

LOCAL GOVERNMENT ATTORNEY EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into this the _____ day of _____, 2007, by and between **THE BOARD OF SUPERVISORS OF THE COUNTY OF PATRICK, VIRGINIA**, and **THE CITY COUNCIL OF THE CITY OF MARTINSVILLE, VIRGINIA** hereinafter jointly and severally called "Employer," as party of the first part, and **ERIC HELMS MONDAY**, hereinafter called "Employee," as party of the second part, both of whom understand and agree as follows:

WITNESSETH

WHEREAS, Employer desires to continue to employ the services of Employee as County and City Attorney, respectively, and to induce him to abandon the private practice of law, and

WHEREAS, Employee wishes to continue employment as County and City Attorney respectively and to obtain assurances for his economic security in the event he abandons the private practice of law,

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree that this Agreement shall in all respects supercede and supplant all prior existing employment agreements between the parties, shall be effective immediately and shall define the parties' employment relationship as follows:

Section 1. DUTIES

Employer hereby agrees to continue employment of Employee, pursuant to Code of Virginia § 15.2-1542, as the respective County Attorney and City Attorney of said Employer to perform the functions and duties specified in the Code of Virginia and the Ordinances of each locality, and to perform such other legally permissible and proper duties and functions as Employer shall from time to time assign. Specifically, Employee shall:

- A. Refrain from engaging in the private practice of law for third-party clients and shall devote his entire professional service to Employer.
- B. Divide his working time equally between the County of Patrick and the City of Martinsville; in practice this shall, to the greatest extent practicable, entail three working days for one locality and two for the other, alternating each week.
- C. Endeavor to promptly address any issue brought before him, to the greatest extent practicable within one working week.
- D. Attend all meetings of the localities' respective governing bodies,
- E. Attend at least one meeting each quarter of the Patrick County Planning Commission, Patrick County Economic Development Authority, Patrick County Public Service Authority, Martinsville Planning Commission and Martinsville Industrial Development Authority and meetings of the respective localities' Boards of Zoning Appeals as may be necessary.

- F. Draft, or review and approve, all ordinances and legal documents considered by the respective localities.
- G. Be on call 24 hours a day to advise the governing body and all local government departments on legal issues.
- H. Subject to the consent of the respective localities' Commonwealth's Attorneys pursuant to Code of Virginia § 15.2-1542, prosecute violations of all local ordinances, with the exception of ordinance violations that are concurrently charged in conjunction with violations of state law, which shall be prosecuted by the Commonwealth's Attorneys.
- I. Subject to the consent of the respective localities' school boards, render legal advice to the respective school systems, including attendance at the regular meetings of the school boards.
- J. Be the statutorily designated agent, pursuant to Code of Virginia §§ 58.1-3934(B) and 58.1-3958, for the collection of the respective localities' delinquent real estate and personal property taxes. For the purposes of this Subsection J, delinquent real estate and personal property taxes shall be deemed to be all such taxes which are six months in arrears unless:
 - 1. They are subject to a valid written payment plan between the tax payer and the treasurer which is not in default;
 - 2. There is in existence in respect of such taxes a Department of Taxation interception in accordance with the Set Off Debt Collection Act; provided further that should said interception fail to resolve the delinquency after a period of one complete fiscal year then such taxes shall be deemed for the purposes of this Subsection J to be delinquent and subject to all lawful collection efforts that Employee shall deem appropriate to employ in accordance with the provisions of this agreement taken as a whole; or
 - 3. There is in existence in respect to such taxes a Division of Motor Vehicles license stop; provided further that should said license stop have failed to resolve the delinquency after a period of two complete fiscal years then such taxes shall be deemed for the purposes of this Subsection J to be delinquent and subject to all lawful collection efforts that Employee shall deem appropriate to employ in accordance with the provisions of this agreement taken as a whole.
- K. With regard to the 20 % collection fee set forth in Code of Virginia § 58.1-3958, which shall be collected on all delinquent accounts referred to Employee for collection, and with respect to each locality, Employer does hereby authorize pursuant to Code of Virginia § 58.1-3958 the imposition of a 20% collection fee on all delinquent and personal property taxes and real property taxes referred to Employee for collection and Employee shall be entitled in consideration of his efforts hereunder and in addition to his compensation as set forth in Section 4 hereof such of the 20% collection fee as

is collected from each delinquent taxpayer. It is expressly understood and agreed that the amount to which Employee shall be entitled hereunder shall be only that amount collected with respect to each delinquent taxpayer which exceeds the total amount, principal and interest inclusive, of the delinquent personal property and/or real property taxes that are owed by the delinquent taxpayer to the Employer at the time of collection. It is further understood and agreed that Employee shall waive his personal receipt of the collection fee until such time as the cumulative amount of delinquent taxes collected in either respective locality equals one-half of his salary as established herein. After the cumulative amount of delinquent taxes collected within a respective locality equals one-half of Employee's salary as established herein, Employee shall receive the collection fee from that locality.

- L. Employee shall establish objective criteria permitting the execution of a valid written agreement with a delinquent taxpayer to pay the amount owed in periodic payments, upon the production by such taxpayer of evidence demonstrating that financial or other hardship would arise from payment in a lump sum.
- M. Perform such other duties as may from time to time be assigned by the localities' respective governing bodies.

Section 2. TERM

Employee shall serve at the pleasure of the governing bodies of the respective localities, but shall be entitled to the applicable severance compensation established herein in the event of termination.

Section 3. SUSPENSION and TERMINATION

- A. Employer may suspend or terminate Employee for any reason at any time during the term of this Agreement by a majority vote of all of its members.
- B. Any suspension shall be with full pay and benefits unless suspension arises from any act of malfeasance or suspected malfeasance in office. Should Employee be suspended for suspected malfeasance in office that proves to be unfounded, Employee shall be entitled to reinstatement of his position with any back pay due him. Malfeasance shall include willful neglect of the performance of Employee's duties.
- C. In the event Employee is terminated for reasons other than malfeasance or suspected malfeasance in office, or the commission of a criminal act, Employer shall pay Employee the sum of \$100,000.00 as severance pay subject to the further provisions of Subsection F of this Section 3. Should Employee be terminated for malfeasance or suspected malfeasance in office which proves to be unfounded, Employee shall be entitled to the sum of \$100,000.00 severance pay or, at the option of the Employer, Employee may resume his position as Employer's attorney in which case he shall be entitled to back pay covering the period for which he was deemed to be terminated.
- D. In the event one of the two localities terminates Employee while the other continues his employment, the terminating locality alone shall be responsible

for payment of \$100,000.00 to Employee, notwithstanding any other provisions of this Agreement.

- E. In the event one locality alone terminates Employee while the other continues his employment, the remaining locality shall be responsible for one-half the cost of Employee's compensation as established hereunder, and this Agreement shall be void between the two localities.
- F. On each three year anniversary of this Agreement commencing with June 1, 2010, for a period of sixty (60) days following said anniversary date, one or both of the entities collectively deemed to be Employers hereunder (hereinafter the "terminating body") may terminate Employee's employment and rescind this Agreement by sending written notice of such termination and rescission within such sixty (60) day period to Employee. In the event that the terminating body elects to so terminate and rescind within said period it is expressly understood and agreed that Employee shall not be entitled to severance pay of \$100,000.00 as provided under Subsection C of this Section 3 or of any amount save and except such amount as such terminating body, in its sole discretion, might deem appropriate.
- G. In the event that Employee voluntarily resigns his position with Employer, then Employee shall give Employer 30 days notice and shall receive full salary and other benefits during said 30 days. Employee shall not have the right to be compensated for any accrued sick leave or vacation time.
- H. At any time hereafter if Employee is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity, or health for a period of eight successive weeks beyond any accrued sick leave and any statutorily permitted medical leave, either party shall have the option to terminate this agreement subject to the right of Employee to be compensated for any accrued sick leave, vacation, holidays and other accrued benefits, but Employee shall not be entitled to severance pay under Subsection C of Section 3 of this Agreement.

Section 4. COMPENSATION

- A. Employee shall be compensated at an initial annual salary of \$98,000.00, which shall be increased by any annual cost of living adjustment or general raise granted to other employees, or in the event that a merit raise protocol is established by Employer then Employee shall be entitled to such salary increase as is established in accordance with the terms of such protocol. Under no circumstances shall Employee's salary be less than his salary at the execution hereof, per annum plus benefits. Employee shall receive all the benefits available to any of Employer's other full-time employees, but may elect to obtain health insurance independently. Employee shall immediately be entitled to three accrued weeks of paid vacation each year.
- B. Employer shall reimburse Employee for all mileage incurred by Employee on government business. Employer shall provide Employee with a cellular phone or comparable personal communication device.
- C. Employer shall provide Employee with an annual budget of \$3,000.00 for attendance at conferences and professional development seminars, and an

annual budget of \$750.00 for the payment of professional dues. Notwithstanding the foregoing, each locality shall pay the annual cost of their respective membership in the Virginia Local Government Attorneys Association.

- D. To the extent permitted by the Virginia Retirement System, Employee may purchase years of creditable service to be applied towards his retirement, retroactively to January 1, 2003.
- E. In addition, Employer may from time to time provide for additional compensation to be paid to Employee.

Section 5. PERFORMANCE EVALUATION

- A. Employer may review and evaluate the performance of the Employee at least once annually, to occur in the month of July. Said review and evaluation shall be in accordance with specific criteria developed jointly by Employer and Employee. Said criteria may be added to or deleted from as Employer may from time to time determine, in consultation with Employee. Further, Employer shall provide Employee with a summary written statement of the findings of Employer and provide an adequate opportunity for Employee to discuss his evaluation with Employer.
- B. Annually, the parties shall define such goals and performance objectives which they determine necessary for the proper operation of the respective localities' legal affairs and in the attainment of Employer's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitation as specified in the annual operating and capital budgets and appropriations provided.
- C. In effecting the provisions of this Section, the parties mutually agree to abide by the provisions of applicable law.

Section 6. HOURS OF WORK

It is recognized by the parties that Employee shall devote his entire working time to the business of Employer, and that in doing so, shall be on call twenty-four (24) hours a day. Employee is expected to devote a great deal of time outside normal business hours to business of the Employer, and to that end Employee will be allowed to take time off as he shall deem appropriate during said normal office hours. Nonetheless, Employee shall to the greatest extent practicable endeavor to maintain regular office hours, Monday through Friday, 8:30 a.m. to 5:00 p.m. and at such times that he is not in his office or on vacation he shall remain accessible to Employer by cellphone, email or other communication media. Employee shall not be permitted to accumulate compensatory time.

Section 7. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

- A. For the purposes of salary, retirement, and other Employee benefits, public liability insurance and bonds, Employee shall be considered as an Employee of the City of Martinsville as permitted and provided in accordance with provisions of Code of Virginia § 15.2-1515 . By its execution of this

Agreement The County of Patrick agrees to reimburse the City of Martinsville one-half of the total cost incurred annually by the City of Martinsville pursuant to this Agreement.

- B. The parties may fix any such other terms and conditions of employment, as they may determine from time to time and mutually agree, relating to the performance of Employee provided such terms and conditions are not inconsistent with or in conflict with any other statute, regulation, or ordinance, or with the provisions of this agreement.
- C. All regulations and rules of Employer relating to vacation and sick leave, 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 Employer, in addition to said benefits enumerated specifically in this Agreement for the benefit of Employee or except as herein provided.
- D. Employee shall be entitled to receive the same vacation and sick leave benefits as are accorded all other employees of Employer.
- E. Employee shall be entitled to the services of an Executive Assistant. No decision affecting the hiring or termination of such Executive Assistant shall be made without the concurrence of Employee. Such Executive Assistant shall be subordinate to and answerable to Employee, provided that such Executive Assistant shall be subject to the personnel and employment policies of Employer. To the extent this Executive Assistant is assigned additional duties for other departments of Employer, such assignment shall be made exclusively by Employee. Employee's initial Executive Assistant shall be employed at an initial annual salary of \$28,750.00 with an immediate accrued two weeks of vacation and shall be entitled to all of the benefits afforded full time employees with the exception of health insurance; any future Executive Assistant shall be offered health insurance. The cost of the Executive Assistant shall be borne by the localities in the same manner set forth in Section 8-A of this Agreement.
- F. Employer shall furnish adequate office space for Employee and his Executive Assistant in each of the localities administrative offices, and shall provide internet and telephone access to that office space. Employer shall also provide for an internet-based legal research subscription with such provider as Employee may designate.
- G. Employer shall bear the cost of Employee's professional malpractice insurance and the cost of any bonds required of Employee for the performance of his duties.
- H. The County of Patrick shall not impose a residence requirement upon Employee.
- I. In the event a conflict of interest arises, Employee shall immediately notify Employer, who shall obtain outside counsel. The parties acknowledge that Employee must at all times act in accordance with the Virginia State Bar Rules of Professional Conduct.

- J. In the event two meeting dates conflict, the entity which first publicly noticed its meeting shall be attended by Employee. The parties undertake to avoid scheduling conflicting dates to the greatest extent practicable.

Section 8. NOTICES

Notices pursuant to this Agreement shall be sent by registered or certified mail, postage prepaid, addressed as follows:

(1) **EMPLOYER:** Chairman of the Board of Supervisors
Patrick County
Post Office Box 466
Stuart, Virginia 24171

Mayor of the City of Martinsville
Post Office Box 1112
Martinsville, Virginia 24114

(2) **EMPLOYEE:** Eric H. Monday
1015 Mulberry Road
Martinsville, Virginia 24112

Alternatively, notices required pursuant to this agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of mailing in the course of transmission in the United States Postal Service.

Section 9. SEVERABILITY

The provisions of this agreement shall be deemed to be severable, and the fact that one or more provisions of this agreement may be judicially declared invalid shall not affect the validity of the remaining provisions of this Agreement.

Section 10. GENERAL PROVISIONS

- A. This Agreement shall be governed by the laws of the Commonwealth of Virginia.
- B. The text of this Agreement and any documents incorporated by reference shall constitute the entire understanding between the parties; section headings are used for purposes of description only and do not constitute a part of the Agreement.

- C. This Agreement shall be binding upon and inure to the benefit of the beneficiaries and personal representatives of the estate of Employee.
- D. This Agreement was drafted by Employee. Employer has been severally advised of their respective rights to obtain the advice of independent counsel prior to its execution of this Agreement.
- E. In the event of breach of this Agreement or a disagreement as to the interpretation of its terms, the parties agree to submit the dispute to binding arbitration conducted according to the rules of the American Arbitration Association. In any such arbitration or in any litigation, the non-prevailing party, as determined by the arbitrators or court, shall bear the costs incurred by the prevailing party, including but not limited to reasonable attorney's fees. In the event such arbitration involves one of the two localities, the provisions of this subsection shall apply to that locality alone. To the extent a locality is involuntarily made a party to arbitration between Employee and the other locality, such involuntarily joined locality shall not be responsible for the payment of costs to the prevailing party as assigned hereunder.
- F. The parties acknowledge that Employee will be unable to terminate completely his private law practice by July 1, 2007. Employee may continue to conduct the winding up of his practice past that date, with the aid of his assistant, and shall undertake his best efforts to conclude this winding up as rapidly as possible.

IN WITNESS WHEREOF, the Board of Supervisors of the County of Patrick, Virginia has caused this Agreement to be executed by David G. Young, its Chairman; the City Council of the City of Martinsville, Virginia has caused this Agreement to be executed by its Kimble J. Reynolds, its Mayor and Eric Helms Monday has executed the same in his own right, this the year and date first above written.

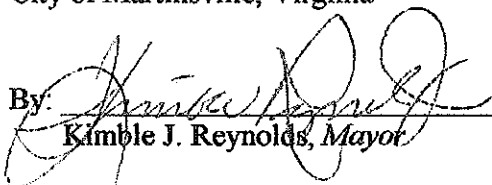
Employer:
Board of Supervisors
County of Patrick, Virginia

By: David G. Young
David G. Young, *Chairman*

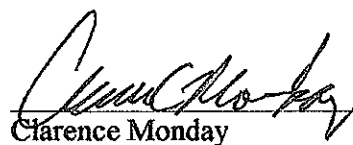
Attest:

Michael D. Burnette
Michael D. Burnette
County Administrator

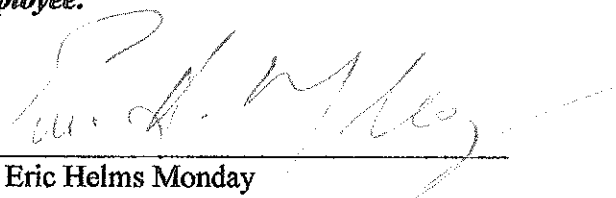
City Council
City of Martinsville, Virginia

By: 
Kimble J. Reynolds, Mayor

Attest:


Clarence Monday
Interim City Manager

Employee:


Eric Helms Monday