

## COUNTY MANAGER EMPLOYMENT AGREEMENT

This County Manager Employment Agreement ("Agreement") is made and entered into this 21st day of May, 2015, by and between the Board of County Commissioners of Lea County, New Mexico ("Employer"), and Michael P. Gallagher, II ("Employee").

A. Employee is an individual who has the education, training, and directly related experience needed to effectively manage a local government agency.

B. Employee is currently serving as the County Manager of Employer and Employer and Employee desire to modify and replace in its entirety Employee's current employment agreement with Employer.

Employer and Employee agree as follows:

### Section 1: Term

The term of this Agreement shall be from July 1, 2015 to June 30, 2020. The term of this Agreement shall automatically renew for successive three (3) year periods thereafter. Notwithstanding the foregoing, this Agreement may be terminated by Employer or Employee as provided in Section 9, 10 or 11 of this Agreement.

### Section 2: Duties and Authority

Employer hereby employs Employee as County Manager to provide professional services to Lea County, New Mexico (sometimes hereinafter referred to as "County"), at the direction of the Board of County Commissioners of Lea County, New Mexico. Employee shall have all duties assigned to him pursuant to his specific job description, pursuant to NMSA 1978 §4-38-19 (1973) and to perform other legally permissible and proper duties and functions as prescribed by the Board of County Commissioners of Lea County, New Mexico.

### Section 3: Compensation

- A. Employer agrees to pay Employee an annual base salary of One Hundred Eighty Five Thousand Dollars (\$185,000.00) payable in installments at the same time and method that other employees of the Employer are paid.
- B. Employer may increase the compensation of the Employee annually dependent upon the results of the performance evaluation conducted under the provisions of Section 12 of this Agreement. Increased compensation may be in the form of a salary increase and/or benefits.
- C. The Employee is not automatically entitled to any annual increase in pay that may be granted to any other employee of Employer.

#### **Section 4: Health Disability and Life Insurance Benefits**

The Employee shall be eligible for and receive all benefits normally provided to other Employees of Employer. Said benefits shall be provided for in the same manner as made available to other employees.

#### **Section 5: Leave Accrual and Credit**

- A. The Employee shall accrue sick and vacation leave on an annual basis at the greater of: (i) at the highest rate provided to any other employee of Employer; or (ii) the rate of 240 hours of vacation leave on July 1 of each year this Agreement is in effect beginning July 1, 2015 and 240 hours of sick leave on July 1 of each year this Agreement is in effect beginning July 1, 2015.
- B. The Employee shall, at least once during each year of this Agreement, take a one week consecutive vacation (Monday through Friday). Further the Employee shall, take a minimum of two weeks total vacation during each year of this Agreement.
- C. The Employee is entitled to carry over 80 hours of vacation leave from year to year of this Agreement. For clarification Employee at any one time shall be entitled to a maximum of 320 hours of vacation leave, provided Employee rolls over 80 hours of unused vacation leave from the prior year. In the event the Employee voluntarily resigns or is terminated under the provisions of Section 9A the Employee shall be compensated for all unused vacation leave. In the event the Employee is terminated under the provisions of Section 9B the Employee shall not be compensated for any unused vacation leave.
- D. The Employee is entitled to accrue all unused sick leave from year to year, up to a maximum of 1040 hours. In the event the Employee voluntarily resigns or is terminated under the provisions of Section 9A the Employee shall be compensated for all unused sick leave through the termination date at a ratio of one hour of sick leave to one hour of pay (1:1) for a total of 720 hours and at a ratio of three hours of sick leave to one hour of pay (3:1) for all unused sick leave in excess of 720 hours up to a maximum of 1040 hours. In the event the Employee is terminated under the provisions of Section 9B the Employee shall not be compensated for any unused sick leave.
- E. The Employee shall be entitled to holiday, jury, and bereavement leave as provided to any other regular employee of Employer.
- F. The Employee may elect to sell back up to 80 hours of unused vacation leave each year of this Agreement at a one to one (1:1) ratio (one hour of vacation leave for one hour of pay) in any amount at any time.

- G. For purposes of clarification when used in this Section 5 the term "year" shall mean from July 1 of one calendar year to June 30 of the next calendar year.

**Section 6: Vehicle Use Allowance**

- A. The Employee agrees to provide a reasonably suitable vehicle for his use on County business. The Employee shall receive a vehicle allowance of \$1,750.00 per month in lieu of the use of a County owned vehicle for official business. The vehicle allowance shall be payable in 26 equal increments to coincide with the Employer's regular pay periods. Employee shall not be entitled to mileage reimbursement for travel under the Employer's Travel Policy. Employee, however, shall be reimbursed for the actual cost of gasoline for travel on official business more than one hundred fifty miles from the Lea County Courthouse, 100 North Main Street, Lovington, New Mexico 88260.
- B. The Employee shall, at his cost and expense, carry liability insurance on vehicles owned or leased by Employee and used in County business, in the amount of at least \$1,000,000.00 combined single limit. Such insurance shall cover business use and name the County as an additional insured.

**Section 7: Retirement**

The Employee shall be required to continue his enrollment with the Public Employee Retirement Association ("PERA"). The Employer shall make all appropriate contributions on the Employee's behalf as provided for all other employees of Employer.

**Section 8: General Business Expenses**

- A. Employer agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer,
- B. Employer agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the New Mexico Association of Counties, National Association of Counties, New Mexico Municipal League, International City/County Managers Association and legislative meetings which may require travel to Santa Fe, New Mexico or Washington, DC. Employee will be required to adhere to the County travel policy for all such travel.
- C. Employer recognizes that certain expenses of a non-personal but job related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses. County finance staff charged with closing out all travel orders is authorized to disburse such moneys upon receipt of duly executed expenses,

receipts, statements or personal affidavits. All record keeping must be in line with standard travel procedures required of County employees.

- D. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer shall pay for the reasonable membership fees and for dues to enable the Employee to become an active member in local civic clubs or organizations.
- E. The Employer shall provide Employee with a computer, software, and cell phone required for the Employee to perform the job and to maintain communication with the Board of County Commissioners of Lea County, New Mexico and operational units of the County.

### **Section 9: Termination**

A. For the purpose of this Agreement:

- 1) Termination shall occur when the majority of the Board of County Commissioners of Lea County, New Mexico votes to terminate the Employee at a duly authorized public meeting.
- 2) Termination shall occur when the Employee dies or becomes permanently disabled. "Permanent disability" shall mean the Employee's physical or mental inability to substantially perform his duties under this Agreement for a period of sixty (60) calendar days in any twelve (12) consecutive month period, which inability shall be certified by a physician duly licensed to practice in the State of New Mexico and acceptable to the Employer and the Employee or his legal representative.
- 3) Termination shall occur if the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads.
- 4) If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resigns, then the Employee may declare a termination of this Agreement as of the date of the suggestion of resignation.
- 5) Termination shall occur if the term of this Agreement expires and the employment of Employee is not renewed on substantially similar terms to the expiring Agreement.
- 6) Termination shall occur in the event that this Agreement is materially breached by Employer and Employer does not cure such breach after a thirty (30) day written notice to cure such breach.

B. For purposes of this Agreement Employer may terminate Employee's employment upon the occurrence of any of the following events:

- 1). Employee's embezzlement or wrongful diversion of funds of Employer or misuses any credit card of Employer;
- 2). Employee's breach of this Agreement if such breach has not been corrected within a reasonable time after Employer has given Employee notice thereof, not to exceed ten (10) days (provided; however, no notice and opportunity to cure need be given with respect to any breach which is not practicably capable of being cured);
- 3). Employee's being convicted of a felony or any crime of moral turpitude;
- 4). Employee's failure to act in accordance with Employer's written policies and procedures, if such failure has not been corrected within a reasonable time after Employer has given Employee notice thereof, not to exceed ten (10) days (provided; however, no notice and opportunity to cure need be given if the failure to act in accordance with the foregoing is not practicably capable of being cured); or
- 5). Employee is dishonest in the execution of his job duties.

**Section 10: Severance**

A. When Employee's employment is terminated as defined in Section 9A, severance pay shall be paid to the Employee as follows:

- 1). Employee shall receive severance pay equal to twelve (12) months of base salary and twelve (12) months of all benefits, excluding automobile allowance, provided to Employee. Provided, however, unused vacation leave and unused sick leave will be paid in accordance with Section 5 hereof.
- 2). Severance shall be paid to Employee or Employee's duly appointed personal representative in the case of the death of Employee, in a lump sum within thirty (30) days after termination unless otherwise agreed to by the Employer and the Employee.

B. Notwithstanding anything to the contrary contained herein severance required under this Section 10 shall not be paid:

- 1). If the Employee is terminated for cause as set forth in Section 9B of this Agreement; or
- 2). If the Employee voluntarily resigns or terminates employment with Employer.

**Section 11: Resignation**

In the event that the Employee voluntarily resigns his position with the Employer, the Employee shall provide a minimum of 30 days advance notice unless the parties agree

otherwise. In the event of Employee's voluntary resignation, Employee shall be paid unused sick leave and vacation leave as set forth in Section 5D and 5E of this Agreement.

### **Section 12: Performance Evaluation**

A. Employer shall annually review the performance of the Employee. The evaluation shall take place within the month of May of each year of the term of this Agreement.

B. The performance evaluation process will include a form, criteria, and format which shall be mutually agreed upon by the Employer and Employee prior to the period of evaluation

C. The process, at a minimum, shall include the opportunity for both parties to meet and discuss the evaluation in a closed meeting.

### **Section 13: Hours of Work**

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

### **Section 14: Outside Activities**

The employment provided for by this Agreement shall be the Employee's sole employment, unless otherwise agreed in writing with Employer.

### **Section 15: Residence**

The Employee agrees to maintain his residence within the County.

### **Section 16: Indemnification and Litigation Expenses**

A. Beyond that required under Federal, State or local law, the Employer shall defend, save harmless and indemnify the Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Employee's duties as County Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful, intentional or wanton conduct of Employee.

B. Legal representation, provided by the Employer for the Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify Employee against any and all losses, damages (including, but not limited to punitive or exemplary damages),

judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties, unless such claim, suit or cause of action results from the willful, intentional or wanton conduct of Employee. Nothing in this Agreement is intended to alter or amend any of the rights or obligations found in the New Mexico Tort Claims Act and case-law interpreting same.

- C. The Employer agrees to pay all reasonable litigation expenses of the Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond the Employee's service to the Employer as long as litigation is still pending. Further, in the event that the litigation continues after the Employee's service under this Agreement is complete, the Employer agrees to pay the Employee reasonable consulting fees and travel expenses when the Employee serves as a witness, advisor or consultant to the Employer regarding pending litigation.

### **Section 17: Bonding**

The Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

### **Section 18: Other Terms and Conditions of Employment**

The Employer, only upon agreement with the Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or any County, state or federal law.

### **Section 19: Notices**

Notice pursuant to this Agreement shall be sufficient if in writing and mailed either by depositing in the custody of the United States Postal Service, postage prepaid, or by e-mail with receipt requested, addressed as follows:

EMPLOYER: Board of County Commissioners of Lea  
County, New Mexico  
Copy: County Attorney  
100 N. Main  
Lovington, New Mexico 88260  
(or)  
Email: [jcaldwell@leacounty.net](mailto:jcaldwell@leacounty.net)

With courtesy copy to Chair of Board of County Commissioners  
of Lea County  
Current Email of the Chair: gfulfer@leacounty.net

EMPLOYEE: Michael P. Gallagher, II, County Manager  
100 N. Main, Suite 4  
Lovington, New Mexico 88260  
(or)  
Email: mgallagher@leacounty.net

Alternatively, notice 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 the date of deposit of such written notice in the course of transmission in the United States Postal Service or upon verification of receipt of electronic mail.

## **Section 20: General Provisions**

- A. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement. In the event of a conflict between this Agreement and the Lea County Personnel Ordinance in effect from time to time the provisions of this Agreement shall control.
- B. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. In the event that either party incurs legal expenses to enforce any provision of this Agreement in a court of law, those expenses shall be borne by the party seeking enforcement during the pendency of any such action. However, the prevailing party in such a dispute will be entitled to recover legal expenses, including reasonable attorney's fees and costs in addition to any other relief to which the prevailing party may be entitled.
- D. By entering into this Agreement, Employer and its "public employees" as defined in the New Mexico Tort Claims Act, NMSA 1978 §41-4-1 et. seq. do not waive sovereign immunity, do not waive any defense, and do not waive any limitation of liability to it by law.
- E. The terms of this Agreement are subject to the approval and existence of adequate funding by the Employer. If this Agreement is terminated or expires because of insufficient appropriation or funding, such expiration or termination shall have the effect of a termination of this Agreement under Section 9A of this Agreement.
- F. No elected or appointed official or employee or agent of Lea County shall be held

personally liable under this Agreement or any extension or renewal thereof because of its enforcement or attempted enforcement provided they are acting within the course and scope of their employment or government duty and responsibility.

G. This Agreement shall become effective on July 1, 2015. This Agreement supersedes and replaces in its entirety all prior employment Agreements between Employer and Employee including but not limited to that certain agreement dated February 12, 2012 and all amendments to such agreement.

H. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

Dated: May 21, 2015

Board of County Commissioners of Lea  
County, New Mexico

By: Gregory H. Fulfer  
Gregory Fulfer, Chairman

Michael P. Gallagher, II  
Michael P. Gallagher, II

By: Ronald Black  
Ronald Black, Vice Chairman

By: Dale Dunlap  
Dale Dunlap, Member

By: James H. Britton  
James H. Britton, Member

By: Rebecca Long  
Rebecca Long, Member

Attest:  
Pat Chappelle  
Lea County, Clerk

By: Kelli Williams  
Kelli Williams, Deputy Clerk

Approved as to Form and Legal  
Sufficiency:

Scotty A. Holloman  
County Attorney

