

RESOLUTION NO. 18 - 23

A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS AND EL PASO COUNTY REGARDING IMPROVEMENTS TO AND FUTURE ANNEXATION OF THE PARK VISTA SOUTH AREA

WHEREAS, the City of Colorado Springs ("City") and El Paso County ("County") wish to address the roadway and stormwater drainage infrastructure needs of a portion of the Park Vista neighborhood, an unincorporated County enclave surrounded by the City, through annexation and conveyance of such infrastructure into the City in connection with County funding contributions to the improvement of such infrastructure; and

WHEREAS, the City and County desire to enter into an Intergovernmental Agreement ("IGA") to describe the conditions of, and respective responsibilities of the City and County for, the improvement, administration, maintenance, operation, transfer and future annexation of portions of County rights-of-way, their appurtenances, and other County property.

WHEREAS, the City and County will enter into a, American Rescue Plan Act (ARPA) subrecipient for the transfer of \$5,500,000 to the City to assist in the construction of the necessary improvements to the area; and

WHEREAS, the City desires to complete Templeton Gap channel improvements in proximity to the Siferd Blvd. and Date St. intersection to address longstanding safety concerns from flooding and potential damage to downstream infrastructure; and


WHEREAS, the City desires to complete Templeton Gap channel improvements to fulfill stormwater commitments by reducing sediment, providing stream flow attenuation and improving water quality.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The City Council approves the Intergovernmental Agreement between the City of Colorado Springs, Colorado, and El Paso County, Colorado, regarding improvements to and future annexation of the Park Vista South Area.

Section 2. The mayor is authorized the execute, administer, amend and extend the intergovernmental agreement.

Dated at Colorado Springs, Colorado this 14th day of February 2023.



Council President

ATTEST:


Sarah B. Johnson, City Clerk



EXHIBIT A

EL PASO COUNTY PROJECT NUMBER 531209

INTERGOVERNMENTAL AGREEMENT FOR PARK VISTA (SOUTH) SUBDIVISION

SITUATE

THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 13 SOUTH, RANGE 66 WEST OF THE 6th P.M.
EL PASO COUNTY, COLORADO








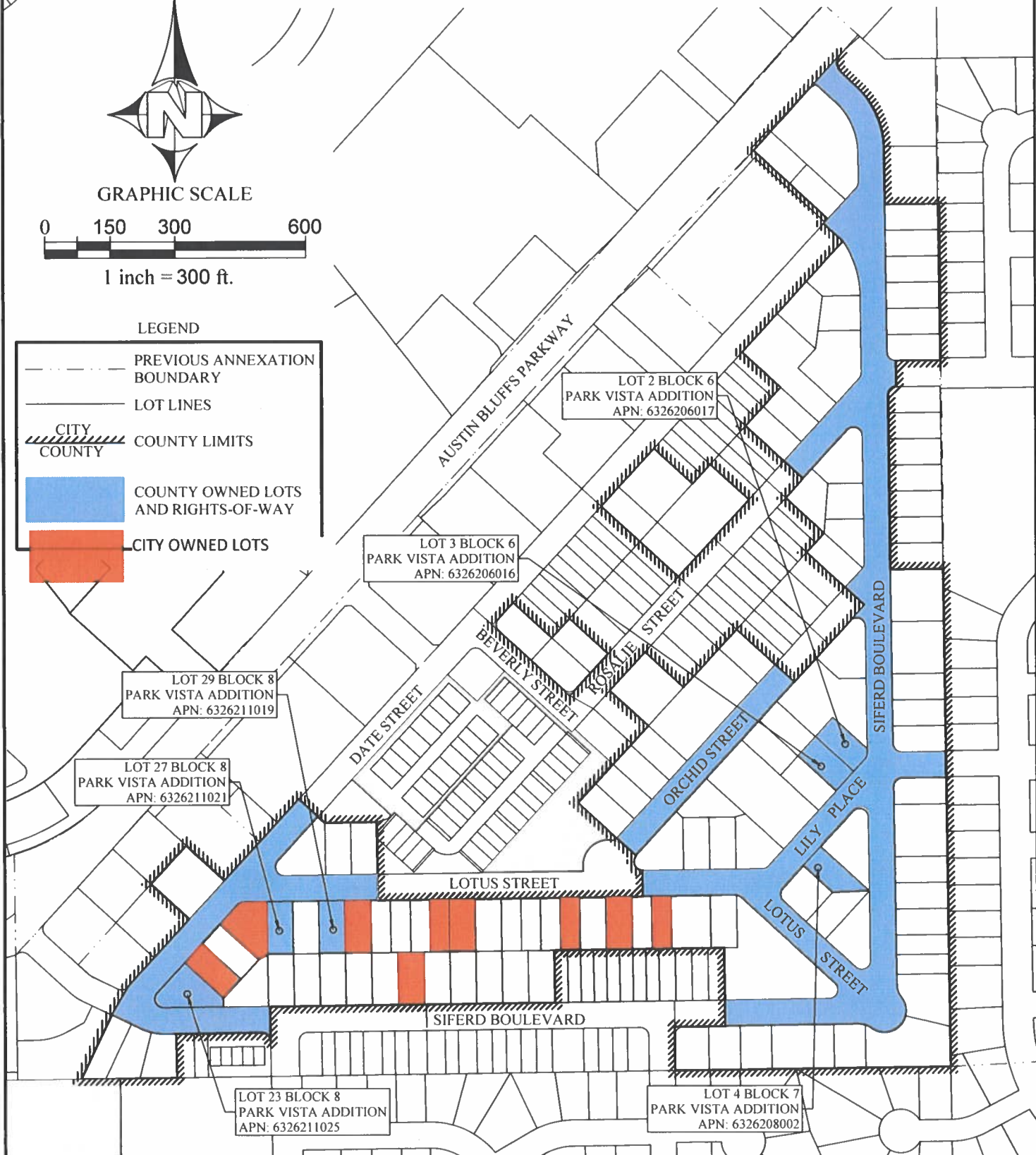
GRAPHIC SCALE



1 inch = 300 ft.

LEGEND

-  PREVIOUS ANNEXATION BOUNDARY
-  LOT LINES
-  CITY COUNTY LIMITS
-  COUNTY OWNED LOTS AND RIGHTS-OF-WAY
-  CITY OWNED LOTS



LOT 2 BLOCK 6
PARK VISTA ADDITION
APN: 6326206017

LOT 3 BLOCK 6
PARK VISTA ADDITION
APN: 6326206016

LOT 29 BLOCK 8
PARK VISTA ADDITION
APN: 6326211019

LOT 27 BLOCK 8
PARK VISTA ADDITION
APN: 6326211021

LOT 23 BLOCK 8
PARK VISTA ADDITION
APN: 6326211025

LOT 4 BLOCK 7
PARK VISTA ADDITION
APN: 6326208002

INTERGOVERNMENTAL AGREEMENT BETWEEN
EL PASO COUNTY AND THE CITY OF COLORADO SPRINGS
REGARDING ANNEXATION OF AND IMPROVEMENTS TO
THE PARK VISTA SOUTH AREA

This Intergovernmental Agreement (“Agreement”) dated this ___ day of _____, 2022, is made by and between El Paso County, by and through the Board of County Commissioners of El Paso County, Colorado (“County”), and the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation (“City”). The County and the City may be referred to herein individually as “Party” or collectively as “Parties.”

RECITALS

- A. Article XIV, Section 18, of the Colorado Constitution, and C.R.S. 29-1-201, *et seq.*, provide for and encourage political subdivisions of the State of Colorado to make the most efficient and effective use of their powers and responsibility by cooperating and contracting with each other.
- B. Pursuant to C.R.S. §§ 30-11-101(1), 30-11-103, and 30-11-107(1), the County has the legislative authority to make all contracts and settle all accounts of the County and to exercise such other and further powers as are conferred by law.
- C. The City as a home rule municipality, is a political subdivision of the State of Colorado and likewise has similar powers pursuant to Article XX of the Colorado Constitution, municipal home rule powers, City Charter ordinance provisions, and applicable state statutes of the Colorado Revised Statutes.
- D. The County and the City wish to address the roadway and stormwater drainage infrastructure needs of a portion of the Park Vista neighborhood, an unincorporated County enclave surrounded by the City, through annexation and conveyance of such infrastructure into the City in connection with County funding contributions to the improvement of such infrastructure.
- E. The purpose of this Agreement is to describe the conditions of, and respective responsibilities of the Parties for, the improvement, administration, maintenance, operation, and transfer of portions of County rights-of-way, their appurtenances, and other County property as set forth below.

AGREEMENT

In consideration of the foregoing recitals and the terms and conditions set forth below, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. Intent. The Parties agree that the intent of this Agreement is to address the conveyance of ownership of portions of Date Street, Siferd Boulevard, Lotus Street, Orchid Street, Rosalie Street, Lily Place, appurtenant infrastructure, and other adjacent County-owned

property and easements from the County to the City, the responsibilities for the roadways and other property pending annexation, and the County's contribution of funding toward roadway and surface drainage improvements in this area. The rights-of-way, property, and easements as depicted on the Plat of Park Vista Addition recorded July 15, 1955 in Plat Book W at page 69 (collectively referred to herein as the "Park Vista South Area") impacted by this Agreement are depicted in Exhibit A, attached hereto and incorporated herein, and include the six (6) lots shaded in blue, the roadway segments shaded in blue, intersections and their area of functional influence, all appurtenant infrastructure, and rights-of-way and appurtenant easements. The County is willing to contribute a fixed amount of funding to roadway and surface drainage improvements. The Parties also wish to convey the ownership of and maintenance responsibility for the Park Vista South Area from the County to the City and address the administration, maintenance, and operational responsibilities until such time as the formal annexation of the ownership of the property, infrastructure, rights-of-way, easements and any appurtenances is completed.

2. Annexation and Conveyance. Subject to the conditions precedent set forth below, the City agrees to accept a quitclaim deed from the County for transfer of ownership of the Park Vista South Area as defined above. County will provide the City with an annexation plat suitable for the annexation application and process with the City. Thereafter, within a reasonable time period, the City will, to the fullest extent permitted by the City Charter and Code, Colorado Revised Statutes, and the Colorado Constitution, in good-faith, petition for annexation and process the annexation petition and recommend approval thereof to the City Council.

3. Administrative, Maintenance, and Operational Responsibilities. Following transfer of ownership of the Park Vista South Area, all administrative control, operation, maintenance, and legal responsibility shall be the sole responsibility of the City. These responsibilities include capital improvements or betterment, roadside appearance, roadside facilities, roadway surface, snow and ice control, structure maintenance, traffic signals or other intersection traffic control devices, signage, and striping and any other traffic services, right-of-way permitting, access permitting, applicable land use permitting, law enforcement activities, fire and emergency first responder activities, and any and all other customary activities that are customarily performed for any other similar City infrastructure, right-of-way, easement or fee simple property. MS4 permit obligations for the Park Vista South Area shall be the responsibility of the City.

4. Conditions Precedent to Annexation and Conveyance. Prior to any conveyance and as a condition precedent to the City's obligation to accept or to annex the Park Vista South Area:

a. To the extent the City requires, the County shall survey the area to confirm the current roads are constructed within the platted right-of-way.

b. The conveyance of the Park Vista South Area real property interests and any future conveyance(s) of facilities or easements must be in compliance with the City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests, Revised 2021.

5. Facilities and Easements Necessary to the Maintenance and Operation of the Park Vista South Area. Following the City's acceptance of the quitclaim deed, if the City determines there are additional facilities and/or easements necessary for the maintenance and operation of the Park Vista South Area outside the property conveyed, the County agrees to convey such facilities and/or easements to the City at no cost to the City.

6. Funding Provisions. There are no current funding provisions for the annexation and conveyance of ownership or the interim administrative, maintenance and operational responsibilities. These needs shall be programmed within the City's and County's respective budgets.

7. HUTF Reporting. Section 43-2-120 (5) (a-b), C.R.S., requires each county to certify to Colorado Department of Transportation (CDOT) any changes in the County Road System Inventory as of December 31st of the previous year. The County shall appropriately report all annual deletions to the County road system upon execution of this Agreement.

8. Future Maintenance. If the City fails to approve the annexation and conveyance under Paragraph 2 above, the City agrees to continue with the administrative, maintenance and operational responsibilities as described in Paragraph 3 for the Park Vista South Area.

9. Reimbursement for Improvements. Concurrent with the execution of this Agreement, the City and County shall execute an American Rescue Plan Act (ARPA) subrecipient agreement setting forth the terms and conditions of County reimbursement of the City's actual expenses incurred for stormwater and surface drainage improvements within the Park Vista South Area in an amount up to \$5,500,000. Should the City fail to complete the project per the subrecipient agreement and use such funds for the purposes described therein by September 30, 2026, the City shall immediately return any distributed funds to the County, and the County shall have no further obligation to contribute to any improvements within the Park Vista South Area.

10. Breach and Remedies. The Parties shall have such remedies as provided by law or equity for breach of this Agreement.

11. Rights and Remedies Not Waived. No assent, express or implied, by either Party to any breach of this Agreement by the other Party shall be held to be a waiver by such non-breaching Party of any later breach by the other Party. Neither the County nor the City shall be excused from complying with any provision of this Agreement because of any failure to insist upon, or to seek compliance with, such provision.

12. Amendment. This Agreement may only be amended in writing with consent of both Parties.

13. Approvals. Obligations either Party under this Agreement that, by law, require approval of either the City Council or the Board of County Commissioners shall be conditioned upon such approval being granted in accordance with the relevant laws. This Paragraph shall not exempt either Party from an obligation to seek such approvals in good faith.

14. Assignment. The City and the County each understands and agrees that they shall not assign their respective rights and obligations under this Agreement, except upon the prior written consent and approval of the assignment by the other Party.

15. Applicable Law, Jurisdiction, and Venue. This Agreement is subject to and shall be interpreted under the laws of the state of Colorado, the City Charter, City Code, ordinances, rules and regulations of the City of Colorado Springs, Colorado, applicable regulations of El Paso County, Colorado, and applicable federal law. Court jurisdiction and venue shall be exclusively in the District Court for El Paso County, Colorado.

16. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights relating to such enforcement, shall be strictly reserved to the Parties. Nothing in this Agreement is intended to create or grant to any third party or person any right or claim for damages or the right to bring or maintain any action at law, nor does any Party waive its immunities at law, including immunity granted under the Colorado Governmental Immunity Act C.R.S. § 24-10-101, et seq.

17. Limitations on Jurisdiction. Nothing herein shall be construed so as to in any manner expand upon or limit the lawful jurisdiction and authority of either the City or the County.

18. Entire Agreement. This Agreement together with all Exhibits attached hereto, which are incorporated herein by this reference, is intended as the complete integration of the understanding between the parties and constitutes the entire Agreement between the Parties. All other representations or statements previously made, whether verbal or written, are merged herein.

19. Captions. All captions and headings contained in this Agreement are for convenience only and for reference, do not define or limit the scope or intent of any provisions of this Agreement, and shall not be construed to define or limit the terms and provisions hereof.

20. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

21. Severability. It is understood and agreed by the Parties that if any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any federal laws, or any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision determined by the court to be invalid.

22. Contacts and Notice. The County and the City will each provide a liaison through their respective entities and will be responsible for coordinating respective activities under this Agreement. Except as may otherwise be provided in this Agreement, all notices required or permitted to be given under this Agreement shall be in writing and shall be valid and sufficient if

dispatched by: (a) registered or certified mail, return receipt requested, postage prepaid, in any post office in the United States, (b) hand delivery, (c) overnight courier, (d) email to the below-designated addresses with proof of receipt. The Parties agree that written notices regarding general operational issues may be accomplished through email.

City of Colorado Springs:

Travis Easton, P.E., Public Works Director
30 South Nevada Avenue, Suite 401
Colorado Springs, CO 80903
719-385-5457
travis.easton@coloradosprings.gov

Darlene Kennedy, Real Estate Services Manager
30 South Nevada Avenue, Suite 502
Colorado Springs, CO 80903
719-385-5605
darlene.kennedy@coloradosprings.gov

El Paso County:

Joshua J. Palmer P.E., County Engineer
3275 Akers Drive
Colorado Springs, Colorado 80922
719-520-6806
joshuapalmer@elpasoco.com

23. Indemnification and Liability. The Parties are prohibited by Article XI, Section I of the Constitution of the State of Colorado, and applicable City Charter provisions and Board resolutions, from indemnifying one another. Each party agrees to be responsible for its own liability incurred as a result of its participation in this Agreement. In the event any claim is litigated, each party will be responsible for its own expenses of litigation or other costs associated with enforcing this Agreement. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to either the County or the City by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.* and Article XI of the Colorado Constitution, or as otherwise provided by law.

24. Fiscal Obligations/Non-Appropriation. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the County or the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the County or the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or

other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the County or the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance or resolution and budget and specifically as to the City, the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

25. Disclaimer of Warranties. The Parties do not make any warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for a particular purpose for use of any County-owned property or for any services rendered or any other representation or warranty with respect to any obligation or services under this agreement.

IN WITNESS THEREOF, the City and County have signed this Agreement on the day and year indicated below, to be effective upon signatures of both Parties.

**BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO**

By: _____ Date: _____
Stan VanderWerf, Chair

ATTEST:

By: _____ Date: _____
Chuck Broerman, El Paso County Clerk and Recorder

APPROVED TO AS FORM:

By: _____
Lori Seago, Office of the County Attorney

CITY OF COLORADO SPRINGS, COLORADO,
a home rule city and Colorado municipal corporation

By: John W. Suthers
John W. Suthers, Mayor

ATTEST

Sarah B. Johnson
Sarah B. Johnson, City Clerk



APPROVED AS TO FORM:

By: Renal
Office of the City Attorney