

RESOLUTION NO. 24-09

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 A FINANCIAL CONTRIBUTION FOR THE CONSTRUCTION OF A ROUNDABOUT AT LAGAE ROAD AND HAPPY CANYON ROAD

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, the City and the County are working together to construct an improved interchange at Happy Canyon Road and Interstate 25 that is partially located within the City and partially located within unincorporated Douglas County (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 wishes to contribute One Million Five Hundred Thousand Dollars (\$1,500,000.00) for a portion of the costs needed to construct the improvements associated with the Project (the “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 a Financial Contribution for the Construction of a Roundabout at Lagae Road and Happy Canyon Road, 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 7 IN FAVOR, 0 AGAINST, AND 0 ABSENT THIS 23RD DAY OF JANUARY, 2024.



ATTEST:

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

By: *Tracy Engerman*
Tracy Engerman (Jan 26, 2024 14:05 MST)
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 A FINANCIAL CONTRIBUTION FOR THE CONSTRUCTION
OF A ROUNDABOUT AT LAGAE ROAD AND HAPPY CANYON ROAD**

THIS INTERGOVERNMENTAL AGREEMENT (“**Agreement**”) is made and entered into this _____ day of _____, **2024** (“**Effective Date**”) by and between the City of Castle Pines, Colorado, a Colorado home rule municipality with offices at 7437 Village Square Drive, Suite 200, Castle Pines, Colorado 80108 (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, as Colorado governments, are constitutionally and statutorily empowered pursuant to Colo. Const., Article XIV, §18 and C.R.S. § 29-1-201, et seq., to cooperate or contract via intergovernmental agreement with one another; and

WHEREAS, the City and County are working together to construct an improved interchange at Happy Canyon Road and Interstate 25 (I-25) that is partially located within the City and partially located within unincorporated Douglas County as shown in **Exhibit A**, attached hereto and incorporated herein; and

WHEREAS, the Parties desire to construct certain improvements to address the safety and traffic operational concerns that exist today at the Happy Canyon Road and Lagae Road Intersection; and

WHEREAS, the City wishes to oversee the design and construction of the entire project, which includes realigning a portion of existing Happy Canyon Road located within unincorporated Douglas County, constructing a roundabout on Lagae Road, constructing the east/west leg that connects directly from the proposed roundabout to the existing I-25 / Happy Canyon Road Interchange, and making minor modifications to the segment of Lagae Road located immediately to the north of the roundabout as shown in **Exhibit A**, and hereinafter referred to as (the “**Project**”); and

WHEREAS, the **Project** is currently estimated to cost between Five and Six Million Dollars for the construction phase; and

WHEREAS, the County wishes to contribute One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00) for a portion of the costs needed to construct the improvements associated with the **Project**.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is 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 fully incorporated into this Agreement.

2. **Purpose.** The purpose of this Agreement is to memorialize the City's commitment to overseeing the design and construction of the entire **Project** and the County's commitment to contributing One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00), hereinafter referred to as the "**Maximum County Contribution**", for a portion of the costs needed to construct the improvements associated with the **Project**.

3. **General Description of the Project.** The **Project** includes realigning a portion of existing Happy Canyon Road located within unincorporated Douglas County, constructing a roundabout on Lagae Road, constructing the east/west leg that connects directly from the proposed roundabout to the existing I-25 / Happy Canyon Road Interchange, and making minor modifications to the segment of Lagae Road located immediately to the north of the roundabout, as shown in **Exhibit A**.

4. **Term and Termination.** This Agreement shall commence upon the Effective Date and shall not terminate until completion of the **Project** or unless the conditions stipulated in **Section 7** apply.

5. **City's Responsibilities and Contribution.**

5.1 The City agrees to complete the bid and final construction documents (plans and specifications) and all other preconstruction activities for the **Project**.

5.2 The City shall commence construction of the **Project** no later than **May 15, 2025**, as evidenced by the City's issuance of a Notice to Proceed to the contractor for the **Project**. The City may reasonably request an extension of time to issue the Notice to Proceed from the County in writing.

5.3 The City shall manage all aspects of the **Project** including all pre-construction and construction activities including but not limited to obtaining all necessary permits, managing consulting services for design, environmental, surveying, subsurface utility engineering, relocating utilities in conflict with the proposed improvements, construction, construction management, construction inspections and material testing related construction.

5.4 The City shall be responsible for all construction costs for the **Project** except for the **Maximum County Contribution**. The City shall also be responsible for any **Project** costs in excess of the current construction cost estimate. The total

construction costs minus the **Maximum County Contribution** shall constitute the “**City’s Contribution.**”

5.5 The City shall be responsible for securing all the necessary funding for the **Project** in excess of the **Maximum County Contribution.**

5.6 The City shall not use the **Maximum County Contribution** for any other purpose unless agreed to by both Parties and by executing a formal written amendment to this Agreement.

5.7 Upon award of the construction contract, the City shall submit an electronic or paper invoice to the attention of Ashley Pennick, Douglas County Public Works Engineering, itemizing the total cost awarded to the contractor selected by the City and also the amount awarded to the consultant selected by the City to provide professional services for the construction phase.

5.8 The City shall provide electronic documentation of all applicable **Project** construction documents and construction costs within sixty (60) days upon written request from the County.

5.9 The City is responsible for owning, operating and maintaining the proposed improvements to be constructed as part of this **Project** that are located within the City of Castle Pines jurisdictional boundary. Additionally, the City is responsible for operating and maintaining the proposed water quality pond and its infrastructure being constructed within unincorporated Douglas County, as identified on the final plans released by the City to the contractor to construct the **Project**. Furthermore, the City is responsible for operating and maintaining a small segment of the east/west road that extends from the proposed roundabout to the I-25 / Happy Canyon Road Interchange, and falls within CDOT right-of-way.

5.10 The City plans to substantially complete the **Project** on or before **June 30, 2024** in advance of the upcoming **August 2024 PGA** event to be held at the Castle Pines Golf Course. The City, at its sole discretion, may delay construction of the **Project** until after the **2024 PGA** event is completed.

6. **County’s Responsibilities and Contribution.**

6.1 Upon execution of this Agreement by both Parties, the County agrees to allocate funds for the **Project** and open a purchase order to the City for the **Maximum County Contribution** identified in this Agreement.

6.2 The County agrees to provide the City with a contribution for the construction phase for an amount not to exceed One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00), (the “**Maximum County Contribution**”).

6.3 The **Maximum County Contribution** includes an estimated Nine Hundred Thousand Dollars and No Cents (\$900,000.00) set aside to construct the improvements that are located within unincorporated Douglas County. Any remaining funds from the County's contribution may be used by the City to help pay for constructing the improvements within the City of Castle Pine's jurisdiction boundary.

6.4 The County shall pay the **Maximum County Contribution** to the City within thirty (30) days after the County has received a written invoice from the City requesting the County's full contribution, associated with the award of a construction contract for the **Project**, as described in **Section 5** of this Agreement.

6.5 In no event will the County be liable for paying the City any amount in excess of the **Maximum County Contribution**, including for any unforeseen **Project** related costs or claims.

6.6 The County agrees to own, operate and maintain that portion of realigned Happy Canyon Road that is located within unincorporated Douglas County. Additionally, the County agrees to provide snow removal for a very short segment of the roadway located within the City of Castle Pines that lies south of proposed roundabout on Lagae Road. Furthermore, the County agrees to continue to voluntarily provide snow removal on that portion of Happy Canyon Road compromising the local roadway network that falls within the I-25 / Happy Canyon Road Interchange Right-of-Way. The County agrees to provide snow removal within CDOT Right-of-Way so long as that segment of Happy Canyon Road remains in unincorporated Douglas County.

7. **Time of Performance.** The City currently anticipates construction will be substantially completed and open to traffic on or before **June 30, 2024**. If construction has not commenced (the Notice to Proceed has not been given by the City to its contractor) before **May 15, 2025**, then the County may terminate this Agreement, unless the Parties agree to an extension in writing before **May 1, 2025**. This **Section** shall survive the termination of this Agreement.

8. **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 6** of this Agreement in the event of a default by the other Party. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing party in such litigation, arbitration or other proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

9. **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
7437 Village Square Drive, Suite 200
Castle Pines, CO 80108
Attention: Larry Nimmo, Public Works Director
Larry.nimmo@castlepinesco.gov

With Copy to: City Attorney
Michow Guckenberger McAskin, LLP
5299 DTC Boulevard, Suite 300
Greenwood Village, CO 80111

Douglas County: Douglas County
100 Third Street
Castle Rock, Colorado 80104
Attention: Janet Herman, Public Works Director
jherman@douglas.co.us

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

10. **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.

11. **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.

12. **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.

13. **Relationship of Parties.** The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout. This Agreement does not and shall not be construed as creating a relationship of joint venturers, partners, or employer-employee between the Parties.

14. **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.

15. **No Waiver of Sovereign Immunity.** The Parties hereto understand and agree that the City and County, and each of their respective commissioners, 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 (the "CGIA"), C.R.S. §§ 24-10-101 to 120, or otherwise available to the County and the City under applicable law. To the extent the CGIA imposes varying obligations or contains different waivers of immunity on the County or the City, the Parties agree that the County or City shall remain liable only as provided under the CGIA, whether due to acts or omissions or property interests, and no party shall be the agent of another or liable for the obligations of another under the provisions of the CGIA.

16. **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.

17. **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.

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

19. **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.

20. **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.

21. **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.

22. **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.

23. **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.

24. **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.

25. **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.

26. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

[Reminder of page left blank - signature pages to follow]

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

CITY OF CASTLE PINES, COLORADO

By: _____

Printed Name: Tracy Engerman

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**

DocuSigned by:
Geo. P. Teal 1/10/2024
E5CD14592431405...

Geo. P. Teal, Chair

ATTEST:



DocuSigned by:
Kristin Randlett 1/10/2024
4D0E70F519BB420...

~~Kristin Randlett~~ Kristin Randlett
Clerk to the Board

DocuSigned by:
APPROVED AS TO CONTENT:

DocuSigned by:
Doug DeBord 1/3/2024
B5C95B68GFAB4AA...

Douglas J. DeBord,
County Manager

APPROVED AS TO FORM:

DocuSigned by:
Chris Pratt 1/3/2024
573DD015549D4F7...

Chris Pratt,
Senior Assistant County Attorney

APPROVED AS TO FISCAL CONTENT:

DocuSigned by:
Andrew Copland 1/3/2024
80C333BC1187403...

Andrew Copland,
Director of Finance

Exhibit A

(insert PDF of project map following this page)

Exhibit A

