

**IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI**

**A RESOLUTION** authorizing the County Executive to execute an Employment Agreement with Bryan O. Covinsky of Lee Summit, MO, to serve as the County Counselor for a term expiring December 31, 2022.

**RESOLUTION NO. 20124**, March 25, 2019

**INTRODUCED BY** Tony Miller, County Legislator

WHEREAS, the County Executive has announced the appointment of Bryan O. Covinsky of Lee Summit, MO, to serve as County Counselor for a term expiring December 31, 2022; and,

WHEREAS, the County Executive recommends that certain aspects of the appointment and employment be governed by the attached "Employment Agreement"; and,

WHEREAS, the execution of this Employment Agreement is in the best interests of the health, welfare, and safety of the citizens of Jackson County; now therefore

BE IT RESOLVED by the County Legislature of Jackson County, Missouri, that the appointment of Bryan O. Covinsky as County Counselor is hereby approved and that County Executive be and hereby is authorized to execute the attached Employment Agreement on behalf of the County; and

BE IT FURTHER RESOLVED that all County officials be and hereby are authorized to undertake all actions required by this Agreement.

Effective Date: This Resolution shall be effective immediately upon its passage by a majority of the Legislature.

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Interim County Counselor

Certificate of Passage

I hereby certify that the attached resolution, Resolution No. 20124 of March 25, 2019 was duly passed on April 8, 2019 by the Jackson County Legislature. The votes thereon were as follows:

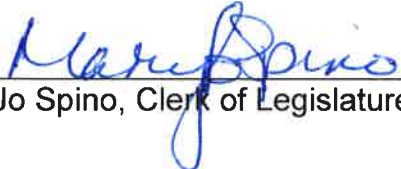
Yeas 9

Nays 0

Abstaining 0

Absent 0

4-9-19  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Mary Jo Spino, Clerk of Legislature

Funds sufficient for this expenditure are subject to appropriation in the County's 2019 and future years' annual budgets.

3/25/19  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Chief Administrative Officer

**EMPLOYMENT AGREEMENT**

This Agreement is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between Jackson County, Missouri, herein after referred to as "the County," and Bryan Covinsky.

WITNESSETH:

WHEREAS, the County, through the County Executive, is desirous of engaging the services of Bryan Covinsky to serve as the County's County Counselor; and,

WHEREAS, Bryan Covinsky, is well-qualified for this position and is desirous of undertaking the professional duties of said position;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, it is agreed by and between the parties as follows:

I. Term.

Conditioned on the County Executive appointing Bryan Covinsky County Counselor no later than March 25, 2019, and filing the notice of appointment with the clerk of the County Legislature within 5 calendar days following the appointment, and further conditioned on the County Legislature not exercising its power of disapproval within fifteen days after the notice of appointment is filed with the clerk of the County Legislature, the County hereby engages the services of Bryan Covinsky to serve as its County Counselor, for a term ending on December 31, 2022, unless otherwise terminated earlier in accordance with paragraph V of this Agreement.

After the initial term, Bryan Covinsky's employment may be renewed by mutual

agreement of the parties, upon such terms as the parties may agree.

II. Employment.

For all purposes, County shall treat Bryan Covinsky as a Charter Officer and employee of the County, eligible for all employee benefits offered by the County to comparable employees, as those benefits offerings may be changed from time to time, with the County paying the employer's share of social security contributions and making appropriate deductions from the biweekly payments required under paragraph III(A) below for federal, state, and local taxes, and any other applicable taxes, fees, and assessments, as well as for any County-provided benefits in which Bryan Covinsky elects to participate. Any expense reimbursement Bryan Covinsky receives under this Agreement or under the County's Personnel Rules, or otherwise, shall be grossed up for taxes. Bryan Covinsky's employment with the County shall be governed by applicable provisions of the United States Constitution, federal law, the Missouri Constitution, Missouri statutory and common law, and the Jackson County Charter, Code, and Personnel Rules, unless otherwise specifically provided herein.

III. Compensation.

A. Subject to upward adjustment as provided in this paragraph III(A), Bryan Covinsky shall be paid for his services a minimum annualized base salary in the total gross sum of \$147,754.00, payable bi-weekly. In the event that the County grants a cost-of-living increase to all or nearly all of its employees at any time during the term of this Agreement, Bryan Covinsky shall be entitled to receive that cost-of-living increase at the same time it becomes effective for those other employees. In the event that the

County creates a “merit pool” for employee merit salary increases, Bryan Covinsky shall be entitled to receive a lump sum merit increase no greater than the average increase for employees within the pool, to be effective at the same time such merit increases become effective for those other employees, provided that any such merit increase must be justified by Bryan Covinsky’s employee evaluation, applying the same methodology used to gauge the employee evaluations of others in the pool who also receive merit increases. Even if no cost of living increase is granted to all or nearly all County employees, and/or no merit pool is created for merit increases, the County Executive shall have discretion to increase Bryan Covinsky’s salary in any manner consistent with the County’s personnel rules and procedures, provided the adjusted salary remains within the range for the county counselor position set in chapter 2 of the County Code.

B. In lieu of submitting invoices for business use of his personal vehicle, Bryan Covinsky shall receive an automobile allowance in the amount of \$600.00 per month.

C. Bryan Covinsky shall be credited with paid vacation leave authorized under the County’s Personnel Rules at the rate of at least four weeks (20 days) per year, or the amount provided under said Personnel Rules based on his years of service with the County, whichever is greater. All service Bryan Covinsky has rendered to the County in the County Prosecutor’s Office since 2005 shall be credited and transferred to his position as County Counselor for purposes of vacation and other benefits accrual. Bryan Covinsky’s use and payout of vacation leave shall otherwise be governed by said Personnel Rules.

D. Bryan Covinsky shall be entitled to an allowance in the amount of \$55.00 monthly for his business use of his personal cellular telephone. The parties acknowledge and agree that Bryan Covinsky's use of his personal cellular telephone (or any other digital device) for business purposes does not waive any of his personal privacy rights in non-business-related content that apply to any other County employees.

IV. Duties.

Bryan Covinsky shall perform all duties and exercise all responsibilities set out by the Missouri Constitution and Laws and Jackson County Charter, Code, and Personnel Rules for the office of the County Counselor. A copy of the current job description for this position is attached hereto as Exhibit A. In the event that the responsibilities of the position of County Counselor change due to County department reorganization, which reorganization is not disapproved by the County Legislature and which becomes effective 30 days after notice of such reorganization is filed with the Clerk of the County Legislature, then the parties shall meet to discuss and negotiate what effect, if any, such reorganization will have on Bryan Covinsky's compensation.

V. Termination.

This Agreement may be terminated by either Bryan Covinsky or County as follows:

A. Upon Bryan Covinsky's termination of the Agreement through a written resignation, upon death of Bryan Covinsky, or upon finding of a permanent disability of Bryan Covinsky, which cannot reasonably be accommodated without posing an undue hardship to the County. No severance pay as outlined in V(C) below shall be

paid to Bryan Covinsky.

B. The County Legislature may terminate the Agreement at any time, with or without "Cause," with an affirmative vote of six of its members. Although no "Cause" is required for the County Legislature to terminate Bryan Covinsky's employment in accordance with the County Charter, if Bryan Covinsky's employment is involuntarily terminated at any time without "Cause" as defined in subparagraph V(C) below, then the County shall pay Bryan Covinsky severance pay equal to six months' base salary in effect under paragraph I of this Employment Agreement in one lump sum payment, less regular withholding for taxes, payable within 15 calendar days of the date of such termination without "Cause."

C. Although no "Cause" is required for the County Legislature to terminate Bryan Covinsky's employment in accordance with the County Charter, for purposes of determining Bryan Covinsky's eligibility for severance pay in the case of an involuntary termination without "Cause" as provided under this Agreement, "Cause" to terminate Bryan Covinsky's employment and this Agreement means Bryan Covinsky commits one or more of the following:

- (i.) An intentional act of fraud, embezzlement, theft or any other material violation of law that occurs during or in the course of Bryan Covinsky's employment with the County;
- (ii.) Intentional material damage to County's assets;
- (iii.) Intentional disclosure of County's confidential information contrary to the County's policies;
- (iv.) Intentional engagement in any competitive activity which would constitute a breach of Bryan Covinsky's duty of loyalty or of Bryan Covinsky's obligations under this Agreement;

- (v.) Intentional material breach of any of County's conduct policies;
- (vi.) The willful and continued failure to perform Bryan Covinsky's material duties for County (other than as a result of incapacity due to physical or mental illness, which the County has attempted to reasonably accommodate) after notice of the performance deficiencies and a reasonable opportunity to cure them; or
- (vii.) Willful conduct by Bryan Covinsky that is demonstrably and materially injurious to the County, monetarily or otherwise.

"Cause" includes any of the above grounds for dismissal regardless of whether the County learns of it before or after terminating Bryan Covinsky's employment.

For purposes of this paragraph, an act, or a failure to act, shall not be deemed willful or intentional, as constitutes "Cause" to terminate Bryan Covinsky's employment and this Agreement without paying Bryan Covinsky the Severance Payment provided under subparagraph V(B) above, unless Bryan Covinsky acts, or fails to act, in bad faith or without a reasonable belief that Bryan Covinsky's action or omission was in the best interest of County. Failure to meet performance standards or objectives, by itself, does not constitute "Cause" under this paragraph; the County Legislature's and/or County Executive's disagreement or dissatisfaction with any confidential legal advice or confidential legal opinion Bryan Covinsky may provide in the good faith exercise of his ethical obligations as an attorney does not constitute "Cause" under this subparagraph.

D. If Bryan Covinsky is terminated with "Cause" as defined in subparagraph V(C) above, Bryan Covinsky shall not receive the severance pay provided in subparagraph V(B) above.

E. In the event of termination of the Agreement under any subparagraph



of paragraph V, Bryan Covinsky shall be paid all compensation for time worked through the termination date, and all benefits which would be due a County employee terminated under similar circumstances, pursuant to the Jackson County Personnel Rules.

VI. Construction.

This Agreement shall be construed under the laws of the State of Missouri.

VII. Severability, Waiver, and Modification.

The invalidity or inability to enforce any provision hereof shall in no way affect the validity or enforceability of any other provision. Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach of this Agreement. Further, any waiver, alteration, or modification of any of the provisions of this Agreement, or cancellation or replacement of this Agreement, shall not be valid unless in writing and signed by the parties.

VIII. Survival.

The parties specifically agree that Paragraph V of this Agreement, and those provisions defining "Cause" for termination and Bryan Covinsky's entitlement to severance pay in the event of an involuntary termination without "Cause" in particular, shall survive the termination of this Agreement for any reason.

IX. Annual Appropriation.

Funds necessary to meet any and all financial obligations incurred by the County herein are subject to appropriation in the County's 2019 annual budget and successive budgets for all years during the term of this Agreement.

X. Incorporation.

This Agreement incorporates the entire understanding of the parties.

JACKSON COUNTY, MO

BRYAN COVINSKY

By \_\_\_\_\_  
Frank White, Jr.  
County Executive

\_\_\_\_\_

APPROVED AS TO FORM:

ATTEST:

By \_\_\_\_\_  
Jay D. Haden  
Interim County Counselor

\_\_\_\_\_  
Mary Jo Spino  
Clerk of the Legislature

**REVENUE CERTIFICATE**

Funds sufficient for this expenditure in calendar year 2019 are included in the County's annual budget. Funds for calendar year 2019 are subject to appropriation in the County's 2019 annual budget.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chief Administrative Officer