

**RESOLUTION NO. 13-11**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF CASTLE PINES, COLORADO  
APPROVING A PROFESSIONAL SERVICES AGREEMENT  
WITH MILLER MUNICIPAL CONSULTANTS, INC.**

**WHEREAS**, the City of Castle Pines (“City”) is authorized to enter into contracts for the performance of general municipal governance and services; and

**WHEREAS**, the City Council desires to engage Miller Municipal Consultants Inc. (“Contractor”) to assist in the selection process of the City Manager; and

**WHEREAS**, the Contractor submitted a proposal to the City to perform such services.

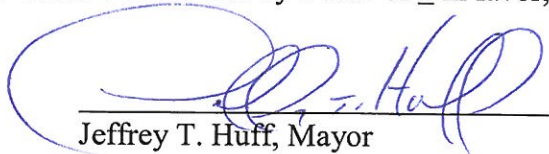
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, THAT:**

**Section 1.** The City Council hereby approves the attached Professional Services Agreement between the City and the Contractor.

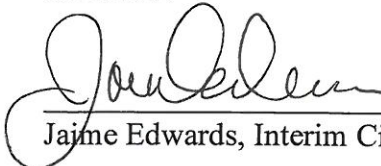
**Section 2.** If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining issues of this Resolution.

**Section 3.** **Effective Date.** 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 26<sup>th</sup> day of March, 2013.

  
\_\_\_\_\_  
Jeffrey T. Huff, Mayor

ATTEST:

  
\_\_\_\_\_  
Jaime Edwards, Interim City Clerk

Approved as to form:

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

**EXHIBIT A**

**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
CITY OF CASTLE PINES AND MILLER MUNICIPAL CONSULTANTS, INC.**

**THIS PROFESSIONAL SERVICES AGREEMENT** ("*Agreement*") is made and entered into this 26<sup>th</sup> day of March, 2013, ("*Effective Date*") by and between the **CITY OF CASTLE PINES**, a Colorado municipal corporation (the "*City*"), and **MILLER MUNICIPAL CONSULTANTS, INC.**, a Colorado corporation (the "*Consultant*"). The City and the Consultant may be collectively referred to as the "*Parties*" and each individually as "*Party*".

**RECITALS AND REPRESENTATIONS**

**WHEREAS**, the Consultant represents to the City that the Consultant has the skill, ability, and expertise to perform the services described in this Agreement; and

**WHEREAS**, the City desires to engage the Consultant to provide the services described in this Agreement subject to the terms and conditions of the Agreement.

**NOW, THEREFORE**, in consideration of the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed by and between the Parties as follows:

**1. LINE OF AUTHORITY:** Council members Radloff, Einolf and Hoffman are the City Council representatives responsible for overseeing and coordinating the City's recruitment of a new City Manager (together, the "*City Authorized Representatives*"), and are designated as the City Authorized Representatives 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 is **Ronald S. Miller** (the "*Consultant Authorized Representative*").

**2. SCOPE OF SERVICES:** Consultant shall perform all services described in **Exhibit A** (the "*Services*") diligently and professionally and in a manner satisfactory to the City Authorized Representatives.

The City may, from time to time, request changes to the Services to be performed hereunder. If agreed to by both Parties, Consultant will, within a reasonable time period, provide to the City in writing a price and modification to services for the proposed addition to Services. 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 an amendment to and part of this Agreement, provided any such change is in writing and signed by the Mayor and by the Consultant Authorized Representative. Unless otherwise stated in the written amendment, 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 Agreement. If Consultant performs any work beyond the Services described in **Exhibit A**, it does so at its own risk.

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

a. In consideration for the completion of the Services specified herein by Consultant, the City shall pay Consultant in accordance with the hourly rate of \$125.00 as set forth in the Consultant's Proposal, a copy of which is attached and incorporated as part of **Exhibit A**. Except as may be agreed upon by the City and Consultant through written change orders as described in Section 2 above, in no event shall the City be liable for payment under this Agreement in excess of **Twelve Thousand Five Hundred Dollars (\$12,500.00)**.

b. The Consultant shall submit invoices to the City in accordance with the terms of this Agreement. Invoices will be billed to the City on a regular basis, but no more frequently than every thirty (30) days. The maximum fee specified herein shall include all fees and expenses incurred by Consultant in performing the services hereunder.

c. Consultant's invoice(s) shall be in a format acceptable to the City, shall be supported by information in such detail as may be required by the City and shall be sufficient to substantiate that the Consultant has performed the Services described in **Exhibit A**. 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.

**4. TERM:** It is mutually agreed by the Parties that the term of this Agreement shall commence as of the Effective Date and terminate on October 31, 2013, unless earlier terminated in accordance with the terms and conditions of this Agreement. Any extension of the term of this beyond the current fiscal year 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 services received during the preceding term.

**5. 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 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 the City.

**6. INDEPENDENT CONTRACTOR:** The Consultant 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 Consultant. 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 Consultant or the Consultant's employees, sub-consultants, Consultants, 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.

**7. 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 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 person 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.

**8. INSURANCE:** The Consultant shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Consultant to be sufficient to meet or exceed the Consultant's minimum statutory and legal obligations arising under this Agreement, including the indemnification obligations set forth in Section 7. The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section 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.

**9. NO WAIVER OF GOVERNMENTAL IMMUNITY ACT:** The Parties hereto understand and agree that the City, its elected officials, 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.

**10. 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 City. Any attempt by the Consultant to assign or transfer its rights hereunder shall, at the option of the City Authorized Representatives, void the assignment or automatically terminate this Agreement and all rights of the Consultant hereunder.

**11. CITY REVIEW OF RECORDS:** The Consultant agrees that, upon a reasonable request of the City Authorized Representatives, 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 City Authorized Representatives, the City Finance Director, or any of their authorized representatives, those books and records of the 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 the three (3) years following the end of the term of this Agreement.

**12. OWNERSHIP OF DOCUMENTS:** Working papers, reports and other documents prepared by the Consultant in connection with this Agreement shall be the property of the Consultant; however, the Consultant shall provide the City with all copies of all reports, data and work product collected or produced by Consultant upon the City's request. The Consultant shall provide the City with copies of any documents produced in association with the Consultant's Services within five (5) business days upon written request of the City.

**13. TERMINATION:** The City 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 ten (10) 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. The Consultant's indemnification obligations hereunder shall survive termination of this Agreement



**14. 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:

To the City: City of Castle Pines  
Attn: City Manager & Mayor  
7501 Village Square Drive, Suite 100  
Castle Pines, CO 80108

with a copy to: Widner Michow & Cox LLP  
City Attorney for Castle Pines  
13313 E. Arapahoe Rd., Suite 100  
Centennial, CO 80112

To the Consultant: Miller Municipal Consultants, Inc.  
Attn: Ron Miller  
15057 E. Grand Place  
Aurora, CO 80015

Said notices shall be delivered personally during normal business hours to the appropriate office above, or by prepaid first class U.S. mail, via facsimile, or other method authorized in writing by the City Authorized Representatives and the Consultant Authorized Representative. Mailed notices shall be deemed effective upon receipt or three (3) working days after the date of mailing, whichever is earlier. The Parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification.

**15. NONDISCRIMINATION:** In connection with the performance of work under this Agreement, the Consultant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

**16. ILLEGAL ALIENS:** Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Consultant 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, Consultant certifies that it has verified, or attempted to verify, through participation in the basic pilot program that the Consultant does not employ any illegal aliens. If the Consultant is not accepted into the basic pilot program, the Consultant shall apply to participate in the basic pilot program every three months until the Consultant is accepted, or this Agreement had been completed, whichever is earlier. The Consultant is prohibited from using the basic pilot program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If 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 notify the subcontractor and the City within three (3) days that the Consultant has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Consultant 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 Consultant's actual knowledge. The Consultant 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 Consultant is

required to comply with any reasonable request made by the 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 Consultant violates this provision, the City may terminate this Agreement, and the Consultant may be liable for actual and/or consequential damages incurred by the City, notwithstanding any limitation on such damages provided by such Agreement.

**17. GOVERNING LAW; VENUE:** This Agreement shall be deemed to have been made in, and construed in accordance with the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado. The Consultant expressly waives the right to bring any action in or to remove any action to any other jurisdiction, whether state or federal.

**18. COMPLIANCE WITH ALL LAWS AND REGULATIONS:** All of the work performed under this Agreement by the Consultant shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado. The Consultant shall also comply with all applicable ordinances, regulations, and resolutions of the City and shall commit no trespass on any public or private property in the performance of any of the work embraced by this Agreement.

**19. SEVERABILITY:** In the event any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining provisions shall not be affected, provided that the remaining provisions without the invalidated provisions are consistent with the Parties' intent. Should either party fail to enforce a specific term of this Agreement it shall not be a waiver of a subsequent right of enforcement, nor shall it be deemed a modification or alteration of the terms and conditions contained herein.

**20. NO THIRD PARTY BENEFICIARIES:** The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Consultant, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement.

**21. HEADINGS; RECITALS:** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. The Recitals to this Agreement are incorporated herein.

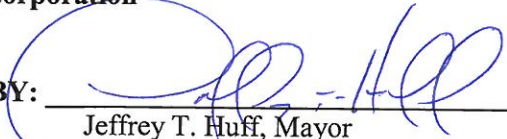
**22. ENTIRE AGREEMENT:** The Parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any elected official, officer, director, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Agreement, except those which are expressly reserved herein to the Mayor, the City Authorized Representatives and/or the Consultant Authorized Representative, shall be valid unless they are contained in writing and executed by all the Parties with the same formality as this Agreement.

**23. FORCE MAJEURE:** Neither Party shall be liable for damages, delays, or failure to perform its obligations under this Agreement if performance is made impractical or impossible, or unpredictably and abnormally difficult or costly, as a result of any unforeseen occurrence, including but not limited to fire, flood, acts of God, civil unrest, failure of a third party to cooperate in providing services other than Consultant's subcontractors, or other occurrences beyond the reasonable control of the party invoking this Force Majeure clause. The Party invoking this Force Majeure clause shall notify the other Party immediately by verbal communication and in writing of the nature and extent of the contingency within five (5) business days after its occurrence or discovery of its occurrence, and shall take reasonable measures to mitigate any impact of the event that triggered the invoking of this Force Majeure clause. If the Force Majeure event shall impact schedule or increase the costs incurred by Consultant, such items shall be handled in accordance with Section 2 and 3.

24. **INCORPORATION OF EXHIBITS:** All exhibits referenced in this Agreement and attached hereto shall be incorporated into this Agreement for all purposes.

**IN WITNESS WHEREOF**, the City and the Consultant have executed this Professional Services Agreement as of the above date.

**CITY:**  
**CITY OF CASTLE PINES, a Colorado municipal corporation**


**BY:**   
\_\_\_\_\_  
Jeffrey T. Huff, Mayor

**DATE:** 3-28, 2013

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

**CONSULTANT:**  
**MILLER MUNICIPAL CONSULTANTS, INC.,**  
a Colorado corporation

**BY:**   
\_\_\_\_\_  
Ronald S. Miller, President

**DATE:** 4-9, 2013



**EXHIBIT A**  
**SCOPE OF SERVICES**

Miller Municipal Consultants, Inc. ("Consultant") is pleased to respectfully submit this Proposal to assist the City of Castle Pines, Colorado, with updating the city's Vision Statement and related goal-setting process and with the recruitment of a City Manager.

**SCOPE OF SERVICES:**

- A. Participate in a minimum of two meetings with the City Council and/or its designated committee members to assist in the update of the city's Vision Statement and related goal-setting process;
- B. Confer with the City Council in the development of a City Manager Profile and qualifications;
- C. Prepare and place advertisements for the City Manager position;
- D. Receive applications for the City Manager position (providing copies of all to the City Clerk);
- E. Conduct an initial screening of all applications;
- F. Prepare a list of semi-finalists;
- G. Conduct background/reference checks of semi-finalists;
- H. Coordinate with city of Castle Pines staff the interviews of Semi-finalists with stakeholders selected by the City Council;
- I. Prepare suggested questions for Stakeholder interviews, and attend the interviews;
- J. Prepare a list of finalists as jointly recommended by the stakeholders and the Consultant and transmit same to the City Council;
- K. Apprise all applicants of their status at appropriate times;
- L. Prepare suggested questions for Council members to ask finalist candidates;
- M. Attend all City Council and Council committee interviews of candidates;
- N. Subsequent to interviews, provide City Council with feedback on the interviews; and
- O. Advise the City Council and City Attorney as requested regarding the preparation of a contract offer to the Final candidate.

**TIMEFRAME:**

The Consultant estimates the Scope of Services will be completed within five (5) months of the date of the acceptance of this Proposal. (The actual starting date for the new City Manager is subject to negotiation).

**ROLE OF THE CITY:** The city will

- a. Assume the costs (if any) of advertisements, and of interview expenses of and for candidates;
- b. Coordinate with the Consultant the scheduling of all interviews of candidates with Stakeholders and with City Council members, including the arrangements of interview sites;
- c. Make arrangements for accommodations for candidates as needed;
- d. Provide information and data about the city of Castle Pines which would be useful to the recruitment process; and
- e. Apprise the Consultant of information relative to any change in the status of candidates (e.g., availability for interviews, withdrawing from the process, special needs, etc.)

## COMPENSATION FOR SERVICES

The Consultant shall be paid an hourly rate of \$125.00 provided that the total compensation for the Scope of Services does not exceed \$12,500.00 without prior approval of the City Council.

The city shall also reimburse the Consultant for auto mileage relative to fulfilling the Scope of Services at the rate of \$.55/mile; reimbursement shall also be provided the Consultant for related expenses, such as printing and supplies. Receipts will accompany reimbursement requests.

## CONFIDENTIALITY/WORKING RELATIONSHIP

The Consultant shall maintain the confidentiality of the applicants' names and the information received through the recruitment process in accordance with the Colorado Open Records Law. The Consultant considers his relationship with the Castle Pines Mayor and City Council a privilege and will keep them regularly apprised of the progress of the recruitment and will be accessible to them, as well as to the City Attorney.