefit to the Clerk.

Section 4. Termination and Severance Pay.

A. In the event the Clerk'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 Clerk 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 Clerk 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 Clerk; 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 Clerk's employment is terminated under any other circumstances during such time as the Clerk is willing and able to perform the duties of Clerk, then the Clerk 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 Clerk 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 Clerk and pay the Clerk, 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 Clerk by the City shall not exceed an amount greater than 20 weeks of salary, provided, however, the Clerk is prohibited from receiving any severance pay from the City if the Clerk'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 Clerk 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 Clerk under any law or ordinance.

Section 7. Vehicle.

The City agrees to provide the Clerk 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.

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 Clerk 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. The City agrees to transfer ownership of said funds to succeeding employers upon the Clerk's termination, if such is in accordance with the plan provisions and legal requirements in effect at that time.

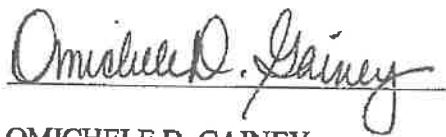
Section 9. Certification Incentive.

In consideration of the agreement by Ms. Gainey to become employed as the Clerk of the Commission and to incent her professional development as Clerk of the Commission, and independent of any performance increases provided under Section 3 of this Agreement, the City agrees to increase Ms. Gainey's annual base salary by \$3,000.00 upon her completion of the Certified Municipal Clerk Certification and increase Ms. Gainey's annual base salary an additional \$3,000.00 upon her completion of the Master Municipal Clerk Certification (hereinafter, "Certification Incentive").

Section 10. 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 January 15, 2018.

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 Interim Clerk of the Commission, and the Clerk has signed and executed this Employment Agreement, both in duplicate on the respective dates under each signature.



OMICHELE D. GAINES

CLERK OF THE COMMISSION

DATED: 12-27-2017

CITY OF GAINESVILLE



LAUREN POE

MAYOR

DATED: 12/27/2017

ATTEST:

BY: 

SHARON WILLIAMS

INTERIM CLERK OF THE COMMISSION

DATED: 12/27/17