

**RESOLUTION NO. 20-11**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO TO RATIFY AND APPROVE THE EXECUTED AGREEMENT FOR PROFESSIONAL SERVICES WITH WEMBER INC. FOR OWNER'S REPRESENTATION SERVICES FOR THE CASTLE PINES CITY HALL CONSTRUCTION PROJECT**

**WHEREAS**, the City of Castle Pines ("City") desires to engage a consultant to provide professional services as owner's representative for the construction of a new City Hall; and

**WHEREAS**, Wember Inc. ("Contractor") represents that it has the requisite expertise and experience to perform the professional services; and

**WHEREAS**, the City Council desires to ratify and approve an agreement for professional services with the Contractor to have the Contractor perform the work as described in the agreement for a lump sum amount of One Hundred Seventy-Nine Thousand Thirty-Three Dollars and Zero Cents (\$179,033.00), in a form approved by the City Attorney and executed by the City Manager (the "Agreement for Professional Services"); and

**WHEREAS**, the City Manager executed the Agreement for Professional Services pursuant to and as authorized under Paragraph 4 of the Declaration of Emergency Related to COVID 19 executed by the Mayor on March 16, 2020.

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

**Section 1.** The City Council hereby ratifies and approves the Agreement for Professional Services with Wember Inc., attached hereto and incorporated herein as Exhibit A.

**Section 2.** If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining issues of this Resolution.

**Section 3.** This Resolution shall take effect upon its approval by the City Council.

**INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES BY A VOTE OF 7 IN FAVOR, 0 AGAINST, AND 0 ABSENT THIS 26TH DAY OF MAY 2020.**



DocuSigned by:

*Tera Stave Radloff*

6E0C8E9279DC479

Tera Stave Radloff, Mayor

ATTEST:

DocuSigned by:

*Tobi Basile*

AD93A3B92092400...

Tobi Basile, CMC, City Clerk

APPROVED AS TO FORM:

DocuSigned by:

*Linda C. Michow*

52A1DE99B8FE444

Linda C. Michow, City Attorney

**EXHIBIT A**  
**WEMBER INC. PROFESSIONAL SERVICES AGREEMENT**

**City of Castle Pines, Colorado  
AGREEMENT FOR PROFESSIONAL SERVICES**

**Project/Services Name: Castle Pines City Hall Construction Project/Owner's  
Representation**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into by and between the City of Castle Pines, a municipal corporation of the State of Colorado, with offices at 360 Village Square Lane, Suite B, Castle Pines, Colorado 80108 (the "City"), and Wember Inc., a Colorado S-Corporation with offices at 7525 South Jasmine Court, Centennial Colorado 80112 ("Contractor") (each individually a "Party" and collectively the "Parties").

**RECITALS**

WHEREAS, the City requires certain professional services as more fully described in **Exhibit A**; and

WHEREAS, Contractor represents that it has the requisite expertise and experience to perform the professional services; and

WHEREAS, the City desires to contract with the Contractor subject to the terms of this Agreement.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**I. SCOPE OF SERVICES**

A. **Project Description:** The intent of the City is to construct a City Hall facility that will meet the current and future needs of the municipal government and its ability to provide community services ("Project"). Preliminary construction estimates for this Project range between \$4,000,000 and \$5,500,000 with a total Project budget to be determined by the City. The Project is to be constructed on a parcel of property, consisting of approximately ten (10)-acre, located at the southwest corner of Lagae Road and Castle Pines Parkway, commonly known as the Lagae Family parcel ("Property"). The current zoning of the Property is commercial. The property is bordered on the west by residential units and on the south by a church property and Elk Ridge Park.

B. **Services.** Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Services" or "Scope of Services"). The Parties recognize and acknowledge that, although the City has requested certain general services to be performed or certain work product to be produced, the Contractor has offered to the City the process, procedures, terms, and conditions under which the Contractor plans and proposes to

achieve or produce the services and/or work product(s) and the City, through this Agreement, has accepted such process, procedures, terms, and conditions as binding on the Parties.

C. Changes to Services. A change in the Scope of Services shall not be effective unless authorized through a written amendment to this Agreement signed by both Parties. If Contractor proceeds without such written authorization, Contractor 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 or as otherwise provided in writing by the City, no agent, employee, or representative of the City is authorized to modify any term of this Agreement.

D. Duty to Inform. The Contractor 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.

E. Time of Performance. The Contractor shall perform all Services in accordance with this Agreement commencing on the Effective Date, as set forth in Section II of this Agreement, until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the City Council, City Manager, or a person expressly authorized in writing to direct the Contractor's services.

## II. TERM AND TERMINATION

A. Term. This Agreement shall commence on the date of mutual execution of the Parties (the "Effective Date") and shall continue until November 30, 2022 to include an eleven (11) month warranty phase following Project completion, or until terminated as provided herein ("Termination Date"). The Parties may mutually agree in writing to extend the term of this Agreement, subject to annual appropriation.

B. 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 of unilateral termination as provided by this paragraph:

1. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after Contractor's receipt of a notice of termination; and

2. The Contractor shall deliver all finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement to the City and such documents, data, studies, and reports shall become the property of the City; and

3. 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 and for any services authorized to be performed by the notice of termination as provided by Section II.B of this Agreement. The Contractor shall

deliver such final accounting and final invoice to the City within thirty (30) days of the date of termination; thereafter, the City shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor.

C. Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party. Such notice shall specify the non-performance, provide a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section II.C, "reasonable time" shall not be less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and any reimbursable expenses authorized by this Agreement. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the Termination Date contained in the written notice. Thereafter, the City shall not accept, and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor. Provided that notice of non-performance is provided in accordance with this Section II.C, nothing in this Section II.C shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

D. Suspension of Services. The City may suspend the Contractor's performance of the Services at the City's discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon Contractor's receipt of such notice of suspension from the City, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement. Contractor shall not re-commence performance of the Services until it receives written notice of re-commencement from the City.

E. Delivery of Notices. Any notice permitted by this Section II and its subsections shall be addressed to the City Representative or the Contractor Representative at the address set forth in Section XII.D of this Agreement or such other address as either Party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

### **III. REPRESENTATIVES AND SUPERVISION**

A. City Representative. The City representative responsible for oversight of this Agreement and the Contractor's performance of Services hereunder shall be the City Manager or his or her designee ("City Representative"). The City Representative shall act as the City's primary point of contact with the Contractor.

B. Contractor Representative and City Engineer. The Contractor representative under this Agreement shall be Paul Wember ("Contractor Representative"). The Contractor

Representative shall act as the Contractor's primary point of contact with the City. The Contractor shall not designate another person to be the Contractor Representative without prior written notice to the City.

C. City Supervision. The Contractor shall provide all Services with little or no daily supervision by City staff or other contractors. Inability or failure of the Contractor to perform with little or no daily supervision which results in the City's need to allocate resources in time or expense for daily supervision shall constitute a material breach of this Agreement and be subject to cure or remedy, including possible termination of the Agreement, as provided in this Agreement.

#### IV. COMPENSATION

A. Lump Sum Amount. Following execution of this Agreement by the Parties, the Contractor shall be authorized to and shall commence performance of the Services as described in **Exhibit A**, subject to the requirements and limitations on compensation as provided by this Section IV and its subsections. Compensation to be paid hereunder shall be a lump sum amount of One Hundred Seventy Nine Thousand Thirty Three Dollars and Zero Cents (\$179,033) ("Lump Sum Amount") unless a larger amount is agreed to by and between the Parties in accordance with the amendment requirements of this Agreement. Notwithstanding the amount specified in this Section, Contractor shall be paid only for work performed. Contractor shall not be paid until tasks identified in the Scope of Services are performed to the satisfaction of the City. In consideration for the completion of the Scope of Services by Contractor, the City shall pay Contractor as follows:

- If this box is checked, the City shall pay Contractor on a percentage complete basis in accordance with the rate schedule shown in **Exhibit B**. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the City for such fees, costs and expenses. Final payment may be requested by the Contractor upon completion and the City's acceptance of all work or Services as set forth in **Exhibit A**.
- If this box is checked, the City shall pay the Contractor the Not-to-Exceed Amount in a single lump sum payment on [insert date here].

B. Receipts. The City, before making any payment, may require the Contractor to furnish at no additional charge releases or receipts from any or all persons performing work under this Agreement and/or supplying material or services to the Contractor, or any subcontractor if this is deemed necessary to protect the City's interest. The City, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts.

C. Reimbursable Expenses.

1. If this Agreement is for lump sum compensation, there shall be no reimbursable expenses.

2. If the Agreement is for compensation based on a time and materials basis, the following shall be considered "reimbursable expenses" for purposes of this Agreement and may

be billed to the City without administrative mark-up, which must be accounted for by the Contractor, and proof of payment shall be provided by the Contractor with the Contractor's monthly invoices:

- None
- Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the IRS as a tax deductible business expense)
- Printing and Photocopying Related to the Services (billed at actual cost)
- Long Distance Telephone Charges Related to the Services
- Postage and Delivery Services
- Lodging and Meals (but only with prior written approval of the City as to dates and maximum amount)

3. Other Expenses. Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost that shall be borne by the Contractor and shall not be billed or invoiced to the City and shall not be paid by the City.

D. No Waiver. The City's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

**V. PROFESSIONAL RESPONSIBILITY**

A. General. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing required by law.

B. Standard of Performance. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

C. Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if and as described more particularly in **Exhibit A**; however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform Services hereunder shall perform such Services in accordance with all terms and conditions of this Agreement.

**VI. INDEPENDENT CONTRACTOR**

A. General. Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms



of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a City employee for any purposes.

B. Liability for Employment-Related Rights and Compensation. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

C. Insurance Coverage and Employment Benefits. The City will not include the Contractor as an insured under any policy the City has for itself. The City shall not be obligated to secure nor provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, subcontractors, agents, or representatives, including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension or retirement account contributions, profit sharing, professional liability insurance, or errors and omissions insurance. The following disclosure is provided in accordance with Colorado law:

**CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE CITY PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.**

B. Employee Benefits Claims. To the maximum extent permitted by law, the Contractor waives all claims against the City for any Employee Benefits; the Contractor will defend the City from any claim and will indemnify the City against any liability for any Employee Benefits for the Contractor imposed on the City; and the Contractor will reimburse the City for any award, judgment, or fine against the City based on the position the Contractor was ever the City's employee, and all attorneys' fees and costs the City reasonably incurs defending itself against any such liability.

**VII. INSURANCE**

A. General. During the term of this Agreement, the Contractor shall obtain and shall continuously maintain, at the Contractor's expense, insurance of the kind and in the minimum amounts specified as follows by checking the appropriate boxes:

- 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"); OR
- The Contractor shall secure and maintain the following ("Required Insurance"):
  - Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.
  - Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.
  - Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) each occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Services, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.
  - Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000) each claim and Two

Million Dollars (\$2,000,000) aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

B. Additional Requirements. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least thirty (30) days prior written notice to the City. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the City, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Insurance Certificates. Contractor shall provide to the City a certificate of insurance as evidence that the required policies are in full force and effect prior to the commencement of the Services. The certificate shall identify this the Project/Services Name as set forth on the first page of this Agreement.

D. Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith. All monies so paid by the City, together with an additional five percent (5%) administrative fee, shall be repaid by the Contractor to the City immediately upon demand by the City. At the City's sole discretion, the City may offset the cost of the premiums against any monies due to the Contractor from the City pursuant to this Agreement.

## VIII. INDEMNIFICATION

A. Contractor agrees to indemnify and hold harmless the City and its officers, insurers, employees and assigns from and against all claims, liability, damages, losses, and expenses, including reasonable attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage to the extent caused in whole or in part by, the negligent act, omission, error, professional error, mistake, or other fault of the Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold

harmless the City may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

**IX. ILLEGAL ALIENS**

The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Contractor shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, the Contractor certifies as of the date of this Agreement it does not knowingly employ or contract with an illegal alien who will perform work under this public contract for services and that the Contractor will participate in the e-verify program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement. The Contractor is prohibited from using the e-verify program to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the City within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding the Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Colorado Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the City may terminate this Agreement, and the Contractor may be liable for actual and/or consequential damages incurred by the City, notwithstanding any limitation on such damages provided by this Agreement.

**X. REMEDIES**

A. In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions include:

1. Suspend the Contractor's performance pending necessary corrective action as specified by the City without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
2. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or

3. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the City; and/or

4. Terminate this Agreement in accordance with this Agreement.

B. The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

## **XI. RECORDS AND OWNERSHIP**

A. Retention and Open Records Act Compliance. All records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act (“CORA”), and records produced or maintained in accordance with this Agreement, are to be retained and stored in accordance with the City’s records retention and disposal policies. Those records which constitute “public records” under CORA are to be at the City offices or accessible and opened for public inspection in accordance with CORA and City policies. Public records requests for such records shall be processed in accordance with City policies. Contractor agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor’s willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City. For purposes of CORA, the City Clerk is the custodian of all records produced or created as a result of this Agreement. Nothing contained herein shall limit the Contractor’s right to defend against disclosure of records alleged to be public.

B. City’s Right of Inspection. The City shall have the right to request that the Contractor provide to the City a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the location and method of storage of such records. Contractor agrees to allow inspection at reasonable times by the City of all documents and records produced or maintained in accordance with this Agreement.

C. Ownership. Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the City of Castle Pines upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the City. Other materials, statistical data derived from other clients and other client projects, software, methodology and proprietary work used or provided by the Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the City and may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under the Colorado Open Records Act, § 24-72-203, C.R.S., to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services. The Contractor may publicly state that it performs the Services for the City.

D. Return of Records to City. At the City’s request, upon expiration or termination of this Agreement, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the CORA, and records produced or maintained in accordance with this Agreement, are to be returned to the City in a reasonable format and with an index as determined and requested by the City. Transfer of records is conditional upon payment of outstanding undisputed invoices for services rendered.

**XII. MISCELLANEOUS**

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Douglas County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligations of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Notice. Unless otherwise provided in this Agreement, any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent via pre-paid, first class United States Mail, to the party at the address set forth below.

**If to the City:**

**If to Contractor:**

City of Castle Pines Attn: City Manager 360 Village Square Lane, Suite B Castle Pines, Colorado 80108	Wember Inc.  Paul Wember, President 7525 South Jasmine Court Centennial Colorado 80112 c. 303.378.4130 e. pwember@wemberinc.com
With Copy to: Castle Pines City Attorney Michow Cox & McAskin LLP 6530 S. Yosemite Street, Suite 200 Greenwood Village, Colorado 80111	With Copy to:

E. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

F. Modification. This Agreement may only be modified upon written agreement signed by the Parties.

G. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

H. Affirmative Action. The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

I. Governmental Immunity. The City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended (“CGIA”), or otherwise available to the City and its officers or employees. Presently, the monetary limitations of the CGIA are set at three hundred fifty thousand dollars (\$350,000) per person and nine hundred ninety thousand dollars (\$990,000) per occurrence for an injury to two or more persons in any single occurrence where no one person may recover more than the per person limit described above.

J. Rights and Remedies. The rights and remedies of the City under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the City's legal or equitable remedies, or the period in which such remedies may be asserted.

K. Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. 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 XII shall not authorize assignment.

M. 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 subcontractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

N. Release of Information. The Contractor shall not, without the prior written approval of the City, release any privileged or confidential information obtained in connection with the Services or this Agreement.

O. Survival. The provisions of Sections VII (Independent Contractor), VII (Insurance), VIII (Indemnification) and XII (A) (Governing Law), (J) (Rights and Remedies), (K) Annual Appropriation), (L) (Release of Information) and (M) Attorneys' Fees, shall survive the expiration or termination of this Agreement.

P. Force Majeure. Neither the Contractor nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

Q. Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City of Castle Pines and the Contractor and bind their respective entities.

R. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

S. Mediation. If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute through good faith negotiations. If the dispute cannot be settled through good faith negotiations within thirty (30) days after the earliest date on which one party notifies the other party in writing of its desire to attempt to resolve such dispute or claim through negotiations, the parties agree to endeavor in good faith to settle the dispute by mediation through selection of a mutually agreeable mediator. In the event the parties are unable to agree upon a mediator, then either party may initiate litigation, terminate this Agreement, and/or pursue any other remedy provided in law or under this Agreement.



*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*

*SIGNATURE PAGES FOLLOW*

**THIS AGREEMENT is executed and made effective as provided above.**

**CITY OF CASTLE PINES, COLORADO**

By:  \_\_\_\_\_  
1E5ECFADE8DF47E...

Printed Name: Michael Penny

Title: City Manager

Date of execution: 4/24/2020, 2020

**ATTEST:**

 \_\_\_\_\_  
AD03A3B02032499...

Tobi Basile, City Clerk

**APPROVED AS TO FORM (excluding exhibits):**

 \_\_\_\_\_  
5241DE99B8FF444...

Linda Michow, City Attorney

**CONTRACTOR:**

By: *Paul D. Wember*

Printed Name: Paul D. Wember

Title: President

Date of execution: April 22, 2020

*24  
Paul*

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Archuleta )

The foregoing Agreement for Professional Services was subscribed, sworn to and acknowledged before me this 24 day of April, 2020, by Paul D. Wember as President of Wember Inc, a S-corp.

My commission expires: 10-15-2023

(SEAL)

JOHN KUECHENMEISTER  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 19393029103  
MY COMMISSION EXPIRES OCTOBER 15, 2023

*John Kuchenmeister*  
Notary Public

## EXHIBIT A SCOPE OF SERVICES

### General

1. Set up and manage Project Management Online Software including shared documents, contacts and calendar.
2. Establish and serve as Owner's Representative as the central point of contact for coordinating all project activities including process for approvals, maintenance of project records, responses to inquiries from consultants, suppliers and contractors, transfer of information to decision makers, coordination of project information flow and progress reports to the Owner.
3. Provide monthly presentations to staff and City Council, as directed.
4. Provide oversight and coordination of the project from Owner's perspective to effectively balance costs, time and quality.
5. Work with the City Project team to refine the scope of work to be within Owner's budget. Upon Owner's approval of the design schematics and budget, the design team will prepare the necessary architectural and other design development documents. Consultant will review design with respect to compliance with agreed-upon project objectives.
6. Represent the Owner at regular Project meetings and provide advice that will help facilitate economical, efficient and desirable development and construction procedures. Track Project related issues, assign responsibility and track follow-through.
7. Act as liaison between the Project team members and assist in the obtaining of building permits, other governmental approvals, authorizations and sign-offs as necessary for the design, construction and operations of the Project.
8. Develop a communication plan and decision-making structure
9. Develop and track a master Project budget including soft costs and construction costs. Manage updates to a master budget to be tracked from start to completion of the Project. Assist the Owner with monitoring, identify cost savings and design options/products.
10. Generate, monitor and update master schedule milestones for all design phases, design review, bidding activities, purchase of major equipment, lead times for fixtures and equipment, coordination of activities outside construction, and coordination of key points with Owner staff.
11. Establish a process by which all changes can be priced, submitted, reviewed and added or subtracted from the Project cost. Review and submit, with recommendations, all requests for payment under vendor agreements, provided that all such payments shall be subject to Owner approval. Coordinate with Owner's finance and accounting departments on related budget and financial matters.
12. Meet with fire departments, cable, power and phone companies to progress design and construction.
13. Submit to the Owner suggestions or changes that could improve the design or reduce costs.
14. Develop a communication organization chart for communication flow and decision making.
15. Maintain electronic Project files for Owner.
16. Review the options for Project delivery methods based on program needs and recommend an approach.

## Procurement

1. Manage architectural and general contractor selection process including generating RFPs, checking references, analyzing fees, managing the interview process and attending interviews. (Completed March 30, 2020)
2. Provide feedback to teams that submitted proposals but were not selected
3. Review contracts for the architect and general contractor in conjunction with the Owner's legal representation.
4. Manage the procurement of the surveyor for a meets and bounds survey.
5. Manage the procurement of the geotechnical engineering firm.
6. Manage the procurement of the material testing firm.
7. Monitor the procurement process, led by the design team, of procurement of the FF&E required for the Project.
8. ~~Generation of RFP's for Move Coordination and services pertaining to management of movers.~~ (none anticipated)
9. Assist the Owner with developing/implementing and coordinating AV/Security/technology needs of the Owner. Assist with the selection of consultants and vendors led by the ownership IT department or architect consultant.
10. Manage the receipt of W-9 and insurance documents from procured team members.

## Design and Planning

1. Serve as the main Owner contact for the design team.
2. Provide interpretation of plans and specifications.
3. Review existing documentation and data, manage existing data and new Project data.
4. Discuss Project with the Owner to review the critical information gathered related to the Project and analyze strategies for the Project's success.
5. Meet with the design team related to Project progress and design decisions required.
6. Work with team to establish proper Project quality controls during construction phase
7. Work with team to refine scope to be within the owners budget.
8. Analyze existing site for issues related to construction implementation and logistics.
9. Review the drawings and plans on behalf of the Owner. Provide comments from ownership team to design team and track to completion.
10. Work with the design team to assist in obtaining building permits, other governmental approvals, authorizations and sign-offs as necessary for the design and construction of the Project.
11. Work with utility providers (gas, electric, internet) and design team to ensure services are delivered to the site.
12. Work with design team estimator or General Contractor to track estimates and cost saving options to align with the project budget.

## Bidding and Permitting

1. Confirm that the permit process is completed prior to start of construction.
2. Coordinate and review any modifications to pricing with the Owner.
3. Review insurance and bonding requirements.
4. Review subcontractor bids and process and confirm that a competitive process has been followed in obtaining bids from subcontractors, assist in the review of bids and subcontractor selection, and take necessary action such that subcontractors are properly insured.

5. Issue final approval of Guaranteed Maximum Price.

### Construction Administration

1. Serve as the main Owner contact for the general contractor.
2. Review contractor's safety plan for the construction site.
3. Work with the General Contractor on schedule and logistics plan.
4. Advise the Owner on issues including construction costs, schedule, coordination, and owner occupancy.
5. Assist with planning for the placement of construction trailers, fences, signage, staging areas, and construction traffic zones.
6. Monitor construction costs.
7. Review and monitor preliminary and final construction schedules.
8. Attend weekly construction meetings.
9. Observe construction activities. Minimum of once per week Project site visits required. Document weekly site observations. Monitor design team reports and follow up and close out quality related issues.
10. Monitor inspections and testing reports take place as required. Review reports to take necessary action such that deficiencies are addressed.
11. Monitor the construction phase activities of the design and engineering firm(s), including the following:
  - i. Technical review and approval of materials submittals and samples
  - ii. Resolution of technical questions that may arise during construction
  - iii. Review and opinion on change orders subject to Owner approval
12. Monitor progress of construction work to determine compliance with the drawings and specifications. Photograph construction progress. Provide observations regarding quality of workmanship, conformity to plans and specs. Address corrective measures to mitigate and correct non-conforming workmanship per the Contract Documents as identified by the Architect or Contractor. Notify the Owner of non-conforming work with the Contract Documents and methods to resolve the issues.
13. Resolve questions asked of Owner that may arise during construction.
14. Maintain Owner's record copies and permanent Project files of necessary design and construction related communications. Includes periodic construction progress photographs.
15. Report to and advise Owner on issues of construction cost, schedule and Owner-related items.
16. Review progress payment requests of contractor and provide payment recommendations to Owner.
17. Monitor design team's construction-phase performance with respect to timeliness of documentation, type and frequency of contractually agreed-to Project reporting and other documentation relied upon by Owner and Owner's Representative.

### Close-Out and Post-Construction

1. Monitor the moving of new ~~old/stored~~ furnishings and equipment into the completed facility.
2. Monitor the creation of the design team punch list monitor progress and completion of corrective work identified on punch list.

3. Monitor the management of FF&E installation and punch list items led by the design team. Monitor and coordinate schedule and payments.
4. Recommend to the Owner the approval of the issuance of the Certificate of Substantial Completion.
5. Provide recommendation to Owner regarding final acceptance of Project and release of final payment to contractor(s).
6. Monitor the turnover of stock supplies of materials as specified by the contract documents.
7. Monitor the preparation of operations, maintenance manuals and as-built plans and specifications on behalf of the Owner.
8. Facilitate contractor's training of appropriate, Owner selected facilities staff members on subjects of operations and maintenance. Facilitate post-occupancy evaluation following approximately 11 months.

### Warranty Period

1. Assist the Owner with determining the warranty period. If an extended warranty is considered, assist the Owner with understanding the cost and value associated with extended warranties to evaluate if the Owner wants to consider for additional cost.
2. Schedule the 11 month warranty walk through with the design team if the warranty is minimum of 1 year.
3. Assist the Owner with building issues/complaints and determine necessary steps to take to address these items. Address warranty items to confirm the requirements of the warranty are met.
4. Provide status reports to the Owner summarizing progress, schedule and cost status, major decisions, changes and other key Project information affected through the warranty period.

## EXHIBIT B COMPENSATION

### Owner's Representation

Professional Service Fees – Owner's Representation	\$168,820
Professional Service Fees –Reimbursables	<u>\$ 10,213</u>
<b>Total Lump Sum Fee</b>	<b>\$179,033</b>

### Reimbursable Expenses ARE included in the lump sum proposal:

1. They include: Postage, couriers, parking (paid parking only), mileage (At current IRS rate), lodging, requested travel and meals and our monthly fee for our online PM software
2. They exclude: Plots, conference call services, airfare, and other requested trips outside of the region (including lodging, travel and meals)

### Hourly Rates, 2020 (for reference):

Owner's Representative – Principal	\$ 140/Hour
Owner's Representative – Project Manager	\$ 110/Hour
Owner's Representative – Project Coordinator	\$ 80/Hour

### Clarifications:

- Fees are based on schedule and scope of services included in this proposal. See matrix.
- Wember Inc. Fees do not include detailed cost estimating, but do include estimate review & validation, as well and change order review.
- Owner's Representation services will be billed monthly.
- Trips to areas outside of the Project location have not been included in reimbursables.

Castle Pines City Hall															
Staff Member	Rate	Procurement hours	Procurement Fees ARP, 2020 - JUN, 2020	Design Phase Hours	Design Phase Fee MAY, 2020 - DEC, 2020	Bidding / Permit Phase Hours	Bidding / Permit Phase Fee JAN, 2020 - JAN 2020	Construction Phase Hours	Construction Phase Fee FEB, 2021 - OCT 2021	Move-In / Close-out Phase Hours	Move-In / Close-out Phase Fee NOV, 2021	Warranty Hours	Warranty Fee	Total Hours (All Phases)	Total Fees (All Phases)
Project Manager	\$ 110	8	\$ 880	366	\$ 40,260	50	\$ 5,500	590	\$ 64,900	48	\$ 5,280	40	\$ 4,400	1,102	\$ 121,220
Assistant PM	\$ 80	4	\$ 320	144	\$ 11,520	15	\$ 1,200	200	\$ 16,000	20	\$ 1,600	30	\$ 2,400	413	\$ 33,040
Principal	\$ 140	16	\$ 2,240	62	\$ 8,680	5	\$ 700	17	\$ 2,380	4	\$ 560	0	\$ -	104	\$ 14,560
<b>Total By Phase</b>		<b>28</b>	<b>\$ 3,440</b>	<b>572</b>	<b>\$ 60,460</b>	<b>70</b>	<b>\$ 7,400</b>	<b>807</b>	<b>\$ 83,280</b>	<b>72</b>	<b>\$ 7,440</b>	<b>70</b>	<b>\$ 6,800</b>	<b>1,619</b>	<b>\$ 168,820</b>
<b>Reimbursables</b>			<b>\$ 324</b>		<b>\$ 3,705</b>		<b>\$ 500</b>		<b>\$ 4,200</b>		<b>\$ 434</b>		<b>\$ 1,050</b>		<b>\$ 10,213</b>
<b>Total Fee with Reimbursables</b>															<b>\$ 179,033</b>