AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Employment Agreement; County Attorney Transition

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Transition Contract for County Attorney Position

Fiscal Impact:

Submitted by: Lauren Hibbard **Submitter's Email Address:** lhibbard@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
Fiscal Impact detail in attached memo. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 10/9/2019

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 10/9/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 10/9/2019 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 10/9/2019

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 10/15/2019

Revised April 2015

Memorandum

To: Members of the BOCC
Matthew Birnie

From: Linda Nienhueser

Date: October 9, 2019

Re: Matthew Hoyt's Contract Renewal

The 2020 fiscal impact of the proposed contract renewal document is $49,562, or 36.83% over the 2019 contract amount. This requires a budget enhancement request of $45,821 in the general fund as only $3,741 for additional payroll costs for this employee was included in the County Attorney target amount for 2020 during initial budget preparation. If you have any questions, please let me know.

Thank you.

GUNNISON COUNTY ATTORNEY TRANSITION
EMPLOYMENT AGREEMENT

THIS GUNNISON COUNTY ATTORNEY TRANSITION EMPLOYMENT AGREEMENT is made and entered into this 15th day of October, 2019, by and between the Board of County Commissioners of the County of Gunnison, Colorado ("Board") and Matthew Hoyt ("Employee").

WHEREAS, in 2017 the Board engaged in a comprehensive, nationwide search for a Deputy County Attorney that the Board intended to promote to County Attorney upon the retirement of the current County Attorney;

WHEREAS, the search and recruitment process included the retention of a nationally recognized recruiting firm, the receipt of applications from numerous qualified applicants, and multiple rounds of interviews of potential candidates by the County Attorney, County department heads, and the current chair of this Board;

WHEREAS, the Board made, and the County Attorney, the County Manager, and the department heads involved in the recruiting process unanimously supported, the offer of employment to Employee in light of his substantial background, experience and education;

WHEREAS, the Board recognizes that Employee accepted the Board's offer of employment as the Deputy County Attorney with the understanding that the acceptance was, so long as the Employee met the expectations of the Board and the County Attorney, intended to result in Employee's promotion to County Attorney upon retirement of the current County Attorney, which is anticipated to be December 31, 2020;

WHEREAS, Employee's performance has exceeded the expectations of the Board and the County Attorney;

WHEREAS, the Board acknowledges that in order to retain experienced and qualified professionals, such as Employee, in executive positions critical to the County, such as the Deputy County Attorney and the County Attorney, the Board is required to compensate such employees in a manner commensurate with an employee's background, experience and education;

WHEREAS, it is the intention of the parties to this Agreement and the County Attorney to employ a similar, nationwide search for a future Deputy County Attorney to fill that position upon the promotion of Employee to the position of County Attorney; and

WHEREAS; unlike the contracts with past deputy county attorneys, the present

Agreement is intended to serve as a vehicle both to promote the Employee to the County Attorney position and to ensure a smooth transition between the current County Attorney and the future one;

NOW, THEREFORE, the parties to this Agreement, for the good and valuable consideration set forth herein, contract and agree as follows:

1. Employment as Deputy County Attorney during Transition. Subject to and inclusive of the provisions set forth in Paragraph 13 of this Agreement, the Board agrees to continue to employ Employee as the Deputy County Attorney, and Employee agrees to be employed as the Deputy County Attorney, pursuant to the terms and conditions of this Agreement, effective January 1, 2020. Until such time, Employee's current Agreement with the Board shall control.

2. Duties. Employee shall serve at the pleasure of the Board. In addition, employee shall perform those duties specifically directed by the board, not individual members thereof, as well as such other duties that in Employee's best professional judgment, are required to perform the job of Deputy County Attorney or County Attorney for Gunnison County. The Employee shall serve as the Operations Manager for the County Attorney's Office with the responsibility of all department employees (except for the County Attorney), and (except for the County Attorney) management of the office's work processes including the assignment of duties and projects.

3. Personnel Policies and Procedures. Except as otherwise stipulated herein, the Personnel Policies and Procedures Manual of Gunnison County as set forth in the Employee Handbook, as amended ("Personnel Policies" or "Employee Handbook") shall not apply to Employee.

4. Employee Benefits. During the period of employment, Employee shall be eligible for those benefits afforded full-time permanent Administrative Personnel of Gunnison County, including those set forth below:

a. Vacation. Upon execution of this Agreement, the Employee shall be credited with an additional four (4) days of vacation leave, in addition to the leave he has already accumulated. The Employee shall continue to accrue vacation at 10 hours per month until such time as he would be eligible for increased accrual under Section 8 "Vacation" of the Gunnison County Employee Handbook or any future amendments thereto. Accruals will be allowed up to 336 hours, the maximum accrual limit under County policy. The provisions of Sections 7 of the Gunnison County Employee Handbook, as amended, shall apply to this Paragraph 5a.

b. Sick Leave. The Employee shall accrue sick leave of eight (8) hours per month of employment. If, and only if, there is a voluntary resignation by Employee, Employee shall receive payment for accumulated sick leave up to a maximum of one-third of 720 hours (720 x .333). The provisions of Section 7 of the Gunnison County Employee Handbook, as amended, shall apply to this Paragraph 5b.

c. Executive Leave. Employee shall have eight (8) days (64 hours) of Executive Leave for the calendar year and each calendar year thereafter, unless otherwise modified pursuant to Paragraph 13 of this Agreement. Executive Leave shall not accrue further, nor shall it result in a payout at termination or retirement. Employee's use of such leave shall be documented in writing.

d. Retirement. As per County policy, except that the County agrees to pay Employee's contribution to the retirement fund(s) and to pay the County's match to the Employee's retirement fund(s). The County shall also pay an additional one percent (1%) of employee's base salary into a retirement fund while this contract is in effect.

e. Cell Phone Reimbursement. Employee shall be eligible for a $75.00 per month cell phone reimbursement.

f. Health and Welfare Benefits. Employee shall be afforded access to all Health and Welfare Benefits per County policy, except that the County shall pay Employee's share of health insurance benefits, in addition to Employer's share of same. Employee shall pay his appropriate share of his dependents' health insurance benefits per County policy.

g. County Holidays. Employee shall receive the benefit of all paid County Holidays as set forth by the Board of County Commissioners.

h. Housing Stipend. County shall pay Employee the sum of six hundred twenty-five dollars ($625) per month of Employee's actual employment, beginning the month of January 2020, for a total of Seven-Thousand Five-Hundred Dollars ($7,500.00) per year, as a housing stipend.

i. Continuing Legal Education. County shall reimburse Employee for the expenses associated with Continuing Legal Education ("CLE") courses required by Colorado Supreme Court in accordance with Section 10-9 of the Personnel Policies regarding Training, including tuition fees, meals, lodging and travel expenses. Such reimbursement shall not exceed One Thousand Five Hundred Dollars ($1,500) per calendar year.

j. Colorado Bar Dues. County shall reimburse Employee the fee(s) assessed by the Colorado Supreme Court to maintain an active license to practice law in the State of Colorado the United States District Court for the District of Colorado, the Court of Appeals for the Tenth Circuit, and the United States Supreme Court.

k. New Mexico Bar Dues. Employee is presently licensed the New Mexico Supreme Court under inactive status. Employee shall be responsible for the fee(s) associated with maintaining inactive status in New Mexico. However, should Employee's job responsibilities require Employee to seek reinstatement to active status, County shall reimburse Employee for the fee(s) associated with his application for reinstatement and to maintain an active New Mexico license for so long as his job responsibilities require.

l. Motor Vehicle. During his employment, the County shall pay employee five hundred twenty-four dollars ($524) a month as payment for motor vehicle expenses.

5. Compensation. During the period of employment, the Board agrees to pay Employee for his services a base salary of One-hundred Fifty-Five Thousand Dollars and no cents ($155,000.00).

6. Market Wage Adjustments. Employee shall receive the same market wage adjustments as those afforded other top salaried tier County employees.

7. Performance Evaluation. The Board shall be responsible for reviewing and evaluating the performance of Employee annually.

8. Hours of Work. It is agreed by both parties that Employee is a professional hired to perform the duties specified and such other duties consistent with the job status, and that performance of these duties will at times require absence from the office, attendance at night meetings and work in excess of forty (40) hours per week. Employee shall not be eligible for wages greater than that identified in this Agreement regardless of the number of hours worked each week. To that end, Employee is free to organize his work schedule in such a fashion as to accommodate his workload, but shall normally be present during the County's business hours.

9. Employee's Responsibilities.

a. Outside Employment. The Employee shall not engage in any outside employment, except that the Employee may volunteer so long as such

volunteer work is unrelated to his official duties and Employee is not providing legal representation or advice to anyone except the County and the Board of County Commissioners.

b. Ethical Responsibilities. Employee shall at all times observe and comply with all ethical and professional standards and all other obligations imposed by constitution, statute or other provision of law and shall at all times conduct Employee's affairs in such a manner as to avoid a conflict of interest and in accordance with the duties and responsibilities outlined by the Board. Employee shall at all times during the period of employment, other than as expressly allowed herein, devote Employee's work time, attention, knowledge and skills solely to the interests of the County.

c. Status as Employee. It is the intention of Board and the Employee that the Employee shall be a public employee and entitled to all of the protection and benefits of a public employee of Gunnison County pursuant to the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.*

10. Termination of Employment by County.

a. Employment at Will. The employment relationship between Employee and the County is terminable at the will of the Board of County Commissioners at any time during the period of employment and nothing in this Agreement shall be interpreted or construed to prevent, limit or otherwise interfere with the right of the Board of County Commissioners to terminate the employment relationship at any time for any reason or for no reason at all.

b. Severance Pay. If the employment relationship is terminated by the Board at any time during the period of employment and Employee is ready, willing and able to perform the duties identified by this Agreement, the County shall provide Employee severance pay in the amount equal to six (6) months base pay, plus benefits, at the rate of his pay and benefits at the time of termination, or the rate of his average base pay for the preceding twenty-four (24) month period, whichever is greater, EXCEPT if the relationship is terminated for nonperformance or unacceptable performance of work, or for violation of any law that would constitute professional misconduct under Rule 8.4 of the Colorado Rules of Professional Conduct, or any ethical or professional standard or other obligation imposed by constitution, statute or other provision of law, there shall be no severance pay.

11. Termination by Resignation of Employee. During the period of employment, Employee may, at any time following forty-five (45) days written notice to the County, resign from employment with the County and terminate this Agreement. If Employee resigns from employment with the County, severance pay provisions of this Agreement shall not apply.

12. Termination of Agreement for Disability of Employee. If Employee becomes permanently disabled or is prevented by accident, sickness, injury or other mental or physical incapacity from performing the essential functions of the Deputy County Attorney position, and/or accommodation of the disability or incapacity would impose undue hardship on the County, the County may terminate the employment relationship, and shall provide severance pay to Employee pursuant to Section 11b of this Agreement.

13. Promotion to County Attorney. The Parties hereby agree that Employee shall be promoted to the position of County Attorney effective January 1, 2021, any additional or modified terms of which the parties agree to negotiate and execute on or before October 15, 2021, including, but not necessarily be limited to, compensation and benefits commensurate with the position, as well as an extension of the term of this Agreement to the extent appropriate and necessary.

14. Entire Agreement. This Agreement constitutes the entire Agreement of the County and Employee and supersedes any and all negotiations relating to the subject matter hereof. It is expressly understood and agreed that in the event of any dispute between the County and Employee arising under this Agreement, Colorado law shall control to the extent that it is not superseded by any applicable federal law.

15. Signatures and Counterparts. This Agreement may be executed in counterparts, each of which is hereby deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or electronically imaged signature shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the Board and Employee have executed this Agreement as of the day and date as first set forth above.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO	EMPLOYEE
_____	_____
Jonathan Houck, Chairperson	Matthew Hoyt Deputy County Attorney

_____
John Messner, Vice Chairperson

_____
Roland Mason, Commissioner

ATTEST:

_____
Deputy County Clerk