



COUNTY OF ELBERT

OFFICE OF THE
BOARD OF
COUNTY
COMMISSIONERS
P.O. BOX 7
KIOWA, COLORADO
80117
Administrative Assistant
303-621-3138

Robert Rowland
District 1
Kelly Dore
District 2
Larry Ross
District 3

August 26, 2015

Wade H. Gateley
Elbert County Attorney
P.O. Box 7
215 Comanche Street
Kiowa, Colorado 80117

Re: Engagement of Services – Elbert County Attorney

Dear Mr. Gateley:

The Board of County Commissioners of Elbert County, Colorado desires to engage your services in the position of Elbert County Attorney in accordance with the following terms and conditions of employment. Should these terms and conditions be acceptable to you, please so indicate by signing this letter in the space indicated below.

The position being offered to you is one of an employee that reports directly to the Board of County Commissioners and is responsible solely to that body. You will perform such duties and responsibilities as may be determined by a majority the Board of County Commissioners, which shall be consistent with your position as County Attorney. Your position will be on an annual renewal basis. During the annual term of this agreement, you will be subject to dismissal by the Board of County Commissioners for cause or without cause, as described by the terms of this agreement.

You agree to devote your full time, attention, and energy to performing your duties and responsibilities under this agreement during the period that it is in effect. You will be compensated on a salary basis and not on an hourly basis, but you will be expected to keep regular office hours of 8:30 a.m. to 5:00 p.m. Monday through Thursday, except when attending court appearances and other meetings on county business. This position will pay a salary of \$8,125.13 per month commencing September 1, 2015 (an annual salary of \$97,501.56). The foregoing salary will be paid in the same manner and conditions as paid to other full-time County employees, including the withholding of any federal, state, and local taxes. Because of the administrative nature of the position, you will not be eligible for either unpaid compensatory time or paid overtime.

You will receive all leave and fringe benefits due other County employees, including County paid health and life insurance, paid days off leave, sick leave, retirement and all other benefits as set forth in the Elbert County Employee Handbook.

Should the Board elect to terminate your services, it shall elect a termination for cause or a termination without cause. Should the Board elect to terminate you without cause, it shall so specify and provide you with thirty (30) days written notice of the effective date of such termination. During the time period between notice and termination, you shall be paid your salary and your normal and customary benefits available to all County employees. On the effective date of termination, and upon the execution and non-rescission of a Waiver and Release, as part of your compensation you shall receive an additional six (6) months' salary at the rate set forth herein. Additionally, you shall receive compensation for accrued benefits, including leave, in the same manner as all other employees of Elbert County.

At its discretion, the Board of County Commissioners may elect to terminate your services for cause, rather than without cause. The Board may terminate your services for cause solely and exclusively for the following reasons:

1. Conviction of a criminal offense directly related to your services for Elbert County;
2. Violation of any written policy of the Board of County Commissioners that results in an award of damages against Elbert County;
3. Any on-duty or off-duty conduct that is materially injurious (or potentially so) to the operation, financial condition or reputation of Elbert County or County government, as determined in the discretion of the Board;
4. A violation of professional ethics, policy or criminal law related to your job function that does not result in a conviction or award of damages, but is otherwise determined to have occurred by the Board of County Commissioners, and which the Board further determines would significantly impair your ability to perform the functions of County Attorney;
5. A material breach by you of this agreement, if you do not correct such breach within thirty (30) days after the Board of County Commissioners gives you written notice of such breach; or
6. Failure to perform your duties satisfactorily, if after receiving written notice of your deficient performance, you fail to correct such deficiency.

Should the Board determine that termination for cause is appropriate for one of the reasons set forth above, you shall be provided written notice of the Board's consideration of such County Commissioners at a regular meeting of the Board. Such response shall be

conducted in accordance with the Colorado Open Meetings Act. During the time period between notice and consideration of your position by the Board of County Commissioners, you may be placed on administrative leave, and in that case, the administrative leave shall be with pay. After consideration of your response, the Board of County Commissioners may proceed to termination for cause that shall be set forth in writing, including the basis for such termination. The Board of County Commissioners may elect to terminate your services upon consideration of your response. With the exception noted below, on the effective date of termination for cause and upon execution and non-rescission of a Waiver and Release, as part of your compensation you shall receive an additional one (1) months' salary at the rate set forth herein. Additionally, you shall receive compensation for accrued benefits, including leave, in the same manner as all other employees of Elbert County. However, in the event of a termination for cause resulting from the reasons identified in paragraphs 1 or 2 above, you will not be entitled to any severance compensation, and you will only receive compensation for accrued benefits, including leave, in the same manner as all other employees of Elbert County.

Should you desire to terminate your services with the County, for any reason, you shall provide the Board of County Commissioners with at least two weeks' written notice prior to the effective date of your decision. Upon the effective date of your resignation, you will be paid for all accrued leave and fringe benefits otherwise due you as an Elbert County employee.

Immediately upon termination of employment, whether with cause, or by resignation, you agree to deliver all memoranda, notes, plans, records, reports, and other documents and information provided to you by Elbert County or created by you in connection with your employment and all copies of all such documents in any form which you may then possess or have under your control. You likewise agree to surrender any and all Elbert County property issued to you incident to your employment, such as computers, keys, name badges, access cards, automobiles, and all similar items.

Should you elect to accept the position now being offered to you in this letter, it is expressly agreed and understood that all compensation due you is as set forth herein. Although all benefits as set forth in the Elbert County Employee Handbook shall apply to your position, you shall be exempt from any classification and compensation plan which the Board adopts for County employees and shall receive compensation solely and exclusively as set forth in this letter of engagement.

The terms and conditions of your employment as set forth herein shall remain in effect from September 1, 2015 through August 31, 2017. No later than July 31, 2017, the Board of County Commissioners shall provide you with a letter of termination, should the Board elect by majority decision to terminate this engagement effective. If the notice deadline of this contract of July 31, 2017 expires, and the Board has not elected to terminate this engagement and provided notice as stated above, this engagement and employment shall automatically be renewed for a period of two years, and for successive two year increments, under the same terms and conditions, including but not limited to the same expiration date and notice of termination deadline in each second successive



year. Each annual renewal shall be subject to the appropriation of funds for the next budget year by the Board. Nothing in this agreement shall prevent negotiation between the parties regarding increased compensation and benefits for the following two year engagement.

If a court of competent jurisdiction determines that any term or provision hereof is invalid or unenforceable, (a) the remaining terms and provisions hereof shall be unimpaired and (b) such court shall have the authority to replace or amend such invalid or unenforceable term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

This engagement will be governed by and construed according to the laws of the State of Colorado, without regard to conflict of law principles. The failure to enforce any right arising under this engagement or any similar agreement on one or more occasions will not be deemed or construed to be a waiver of that right under this engagement or any other agreement on any other occasion, or any other right on that occasion or any other occasion.

This letter contains the entire understanding between you and Elbert County with regard to your employment with Elbert County. There are no other agreements, conditions, or representations, oral or written, expressed or implied, with regard thereto. This agreement supersedes all prior agreements, promises, and representations relating to your employment with Elbert County.

Finally, in all instances, you will conduct yourself in a professional manner and exercise your fiduciary duties to the Board of County Commissioners, specifically, a duty of loyalty and a duty of care.

Sincerely,

Robert Rowland
Board of County Commissioners of Elbert County, Chairman

Acceptance:

Wade H. Gateley