

RESOLUTION NO. 21-47

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES, COLORADO APPROVING AN
AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY AND NORTH PINE VISTAS METROPOLITAN
DISTRICT NOS. 1-3**

WHEREAS, a Combined Service Plan for North Pine Vistas Metropolitan District Nos. 1-3 (the “Districts”) was approved by the City Council for the City on August 23, 2011, and amended by that First Amendment to the Consolidated Service Plan for North Pine Vistas Metropolitan District Nos. 1-3 approved by the City Council on October 11, 2016, (the “Service Plan”); and

WHEREAS, at the time the City approved the Service Plan, it was anticipated that all water, wastewater and sanitary sewer infrastructure would be dedicated to Castle Pines North Metropolitan District or to the City for ownership, ongoing operation and maintenance; certain storm drainage, landscaping, and traffic and safety protection infrastructure would be dedicated to the City; and the Districts would own, operate, and maintain facilities not otherwise dedicated to or owned by the City or other appropriate entity; and

WHEREAS, in an effort to reduce duplication, overlapping, and fragmentation of the functions and facilities of special districts within the City, increase efficiency of operation and reduce costs, the City now desires to own, operate and maintain certain public improvements within the Districts or benefitting those residing within the Districts’ service area boundary, which public improvements include, but are not limited to streets, safety protection improvements, trails, parks and recreation, open space, landscaping, and storm drainage improvements (as further described in Section 3.01, the “City Maintained Improvements”); and

WHEREAS, in accordance with the terms of the Service Plan, the City and the Districts entered into that certain Intergovernmental Agreement for North Pine Vistas Districts Nos. 1-3 dated November 1, 2012, as amended (“Service Plan IGA”); and

WHEREAS, the Districts and the City also entered into that certain Intergovernmental Agreement Concerning Annual Contribution for Right-of-Way and Storm Sewer Maintenance dated as of October 11, 2016 (the “Prior Mill Levy Contribution IGA”), pursuant to which the Districts agreed to make annual contributions to the City derived from a mill levy of 5 mills imposed on taxable property within the Districts to defray the City’s operation and maintenance costs associated with certain landscaping, storm sewer, and drainage improvements; and

WHEREAS, the City and Districts desire to enter into an amended and restated intergovernmental agreement to memorialize the Districts’ obligation to contribute on an annual basis toward defraying the City’s costs associated with the City Maintained Improvements in addition to those funding obligations of the Districts set forth in the Prior Mill Levy Contribution IGA which funding obligations are confirmed and restated in the amended and restated agreement, attached hereto as **Exhibit A** (“Amended and Restated Agreement”); and

WHEREAS, pursuant to the Amended and Restated Agreement, the Districts have agreed to impose and certify an ad valorem mill levy in each year commencing in calendar year 2022 (for collection and remittance to the City in calendar year 2023) to cover the costs borne by the City in owning, maintaining and operating the City Maintained Improvements (the “City Operations Mill Levy”); and

WHEREAS, the Constitution of Colorado, Article XIV, Section 18(2)(a), provides that the Constitution shall not be construed to prohibit the state or any of its political subdivisions in cooperating and contracting with one another; and

WHEREAS, § 29-1-201, C.R.S., as amended, permits and encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

WHEREAS, § 29-1-203, C.R.S., as amended, authorizes the Parties to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide; and

WHEREAS, the City Council finds it is in the best interests of the citizens of the City to enter into an Intergovernmental Agreement with the Districts, in substantially the form attached to this Resolution for the purpose of assigning the relative rights and responsibilities between the City and the Districts with respect to certain functions, operations, and obligations.

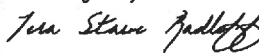
THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, THAT:

Section 1. The City Council hereby: (a) approves the Amended and Restated Intergovernmental Agreement between the City of Castle Pines, Colorado and the North Pine Vistas Metropolitan District Nos. 1-3 in substantially the form attached hereto as **Exhibit A**; (b) authorizes the City Attorney, in consultation with the City Manager, to make such non-material changes that do not increase the obligations of the City; and (c) authorizes the Mayor to execute the Amended and Restated Agreement in final form.

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 7 in favor and 0 against this 12th day of October, 2021.

DocuSigned by:



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Tera Stave Radloff, Mayor

ATTEST:

DocuSigned by:
Tobi Duffey
AD83A3B02092499...
Tobi Duffey, CMC, City Clerk

APPROVED AS TO FORM:

DocuSigned by:
Linda C. Michow
5241DE008FF444...
Linda C. Michow, City Attorney



EXHIBIT A
AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF CASTLE PINES, COLORADO AND THE NORTH PINE VISTAS
METROPOLITAN DISTRICT NOS. 1-3

**AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF CASTLE PINES, COLORADO AND
NORTH PINE VISTAS METROPOLITAN DISTRICT NOS. 1-3**

THIS AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT, including the exhibits attached and incorporated by reference (the “**Agreement**”) is made and entered into by and between the **CITY OF CASTLE PINES**, a home rule municipal corporation of the State of Colorado (the “**City**”), and **NORTH PINE VISTAS METROPOLITAN DISTRICT NOS. 1-3**, quasi-municipal corporations and political subdivisions of the State of Colorado (collectively, the “**Districts**”). The City and the District may each be referred to in this Agreement as a “**Party**” and collectively as the “**Parties**.” This Agreement shall be effective on the date of mutual execution hereof by the Parties (the “**Effective Date**”).

RECITALS

WHEREAS, the Combined Service Plan for North Pine Vistas Metropolitan District Nos. 1-3 was approved by the City Council for the City (the “**City Council**”) on August 23, 2011, and amended by that First Amendment to the Consolidated Service Plan for North Pine Vistas Metropolitan District Nos. 1-3 approved by the City Council on October 11, 2016, (the “**Service Plan**”); and

WHEREAS, at the time the City approved the Service Plan, it was anticipated that all water, wastewater and sanitary sewer infrastructure would be dedicated to Castle Pines Metropolitan District or to the City for ownership, ongoing operation and maintenance, certain storm drainage, landscaping, and traffic and safety protection infrastructure would be dedicated to the City, and the Districts would own, operate, and maintain facilities not otherwise dedicated to or owned by the City or other appropriate entity; and

WHEREAS, in an effort to reduce duplication, overlapping, and fragmentation of the functions and facilities of special districts within the City, increase efficiency of operation and reduce costs, the City now desires to own, operate and maintain certain public improvements within the Districts or benefitting those residing within the Districts’ service area boundary, which public improvements include, but are not limited to streets, safety protection improvements, trails, parks and recreation, open space, landscaping, and storm drainage improvements (as further described in Section 3.01, the “**City Maintained Improvements**”); and

WHEREAS, in accordance with the terms of the Service Plan, the City and Districts entered into that certain Intergovernmental Agreement for North Pine Vistas Districts Nos. 1-3 dated November 1, 2012, as amended by that certain First Amendment to the Intergovernmental Agreement effective May 1, 2014 and by that certain Second Amendment dated October 13, 2016 (“**Service Plan IGA**”); and

WHEREAS, the Districts and the City entered into that certain Intergovernmental Agreement Concerning Annual Contribution for Right-of-Way and Storm Sewer Maintenance dated as of October 11, 2016 (the “**Prior Mill Levy Contribution IGA**”), pursuant to which the

Districts agreed to make annual contributions to the City derived from a mill levy of 5 mills imposed on taxable property within the Districts to defray the City's operation and maintenance costs associated with certain landscaping, storm sewer, and drainage improvements; and

WHEREAS, the Parties desire to enter into this Agreement to memorialize the Districts' obligation to contribute on an annual basis toward defraying the City's costs associated with the City Maintained Improvements in addition to those funding obligations of the Districts set forth in the Prior Mill Levy Contribution IGA which funding obligations are confirmed and restated in this Agreement; and

WHEREAS, the Districts will agree to impose and certify an ad valorem mill levy in calendar year 2022 for collection and remittance to the City in calendar year 2023 or such time as the City has finally accepted the City Maintained Improvements for operation and maintenance (as further described in Section 2.02, the "**City Operations Mill Levy**"); and

WHEREAS, the Districts' electoral authorizations described herein permit the execution and performance of this Agreement by the Districts; and

WHEREAS, prior voter authorization for annual tax increases, multiple-fiscal year contractual obligations, and levy of ad valorem taxes was approved at the Districts' elections held on November 1, 2011 (collectively, the "**Elections**"), as required by Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the Constitution of Colorado, Article XIV, Section 18(2)(a), provides that the Constitution shall not be construed to prohibit the state or any of its political subdivisions in cooperating and contracting with one another; and

WHEREAS, § 29-1-201, C.R.S., as amended, permits and encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

WHEREAS, § 29-1-203, C.R.S., as amended, authorizes the Parties to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide; and

WHEREAS, the Parties have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Agreement; and

WHEREAS, the Parties desire to enter into this Agreement in order to set forth their mutual understanding and responsibilities regarding the City Operations Mill Levy and to restate their mutual obligations set forth in the Service Plan IGA and the Prior Mill Levy Contribution IGA, and fully incorporate said obligations into this Agreement.

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby covenant and agree as follows:

AGREEMENT

**ARTICLE I
DISTRICT OBLIGATIONS AND COVENANTS**

Section 1.01 Electoral Authorization; Payment Obligation; City Operations Mill Levy.

(a) Electoral Authorization. The Districts represent and warrant that prior voted authorization for annual tax increases, multiple-fiscal year contractual obligations, and the levy of ad valorem taxes was approved at the Elections as required by Article X, Section 20 of the Colorado Constitution, and that the performance by the Districts of the terms of this Agreement requires no further electoral authorization. In the event a court of competent jurisdiction determines that this Agreement constitutes a violation of the Colorado Constitution or any State law in any manner, the Districts agree they shall take such action as is necessary to obtain additional electoral authorization at the earliest practicable date to cure any constitutional or legal defect, and that until the Districts have obtained such additional electoral authorization as may be necessary, the City shall be permitted to exercise any and all remedies under this Agreement.

(b) Payment Obligation. The obligations (collectively, the “**City Operations Mill Levy Obligation**”) of the Districts to impose the City Operations Mill Levy and remit to the City any and all revenues therefrom (the “**Operations Revenue**”) shall be payable solely from Operations Revenue of the Districts. The Districts shall pay the Operations Revenue to the City to secure the City Operations Mill Levy Obligation. The Districts covenant not to incur any indebtedness or obligations of any kind that would constitute a lien or claim on or to the City Operations Mill Levy or the Operations Revenue. Failure to pay the City Operations Mill Levy by the District shall constitute a default under this Agreement by the District subject to the remedies set forth in Section 5.02(a) and Section 5.02(b).

(c) Covenant to Impose City Operations Mill Levy. In exchange for the City's operation and maintenance of the City Maintained Improvements, the Districts hereby covenant as follows:

(i) Commencing in tax certification year 2022, the Districts agree to annually impose the City Operations Mill Levy in the amount calculated as set forth in **Exhibit A**, attached hereto and incorporated herein by this reference. The Districts shall remit any and all revenues from resulting from the imposition of the City Operations Mill Levy net of the collection fee imposed by the Douglas County Treasurer (the “**Operations Revenue**”) to the City no later than thirty (30) days after receipt of the same. The Operations Revenue shall be used solely for the upkeep, operation, maintenance, repair and replacement of the City Maintained Improvements. The failure of the Districts to impose the City Operations Mill Levy or to remit the Operations Revenue to the City in accordance with the terms of this Section will constitute a material breach of the terms of this Agreement.

(ii) The sums required to make the Operations Revenue payments due hereunder are hereby appropriated by the Districts' Boards of Directors for that purpose, and said

sums for each year of the Term (as defined in Section 7.01 below) shall be included in the annual budgets and appropriation resolutions to be adopted or passed by the Districts' Boards of Directors for each such year. For each year of the Term, it shall be the duty of the Districts to include the City Operations Mill Levy and the Operations Revenue in the draft budget of each District prepared and presented to the Districts' Boards of Directors on or before the October 15 deadline set forth in C.R.S. § 29-1-105.

(iii) It shall be the duty of the Districts' Boards of Directors, for each year of the Term, at the time and in the manner provided by law for levying other taxes of the Districts, to ratify and carry out the provisions of this Section 1.01 with reference to the levying of the City Operations Mill Levy; and the Districts' Boards of Directors shall levy and certify said taxes in the manner provided by law for the purposes described herein.

(iv) The Districts' Boards of Directors shall take all reasonably necessary and proper steps to ensure that the City Operations Mill Levy is levied, assessed, collected, and enforced by the Douglas County Treasurer at the same time and in the same form and manner and with like interest and penalties as other general taxes in the State of Colorado, and that, when collected, the Douglas County Treasurer promptly pays the Operations Revenue to the respective District.

(v) In the event any ad valorem taxes are not paid when due, the Districts shall diligently cooperate with the Douglas County Treasurer to enforce the lien of such unpaid taxes against the property for which the taxes are owed.

(d) Any violation by a District of this Section 1.01 shall constitute a material breach of this Agreement and a violation of such District's obligation under Section 4-4-150 of the Castle Pines Municipal Code and § 32-1-207, C.R.S., as such code and statutory provisions may be amended from time to time; in addition to the remedies set forth in this Agreement, the City may exercise any and all remedies available to it under the Castle Pines Municipal Code and §§ 32-1-101 *et seq.*, C.R.S. (the "Special District Act").

Section 1.02 Additional Covenants and Obligations.

(a) Covenant not to Exclude. No District shall exclude any property from its boundaries or otherwise change its respective boundaries without the prior administrative approval of the City Manager, which approval shall not be unreasonably withheld. The Districts agree that any attempt to exclude any property from their boundaries or otherwise change their boundaries without the prior administrative approval of the City Manager shall be void and shall constitute a material breach of this Agreement and a violation of the Districts' obligations under Section 4-4-150 of the Castle Pines Municipal Code and § 32-1-207, C.R.S as such code and statutory provisions may be amended from time to time, to obtain the approval of the City Council of a material modification of the Service Plan; in addition to the remedies set forth in this Agreement, the City may exercise any and all remedies available to it under the Castle Pines Municipal Code and the Special District Act. Notwithstanding the foregoing, the Districts may exclude property from their boundaries or otherwise change their boundaries without the administrative approval of the City Manager if the property proposed for exclusion will otherwise be subject to the City Operations Mill Levy.

(b) No Liens or Claims on Operations Revenue. The Districts shall not issue or incur bonds, notes, or other claims or obligations payable in whole or in part from, or constituting a lien or claim upon, the Operations Revenue or any portion thereof.

(c) Records and Accounting. The Districts shall keep and maintain, or cause to be kept and maintained, accurate records and accounting entries reflecting all moneys received or delivered pursuant to this Agreement, including but not limited to the Operations Revenue. The Districts will make such records available to the City within a reasonable time following the City's written request for the same.

(d) Limited Defenses. It is understood and agreed by the Districts that their obligations under this Agreement are absolute, irrevocable, and unconditional and so long as this Agreement has not been terminated by a court of competent jurisdiction or otherwise, the Districts agree that, notwithstanding any fact, circumstance, dispute, or any other matter, they will not assert any rights of setoff, estoppel, or other defenses to their obligations under this Agreement, and the Districts will not take or fail to take any action which would delay the performance of their obligations under this Agreement.

Section 1.03 No Retrospective Effect; Survival of Obligations.

(a) No Retrospective Effect. No provisions of any constitution, statute, resolution or other order or measure enacted after the execution of this Agreement shall in any manner be construed as limiting or impairing the obligation of the Districts to levy ad valorem property taxes, or as limiting or impairing the obligations of the Districts to levy, administer, enforce and collect the Operations Revenue as provided herein to satisfy the City Operations Mill Levy Obligation.

(b) Survival of Payment Obligation. In addition, and without limiting the generality of the foregoing, the City Operations Mill Levy Obligation of the Districts shall survive any court determination of the invalidity of this Agreement as a result of a failure, or alleged failure, of any of the individual directors of the Districts' Boards of Directors to properly disclose, pursuant to Colorado law, any potential conflicts of interest related to this Agreement in any way, provided that a disclosure is made on the record of the Districts' Boards of Directors meetings as set forth in the official minutes.

**ARTICLE II
CITY OBLIGATIONS AND COVENANTS**

Section 2.01 Annual Budget. Commencing in tax certification year 2022, for collection and remittance to the City in 2023, the City, with input from the Districts, will prepare and approve an annual estimated budget to determine the Operations Revenue needed by the City for the City's upkeep, operation, maintenance, repair and replacement of the City Maintained Improvements. The budget, which shall include the amount of the City Operations Mill Levy and appropriation of expenditures for the operation and maintenance of the City Maintained Improvements, shall be prepared and approved in accordance with the procedures set forth in **Exhibit A**. Notwithstanding the foregoing, as substantial build-out of the Districts' service area boundary occurs and revenues and expenditures related to the City Maintained Improvements

become more predictable, the Parties may mutually agree to amend this Agreement to remove the annual budgeting requirement and establish a fixed City Operations Mill Levy for the remainder of the Term.

Section 2.02 General Provisions Applicable to the City Operations Mill Levy.

(a) The City Operations Mill Levy shall be subject to the Maximum Mill Levy set forth in Section VI of the Service Plan.

(b) The City Operations Mill Levy shall be certified in the minimum amount as follows (collected and remitted in the following year) per the following schedule: eight (8) mills in 2022; 10.5 mills in 2023; 12.5 mills in 2024; 13.5 mills in 2025; and 14.5 mills in 2026 and in subsequent years (“City Operations Mill Levy Schedule”). The City Operations Mill Levy shall be utilized exclusively to pay for the costs of operations and maintenance of the City Maintained Improvements by the City and directly associated City administrative costs. The remainder of the Districts’ operations mill levy shall be retained by the Districts to fund the Districts’ covenant enforcement, legal, accounting and administration costs, including the cost to operate and maintain District Maintained Improvements (as defined in Section 3.03). The City Operations Mill Levy may exceed the amounts set forth in the City Operations Mill Levy Schedule if the property within the Districts is developed sooner than anticipated under the City Operations Mill Levy Schedule. The City and Districts agree to cooperate in good faith to adjust the City Operations Mill Levy Schedule to increase the City Operations Mill Levy in conjunction with the completion of residential units within the District. The payment obligation of the Districts pursuant to the City Operations Mill Levy Schedule shall not be required of the Districts until such time as the Districts have a capital reserve fund balance of no less than fifty thousand dollars (\$50,000), after which the Operations Revenues shall be paid to the City as provided in the City Operations Schedule.

Section 2.03 Deposit of City Operations Mill Levy Revenues. The City shall deposit and maintain any Operations Revenue received from the Districts in a separate fund earmarked specifically for use by the City only for the upkeep, operation, maintenance, repair, and replacement of the City Maintained Improvements and directly associated administrative costs (the “North Pine Vistas Metropolitan District Nos. 1-3 O&M Fund”). The City shall hold, treat, and invest all funds in the North Pine Vistas Metropolitan District Nos. 1-3 O&M Fund in the same manner as it holds, treats, and invests other public funds which are available for public expenditure. All interest income derived from the investment and reinvestment of any moneys in the North Pine Vistas Metropolitan District Nos. 1-3 O&M Fund shall be credited to the North Pine Vistas Metropolitan District Nos. 1-3 O&M Fund, and not to any other account or fund held or maintained by the City.

Section 2.04 Use of Operations Revenue. The City shall use the Operations Revenue held in the North Pine Vistas Metropolitan District Nos. 1-3 O&M Fund only for the uses set forth in Section 2.03 above. The City Maintained Improvements must be maintained by the City to at least to the same standard and operated substantially in the same manner as similar public improvements that are operated and maintained by the City. To the extent that the City uses Operations Revenue to pay for costs incurred by the City in performing its obligations under this

Agreement, such costs shall be comparable with costs incurred by the City for the performance of similar services for similar properties located within the City.

Section 2.05 Records and Accounting. The City shall keep and maintain, or cause to be kept and maintained, accurate records and accounting entries reflecting all moneys received or delivered pursuant to this Agreement and the use(s) of such moneys. The City will make such records available to the Districts within a reasonable time following a District's written request for the same.

**ARTICLE III
CITY MAINTAINED IMPROVEMENTS**

Section 3.01 Determination of City Maintained Improvements. The Parties acknowledge and agree that the City Maintained Improvements shall consist of the tracts, areas and improvements set forth in **Exhibit B** hereto.

Section 3.02 Ownership of City Maintained Improvements. The Parties acknowledge and agree that the City Maintained Improvements have been or will be installed or constructed upon or within tracts of real property to be identified and dedicated to the City as platting and development occurs within the Districts' service area boundary or outside of the Districts' boundaries but for the benefit of those residing within the Districts' service area boundary. The Parties acknowledge and agree that the City Maintained Improvements that have not been conveyed to and finally accepted by the City will be conveyed by special warranty deed to and finally accepted as soon as reasonably possible after of execution of this Agreement. Following transfer by the Districts or the party or parties that constructed the City Maintained Improvements, the Districts shall assign all warranties for the improvements to the City and City shall be responsible for claims and enforcement of warranty issues during the warranty periods ("**Final Acceptance**" or "**Finally Accepted**"). For the City Maintained Improvement that are not yet complete as identified in Exhibit B ("**Incomplete City Improvements**"), the City accepts such improvements in the current condition and state with no warranty or representation given by the Districts, in exchange for the amount of \$ [REDACTED] ("**Completion Payment**"), to be paid to the City by the Districts as full and final payment to be applied to the costs of completion of the Incomplete City Improvements by the City. The Parties agree that the Completion Payment shall include a contingency of not less than 15% of the estimated costs of the City completing the Incomplete City Improvements. City shall be responsible for timely completion of the Incomplete City Improvements no later than [REDACTED], 2022. If the amount of the Completion Payment is greater than the actual cost to complete the Incomplete City Improvements, the excess amount shall be repaid to the Districts and attributed first to the capital reserve fund set forth in Section 2.02(b).

Section 3.03 District Maintained Improvements. The Parties acknowledge and agree that the Districts may operate and maintain certain public improvements that have not been conveyed to and Finally Accepted by the City. The Districts shall own and maintain certain retaining wall and monument sign improvements as described in **Exhibit C** ("**District Maintained Improvements**").

**ARTICLE IV
REPRESENTATIONS AND WARRANTIES**

Section 4.01 Representations and Warranties of the Districts. In addition to the representations and warranties made by the Districts in Section 1.01 of this Agreement, the Districts hereby make the following representations and warranties to the best of their knowledge:

(a) The Districts are quasi-municipal corporations and political subdivisions duly organized and validly existing under the laws of the State of Colorado.

(b) The Districts have all requisite corporate power and authority to execute, deliver, and to perform their obligations under this Agreement and the execution, delivery, and performance of this Agreement have been duly authorized by all necessary action.

(c) The Districts are not in violation of any of applicable provisions of law or any order of any court having jurisdiction in the matter, which violation could reasonably be expected to materially adversely affect the ability of the Districts to perform their obligations hereunder. The execution, delivery and performance by the Districts of their obligations under this Agreement will not violate any provision of any applicable law or regulation or of any order, writ, judgment or decree of any court, arbitrator, or governmental authority; (ii) will not violate any provision of any document or agreement constituting, regulating, or otherwise affecting the operations or activities of the Districts in a manner that could reasonably be expected to result in a material adverse effect; and (iii) will not violate any provision of, constitute a default under, or result in the creation or imposition of any lien, mortgage, pledge, charge, security interest, or encumbrance of any kind on any of the revenues or other assets of the Districts pursuant to the provisions of any mortgage, indenture, contract, agreement, or other undertaking to which the Districts are a party or which purports to be binding upon the Districts, or upon any of their revenues or other assets which could reasonably be expected to result in a material adverse effect.

(d) There is no action, suit, inquiry, investigation, or proceeding to which the Districts are a party, at law or in equity, before or by any court, arbitrator, governmental or other board, body, or official which is pending or, to the actual knowledge of the Districts, threatened, in connection with any of the transactions contemplated by this Agreement nor, to the best knowledge of the Districts is there any basis therefor, wherein an unfavorable decision, ruling, or finding could reasonably be expected to have a material adverse effect on the validity or enforceability of, or the authority or ability of the Districts to perform their obligations under, this Agreement.

(e) This Agreement constitutes the legal, valid, and binding obligation of the Districts, enforceable against the Districts in accordance with its terms (except as such enforceability may be limited by bankruptcy, moratorium, or other similar laws affecting creditors' rights generally and provided that the application of equitable remedies is subject to the application of equitable principles).

Section 4.02 Representations and Warranties of the City. The City hereby makes the following representations and warranties to the best of its knowledge:

(a) The City is a home-rule municipality and a political subdivision duly organized and existing under the constitution and laws of the State of Colorado.

(b) The City has all requisite corporate power and authority to execute, deliver, and to perform its obligations under this Agreement and the execution, delivery, and performance of this Agreement has been duly authorized by all necessary action.

(c) The City is not in violation of any of applicable provisions of law or any order of any court having jurisdiction in the matter, which violation could reasonably be expected to materially adversely affect the ability of the City to perform its obligations hereunder. The execution, delivery and performance by the City of its obligations under this Agreement (i) will not violate any provision of any applicable law or regulation or of any order, writ, judgment or decree of any court, arbitrator, or governmental authority; (ii) will not violate any provision of any document or agreement constituting, regulating, or otherwise affecting the operations or activities of the City in a manner that could reasonably be expected to result in a material adverse effect; and (iii) will not violate any provision of, constitute a default under, or result in the creation or imposition of any lien, mortgage, pledge, charge, security interest, or encumbrance of any kind on any of the revenues or other assets of the City pursuant to the provisions of any mortgage, indenture, contract, agreement, or other undertaking to which the City is a party or which purports to be binding upon the City, or upon any of its revenues or other assets which could reasonably be expected to result in a material adverse effect.

(d) There is no action, suit, inquiry, investigation, or proceeding to which the City is a party, at law or in equity, before or by any court, arbitrator, governmental or other board, body, or official which is pending or, to the best knowledge of the City, threatened, in connection with any of the transactions contemplated by this Agreement nor, to the best knowledge of the City is there any basis therefor, wherein an unfavorable decision, ruling, or finding could reasonably be expected to have a material adverse effect on the validity or enforceability of, or the authority or ability of the City to perform its obligations under, this Agreement.

(e) This Agreement constitutes the legal, valid, and binding obligation of the City, enforceable against the City in accordance with its terms (except as such enforceability may be limited by bankruptcy, moratorium, or other similar laws affecting creditors' rights generally and provided that the application of equitable remedies is subject to the application of equitable principles).

ARTICLE V NON-COMPLIANCE AND REMEDIES

Section 5.01 Events of Non-Compliance. The occurrence or existence of any one or more of the following events shall be an "Event of Non-Compliance" hereunder:

(a) A District fails to certify the City Operations Mill Levy or cooperate with Douglas County to collect or enforce the collection of the Operations Revenue;

(b) A District fails to remit the Operations Revenue to the City as required by the terms of this Agreement;

(c) Any representation or warranty made by any Party to this Agreement proves to have been untrue or incomplete in any material respect when made and which untruth or incompleteness would have a material adverse effect upon the other Party to this Agreement;

(d) A District materially fails in the performance of any other of its covenants or obligations in this Agreement, and such material failure continues for thirty (30) days after receipt of written notice from the City specifying such default and requiring the same to be remedied;

(e) A District commences proceedings for dissolution or consolidation with another metropolitan district during the Term (as defined in Section 7.01 below);

(f) A District (i) commences any case, proceeding, or other action (A) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization, or relief of debtors, seeking to have an order for relief entered with respect to it or seeking to adjudicate it insolvent or bankrupt or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition, or other relief with respect to it or its debts; or (B) seeking appointment of a receiver, trustee, custodian, or other similar official for itself or for any substantial part of its property; or (ii) makes a general assignment for the benefit of its creditors; or (iii) has commenced against it any case, proceeding, or other action of a nature referred to in clause (i) and the same shall remain not dismissed within 90 days following the date of filing; or (iv) has commenced against it any case, proceeding, or other action seeking issuance of a warrant of attachment, execution, distraint, or similar process against all or any substantial part of its property which results in the entry of an order for any such relief which shall not have been vacated, discharged, stayed, or bonded pending appeal within 90 days from the entry thereof; or (v) takes action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iv) above; or (vi) generally is not, or is unable to, or admits in writing its inability to, pay its debts as they become due; or

(g) The City fails to operate and maintain the City Maintained Improvements as required by the terms of this Agreement, fails to apply the Operations Revenue to the provision of such services, or materially fails in the performance of any other of its covenants or obligations in this Agreement, and such failure or material failure continues for thirty (30) days after receipt of written notice from the Districts specifying such default and requiring the same to be remedied.

Section 5.02 Remedies for Events of Non-Compliance.

(a) In addition to other remedies set forth herein, and subject to Sections 1.02(d) and 1.03(b) hereof, upon the occurrence and continuance of an Event of Non-Compliance, a Party may proceed to protect and enforce its rights against the Party causing the Event of Non-Compliance by mandamus or such other suit, action, or special proceedings in equity or at law, in any court of competent jurisdiction, including an action for specific performance. In the event of any litigation or other proceeding to enforce any of the terms,

covenants or conditions hereof, the Party in such litigation or other proceeding shall obtain, as part of its judgment or award, its reasonable attorneys' fees and costs.

(b) In the event that the Districts fail to impose, collect or pay over the City Operations Mill Levy to the City during the term of this Agreement and such failure is due to the Districts' board of directors failing to take the actions required by this Agreement (i.e. not due to County failure, clerical or other mistakes preventing imposition, collection or payment of the City Operations Mill Levy) and such failure is uncured or addressed in a manner acceptable to the City, the City may, in its sole discretion, quit claim and transfer the City Maintained Improvements to the Districts and have no further obligation to operate or maintain same and may terminate this Agreement. If the City elects to quit claim and transfer the City Maintained Improvements to the Districts, the Districts shall be obligated to accept the City Maintained Improvements in their "as-is" and "where-is" condition, and the City shall be authorized to record the quit claim deeds in the Douglas County property records. In addition, if City elects to return the City Maintained Improvements to the Districts and terminate this Agreement, the Parties agree that the City will have undertaken significant expense in providing for the maintenance of the City Maintained Improvements, including, but not limited to, hiring of staff, investing in equipment, contracting with vendors and undertaking capital replacement activities the exact amount of which cannot be readily ascertained. The Parties agree that a reasonable estimate of such costs is four hundred thousand dollars (\$400,000.00) ("City Termination Cost") which shall be paid by the Districts to City in the event of termination pursuant to this Section 5.02(b), not as a penalty but as the agreed upon cost of the impact to City for termination under the conditions described herein. The City Termination Cost amount shall increase annually based upon the Consumer Price Index, Lakewood/Denver/Aurora, or similar replacement index if such index ceases to be available.

ARTICLE VI

SERVICE PLAN LIMITATIONS

Section 6.01 Construction Standards. The Districts will ensure that all public improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The Districts will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of public improvements prior to performing such work.

Section 6.02 Overlap Limitation. The boundaries of the Districts shall not overlap unless the aggregate mill levy of the overlapping Districts will not at any time exceed the Mill Levy Cap.

Section 6.03 Total Debt Issuance. The Districts shall not issue Debt in excess of Thirty Five Million Dollars (\$35,000,000) in the aggregate, exclusive of refundings.

Section 6.04 Consolidation. No District shall file a request with any Court to consolidate with another Title 32 district without the prior written consent of the City, unless

such consolidation is between District No. 1 (the Operating District) and District No. 2 and/or District No. 3.

Section 6.05 Dominant Eminent Domain. No District shall undertake any condemnation action against the City without the prior written approval of the City Council.

Section 6.06 Annual Report. Each of the Districts shall be responsible for submitting an annual report to the City Manager no later than August 1st of each year beginning with August 1, 2012, pursuant to Section XII of the Service Plan. The annual report may be submitted on a consolidated basis by the Districts.

Section 6.07 Mill Levy Cap. The Districts shall not impose a mill levy in excess of the Mill Levy Cap, except as may be specifically permitted by the Service Plan. The Maximum Debt Mill Levy shall be fifty (50) mills and the Maximum Operating Mill Levy shall not exceed nineteen (19) mills without a corresponding reduction in the Maximum Debt Mill Levy, so that the combined total mill levy will not exceed the Mill Levy Cap of sixty-nine (69) mills.

Section 6.08 Maximum Mill Levy Imposition Term for Repayment of Debt. No District shall impose a levy for repayment of any and all Debt (or use the proceeds of any mill levy for repayment of Debt) on any single property developed for residential uses which exceeds forty (40) years after the year of the initial imposition of such mill levy by the respective District, unless a majority of the Board of Directors of such District are residents of such District and have voted in favor of a refunding of a part or all of the Debt and such refunding will result in a net present value savings as set forth in Section 11-56-101, C.R.S., et seq.

Section 6.09 Monies from Other Governmental Sources. No District shall apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental entities that the City is eligible to apply for, except as may be specifically provided for in this Agreement or as may be specifically authorized by the City in writing. This Paragraph shall not apply to specific ownership taxes which may be distributed to and constitute a revenue source for the Districts.

Section 6.10 Applicable Laws. The Districts acknowledge that all real property within the Service Area shall be subject to all ordinances, rules and regulations of the City, including, without limitation, ordinances and rules and regulations relating to zoning, subdivision, building and land use, water conservation regulations, and relating to all City land use policies, comprehensive plans, special districts, and related plans.

Section 6.11 Dissolution. Upon an independent determination of the City Council that the purposes for which one or more of the Districts was or were created have been accomplished, the District(s) subject to such City Council determination agree to file a petition in the appropriate District Court for dissolution, pursuant to the Special District Act, which petition(s) shall contain a plan for dissolution, if required. If a plan for dissolution is required by the Special District Act, the Board(s) agrees to submit such plan(s) to the City Manager and City Attorney for review and approval prior to submitting the petition(s) for dissolution in the appropriate District Court. In no event shall a final dissolution occur until the payment or discharge of all of the outstanding indebtedness and other obligations of the District(s) has been

adequately addressed, inclusive of outstanding operational requirements, as required pursuant to the Special District Act.

Section 6.12 Service Plan Amendment Requirement. Actions of the Districts which violate the limitations contained within the Service Plan or which violate the provisions of this Agreement may, in City Council's discretion, be deemed to be a material modification of the Service Plan, and the City shall be entitled to all remedies available under State and local law to enjoin actions of the Districts.

ARTICLE VII

MISCELLANEOUS

Section 7.01 Term; Termination of Obligation. This Agreement shall commence on the Effective Date and the initial term of this Agreement shall terminate on December 31, 2051 ("**Initial Term**"). Commencing on January 1, 2052, this Agreement shall automatically renew for successive five (5) year terms unless a party provides a minimum of 365-day advance written notice of termination of this Agreement to the remaining Parties ("**Notice of Termination**"). Any Notice of Termination shall set forth the proposed date of termination of this Agreement, which date shall be not less than 365 days following the date of the Notice of Termination.

Section 7.02 Notices. All notices, demands, requests or other communications to be sent by one Party to the other Parties hereunder or required by law, shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via Federal Express or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the Districts: Spencer Fane LLP
 Attn: Russell Dykstra
 1700 Lincoln Street, Suite 2000
 Denver, CO 80203
 Phone: (303) 839-3800

To the City: City of Castle Pines
 7501 Village Square Drive, Suite 100
 Castle Pines, CO 80108
 Attn: City Attorney
 Phone: (303) 705-0200
 Fax: (303) 705-0201

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with Federal Express or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

Section 7.03 Relationship of the Parties. The Parties shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with each other than as contracting parties.

Section 7.04 Non-assignability. No Party to this Agreement may assign any interest therein to any person without the consent of the other Party hereto at that time.

Section 7.05 Amendments. This Agreement may not be amended, modified, or terminated in any respect, except by further agreement in writing duly executed by the Parties or their successors and assigns.

Section 7.06 Severability. If any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, void or unenforceable, such decision shall not affect the validity of any other portion of this Agreement which shall remain in full force and effect, the intention being that such portions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

Section 7.07 Negotiated Provisions. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed to the preparation of this Agreement.

Section 7.08 Waiver. No waiver by either Party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement. No covenant or term of this Agreement shall be deemed to be waived by a Party except in writing signed by the governing body of the Party or by a person expressly authorized to sign such waiver.

Section 7.09 Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for all actions brought hereunder shall be in the District Court in and for Douglas County.

Section 7.10 Inurement. Each of the terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 7.11 Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

Section 7.12 No Third Party Beneficiaries. No person or entity who or which is not a Party to this Agreement will have any right of action under this Agreement. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party. It is expressly understood and agreed that 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 third-party. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

Section 7.13 Entirety. This Agreement (including all exhibits) merges and supersedes all prior negotiations, representations, and agreements, between the Parties relating to the subject matter hereof, and this Agreement, together with the Service Plan, constitute the entire agreement between the Parties concerning the subject matter hereof.

Section 7.14 Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to a Party its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Party and, in particular, governmental immunity afforded or available to a Party pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

Section 7.15 Counterpart Execution. This Agreement may be executed in multiple counterparts; all counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

Section 7.16 This Agreement shall supersede and replace the Prior Mill Levy Contribution IGA and Service Plan IGA in their entirety.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Agreement is executed by the City and the Districts as of the date(s) set forth below.

CITY OF CASTLE PINES, COLORADO

Tera Radloff, Mayor

Date of execution: _____, 2021

ATTEST:

Tobi Duffey, City Clerk

APPROVED AS TO FORM:

Linda Michow, City Attorney

**NORTH PINE VISTAS METROPOLITAN
DISTRICT NO. 1**, a quasi-municipal corporation
and political subdivision of the State of Colorado

By: _____
Tom Clark, President
North Pine Vistas Metropolitan District No.
1

Date of execution: _____, 2021

ATTEST:

Secretary

NORTH PINE VISTAS METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____
Tom Clark, President
North Pine Vistas Metropolitan District No.
2

Date of execution: _____, 2021

ATTEST:

Secretary

NORTH PINE VISTAS METROPOLITAN DISTRICT NO. 3, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____
Tom Clark, President
North Pine Vistas Metropolitan District No.
3

Date of execution: _____, 2021

ATTEST:

Secretary

EXHIBIT A

CALCULATION OF CITY OPERATIONS MILL LEVY

1. Preliminary Budget.

- (a) On or before August 15 of each year, the City will prepare and submit to the District a preliminary budget for the following budget year in conformance with Section 2.02 of this Agreement and this Exhibit A (the “**Preliminary Budget**”).
- (b) In support of the minimum mill levies set forth in Section 2.02, the Preliminary Budget shall show the services to be provided and the proposed expenses anticipated to be incurred by the City with respect to its upkeep, operation, maintenance, repair, and replacement of those City Maintained Improvements that the City reasonably anticipates owning, operating, and maintaining during the ensuing budget year, it being acknowledged and agreed to by the Parties that the City shall have no obligation to budget for, operate, or maintain any City Maintained Improvements that have not been finally accepted, any City Maintained Improvements that are not reasonably anticipated to be finally accepted during the ensuing budget year, or any District Maintained Improvements. Without limiting the foregoing, in preparing the Preliminary Budget, the City will consider: (i) the City Maintained Improvements that have been constructed, including land that has been set aside, and Finally Accepted and are actually being operated and maintained by the City; (ii) the City Maintained Improvements, including land to be set aside, that are likely to be Finally Accepted by the City during the ensuing budget year; (iii) the City Maintained Improvements that are or are likely to be operated and maintained by the District as District Maintained Improvements during the ensuing budget year; (iv) the beginning fund balance for the North Pine Vistas Metropolitan District Nos. 1-3 O&M Fund; and (v) similar factors to determine the revenues needed for the City to discharge its obligations under this Agreement.
- (c) The Preliminary Budget shall include reasonable reserves or contingencies to account for future maintenance and capital expenditures.
- (d) The Preliminary Budget shall include the amount of the Operations Revenue projected to be sufficient to cover the expenses budgeted to be incurred by the City in performing its obligations under this Agreement, subject to Section 2.02 of this Agreement.
- (e) At the City’s request, the Parties shall adjust the list of City Maintained Improvements to be actually operated and maintained by the City in a given budget year until such time as existing and projected Operations Revenue are adequate to fund the City’s upkeep, operation, maintenance, repair, and

replacement of the City Maintained Improvements in accordance with the standard stated in Section 2.04 of this Agreement.

2. Budget Review. The Districts may submit any comments or suggested modifications to the Preliminary Budget to the City no later than September 15 of such year. The City will consider such comments or suggested modifications in order to finalize its draft budget by October 15 of the applicable year and to facilitate the circulation of a draft budget in accordance with C.R.S. § 29-1-105. The City will proceed to consider and adopt its final budget for the ensuing fiscal year on or before December 15 of each year of the Term (the “**City Final Budget**”). If the Districts do not provide any comments or suggested modifications to the Preliminary Budget in writing to the City by September 15 of the applicable year, the Districts will be deemed to have accepted the Preliminary Budget, including the proposed City Operations Mill Levy and amount of Operations Revenue set forth therein.
3. Budget Adoption – City. The City shall give due consideration to the Districts’ comments on the Preliminary Budget, if any; however, given the nature and extent of the City Maintained Improvements and the requirements of Article X of the City’s Home Rule Charter, the timing of consideration and approval of the City Final Budget for each year of the Term shall be in the sole discretion of the City.
4. Budget Preparation – Districts. In accordance with the provisions of Section 1.01(c)(ii) of the Agreement, and for each year of the Term, it shall be the duty of the Districts to include the City Operations Mill Levy and the Operations Revenue in the draft budget of each District prepared and presented to the Districts’ Boards of Directors on or before the October 15 deadline set forth in C.R.S. § 29-1-105, in the specific amounts set forth in the Preliminary Budget.
5. Budget Adoption – Districts. In accordance with the provisions of Section 1.01(c)(iii) of the Agreement, and for each year of the Term, it shall be the duty of the Districts’ Boards of Directors, at the time and in the manner provided by law for levying other taxes of the Districts, to ratify and carry out the provisions Section 1.01 of the Agreement with respect to the levying of the City Operations Mill Levy in order to generate the Operations Revenue in the specific amount included in the City Final Budget.

EXHIBIT B
CITY MAINTAINED IMPROVEMENTS

EXHIBIT C
DISTRICT MAINTAINED IMPROVEMENTS