

PUBLIC CONTRACT FOR SERVICES

THIS AGREEMENT ("Agreement") is made and entered into this 17th day of November, 2010, by and between the **BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO** (the "County"), and The Capstone Group, LLC, a Limited Liability Company, authorized to do business in Colorado (the "Consultant").

RECITALS

WHEREAS, the County is undertaking certain activities for legislative representation of Douglas County on water, human services, and economic development for the 2011 legislative session; and

WHEREAS, the County desires to engage the Consultant to render certain professional services and assistance in connection with such undertakings of the County; and

WHEREAS, the Consultant has the ability to assist the County through its professional expertise, knowledge, and experience and is ready, willing and able to provide such services, subject to the conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the parties agree as follows:

1. LINE OF AUTHORITY: Wendy Holmes, Public Affairs Director, (the "Authorized Representative"), is designated as Authorized Representative of the County for the purpose of administering, coordinating and approving the work performed by the Consultant under this Agreement.

2. SCOPE OF SERVICES: All services described in Exhibit A, attached hereto and incorporated herein, shall be performed by Consultant.

The County may, from time to time, request changes to the scope of services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, which are mutually agreed upon between the County and Consultant, shall be in writing and shall become part of this Agreement upon execution.

The Consultant agrees to diligently and professionally perform all the services described herein in a manner satisfactory to the Authorized Representative. It is also understood and agreed that the Consultant shall not, in performing services hereunder, undertake any action or activity prohibited by the terms of any lease, permit, license or other agreement in effect during the term hereof between the Consultant and the County for the use and occupancy by the Consultant of any County facilities or space.

3. COMPENSATION: Subject to the maximum contract liability and all other provisions of this Agreement, the County agrees to pay to the Consultant, and the Consultant agrees to accept payment as described in Exhibit B, attached hereto and incorporated herein, during the term hereof, in accordance with the terms set forth herein.

4. MAXIMUM CONTRACT EXPENDITURE: Any other provision of this Contract notwithstanding and pursuant to Section 29-1-110, C.R.S., the amount of funds appropriated for this Contract is Forty Thousand Dollars (\$40,000.00) for fiscal year 2011. In no event shall the County be liable for payment under this Contract for any amount in excess thereof. The County is not under obligation to make any future apportionment or allocation to this Contract nor is anything set forth herein a limitation of liability for Consultant. Any potential expenditure for this Contract outside the current fiscal year is subject to future annual appropriation of funds for any such proposed expenditure.

5. TERM: It is mutually agreed by the parties that the term of this Agreement shall commence as of 12:01 a.m. on January 1, 2011, and terminate at 12:00 a.m. on December 31, 2011. (This Agreement, at the option of the County, may be renewed for one (1) successive terms, if notice is given to the Consultant by the County on or before 1st of December of the current term. This Agreement and/or any extension of its original term shall be contingent upon annual funding being appropriated, budgeted and otherwise made available for such purposes and subject to the County's satisfaction with all products and services received during the preceding term.

6. INVOICING PROCEDURES: Payments shall be made to the Consultant based upon invoices submitted by the Consultant, provided such invoices have been approved by the Authorized Representative. Payments will be made to the Consultant within thirty (30) days, or within a mutually agreed upon period after County has received complete invoices from the Consultant. The County reserves the right to require such additional documentation, including monthly activity reports detailing the Consultant's activities and services rendered, as the County deems appropriate to support the payments to the Consultant. The signature of an officer of the Consultant shall appear on all invoices certifying that the invoice has been examined and found to be correct.

7. CONFLICT OF INTEREST: The Consultant agrees that no official, officer or employee of the County shall have any personal or beneficial interest whatsoever in the services or property described herein, and the Consultant further agrees not to hire, pay, or contract for services of any official, officer or employee of the County. 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 County.

8. INDEMNIFICATION: The County 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 for any purpose whatsoever. The Consultant shall defend,

indemnify and hold harmless the County, its commissioners, officials, officers, directors, agents, and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including workers' compensation claims, in any way resulting from or arising from this Agreement; provided, however, that the Consultant need not indemnify or save harmless the County, its officers, agents and employees from damages resulting from the sole negligence of the County's commissioners, officials, officers, directors, agents, and employees.

9. INDEPENDENT CONTRACTOR: The Consultant is an independent contractor and is free to perform services for other clients. Notwithstanding any provision of this Agreement, all personnel assigned by the Consultant to perform work under this Agreement shall be and remain at all times, employees of the Consultant for all purposes. THE INDEPENDENT CONTRACTOR IS NOT ENTITLED TO WORKERS' COMPENSATION OR UNEMPLOYMENT BENEFITS THROUGH THE COUNTY AND IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONIES EARNED PURSUANT TO THE CONTRACT RELATIONSHIP.

10. ILLEGAL ALIENS: If Consultant has any employees or subcontractors, the Consultant shall comply with §8-17.5-101, *et seq.* C.R.S., regarding Illegal Aliens - Public Contracts for Services, and this Agreement. By execution of this Agreement, the Consultant certifies that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that the Consultant will participate in either the E-Verify Program or Department Program in order to confirm the eligibility of all employees who are newly hired for employment to perform work under this Agreement.

A. Consultant shall not:

- (i) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
- (ii) Enter into a contract with a subcontractor that fails to certify to the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

B. The Consultant has confirmed the employment eligibility of all employees who are newly hired for employment to perform Work under this Agreement through participation in either the E-Verify Program or Department Program.

C. The Consultant shall not use either the E-Verify Program or Department Program to undertake pre-employment screening of job applicants while this Agreement is in effect.

D. 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:

- (i) Notify the subcontractor and the County within three (3) days that the Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

- (ii) Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to the preceding sub-subparagraph of this subparagraph, the subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

E. The Consultant shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in §8-17.5-102(5), C.R.S.

F. If the Consultant violates this provision of this Agreement, the County may terminate the Agreement for a breach of contract. If the Agreement is so terminated, the Consultant shall be liable for actual and consequential damages to the County as required by law.

G. The County will notify the Office of the Secretary of State if the Consultant violates this provision of this Agreement and the County terminates the Agreement for such breach.

11. NO WAIVER OF GOVERNMENTAL IMMUNITY ACT: The parties hereto understand and agree that the County, its commissioners, officials, officers, 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., or otherwise available to the County.

12. ASSIGNMENT: The Consultant covenants and agrees that it will not assign or transfer its rights hereunder, or subcontract any work hereunder, either in whole or in part without the prior written approval of the Authorized Representative. Any attempt by the Consultant to assign or transfer its rights hereunder shall, at the option of the Authorized Representative, void the assignment or automatically terminate this Agreement and all rights of the Consultant hereunder.

13. COUNTY REVIEW OF RECORDS: The Consultant agrees that, upon request of the Authorized Representative, at any time during the term of this Agreement, or three (3) years thereafter, it will make full disclosure to the County and make available for inspection and audit upon request by the Authorized Representative, the County Director of Finance, or any of their authorized representatives, all of its records associated with work performed under this Agreement for the purpose of making an audit, examination or excerpts. The Consultant shall maintain such records until the expiration of three (3) years following the end of the term of this Agreement.

14. OWNERSHIP OF DOCUMENTS: Drawings, specifications, guidelines and any other documents prepared by the Consultant in connection with this Agreement shall be the property of the County.

15. ASSIGNMENT OF COPYRIGHTS: The Consultant assigns to the County the copyrights to all works prepared, developed, or created pursuant to this Agreement, including the right to: 1) reproduce the work; 2) prepare derivative works; 3) distribute copies to the public by sale, rental, lease, or lending; 4) perform the works publicly; and 5) to display the work publicly. The Consultant waives its rights to claim authorship of the works, to prevent its name from being used wrongly in connection with the works, and to prevent distortion of the works.

16. TERMINATION: The County 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) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies and reports prepared by the Consultant pursuant to this Agreement shall become the County'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 County for damages sustained by the County by virtue of any breach of the Agreement by the Consultant.

17. 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:

by the Consultant to: Wendy Holmes, Public Affairs Director
100 Third Street
Castle Rock, CO 80104
303-660-7401
Facsimile: 303-688-1293
Email: wholmes@douglas.co.us

with a copy to: Douglas County Attorney's Office
100 Third Street
Castle Rock, CO 80104
(303) 660-7414

and by the County to: Attn: Mary Marchun
The Capstone Group, LLC
1410 Grant Street Suite B303
Denver, CO 80203
Telephone: (303) 860-0555
Facsimile: (303) 863-8207
E-mail: mmarchun@capstonegroupllc.com

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 Authorized Representative. Mailed notices shall be deemed effective upon receipt or three (3) 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.

18. 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.

19. 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.

20. 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 County and shall commit no trespass on any public or private property in the performance of any of the work embraced by this Agreement.

21. 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. 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.

22. 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 County 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.

23. PRIORITY OF PROVISIONS: In the event that any terms of this Agreement and any Exhibit, attachment, or other referenced document are inconsistent, the following order of priority shall control:

- 1st This Agreement, Sections 1 through 27
- 2nd Request for Proposal (if applicable)

- 3rd Exhibit C- Insurance Requirements
- 4th Exhibit A- Scope of Services
- 5th Exhibit B- Method of Payment
- 6th Response to Request for Proposal (if applicable).

24. 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.

25. ENTIRE AGREEMENT: The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any commissioner, 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 Authorized Representative, shall be valid unless they are contained in writing and executed by all the parties with the same formality as this Agreement.

26. INSURANCE: The Consultant shall be required to maintain the insurance requirements provided in Exhibit C, attached hereto and incorporated herein by reference. The Consultant shall provide evidence that such requirements have been met and shall provide updated information to the County in the event any changes are made to the Consultant's insurance coverage during the term of this Agreement.

27. COUNTY EXECUTION OF AGREEMENT: This Agreement is expressly subject to, and shall not be or become effective or binding on the County, until execution by all signatories of the County.

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

(INSERT FULL NAME OF CONSULTANT)

BY: *Mary E. Marchin*

ATTEST: (if a corporation)

Printed Name Mary E. Marchin

Title: Partner

Title: _____

DATE: 4/19/2010

Signature of Notary Public Required:

STATE OF COLORADO)

)

ss.

COUNTY OF DENVER)

)

The foregoing instrument was acknowledged before me this 19TH day of NOVEMBER, 20 10, by MARY MARCHUN.

Witness my hand and official seal



Notary Public

My commission expires: 12/02/2013



**BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS**

BY: 
Douglas J. DeBord, County Manager

DATE: 12/9/12

APPROVED AS TO FISCAL CONTENT:



Andrew Copland
Director of Finance

DATE: 12/8/10

APPROVED AS TO LEGAL FORM:



Senior Assistant County Attorney

DATE: 11/30/2010

Exhibit A
SCOPE OF SERVICES

Proposed services, for January – December 2011 will include, but not limited to, the following;

- Develop and direct Douglas County Commissioners position on 2011 water, economic development, and human services legislation;
- Advise, confer, and participate in the passage or defeat of key legislation as determined, and advise Douglas County on strategy that should be followed to reach desired results;
- Work with coalitions as appropriate to advocate for passage of legislation;
- Represent Douglas County's position on matters of interest to the County with members of the General Assembly, Governor's Office, Executive Branch Cabinet members and agencies;
- Assist in planning of special events with legislators and other key policy makers when appropriate;
- Develop and grow key relationships with other stakeholders engaged in policy areas in our purview, policy makers, members of the General Assembly, and the Executive Branch on behalf of Douglas County.
- Attend/participate in weekly Douglas County joint lobbyist meeting/conference call to review and update Douglas County staff and Commissioners on actions taken at the Capitol and anticipated actions for forthcoming week or weeks.
- Available to be back up lobbying assistance for Mr. Clayton and Mr. Lombard on issues in their purview.

Any post-legislative session work on behalf of Douglas County by this consultant will be negotiated separately and would be included as an amendment to this agreement.

Exhibit B
METHOD OF PAYMENT

Douglas County shall reimburse The Capstone Group, LLC for time spent and reasonable expenses that may be incurred as a result of acting on behalf of the County, including postage, parking, printing costs, and travel expenses (mileage, meals, and lodging). Expenses will be invoiced to Douglas County on a monthly basis and shall include only those incurred while conducting Douglas County business. The hourly rate associated with work done behalf of the County is \$75.00 per hour. Any single expense exceeding \$200.00 in any given month will require prior written approval.

Please see Scope of Services above in Exhibit A.

Exhibit C
INSURANCE REQUIREMENTS

Insurance.

1. The Consultant agrees to procure and maintain with insurers with an A- or better rating as determined by Best's Key Rating Guide, at its own expense, the following policies of insurance:

(a) Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement, and Employers' Liability insurance with the following limits:

Workers' Compensation:	Statutory
Employers' Liability:	\$1,000,000

(b) Commercial General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy will be applicable to all premises and operations. The policy will include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy will include coverage for explosion, collapse and underground hazards. The policy will contain a severability of interests provision.

(c) Commercial Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence with respect to each of Consultant's owned, hired and non-owned vehicles assigned to or used in performance of the services. The policy will contain a severability of interests provision.

(d) Professional Liability Insurance Coverage in an amount not less than 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.

2. The required Commercial General Liability and Commercial Automobile Liability policies will be endorsed to include Douglas County as a Certificate Holder and name Douglas County, its officers and employees as additional insureds. The required Workers' Compensation policy will be endorsed to include Douglas County as a Certificate Holder. Douglas County reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

3. The certificates of insurance will be attached to this Agreement as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The completed certificates of insurance and any notices, within 20 days of cancellation, termination, or material change will be sent to:

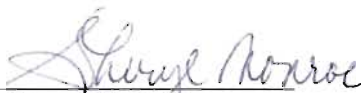
Sheryl D. Monroe
Douglas County
Risk Management
100 Third Street
Castle Rock, Colorado 80104

4. The Consultant will not be relieved of any liability, claims, demands, or other obligations assumed by its failure to procure or maintain insurance, or its failure to procure or maintain insurance in sufficient amounts, durations, or types.

5. Failure on the part of the Consultant to procure or maintain policies providing the required coverages, conditions and minimum limits will constitute a material breach of contract upon which Douglas County may immediately terminate this Agreement.

6. The parties hereto understand and agree that Douglas County is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Sections 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to Douglas County, its officers, or its employees.

Approved by:



Sheryl D. Monroe
Risk Manager