

RESOLUTION NO. 23-02

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES,
COLORADO, APPROVING A FIRST AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND CASTLE
PINES NORTH METROPOLITAN DISTRICT REGARDING TRANSFER OF
STORMWATER SYSTEM AND NECESSARY EASEMENTS**

WHEREAS, the City of Castle Pines (the “City”) is a Colorado home rule municipal corporation; and

WHEREAS, the Castle Pines North Metropolitan District (the “District”) was formed and exists as a special district pursuant to § 32-1-101, *et seq.*, C.R.S., for the purpose of providing certain public improvements, facilities, and services to and for the use and benefit of the District, its residents, users, property owners and the public; and

WHEREAS, the City and the District previously entered into that certain Intergovernmental Agreement Regarding Transfer of Stormwater System and Necessary Property Rights dated June 29, 2022 (“Original Agreement”); and

WHEREAS, the purpose of the Original Agreement is to transfer the ownership and operation of the District’s Stormwater System and to transfer the District Stormwater Enterprise funds to the City for the City’s continued operation of the Stormwater System; and

WHEREAS, in accordance with the Original Agreement, the City has established the City Stormwater Enterprise via Ordinance No. 22-12 in accordance with law; and

WHEREAS, since the execution of the Original Agreement, the City and District have continued to work together to transfer the Stormwater System and necessary easements and real property from the District to the City, and also have begun negotiations regarding the transfer of ownership and operation of the District’s parks, trails, open space and recreation facilities (“Recreation Properties”) from the District to the City; and

WHEREAS, the District intends to assign and delegate all responsibility for its Recreation Properties and to convey all of the related real and personal property interests related to the Stormwater System and the Recreation Properties to the City as part of an effort to dissolve the District; and

WHEREAS, the City and the District desire to amend and restate the Original Agreement with respect to the transfer of the Stormwater System to extend the date by which the transfer of the Stormwater System will be transferred and to memorialize the Parties’ intent to transfer the Recreation Properties, as more fully set forth in the First Amended and Restated Intergovernmental Agreement Regarding the Transfer of Stormwater System and Necessary Easements attached 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 First Amended and Restated Intergovernmental Agreement between the City of Castle Pines and the Castle Pines North Metropolitan District Regarding Transfer of Stormwater System and Necessary Easements (“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 or provisions 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 6 IN FAVOR AND 0 AGAINST THIS 10th DAY OF JANUARY, 2023.


Tracy Engerman (Jan 18, 2023 09:02 PST)

Tracy Engerman, Mayor

ATTEST:



APPROVED AS TO FORM:



Tobi Duffey, MMC, City Clerk



Linda C. Michow, City Attorney

EXHIBIT 1

[see attached agreement]

**FIRST AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT
REGARDING TRANSFER OF STORMWATER SYSTEM AND
NECESSARY PROPERTY INTERESTS**

This **FIRST AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT REGARDING TRANSFER OF STORMWATER SYSTEM AND NECESSARY PROPERTY INTERESTS** (the “Agreement”) is entered into this ___ day of _____, 2023 (“Effective Date”), by and between the **CITY OF CASTLE PINES**, a Colorado home rule municipality (the “City”) and the **CASTLE PINES NORTH METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and; individually referred to herein as a “Party” and collectively referred to herein as the “Parties”.

WHEREAS, the City is a Colorado home rule municipal corporation incorporated as of February, 2008; and

WHEREAS, the District was formed and exists as a special district pursuant to § 32-1-101, *et seq.*, C.R.S. for the purpose of providing certain public improvements, facilities and services, to and for the use and benefit of the District, its residents, users, property owners, and the public; and

WHEREAS, the District has established and currently operates the District Stormwater Enterprise to provide stormwater services to properties within the boundaries of the District; and

WHEREAS, the District’s boundaries are located entirely within the corporate limits of the City; and

WHEREAS, pursuant to § 29-1-203, C.R.S., and Article XIV, Section 18(2)(a) of the Colorado Constitution, the Parties are permitted to cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the Parties; and

WHEREAS, the City and the District previously entered into that certain Intergovernmental Agreement Regarding Transfer of Stormwater System and Necessary Property Rights dated June 29, 2022 (“Original IGA”); and

WHEREAS, the purpose of the Original IGA is to transfer the ownership and operation of the District’s Stormwater System and to transfer the District Stormwater Enterprise funds to the City for the City’s continued operation of the Stormwater System; and

WHEREAS, in accordance with the Original IGA, the City has established the City Stormwater Enterprise within the City’s Department of Public Works in accordance with law; and

WHEREAS, subsequent to the execution of the Original Agreement, the City and

District have continued to work together to transfer the Stormwater System and necessary easements and real property from the District to the City, and also have begun negotiations regarding the transfer of ownership and operation of the Recreation Properties from the District to the City; and

WHEREAS, the District intends to assign and delegate all responsibility for the Recreation Properties to the City and convey all of the related real and personal property interests related to the Stormwater System and the Recreation Properties to the City as part of an effort to dissolve the District; and

WHEREAS, the City and the District desire to amend and restate the Original Agreement with respect to the transfer of the Stormwater System and the Parties' intent to transfer the Recreation Properties as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**ARTICLE 1
DEFINITIONS**

As used in this Agreement, the following terms shall have the following meanings:

A. *City Stormwater Enterprise* means an enterprise established by the City Council of the City of Castle Pines pursuant to Ordinance No. 22-12 in accordance with TABOR, Colo. Cons. Art. X, Sec. 20, to operate the Stormwater System within the City and the District.

B. *Closing Date* means on or before March 31, 2023, as mutually agreed upon in writing by the Parties' representatives designated in Section 2.B below.

C. *District Property* means all real property owned by the District relating to the operation of the Stormwater System.

D. *District Stormwater Enterprise or District Enterprise* means the storm drainage activity enterprise established by the District to provide stormwater services within the boundaries of the District.

E. *District Stormwater Fee* means the fee collected for stormwater services and facilities each month in the amount of:

- \$ 5.00 per ¾" Meter
- \$ 8.35 per 1" Meter
- \$ 16.63 per 1 ½" Meter
- \$ 26.68 per 2" Meter

And, properties within the Hidden Point subdivision are charged 1.25 times the rate stated for extraterritorial service.

F. *Parks IGA* means an intergovernmental agreement to be entered into between the City and the District regarding transfer of parks, open space, trails and recreation facilities to the City to accomplish the following:

a. Assign and delegate all responsibility to the City for the maintenance, operation and upgrade of the Recreation Properties; and,

b. Provide funding for such purposes from the District until the City is able to obtain voter authorization to replace the District funding simultaneous with the District seeking voter authorization to dissolve or include into another entity to provide water and sanitation services; and,

c. Provide for the potential transition of qualified District employees involved in stormwater and park functions to similar positions within the City; and,

d. Provide for the timing and conveyance of all real property and personal property of the District relating to the Recreation Properties and the Stormwater System while allowing the District to retain interests necessary for the operation and maintenance of its water and sewer enterprises.

G. *Recreation Properties* means real property owned and operated by the District for parks, open space, trails and recreation facilities.

H. *Service Plan* means the Castle Pines North Metropolitan District service plan dated February 1984 as amended April 1994.

I. *Stormwater System* shall mean all stormwater infrastructure and associated improvements and equipment necessary and sufficient to maintain and operate the stormwater system within and without the boundaries of the District.

J. *Stormwater Easement* shall mean a non-exclusive perpetual blanket easement upon, over, under, across and through the District Property for the purpose of the City's construction, reconstruction, operation, use, maintenance, repair, removal, and replacement of the Stormwater System as required by City in a form mutually agreed upon by the City and the District.

K. *Stormwater Fund* means the fund created by the City in which all monies received by the District under this Agreement or generated by future stormwater fees and charges collected by the District on the City's behalf or by the City shall be paid into.

ARTICLE 2
ASSUMPTION OF SERVICES

A. Operation and Maintenance of Stormwater System. By the Closing Date, the City shall own, operate and maintain the Stormwater System and the Stormwater Easement necessary and sufficient to provide stormwater services to all persons and properties currently served by the District at a level equal or better than that currently provided by the District.

B. Appointment of Service Integration Representatives. The District's project manager for purposes of accomplishing the transfer of the Stormwater System and associated Stormwater Easement to the City in accordance with the provisions of this Agreement shall be Nathan Travis, Interim District Manager. The City's project manager for said purposes shall be Michael Penny or other person designated in writing. The Parties' representatives shall work together and cooperate in good faith toward accomplishing the full and complete transfer of the Stormwater System and Stormwater Easement by the District to the City on or before the Closing Date.

C. Establishment of City Stormwater Enterprise: Assumption of Services.

1. City Stormwater Enterprise. The City has established its City Stormwater Enterprise and Stormwater Fund effective on or about October 28, 2022. Funds deposited therein shall be used only to pay costs associated with the administration of the City Enterprise and shall not be used for general governmental purposes or transferred into the City's general fund. On or before the Closing Date, the City will assume responsibility by contract or otherwise for all maintenance, operations, facilities, improvements, improvements under construction and/or needed improvements of or to the District Stormwater System.

2. Assessment of Stormwater Fee. The District will continue to assess and collect the Stormwater Fee and pay the proceeds to the City Stormwater Enterprise Fund for the services provided in C.1. until the Closing Date.

D. Acquisition of Stormwater System by the City. The Parties specifically acknowledge and agree that the City shall become the successor in interest and owner of all assets of whatsoever kind or nature owned by the District or the District Stormwater Enterprise and all necessary and sufficient real property interests related to the operation of the Stormwater System. On or before the Closing Date, the transfer of all assets and property shall be accomplished as set forth below:

1. Conveyance of Stormwater Facilities: Stormwater Easement. By the Closing Date, the District shall convey all facilities, fixtures and interests therein related to the Stormwater System that are owned by the District, including, but not limited to, all easements for stormwater infrastructure and other easements relating to and/or necessary for the provision of stormwater services as described in **Exhibit A**, to the City by quitclaim deed, or by conveyance of the Stormwater Easement, as mutually determined by the Parties. The District shall supply the City with a

complete list of all such real property interests, facilities and fixtures within sixty (60) days of the date of mutual execution of this Agreement, and the project managers identified in Article 2, Section B, above, shall meet as necessary to confirm the accuracy of the list prior to the delivery of the quitclaim deed or easements to the City.

2. Conveyance of Personal Property. All personal property related to the Stormwater System that is owned by the District, including, but not limited to, any vehicles, supplies, or equipment necessary for the operation or maintenance of the Stormwater System, shall be conveyed by the District to the City by bill of sale, in substantially the form attached hereto as **Exhibit B**. The District shall supply the City with a complete list of all such personal property, and the project managers identified above shall meet as necessary to confirm the accuracy of the list prior to the delivery of the bill of sale to the City.

3. Conveyance of District Records. All District records relating to the Stormwater System including, but not limited to, any study or studies on which the District has relied to establish the Stormwater Fee, books or records pertaining to the Stormwater System, minutes of District Stormwater Enterprise activities, customer lists, accounting records, rules and regulations of the District pertaining to the Stormwater System, policies and procedures of the District related to the Stormwater System or the operation or maintenance thereof, insurance policies, list(s) of customers delinquent in remitting the Fee, unreleased liens, service contracts, maintenance history of the Stormwater System, maintenance history and any product warranties of equipment related to the Stormwater System, and the maintenance schedule(s) of the District pertaining to the Stormwater System shall be made available by the District for review by the City within ninety (90) business days of the date of mutual execution of this Agreement. Necessary documents selected by the City will be provided before the Closing Date. The project managers identified in Article 2, Section B, above, shall meet as necessary to confirm that all District records have been provided to the City on or before the Closing Date.

4. Transfer of District Stormwater Enterprise Funds. On or before the Closing Date, the District shall transfer all funds remaining in its Enterprise Fund, whether held in one or more accounts, to the City to be used for its intended purpose. Upon receipt, the City shall deposit all such funds into the Stormwater Fund and shall thereafter use said funds for costs associated with administration of the City's stormwater utility. As of the date of mutual execution of this Agreement, the existing balance of funds in the District Enterprise is approximately \$1,102,090.00 (the "Current Estimated Fund Amount"). The Parties additionally acknowledge and agree that the amount ultimately transferred by the District to the City will be different than the Current Estimated Fund Amount as pending projects initiated by the District must be completed. The District will provide an accounting of the use of the Current Estimated Fund Balance at the time of transfer to the City.

E. Assignment of Contracts. The District shall provide a list of all contracts between the District and third parties that are pertinent to and affect the maintenance, operation of the Stormwater System. The District and City project managers identified in Section 2.B above shall agree upon the contracts to be assigned to the City (“Assigned Contracts”). The District hereby covenants that by the Closing Date it shall have obtained approval or acknowledgment of the assignment of all Assigned Contracts to the City that are necessary to implement the transfer of the Stormwater System and associated Properties to the City and that such assignments shall be effective as of the Closing Date. To the extent any contract, permit, or right is not assigned hereunder, the District shall use its best efforts to cause such assignment or transfer to occur on or after the Closing Date.

ARTICLE 3 COLLECTION AND REMITTANCE OF STORMWATER FEE

A. Continued Collection and Remittance of Stormwater Fees. The District will continue to assess and collect the Stormwater Fee and pay the full proceeds, including any late payments, fees, and charges received by the District, to the City Stormwater Enterprise Fund until the Closing Date, and thereafter immediately upon receipt of any Stormwater Fees the District receives. All Stormwater Fees remitted to the City shall be accomplished via wire transfer, or such other delivery method as may be agreed to by the Parties in writing

B. Analysis of Stormwater Fees. The Parties acknowledge and agree that the Stormwater Fees are currently imposed as a flat monthly charge based on meter size. The City may, in its discretion, undertake one or more studies in the future to determine whether the Stormwater Fees should be increased or decreased.

ARTICLE 4 TERMINATION OF DISTRICT CDPS MS4 PERMIT

A. CDPS MS4 Permit. Both Parties are permitted entities under the Colorado Discharge Permit System (“CDPS”) General Permit for Municipal Separate Storm Sewer Systems (“MS4”). The District currently holds a non-standard MS4 permit (Permit No. COR-070215) and the City currently holds a standard MS4 permit (Permit No. COR-080022). The CDPS program is administered by the Colorado Department of Public Health and Environment (“CDPHE”).

B. Filing of District Annual Report. The District agrees to file any stormwater report required by CDPHE, and shall provide the City with a complete copy thereof on the date the report is submitted to CDPHE.

C. Termination of District’s Non-Standard MS4 Permit. Within fifteen (15) business days of the Closing Date, the Parties shall take all necessary and proper steps to terminate the District’s non-standard MS4 permit (Permit No. COR-070215) with CDPHE and fully and completely transfer all of the District’s authority for stormwater management within the Parties’ common boundaries to the City subject to indemnification from the City for any claims of violations. The City’s Mayor and the President of the Board of Directors of the District, as the legal representatives for each of the Parties under applicable provisions of the CDPS General Permit,

shall jointly execute a letter addressed to CDPHE requesting that CDPHE recognize that the District's non-standard MS4 permit be terminated. The Parties agree that the letter addressed to CDPHE shall contain the certification language required by Part I.H.1 of the CDPS General Permit and shall otherwise be in a form that satisfies other applicable CDPHE requirements. On and after CDPHE's confirmation of receipt of said letter, the City shall be considered the sole MS4 permit holder within the City's boundaries and shall be the only entity responsible for maintaining a stormwater management program within the City's boundaries.

D. Cancellation of Membership in Douglas County Stormwater Cooperative and Colorado Stormwater Council. Within fifteen (15) business days of the Closing Date, the District shall take all necessary and proper steps to terminate its membership with the Douglas County Stormwater Cooperative ("DCSC") and the Colorado Stormwater Council ("CSC"). The District's project manager identified above agrees to attend meetings of DCSC and CSC at the request of the City's project manager in order to advise DCSC and CSC of this Agreement and to facilitate the distribution of any additional information pertaining to the transfer of the Stormwater System to the City.

ARTICLE 5
AMENDMENT OF DISTRICT SERVICE PLAN

A. Service Plan Authority and Amendment. On or before the Closing Date, the District shall petition the County to process an amendment to its Service Plan to remove the District's authority to provide, own, or maintain a Stormwater System.

ARTICLE 6
TERMINATION OF THIS AGREEMENT

A. Termination by District. The District may terminate this Agreement for any reason provided in writing to the City at least 30 days prior to the Closing Date.

B. Termination by City. City may terminate this Agreement for any reason provided in writing to the District at least 30 days prior to the Closing Date.

ARTICLE 7
PARKS IGA

The City and the District will negotiate in good faith to enter into and execute the Parks IGA on or before the Closing Date.

ARTICLE 8
MISCELLANEOUS PROVISIONS

A. Modification. This Agreement may not be amended, modified, or changed, in whole or in part, without a written agreement executed by the Parties.

B. Time. Time is of the essence in the performance of this Agreement.

C. Notification to Customers. Prior to the Closing Date, the District will notify its customers in writing that the City is assuming ownership and maintenance of the Stormwater System on the Closing Date and that the Stormwater Fees will be collected by the City after the Closing Date, and that the existing balance in the District Enterprise has been transferred to the City in order to defray the City's expenses in performing its obligations to maintain and operate the Stormwater System. The City shall review and approve the form of notice prior to the District distributing the same to its customer base. The District may comply with the notice requirement of this Section by providing an insert or additional information in its regular monthly bills to customers.

D. Enforcement of Contract. The Parties acknowledge and agree that this Agreement may be enforced in law or in equity by a decree of specific performance, damages, or such other legal and equitable relief as may be available to either Party.

E. Notices. Any notice pursuant to the terms and conditions of this Agreement shall be in writing and delivered personally, or sent by certified mail, return receipt requested, or sent by a recognized overnight mail or courier services, with delivery receipt requested, to the addresses set forth below (or to such other address or addresses as may from time to time be specified in writing by the Parties):

To the District:

Castle Pines North Metropolitan District
Attn: Board President
7404 Yorkshire Drive
Castle Rock, CO 80108

With a copy to:

Kim Seter
Seter & Vander Wall, PC
7400 E. Orchard Road, #3300
Greenwood Village, Colorado 80111

To the City:

City of Castle Pines
Attn: Mayor and City Manager
360 Village Square Lane, Suite B
Castle Pines, CO 80108

With a copy to:

Linda C. Michow
City Attorney – City of Castle Pines
Michow Cox & McAskin LLP
6530 S. Yosemite Street, Suite 200
Greenwood Village, Colorado 80111

Notices shall be effective when received by the party to whom addressed.

F. Governing Law/Venue. This Agreement shall be governed by, and enforced in accordance with, the laws of the State of Colorado. Any suit or proceeding arising from or relating in any way to the subject matter of this Agreement shall be brought only in the District Court for and in Douglas County, Colorado.

G. Binding Agreement. This Agreement shall inure to and be binding on the successors and permitted assigns of the Parties hereto.

H. Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior oral and written proposals, negotiations, representations, promises, agreements, warranties or understandings concerning such subject matter.

I. Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of the rights and privileges of the Parties pursuant to the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as the same may be amended from time to time.

J. Authority to Enter into Agreement. Each Party hereby confirms it is lawfully authorized to enter into this Agreement, and has taken all steps necessary to authorize the execution of the Agreement by the respective signatories below.

K. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then the legality, validity, and enforceability of the remaining provisions of this Agreement will not be affected thereby; and in lieu of each such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and which will be legal, valid and enforceable to implement the parties manifest intent as nearly as possible.

L. Headings. The headings and captions contained in this Agreement are inserted for the convenience of reference only. They are not to be deemed a part of this Agreement, nor are they to be used in the construction of this Agreement.

M. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

N. No Third Party Beneficiaries: 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, including any agent, consultant, or contractor of a Party. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the day and year first above written.

CITY:

CITY OF CASTLE PINES,
a Colorado municipal corporation

By: _____
Tracy Engerman, Mayor

ATTEST:

Approved as to Form:

Tobi Duffey, City Clerk

By: _____
Linda Michow, City Attorney

DISTRICT:

CASTLE PINES NORTH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____
Chuck Lowen, President

ATTEST:

Secretary

Approved as to form:

Kim J. Seter, Attorney for the District

EXHIBIT A

DESCRIPTION OF STORMWATER PROPERTIES AND FIXTURES

