

RESOLUTION NO. 09-88

INTRODUCED BY:

Councilperson Clark

Councilperson Coppola

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF CASTLE PINES NORTH  
APPROVING A MUNICIPAL PROSECUTION PROFESSIONAL SERVICES  
AGREEMENT WITH AUSMUS LAW FIRM, P.C.**

WHEREAS, Section 13-10-104, C.R.S., provides authority for the City of Castle Pines North ("City") to establish a Municipal Court System; and

WHEREAS, the City Council previously adopted Ordinance 09-21 establishing a Municipal Court to hear and try alleged violations of the City ordinance provisions and the Model Traffic Code and setting forth the functions and duties of its Municipal Court; and

WHEREAS, the City Council desires to retain the services of a municipal prosecutor to assist in the duties and functions of the Municipal Court; and


WHEREAS, the Ausmus Law Firm, P.C. has agreed to the terms of the Professional Services Agreement, as attached hereto as **Exhibit A**.

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

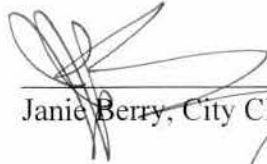
Section 1. The City Council (a) approves the Professional Services Agreement for municipal prosecution services attached hereto as **Exhibit A**, including all exhibits thereto (b) authorizes the City Manager and the City Attorney, in consultation with the Mayor, to make such changes as may be needed to correct any nonmaterial errors or language that do not increase the obligations of the City, and (c) authorizes the Mayor to execute the same on behalf of the City.

Section 2. 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 NORTH by a vote of five (5) in favor, none against and two (2) absent this 3rd day of December, 2009.

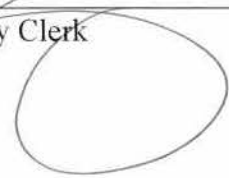
  
Maureen A. Shul, Mayor

ATTEST:




---

Janie Berry, City Clerk



APPROVED AS TO FORM:



---

Linda C. Michow, City Attorney

**Exhibit A**

**PROFESSIONAL SERVICES AGREEMENT**

## AGREEMENT FOR MUNICIPAL PROSECUTION SERVICES

THIS AGREEMENT ("Agreement") is made this 3<sup>rd</sup> day of DECEMBER, 2009, by and between the **AUSMUS LAW FIRM, P.C.** (the "Prosecutor") and the **CITY OF CASTLE PINES NORTH**, a municipal corporation of the State of Colorado (the "City").

### RECITALS AND REPRESENTATIONS

**WHEREAS**, the City desires to contract with the Prosecutor to serve as municipal prosecutor in the Castle Pines North Municipal Court on the terms established in this Agreement; and

**WHEREAS**, the Prosecutor desires to serve as a municipal prosecutor in the Castle Pines North Municipal Court.

**NOW, THEREFORE**, in consideration of the mutual undertakings set forth in this Agreement, the City and the Prosecutor agree as follows:

- 1. COMPENSATION.** The Prosecutor's compensation shall be paid at the rate of Six Hundred Dollars (\$600.00) per court session at which the Prosecutor is in attendance. Within the compensation rate of \$600.00 per court session, Prosecutor shall perform all associated duties including but not limited to those described in Paragraph 2 of this Agreement.
- 2. SCOPE OF SERVICES.** The parties currently anticipate holding one (1) combined municipal court pre-trial and trial session per month at which the Prosecutor's attendance is necessary. In addition to attending court, the Prosecutor shall be responsible for all facets of prosecution for the City, including pre-trial conferences, arraignments, interviewing witnesses, and such bench or jury trials as may be required by the City, subject to the terms of this Agreement. Discovery requests will not be processed by the Prosecutor, except to the extent of referring requests to the municipal court clerk, and the Prosecutor shall not be responsible for handling appeals, except as directed by the City Manager in consultation with the City Attorney. The Prosecutor may be required to undertake enforcement of City code violations from time to time. The Prosecutor may also be required to attend meetings and conferences with City staff, as directed, to be available to answer inquiries from sheriff's deputies about pending or potential cases and to conduct occasional training sessions for City staff as directed by the City. The role of the Prosecutor under this Agreement shall be non-exclusive, and the City retains the right to contract with additional prosecutors and/or to perform prosecution services through the City Attorney.

The Prosecutor shall at all times during the term of this Agreement comply with the Colorado Rules of Municipal Court Procedure, the constitutions and applicable laws of the United States and the State of Colorado, and the Ordinances, Resolutions and Regulations of the City. The Prosecutor shall consult with the City Attorney as needed, including attending meetings as requested, to support the City in the ongoing development of the Municipal Court. All attorneys working as the Prosecutor shall be currently licensed to practice law by the Colorado Supreme Court and shall remain in good standing during the term of this Agreement.

3. **REPORTING.** The Prosecutor shall keep the City Manager and City Attorney informed of any unusual or noteworthy events or cases. Items that should be reported include, but shall not be limited to, threatened appeals, cases with multiple witnesses, cases for which witnesses failed to appear, cases with belligerent or uncooperative defendants, non-traffic cases in which the defense involved a credible allegation of officer misconduct, and cases in which the plea-bargained disposition was outside of the normal guidelines. The Prosecutor and the City Attorney shall meet as needed to discuss issues related to the services provided by the Prosecutor pursuant to this Agreement.
4. **ANNUAL BUDGET/APPROPRIATION.** Notwithstanding any provision of this Agreement to the contrary, the City is not obligated by this Agreement to make any payments in any fiscal year beyond the fiscal year for which funds are appropriated for the payment thereof or to make payments from any funds of the City other than funds appropriated for the payment of current expenditures. All payment obligations of the City under this Agreement are from year to year only and do not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of the City.
5. **INDEPENDENT CONTRACTOR.** This Agreement is one for independent contractor services. The Prosecutor is an independent contractor and shall not be considered an employee of the City for purposes of any federal or state law. The City shall not be obligated to secure and shall not provide any employment benefits of any kind or type to or for the Independent Contractor, including but not limited to worker's compensation, disability insurance, errors and omissions insurance, vacation or sick leave, retirement contributions, or other benefits. The Prosecutor shall be responsible for any federal and state income tax withholding on moneys earned pursuant to this Agreement. The Prosecutor's services shall be supervised by the City Attorney.
6. **INSURANCE.** The Prosecutor shall maintain professional liability insurance with minimum combined single limits of five hundred thousand dollars (\$500,000.00) per claim and one million dollars (\$1,000,000.00) annual aggregate.
7. **EXPENSES AND MATERIALS.** The Prosecutor will not be reimbursed for any incidental expenses incurred by the Prosecutor in the performance of services for the City.
8. **EFFECTIVE DATE.** This Agreement becomes binding and effective as of the date of approval by the City.
9. **TERMINATION WITHOUT CAUSE OR REASON.** This Agreement may be terminated by either party without cause or reason at any time by giving thirty (30) days written notice to the other party. In such event of termination, the Prosecutor shall continue services during such thirty day period and shall reasonably assist the City in the transfer of services to a new prosecutor in accordance with the rules governing professional responsibility for attorneys practicing in the State of Colorado.
10. **ENTIRE AGREEMENT/TERMINATION OF PRIOR AGREEMENTS.** This Agreement shall constitute the entire agreement between the parties and is binding upon and inures to the benefit of the Prosecutor's successors, heirs at law and executors. This Agreement supersedes any and all prior agreements between the parties.

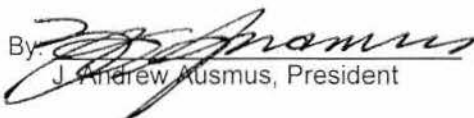
11. **SEVERABILITY.** If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement shall be deemed severable, shall not be affected, and shall remain in full force and effect.
12. **AMENDMENTS.** The terms and conditions of this Agreement may be modified only by the mutual written consent of the Prosecutor and the City Council.
13. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Gilpin County, Colorado.
14. **NO WAIVER.** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.
15. **NO WAIVER OF GOVERNMENTAL IMMUNITY.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
16. **PARAGRAPH CAPTIONS.** The captions of the paragraphs are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

**IN WITNESS WHEREOF,** the City has caused this Agreement to be signed and executed on its behalf and the Prosecutor has signed and executed this Agreement, both in duplicate, as of the day and year first above written.

**CITY OF CASTLE PINES NORTH, COLORADO**

By:   
Maureen Shul, Mayor

**AUSMUS LAW FIRM, P.C.**

By:   
J. Andrew Ausmus, President

**ATTEST:**

By:   
Carl Kollmar, Deputy City Clerk

**APPROVED AS TO FORM:**

By:   
Linda C. Michow, City Attorney