

RESOLUTION NO. 23-35

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES, COLORADO APPROVING AN
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF CASTLE PINES AND THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, STATE OF COLORADO, REGARDING THE
RELOCATION OF SOUTH HAVANA STREET PROJECT AND A FINANCIAL
CONTRIBUTION FOR A FUTURE TRAFFIC SIGNAL**

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; and

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; and

WHEREAS, by special warranty deed dated August 14, 2003 between Judge, Inc. and the Board of County Commissioners of Douglas County, recorded in the Clerk and Recorder's Office of Douglas County at Reception No. 2003135858, Judge, Inc. conveyed certain real property to the County in fee for public right-of-way, including a portion of existing South Havana Street extending from the existing intersection with Castle Pines Parkway north approximately 800 feet (collectively, the "Havana Street ROW") and a portion of Castle Pines Parkway at the intersection of Castle Pines Parkway and South Havana Street ("Castle Pines Parkway Parcel"); and

WHEREAS, the City and the County desire to cooperate in the reconstruction of the intersection of Havana Street ROW and Castle Pines Parkway to include: (a) the relocation of the Existing South Havana Street approximately 350' west of its current intersection with Castle Pines Parkway, the installation of a full-movement 4-way traffic signal, and construction of realigned South Havana Street (collectively, the "Project"); and

WHEREAS, the City will be responsible for all design, pre-construction and construction activities and costs associated with the Project; and

WHEREAS, the County will convey Havana Street ROW and Castle Pines Parkway Parcel to the City by quit claim deed; and

WHEREAS, the County will fund costs associated with the Traffic Signal including design, materials and equipment, installation and testing in a not to exceed amount of Five Hundred Thousand Dollars (\$500,000.00) ("County Contribution"); and

WHEREAS, the City and County desire to enter into an intergovernmental agreement as set forth in **Exhibit A** to this Resolution to memorialize the terms and conditions of their respective obligations regarding the Project and the County Contribution.

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

Section 1. The City Council hereby approves the Intergovernmental Agreement between the City and the Board of County Commissioners of the County of Douglas, State of Colorado, Regarding the Relocation of South Havana Street Project and a Financial Contribution for a Future Traffic Signal, substantially in the form attached as **Exhibit A** (the "IGA"), subject to minor modifications approved by the City Attorney that do not increase the obligations of the City, and authorizes the City Manager and his designees to take whatever action is necessary to implement the terms of the IGA.

Section 2. This Resolution shall be effective immediately upon approval of the City Council of the City of Castle Pines.

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 25th day of JULY, 2023.



ATTEST:

By: *Tobi Duffey*
Tobi Duffey, MMC, City Clerk

By: *Tracy Engerman*
Tracy Engerman (Jul 27, 2023 14:30 MDT)
Tracy Engerman, Mayor

Approved as to Form:

By: *Linda C Michow*
Linda Michow, City Attorney

EXHIBIT A
INTERGOVERNMENTAL AGREEMENT

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF CASTLE PINES AND THE BOARD OF COUNTY
COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO,
REGARDING THE RELOCATION OF SOUTH HAVANA STREET PROJECT
AND A FINANCIAL CONTRIBUTION FOR A FUTURE TRAFFIC SIGNAL**

THIS INTERGOVERNMENTAL AGREEMENT between the City of Castle Pines and the Board of County Commissioners of the County of Douglas, State of Colorado, regarding the Relocation of South Havana Street Project and a Financial Contribution for a Future Traffic Signal (“**Agreement**”) is made and entered into this _____ day of _____, **2023** (“**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, Article XIV, Section 18(2)(a) of the Colorado Constitution, and section 29-1-203, C.R.S. provide a means whereby governmental units may cooperate or contract with one another to make the most efficient and effective use of their powers and responsibilities; and

WHEREAS, by special warranty deed dated August 14, 2003 between Judge, Inc. and the Board of County Commissioners of Douglas County, recorded in the Clerk and Recorder’s Office of Douglas County at Reception No. 2003135858, Judge, Inc. conveyed certain real property to the County in fee for public right-of-way, including a portion of existing South Havana Street extending from the existing intersection with Castle Pines Parkway north approximately 800 feet identified as **State Parcel Number 2351-031-99-010** and **State Parcel Number 2351-023-99-001** (collectively, the “**Havana Street ROW**”) and a portion of Castle Pines Parkway at the intersection of Castle Pines Parkway and South Havana Street (“**Castle Pines Parkway Parcel**”), together as legally described and depicted in the attached **Exhibit A**; and

WHEREAS, the City and the County desire to cooperate in the reconstruction of the intersection of Havana Street ROW and Castle Pines Parkway to include: (a) the relocation of the Existing South Havana Street approximately 350’ west of its current intersection with Castle Pines Parkway (“**Realigned Intersection**”), the installation of a full-movement 4-way traffic signal (“**Traffic Signal**”), and construction of realigned South Havana Street (“**Realigned South Havana Street**”) (collectively, the “**Project**”) in accordance with the terms identified in this Agreement and as generally depicted in **Exhibit B**, attached hereto and incorporated herein by reference; and

WHEREAS, in conjunction with the Project, the County will convey certain parcels and easements to the City; and

WHEREAS, the Project shall consist of final construction plans that will be maintained on file in the City Public Works Department; and

WHEREAS, the City shall be responsible for all design, pre-construction and construction activities and costs associated with the Project except as provided in this Agreement; and

WHEREAS, the County will convey Havana Street ROW and Castle Pines Parkway Parcel to the City by quit claim deed; and

WHEREAS, the County will fund costs associated with the Traffic Signal including design, materials and equipment, installation and testing in a not to exceed amount of Five Hundred Thousand Dollars (\$500,000.00) (“**County Contribution**”); and

WHEREAS, the County Contribution for a portion of the future traffic signal fulfills Douglas County’s previous commitment to the adjacent developer / property owner that was identified as part of the Hess Road Extension Project, (between existing South Havana Street and Chambers Road in the Town of Parker); and

WHEREAS, the City is responsible for securing all funding for the **Project**, except for the County’s Contribution; and

WHEREAS, upon execution of this Agreement, the County’s only financial responsibility is to pay the County Contribution.

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 terminate two (2) years following final completion of the Project as evidenced by the City’s final acceptance of the Project.

3. **City Responsibilities and Contributions.**

a. **Project Responsibility.** The City shall be responsible for the design, construction and construction management of the Project. The City shall provide the County with the final construction documents (plans and specifications) conforming to the City’s roadway design criteria (“**Construction Documents**”) for review and approval by the County. The County shall review and provide comments to the City on the Construction Documents within fifteen (15) days of receipt of same from the City. The City will consider any comments provided by the County in preparing and finalizing the Construction Documents and the City shall have final approval of the Construction Documents.

b. Access to Realigned South Havana Street. In order for the County's regional transportation network to operate safely and efficiently, the City agrees with the County to not allow on any access from Lot 1 southbound onto the proposed relocated South Havana Street within 350-feet (measured from the curb and gutter for westbound Castle Pines Parkway) to the north of the proposed full movement intersection with Castle Pines Parkway. Any proposed access between 350 feet and 450 feet (measured from the curb and gutter for westbound Castle Pines Parkway) shall be limited to right-in only.

c. Acceptance of Conveyance and Annexation of County Parcels. Upon County's execution of quit claim deeds for the conveyance of the Havana Street ROW and Castle Pines Parkway Parcel ("**County Parcels**") to the City, as set forth in Section 4.b below, the City Council of the City shall accept said County Parcels via resolution considered at a public meeting. Upon City Council's acceptance of the County Parcels, the City will initiate annexation proceedings to annex the portion of County Parcels not already within the City limits. Upon completion of annexation of the County Parcels, the City shall be solely responsible to own, operate, vacate, repair and maintain the County Parcels.

d. Drainage infrastructure. The City agrees to operate and maintain the drainage infrastructure to be constructed within a permanent easement with limits depicted in Exhibit C, with final limits to be determined through the design process, and located along the west side of existing South Havana Street and located within the County property identified by State Parcel Number 2351-031-00-002.

e. Vacation of Havana Street ROW. The County acknowledges the City's legislative authority to vacate all or any portion of the Havana Street ROW upon the County's conveyance to and annexation by the City of Havana Street ROW (as shown in **Exhibit D**). The City will not vacate any portion of existing Havana Street ROW until the ROW for the new Havana Street alignment is dedicated and all improvements within and serving the new ROW are accepted by the City.

f. Modification of A-Line. Once the City has caused the completion of the Project, and the Castle Pines Intersection has been fully and permanently closed by the City, the Parties will cooperate to seek approval from the Colorado Department of Transportation (CDOT) to modify the existing CDOT Access Control Lines (A-lines) in order to close the existing gap (break) in the A-line for the Existing South Havana Street / Castle Pines Parkway Intersection. Additionally, the City will work with CDOT and adjacent property owners to remove the existing CDOT A-lines that extend north of Castle Pines Parkway along the east and west sides of existing South Havana Street. The proposed A-line revisions are depicted in **Exhibit E**.

g. Invoice for County Contribution. Upon full execution of this Agreement, the City shall submit an invoice to Douglas County Public Works Engineering, (attention: Assistant Director of Public Works - Engineering), requesting full payment of the County's Contribution as defined in Section 4 of this Agreement.

h. Signal at South Havana Street/Castle Pines Parkway intersection. The City agrees to complete a signal warrant study to determine if a traffic signal is warranted. The City or its assigns agrees to construct the traffic signal at the proposed relocated South Havana Street/Castle Pines Parkway intersection when warranted.

4. **County Responsibilities and Contribution.**

a. Payment of County Contribution. The County agrees to fund the Traffic Signal in the amount of the County Contribution. The sole purpose of the County Contribution is to fund the Traffic Signal. In no event will the County be liable for paying the City or its assigns 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, in accordance with Section 3(g) above. The City shall not use the County Contribution for any purpose other than to pay the cost of the Traffic Signal, unless otherwise agreed to by both Parties and by executing a formal written contract amendment.

b. Conveyances. Within thirty (30) days of execution of this Agreement, the County will convey to the City: (a) Havana Street ROW and Castle Pines Parkway Parcel; (b) easements appurtenant to the South Havana Street ROW including but not limited to easements recorded in the office of the Douglas County Clerk and Recorder at Reception Nos. 2003135859 and 2010006587 (collectively, the “**Existing Easements**”); and (c) a temporary construction access easement and permanent slope and drainage easement in a form approved by the City and County along the west side of existing South Havana Street within **State Parcel Number 2351-031-00-002**, generally as shown in **Exhibit C** subject to final configuration through the design process (the “**Drainage Easement**”). The Drainage Easement shall be for the City, to maintain and operate drainage facilities, including modifications to the existing stormwater runoff system and new water quality ponds (if required).

c. No County Maintenance Obligation. Upon the County’s conveyance of the County Parcels to the City by quit claim deed, the County will be relieved of any and all ownership, maintenance and operations responsibilities over the County Parcels, except as may be agreed upon between the Parties in a separate agreement regarding snow removal and street sweeping.

5. **Time of Performance of Project.** Upon execution of this Agreement by both Parties, the City shall diligently pursue or cause to be pursued an award of a contract for the **Project**.

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 or if construction has not commenced as evidenced by a Notice to Proceed issued by or through the City to its contractor, before **October 31, 2025**, then the County may terminate this Agreement and the City will refund any and all County Contribution the City 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
7437 Village Square Drive, Suite 200
Castle Pines, Colorado 80108
Attention: Larry Nimmo, Public Works Director
Larry.nimmo@castlepinesco.gov

With an electronic copy sent to linda@mcm-legal.com

Douglas County: Douglas County
100 Third Street
Castle Rock, Colorado 80104
Attention: Matt Williams, Assistant Director PW
Engineering
MWillal@douglas.co.us

With an electronic copy sent to attorney@douglas.co.us

8. **Appropriation.** Pursuant to section 29-1-110, C.R.S., any financial obligations of the County and the City 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 or the County not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the City or the County 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. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, neither the City nor the County shall be deemed or constitute a partner, joint venturer, or agent of the other. Any actions taken by the parties pursuant to this Agreement shall be deemed actions as an independent contractor of the other.

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. The County agrees that the City may work directly with The Canyons Metropolitan

District No. 3 to carry-out this project, however, the City is ultimately responsible for the terms in this Agreement.

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; Electronic Signatures.** 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: Tracy Engerman

Title: **Mayor**

Date of Execution: _____

ATTEST:

Tobi Duffey, MMC, 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

Havana Street ROW and Castle Pines Parkway Parcel Deeds (Reception No.
2003135858)

EXHIBIT B

Illustration of Project

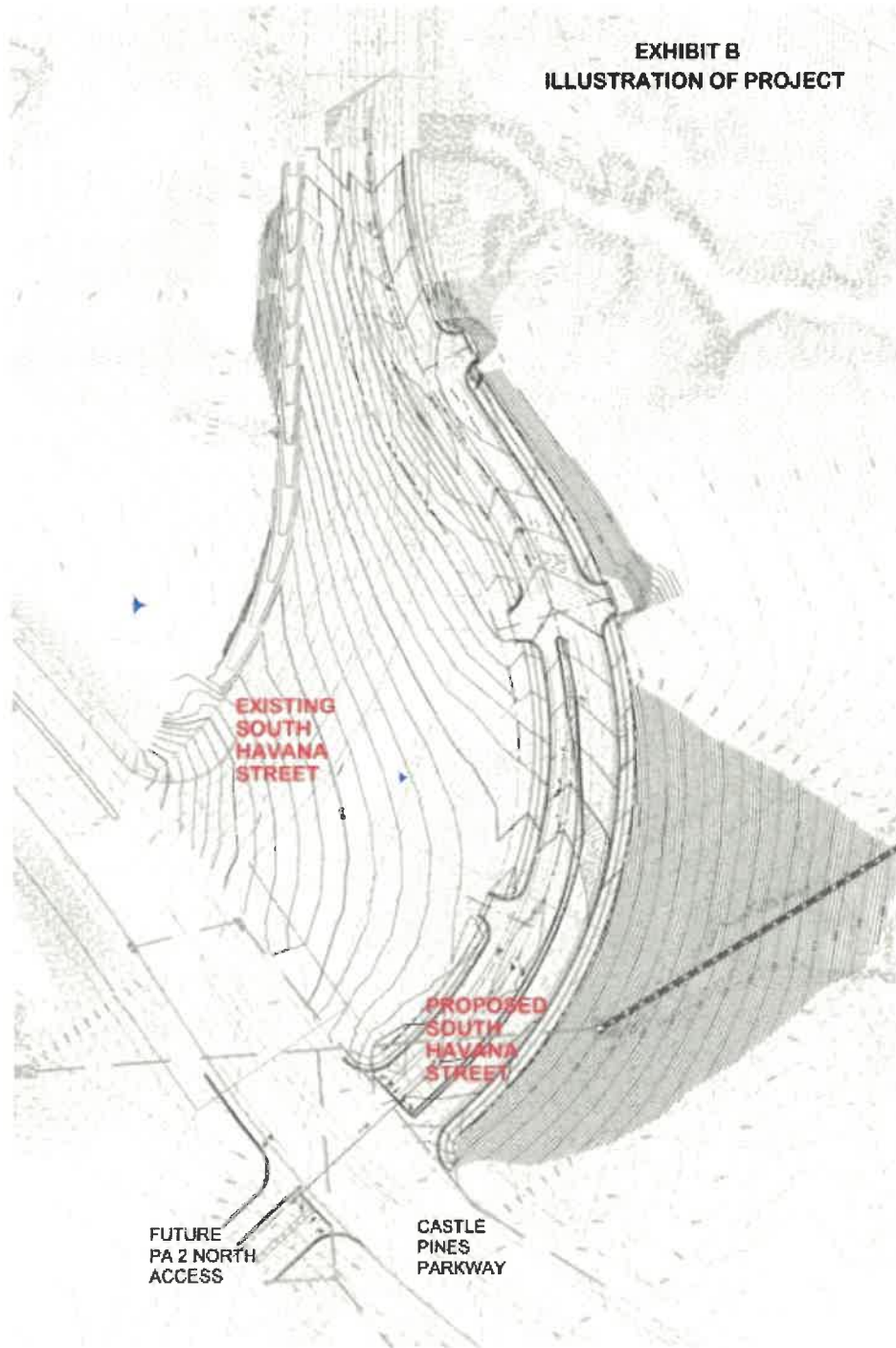


EXHIBIT C

**Illustration/location of new Temporary Construction Access and
Permanent Slope and Drainage easement**

**EXHIBIT C
ILLUSTRATION OF APPROXIMATE
LOCATION OF TEMPORARY
CONSTRUCTION ACCESS AND
PERMANENT SLOPE AND DRAINAGE
EASEMENT**

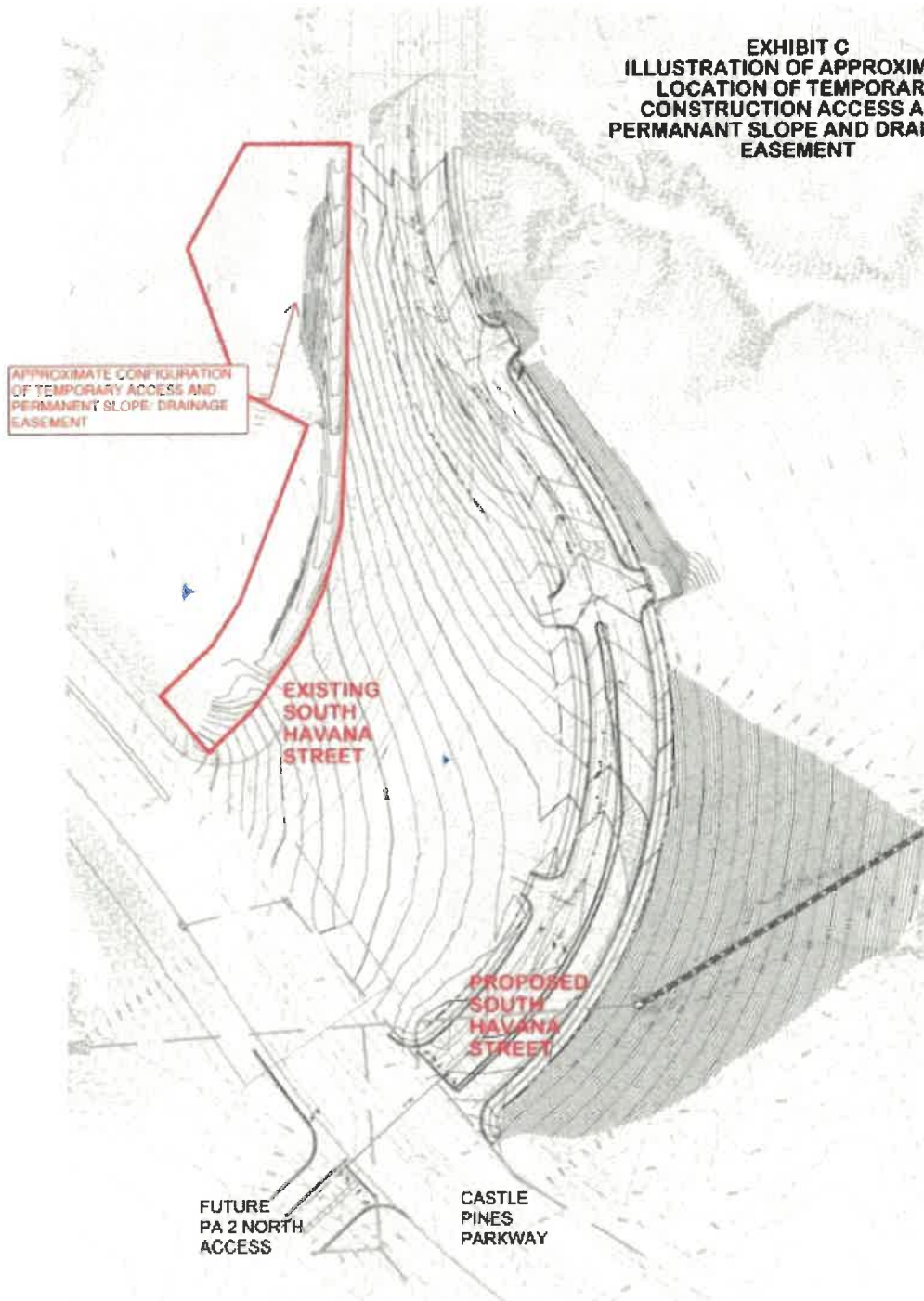


EXHIBIT D

Existing South Havana Street (To Be Vacated)

**EXHIBIT D
EXISTING SOUTH HAVANA
STREET RIGHT OF WAY
(TO BE VACATED)**

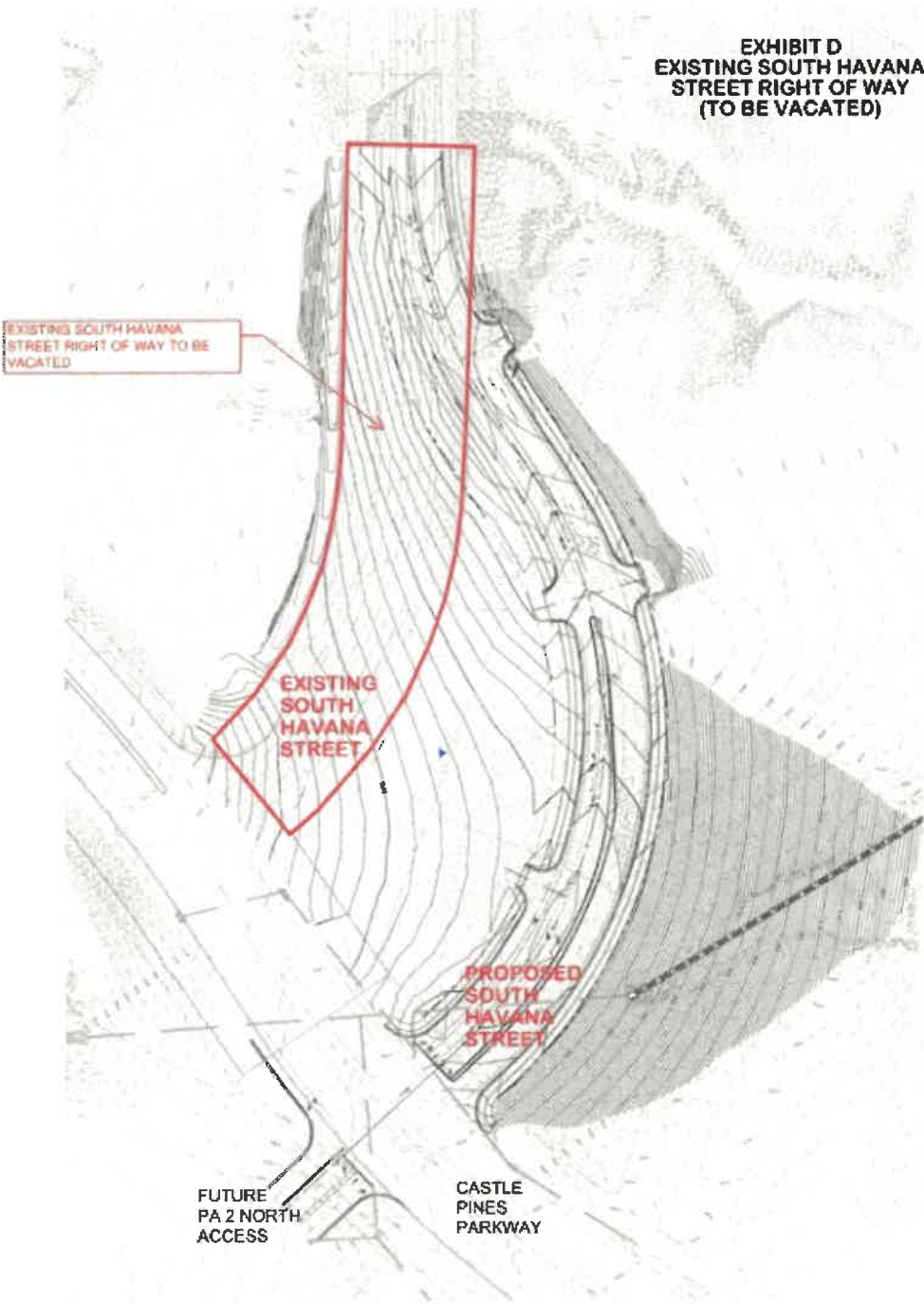


EXHIBIT E A-LINE REVISIONS

