

RESOLUTION NO. 13-27

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES, COLORADO
APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH DOUGLAS
COUNTY LIBRARIES FOR THE CASTLE PINES LIBRARY

WHEREAS, Part 2 of Article 1 of Title 29 of the Colorado Revised Statutes, as amended, authorizes and enables governmental entities within the State of Colorado to enter into cooperative agreements or contracts with one another to provide such functions, services or facilities lawfully authorized to each of them; and

WHEREAS, the City of Castle Pines ("City") and Douglas County Libraries ("Library") desire to jointly participate in the location, construction and operation of a new Castle Pines library to be located on City-owned property legally described as Lot 7, Charter Oaks 4th Amendment ("Property"), within the current business district of the City; and

WHEREAS, the City Council and the Library Board of Directors desire to enter into an intergovernmental agreement to set forth the terms and conditions under which the City agrees to convey the Property to the Library and the Library agrees to construct and operate a new library on the Property.

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

Section 1. The City Council hereby approves the intergovernmental agreement with Douglas County Libraries in substantially the same form as attached hereto as **Exhibit A** and authorizes the Mayor to execute the same.

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, 0 against and 1 absent this 24th day of September, 2013.



Jeffrey T. Huff, Mayor

ATTEST:

Approved as to form:



Diane Spomer, CMC, Deputy City Clerk



Linda C. Michow, City Attorney

EXHIBIT A

**INTERGOVERNMENTAL AGREEMENT
CASTLE PINES LIBRARY**

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is made and entered into this 4th day of November, 2013, ("Effective Date") by and between the City of Castle Pines, Colorado, a Colorado municipal corporation (the "City"), and the Douglas County Libraries, a library district formed in Douglas County pursuant to the provisions of C.R.S. §§ 24-90-101 through 119 (the "Library") (also referred to as "Party" or "Parties").

RECITALS:

- A. C.R.S. § 29-1-203 authorizes the City and the Library as political subdivisions to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide.
- B. The City desires to ensure the long term economic viability of the library located within the boundaries of the City operated by the Library.
- C. To that end, the City has donated Fifty Thousand Dollars (\$50,000.00) to the Library and an additional Fifty Thousand Dollars (\$50,000.00) has been raised through private donations for purposes of maintaining a library in a leased space within the City.
- D. Following the Effective Date of this Agreement, the Library intends to initiate the design of a new Castle Pines library (the "Castle Pines Library").
- E. The Library intends to commence construction of the Castle Pines Library prior to March 31, 2015.
- F. The City desires to ensure that the Castle Pines Library remains within the City as a benefit to the residents of the community.
- G. The Library currently leases space within the City for use as the Castle Pines library, which library has proven to be one of the most-used libraries within the country.
- H. The City and Library desire to jointly participate in the location, construction and operation of a new Castle Pines Library to be located within the current business district of the City.
- I. The City desires to assist the Library in the construction of a new Castle Pines Library through a reduction in building permit fees and timely land use review procedures.
- J. The Library is a passionate advocate for literacy and lifelong learning, and through engagement, education, and entertainment, the Library seeks to transform lives and enhance the community.

K. The City and the Library desire to partner to ensure that the Castle Pines Library will advance the above stated goals of both organizations and will serve as a community and cultural resource that will enhance the quality of life for all residents within the City.

L. The Library has the funds available to design and construct a new library in the City, and the City desires to assist in the construction of the new Castle Pines Library through the donation of certain property legally described as Lot 7, Charter Oaks 4th Amendment, County of Douglas, State of Colorado, and consisting of 0.68 acres more or less ("Property").

M. The City desires to convey the Property to the Library on the terms and conditions set forth in this Agreement to be used to facilitate the construction of the Castle Pines Library. A general description of the Castle Pines Library is attached to this Agreement as **Exhibit A** and is incorporated herein by reference. In recognition of the City's contributions to the Library's efforts to locate and construct the Castle Pines Library, the Castle Pines Library will also include approximately 2,000 square feet of space within the Castle Pines Library for use by the City for uses associated with municipal government including public meeting spaces (flex space), staff offices, and related uses ("City Space").

N. The Library desires to accept the conveyance of the Property to design and construct the Castle Pines Library and City Space on terms and conditions set forth in this Agreement.

O. The construction of the Castle Pines Library will include functions, services and facilities that are mutually beneficial to both the City and the Library.

P. The City and the Library desire to cooperate in the land use planning of the Property to determine the site layout, design and other functionality components of the new Castle Pines Library on the Property.

Q. The City and the Library agree that it is in the best interests of the residents of the City and the Library District to cooperate in the manner set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, and the covenants and promises set forth below, the receipt and sufficiency of which are mutually acknowledged, the City and the Library hereby agree as follows:

1. Submission of Land Use Application for Location and Extent Plan. The City and the Library agree to file a joint land use application to process a location and extent plan for the Property. The City and the Library further agree to cooperate in diligently seeking the approval of the Planning Commission of a site plan for the Property. The location and extent plan shall be processed in accordance with the City's Zoning Ordinance, and the Library shall be subject to all applicable ordinances and regulations of the City provided that building permit fees shall be reduced by fifty percent (50%) in recognition of the partnership between the Library and the City.

2. City Obligations. In the event that the conditions described in Paragraph 1 of this Agreement are satisfied, the City agrees:

- a. To convey a fee simple determinable estate to the Library the Property by special warranty deed (the "Deed"), free and clear of all liens and encumbrances, except

permitted exceptions. The Deed shall be substantially in the form attached to this Agreement as **Exhibit B**, a copy of which is attached hereto and incorporated by this reference. The Parties agree that the Deed shall convey the Library an estate in fee simple determinable, with the City retaining a possibility of reverter, for a period of ten (10) years. The Deed will contain language requiring: (1) that the Library obtain a certificate of occupancy for the Castle Pines Library on or before December 31, 2016; (2) that the Castle Pines Library be owned and operated by the Library for a period of ten (10) years from the date that the certificate of occupancy for the Castle Pines Library is issued by the City; and (3) that the Library lease the City Space to the City for a minimum of ten (10) years at a lease rate not to exceed twelve dollars (\$12.00) per calendar year for the City Space as more fully set forth below. Upon the violation of any of the limiting events set forth above, the estate of the Library in the Property shall automatically terminate. The Deed shall contain language terminating the possibility of reverter following the end of the ten (10) year period. The City agrees to prepare and record, at its expense, a notice of termination of the possibility of reverter in the real property records of Douglas County, Colorado, once the limiting events set forth above have been satisfied by the Library.

- b. Following the Effective Date of this Agreement and the City acquiring fee ownership of the Property, the City Council shall consider an ordinance transferring the Property to the Library, in accordance with C.R.S. § 31-15-713(1)(b). Following the effective date of the Ordinance, and the date on which the City Attorney has approved the form of the Deed, the Mayor shall execute the Deed and the same shall be held in escrow until the condition(s) specified in Paragraph 1 have been satisfied and a building permit for the Castle Pines Library issued. The Deed will be delivered to the Library and the same will be recorded in the real property records of Douglas County, Colorado within three (3) business days following the date on which the Library has been issued a building permit to commence the construction of the Castle Pines Library.
- c. To participate in the selection of the Architect, the design of the Castle Pines Library, and other coordination meetings with the Library and provide timely input into the design of the Castle Pines Library.
- d. To lease the City Space within the Castle Pines Library from the Library for an annual rent of twelve dollars (\$12.00) per calendar year for the full initial ten year term of the Lease. The City and Library shall enter into a separate lease agreement (the "Lease") to set forth the specific terms of the Lease not inconsistent with the terms of this Agreement. The Parties agree that said Lease shall not be recorded, but agree to prepare and record a memorandum of lease which shall acknowledge the right of first refusal created by Paragraph 4 below and shall be recorded in the real property records of Douglas County, Colorado. In no event shall the City be entitled to sublease the City Space and the Lease shall expressly prohibit subleasing.
- e. To reduce applicable building permit fees associated with the construction of the Castle Pines Library by fifty percent (50%).

3. Library Obligations. In the event that the conditions described in Paragraph 1 of this Agreement are satisfied and the City conveys the Property to the Library following the issuance of a building permit for the Castle Pines Library, the Library agrees:

- a. That it has fully budgeted, appropriated and reserved sufficient funds to fully design and construct the Castle Pines Library, including the City Space, to meet the Library's obligations imposed by this Agreement and Article X, Section 20 of the Colorado Constitution.
- b. That it will continue operation of the Castle Pines Library on the Property for a period of not less than ten (10) years following the date on which the certificate of occupancy for the Castle Pines Library is issued.
- c. To design and construct, at its sole cost and expense, the Castle Pines Library generally described in **Exhibit A**, which is attached hereto and incorporated by this reference, and to have the Castle Pines Library open to the public on or before a target date of December 31, 2016. The Castle Pines Library shall include a City meeting/hearing room suitable for public and City meetings and functions ("Community Room") and suitable City Space, as will be agreed upon by both the City and the Library through the design process and the coordination meetings contemplated in Paragraph 2.c. above. The City and Library shall have shared use of the Community Room, provided however, that the City shall be entitled to exclusive use of the Community Room for its regularly scheduled Council meetings (which presently occur on the second and fourth Tuesday of each month), Planning Commission meetings, and Municipal Court proceedings.
- d. To lease the City Space within the Castle Pines Library to the City for an annual rent of twelve dollars (\$12.00) per calendar year for the full initial term of the Lease, being ten (10) years following the date on which the certificate of occupancy is issued on the Castle Pines Library. As set forth in Paragraph 2.d. above, the Parties shall enter into a written Lease. The Lease shall not be recorded, but the Parties agree to prepare and record a memorandum of lease which shall acknowledge the right of first refusal created by Paragraph 4 below and shall be recorded in the real property records of Douglas County, Colorado.

4. Renewal Lease Terms; Right of First Refusal. Prior to the end of the initial ten (10) year Lease term, the Parties agree to confer to determine whether to renew the Lease beyond the initial term. If the Parties agree to renew the Lease, the Parties shall engage a neutral third party with real estate expertise in Douglas County to determine the fair market rental value of the City Space, or otherwise agree to meet and confer in good faith to jointly determine a market lease rate acceptable to the City and the Library. During each renewal term of the Lease, the City shall have a right of first refusal on the Property. The Lease shall contain right of first refusal language acceptable to both Parties. Should the Library seek to accept the terms of any bona fide offer to purchase the Property and improvements thereon during any renewal term of the Lease, the City shall have the right to match said bona fide offer and acquire the Property and improvements thereon from the Library.

5. Expenses of the Castle Pines Library. The Library shall be solely responsible for design costs, all capital expenses for construction and long-term maintenance of the Castle Pines Library, including the replacement of capital improvements and capital equipment. The Library shall be responsible for all expenses associated with the operation, management, and upkeep of the Castle Pines Library, provided that the City shall be responsible for its proportionate share of the operating expenses including common area maintenance, utilities, and installation and use of data lines, arising from the City's use of the City Space and Community Room. The cost sharing arrangement related to the operating expenses associated with the City Space and Community Room shall be set forth in the Lease.

6. Insurance. The City shall obtain and continuously maintain the types, forms and coverages of insurance deemed necessary by the City during its ownership of the Property. Upon conveyance of the Property to the Library, by delivery of the Deed as contemplated above, the Library shall obtain and continuously maintain the types, forms and coverages of insurance deemed necessary by the Library during its ownership of the Property.

7. Joint Vision for the Development of the Property. The City and the Library agree to cooperate in the design and construction of the Castle Pines Library. Through the design and construction of the Castle Pines Library, the Library will ensure that the Castle Pines Library will serve as a valuable community and cultural resource within the City.

8. Term and Termination. This Agreement shall remain effective commencing upon the Effective Date of this Agreement until terminated in accordance with this section. This Agreement may be terminated:

- a. Upon the mutual consent of the Parties in writing explicitly stating that the Agreement shall be terminated;
- b. Upon written notice from the City stating that the City no longer desires use of the City Space and elects to terminate the Agreement; or
- c. Following the tenth (10th) anniversary of the Effective Date of this Agreement and upon not less than sixty (60) days prior written notice provided by the Library delivered to the City that the Library will permanently close the Library.

9. Remedies. The Parties hereto acknowledge and agree that each Party may exercise all rights and remedies in law or in equity, by a decree in specific performance, or such other legal or equitable relief as may be available.

10. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States mail.

To the City:

City of Castle Pines
7501 Village Square Drive, Suite 100

Castle Pines, CO 80108
Attn: Mayor


With copy to: Linda Michow, City Attorney
Widner Michow & Cox LLP
13133 E. Arapahoe Road, Suite 100
Centennial, CO 80112
lmichow@wmcattorneys.com

To the Library: Douglas County Libraries
Attn: Director
100 South Wilcox Street
Castle Rock, CO 80104

11. Appropriation. Pursuant to Section 29-1-110, C.R.S., and except as provided in Paragraph 3(a), any financial obligations of the City and the Library contained herein that are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available on an annual basis.
12. Additional Documents. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this Agreement.
13. Colorado Law. The laws of the State of Colorado shall govern this Agreement. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado and the Parties waive any right to remove any action to any other court, whether state or federal.
14. Separate Entities. The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.
15. 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 Parties, 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. Any beneficiary of the terms and conditions of this Agreement are not intended beneficiaries but are incidental beneficiaries only.
16. No Waiver of Governmental Immunity Act. The Parties hereto understand and agree that the Library, its board members, officials, officers, directors, agents and employees, and the City, its councilmember's, 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, Sections 24-10-101 to 120, C.R.S., or otherwise available to the Library and the City.
17. Entirety. This Agreement merges and supercedes all prior negotiations, representations and agreements between the Parties hereto relating to the subject matter hereof and constitutes the entire agreement between the Parties concerning the subject matter hereof.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto as of the date first written above.

THE CITY OF CASTLE PINES

BY: 
Jeffrey T. Huff, Mayor

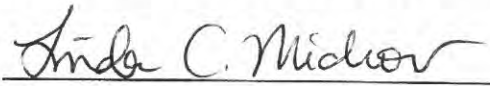
DATE: 11-4-13

ATTEST:


Jaime Edwards
Interim City Clerk

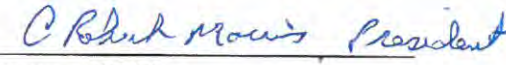
DATE: 11-4-13

APPROVED AS TO LEGAL FORM:


Linda C. Michow
City Attorney

DATE: 11-4-13

DOUGLAS COUNTY LIBRARIES

BY: 
Name and Title

DATE: 10/30/13

ATTEST:

Name
Title

DATE: _____

APPROVED AS TO LEGAL FORM:

Name
Title

DATE: _____

EXHIBIT A

General Description of Castle Pines Library

The Castle Pines Library will be designed and constructed on Lot 7, Charter Oaks 4th Amendment, County of Douglas, State of Colorado, which Property consists of 0.68 acres more or less.

Currently, it is anticipated that the Castle Pines Library will be a two level building and will consist of approximately 9,500 – 12,000 square feet, with community meeting/flex space room(s), a drive-through aisle for Library circulation use, parking, landscaping, and the City Space.

EXHIBIT B

Form of Special Warranty Deed

[ATTACHED]

Following recordation, return to:
Marcus McAskin
Widner, Michow & Cox LLP
13133 E. Arapahoe Road, Suite 100
Centennial, Colorado 80112

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made as of Nov. 4, 2013, between the **CITY OF CASTLE PINES**, a Colorado municipal corporation, whose address is 7501 Village Square Drive, Suite 100, Castle Pines, Colorado 80108 ("Grantor"), and the **DOUGLAS COUNTY LIBRARIES**, a library district formed in Douglas County pursuant to the provisions of C.R.S. §§ 24-90-101 et seq., whose address is 100 South Wilcox Street, Castle Rock, Colorado 80104 ("Grantee").

GRANTOR, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, has sold and conveyed, and by these presents does hereby sell and convey unto the Grantee, its successors and assigns forever, the following real property in the County of Douglas, State of Colorado, to wit, which real property consists of 0.68 acres more or less (the "Property"):

See Exhibit 1 attached hereto and incorporated herein by reference

FOR SO LONG AS: (1) the Grantee commences construction of a new public library of approximately 9,500 -12,000 finished square feet on the Property (the "Castle Pines Library") prior to March 31, 2015; and (2) the Castle Pines Library is owned and operated by Grantee and open to the general public as a public library for a period of ten (10) years following the date on which Grantor issues a certificate of occupancy for the Castle Pines Library; and (3) approximately 2,000 square feet in the Castle Pines Library is leased by Grantee to Grantor for uses associated with municipal government including but not limited to City offices and appurtenant uses (the "City Hall Space") for a maximum rent not to exceed twelve dollars (\$12.00) per calendar year for the City Hall Space for a period of ten (10) years following the date on which Grantor issues a certificate of occupancy for the Castle Pines Library (collectively, the "Limiting Events").

BY THIS SPECIAL WARRANTY DEED, Grantor expressly intends to convey an estate in fee simple determinable to Grantee, which estate shall be automatically terminated by Grantee's failure to adhere to the Limiting Events set forth in (1) – (3) of the preceding paragraph. Grantor intends to retain a possibility of reverter, such that the Property will automatically revert to Grantor if the Grantee fails to fully satisfy the Limiting Events set forth above.

TOGETHER WITH all improvements, easements and appurtenances thereto belonging or in any way appertaining, and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or in equity, of, in and to the Property.

GRANTOR does covenant and agree to and with Grantee to warrant and defend the quiet and peaceful possession of the Grantee, its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof by, through or under Grantor, subject only to all real property taxes and assessments for the year in which this deed is dated, and the matters of record described on Exhibit 2 attached hereto.

EXHIBIT 1

LEGAL DESCRIPTION

LOT 7, CHARTER OAKS 4TH AMENDMENT,
COUNTY OF DOUGLAS,
STATE OF COLORADO.

Property Address: N/A (Vacant Land, City of Castle Pines, Douglas County, Colorado).

Douglas County Assessor's Office Identification Number: 2351-030-01-006. Property consists of 0.68 acres, more or less.

EXHIBIT B to Intergovernmental Agreement
(Castle Pines Library)

EXHIBIT 2

EXCEPTIONS TO TITLE