

RESOLUTION NO. 23-36

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF CASTLE PINES, COLORADO APPROVING AN AGREEMENT
AMONG THE CITY OF CASTLE PINES, COLORADO, THE CANYONS
METROPOLITAN DISTRICT NO. 3 AND NORTH CANYONS, LLLP REGARDING
THE RELOCATION OF SOUTH HAVANA STREET AT THE CASTLE PINES
PARKWAY INTERSECTION**

WHEREAS, the City of Castle Pines (the “City”) is authorized to enter into contracts for lawful purposes for the protection of the health, safety, and welfare of its citizens; and

WHEREAS, the Canyons Metropolitan District No. 3 (the “District”) was organized pursuant to and in accordance with the provisions of §§ 32-1-101, *et seq.*, C.R.S. for the purpose of constructing, financing, operating, and maintaining certain public facilities and improvements for itself, its taxpayers, residents, and users; and

WHEREAS, pursuant to § 32-1-1001(1)(d)(I), C.R.S., the District is empowered to enter into contracts and agreements affecting the affairs of the District; 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, § 29-1-203, C.R.S., as amended, authorizes the City and the District to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide; and

WHEREAS, North Canyons, LLLP, a Colorado limited liability limited partnership (“North Canyons”) submitted an application to the City for Canyonside Preliminary Plan No. 2 to subdivide a parcel of land for commercial development and to realign South Havana Street (“Canyonside Preliminary Plan”); and

WHEREAS, the City Council approved the Canyonside Preliminary Plan on March 14, 2023, conditioning approval on the “execution of an intergovernmental agreement between the City and Douglas County in a form approved by the City and an agreement between the City, North Canyons LLLP, and the Canyons Metropolitan District No. 3 in a form approved by the City for the realignment of S. Havana Street and associated intersection improvements at Castle Pines Parkway within 180 days from the date of approval of the preliminary plan;” and

WHEREAS, pursuant to the 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, Douglas County, Colorado (the “County”) and the City agreed to cooperate in the reconstruction of the intersection of Havana Street 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”); and

WHEREAS, the City, District and North Canyons desire to cooperate in completing the Project; and

WHEREAS, the City, North Canyons and the District have determined it to be in the best interests of the Castle Pines community to enter into an agreement, as set forth in **Exhibit A** attached to this Resolution, to memorialize their respective obligations with respect to the Project.

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

Section 1. The City Council hereby approves the Agreement between the City of Castle Pines, the Canyons Metropolitan District No. 3 and North Canyons, LLLP Regarding the Relocation of South Havana Street at the Castle Pines Parkway Intersection, substantially in the form attached as **Exhibit A** (the “Agreement”), subject to minor modifications approved by the City Attorney that do not increase the obligations of the City, and authorizes the City Manager or his designees to take whatever action is necessary to complete the Project.

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
AGREEMENT**

**AGREEMENT AMONG THE CITY OF CASTLE PINES, COLORADO, THE
CANYONS METROPOLITAN DISTRICT NO. 3 AND NORTH CANYONS, LLLP
REGARDING THE RELOCATION OF SOUTH HAVANA STREET AT THE CASTLE
PINES PARKWAY INTERSECTION**

This **AGREEMENT AMONG THE CITY OF CASTLE PINES, COLORADO, THE CANYONS METROPOLITAN DISTRICT NO. 3 AND NORTH CANYONS, LLLP REGARDING THE RELOCATION OF SOUTH HAVANA STREET AT THE CASTLE PINES PARKWAY INTERSECTION**, including any and all exhibits attached hereto (the “**Agreement**”), is entered into as of the ____ day of _____ 2023, by and among the **CITY OF CASTLE PINES**, a Colorado home rule municipality (the “**City**”), **THE CANYONS METROPOLITAN DISTRICT NO. 3**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”) and **NORTH CANYONS, LLLP**, a Colorado limited liability limited partnership (“**North Canyons**”). The City, the District, and North Canyons are referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

WHEREAS, the City is legally empowered under Section 29-1-201, *et seq.*, C.R.S. and its home rule authority to enter into this Agreement; and

WHEREAS, the District was organized pursuant to and in accordance with the provisions of §§ 32-1-101, *et seq.*, C.R.S. for the purpose of constructing, financing, operating, and maintaining certain public facilities and improvements for itself, its taxpayers, residents, and users; and

WHEREAS, pursuant to § 32-1-1001(1)(d)(I), C.R.S., the District is empowered to enter into contracts and agreements affecting the affairs of the District; 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, pursuant to the 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 dated as of _____, 2023 (the “**City/County IGA**”), Douglas County, Colorado (the “**County**”) and the City agreed to cooperate

in relocating a portion of existing South Havana Street in accordance with the terms of the City/County IGA; and

WHEREAS, pursuant to this Agreement, the Parties agree to cooperate to relocate a portion of South Havana Street approximately 350-feet to the east of the existing South Havana Street / Castle Pines Parkway Intersection; and

WHEREAS, the portion of existing South Havana Street to be relocated or modified extends from its existing intersection with Castle Pines Parkway to the north approximately 800-feet as show in **Exhibit A** attached hereto and incorporated herein (the “**Project**”); and

WHEREAS, pursuant to the City/County IGA, the County agreed to convey its interest in a portion of existing South Havana Street and a portion of Castle Pines Parkway to the City by quit claim deed together with the benefit of certain easements appurtenant thereto; 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 this Agreement; and

WHEREAS, North Canyons has determined it to be in the best interests of its partners to enter into this Agreement;

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

TERMS AND CONDITIONS

1. Recitals Incorporated. The above recitals are hereby incorporated as if fully set forth in this Agreement.

2. Performance of City/County IGA.

a. Enforcement of Performance. Pursuant to the terms of the City/County IGA, the County will convey to the City: (a) the existing South Havana Street right-of-way (**State Parcel Number 2351-031-99-010** and **State Parcel Number 2351-023-99-001**) (collectively the “**South Havana ROW**”); (b) the benefit of easements appurtenant to the South Havana 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 permanent slope and drainage easement along the west side of existing South Havana Street within **State Parcel Number 2351-031-00-002** (the “**Drainage Easement**”). The performance of the obligations under the City/County IGA will enable the Parties to perform their respective obligations under this Agreement.

b. Drainage Easement. The City agrees that the Drainage Easement: (i) will be appurtenant to and benefit real property owned by the County within **State Parcel Number 2351-031-00-002** and real property currently within the South Havana ROW (as such real property may be transferred and re-platted pursuant to the terms of this Agreement); and (ii) will permit the

District to construct a drainage swale and appurtenant drainage improvements (the “**Drainage Improvements**”) within such easement as part of the Project. Subsequent maintenance of the Drainage Easement and Drainage Improvements will be governed by the terms of the City/County IGA and the Drainage Easement.

3. Submission of Preliminary Plan and Final Plat. North Canyons will submit a preliminary plan (the “**Preliminary Plan**”) and final plat (the “**Final Plat**”) to the City showing a proposed relocation of the South Havana ROW (the “**Relocated South Havana ROW**”) and the location of appurtenant permanent slope and drainage easements (the “**New Easements**”) as part of a re-subdivision of adjacent real property owned by North Canyons, and will pay all application fees and costs associated with such submittals. The City will review and process the Preliminary Plan and Final Plat in accordance with the process specified in the Annexation and Development Agreement for The Canyons dated October 22, 2009, as amended (the “**ADA**”).

4. Annexation and Zoning. Upon completion of the conveyances contemplated by the City/County IGA and approval of the Preliminary Plan, if approved by the City Council, the City Council will hold public hearings to consider: (a) annexation of the portion of the South Havana ROW that is not within the City limits (the “**Annexation Parcel**”); and (b) amendment of the ADA and The Canyons Planned Development to include the Annexation Parcel and to apply land use designations consistent with the zoning of applicable adjacent private property and as shown on the Preliminary Plan (“**Annexation and Zoning**”). The Annexation and Zoning hearings shall be held by the City Council as expeditiously as possible in accordance with applicable state law, City municipal code requirements, and provisions of the ADA.

5. Vacating South Havana ROW.

a. Adoption of Ordinance. Concurrent with its review of the Final Plat, the City will initiate and conduct a hearing to consider an ordinance to vacate the South Havana ROW (the “**Vacation Ordinance**”). If approved by the City, the Vacation Ordinance will not become effective until the later to occur of the following: (i) final approval, execution, and recording of the Final Plat dedicating the Relocated South Havana ROW and the New Easements to the City; or (ii) construction by the District and preliminary acceptance by the City of South Havana Street within such Relocated South Havana ROW.

b. Vesting of Title. In accordance with C.R.S. §43-2-302(1)(a): title to the vacated portion of the South Havana ROW shall vest in North Canyons, at no cost to North Canyons except for the City’s applicable plan review fees and costs, upon the effective date of the Vacation Ordinance except to the extent that the vacated South Havana ROW is included within the Relocated South Havana ROW or the right of way for Castle Pines Parkway (such portion of the vacated South Havana ROW is referred to as the “**Vacated Portion**”); and (ii) the Vacated Portion will be merged into adjacent real property owned by North Canyons as described in the Preliminary Plan and Final Plat.

c. Termination of Easements. Upon the effective date of the Vacation Ordinance, the Existing Easements may be terminated and abandoned as determined necessary by the City to facilitate the Project.

6. Construction of Relocated South Havana Street.

a. Construction Drawings. In connection with the Final Plat submittal by North Canyons, the District shall provide construction drawings (the “**Construction Drawings**”) for the new street improvements (“**Relocated South Havana Street**”) to be constructed within the Relocated South Havana ROW for review and approval by the City and its referral agencies (which shall include the County). The Construction Drawings shall be reviewed and, if determined to be in conformance with applicable City requirements, approved by the City simultaneously with its review of the Final Plat. The Parties agree that the intersection of the Relocated South Havana Street and Castle Pines Parkway will be a full movement intersection with traffic signal (“**Traffic Signal**”). The City shall be responsible for payment of costs for the design and installation of the Traffic Signal in a not to exceed amount of Five Hundred Thousand Dollars (\$500,000.00) (“**City Contribution**”). The obligations of all of the Parties under this Agreement are contingent upon the City’s receipt of payment from the County in the amount of Five Hundred Thousand Dollars (\$500,000.00) as set forth in the City/County IGA. The District shall be responsible for the design and installation of the Traffic Signal and any costs associated with the design or installation of the Traffic Signal that exceed the City Contribution (“**Cost Overruns**”). Pursuant to the City/County IGA, the City has sole discretion to determine when the Traffic Signal is warranted and when it shall be installed.

Commented [LMT]: It should be the district's obligation to install

b. Drainage Improvements. The Construction Drawings will include plans for the Drainage Improvements, which will be considered part of the Project and the construction of Relocated South Havana Street for the purposes of this Agreement.

c. Escrow Agreement. The District and the City agree to enter into a separate Escrow Agreement to finance the construction of Relocated South Havana Street, which agreement may be combined with the Subdivision Improvement Agreement executed by the Parties in connection with approval of the Final Plat.

d. Construction. The District agrees to construct Relocated South Havana Street and install the Traffic Signal in compliance with the Construction Drawings approved by the City and in compliance with applicable City requirements. Upon substantial completion, the District will apply to the City for preliminary acceptance of the street for ownership, operation and maintenance, subject to warranty and final acceptance procedures of the City.

e. Access During Construction of Relocated South Havana Street. The Parties agree that the public shall have access to the South Havana ROW and rite of passage along existing South Havana Street until the City’s preliminary acceptance of the Relocated South Havana Street.

f. Modification of A-Line. Once construction of the Relocated South Havana Street has been completed, and the existing South Havana Street/Castle Pines Intersection has been fully and permanently closed by the City, the Parties agree to work with 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.

7. Notices. Any notice or communication required under this Agreement must be in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (A) one business day after being deposited with a nationally recognized overnight air courier service; or (B) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section 7, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

The City:	City of Castle Pines 7437 Village Square Drive, Suite 200 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
The District:	The Canyons Metropolitan District No. 3 c/o North Canyons Development Company, LLC 3033 East First Avenue, Suite 725 Denver, CO 80206 Attention: Kaitlin Crandell Phone: (720) 624-1700 Email: kcrandell@alpertcorp.com
With a copy to:	WHITE BEAR ANKELE TANAKA & WALDRON 2154 E. Commons Ave., Suite 2000 Centennial, CO 80122 Attention: Clint Waldron, Esq. Phone: (303) 858-1800 E-mail: cwaldron@wbapc.com
North Canyons:	North Canyons, LLLP

3033 East First Avenue, Suite 725
Denver, Colorado 80206
Attention: Kaitlin Crandell
Phone: (303) 773-3400
Email: kcrandell@alpertcorp.com

With a copy to:

North Canyons, LLLP
3033 East First Avenue, Suite 725
Denver, Colorado 80206
Attention: Leland Alpert
Phone: (303) 773-3400
Email: jwood@alpertcorp.com

8. Good Faith of Parties. In the performance of this Agreement, or in considering any requested approval, acceptance, consent, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, consent, or extension of time required or requested pursuant to this Agreement.

9. Subject to Annual Appropriation and Budget. The City and the District do not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The Parties expressly understand and agree that each Party's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Party and shall not constitute a mandatory charge, requirement, or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the City or the District, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City or the District or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of funds. The City and the District's obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.

10. 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 the City or the District, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the City or the District and, in particular, governmental immunity afforded or available to the City or the District pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

11. 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.

12. 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.

13. No Third-Party Beneficiaries. 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 on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

14. Counterpart Execution; Electronic Signatures. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings. 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.

15. Police Powers Retained. Nothing in this Agreement shall be construed or intended to waive the City's police powers and legislative authority.

16. Assignability. North Canyons may assign its rights and obligations under this Agreement to North Canyons Development Company, a Delaware limited liability company ("Assignee"); provided, however, that (a) North Canyons notifies the City of the assignment and the Assignee expressly assumes, in writing, the obligations of North Canyons under this Agreement, and (c) the City has consented in advance and in writing to such assignment, which consent will not be unreasonably conditioned or delayed.

[Signature page follows]

[Signature Page – Intergovernmental Agreement]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

CITY:
CITY OF CASTLE PINES, a Colorado home
rule municipality

By: _____
Tracy Engerman, Mayor

ATTEST:

Tobi Duffey, MMC, City Clerk

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

Linda Michow, City Attorney

NORTH CANYONS:
NORTH CANYONS, LLLP, a Colorado
limited liability limited partnership

By: Alpert Canyons, LLC, its General Partner

By: _____
Leland Alpert, Manager

STATE OF COLORADO)
) ss:
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of September, 2022, by Leland J. Alpert as Manager of Alpert Canyons, LLC, a Colorado limited liability company, as Manager of North Canyons LLLP, a Colorado limited liability partnership.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A TO INTERGOVERNMENTAL AGREEMENT
Diagram of the Project

