

**RESOLUTION NO. 24-39A**

**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 DESIGN OF THE HAPPY CANYON ROAD / I-25 INTERCHANGE PROJECT**

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 One Hundred Thousand Dollars (\$1,100,000.00) 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 (“IGA”) 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: (1) approves the IGA between the City and the County in substantially the same form as attached to this Resolution as **Exhibit A**, subject to minor modifications approved by the City Attorney that do not increase the obligations of the City; (2) authorizes the City Manager and his designees to take whatever action is necessary to implement the terms of the IGA; and (3) designates authority to the Mayor to execute the IGA once in final form.

**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 4 IN FAVOR, 0 AGAINST, AND 3 ABSENT THIS 25<sup>TH</sup> DAY OF JUNE, 2024.**



ATTEST:

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

By: *Tracy Engerman*  
Tracy Engerman (Jun 26, 2024 19:26 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 A FINANCIAL CONTRIBUTION FOR THE DESIGN OF THE  
HAPPY CANYON ROAD / I-25 INTERCHANGE PROJECT**

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 advance the design and other preconstruction activities associated with constructing improvements for the Happy Canyon Road / Interstate 25 (I-25) Interchange, which is partially located within the City and partially located within unincorporated Douglas County; and

WHEREAS, the Parties desire to design and construct certain improvements to address the safety and future traffic operational needs at the Happy Canyon Road / I-25 Interchange, hereinafter referred to as the “**Project**”; and

WHEREAS, the City agrees to oversee the **Project** during the preconstruction phase, which includes, but is not limited to the following activities: supplemental survey, property ownership mapping, traffic studies and traffic modeling, the environmental clearance process, right-of-way acquisition, locating utilities, utility relocations, as well as completing preliminary and final design; and

WHEREAS, it is currently estimated to cost approximately \$4,800,000.00 to complete various preconstruction activities associated with the **Project**; and

WHEREAS, the County wishes to contribute One Million One Hundred Thousand Dollars and No Cents (\$1,100,000.00) for a portion of the costs needed to advance various preconstruction activities 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 preconstruction activities for the **Project** and establish the County's commitment to contribute One Million One Hundred Thousand Dollars and No Cents (\$1,100,000.00), hereinafter referred to as the "**County Contribution**", for a portion of the costs needed to advance the design and other preconstruction activities associated with the **Project**.

3. **General Description of the Project.** The **Project** includes designing and eventually constructing improvements at the Happy Canyon Road / I-25 Interchange, and said improvements require approval by the Colorado Department of Transportation (CDOT) and Federal Highway Administration (FHWA).

4. **Term and Termination.** This Agreement shall commence upon the Effective Date and shall terminate **December 31, 2027** or unless the conditions stipulated in **Section 7** apply.

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

5.1 The City agrees to complete the necessary traffic modeling and traffic studies, prepare environmental clearance documents, complete preliminary plans and prepare final construction documents (plans and specifications), and advance other preconstruction activities needed for the **Project**.

5.2 The City shall manage the various pre-construction activities required for the **Project**, including but not limited to obtaining all necessary permits, managing consulting services related to the preliminary and final design, completing environmental studies, completing supplemental surveying and property ownership mapping, conducting subsurface utility engineering, identifying and advancing relocation of existing utilities in conflict with the proposed improvements, preparing right-of-way (ROW) plans, and acquiring additional ROW needed to construct the proposed improvements.

5.3 The City shall be responsible for all **Project** expenses, except for the **County Contribution**. The City is responsible for all **Project** costs in excess of the current cost estimate for the preconstruction activities. The total costs minus the **County Contribution** shall constitute the "**City's Contribution**."

5.4 The City shall be responsible for securing all the necessary funding for the **Project** in excess of the **County Contribution**. The City is responsible for obtaining reimbursement payments from CDOT, which are estimated to not exceed \$2,638,000.00 for various preconstruction activities, identified in the City's executed intergovernmental agreement with CDOT.

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

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

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 **County Contribution** identified in this Agreement.

6.2 The County agrees to provide the City with a contribution for the preconstruction activities for an amount not to exceed One Million One Hundred Thousand Dollars and No Cents (\$1,100,000.00), (the "**County Contribution**").

6.3 The County shall pay the **County Contribution** to the City within forty-five (45) days after the County has received a written invoice from the City requesting the County's full contribution. The City may invoice the County for the full **County Contribution**, once the City has selected and awarded a consultant service contract that exceeds \$1,100,000.00 to advance preconstruction activities that have been approved by the City, County and CDOT.

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

7. **Time of Performance.** The City currently anticipates initiating various preconstruction on or before **July 1, 2024**. If the City has not commenced (the Notice to Proceed has not been given by the City to any of its consultants / contractors) on or before **May 15, 2025**, then the County may terminate this Agreement, unless the Parties agree to an extension in writing before **May 31, 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](mailto: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](mailto:jherman@douglas.co.us)

With an electronic copies sent to [attorney@douglas.co.us](mailto:attorney@douglas.co.us)  
and to Art Griffith at [agriffit@douglas.co.us](mailto:agriffit@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* 6/12/2024  
E50D14592431405...

Geo. P. Teal, Chair

**ATTEST:**



DocuSigned by:  
*Hayley Hall* 6/12/2024  
166E3E33F002400...

Hayley Hall,

Clerk to the Board

**APPROVED AS TO CONTENT:**

DocuSigned by:  
*Doug DeBord* 6/3/2024  
B5C3588DCFAB4AA...

Douglas J. DeBord,  
County Manager

**APPROVED AS TO FORM:**

DocuSigned by:  
*Chris Pratt* 5/31/2024  
573DD015549D4F7...

Chris Pratt, Sr. Asst.  
Managing County Attorney

**APPROVED AS TO FISCAL CONTENT:**

DocuSigned by:  
*Andrew Copland* 6/3/2024  
80C333BC1187403...

Andrew Copland,  
Director of Finance