

RESOLUTION NO. 10-39

INTRODUCED BY:

Councilperson Hamilton-Bruer

Councilperson Gilbert

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF CASTLE PINES NORTH, COLORADO  
APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH IMS  
INFRASTRUCTURE MANAGEMENT SERVICES, LLC FOR COMPLETION  
OF A PAVEMENT CONDITION DATA ASSESSMENT  
AND RECOMMENDATIONS ANALYSIS**

WHEREAS, the City is authorized to enter into contracts for the performance of general municipal governance and services; and

WHEREAS, the City desires to contract with IMS Infrastructure Management Services, LLC to have certain professional services, including completion of a pavement condition data assessment and a recommendations analysis, performed.

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

**Section 1.** The City Council hereby (a) approves and ratifies the Professional Services Agreement Between the City and IMS Infrastructure Management Services, LLC, attached hereto as Exhibit A ("Agreement"), including all exhibits thereto, (b) authorizes the Mayor and the City Attorney to make such changes as may be needed to correct any nonmaterial errors or language or to negotiate such changes to the Agreement as may be appropriate that do not substantially increase the obligations of the City, and (c) authorizes the Mayor to execute the same on behalf of the City with the approval of the City Attorney.

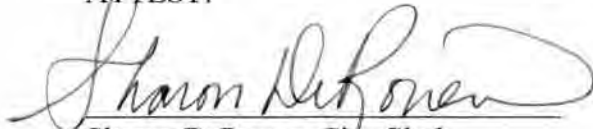
**Section 2.** If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining issues of this Resolution.

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

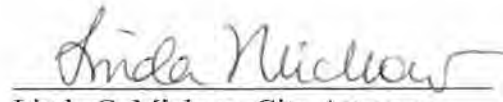
INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH by a vote of six (6) in favor and none against this 27<sup>th</sup> day of April, 2010.

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

ATTEST:

  
Sharon DeRouen, City Clerk

APPROVED AS TO FORM:

  
Linda C. Michow, City Attorney

**EXHIBIT A**  
**PROFESSIONAL SERVICES AGREEMENT**  
**IMS INFRASTRUCTURE MANAGEMENT SERVICES, LLC**

## PROFESSIONAL SERVICES AGREEMENT

### CASTLE PINES NORTH AND IMS INFRASTRUCTURE MANAGEMENT SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT ("*Agreement*") is made and entered into this 27<sup>th</sup> day of APRIL, 2010, ("*Effective Date*") by and between the CITY OF CASTLE PINES NORTH, a Colorado municipal corporation (the "*City*"), and IMS INFRASTRUCTURE MANAGEMENT SERVICES, LLC, an Arizona limited liability company (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 City desires to have performed certain professional services including a pavement condition data assessment and recommendations analysis; and

**WHEREAS**, the Consultant represents that the Consultant has the skill, ability, and expertise to perform the services described in this Agreement and within the deadlines provided by the 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:** The City Director of Public Works, (the "*City Authorized Representative*"), is designated as Authorized Representative 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 Fred Stephenson (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 Authorized Representative. The Parties anticipate that the Consultant shall complete the Services within ninety (90) days of the Effective Date.

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 City Authorized Representative 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 by 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 a fee in accordance with the fee proposal set forth in page 3 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 Eighteen Thousand Five Hundred Dollars (\$18,500.00). The City and Consultant may mutually agree, however, to extend the scope of Services, in which case the Consultant and City may amend this Agreement to include such additional services and compensation based on the agreed upon fee for such additional services.

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 invoices 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**. With each invoice, to the extent possible, the Consultant shall submit an activity service report detailing the Services provided in accordance with **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 December 31, 2010, unless earlier terminated by the terms of this Agreement. This Agreement may be renewed or extended by mutual agreement of the Parties signed in writing by the City Authorized Representative and the Consultant Authorized Representative. This Agreement and/or any extension of its original term 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. At a minimum, Consultant shall maintain Commercial General Liability Insurance Coverage in an amount of One Million Dollars (\$1,000,000.00), Automobile Liability Coverage in an amount of One Million Dollars (\$1,000,000.00), and Consultant shall maintain such coverage for at least two (2) years from the termination of this Agreement and Consultant's insurance shall provide that the insurer will give the City a minimum of thirty (30) calendar days written notice prior to the cancellation or material modification of any policy of insurance obtained to comply with this Section 8. The Consultant shall be solely responsible for any insurance deductible. The Consultant'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 Consultant 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 Representative, 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 Authorized Representative, 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 Representative, the City Treasurer, 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 and data collected by Consultant as identified in **Exhibit A**, upon 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:	Mayor of the City of Castle Pines North 7501 Village Square Drive, Suite 100 Castle Pines North, CO 80108
with a copy to:	Widner Michow & Cox LLP City Attorney for Castle Pines North 13313 E. Arapahoe Rd., Suite 100 Centennial, CO 80112 Facsimile (303) 754-3395
To the Consultant:	IMS Infrastructure Management Services Attn: Fred Stephenson 1820 W. Drake Dr. Suite 108 Tempe, AZ 85283

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 Representative 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:** [Requirement of Colorado law]. 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 City Authorized Representative and/or the Consultant



Authorized Representatives 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 if performance is unreasonably 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.

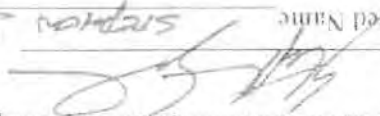
IN WITNESS WHEREOF, the City and the Consultant have executed this Professional Services Agreement as of the above date.

CONSULTANT:

IMS INFRASTRUCTURE MANAGEMENT SERVICES

L.L.C., an Arizona limited liability company

BY:



Printed Name

Stephen Smith

Title

Member/Manager

DATE:

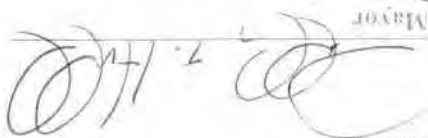
04-30-10

CITY:

CITY OF CASTLE PINES NORTH, a Colorado municipal

corporation

BY:



Mayor

DATE:

4-30-10

APPROVED AS TO LEGAL FORM:



City Attorney

DATE:

4/30/10