

RESOLUTION NO. 09-06

INTRODUCED BY:

Councilperson Havercroft

Councilperson Clark

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES NORTH
APPROVING LEGAL SERVICES AGREEMENT**

WHEREAS, pursuant to Section 31-4-208, C.R.S., the City Council of the City of Castle Pines North, on February 11, 2009, appointed the law firm of Widner, Michow & Cox, L.L.C. as its City Attorney (the "Law Firm"); and

WHEREAS, the City shall receive legal services and legal advice from the Law Firm and the Law Firm shall invoice the City on a monthly basis; and

WHEREAS, the purpose of this resolution is to memorialize the Legal Services Agreement between the City and the Law Firm.

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


Section 1. The City Council hereby approves the Legal Services Agreement with Widner, Michow & Cox, L.L.C., substantially in the form attached hereto as Exhibit A.

INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH the 11th day of February, 2009.


Maureen A. Shul, Mayor

ATTEST:

APPROVED AS TO FORM:



Janie Berry, City Clerk

City Attorney

Exhibit A

LEGAL SERVICES AGREEMENT

AGREEMENT FOR LEGAL SERVICES OF CITY ATTORNEY

THIS AGREEMENT is made effective as of the 11th day of February, 2009, between **WIDNER MICHOW & COX LLP**, a Colorado limited liability partnership with its principal place of business at 13133 E. Arapahoe Road, Suite 100, Centennial, Colorado 80112, (the "Firm"), and the **CITY OF CASTLE PINES NORTH, COLORADO**, a municipal corporation of the State of Colorado, with offices at 558 Castle Pines Parkway, Unit B4-208, Castle Rock, Colorado 80108 (the "City").

WITNESSETH:

WHEREAS, the City wishes to retain the Firm for the purpose of providing legal representation for the City, and the Firm wishes to provide such representation subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for the consideration herein expressed, it is agreed as follows between the City and the Firm:

1. APPOINTMENT OF GENERAL LEGAL COUNSEL

- A. The Firm is engaged and appointed as general legal counsel to represent and advise the City with respect to legal matters referred by the City to the Firm in accordance with this Agreement.
- B. Linda Michow is hereby designated and appointed as the "City Attorney for the City of Castle Pines North". The Firm may change the designation of the attorney to serve as the City Attorney only with the express written consent of the City. The Firm may represent to third parties and identify in Firm advertising and other Firm-sponsored materials that the Firm serves or represents the City as the City Attorney for Castle Pines North unless the City specifically directs the Firm not to make such representation on a particular matter or to a particular party.
- C. The City Attorney and the Firm will work cooperatively and in concert with other City-appointed attorneys who may be appointed by City Council to represent the City on specialized matters such as but not limited to litigation and water matters.
- D. The Firm may utilize other qualified attorneys to assist the City Attorney and provide legal services to the City as deemed appropriate by the City Attorney, and such additional attorneys may be deemed "Assistant City Attorneys" for such purposes. The City shall retain the right to reasonably reject the assignment of any Firm-selected assisting attorney.

- E. The City grants to the City Attorney and the Assistant City Attorneys the power to execute documents connected with the representation of the City, including pleadings, applications, protests, contracts, commercial papers, settlement agreements and releases, verifications, dismissals, orders, and all other documents, and to represent the City in matters associated with providing legal services to the City.

2. SCOPE OF LEGAL SERVICES

- A. The Firm shall provide to and coordinate for the City all usual and customary legal services authorized to and provided by the City Attorney's Office for comparable cities that engage a law firm on a contract basis for general legal services. The legal services shall include, but not be limited to:
 - i. Representing the City Council, the City staff and consultants, and the various Boards and Commissions of the City, as may be created by City Council;
 - ii. Providing legal advice and services associated with land use, subdivision and other planning applications;
 - ii. Negotiating and drafting contracts;
 - iii. Representing the City in judicial and appropriate administrative proceedings;
 - iv. Advising the City of new developments in municipal law on a regular continuing basis; and
 - v. Providing advice and topical seminars to the City Council and administrative personnel on a periodic basis.
- B. In recognition of the City's budgetary constraints, the City Attorney shall take direction from the Mayor, the City Manager, or from a majority of City Council pursuant to a public meeting. The City Attorney shall endeavor to communicate with Council as the governing body and shall ensure that communications between the City Attorney and one or more elected officials are provided to all elected officials in the interest of full disclosure and effective governance.
- C. The Firm shall provide for support by any para-professional personnel in its representation of the City as deemed necessary and cost effective by the City Attorney.
- D. The City reserves the right to engage special legal counsel on any matter deemed appropriate by the City, following consultation with the Firm, to advise the City or to assist the Firm.

- E. The Firm shall maintain working relationships with attorneys specializing in fields of interest to municipalities, including but not limited to urban renewal, employment and personnel, condemnation, litigation, and water law. The Firm shall recommend hiring special legal counsel with special knowledge and expertise to represent the City or assist the Firm when it deems reasonable and in the best interest of the City and in cases of conflict of interest by the Firm. The Firm shall also recommend hiring special legal counsel to advise the City or provide second opinions on matters of extraordinary importance to the City, including matters involving complex litigation or a substantial financial or other impact on the City or its residents, considering the City's budget as a whole, or considering City functions or programs as a whole, when such matters of extraordinary importance also involve legal uncertainties or complexities. In order to best manage and reduce costs associated with retaining outside counsel for specialized legal matters, the City Attorney shall, at the Firm's cost and expense, initiate and implement a proposal process among qualified and experienced attorneys and law firms providing specialized legal services. The Firm's process shall identify and commit outside legal counsel for possible assignment of matters at rates and charges competitive with the rates and charges customarily available to other similar Colorado municipalities for such services.
- F. Any attorneys who are not employed by the Firm, but who are employed by or retained by the City to perform legal representation or to assist such employed or retained representatives, shall be under the general coordination of the City Attorney although such non-Firm attorneys shall contract directly with the City and the Firm shall not warrant the quality of work of such non-Firm attorneys or firms. Such coordination and supervision by the Firm shall not be undertaken when special legal counsel is appointed due to a conflict of interest on behalf of the Firm.
- G. Although the Firm actively seeks to avoid potential for conflicts, the City understands and recognizes that unanticipated conflicts may arise that could impair the ability of the City Attorney and the Firm to represent the City on specific legal matters. In such event, the City Attorney shall comply with the requirements of the Colorado Rules of Professional Responsibility in addressing such conflict with the City. The Parties understand that the City is not obligated to waive any conflict in order to permit the City Attorney to represent the City. Where a waiver by the City is not granted for any reason or the City Attorney is otherwise legally precluded from representing the City, the City Attorney shall, in consultation with the City Manager and Mayor with notice to the City Council, assign such matter to outside legal counsel. In order to best manage and reduce costs associated with securing outside counsel for conflict matters, the City Attorney shall, at the Firm's cost and expense,

initiate and implement a competitive bidding or proposal process among qualified and experienced law firms. Such process shall identify and commit outside legal counsel for possible assignment of conflict matters at rates and charges competitive with the rates and charges established by this Agreement.

3. COMPENSATION

- A. The City shall compensate the Firm for the services of the City Attorney at a rate of \$200.00 per hour. For legal services provided in connection with a land use application (annexation, zoning, subdivision, special or conditional use permits, variances, vacations and similar land use applications) for which the City will be reimbursed by a developer/applicant, the rate of compensation for services performed by Linda Michow shall be \$250.00 per hour. Separate billing accounts shall be established by the Firm for individual land use applications and for such other special matters as deemed necessary by the City in consultation with the Firm.
- B. The City shall compensate the Firm for the legal services of other attorneys or paralegals of the Firm at their standard billing rates, a copy of which is attached to this Agreement as **Exhibit A**.
- C. The City shall not be required to compensate the Firm for:
 - i. Electronic and hardcopy library and research materials and research librarian services except database access charges (e.g., Lexis/Nexis or Westlaw) for legal research billed at Firm cost without administrative mark-up;
 - ii. Employee benefits;
 - iii. Employee insurance, including malpractice insurance;
 - iv. Training and continuing legal education;
 - v. Bar and professional licensing expenses and registrations;
 - vi. Local professional memberships;
 - vii. Firm-owned electronic, computer and computer/network related communications equipment, hardware, software and information technology support services, systems training of Firm personnel, including personal computers, laptops, computer printers, dictaphones, telefax, PDAs and mobile telephones;
 - viii. Routine copying customarily performed in the day-to-day performance of legal services except those projects requiring outside copying and specialized printing services may be charged at cost. Large project copying (typically more than 300 pages/project) may be charged to the City in accordance with the Firm's standard policies;

- ix. Telefax expenses except for long-distance telefax charges which may be charged at the Firm's cost;
 - x. Newspapers and professional periodicals;
 - xi. Postage for regular mail delivery by United States Postal Service except for mass mailings (with prior City Manager approval) and special, expedited, or overnight delivery services, which may be charged at cost;
 - xii. Office supplies used by the City Attorney (to include items customarily associated with standard office operations and management such as paper, pens, notebooks, paper files, file folders, tape, paperclips, labels, etc.); and
 - xiii. Archival storage and retrieval of outdated client files performed in accordance with the Firm's standard client file storage policies; provided, however, that the Firm may relinquish possession of outdated files to the City for storage.
- D. The City shall compensate the Firm for out-of-pocket fees and costs incurred on the City's behalf, including but not limited to filing fees, service of process, expert witness fees (only as pre-authorized by the City), court reporter fees, transcript fees, recording fees, title company's fees for reports of title, and publication fees. Such fees will be billed to the City at the Firm's cost without mark-up.
- E. The City shall compensate the Firm for mileage expenses for personal use of private vehicles used by the City Attorney, other Firm attorneys and paralegals for travel within the Denver metropolitan area incurred in the direct and exclusive performance of services for the City. Mileage shall be charged at the Firm's standard mileage rate (not to exceed U.S. Internal Revenue Service published business travel mileage allowance).
- F. The Firm shall provide to the City a detailed invoice for all legal services on a monthly basis. Such billings shall separate work and fees, including allocations associated with specific projects for which the City accounts separately. The City shall pay all undisputed billings from the Firm within thirty (30) days of receipt of invoice. If the Client fails to pay any charges within thirty (30) days of the date of the bill, the Law Firm may elect to stop all work for the Client. The Client's obligation to make prompt payment of all fees and charges does not depend upon achievement of any specific result.
- G. The Firm shall not, without the express written consent of the City, incur fees or charges to be payable by the City in excess of the budget and annual appropriation by the City for such services. Specifically for the 2009 calendar year, the Firm shall endeavor to meet an average monthly billing of not more than Eight Thousand Dollars (\$8,000.00) for general

legal services, exclusive of any pass through amounts billed to specific land use applications or other special projects outside the scope of general legal services as mutually agreed upon by the Firm and the City.

- H. The Firm shall maintain the base rate and other billing rates set forth in this Agreement without increase until December 31, 2009. Commencing with the calendar year beginning January 1, 2010, the base rate and other billing rates set forth in this Agreement shall be subject to an increase as mutually agreed upon by the Firm and the City.

4. AVAILABILITY

- A. The City Attorney shall routinely attend regular City Council meetings and be available to provide legal services for the City Council. The City Attorney will endeavor to attend City Council special meetings whenever possible.
- D. The City Attorney shall be available to render the services required hereunder on an "on call" basis, and when necessary shall cause any Assistant City Attorneys to be available by appointment for consultation with City representatives.
- E. The Firm shall assign one or more Assistant City Attorneys to be available to render the services required of the City Attorney hereunder on an "on call" basis whenever the City Attorney is unavailable.
- F. The Firm will employ or retain on contract at its discretion and own cost, at its own offices and during regular business hours, such administrative personnel as are necessary to support the City Attorney.

5. CITY DESIGNATED REPRESENTATIVE

- A. To ensure that the City's budget for legal services is not exceeded in any given year, the City Council hereby designates the Mayor and City Manager to serve as the primary contact to the City Attorney outside of the regular City Council meetings.

6. INDEPENDENT CONTRACTOR

In performing the services herein specified, the Firm is acting as an independent contractor. Its attorneys will be practicing their profession of law in accordance with the Colorado Rules of Professional Responsibility as approved and adopted by the Colorado Supreme Court, as they may be changed or revised from time to time.

7. NON-DISCRIMINATION

During the performance of this Agreement, the Firm shall:

- A. Not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, age, military service, veteran status, marital status, national origin, or disability.
- B. Comply with all state and federal laws, regulations and executive orders regarding non-discrimination applicable to the City and its programs.

8. ASSIGNMENT

This Agreement for services is personal to the parties hereto and shall not be assigned by either party.

9. TERM AND TERMINATION

- A. This Agreement may be terminated by either party, upon written notice, without cause or reason under the following procedures upon thirty (30) days prior written notice to the non-terminating Party. During such period following notice and prior to termination, the Parties shall coordinate the transfer of legal services from the Firm to the City's selected City Attorney.
- B. The Parties understand and agree that the compensation to be provided by the City pursuant to this Agreement is subject to annual appropriation by the City. Although the Parties recognize that the City may effectively terminate this Agreement through a refusal to appropriate funds for a given fiscal year, the City agrees that its exercise of such authority will be undertaken in good faith and in accordance with the provisions of Paragraph A above which would require the funding of services for the period of notice prior to termination.
- C. Nothing in this Section shall preclude or prevent the Parties from modifying any notice requirement or term of notice or negotiating other terms for a mutually acceptable termination.

10. CONFLICTS

Unless otherwise agreed by the City, the Firm shall not accept work on behalf of any client that will create a conflict or the potential for a conflict with the City. This requirement shall specifically preclude the Firm from undertaking work on behalf of Douglas County, any special district whose jurisdiction or area of service lies within all or any portion of the City, any special district or municipality that shares a common boundary with the City or which may potentially provide

services within the City, and any landowners, businesses, and developers residing or working within the City.

11. MISCELLANEOUS PROVISIONS

- A. Arbitration. Although the Parties do not expect that any dispute will arise between the parties, in the unlikely event of any dispute under this Agreement, including a dispute regarding the amount of legal fees or costs owed to the Firm or the quality of the Firm's services, including any claim of malpractice, such dispute shall be subject to binding arbitration. The City and the Firm acknowledge that they are waiving their right to seek remedies in court, including the right to a jury trial. (This clause does not prevent the City and the Firm from trying to resolve any dispute through voluntary mediation, but there is no requirement to do so.)

Any dispute concerning fees or costs or concerning the quality of the Firm's services, including malpractice claims, shall be submitted to a single arbitrator and the decision of the arbitrator shall be final and binding on both parties. A final judgment can be entered on the arbitration award by a court of competent jurisdiction. The arbitrator shall be selected from the Judicial Arbitrator Group, Denver, Colorado, unless the parties agree otherwise. If the parties do not agree on the selection of a single arbitrator within ten (10) days after a demand for arbitration is made, then the arbitrator shall be selected by the Judicial Arbitrator Group from among its available professionals.

All arbitrations shall be held in Denver, Colorado, unless the parties mutually agree on some other location. All arbitrations shall proceed under the Commercial Arbitration Rules of the American Arbitration Association, except as modified in this Agreement, unless otherwise agreed by the parties. The arbitrator shall have the discretion to order that the costs of arbitration, fees (including expert witness and reasonable attorneys' fees), and other costs shall be borne by the losing party. Any filing fees or other administrative costs of arbitration shall be divided equally between the City and the Firm. Arbitration of all disputes, and the outcome of the arbitration, to the extent legally permissible, shall remain confidential between the parties.

- B. Privacy Policy. The Firm's "Privacy Policy Notice" is attached to this Agreement as **Exhibit B**. The Firm will conduct its representation of the City in accordance with this policy.
- C. Document Ownership. Files maintained by the Firm as the result of the performance of services of the City shall be property of the City and, upon

termination of this Agreement, shall be delivered to the City following termination.

- D. Prohibition Against Employing Illegal Aliens. The Firm shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Firm shall not knowingly contract with a subcontractor that (a) knowingly employs or contracts with an illegal alien to perform work under this Agreement or (b) fails to certify to the Firm that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Firm shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation pursuant to C.R.S. § 8-17.5-102 (5).
- E. Contract Competitively Bid. The Parties recognize and acknowledge that the Firm's services were competitively secured as the result of a competitive proposal or bidding process in 2008 in which the City selected the Firm as a finalist for the contract as City Attorney. The City's initial selection of a contractor to serve as City Attorney was unsuccessful and, as a finalist, the Firm was requested to provide the contracted services.

IN WITNESS WHEREOF, the parties hereto have set their hands this 11th day of February, 2009.

ATTEST:

By: _____

City Clerk

CITY OF CASTLE PINES NORTH

By: _____

Maureen Shul, Mayor

WIDNER MICHOW & COX LLP

By: _____

Linda C. Michow, Partner

By: _____

Robert C. Widner, Partner

By: _____

Timothy P. Cox, Partner

EXHIBIT A

RATES PER HOUR FOR MUNICIPAL LEGAL SERVICES

Robert C. Widner, Partner	\$ 250.00
Tim Cox, Partner	\$ 225.00
Maureen Herr Juran, Partner	\$ 200.00
Eric Heil, Special Counsel	\$190.00
Mary Conboy, Associate Special Counsel	\$150.00 up to \$200.00
Associate	up to \$190.00
Paralegal/Research Professional	\$ 70.00

EXHIBIT B

WIDNER MICHOW & COX LLP

PRIVACY POLICY NOTICE

Attorneys, like other professionals, who advise on certain personal matters, are required by federal law to inform their clients of their policies regarding privacy of client information. Attorneys have been and continue to be bound by professional standards of confidentiality that are even more stringent than those required by federal law. Maintaining your trust and confidence is a high priority to our law firm. The purpose of this notice is to comply with the federal law by explaining our privacy policy with respect to your personal information.

NONPUBLIC PERSONAL INFORMATION WE COLLECT:

In the course of providing services to our clients, we collect personal and financial information about our clients that is not available to the public and which is provided to us by our clients or obtained by us with their authorization or consent.

PRIVACY POLICY:

As a current or former client of Widner Michow & Cox LLP, please be assured that all nonpublic personal information that we receive from you is held in confidence, and is not released to people outside the firm, except as agreed to by you, or as is permitted or required by law and applicable ethics rules.

CONFIDENTIALITY AND SECURITY:

We retain records relating to professional services that we provide so that we are better able to assist you with your professional needs and, in some cases, to comply with professional guidelines. We restrict access to nonpublic, personal information about you to those people in the firm who need to know that information to provide services to you (and their support personnel). In order to guard your nonpublic personal information, we maintain physical, electronic, and procedural safeguards that comply with our professional standards as well as federal regulations.

Please call the attorney you work with if you have any questions. Your privacy, our professional ethics, and the ability to provide you with quality service are very important to us.

Widner Michow & Cox LLP