

**CASTLE PINES NORTH**  
**PROFESSIONAL SERVICES AGREEMENT**  
**Total Compensation Not Exceeding \$5,000**

Project/Services Name: Water Resources Engineer

**THIS PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is entered into by and between Helton & Williamsen, P.C. whose business address is 384 Inverness Parkway, Suite 144, Englewood, CO 80112 (the "Contractor") and the **CITY OF CASTLE PINES NORTH, COLORADO** ("City"), a statutory municipality of the State of Colorado. The City and the Contractor may be collectively referred to as the "Parties."

**WHEREAS**, the City desires to have performed certain professional services as described in this Agreement and to engage the Contractor to provide the services subject to this Agreement.

**NOW, THEREFORE**, in consideration of the benefits and obligations of this Agreement, the Parties mutually agree as follows:

**1.0 SERVICES AND CONTRACTOR PERFORMANCE**

- 1.1 Services. As directed by and under the supervision of the City Manager for the City, the Contractor shall provide the City with the services described in **Exhibit A** (the "Services").
- 1.2 Independent Contractor. The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the City other than as a contracting party and independent contractor. The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or health; professional liability insurance, errors and omissions insurance; or retirement account contributions.
- 1.3 Standard of Performance. In performing the Services, the Contractor shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing in the State of Colorado.

**2.0 COMPENSATION**

- 2.1 Commencement of and Compensation for Services. Following execution of this Agreement by the Mayor, the Contractor shall be authorized to commence performance of the Services as described in **Exhibit A** subject to the requirements and limitations on compensation as provided by this Section 2.0 and its subsections.

- A. Time and Materials Contract – Not to Exceed Amount. The Contractor shall perform the Services and shall invoice the City for work performed based on an hourly rate of \$137.00 per hour in an amount not to exceed **Five Thousand Dollars (\$5,000.00)** (including all reimbursable expenses).
  - B. Increases in Compensation or Reimbursable Expenses. Any increases or modification of compensation or reimbursable expenses shall be subject to the approval of the City and shall be made only by written amendment of this Agreement executed by both Parties.
- 2.3 Payment Processing. The Contractor shall submit invoices and requests for payment in a form and on a timeframe acceptable to the City. All invoices shall contain sufficient information to account for all Contractor time and all authorized reimbursable expenses for the Services during the stated period of the invoice. Following receipt of a Contractor's invoice, the City shall promptly review the Contractor's invoice and pay within the City's usual accounts payable processing timeframe.

### **3.0 CONTRACTOR'S GENERAL RESPONSIBILITIES**

- 3.1 The Contractor shall become fully acquainted with the available information related to the Project and shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.
- 3.2 The Contractor shall provide all of the Services in a timely and professional manner.
- 3.3 The Contractor shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions.

### **4.0 TERM AND TERMINATION**

- 4.1 Term. This Agreement shall be effective as of \_\_\_\_\_, **2009 at 12:01 a.m.**, (the "Effective Date") and shall terminate at **11:59 p.m. on December 31, 2009**, or as otherwise provided by written amendment of the Parties.
- 4.2 Continuing Services Required. The Contractor shall perform the Services commencing on the Effective Date until such Services are completed or terminated in accordance with this Agreement.
- 4.3 City Unilateral Termination. This Agreement may be terminated by the City for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the City's exercise of the right as provided by this paragraph:

- A. The Contractor shall provide no further services in connection with this Agreement; and
- B. All finished or unfinished documents, data, studies and reports prepared by the Contractor shall be delivered to the City and shall become the property of the City; and
- C. The Contractor shall submit to the City a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses performed prior to the Contractor's receipt of notice of termination.

## **5.0 INSURANCE**

The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement ("Contractor Insurance"). The Contractor shall be solely responsible for any insurance deductible.

## **6.0 OWNERSHIP OF WORK PRODUCT AND DOCUMENTS**

Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the City of Centennial upon delivery and shall not be made subject to any copyright unless authorized by the City.

## **7.0 CONFLICT OF INTEREST**

The Contractor shall refrain from providing services to other persons, firms, or entities that would create a conflict of interest for the Contractor with regard to providing the Services pursuant to this Agreement. The Contractor shall not offer or provide anything of benefit to any City official or employee that would place the official or employee in a position of violating the public trust as provided by C.R.S. § 24-18-109, as amended, or any City-adopted Code of Conduct or ethical principles.

## **8.0 MISCELLANEOUS PROVISIONS**

- 8.1 No Waiver of Rights: A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.
- 8.2 No Waiver of Governmental Immunity: Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City.
- 8.3 Affirmative Action: Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.
- 8.4 Binding Effect: The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section 8.4 shall not authorize assignment.

- 8.5 No Third Party Beneficiaries: Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of Contractor.
- 8.6 Article X, Section 20/TABOR: The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.
- 8.7 Governing Law, Venue, and Enforcement: This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Douglas County, Colorado. The Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement.
- 8.8 Assignment and Release: All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by Contractor without the express written consent of the City Council for the City.
- 8.9 Integration and Amendment: This Agreement represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this must be in writing and be signed by both the City and the Contractor.
- 8.10 Incorporation of Exhibits: Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE FOLLOWS

THIS AGREEMENT is executed and made effective as provided above.

**CITY OF CASTLE PINES NORTH, COLORADO**

By: \_\_\_\_\_  
Maureen A. Shul, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Janie Berry, City Clerk

\_\_\_\_\_  
Linda C. Michow, City Attorney

**CONTRACTOR:  
HELTON & WILLIAMSEN, P.C.**

By: \_\_\_\_\_  
Name: Thomas A. Williamsen

**EXHIBIT A**  
**SCOPE OF WORK**

**HELTON & WILLIAMSEN, P.C.**  
**CONSULTING ENGINEERS IN WATER RESOURCES**  
384 INVERNESS PARKWAY, SUITE 144  
ENGLEWOOD, COLORADO 80112-5822  
PHONE: (303) 792-2161  
FAX: (303) 792-2165

November 6, 2009

Mr. Alan Lanning  
City Manager – Castle Pines North  
9193 S. Jamaica Street, Suite 400  
Englewood, Colorado 80112

Subject: City of Castle Pines North – Scope of Work

Dear Mr. Lanning:

This letter presents a scope of work concerning the due diligence investigation of a potential water source available to the City of Castle Pines North. On September 30, you and Eric Guth explained that the City of Castle Pines North is considering the acquisition of additional water sources in order to meet the City's long-term water needs. One source is ground water withdrawn from the Lost Creek Designated Ground Water Basin and transported to the City.

Steve Jeffers' November 3 draft memorandum details specific areas of inquiry that he and our firm will evaluate. Steve's memorandum is presented in two parts: 1) Issues Related to the Draft Water Agreement and 2) Due Diligence Investigation. For both parts, our firm would provide to Steve and to you the hydrological, hydrogeological, and water rights evaluations necessary to provide opinions and recommendations concerning the offered water supplies. In this effort, we will review available reports, Ground Water Commission findings and orders, well permits, geologic maps, and other available documents and information concerning the Lost Creek Designated Ground Water Basin and specifically the wells and water supplies offered by Resource Colorado Metropolitan Water and Sanitation District. Our work will include:

1. Studying the "Water Agreement" prepared by Resource Colorado and assisting Steve Jeffers with the review of this document.
2. Reviewing the documents made available by Resource Colorado. We have downloaded the documents and have made a cursory inspection of the many well permits, engineering reports, title opinions, District Court orders and decrees, and other documents.
3. Meeting with Resource Colorado's representatives to learn about the water rights, wells, and water systems being offered. We have contacted Margaret Medellin of JF Companies concerning availability of documents describing the proposed water supply project.
4. Obtaining and reviewing documents and information pertaining to and interviewing engineers and geologists with knowledge of the Lost Creek Designated Ground Water Basin and the Resource Colorado's water production and conveyance system.

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5. Investigating the rules and regulations of the Lost Creek Ground Water Management District and the operational practices, management, and regulations of the Henrylyn Irrigation District. These districts have an important symbiotic relationship in which one regulates groundwater pumping and the other distributes imported surface water for irrigation which in part recharges the aquifer.
6. Investigating the completion status of any ground water models of the Lost Creek basin by the U.S. Geological Survey and others, reviewing the data used in the models and, if available, reviewing any model results and conclusions.
7. Developing opinions about the long-term viability and sustainability of the ground water resources and preparing memorandums to you that present the opinions.

Our firm specializes in the hydrological, hydrogeological, and water rights engineering aspects of water resource development. We do not specialize in water quality issues or water conveyance and water treatment design. During our investigations, we will work closely with you, Eric Guth, and Steve Jeffers to efficiently evaluate Resource Colorado's offering. Our charges will be based on the time expended on the work and our normal hourly rates plus out-of-pocket expenses for travel and outside services. Our invoices will be submitted monthly. Our billing rates for calendar year 2009 are attached. I expect that our billing rates will increase modestly in January.

If this scope of work is acceptable, please send your normal authorization to proceed. Thank you for considering our firm for these services.

Sincerely yours,

**HELTON & WILLIAMSEN, P.C.**



Thomas A. Williamsen

TAW/mlc

Enclosure

cc: Steven P. Jeffers w/enc.

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**HELTON & WILLIAMSEN, P.C.**  
**CONSULTING ENGINEERS IN WATER RESOURCES**

**RATES FOR 2009**

This schedule shows the normal hourly rates of our personnel. In addition to the charges for our time, our billings will include charges for reimbursable expenses as indicated below.

**Hourly Billing Rates**

Thomas A. Williamsen .....	\$137
Frank C. Healy.....	\$114
Randy L. Hendrix.....	\$112
Daniel J. Gillham .....	\$90
Anders C. Olson .....	\$68
Margaret L. Cridlebaugh.....	\$62
Richard L. Teed .....	\$52
Dewayne R. Schroeder .....	\$125

**Reimbursable Expenses**

Personal vehicle (IRS specified business rate) .....	55¢ per mile
Other.....	actual cost