

**RESOLUTION NO. 22-35**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND DOUGLAS COUNTY REGARDING A FINANCIAL CONTRIBUTION FOR THE CONSTRUCTION OF A DISC GOLF COURSE IN CASTLE PINES**

**WHEREAS**, the City of Castle Pines (“City”) and the Board of County Commissioners of Douglas County (“County”) are authorized to enter into contracts for lawful purposes for the protection of the health, safety, and welfare of its citizens;

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

**WHEREAS**, the Parties are legally empowered under Section 29-1-201, et seq., C.R.S. to enter into this Agreement;

**WHEREAS**, the City and the County desire to cooperate in advancing outdoor recreation in Castle Pines and the greater Douglas County community through the design, construction and installation of a disc golf course on land to be owned and maintained by the City (“Project”);

**WHEREAS**, the County agrees to share in the construction costs for the Project, which includes professional services for construction management and material testing; and

**WHEREAS**, the City and County desire to enter into an agreement.

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

**Section 1.** The City Council hereby: (a) approves the Intergovernmental Agreement between the City of Castle Pines and the Board of County Commissioners of Douglas County Regarding a Financial Contribution for the construction of a Disc Golf Course in Castle Pines (“IGA”) in substantially the same form as attached hereto as 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 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 12<sup>th</sup> DAY OF JUNE, 2022.**

DocuSigned by:



18352126594545A...

Tracy Engerman, Mayor



**ATTEST:**

**APPROVED AS TO FORM:**

DocuSigned by:  
*Tobi Duffey*  
AD03A3B02032499  
Tobi Duffey, CMC, City Clerk

DocuSigned by:  
*Linda C. Michow*  
5241DE98B8FF444  
Linda C. Michow, City Attorney

**EXHIBIT 1**

*[see attached agreement]*

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE CITY OF CASTLE PINES AND THE BOARD OF COUNTY  
COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO,  
REGARDING A FINANCIAL CONTRIBUTION FOR THE CONSTRUCTION  
OF A DISC GOLF COURSE IN CASTLE PINES**

THIS INTERGOVERNMENTAL AGREEMENT ("**Agreement**") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, **2022** ("Effective Date") by and between the City of Castle Pines, Colorado, a Colorado home rule municipality (the "**City**"), and the Board of County Commissioners of Douglas County, State of Colorado, (the "**County**"), hereinafter collectively referred to as the "**Parties**."

**RECITALS**

WHEREAS, the Parties are legally empowered under Section 29-1-201, et seq., C.R.S. to enter into this Agreement; and

WHEREAS, the City and the County desire to cooperate in advancing outdoor recreation in Castle Pines and the greater Douglas County community through the design, construction and installation of a disc golf course on land to be owned and maintained by the City, as shown in **Exhibit A ("Project")**; and

WHEREAS, the County agrees to share in the construction costs for the **Project**, which includes professional services for construction management and material testing; and

WHEREAS, the City is responsible for managing all pre-construction and all construction activities associated with the **Project**; and

WHEREAS, the City is responsible for securing funding for the **Project**, except for the County's contribution; and

WHEREAS, the County's only responsibility is to fund up to **fifty percent (50%)** of the construction costs for an amount not to exceed **\$300,000.00** as identified in **Section 4**.

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the Parties hereto agree as follows:

1. **Acknowledgment and Incorporation of Recitals.** The foregoing recitals are hereby acknowledged by the Parties to be true and correct and are incorporated into this Agreement.

2. **Term.** This Agreement shall commence upon the Effective Date and shall continue until twelve (12) months following substantial completion of the **Project**.

3. **City Responsibilities and Contribution.**

The City estimates the **Project** to cost **Six Hundred and Fifty Thousand Dollars and No Cents (\$650,000.00)**, hereinafter referred to as the "**Project Cost Estimate**" which includes the **County Contribution**, as that term is defined below in **Section 4** of this Agreement.

It is anticipated that the City's contribution will be **Three Hundred and Fifty Thousand Dollars and No Cents (\$350,000.00)**. The City agrees to manage all aspects of the **Project**. Except as expressly provided in **Section 4** of this Agreement, the City shall be responsible for paying for all **Project** costs, including any cost in excess of the **Project Cost Estimate**.

Once the City has made a determination to award a construction contract for the **Project**, the City shall submit an invoice to Douglas County Parks Department, (attention to Scott McEldowney), requesting full payment of the **County Contribution**, as defined below; and such invoice shall include a statement that the City intends to award a construction contract for the **Project** and the amount of the awarded contract(s).

Upon written request from the County, the City agrees to provide the County with copies of applicable **Project** expenditures.

4. **County Responsibilities and Contribution.**

The County agrees to pay the City with up to **fifty percent (50%)** of the construction costs for an amount not to exceed **Three Hundred Thousand Dollars and No Cents (\$300,000.00)**, referred to herein as the "**County Contribution.**" The sole purpose of the **County Contribution** is to provide partial funding for construction and other construction-related activities, which includes consulting services associated with construction management and material testing as well as associated disc golf park-related equipment acquisition. In no event will the County be liable for paying the City any amount in excess of the **County Contribution**, including for any unforeseen **Project** related costs or claims.

The County shall pay the **County Contribution** to the City within thirty (30) days after the County has received a written invoice from the City associated with the award of a construction contract for the **Project**. The **County Contribution** shall be used by the City solely for up to fifty percent (50%) of the **Project** costs. The City shall not use the **County Contribution** for any other purpose unless agreed to by both Parties and by executing a formal written contract amendment.

If any of the **County Contribution** is not used within the earlier of thirty (30) months after being paid to the City or within thirty (30) days after final acceptance of the **Project**, then the City shall notify the County; and the County may request any unused portion of the **County Contribution** be returned to the County within sixty (60) days' of

written notice. Under this provision, any amount the City desires to retain (not refunded to the County), shall be detailed in a written request and presented by the City for the County's consideration, and said request shall include copies of applicable supporting documentation justifying why the unused funds are still needed for additional construction-related Project costs. The County will determine in its sole discretion if the City may retain such funds.

5. **Time of Performance.** Upon execution of this Agreement by both Parties, the City shall diligently pursue award of a contract for the **Project's** construction activities. Currently, the Parties anticipate that the **Project** will be substantially completed on or before **June 1, 2023**.

6. **Remedies.** The Parties hereto acknowledge and agree that each Party may exercise all rights and remedies in law or in equity, by a decree in specific performance, or such other legal or equitable relief as may be available, including a return of the funds described in **Section 4** of this Agreement in the event of a default by the other Party. Unless an extension is agreed to in writing by both Parties prior to **June 30, 2023**, or if construction has not commenced, (a Notice to Proceed has been given by the City to its contractor), before **November 1, 2022**, then the County may terminate this Agreement and the City will give a full refund of any and all County Contribution received. This Section shall survive the termination of this Agreement.

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

City of Castle Pines: City of Castle Pines  
Public Works Department  
360 Village Square Lane, Suite B  
Castle Pines, Colorado 80108  
Attention: Larry Nimmo, Public Works Director  
[Larry.nimmo@castlepinesco.gov](mailto:Larry.nimmo@castlepinesco.gov)

Douglas County: Douglas County  
100 Third Street  
Castle Rock, Colorado 80104  
Attention: Scott McEldowney, Director, Open Space and  
Natural Resources  
[smceldow@douglas.co.us](mailto:smceldow@douglas.co.us)

With an electronic copy sent to [attorney@douglas.co.us](mailto:attorney@douglas.co.us)

8. **Appropriation.** Pursuant to section 29-1-110, C.R.S., any financial obligations of the County contained herein that are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made

available on an annual basis. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

9. **Additional Documents.** The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this Agreement.

10. **Colorado Law.** The laws of the State of Colorado shall govern this Agreement. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado and the Parties waive any right to remove any action to any other court, whether state or federal.

11. **Separate Entities.** The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.

12. **No Third-Party Beneficiaries.** The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. Any beneficiary of the terms and conditions of this Agreement are not intended beneficiaries but are incidental beneficiaries only.

13. **No Waiver of Governmental Immunity.** The Parties hereto understand and agree that the County, its commissioners, officials, officers, directors, agents and employees, and the City, its council members, officials, officers, directors, agents and employees are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, sections 24-10-101 to 120, C.R.S., or otherwise available to the County and the City.

14. **Entirety.** This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties hereto relating to the subject matter hereof and constitutes the entire agreement between the Parties concerning the subject matter hereof.

15. **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

16. **Modification.** This Agreement may only be modified upon written agreement signed by the Parties.

17. **No Waiver.** Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by either Party shall not constitute a waiver of any of the other terms or obligations of this Agreement.

18. **Assignment.** Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

19. **Survival.** Any terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

20. **Agreement Controls.** In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.

21. **Force Majeure.** Neither the County nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by “force majeure.” As used in this Agreement, “force majeure” means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

22. **Authority.** The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City of Castle Pines and the County and bind their respective entities.

23. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

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

[signature pages follows]



**CITY OF CASTLE PINES, COLORADO**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: **Mayor**

Date of Execution: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_

Tobi Duffey, City Clerk

**APPROVED AS TO FORM (excluding exhibits):**

\_\_\_\_\_

Linda Michow, City Attorney

[Douglas County signature page follows]

**BOARD OF COUNTY COMMISSIONERS  
OF DOUGLAS COUNTY**

\_\_\_\_\_  
\_\_\_\_\_, Chair

**ATTEST:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Kristin Randlett,  
Clerk to the Board

\_\_\_\_\_  
Douglas J. DeBord,  
County Manager

**APPROVED AS TO FORM:**

**APPROVED AS TO FISCAL CONTENT:**

\_\_\_\_\_  
Chris Pratt,  
Senior Assistant County Attorney

\_\_\_\_\_  
Andrew Copland,  
Director of Finance

**Exhibit A**

Insert information provided by Castle Pines depicting the design  
and limits of the Disc Golf Course project

## **EXHIBIT A**