

RESOLUTION NO. 17-12

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO
AUTHORIZING THE MAYOR OR CITY MANAGER TO EXECUTE AN
INTERGOVERNMENTAL AGREEMENT WITH THE URBAN DRAINAGE AND FLOOD
CONTROL DISTRICT FOR THE DESIGN AND CONSTRUCTION OF DRAINAGE AND
FLOOD CONTROL IMPROVEMENTS FOR THE CANYONS**

WHEREAS, Part 2 of Article 1 of Title 29 of the Colorado Revised Statutes, as amended, authorizes and enables governmental entities within the State of Colorado to enter into cooperative agreements or contracts with one another to provide such functions, services or facilities lawfully authorized to each of them; and

WHEREAS, the City of Castle Pines (“City”), desires to enter into an intergovernmental agreement with the Urban Drainage and Flood Control District, a special district organized under Title 32 of the Colorado Revised Statutes (“UDFCD” or “District”), to facilitate the design and construction of drainage and flood control improvements (the “Project”) for the Canyons development within the City’s boundaries; and

WHEREAS, the developers and owners of the Canyons desire to engage the UDFCD to design and construct the Project in order to be eligible for maintenance of the drainage and flood control improvement by UDFCD in the future; and

WHEREAS, the developers and owners of the Canyons shall fund one hundred percent (100%) of the costs of the Project but desire that the City retain and distribute the funds for the Project to the District; and

WHEREAS, the developers and owners of the Canyons responsible for funding the Project shall execute a separate funding agreement with the City detailing its and the City’s respective obligations regarding the Project funds (“Canyons Funding Agreement”) under which the City shall incur no financial obligations; and

WHEREAS, the estimated cost for the design of the Project is **Four Hundred Thirteen Thousand Seven Hundred Eighty-Five Dollars and Two Cents (\$413,785.02)**, which shall be the amount deposited with the City by the Canyons developers and owners and which shall be listed as the not-to-exceed amount in the intergovernmental agreement between the City and UDFCD; and

WHEREAS, the execution of the intergovernmental agreement between the City and UDFCD shall be contingent upon the execution of the Canyons Funding Agreement by the City and the Canyons, the deposit of funds from the Canyons into an account with the City; and

WHEREAS, it is in the best interests of the City to execute an intergovernmental agreement with the UDFCD to facilitate the Project; and

WHEREAS, the City desires to enter into an intergovernmental agreement with UDFCD to have the District oversee the design and completion of the Project, as described with particularity in the intergovernmental agreement, for the benefit of the City of Castle Pines, and which intergovernmental agreement shall be substantially in the form as attached to hereto as **Exhibit A**, and approved as to form by the City Attorney (the “IGA”).

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

Section 1. The City Council hereby: (a) approves the IGA with the District for the design and construction of drainage and flood control improvements in the Canyons development, contingent upon the execution of a separate Canyons Funding Agreement by and between the City and the owners and

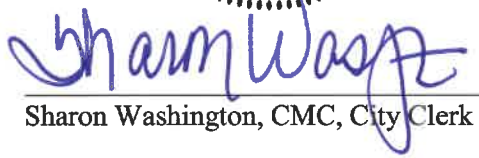
developers of the Canyons and receipt of funds from the responsible owners and developers; (b) authorizes the City Attorney to finalize and to make such changes as may be needed to correct any nonmaterial errors or language or to negotiate such changes to the IGA as may be appropriate and that do not increase the obligations of the City; and (c) authorizes the Mayor or City Manager to execute the IGA when in final form and only after execution of the Canyons Funding Agreement and the City's actual receipt of all funds necessary for the Project.

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, COLORADO by a vote of 6 in favor, 0 against and 1 absent this 25th day of July, 2017.



ATTEST:


Sharon Washington, CMC, City Clerk


Jeffrey T. Huff, Mayor

Approved as to form:


Linda C. Michow, City Attorney

EXHIBIT A

**AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
NEWLIN GULCH BETWEEN INTERSTATE 25 AND RUETER HESS RESERVOIR
CITY OF CASTLE PINES**

Agreement No. 17-07.08

Project No. 106799

THIS AGREEMENT, dated _____, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY OF CASTLE PINES (hereinafter called "CITY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, DISTRICT, in a policy statement previously adopted, (Resolution No. 14, Series of 1970 and Resolution No. 11, Series of 1973) expressed an intent to assist public bodies which have heretofore enacted floodplain regulation measures; and

WHEREAS, Douglas County, Town of Parker, and DISTRICT participated in a joint planning study titled "Newlin and Baldwin Gulches and Basin 4600-09 Outfall Systems Planning – Preliminary Design Report" by Kiowa Engineering Corporation, dated December 1994 (hereinafter called "PLAN"); and

WHEREAS, PARTIES now desire to proceed with design and construction of drainage and flood control improvements for Newlin Gulch and South Newlin Gulch from approximately Interstate 25 downstream to the Rueter Hess Reservoir (hereinafter called "PROJECT"); and

WHEREAS, DISTRICT has adopted at a public hearing a Five-Year Capital Improvement Program (Resolution No. 53, Series of 2016) for drainage and flood control facilities in which PROJECT was included in the 2017 calendar year; and

WHEREAS, the City Council of CITY have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. **SCOPE OF AGREEMENT**

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. **SCOPE OF PROJECT**

A. **Final Design.** PROJECT shall include the final design of improvements in accordance with the recommendations defined in PLAN. Specifically, the final design of facilities shall extend along Newlin Gulch and South Newlin Gulch from approximately Interstate 25 downstream to the Rueter Hess Reservoir, as shown on Exhibit A.

B. Construction. PROJECT shall include construction by DISTRICT of the drainage and flood control improvements as set forth in the final design including vegetation establishment.

3. PUBLIC NECESSITY

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of PARTIES and to their property therein.

4. PROJECT COSTS AND ALLOCATION OF COSTS

A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:

1. Final design services;
2. Construction of improvements;
3. Contingencies mutually agreeable to PARTIES.

B. It is understood that PROJECT costs as defined above are not to exceed \$413,785.02 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>AMOUNT</u>
1. Final Design	\$413,785.02
2. Construction	-0-
3. Contingency	-0-
Grand Total	\$413,785.02

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest, if applicable.

C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Maximum Contribution</u>
DISTRICT	0%	\$ 0
CITY	100.00%	\$413,785.02
TOTAL	100.00%	\$413,785.02

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's share may come from its own revenue sources or from funds received from state, federal or other sources of funding without limitation and without prior DISTRICT approval.

Payment of each party's full share (CITY - \$413,785.02; DISTRICT - \$0) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining, which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares; or, at CITY request, CITY share of remaining monies shall be transferred to another special fund held by DISTRICT.

6. FINAL DESIGN

The contracting officers for PARTIES, as defined under Paragraph 13 of this Agreement, shall select an engineer mutually agreeable to both PARTIES. DISTRICT shall contract with selected engineer and shall supervise and coordinate the final design including right-of-way delineation subject to approval of the contracting officer for CITY. Payment for final design shall be made by DISTRICT as the work progresses from the PROJECT fund established as set forth above.

Final design services shall consist of, but not be limited to, the following:

- A. Preparation of a work plan schedule identifying the timing of major elements in the design;
- B. Preparation of detailed construction plans and specifications;
- C. Preparation of an estimate of probable construction costs of the work covered by the plans and specifications;
- D. Preparation of an appropriate construction schedule.

DISTRICT shall provide any written work product by the engineer to CITY.

7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE

CITY shall own the property either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that shall diminish or preclude its use for drainage and flood control purposes. CITY may not dispose of or change the use of the properties without approval of DISTRICT. If, in the future, CITY disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements

located on any portion of the properties upon which PROJECT is constructed pursuant to this Agreement; and CITY has not obtained the written approval of DISTRICT prior to such action, CITY shall take any and all action necessary to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at CITY's sole expense. In the event CITY breaches the terms and provisions of this Paragraph 7 and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against CITY for specific performance of this portion of the Agreement.

8. MANAGEMENT OF CONSTRUCTION

- A. Costs. Construction costs shall consist of those costs as incurred by the most qualified contractor(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.
- B. Construction Management and Payment
 - 1. DISTRICT, with the concurrence of CITY, shall administer and coordinate the construction-related work as provided herein.
 - 2. DISTRICT, with concurrence of CITY, shall select and award construction contract(s).
 - 3. DISTRICT shall require the contractor to provide adequate liability insurance that includes CITY. The contractor shall be required to indemnify CITY. Copies of the insurance coverage shall be provided to CITY.
 - 4. DISTRICT, in consultation with CITY, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of CITY, shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to CITY on a weekly basis. DISTRICT shall retain an engineer to perform all or a part of these duties.
 - 5. DISTRICT, with concurrence of CITY, shall contract with and provide the services of the design engineer for basic engineering construction services to include addendum preparation; survey control points; explanatory sketches; revisions of contract plans; shop drawing review; as-built plans; weekly inspection of work; and final inspection.
 - 6. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.
 - 7. DISTRICT shall review and approve contractor billings... DISTRICT shall remit payment to contractor based on billings.
 - 8. DISTRICT, with concurrence of CITY, shall prepare and issue all written change or work orders to the contract documents.

9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.

10. DISTRICT shall provide CITY a set of reproducible "as-built" plans.

C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the PROJECT fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES.

9. MAINTENANCE

PARTIES agree that CITY shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at CITY's request, shall assist CITY with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to CITY, upon acceptance of DISTRICT's annual Maintenance Work Program.

DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

10. FLOODPLAIN REGULATION

CITY agrees to regulate and control the floodplain of Newlin Gulch within CITY in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.

PARTIES understand and agree, however, that CITY cannot obligate itself by contract to exercise its police powers. If CITY fails to regulate the floodplain of Newlin Gulch within CITY in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum, DISTRICT may exercise its power to do so and CITY shall cooperate fully.

11. TERM OF AGREEMENT

The term of this Agreement shall commence upon final execution by all PARTIES and shall terminate three (3) years after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein, except for Paragraph 10. FLOODPLAIN REGULATION, Paragraph 7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE, and Paragraph 9. MAINTENANCE, which shall run in perpetuity.

12. LIABILITY

Each party hereto shall be responsible for any suits, demands, costs, or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

13. CONTRACTING OFFICERS

- A. The contracting officer for CITY shall be the City Manager, 360 Village Square Lane, Suite B, Castle Pines, Colorado 80108.
- B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.
- C. The contracting officers for PARTIES each agree to designate and assign a PROJECT representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or CITY. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement. However, in regard to any amendments or addenda to this Agreement, said representative shall be responsible to promptly obtain the approval of the proper authority.

14. RESPONSIBILITIES OF PARTIES

DISTRICT shall be responsible for coordinating with CITY the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from CITY needed to complete PROJECT in a timely manner. CITY agree to review all concept plans, preliminary design plans, and final plans and specifications; and to provide comments within 21 calendar days after the drafts have been provided by DISTRICT to CITY.

15. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

16. SEVERABILITY

If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

17. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Jurisdiction for any and all legal actions regarding this Agreement shall be in the State of Colorado and venue for the same shall lie in the CITY where PROJECT is located.

18. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.

19. BINDING EFFECT

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

20. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

21. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) days' written notice by any party to this Agreement, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions.

22. PUBLIC RELATIONS

It shall be at CITY's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of PROJECT and what impact it may have on them. Technical information shall be presented to the public by the selected engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist CITY as needed and appropriate.

23. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

24. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of CITY and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of CITY and/or DISTRICT.

25. 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 PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of

action by any other or third person on such Agreement. It is the express intention of PARTIES that any person or party other than any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

26. ILLEGAL ALIENS

PARTIES agree that any public contract for services executed as a result of this intergovernmental agreement shall prohibit the employment of illegal aliens in compliance with §8-17.5-101 C.R.S. *et seq.* The following language shall be included in any contract for public services: "The contractor certifies, warrants, and agrees that the contractor does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the United States Department of Homeland Security and the Social Security Administration E-Verify Program or the Colorado Department of Labor and Employment (CDLE) program established pursuant to 8-17.5-102 (5)(c) C.R.S. The contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a subcontract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under Agreement. The contractor shall (a) not use the E-Verify Program or the CDLE program established pursuant to 8-17.5-102 (5)(c) C.R.S., to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) notify the subcontractor and DISTRICT within three days if the contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) comply with the reasonable request made in the course of an investigation, undertake pursuant to 8-17.5-102 (5)(c) C.R.S, by the CDLE. If the contractor participates in the CDLE program, the contractor shall, within twenty days after hiring an employee who is newly hired for employment to perform work under this Agreement, deliver to DISTRICT a written, notarized affirmation, affirming that the contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. Section 1324a, and not altered or falsified the identification documents for such employees. If the contractor fails to comply with any requirement of this Section or 8-17.5-101 *et seq.* C.R.S, DISTRICT may terminate this Agreement for breach and, if so terminated, the contractor shall be liable for actual and consequential damages.

DISTRICT shall notify the Colorado Office of the Secretary of State if the contractor violates this Section and DISTRICT terminates this Agreement for such a breach.

The contractor acknowledges that the CDLE may investigate whether the contractor is complying with this Section of the Agreement. This may include on-site inspections and the review of documentation that proves the citizenship of any person performing work under this Agreement and any other reasonable steps necessary to determine compliance with the provisions of this Section."

27. GOVERNMENTAL IMMUNITIES

PARTIES hereto intend that nothing herein shall be deemed or construed as a waiver by any party of any rights, limitations, or protections afforded to them under the Colorado Governmental

Immunity Act (§ 24-10-101, *et seq.*, C.R.S.) as now or hereafter amended or otherwise available at law or equity.

28. INTENT OF AGREEMENT

Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between PARTIES and is not intended to and shall not be deemed to confer rights upon any person or entities not named as PARTIES, nor to limit in any way the powers and responsibilities of CITY, DISTRICT or any other entity not a party hereto.

29. EXECUTION IN COUNTERPARTS – ELECTRONIC SIGNATURES

This Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement, may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. PARTIES approve the use of electronic signatures for execution of this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement. Only the following two forms of electronic signatures shall be permitted to bind PARTIES to this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement.

- A. Electronic or facsimile delivery of a fully executed copy of a signature page; or
- B. The image of the signature of an authorized signer inserted onto PDF format documents.

Documents requiring notarization may also be notarized by electronic signature, as provided above. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 to -121.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

By _____

Name Ken A. MacKenzie

Checked By

Title Executive Director

(SEAL)

CITY OF CASTLE PINES, COLORADO

By:

Jeffrey Huff, Mayor

ATTEST:

By _____
Sharon Washington, City Clerk

Date _____

APPROVED AS TO FORM:

By _____
Linda Michow, City Attorney

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Exhibit A

