



# COUNTY OF ELBERT

## COMMUNITY & DEVELOPMENT SERVICES

P.O. BOX 7  
215 COMANCHE STREET  
KIOWA, COLORADO 80117  
303-621-3136 FAX: 303-621-3165  
cde@elbertcounty-co.gov



### APPLICATION AGREEMENT FORM

**PROJECT NAME:**

**INDEPENDENCE (FP-16-0005)**

**SPECIAL DISTRICTS / SERVICE PLANS FOR:**

- INDEPENDENCE WATER & SANITATION DISTRICT
- INDEPENDENCE OVERLAY METROPOLITAN DISTRICT
- INDEPENDENCE METROPOLITAN DISTRICTS 1 THROUGH 4

**PROJECT LOCATION:**

Portions of Sections 14 & 15, Township 7, Range 65 West of the 6th P.M.

The applicant agrees to pay for additional engineering and/or consultation associated with their application described above and when requested by the Community & Development Services Department, Planning Commission or Board of County Commissioners when, in their opinion, additional information, studies, or investigations are needed to help clarify the proposal made.

*Craft Bandera Acquisition Company, LLC*

*[Signature]*

**Applicant or Authorized Representative**

*5/2/17*

**Date**

*\$7,500 max allowance with this application.*

GARY R. WHITE  
KRISTEN D. BEAR  
WILLIAM P. ANKELE, JR.  
JENNIFER GRUBER TANAKA  
CLINT C. WALDRON  
KRISTIN BOWERS TOMPKINS  
ROBERT G. ROGERS



SEAN ALLEN  
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CASEY K. LEKAHAL  
TRISHA K. HARRIS  
HEATHER L. HARTUNG  
MEGAN J. MURPHY  
MARC D. SARMIENTO  
KRISTIN J. SCHLEDORN  
SILVIA FEJKA

OF COUNSEL:  
GEORGE M. ROWLEY  
BLAIR M. DICKHONER

April 28, 2017

Elbert County  
Attn: Kyle Fenner  
PO Box 7  
215 Comanche Street  
Kiowa, Colorado 80117

RE: Engagement of WHITE BEAR ANKELE TANAKA & WALDRON

Dear Mr. Fenner:

Thank you for retaining White Bear Ankele Tanaka & Waldron (“WBA”) as special counsel to provide legal services to Elbert County (the “County”) to assist with the review of a service plan for a proposed metropolitan district to be organized within the County. This special counsel engagement is a limited engagement for the sole purpose of advising the County on special district legal and policy matters related to the proposed service plan and to negotiate the content of such service plan consistent with instructions provided by County staff to WBA over the course of the negotiation. The County specifically acknowledges that WBA’s primary practice is in representing developers and owners who propose the formation of similar special districts throughout the state and that WBA’s focus in this limited engagement would be to facilitate the organization of districts for the proposed project consistent with County policy, staff directives, and practices customary in the special district industry.

This engagement letter provides the terms upon which WBA will provide legal services to the County, and is intended to formalize our retention, as required by the applicable Rules of Professional Conduct. This letter sets forth details of the engagement, including how we propose to staff the matter, billing arrangements and certain conflict of interest understandings. Additional information about WBA can be found at [www.whitebearankele.com](http://www.whitebearankele.com).

**1. Personnel.** Legal services provided under this engagement may be performed by any lawyer at WBA. We will also use paralegals and/or other support staff as we believe to be necessary and effective in providing you with legal services.

**2. Fees, Expenses and Retainer.** Our fees for services rendered on the County’s behalf will be based upon time charged using the hourly rates charged by each attorney or paralegal working on the matter. WBA’s legal services are billed on an hourly basis, in increments of one-tenth of an hour, and are not contingent. Hourly rates for professionals in WBA currently range from \$190.00 to \$450.00 (attorneys) and from \$135.00 to \$155.00 (paralegals). Hourly rates are revised each year to reflect the

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current cost for delivery of legal services and the fees charged for services under this engagement may change without notice. From time to time WBA prepares memoranda, agreements or other documents based upon current legislative, State and Federal law concerns that are the subject of common interest and benefit to our clients. WBA allocates the fees for this work on an equitable basis to clients who benefit from this legal work by WBA's personnel. If you do not wish to receive this information, please advise us accordingly.

In addition to legal fees, WBA also charges for certain out-of-pocket costs incurred by us in representing you. Charges for long distance telephone calls (domestic only), conference calling services (domestic only), facsimiles (domestic only), in-office copying, ordinary postage (under \$10.00), and deliveries made by in-house staff are covered by an administrative fee, currently equal to 2.5% of the legal fees charged. This administrative fee is in lieu of itemizing those expenses and may be adjusted over time. If there are other expenses, such as filing and recording fees, computer-assisted research fees, mileage, delivery service fees, travel, meals or hotel accommodation charges, those will be billed separately. These costs are subject to the same payment terms as legal fees and are your responsibility. WBA's policy is to advance or incur expenses on a discretionary basis up to \$1,000.00, subject to your reimbursement of them in the next bill. If an expense will exceed that amount, we will ask you to pay it directly to us or have you contract directly with the vendor.

WBA will not require the payment of a retainer at this time, but we reserve the right to require a retainer if deemed necessary by WBA or if you fail to timely pay invoices.

**3. Billing.** Generally, invoices for fees and expenses will be submitted to you monthly and are due upon receipt. If an invoice remains unpaid after thirty (30) days, we will consider it in default and you agree that we may charge a late fee on all amounts due and owing at the rate of one percent (1%) compounded monthly. By signature below, you agree to pay all fees, costs and expenses billed by WBA for the legal services. If payments as described above are not paid on a timely basis, WBA may withdraw from the representation in accordance with the Rules of Professional Conduct. In the event that WBA is compelled to resort to collection of your account, which may or may not include litigation, you agree that your obligations to WBA shall include payment of all costs and expenses of such collection efforts, including court fees and costs, attorneys' fees and out-of-pocket expenses.

**4. Attorney-Client Relationship.** This engagement shall establish an attorney-client relationship between WBA and the County, and we will conduct our legal services in accordance with the terms stated herein. Nothing in this engagement agreement and nothing in our statements to you will be construed as a guarantee or promise about the outcome of any matter which WBA may handle on your behalf. Our comments about the outcome of your matters or any phase thereof are expressions of opinion only.

**5. Conflicts of Interest.** We have performed a preliminary internal review for potential conflicts of interest based upon information you have provided to us and we find none at this time. If any are discovered in the future, we will discuss our continued engagement with you.

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WBA represents many other local governments, municipal clients and developers who may, from time to time, need to interact with the County on legal matters. By execution of this engagement letter, the County acknowledges that WBA has disclosed such existing relationships, as well as its intent to create similar future relationships, and that this present engagement shall not now, nor in the future, be viewed as creating a general attorney-client relationship between the County and WBA sufficient to create a conflict of interest that would preclude WBA from representing current or future clients with legal issues that need to be addressed with the County. Specifically, and without limiting the generality of the foregoing, the County, upon advice of the County Attorney, hereby waives any existing or future conflict of interest arising solely as a result of this limited engagement.

**6. Document Retention.** WBA maintains its client files electronically and ordinarily does not keep separate paper files. We will scan documents you or others send to us related to your work to our electronic file and will ordinarily maintain the electronic version throughout the term of our engagement or, in some instances, while a particular matter or project is pending. Unless you instruct us otherwise, with limited exceptions for certain documents such as original real property deeds and promissory notes, once such documents have been scanned to our electronic file, we will destroy all paper documents provided to us. Following the conclusion of our services, we will return the County's files to the County upon request, unless WBA has not received payment of all outstanding fees and costs, in which case WBA reserves the right to withhold them until payment is made. Otherwise, no sooner than thirty (30) days after the conclusion of our services, we may destroy the files.

**7. Termination.** You will have the right to terminate our representation at any time. Whether you terminate the representation or we terminate the representation for reasons set forth in the Rules of Professional Conduct, including nonpayment of legal fees and expenses, all fees incurred for services rendered through the date of termination, as well as all costs and expenses incurred by us on your behalf, must be paid within ten days of receipt of our final statement. We reserve the right to charge for any work required in connection with the orderly transition of pending matters to new counsel. Upon conclusion of our services, whether due to termination or completion of the work, we will not thereafter be responsible for legal matters for which our services have not been specifically requested and we have agreed to perform in writing.

**8. Arbitration of Disputes.** If a dispute arises regarding our services or fees, any fee dispute will be decided by the Colorado Bar Association Legal Fee Arbitration Committee in Denver, Colorado. There is no charge for the dispute resolution services provided by the Legal Fee Arbitration Committee and each party will pay its own costs and expenses. If, either in addition to a pending fee dispute or in the absence of one, any other dispute or claim of any type or nature arises with respect to services rendered pursuant to this engagement agreement, including, without limitation, a claim for legal malpractice, it will be decided by the Judicial Arbitrator Group in Denver, Colorado by a single arbitrator to be mutually agreed to by the parties. Each party will be responsible for paying one-half of all fees and expenses charged by the arbitrator. The parties recognize that by agreeing to arbitration as the method for dispute resolution, they relinquish the right to bring an action in court and waive the right to a jury trial and the extensive discovery rights typically permitted in judicial proceedings.

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If you are in agreement with the foregoing terms of this engagement and it meets your understanding of the professional relationship we have established, please have an authorized representative of the County sign and return a copy of this letter to our office at your earliest convenience. By signing below, you acknowledge that you have been given the opportunity to discuss this engagement letter with another attorney or any other person of your choosing.

We look forward to working with you and will commit the necessary resources of WBA to meet your needs. Our efforts will always be to ensure that our relationship is based on open and honest communication regarding these matters. If at any time you have questions concerning our representation, please feel free to contact us immediately.

Sincerely,

WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law

*White Bear Ankele Tanaka & Waldron*

JGT:ecs

APPROVED, ACCEPTED AND AGREED TO BY:  
Elbert County

\_\_\_\_\_  
Signature

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

*✓  
\$7,500 max allowance with this application.*