

RESOLUTION NO. 08-07

INTRODUCED BY:

Councilperson Clark

Councilperson Havercroft

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES NORTH
APPROVING AN AGREEMENT FOR INTERIM PLANNING SERVICES
WITH CH2M HILL, INC.**

WHEREAS, pursuant to Section 31-15-101, C.R.S., the governing body of a municipality has the authority to enter into contracts; and

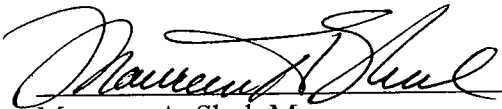
WHEREAS, the City Council wishes to hereby approve a professional services agreement with CH2M Hill, Inc. and finds that such approval promotes the public health and welfare; and

WHEREAS, the City shall receive services and value from CH2M Hill, Inc. and CH2M Hill, Inc. shall invoice the City on a monthly basis.

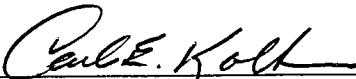
THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO:

Section 1. The City Council hereby approves the Agreement for Professional Services with CH2M Hill, Inc. substantially in the form attached hereto as Exhibit A and authorizes the Mayor to execute said agreement on behalf of the City.

INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH the 28th day of May, 2008.

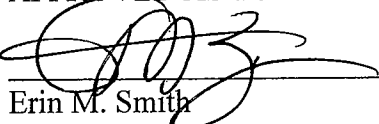

Maureen A. Shul, Mayor

ATTEST:



Carl E. Kollmar, City Clerk

APPROVED AS TO FORM:



Erin M. Smith
City Attorney

Exhibit A

Agreement for Interim Planning Services with CH2M Hill, Inc.

AGREEMENT FOR INTERIM PLANNING SERVICES
BETWEEN THE CITY OF CASTLE PINES NORTH AND
CH2M HILL, INC.

THIS AGREEMENT, made and entered into this _____ day of _____, 2008, by and between the **CITY OF CASTLE PINES NORTH**, a municipal corporation (the "City"), and CH2M HILL, Inc., a Florida corporation authorized to do business in Colorado (the "Consultant"). Collectively, City and Consultant shall be referred to as the "Parties".

RECITALS

WHEREAS, the City is newly incorporated; and

WHEREAS, the City anticipates hiring one or more private contractors to provide regular land planning and related services appropriate for the efficient operation and administration of the City; and

WHEREAS, until such time as the City obtains such regular services, the City is in need of obtaining land planning and related services on an interim basis; and

WHEREAS, by Resolution 08-01, the City appointed the firm of CH2M Hill as interim planner for the City of Castle Pines North, to serve at will and at the pleasure of Council, with the other terms and conditions of the appointment to be set forth in a written contract; and

WHEREAS, the City desires to engage the Consultant to render the interim planning services and to set forth the terms and conditions of the appointment made by Resolution 08-01; and

WHEREAS, the City has the authority to charge and collect fees in connection with the planning services it provides through Consultant; and

WHEREAS, the Consultant has the ability to assist the City through its professional expertise, knowledge, and experience and is ready, willing and able to provide such services, subject to the conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the parties agree as follows:

1. LINE OF AUTHORITY: The Mayor, (the "Authorized Representative"), is designated as Authorized Representative of the City for the purpose of administering, coordinating and approving the work performed by the Consultant under this Agreement. For purposes of this Agreement, the Consultant's designated representative will be Don Howell.

2. SCOPE OF SERVICES: Consultant shall perform all services described in Exhibit A (the "Interim Planning Services"), attached hereto and incorporated herein and shall submit an invoice to the City in accordance with the Compensation section listed below.

The City may, from time to time, request changes to the scope of services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, when mutually agreed upon between the City and Consultant, shall become part of this Agreement, provided any such change is in writing and signed by the Authorized Representative and by an authorized representative for the Consultant. If agreed to by both Parties, Consultant will, within a reasonable time period (generally within ten (10) business days) provide to the City in writing a price and modification to services for the proposed addition to services. Any changes that are mutually agreed upon between the City and the Consultant shall be made in writing and upon execution by both Parties and shall become an amendment to this Agreement. Unless otherwise stated in the estimate, Consultant will invoice the City on the next billing cycle after completion of the addition to services or if the change involves an ongoing new addition to the services, Consultant will include the associated adjustment to the monthly compensation amount.

If Consultant proceeds without such written change authorization, then the Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein, no agent, employee or representative of the City shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this Contract. If Consultant performs any work beyond the work described in the scope of work set out in Exhibit A, it does so at its own risk.

The Consultant agrees to diligently and professionally perform all the services described herein in a manner satisfactory to the Authorized Representative. It is also understood and agreed that the Consultant shall not, in performing services hereunder, undertake any action or activity prohibited by the terms of any lease, permit, license or other agreement in effect during the term hereof between the Consultant and the City for the use and occupancy by the Consultant of any City facilities or space.

3. COMPENSATION FOR SERVICES: In consideration for the provision of Interim Planning Services described herein in Exhibit A, the City agrees to compensate Consultant based on the following:

a. **Monthly Hourly Billing.** The Consultant will bill the City for the Community Development Services and Use Tax Collection Services as described in Exhibit A Sections 1.0 and 3.0, at the rates and for the expenses as set forth in Exhibit B, Billing Fees and Expenses.

b. **Building Permitting and Inspection Services Billing.** The Consultant will be compensated for the building permitting and inspection services from the collection of building, plan review, permit and inspection fees ("Building Fees") as described in Exhibit A Section 2.0 through a self-funding process using the revenues generated from collection of the Building Fees for such services. The Consultant shall bill the City for the building permitting and inspection services on a separate invoice. Specifically, the City will reimburse on a monthly basis to Consultant ninety percent (90%) of the Building Fees collected in the prior month. A sample invoice, substantially in the form to be used, is attached hereto as Exhibit D.

Consultant's invoices shall be in a format acceptable to the City, shall be supported by cost information in such detail as may be required by the City and shall be sufficient to substantiate all items for a proper audit and post audit thereof. With each invoice, to the extent possible, the Consultant shall submit an activity service report detailing the services provided in accordance with Exhibit A. The City may return to Consultant for revision unsatisfactory invoices and may withhold payment thereof. The City may withhold payment for work which is not completed as scheduled, or which is completed unsatisfactorily, until completed satisfactorily and may deny payment for such work upon termination by the Consultant. In the event City does not have available funds to pay in full the Consultant's monthly invoice, the Consultant shall carry forward to the next billing month, at no monthly interest charge to the City, the balance due from the City.

In the event, the Agreement terminates prior to January 1, 2009 or prior to the City paying all balances due in full to the Consultant, the City shall make payment in full no later than thirty (30) calendar days after termination, unless the Parties mutually agree to an alternate payment schedule.

The Consultant shall be considered an authorized agent of the City while providing the Interim Planning Services and shall act on behalf of the City while providing the Interim Planning Services. Should a party seeking Interim Planning Services from the City fail to pay, the City shall utilize its powers and authority to collect any and all fees due and owing to the City.

4. MAXIMUM CONTRACT LIABILITY: Any other provisions of this Agreement notwithstanding, in no event shall the City be liable for payment under this Agreement in excess of One Hundred Thousand Dollars (\$100,000.00), unless otherwise mutually agreed upon by the Parties. The City is not under obligation to make any future apportionment or allocation to this Agreement.

5. TERM: It is mutually agreed by the parties that the term of this Agreement shall commence as of 12:01 a.m. on April 29, 2008, and terminate at 12:00 a.m. on January 1, 2009, unless earlier terminated as provided by the terms of this Agreement. This Agreement, at the option of the City, may be renewed for one successive term, if notice is given to the Consultant by the City on or before December 1, 2008. This Agreement and/or any extension of its original term shall be contingent upon annual funding being appropriated, budgeted and otherwise made available for such purposes and subject to the City's satisfaction with all products and services received during the preceding term. This Agreement and/or any extension of this original term, shall be subject to the City's satisfaction with all services received during the preceding term.

6. REPORTING PROCEDURES: Consultant shall furnish a written report to the Authorized Representative regularly, and no less than monthly, summarizing the services rendered since the last report and, the amounts billed and the amounts collected. Consultant shall furnish such documentation as requested by the Authorized Representative.

7. CONFLICT OF INTEREST: The Consultant agrees that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or

property described herein, and the Consultant further agrees not to hire, pay, or contract for services of any official, officer or employee of the City. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Consultant by placing the Consultant's own interests, or the interest of any party with whom the Consultant has a contractual arrangement, in conflict with those of City. Nothing in this Agreement shall prohibit Consultant from being eligible to participate in any additional requests for proposals and/or requests for statements of qualifications issued by the City.

8. INDEMNIFICATION: The City cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Consultant or any other person or entity whatsoever. The Consultant shall defend, indemnify and hold harmless the City, its elected officials, officers, directors, agents, and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, in any way resulting from or arising from this agreement; provided, however, that the Consultant need not indemnify or save harmless the City, its officers, agents and employees from damages resulting from the negligence of the City's elected officials, officers, directors, agents, and employees. Consultant's defense, indemnification and insurance obligations shall be to the fullest extent permitted by law and nothing in this Agreement shall be construed as requiring the Consultant to defend in litigation, indemnify or insure the City against liability arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of the City or any third party under the control or supervision of the City.

9. INDEPENDENT CONTRACTOR: The Consultant is an independent contractor. Notwithstanding any provision of this Agreement, all personnel assigned by the Consultant to perform work under this Agreement shall be and remain at all times, employees of the Consultant for all purposes. **THE INDEPENDENT CONTRACTOR IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS THROUGH THE CITY AND IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED PURSUANT TO THE CONTRACT RELATIONSHIP.** Consultant shall have and maintain the responsibility for and control of the provision of services herein, the discipline of Consultant's employees and other matters incident to the provision of services herein.

10. ILLEGAL ALIENS: The Consultant shall not and by signing this Agreement certifies that it does not knowingly employ or contract with an illegal alien to perform work under this Agreement. Consultant shall not enter into a subcontract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services. Consultant affirms that he has confirmed or attempted to confirm the employment eligibility of all employees who are hired for employment in the United States through participation in the E-Verify Program formally known as the Basic Pilot Employment Verification Program jointly administered by the United States Department of Homeland Security through the United States Citizenship and Immigration Services and the Social Security Administration that Consultant does not employ illegal aliens. Consultant is prohibited from using the Basic Pilot Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

In the event that the Consultant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant shall be required to:

- (A) Notify the subcontractor and the City within three (3) working days that the Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; AND
- (B) Terminate the subcontract with the subcontractor if within three days of receiving the notice required the Subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the Subcontractor if during such three days the Subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant is required under this Agreement to comply with any reasonable request by the Department of Labor and Employment (Department) made in the course of an investigation the Department is undertaking pursuant to its legal authority.

Violation of this section of this Agreement shall constitute a breach of this Agreement and may result in termination by the City. Consultant shall be liable to City for actual damages to the City resulting from such breach pursuant to §8-17.5-102(3) C.R.S. City shall also report any such breach to the Office of the Secretary of State.

Consultant acknowledges that the Department may investigate whether Consultant is complying with the provision of the Agreement. This may include on-site inspections and the review of documentation that proves the citizenship of any person performing work under this Agreement and any other reasonable steps necessary to determine compliance with the provisions of this section.

11. NO WAIVER OF GOVERNMENTAL IMMUNITY ACT: The Parties hereto understand and agree that the City, its elected officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., as the same may be amended from time to time, or otherwise available to the City.

12. ASSIGNMENT: The Consultant covenants and agrees that it will not assign or transfer its rights hereunder, either in whole or in part without the prior written approval of the Authorized Representative. Any attempt by the Consultant to assign or transfer its rights hereunder shall, at the option of the Authorized Representative, void the assignment or automatically terminate this Agreement and all rights of the Consultant hereunder.

13. CITY REVIEW OF RECORDS: The Consultant agrees that, upon a reasonable request of the Authorized Representative, at any time during the term of this Agreement, or three (3) years thereafter, will make available for inspection and audit upon request by the Authorized

Representative, the City Treasurer, or any of their authorized representatives, those books and records of the Consultant that are related to Consultant's work performed under this Agreement. Nothing construed herein shall be construed as a requirement that Consultant shall provide its financial records determined to be proprietary by the Consultant. The Consultant shall maintain such records until the expiration of three (3) years following the end of the term of this Agreement.

14. OWNERSHIP OF DOCUMENTS: Drawings, specifications, guidelines and any other documents prepared by the Consultant in connection with this Agreement shall be the property of the City.

15. ASSIGNMENT OF COPYRIGHTS: The Consultant assigns to the City the copyrights to all works prepared, developed, or created pursuant to this Agreement, including the right to: 1) reproduce the work; 2) prepare derivative works; 3) distribute copies to the public by sale, rental, lease, or lending; 4) perform the works publicly; and 5) to display the work publicly.

16. TERMINATION: The City or the Consultant shall have the right to terminate this Agreement, with or without cause, by giving written notice to the Consultant of such termination and specifying the effective date thereof, which notice shall be given at least forty-five (45) calendar days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies and reports which are considered to be documents subject to the Colorado Open Records Act, shall become the City's property. The Consultant shall be entitled to receive compensation in accordance with this Agreement for any satisfactory work completed pursuant to the terms of this Agreement prior to the date of notice of termination. Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Consultant.

17. NOTICES: Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms or provisions of this Agreement, and all other notices shall be made as follows:

By the Consultant to: Mayor of the City of Castle Pines North
558 Castle Pines Parkway, Unit B4-208
Castle Rock, CO 80108
E-mail: mshul@castlepinesnorth-co.gov

with a copy to: Erin Smith
City Attorney for Castle Pines North
1331 17th Street, Suite 500
Denver, CO 80202
Facsimile (303) 292-6401
Email: esmith@insbcolorado.com

