

RESOLUTION NO. 20-32

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, APPROVING AND RATIFYING THE FOURTH AMENDMENT TO AGREEMENT REGARDING FINAL DESIGN AND CONSTRUCTION OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR NEWLIN GULCH BETWEEN INTERSTATE 25 AND RUETER HESS RESERVOIR

WHEREAS, the City of Castle Pines (“City”) is authorized to enter into contracts for lawful purposes for the protection of the health, safety, and welfare of its citizens; and

WHEREAS, C.R.S. § 29-1-203, as amended from time to time, authorizes local governments to cooperate and contract with other governmental entities regarding functions, services and facilities each is authorized to provide; and

WHEREAS, the City and Urban Drainage and Flood Control District (doing business as Mile High Flood District), a special district organized under Title 32 of the Colorado Revised Statutes (“District”), previously entered into an intergovernmental agreement to facilitate the design and construction of drainage and flood control improvements (the “Project”) for the Canyons development within the City’s boundaries (“IGA”), as amended; and

WHEREAS, the developers and owners of the Canyons have agreed, through a separate funding agreement between the Canyons Metropolitan District No. 7 and the City, to fully fund the design and construction of the Project in order to be eligible for maintenance of the drainage and flood control improvement by the District in the future (“Canyons Funding Agreement”); and

WHEREAS, since execution of the IGA, as amended, the estimated cost for the construction of the Project has increased from Three Million Seven Hundred Ninety-Nine Thousand Six Hundred Thirty-Five Dollars and Ninety-Eight Cents (\$3,799,635.98) to Five Million Forty-One Thousand Eight Hundred Twenty-Four Dollars and Ninety-Three Cents (\$5,041,824.93), which necessitates an amendment to the IGA; and

WHEREAS, the Fourth Amendment to the IGA is in the best interests of the City and will facilitate the Project.

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

Section 1. The City Council hereby ratifies and approves the fourth amendment to the IGA with the District for the design and construction of drainage and flood control improvements in the Canyons development as attached hereto as **Exhibit A**, and approved as to form by the City Attorney (the “Amendment”), contingent upon the City’s receipt of funds from the Canyons Metropolitan District No. 7 in an amount necessary to fully fund the Project in accordance with the Canyons Funding Agreement.

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 BY A VOTE OF 6 IN FAVOR AND 0 AGAINST THIS 22ND DAY OF SEPTEMBER, 2020.

DocuSigned by:

Tera Stave Radloff

6E0C8EB279DC479

Tera Stave Radloff, Mayor



ATTEST:

APPROVED AS TO FORM:

DocuSigned by:

Tobi Basile

AD9343B92032498

Tobi Basile, CMC, City Clerk

DocuSigned by:

Linda C. Michow

3241DE99B3FF411

Linda C. Michow, City Attorney

EXHIBIT A

[See attached.]

AMENDMENT TO
AGREEMENT REGARDING
FINAL DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
NEWLIN GULCH BETWEEN INTERSTATE 25 AND RUETER HESS RESERVOIR
CITY OF CASTLE PINES

Agreement No. 17-07.08D
Project No. 106799

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT") and CITY OF CASTLE PINES (hereinafter called "CITY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, PARTIES have entered into "Agreement Regarding Final Design and Construction of Drainage and Flood Control Improvements for Newlin Gulch between Interstate 25 and Rueter Hess Reservoir, City of Castle Pines" (Agreement No. 17-07.08) dated September 12, 2017, as amended; and

WHEREAS, PARTIES now desire to construct drainage and flood control improvements for Newlin Gulch between Interstate 25 and Rueter Hess Reservoir; and

WHEREAS, PARTIES desire to increase the level of funding by \$1,242,188.95; and

WHEREAS, the City Council of CITY and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS is deleted and replaced as follows:

4. PROJECT COSTS AND ALLOCATION OF COSTS

A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:

1. Final design services;
2. Construction of improvements;
3. Contingencies mutually agreeable to PARTIES.

B. It is understood that PROJECT costs as defined above are not to exceed \$5,041,824.93 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>AS AMENDED</u>	<u>PREVIOUSLY AMENDED</u>
1. Final Design	\$ 1,121,077.02	\$ 1,121,077.02
3. Construction	\$ 3,826,747.91	\$ 2,584,558.96
4. Construction Contingency	\$ 94,000.00	\$ 94,000.00
Grand Total	\$ 5,041,824.93	\$ 3,799,635.98

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

- C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Previously Contributed</u>	<u>Additional Contribution</u>	<u>Maximum Contribution</u>
DISTRICT	0.00%	\$ -0-	\$ -0-	\$ -0-
CITY	100.00%	\$3,799,635.98	\$1,242,188.95	\$5,041,824.93
TOTAL	100.00%	\$3,799,635.98	\$1,242,188.95	\$5,041,824.93

- 2. Paragraph 5. MANAGEMENT OF FINANCES is deleted and replaced as follows:

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's one-half share may come from its own revenue sources or from funds received from state, federal, or other sources of funding without limitation and without prior Board approval. Payment of each party's full share (CITY - \$5,041,824.93; DISTRICT - \$-0-) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares; or at CITY

request, CITY share of remaining monies shall be transferred to another special fund held by DISTRICT.

- 3. All other terms and conditions of Agreement No. 17-07.08 shall remain in full force and effect.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year written below.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT
D/B/A MILE HIGH FLOOD DISTRICT

By _____

Name Ken A. MacKenzie

Title Executive Director

Date _____

Checked By

CITY OF CASTLE PINES

By _____

Name _____

Title _____

Date _____