

LEE COUNTY

CHIEF HEARING EXAMINER EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into and is effective this 3rd day of **September, 2013** ("Effective Date"), by and between Lee County, a charter county and political subdivision of the State of Florida by and through its Board of County Commissioners ("County") and Donna Marie Collins ("Chief Hearing Examiner").

WITNESSETH:

WHEREAS, the County desires to retain the Chief Hearing Examiner as its hearing examiner; and

WHEREAS, the Chief Hearing Examiner desires to serve as the Chief Hearing Examiner; and

WHEREAS, the parties wish to memorialize herein the terms and conditions of such employment.

NOW, THEREFORE, for and in consideration of the mutual promises and benefits conferred herein, the payments contemplated hereunder, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties hereto, intending to be legally bound, covenant and agree as follows:

1. **RECITALS.** The recitals contained in this Agreement are true and correct and are incorporated herein in their entirety.
2. **EMPLOYMENT.** The County hereby employs the Chief Hearing Examiner as its Chief Hearing Examiner, and the Chief Hearing Examiner hereby accepts such employment upon the terms and conditions set forth in this Agreement.
3. **DUTIES.** The Chief Hearing Examiner shall perform those duties and responsibilities which are normally and customarily performed by the Chief Hearing Examiner as well as all duties and responsibilities imposed upon her by the Lee County Charter, applicable laws, ordinances, regulations, and policies of the Board of County Commissioners, as well as all other proper and legally permissible duties as she may be directed to perform by the Board of County Commissioners or by any County Commissioner. At all times, the Chief Hearing Examiner agrees to perform the functions of her office in a loyal, efficient, competent and professional manner.

4. **TERM.**

- 4.1. **Initial Term.** The initial term of this Agreement shall commence on the Effective Date and shall be for a period of three (3) years unless earlier terminated under the provisions of paragraph 7 of this Agreement (“Initial Term”).
- 4.2. **Renewal.** Upon expiration of the Initial Term, this Agreement shall automatically renew for successive three (3) year periods unless earlier terminated under the provisions of paragraph 7 of this Agreement.

5. **COMPENSATION.**

- 5.1. **Base Salary.** The Chief Hearing Examiner shall receive an annual salary of One Hundred Fifty One Thousand and No/100 Dollars (\$151,000.00) (“Base Salary”) which shall be paid in bi-weekly installments according to the County’s regular payroll schedule. If the Chief Hearing Examiner does not remain employed for any given full pay period, such compensation shall be prorated accordingly.
- 5.2. **Adjustments.** During the first year following the Effective Date of this Agreement, no bonuses, raises or escalator provisions or other adjustments will be applied to the Base Salary other than those that may be provided across-the-board to all other County employees. Thereafter, the Chief Hearing Examiner’s annual salary will be adjusted annually to reflect merit increases of no less than four percent (4%) and up to six percent (6%) of her then current salary.
- 5.3. **Deferred Compensation.** The County will contribute on a monthly basis the sum of One Thousand Two Hundred Fifty and No/100 Dollars (\$1,250.00) to the Chief Hearing Examiner’s deferred compensation account for so long as the Chief Hearing Examiner is employed by the County.
- 5.4. **Deductions.** The compensation payable to the Chief Hearing Examiner under this Agreement shall be subject to federal and state income tax withholding, Social Security, Medicare or such other employee deductions as are required by federal, state and/or local law.

6. **BENEFITS.**

- 6.1. **Vacation.** The Chief Hearing Examiner shall be awarded one hundred sixty (160) hours of vacation leave as of the Effective Date. These hours shall be in addition to vacation leave accrued to date by virtue of her previous employment with the County. Thereafter, the Chief Hearing Examiner shall accrue vacation leave based on her length of service in the Florida Retirement System (FRS) for every bi-weekly pay period she is employed. All payments associated with the Chief Hearing Examiner's accrued vacation leave shall be based on the Chief Hearing Examiner's then Base Salary as of the termination of this Agreement.
- 6.2. **Sick Time.** The Chief Hearing Examiner shall be awarded eighty (80) hours of sick leave as of the Effective Date. These hours shall be in addition to sick leave accrued to date by virtue of her previous employment with the County. The Chief Hearing Examiner will accrue sick leave in accordance with County policy. The Chief Hearing Examiner shall be compensated for unused sick leave upon termination of the Agreement in accordance with County policy.
- 6.3. **Medical Insurance.** During the term of this Agreement, the County shall provide to the Chief Hearing Examiner, at the County's cost, medical insurance in such form and such amounts as are offered to the County's other employees.
- 6.4. **Other Benefits.** Except as otherwise provided herein, the Chief Hearing Examiner will continue to receive the same benefits as all other County employees, including but not limited to, worker's compensation, Florida state retirement, and life insurance.

7. **TERMINATION AND SUSPENSION.**

- 7.1. **Termination for Convenience by County.** The County may terminate the employment of the Chief Hearing Examiner without cause at any time. The effective date of such a termination shall be set forth in the written notice of termination to be provided by the County.

In the event that the Chief Hearing Examiner's employment is terminated without cause and for convenience by the County, she shall receive ninety (90) days written notice of the effective date of her termination, during which period of time the County may commence its search for a replacement hearing examiner and Collins may continue her employment and continue to receive salary and benefits under this Agreement

- 7.2. Termination for Convenience by Chief Hearing Examiner. In the absence of cause, the Chief Hearing Examiner may terminate her employment by giving the County notice of her intent to terminate not less than ninety (90) days in advance of the effective date of termination. The County shall, in its sole and absolute discretion, have the right to accelerate the effective date of the Chief Hearing Examiner's termination once it receives notice of the Chief Hearing Examiner's intent to terminate her employment without cause.
- 7.3. Termination for Cause. During the employment term, the Chief Hearing Examiner's employment may be terminated by the County, without advance notice, and without severance upon the happening of any of the following events:
- 7.3.1. The Chief Hearing Examiner shall fail or refuse to comply with the policies, standards and regulations of the County from time to time established;
 - 7.3.2. The Chief Hearing Examiner shall disregard the standards of conduct contemplated by this Agreement, or the standards of conduct that the County has a right to expect from the Chief Hearing Examiner;
 - 7.3.3. A material breach by the Chief Hearing Examiner of any of her obligations hereunder;
 - 7.3.4. The Chief Hearing Examiner conducts herself in an unethical, illegal, immoral or fraudulent manner or should the Chief Hearing Examiner's conduct otherwise adversely impact public confidence in County government;
 - 7.3.5. The Chief Hearing Examiner is insubordinate or neglects her duties;
 - 7.3.6. The Chief Hearing Examiner shall fail or refuse to faithfully or diligently perform the provisions of this Agreement or the usual and customary duties of her employment; or
 - 7.3.7. The Chief Hearing Examiner is convicted or indicted of any crime punishable as a misdemeanor or a felony, or a plea by the Chief Hearing Examiner of no contest to such a crime, or the entering by

the Chief Hearing Examiner into a plea bargain with respect to such a crime.

7.3.8. Misconduct as defined in Section 443.036(30).

7.4. Suspension. When deemed necessary or appropriate by the County, the Chief Hearing Examiner may be suspended from her duties with pay until such matters at issue warranting the suspension are resolved to the satisfaction of the County for a return to regular duties or the Chief Hearing Examiner is terminated.

8. **PROFESSIONAL ASSOCIATIONS AND DEVELOPMENT.**

8.1. The County shall budget and pay for all professional dues necessary for the Chief Hearing Examiner's participation in national, regional, state and local associations, certifications, and organizations desirable for her continued professional growth, development and advancement.

8.2. The County shall budget and pay for all travel expenses of the Chief Hearing Examiner while on authorized County business or while attending functions as the representative of or on behalf of the County. All such travel expenses shall be incurred and reimbursed in accordance with all applicable County policies.

8.3. The County shall budget and pay for all travel expenses of the Chief Hearing Examiner for such continuing education programs which benefit the County and promote the Chief Hearing Examiner's professional development.

9. **BONDING**. The County shall bear the full cost of any fidelity or other bonds required of the Chief Hearing Examiner under law or ordinance.

10. **INDEMNIFICATION**. The County shall indemnify, hold harmless and defend the Chief Hearing Examiner from and against any and all damages, liabilities, losses, costs, lawsuits, claims and expenses incurred by the Chief Hearing Examiner and arising out of or resulting from any alleged or real acts or omissions by the Chief Hearing Examiner which fall within the scope of the Chief Hearing Examiner's employment or the performance by the Chief Hearing Examiner of her duties hereunder. If any lawsuit, enforcement or other actions is filed against the Chief Hearing Examiner for which the Chief Hearing Examiner is or may reasonably be entitled to indemnification pursuant to this Agreement, the County may elect to take control of the defense and investigation of such lawsuit or action using attorneys, investigators and others reasonably satisfactory to the Chief

Hearing Examiner. If the County exercises this option, the County shall be deemed to have satisfied its duty to defend the Chief Hearing Examiner. The Chief Hearing Examiner and the County shall cooperate in all reasonable respects with respect to the investigation, trial, defense, appeal and/or settlement of any lawsuit or action for which the Chief Hearing Examiner may reasonably be entitled to indemnification pursuant to this Agreement.

11. **OUTSIDE EMPLOYMENT.** The Chief Hearing Examiner recognizes and understands that the position of the Chief Hearing Examiner for Lee County requires her full time and attention, and accordingly, agrees to devote all time necessary to fully discharge her duties. The Chief Hearing Examiner shall refrain from accepting any other employment engagement which would interfere in any way with the loyal and faithful performance of her duties. Notwithstanding the foregoing, nothing contained in this Agreement will be construed so as to prevent the Chief Hearing Examiner from accepting honoraria or consulting fees from educational institutions, units of local government or state agencies for lectures, articles, instructional material, or consultation in the area of local government which will not be in conflict with or impede in any fashion whatsoever the Chief Hearing Examiner's responsibilities to the County.

12. **PERFORMANCE EVALUATION**

12.1. **Annual Performance Evaluation.** The County, acting through the Board of County Commissioners, shall review the Chief Hearing Examiner's performance annually in the same manner and with the same timing as is performed with respect to other County contract employees.

12.2. **Implementation.** In effecting the provisions of this section, the County and Chief Hearing Examiner mutually agree to abide by all provisions of applicable law.

13. **DISABILITY.** If the Chief Hearing Examiner is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury or mental incapacity for a period of four (4) successive weeks beyond all accrued sick leave, the County may terminate this Agreement. Such a termination shall be deemed a termination by the County without cause.

14. **WAIVER OF JURY TRIAL. THE PARTIES HEREBY WAIVE ANY STATUTORY OR CONSTITUTIONAL RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN ANY CIVIL PROCEEDING ARISING OUT OR RELATING IN ANY FASHION WHATSOEVER TO THIS AGREEMENT.**

15. MISCELLANEOUS.

- 15.1. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by the parties against whom the enforcement of such modification, waiver, amendment, discharge, or change is sought.
- 15.2. This Agreement shall be construed in accordance with the laws of the State of Florida.
- 15.3. Any and all litigation arising in connection with this Agreement shall be heard in a State Court of appropriate jurisdiction in Lee County, Florida.
- 15.4. This Agreement shall be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- 15.5. All notices under this Agreement shall be in writing and shall be deemed to have been given when mailed in any United States Post Office, enclosed in a registered, postage-paid envelope, return receipt requested, addressed to the address of the respective parties stated below:

If to the County:

Chair,
Lee County Board of County Commissioners
2115 2nd Street
Fort Myers, FL 33901

with copies to:

County Attorney, Lee County
P.O. Box 398
Fort Myers, FL 33902

If to the Chief
Hearing Examiner:

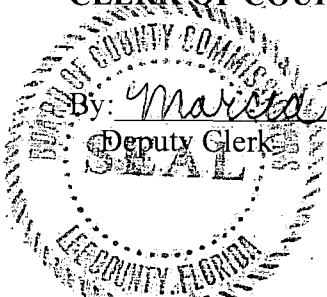
Donna Marie Collins
1500 Monroe Street, 2nd Floor
Fort Myers, FL 33901

or to such other address or to such other persons as any party may designate in writing to the other for such purpose.

- 15.6. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the persons or entity may require.
- 15.7. In the event of any dispute as to the precise meaning of any term contained herein, the principals of construction and interpretation that written documents be construed against the party preparing the same shall not be applicable.
- 15.8. If any provision or any portion of any provision of this Agreement, or the application of any such provision or portion thereof to any person or circumstance, shall be held invalid or unenforceable, the remaining portion of such provision and the remaining provisions of this Agreement or the application of such provision held invalid or unenforceable to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.
- 15.9. In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred, including a reasonable attorneys' fee.
- 15.10. The parties hereto shall, at any time and from time to time following the execution hereof, execute and deliver all such further instruments and take all such further action as may be reasonably necessary or appropriate in order to carry out more effectively the purposes of this Agreement.
- 15.11. Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and shall not be strictly construed for or against any party.
- 15.12. All titles or captions contained in this Agreement and in any exhibit annexed hereto are for convenience only and shall not be deemed a part of this Agreement and shall not affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the County and Chief Hearing Examiner have made and executed this Agreement on the respective dates under each signature. Lee County, through its Board of County Commissioners, authorized the County Chair to execute this Agreement on this 27th day of August, 2013.

ATTEST: LINDA DOGGETT
CLERK OF COURTS



By: Marista Wilson
Deputy Clerk

ATTEST:

By: _____

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: [Signature]
Chair

Date: 8/27/13

CHIEF HEARING EXAMINER

By: Donna Marie Collins
Donna Marie Collins

Date: 8-23-2013

APPROVED AS TO FORM:

By: Andrea B. Jurek
Office of County Attorney