

RESOLUTION NO. 11-21

INTRODUCED BY:

Mayor Huff

Councilperson Shul

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES, COLORADO
APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH
GROUND FLOOR MEDIA, INC. FOR PROVISION OF COMMUNICATIONS
SERVICES TO THE CITY OF CASTLE PINES**

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 desires to contract with Ground Floor Media (the "Consultant") to have the Consultant provide communications services to the City of Castle Pines; and

WHEREAS, the Consultant has submitted an initial proposal to the City to provide communications services to the City for fees and expenses not to exceed Forty-Four Thousand Dollars (\$44,000.00) for services performed from March 2011 to December 31, 2011.

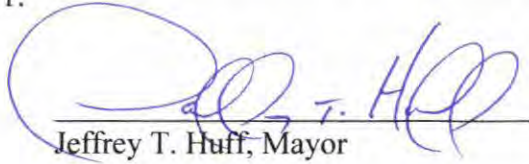
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, THAT:

Section 1. The City Council hereby (a) approves the Professional Services Agreement between the City and the Consultant, in substantially the form attached hereto as **Exhibit A** (the "Agreement"), (b) authorizes 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.

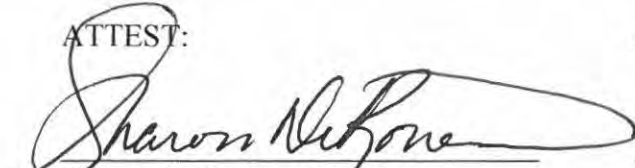
Section 2. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining issues of this Resolution.

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 by a vote of five (5) in favor, none against and two (2) absent this 8th day of March, 2011.


Jeffrey T. Huff, Mayor

ATTEST:


Sharon DeRouen, City Clerk

APPROVED AS TO FORM:


Linda C. Michow, City Attorney

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF CASTLE PINES AND GROUND FLOOR MEDIA, INC.

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 9TH day of March, 2011, ("Effective Date") by and between the CITY OF CASTLE PINES, a Colorado municipal corporation (the "City"), and GROUND FLOOR MEDIA, 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 City desires to retain the Consultant to provide communications services to the City; and

WHEREAS, the Consultant represents 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: The City Manager (or Interim City Manager, as applicable) **and City Council Communications Committee** (the "City Authorized Representative"), is designated as the City 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 Ramonna Robinson (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. As set forth in Section 3, below, it is currently anticipated that the Consultant will initially be retained by the City through December 31, 2011.

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

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 Professional Liability Insurance Coverage (errors and omissions 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 nonperformance 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

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

CITY: CITY OF CASTLE PINES, a Colorado municipal corporation

BY: _____
Jeffrey T. Huff, Mayor

DATE: _____

ATTEST:

Sharon DeRouen, City Clerk

DATE: _____

APPROVED AS TO LEGAL FORM:

Linda C. Michow, City Attorney

DATE: _____

Estimated Budget:

Monthly Newsletter	16 hours/month	\$2,560
News and Notes Emails	4 hours/month	\$640
Strategic Counsel/Account Management	5 hours/month	\$800
10% Out-of-Pocket Expense Fee		\$400
Monthly Total		\$4,400
Project Total		\$44,000

GroundFloor Media will work within a \$4,400 monthly budget. This budget will cover public relations labor as outlined above and a 10 percent out-of-pocket expense fee. Any items that fall outside of this Scope of Work will be discussed with the client in advance and approved via a separate Scope of Work and amendment to the Agreement, as approved by City Council.

Charges for the services of GroundFloor Media's professional staff will be based on a standard government/non-profit hourly rate of \$160. During normal business hours, GroundFloor Media charges clients this standard hourly rate for all work, including crisis/issues management. When activated by the client to respond to crisis situations/issues after hours (weekdays from 6 p.m. to 6 a.m.) and on weekends (6 p.m. Friday through 6 a.m. Monday), GroundFloor Media charges a crisis activation rate of \$200 per hour.

\$44,000 is a total, not-to-exceed budget based on GroundFloor Media's best estimates given the information provided at the time of the proposal.