

RESOLUTION NO. 21-52

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES,
COLORADO, APPROVING A CITY OPERATIONS MILL LEVY PLEDGE
AGREEMENT BETWEEN THE CITY OF CASTLE PINES, COLORADO AND
THE CANYONS METROPOLITAN DISTRICT NO. 4**

WHEREAS, the City Council of the City of Castle Pines (“City”) approved the Amended and Restated Service Plan for The Canyons Metropolitan District Nos. 2-4 and Consolidated Service Plan for The Canyons Metropolitan District Nos. 5-11 (the “Amended and Restated Service Plan”) on October 22, 2009, and amended by that First Amendment to the Amended and Restated Service Plan approved by the City Council on December 8, 2015, (the “First Amendment”), that Second Amendment to the Amended and Restated Service Plan approved by the City Council on December 10, 2019 (the “Second Amendment”) and that Third Amendment to the Amended and Restated Service Plan for The Canyons Metropolitan District No. 4 (the “District”) approved by the City Council on November 9, 2021, (the “Third Amendment” and, together with the Amended and Restated Service Plan, the First Amendment and the Second Amendment, the “Service Plan”); and

WHEREAS, at the time the City approved the First Amendment, it was anticipated that the metropolitan districts serving “The Canyons” project, including the District, would own, operate and maintain: park and recreation improvements (including but not limited to, recreation facilities, parks and trails), tract landscaping improvements, streetscape landscaping, drainage improvements (including detention and retention ponds, and trickle channels), and other related public improvements; 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 intends to own, operate and maintain the public improvements within the District or benefitting those residing within the District’s service area boundary, which public improvements include, but are not limited to, trails, parks, open space, landscaping, drainage and recreation improvements (the “City Maintained Improvements”); and

WHEREAS, the Second Amendment provides that the District shall impose an ad valorem mill levy and remit the revenues from such levy to the City to be used by the City for the City’s upkeep, operation, maintenance, repair and replacement of City Maintained Improvements (the “City Operations Mill Levy”); and

WHEREAS, North Canyons, LLLP, the City, and the District entered into that certain Second Amendment to Annexation and Development Agreement on January 13, 2020, which was approved by the City Council by adoption of Ordinance No. 19-16 on December 10, 2019, and recorded in the office of the Douglas County, Colorado, Clerk and Recorder on January 17, 2020, at Reference No. 2020004049 (the “Second ADA Amendment”); and

WHEREAS, paragraph (4) of the Second ADA Amendment requires the District to enter into a mill levy pledge agreement with the City whereby the District will impose the City Operations Mill Levy upon taxable real and personal property located within the District’s boundaries, commencing in tax certification year 2021, to be paid to the City annually in order to offset the costs of operations and maintenance of the City Maintained Improvements; and

WHEREAS, the District has agreed to impose the City Operations Mill Levy and remit the revenues resulting therefrom to the City to offset the City’s costs of the upkeep, operation, maintenance, repair and replacement of, the provision of services related to, the City Maintained Improvements in accordance with the provisions of the City Operations Mill Levy Pledge Agreement, attached as **Exhibit 1** to this Resolution; 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

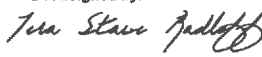
WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into the City Operations Mill Levy Pledge Agreement attached as **Exhibit 1** to this Resolution.

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

Section 1. The City Council hereby: (a) approves the City Operations Mill Levy Pledge Agreement between the Canyons Metropolitan District No. 4 and the City of Castle Pines (“2021 IGA”) as fully set forth in **Exhibit 1**; (b) authorizes the City Attorney, in consultation with the City Manager, to make such changes as may be necessary to correct any non-material errors that do not increase the obligations of the City; and (c) authorizes the Mayor to execute the 2021 IGA 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 9th DAY OF NOVEMBER, 2021.

DocuSigned by:

6E0C8EB279DC478...
Tera Stave Radloff, Mayor

ATTEST:

APPROVED AS TO FORM:

DocuSigned by:
Tobi Duffey
AD03A3802032400

Tobi Duffey, CMC, City Clerk

DocuSigned by:
Linda C. Michow
5241DE89B8FF444

Linda C. Michow, City Attorney



EXHIBIT 1

[see attached agreement]

**CITY OPERATIONS MILL LEVY PLEDGE AGREEMENT
BETWEEN THE CITY OF CASTLE PINES, COLORADO AND
THE CANYONS METROPOLITAN DISTRICT NO. 4**

THIS CITY OPERATIONS MILL LEVY PLEDGE AGREEMENT, including the exhibits attached and incorporated by reference (the “**Agreement**”) is made and entered into as of this ___ day of _____, 2021, by and between the **CITY OF CASTLE PINES**, a home rule municipal corporation of the State of Colorado (the “**City**”), and **THE CANYONS METROPOLITAN DISTRICT NO. 4**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”). The City and the District may each be referred to in this Agreement as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, the Amended and Restated Service Plan for The Canyons Metropolitan District Nos. 2-4 and Consolidated Service Plan for The Canyons Metropolitan District Nos. 5-11 (the “**Amended and Restated Service Plan**”) was approved by the City Council for the City (the “**City Council**”) on October 22, 2009, and amended by that First Amendment to the Amended and Restated Service Plan approved by the City Council on December 8, 2015, (the “**First Amendment**”), that Second Amendment to the Amended and Restated Service Plan approved by the City Council on December 10, 2019 (the “**Second Amendment**”) and that Third Amendment to the Amended and Restated Service Plan approved by the City Council on November 9, 2021 (the “**Third Amendment**” and, together with the Amended and Restated Service Plan, the First Amendment and the Second Amendment, the “**Service Plan**”); and

WHEREAS, at the time the City approved the First Amendment, it was anticipated that the metropolitan districts serving “The Canyons” project, including the District, would own, operate and maintain: park and recreation improvements (including but not limited to, recreation facilities, parks and trails), tract landscaping improvements, streetscape landscaping, drainage improvements (including detention and retention ponds, and trickle channels), and other related public improvements; 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 the public improvements within the District or benefitting those residing within the District’s service area boundary, which public improvements include, but are not limited to, trails, parks, open space, landscaping, drainage and recreation improvements as determined by agreement of the Parties (as further described in Section 2.01, the “**City Maintained Improvements**”); and

WHEREAS, the Second Amendment provides that the District shall impose an ad valorem mill levy and remit the revenues from such levy to the City to be used by the City for the City’s upkeep, operation, maintenance, repair and replacement of City Maintained Improvements, as set forth in one or more intergovernmental agreement(s) entered into between the City and one or

more of the Districts (as the term “Districts” is defined in the Second Amendment) (as further described in Section 3.02(a), the “**City Operations Mill Levy**”); and

WHEREAS, North Canyons, LLLP, the City, and the District entered into that certain Second Amendment to Annexation and Development Agreement on January 13, 2020, which was approved by the City Council by adoption of Ordinance No. 19-16 on December 10, 2019, and recorded in the office of the Douglas County, Colorado, Clerk and Recorder on January 17, 2020, at Reference No. 2020004049 (the “**Second ADA Amendment**”); and

WHEREAS, paragraph (4) of the Second ADA Amendment requires that within 180 days of the effective date of such amendment the District enter into a mill levy pledge agreement with the City whereby the District will impose the City Operations Mill Levy upon taxable real and personal property located within the District’s boundaries, commencing in tax certification year 2021, to be paid to the City annually in order to offset the costs of operations and maintenance of the City Maintained Improvements; and

WHEREAS, in furtherance of the provisions of the Service Plan and the Second ADA Amendment, upon the occurrence of the Effective Date (as defined herein, which is to occur prior to the District’s first issuance of Debt (as defined in the Service Plan)), the District has agreed to impose the City Operations Mill Levy and remit the revenues resulting therefrom to the City to offset the City’s costs of the upkeep, operation, maintenance, repair and replacement of, the provision of services related to, City Maintained Improvements, all in accordance with the provisions of this Agreement; and

WHEREAS, the District’s electoral authorization described herein permits the execution and performance of this Agreement by the District; and

WHEREAS, the obligation of the District to impose the City Operations Mill Levy and to remit the revenues resulting therefrom to the City constitutes a multiple fiscal year financial obligation of the District authorized at the District election held on November 4, 2014 (the “**Election**”), in accordance with law and pursuant to due notice, at which a majority of those qualified to vote and voting at such Election voted in favor of, inter alia: (a) Ballot Issue 5D authorizing the District to impose ad valorem property taxes up to \$226,000,000 annually for the payment of amounts due under one or more intergovernmental agreements or contracts, and (b) Ballot Issue 5U authorizing the issuance by the District of indebtedness consisting of intergovernmental agreements and other contracts in the principal amount of up to \$226,000,000, with a maximum repayment cost of \$1,853,200,000, and also authorizing the imposition of ad valorem property taxes for the purpose of paying such indebtedness in an annual amount of up to \$1,853,200,000 (collectively, Ballot Issue 5D and Ballot Issue 5U are referred to herein as the “**Authorizing Ballot Issues**”); 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 (effective only upon the Effective Date, as defined herein, which is to occur prior to the District's first issuance of Debt (as defined in the Service Plan)) and to address in Section 7.04 of this Agreement any conflict between the provisions hereof and those in paragraph (4) of the Second ADA Amendment; and

WHEREAS, the District represents that it has not previously issued Debt (as defined in the Service Plan) and, in accordance with the Third Amendment, this Agreement does not constitute Debt (as defined in the Service Plan).

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 covenant and agree as follows:

AGREEMENT

ARTICLE I DISTRICT OBLIGATIONS AND COVENANTS

Section 1.01 Notice of Effective Date; Opinion of District's Bond Counsel.

(a) The District shall determine, in its sole and absolute discretion (but subject to paragraph (b) hereof), the Effective Date (as defined below) and shall submit to the City a notice in the form attached as **Exhibit C** hereto (an "**Effective Date Notice**") stating the Effective Date, accompanied by an opinion of nationally recognized bond counsel addressed to the City substantially in the form attached hereto as **Exhibit D** (the "**Bond Counsel Opinion**"), dated the Effective Date. "**Effective Date**" means the date indicated in a fully-executed Effective Date Notice, which is accompanied by a Bond Counsel Opinion dated as of the Effective Date.

(b) In accordance with the Service Plan, the District covenants and agrees that the Effective Date shall occur prior to the District's first issuance of Debt (as defined in the Service Plan), if any. The Parties agree that there otherwise is no obligation for the District to cause the Effective Date to occur on any particular date, or at all (in the event that the District never issues Debt).

(c) If the District intends to issue Debt and is unable to obtain the required bond counsel opinion for the Effective Date to occur, the District shall deliver to the City the bond counsel's written explanation detailing why bond counsel is unable or unwilling to render the required opinion. The District shall promptly take any action required of it to resolve the concerns detailed in bond counsel's written explanation, if possible. If required, the Parties shall negotiate with the utmost diligence and good faith to amend this Agreement to address bond counsel's concerns; any such amendments shall be drafted as narrowly as possible to obtain the required bond counsel opinion while still accomplishing the Parties' intent. The District hereby represents that, based upon the advice of its bond counsel, it is reasonably expected that the opinion described in **Exhibit D** will be delivered on the date selected by the District (and reflected in an Effective Date Notice) barring only a change in law impacting the District's ability to undertake the obligations described herein.

Section 1.02 Electoral Authorization; Payment Obligation; Condition Precedent; City Operations Mill Levy.

(a) Electoral Authorization.

(i) The District represents and warrants that prior voted authorization for issuance of debt, annual tax increases, multiple-fiscal year contractual obligations, and the levy of ad valorem taxes was approved at the Election as required by Article X, Section 20 of the Colorado Constitution, and that the performance by the District of the terms of this Agreement (upon occurrence of the Effective Date) 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 District agrees it shall take such action as is necessary to obtain additional electoral authorization to cure any constitutional or legal defect and that until such takes place, the City shall be permitted to exercise any and all remedies under this Agreement.

(ii) Allocation of Voted Authorization. The District represents and warrants that the multiple-fiscal year financial obligation represented by this Agreement (but only upon the occurrence of the Effective Date) shall be allocated to Ballot Issue 5D and Ballot Issue 5U (as previously defined, the Authorizing Ballot Issues) approved at the Election, in accordance with the provisions hereof, subject to the occurrence of the Effective Date. The District shall disclose such obligation annually in its audited financial statements, if any, for the Mill Levy Commencement Year (as defined in Section 1.02(d)(i) below) and each year thereafter. The Parties acknowledge and agree that the District does not intend to issue any other indebtedness or incur any other multiple-fiscal year obligations that would require use of the authorization provided in the Authorizing Ballot Issues, and therefore, in the event that this Agreement constitutes, in addition to a multiple-fiscal year obligation, "debt" requiring electoral authorization containing a maximum repayment amount, the District hereby reserves the authority for

debt provided at the Election by the approval of the Authorizing Ballot Issues for the multiple-fiscal year obligation represented by this Agreement, and further reserves the authority to impose ad valorem property taxes provided at the Election by the approval of the Authorizing Ballot Issues for the City Operations Mill Levy required by this Agreement. It is further acknowledged that in no event shall the total amount paid by the District hereunder exceed the maximum repayment cost authorized in Ballot Issue 5U. The District agrees to reserve the authority provided in the Authorizing Ballot Issues for this Agreement, notwithstanding the occurrence of the Effective Date.

(iii) Limits of Electoral Authorization. In no event shall the total or annual obligation of the District hereunder exceed the maximum amounts permitted under the Authorizing Ballot Issues.

(b) Payment Obligation and Pledge of Operations Revenue. In exchange for the City's upkeep, operation, maintenance, repair, and replacement of City Maintained Improvements and for the City's assumption on behalf of the District of services related thereto, commencing with the Mill Levy Commencement Year (as defined below), the District hereby agrees to impose the City Operations Mill Levy (as defined in Section 3.02(a)) and remit all revenues resulting therefrom (the "**Operations Revenue**") to the City in accordance with the provisions hereof. The obligations of the District to impose the City Operations Mill Levy and remit to the City any and all revenues resulting therefrom (collectively, the "**City Operations Mill Levy Obligation**") constitute a limited tax general obligation and a multiple-fiscal year financial obligation of the District payable solely from the Operations Revenue of the District. The District hereby pledges the Operations Revenue to the City to secure the City Operations Mill Levy Obligation. The District covenants not to incur any other indebtedness of any kind that would have a lien on or claim to the City Operations Mill Levy or the Operations Revenue. The City Operations Mill Levy Obligation shall constitute an irrevocable and first and exclusive priority lien upon the Operations Revenue of the District.

(c) Conditions Precedent. **The District's obligations hereunder comprising the City Operations Mill Levy Obligation shall not become effective and binding upon the District until the Effective Date, which is not to occur until: (i) the District has delivered an Effective Date Notice stating the Effective Date; and (ii) the District has delivered to the City an opinion of nationally recognized bond counsel in the form attached as Exhibit D hereto dated the Effective Date. Unless and until the Effective Date has occurred, this Agreement shall not constitute indebtedness of the District under any constitutional or statutory provision, including, but not limited to Section 32-1-503, C.R.S.**

(d) Covenant to Impose City Operations Mill Levy. In exchange for the City's upkeep, operation, maintenance, repair, and replacement of City Maintained Improvements and for the City's assumption on behalf of the District of services related thereto, the District hereby covenants as follows:

(i) Commencing with the calendar year in which the Effective Date occurs (if at all) (referred to herein as the “**Mill Levy Commencement Year**”), the District agrees to annually certify the City Operations Mill Levy in the amount calculated as set forth in Article III of this Agreement. The District shall remit the full amount of the Operations Revenue to the City no later than thirty (30) days after receipt of the same. The Operations Revenue shall be used for the upkeep, operation, maintenance, repair and replacement of the City Maintained Improvements and for services the City will be assuming on behalf of the District related thereto.

(ii) The sums required to make the Operations Revenue payments due hereunder are hereby appropriated by the Board of Directors of the District (the “**District Board**”) for that purpose, and said sums for each year of the Vesting Term (as defined herein) shall be included in the annual budget and appropriation resolution(s) to be adopted or passed by the District Board for each such year. For purposes of this Agreement, the “**Vesting Term**” shall commence with the Mill Levy Commencement Year and expire at the end of the calendar year that is the later of: (y) the twenty-eighth (28th) anniversary of the Effective Date or (z) the expiration of the term of the vested rights period as set forth in and as may be extended pursuant to that certain Annexation and Development dated October 22, 2009 and recorded in the office of the Douglas County Clerk and Recorder on December 29, 2009 at Reception No. 2009100334, as the same has been and may be further amended.

(iii) It shall be the duty of the District Board, for the Mill Levy Commencement Year and each year thereafter of the Vesting Term, at the time and in the manner provided by law for levying other taxes of the District, to ratify and carry out the provisions of this Section 1.02 with reference to the levying of the City Operations Mill Levy; and the District Board shall levy and certify said taxes in the manner provided by law for the purposes described herein.

(iv) The District Board 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 District.

(v) In the event any ad valorem taxes are not paid when due, the District 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.

(vi) For the avoidance of doubt, the District shall certify the City Operations Milly Levy in the final calendar year of the Vesting Term and

shall take all other reasonably necessary and proper steps to ensure that the City Operations Mill Levy is levied, assessed, collected, and enforced as provided herein for the duration of the calendar year following the expiration of the Vesting Term.

(e) Determination of City Operations Mill Levy. The City Operations Mill Levy shall be determined each year, commencing with the Mill Levy Commencement Year, in accordance with Article III of this Agreement.

(f) Certification to County Commissioners. The provisions of this Section 1.02 of this Agreement are hereby declared to be the certificate of the District Board to the Board of County Commissioners of Douglas County, showing the amount of taxes to be levied each year in the manner required by law, for the purposes set forth herein.

(g) Any violation by the District of this Section 1.02 shall constitute a material breach of this Agreement and a violation of the 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, 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 §§ 32-1-101 *et seq.*, C.R.S. (the "**Special District Act**").

Section 1.03 Additional Covenants and Obligations.

(a) Covenant not to Exclude; Permitted Exclusions. With the exception of "Permitted Exclusions" (as defined below), the District shall not exclude any property from its boundaries or otherwise change its boundaries without the prior administrative approval of the City Manager, which approval shall not be unreasonably withheld. The District agrees that any attempt to exclude any property from its boundaries without the prior administrative approval of the City Manager (unless a Permitted Exclusion) shall be void and shall constitute a material breach of this Agreement and a violation of the 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, 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. "*Permitted Exclusions*" means an exclusion from the District of property satisfying one of the following: (i) the exclusion occurs after the Effective Date of this Agreement (and, accordingly, the property proposed to be excluded from the District will remain subject to the obligations hereof after such exclusion); or (ii) immediately upon the effectiveness of its exclusion from the boundaries of the District, the property will be included into another metropolitan district serving The Canyons project that has executed an agreement with the City to impose the City Operations Mill Levy, which agreement includes substantially similar terms and incorporates the material provisions of this Agreement.

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

(c) Records and Accounting. The District 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. The District 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 District that its 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 District agrees that, notwithstanding any fact, circumstance, dispute, or any other matter, it will not assert any rights of setoff, estoppel, or other defenses to its obligations under this Agreement, and it will not take or fail to take any action which would delay the performance of its obligations under this Agreement.

Section 1.04 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 District to levy ad valorem property taxes, or as limiting or impairing the obligation of the District to levy, administer, enforce and collect the ad valorem property taxes 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 shall survive any court determination of the invalidity of this Agreement as a result of a failure, or alleged failure, of any of the directors of the District Board 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 District Board meetings as set forth in its official minutes.

**ARTICLE II
DETERMINATION OF CITY AND DISTRICT
MAINTAINED IMPROVEMENTS**

Section 2.01 Determination of City Maintained Improvements. The Parties acknowledge and agree that the City Maintained Improvements have not yet been specifically identified or constructed and that these improvements will be identified by the Parties and constructed over a period of several years as property within and outside the District is platted and developed. As part of the platting process and as a pre-condition to final plat approval, the City will identify the public improvements that the City desires to own, operate, and maintain as City Maintained Improvements under this Agreement in accordance with the procedures set forth in **Exhibit A**, attached hereto and incorporated herein. Without limiting the foregoing, the Parties

acknowledge and agree that it is the City's plan to own, operate, and maintain all of the trails, parks, open space, landscaping, drainage and recreation improvements within the service area boundary of the District, except for those limited District Maintained Improvements described in Section 2.03 below.

Section 2.02 Ownership of City Maintained Improvements. The Parties acknowledge and agree that the City Maintained Improvements will be installed or constructed upon or within tracts or parcels of real property to be identified and dedicated or deeded to the City as platting and development occurs within the District's service area boundary or outside of the District's boundaries but for the particular benefit of those residing within the District's service area boundary. The Parties acknowledge and agree that the City Maintained Improvements will be conveyed to and finally accepted by the City following applicable City-required warranty periods ("**Final Acceptance**" or "**Finally Accepted**"); provided, however, that the City shall be under no obligation to finally accept any City Maintained Improvements until after the Effective Date.

Section 2.03 Determination of District Maintained Improvements. The Parties may mutually agree, in limited circumstances where appropriate and for purposes of efficiency, for the District to own, operate, and maintain certain Eligible Improvements (as defined in **Exhibit A**) such as monument signage and retaining walls (collectively, the "**District Maintained Improvements**"). During the platting process and as a pre-condition to final plat approval, the Parties will mutually agree to the District Maintained Improvements to be own, operated, and maintained by the District. The procedures for determining the District Maintained Improvements are further set forth in **Exhibit A**.

Section 2.04 Amendment to Exhibit A. Upon determination of the City Maintained Improvements and District Maintained Improvements in accordance with the procedures set forth in Sections 2.01 and 2.03 and **Exhibit A**, the Parties shall list and describe the improvements in an attachment to Exhibit A (i.e., as Exhibits A-1, A-2, A-3, etc.), which attachments shall be approved by the Parties in accordance with Section 7.06 below. The Parties shall update the list and description of the City Maintained Improvements and District Maintained Improvements set forth in **Exhibit A** at least once annually as part of the budgeting process described in **Exhibit B** unless there has been no changes to the prior year's list and description in **Exhibit A**.

Section 2.05 Operations and Maintenance Standards. The City Maintained Improvements and District Maintained Improvements must be maintained by the City and the District, respectively, to at least the same standard and operated substantially in the same manner as similar improvements that are operated and maintained by the City. While the property or portions thereof being served by the City Maintained Improvements are being marketed to individual third-party homebuyers or commercial buildings, the District may desire that certain City Maintained Improvements receive additional or enhanced upkeep, operation, and maintenance ("**Enhanced Maintenance**"). The District will initiate a request for Enhanced Maintenance by submitting a written request to the City identifying the particular City Maintained Improvements subject to the request as well as the particular Enhanced Maintenance services requested by the District (each, a "**District Enhanced Maintenance Request**"). The City agrees to use good faith efforts to accommodate the District Enhanced Maintenance Requests in the City's Preliminary Budget and City's Final Budget (as those terms are defined below).

ARTICLE III
DETERMINATION OF CITY AND DISTRICT OPERATIONS MILL LEVIES

Section 3.01 Annual Budget. Commencing in the Mill Levy Commencement Year, each Party, with input from the other Party, will prepare and adopt an annual budget to determine the Annual City Operations Amount (as defined in Section 3.02(c)) and the Annual District Operations Amount (as defined in Section 3.02(d)) needed by the City and District, respectively, for such Party's upkeep, operation, maintenance, repair and replacement of, and capital expenditures for, the City Maintained Improvements and District Maintained Improvements, respectively. The Parties' budgets shall be prepared and the City's budget shall be approved in accordance with the procedure set forth in **Exhibit B** hereto, and shall include a determination of the City Operations Mill Levy and the District Operations Mill Levy, in accordance with the definitions thereof set forth in Section 3.02 below. Notwithstanding the foregoing, as substantial build-out of the District's service area boundary occurs and revenues and expenditures related to the City Maintained Improvements and District 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 Vesting Term.

Section 3.02 Determination of Mill Levies. The City Operations Mill Levy and District Operations Mill Levy shall be determined each year, commencing with the Mill Levy Commencement Year and continuing each year thereafter for the remainder of the Vesting Term (subject to amendment of this Agreement as provided in Section 3.01 above), in accordance with the following definitions and requirements, and the procedure established in **Exhibit B** hereto.

(a) **"City Operations Mill Levy"** means an ad valorem mill levy (a mill being equal to 1/10 of 1 cent) imposed upon all taxable property of the District each year in an amount sufficient to generate Operations Revenue to fund the Annual City Operations Amount (as defined below) for the year in which such levy is collected, but not in excess of 19 mills, unless otherwise agreed in writing by the District, less the District Operations Mill Levy for the applicable year; *provided, however*, that in no event shall the City Operations Mill Levy be less than 5 mills; and, *further provided*, that, in the event the method of calculating assessed valuation has or is changed on or after January 1, 2009, the 19 mill maximum and the 5 mill minimum provided herein will be increased or decreased to reflect such changes, such increases or decreases to be determined by the District in good faith, in consultation with the City (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the applicable mill levy, as adjusted, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation to assessed valuation shall be deemed to be a change in the method of calculating assessed valuation.

(b) **"District Operations Mill Levy"** means an ad valorem mill levy (a mill being equal to 1/10 of 1 cent) imposed upon all taxable property of the District each year in an amount sufficient to fund the Annual District Operations Amount (as defined below) for the year in which such levy is collected, but not in excess of 14 mills, unless otherwise agreed in writing by the City; *provided, however*, that in the event the method of calculating assessed valuation has or is changed on or after January 1, 2009, the 14 mill maximum

provided herein will be increased or decreased to reflect such changes, such increases or decreases to be determined by the District in good faith, (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the applicable mill levy, as adjusted, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation to assessed valuation shall be deemed to be a change in the method of calculating assessed valuation.

(c) “**Annual City Operations Amount**” means, for each calendar year, the amount determined by the City and agreed to by the District in accordance with the procedure set forth in **Exhibit B** hereto (i) sufficient to fund for such year the City’s reasonable costs to upkeep, operate, maintain, repair, and replace, and to provide services related to, the City Maintained Improvements that have been, or in the subject year likely will be, Finally Accepted, (ii) sufficient to establish and maintain reasonable reserves and contingencies for the upkeep, maintenance, repair, and replacement of, and the provision of services related to, City Maintained Improvements to be Finally Accepted in future years and for capital expenditures to be incurred prior to the expiration of the Vesting Term (collectively, the “**Reserve Funds**”). The Annual City Operations Amount shall be reduced by (i) amounts then on deposit in The Canyons Metropolitan District No. 4 Fund (as defined in Section 3.03 below) that are not set aside as Reserve Funds and (ii) amounts which the City has determined to fund from sources other than the City Operations Mill Levy.

(d) “**Annual District Operations Amount**” means, for each calendar year, an amount determined by the District (i) sufficient to fund for such year the District’s reasonable legal, accounting, and administration costs, (ii) sufficient to fund the cost to operate and maintain District Maintained Improvements and any City Maintained Improvements that have not been Finally Accepted by the City for operations and maintenance, and (iii) sufficient to establish and maintain reasonable reserves and contingencies for the upkeep, maintenance, repair, and replacement of, District Maintained Improvements and any City Maintained Improvements that have not been Finally Accepted by the City in future years, and for capital expenditures to be incurred (the “**District Reserve Funds**”). The Annual District Operations Amount shall be reduced by amounts which the District has determined to fund from sources other than the District Operations Mill Levy.

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

(f) The City Operations Mill Levy may not be calculated to require or be used to fund any costs with respect to Planning Area O, as described in The Canyons Planned Development – 2nd Major Amendment, approved by the City Council by adoption of Ordinance No. 19-15 on December 10, 2019, and recorded in the office of the Douglas County, Colorado, Clerk and Recorder on January 17, 2020, at Reference No. 2020004048.

(g) The Parties recognize that the District’s revenue sources are finite and that the City Operations Mill Levy may not be sufficient to fund the Annual City Operations Amount. The City acknowledges and agrees that the revenues resulting from the City

Operations Mill Levy required to be imposed by the District after the Effective Date in accordance with the provisions hereof may not be sufficient to fund the City's upkeep, operation, maintenance, repair and replacement of, the City Maintained Improvements. In no event shall the District be obligated to fund any such cost in excess of the amounts generated from the City Operations Mill Levy, which is subject to the limitations set forth in this Agreement

Section 3.03 Deposit of City Operations Mill Levy Revenues. The City shall deposit and maintain any Operations Revenue received from the District in a separate fund or account earmarked specifically for use by the City for costs related to the upkeep, operation, maintenance, repair, and replacement of, and the provision of services related to, the City Maintained Improvements (the "**The Canyons Metropolitan District No. 4 Fund**"). Any Reserve Fund established by the City and funded with Operations Revenue shall be established as a subfund or subaccount of The Canyons Metropolitan District No. 4 Fund and shall be subject to the provisions of Section 3.04 hereof. The City shall hold, treat, and invest all funds in The Canyons Metropolitan District No. 4 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 Canyons Metropolitan District No. 4 Fund shall be credited to The Canyons Metropolitan District No. 4 Fund, and not to any other account or fund held or maintained by the City.

Section 3.04 Use of Operations Revenue. The City shall use the Operations Revenue held in The Canyons Metropolitan District No. 4 Fund for costs related to the upkeep, operation, maintenance, repair, and replacement of, and the provision of services related to, the City Maintained Improvements. 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 3.05 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 provide the District with an annual report of its use of such moneys and will otherwise make such records available to the District within a reasonable time following the District's written request for the same.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 4.01 Representations and Warranties of the District. In addition to the representations and warranties made by the District in Section 1.02 of this Agreement, the District hereby makes the following representations and warranties to the best of its knowledge:

- (a) The District is a quasi-municipal corporation and political subdivision duly organized and validly existing under the laws of the State of Colorado.

(b) The District 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 District 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 District to perform its obligations hereunder. The execution, delivery and performance by the District of its 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 District 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 District pursuant to the provisions of any mortgage, indenture, contract, agreement, or other undertaking to which the District is a party or which purports to be binding upon the District, 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 District 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 actual knowledge of the District, threatened, in connection with any of the transactions contemplated by this Agreement nor, to the best knowledge of the District 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 District to perform its obligations under, this Agreement.

(e) This Agreement constitutes the legal, valid, and binding obligation of the District, enforceable against the District 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 actual 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).

(f) The Parties acknowledge that the City may enter into similar agreements with other metropolitan districts located within the City. In order to provide consistency to properties located within the metropolitan districts serving The Canyons project, the Parties agree to cooperate to revise, supplement, or amend this Agreement, to the extent practicable, so that properties within The Canyons that are similarly situated are treated similarly and equitably.

(g) The City acknowledges and agrees that the City Operations Mill Levy is not intended to, and shall not, diminish the mill levy permitted to be imposed by the District in accordance with its Service Plan for the payment of Debt (as defined therein). This Agreement is not intended to, and shall not, limit in any way the manner in which the District applies any revenues resulting from the imposition of a debt service mill levy for the payment of Debt, or otherwise restrict the District's ability to issue Debt. The City agrees to cooperate to revise, supplement, or amend this Agreement, to the extent necessary to further reflect such intent if necessary in connection with the issuance of Debt by the District.

**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) The District fails to impose the City Operations Mill Levy or cooperate with Douglas County to collect or enforce the collection of the Operations Revenue;

(b) The 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) The 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) The District commences proceedings for dissolution or consolidation with another metropolitan district during the Vesting Term; or

(f) The 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), (iii) 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.

(g) The City materially fails in the performance of any of its covenants or obligations in this Agreement, including operating and maintaining the City Maintained Improvements and applying the Operations Revenue as required by this Agreement, and

such material failure continues for thirty (30) days after receipt of written notice from the District 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 1.03(d) and 1.04(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 injunction or specific performance. In addition, upon the occurrence and continuance of an Event of Non-Compliance by the District, the City may refuse to accept any additional City Maintained Improvements and the City shall not be required to maintain the City Maintained Improvements to the standard set forth in Section 2.05. 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) Notwithstanding any other provision herein, the Parties acknowledge and agree that in no event shall any revenues pledged to the payment of indebtedness of the District (other than the Operations Revenue pledged hereunder) be available to satisfy any obligation of the District arising hereunder.

**ARTICLE VI
SUPPLEMENTAL PUBLIC SECURITIES ACT**

Section 6.01 Pledge of Revenue. The creation, perfection, enforcement, and priority of the District's pledge of the Operations Revenue under this Agreement for the purpose of securing its City Operations Mill Levy Obligation shall be governed by C.R.S. Section 11-57-208 and this Agreement. The Operations Revenue shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the Operations Revenue and the District's obligation to perform the obligations under this Agreement shall have priority over any or all other obligations and liabilities of the District, except as may otherwise be provided in C.R.S. 11-57-201 *et seq.* (the "**Supplemental Public Securities Act**"). The lien of such pledge on the Operations Revenue shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the District irrespective of whether such persons have notice of such lien. In no event shall this Agreement constitute a lien on, or otherwise encumber or limit, any revenues of the District resulting from a debt service mill levy imposed for the payment of indebtedness of the District (excluding the City Operations Mill Levy).

Section 6.02 No Recourse against Officers and Agents. Pursuant to C.R.S. Section 11-57-209, if a member of the District Board, or any officer or agent of the District acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment or performance of the District's obligations hereunder.

Section 6.03 Conclusive Recital. Pursuant to C.R.S. Section 11-57-210, this Agreement is executed and delivered pursuant to those provisions of the Supplemental Public Securities Act referenced in this Agreement, and this recital is conclusive evidence of the validity and the regularity of this Pledge Agreement after its delivery for value.

Section 6.04 Limitation of Actions. Pursuant to C.R.S. Section 11-57-212, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization, execution, or delivery of this Agreement shall be commenced more than thirty (30) days after the authorization of this Agreement.

ARTICLE VII MISCELLANEOUS

Section 7.01. Termination of Obligation. The obligations of the District under this Agreement will terminate at the end of the calendar year within which the Vesting Term expires. Notwithstanding the foregoing, such termination will not affect the liability of the District for amounts required to be remitted under this Agreement, including any deficiencies or interest accrued as of, and interest accruing subsequent to, expiration of the Vesting Term.

Section 7.02. Notices. All notices, demands, requests or other communications to be sent by one Party to the other 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 District: WHITE BEAR ANKELE TANAKA & WALDRON
Attn: Clint Waldron, Esq.
2154 E. Commons Ave., Suite 2000
Centennial, CO 80122
Phone: (303) 858-1800
E-mail: cwaldron@wbapc.com

To the City: City of Castle Pines
360 Village Square Drive, Suite B
Castle Pines, CO 80108
Attn: City Manager
Phone: (303) 705-0200
E-mail: michael.penny@castlepinesco.gov

With a copy to: City of Castle Pines
Attn: City Attorney
c/o Michow Cox & McAskin LLP
6530 S. Yosemite Street, Suite 200
Greenwood Village, CO 80111
Phone: (303) 459-2725
E-mail: Linda@mcm-legal.com

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. Modification of Terms of the Second ADA Amendment. The City hereby acknowledges and agrees that this Agreement satisfies the provisions of paragraph (4) of the Second ADA Amendment concerning the execution and delivery of the Pledge Agreement (as defined in the Second ADA Amendment) and hereby waives any provision of paragraph (4) of the Second ADA Amendment requiring such Pledge Agreement to provide for the imposition of taxes and remittance of the proceeds thereof to the City in a manner inconsistent with the terms hereof. Without limiting the foregoing, the City acknowledges that paragraph (4) of the Second ADA Amendment provides that the District is to impose the City Operations Mill Levy commencing in tax certification year 2021, while this Agreement requires the imposition of the City Operations Mill Levy commencing with the Mill Levy Commencement Year (as defined herein), and the City hereby agrees that the provisions of this Agreement supersede such provision of the Second ADA Amendment in its entirety. The City further hereby waives the provisions of the Second ADA Amendment requiring the execution of the Pledge Agreement within 180 days of the Second ADA Amendment, recognizing that such period ended in July 2020. North Canyons, LLLP, and any successor thereto under the Second ADA Amendment are hereby expressly made third party beneficiaries to this Section 7.04, entitled to rely on and enforce the provisions hereof in the same manner as if included in an amendment to the Second ADA Amendment executed by all parties thereto.

Section 7.05. 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 7.06. 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 7.07. 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 7.08. 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 7.09. 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 7.10. 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 7.11. 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 7.12. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

Section 7.13. 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, except as expressly provided in Section 7.04 hereof. 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, except as provided in Section 7.04 hereof. It is the express intention of the Parties that, except as provided in Section 7.04 hereof, any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

Section 7.14. 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 7.15. 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 7.16 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.

(Signature page follows.)

IN WITNESS WHEREOF, this Agreement is executed by the City and the District as of the date first above written.

CITY OF CASTLE PINES, COLORADO

Tera Stave Radloff, Mayor

ATTEST:

Tobi Duffey, City Clerk

APPROVED AS TO FORM:

Linda Michow, City Attorney

**THE CANYONS METROPOLITAN
DISTRICT NO. 4**, a quasi-municipal corporation
and political subdivision of the State of Colorado

Jonathan Alpert, President
The Canyons Metropolitan District No. 4

ATTEST:

Scott Alpert, Secretary

By its signature below, North Canyons, LLLP, agrees to cooperate with the City and the District in connection with identifying City Maintained Improvements and District Maintained Improvements during the platting process for real property it owns and located within the service area boundary of the District. North Canyons, LLLP, is executing this Agreement exclusively for such purpose and for no other purposes whatsoever.

NORTH CANYONS, LLLP, a Colorado limited liability limited partnership

By: _____
Its: _____

EXHIBIT A

Determination of City Maintained Improvements and District Maintained Improvements

As platting and construction proceeds and public improvements are constructed (*e.g.*, trails, parks, landscaping, drainage, or recreation improvements) or land is set aside for public purposes (*e.g.*, natural open space), the Parties agree that the City Maintained Improvements and District Maintained Improvements will be identified in accordance with the following procedures:

1. (a) Prior to the City's acceptance and consideration of any plat for property within the District's service area boundary representatives of the City, the District, and the owner of the property to be platted will meet (the "**Pre-Submittal Meeting**") to identify, in connection with the development of the property to be platted: (i) the type of public improvements that will be constructed, (ii) the land on or within which the public improvements will be constructed, and (iii) any land that will be set aside for public use (*e.g.*, natural open space) or future public improvements ("**Eligible Improvements**").

(b) Eligible Improvements may include, without limitation, trails, parks, open space, landscaping, drainage, and recreation improvements; provided, however, that Eligible Improvements may not include: streets and sidewalks, water and sewer mains required to be dedicated to and accepted by the Parker Water and Sanitation District, or any improvements within Planning Area O, as described in The Canyons Planned Development – 2nd Major Amendment, approved by the City Council by adoption of Ordinance No. 19-15 on December 10, 2019, and recorded in the office of the Douglas County, Colorado, Clerk and Recorder on January 17, 2020, at Reference No. 2020004048. Further, Eligible Improvements may only include improvements that legally could be maintained, operated, repaired, or replaced by the District as of or after the Effective Date, and will not include any improvements to be owned by an owners association or are otherwise designated as not being generally available to the public.

(c) The Parties agree that it generally is desirable for the same types of Eligible Improvements to be operated and maintained by the same Party regardless of where within the District they may be located; for example, a trail system should be under common management as opposed to being divided between maintenance entities.

2. Following the Pre-Submittal Meeting, the City shall identify and submit in writing to the District: (i) which of the Eligible Improvements the City will own, operate, and maintain as City Maintained Improvements, and (ii) which of the District Maintained Improvements the District will continue to own, operate, and maintain. On or before thirty (30) days following the District's receipt of the City's list of City Maintained Improvements, the District shall submit to the City in writing any concerns or objections that the District has to the City's list of City Maintained Improvements or District Maintained Improvements.

3. Following receipt of the District's written communication pursuant to paragraph 2 of this Exhibit A (if any), the Parties will use good faith efforts to mutually and reasonably agree to the City Maintained Improvements and District Maintained Improvements; provided, however, if the Parties cannot agree on said matters, the City shall make the final decision with respect to the same subject to compliance with paragraph 1(b) of this Exhibit A.

EXHIBIT B

Preparation and Adoption of Annual Budget and Calculation of City Operations Mill Levy

1. Preliminary Budget.

- (a) On or before September 1 of each year, commencing with the Mill Levy Commencement Year, each Party will prepare and submit to the other Party a preliminary budget for the following budget year in conformance with Article III of this Agreement and this Exhibit B (the “**Preliminary Budgets**”). Each Party shall provide to the other Party with its Preliminary Budget reasonable and reliable documentation to substantiate and validate the Preliminary Budget; such documentation may include, without limitation, existing contracts with, or proposals for the provision of services by, third-party contractors and service providers, and/or City and District (as applicable) staffing allocations for the subject budget year.
- (i) The City’s Preliminary Budget shall show the services to be provided and the proposed expenses anticipated to be incurred by the City with respect to (1) 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 its Preliminary Budget, the City will consider: (a) the City Maintained Improvements that have been constructed, including land that has been set aside for public purposes (e.g., natural open space), and Finally Accepted and are actually being operated and maintained by the City; (b) the City Maintained Improvements, including land to be set aside for public purposes (e.g., natural open space), that are likely to be Finally Accepted by the City during the ensuing budget year; (c) 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; (d) the beginning fund balance for The Canyons Metropolitan District No. 4 Fund; (e) the funds in The Canyons Metropolitan District No. 4 Fund set aside as Reserve Funds (as defined in Section 3.02(c) of this Agreement); (f) other available funding sources for the upkeep, operation, maintenance, repair, and replacement of, and the provision of services related to, the City Maintained Improvements that have been, or are likely to be, Finally Accepted by the City during the ensuing budget year; (g) the operation and maintenance standard set forth in Section 2.05 of this Agreement; (h) foreseeable enhancements to the District’s tax base; and (i) similar factors to determine the Annual City Operations Amount. The City’s Preliminary Budget shall include the

amount of the City Operations Mill Levy required to fully fund the Annual City Operations Amount.

(ii) The District's Preliminary Budget shall show the services to be provided and the proposed expenses anticipated to be incurred by the District with respect to its upkeep, operation, maintenance, repair, and replacement of the District Maintained Improvements and the not-yet Finally Accepted City Maintained Improvements that the District reasonably anticipates operating and maintaining during the ensuing budget year. Without limiting the foregoing, in preparing its Preliminary Budget, the District will consider: (a) the District Maintained Improvements that have been constructed and are actually being operated and maintained by the District; (b) the District Maintained Improvements that are likely to be completed during the ensuing budget year; (c) the City Maintained Improvements that are or are likely to be operated and maintained by the District during the ensuing budget year or some portion thereof (*i.e.*, until such time as the City Maintained Improvements have been Finally Accepted); (d) District funds in excess of the total expenses estimated in the District's Final Budget for the prior budget year; (e) other available funding sources for the upkeep, operation, maintenance, repair, and replacement of, and the provision of services related to, the District Maintained Improvements, including the District Reserve Funds (as defined in Section 3.02(d) of this Agreement); (f) the operation and maintenance standard set forth in Section 2.05 of this Agreement; (g) foreseeable enhancements to the District's tax base; (h) the District's reasonable legal, accounting, and administration costs; and (i) similar factors to determine the Annual District Operations Amount. The District's Preliminary Budget shall include the amount of the District Operations Mill Levy required to fully fund the Annual District Operations Amount.

2. **Budget Review.** Each Party may submit any comments, modifications to, additions to and/or deletions from the other Party's Preliminary Budget to the other Party no later than October 1 of such year. The Parties will exercise reasonable and good faith efforts to resolve any disagreements concerning the Preliminary Budgets in order to finalize the budgets by November 15 of the applicable year, and to facilitate the adoption of a final budget and certification of the City Operations Mill Levy and District Operations Mill Levy by the District (the "**Final Budgets**"). If a Party does not provide any comments, modifications to, additions to and/or deletions from the other Party's Preliminary Budget in writing to the other Party by October 1 of the applicable year, the reviewing Party will be deemed to have accepted the other Party's Preliminary Budget, including the amount of the City Operations Mill Levy or District Operations Mill Levy (as applicable), as presented.
3. **City Default Budget.** In the event that the Parties cannot agree on the City's Final Budget by November 15th of any year, the City and District will be deemed to have accepted a Final Budget with a City Operations Mill Levy set at the amount required to fully fund an Annual City Operations Amount equal to one-hundred and

fifteen percent (115%) of the prior year's Annual City Operations Amount. The imposition of a City default budget shall not prejudice the rights of the District and City to pursue remedies pursuant to the terms of this Agreement. Notwithstanding the foregoing, the financial obligations of the District due under this Agreement are payable solely from the Operations Revenue and will not exceed 19 mills, less the District Operations Mill Levy for the applicable year; *provided, however*, that, in the event the method of calculating assessed valuation has or is changed on or after January 1, 2009, the 19 mill maximum will be increased or decreased to reflect such changes, such increases or decreases to be determined by the District in good faith, in consultation with the City (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the applicable mill levy, as adjusted, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation to assessed valuation shall be deemed to be a change in the method of calculating assessed valuation.

4. Balanced Budget. In the event actual revenues for a budget year exceed total expenses, such excess shall roll over and be accounted for in the ensuing year's budget.

EXHIBIT C
FORM OF EFFECTIVE DATE NOTICE

_____, 20__

City of Castle Pines
7501 Village Square Drive, Suite 100
Castle Pines, CO 80108
Attn: City Manager
Phone: (303) 705-0200

Re: City Operations Mill Levy Pledge Agreement—Effective Date Notice

Ladies and Gentlemen:

This notice (the "**Notice**") is submitted to you pursuant to Section 1.01(a) of that certain City Operations Mill Levy Pledge Agreement, dated _____, 2021 (the "**Pledge Agreement**"), by and between The Canyons Metropolitan District No. 4 (the "**District**") and the City of Castle Pines, Colorado (the "**City**"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Pledge Agreement.

The District hereby notifies you that the "**Effective Date**" under the Pledge Agreement is [_____]. Attached hereto is an executed Bond Counsel Opinion, in the form attached as Exhibit D to the Pledge Agreement, dated as of the Effective Date.

The District acknowledges that, by delivery of this Notice and the enclosed Bond Counsel Opinion, the Effective Date has occurred, and that such occurrence is irrevocable. Accordingly, the District is hereafter unconditionally obligated to impose the City Operations Mill Levy and remit the proceeds thereof in accordance with, and subject to the limitations of, the Pledge Agreement.

Sincerely,

[Authorized Representative of the District]

EXHIBIT D
FORM OF BOND COUNSEL OPINION

_____, 20__

The Canyons Metropolitan District No. 4
C/O WHITE BEAR ANKELE TANAKA &
WALDRON
Attn: Clint Waldron, Esq.
2154 E. Commons Ave., Suite 2000
Centennial, CO 80122

City of Castle Pines
7501 Village Square Drive, Suite 100
Castle Pines, CO 80108
Attn: City Manager
Phone: (303) 705-0200

Re: City Operations Mill Levy Pledge Agreement

Ladies and Gentlemen:

We have acted as special bond counsel to The Canyons Metropolitan District No. 4 (the "**District**") in connection with the District's execution of that certain City Operations Mill Levy Pledge Agreement, dated _____, 2021 (the "**Pledge Agreement**"), by and between the District and the City of Castle Pines, Colorado (the "**City**").

The Pledge Agreement was authorized by the District by the approval of the Board of Directors of the District of a resolution authorizing the Pledge Agreement on _____, 2021 (the "**Pledge Agreement Resolution**"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Pledge Agreement and the Pledge Agreement Resolution.

The following three opinions (the "**Opinions**") are necessarily based solely upon our examination of the Pledge Agreement; the Pledge Agreement Resolution; certain certificates signed by officers of the District; the constitution and laws of the State of Colorado as of the date hereof; and such other documents, records, and matters of law as we have deemed necessary as a basis for the opinions hereinafter expressed. As to questions of fact material to our opinions, we have relied upon representations of the District and others without undertaking to verify the same by independent investigation. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to authentic original documents of all documents submitted to us as certified, conformed, or photostatic copies. The Opinions are given in our role as special bond counsel to the District, and in rendering the Opinions we are not undertaking to represent any other party. The Opinions given herein are limited to the laws of the State of Colorado.

Based upon the foregoing examination, and subject to the limitations and qualifications set forth herein, we are of the opinion under existing law that:

- (1) The Pledge Agreement constitutes a legal, valid and binding limited tax obligation of the District, and is legally enforceable against the District in accordance with its terms, subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other law affecting the enforcement of creditors' rights generally and subject to the application of general principles of equity.
- (2) The Pledge Agreement creates a limited tax pledge and a multiple-fiscal year obligation of the District to remit the Operations Revenue to the City.
- (3) All taxable property of the District is subject to an ad valorem tax levy at the rate and in the amount of the City Operations Mill Levy commencing on the date, and for the purposes, set forth in the Pledge Agreement.

The Opinions are rendered as of the date hereof, and we cannot and do not assume any responsibility for providing any information to any addressee or any other person concerning the Pledge Agreement or any opinions based upon such information, that may or may not become known to us after the date hereof. We express no opinion herein as to any matter not specifically set forth above.

The Opinions are solely for your benefit in connection with the execution and delivery of the Pledge Agreement, and are not to be circulated, quoted, or otherwise communicated, in whole or in part, to any other person or used for any other purpose without our prior written consent. The District is our sole client in this transaction and we have not been engaged by, nor have we undertaken to advise any other party or to opine as to matters not specifically covered herein.