

INTERGOVERNMENTAL AGREEMENT REGARDING MARKSHEFFEL ROAD
THROUGH STERLING RANCH

This Intergovernmental Agreement Regarding Marksheffel Road Through Sterling Ranch (“Agreement”) is made this ____ day of _____, 2021 (“Effective Date”) by and between El Paso County, by and through the Board of County Commissioners of El Paso County, Colorado, a duly organized county and political subdivision of the State of Colorado (“County”), the City of Colorado Springs, Colorado, a home rule City and Colorado municipal corporation (“City”), and the Sterling Ranch Metropolitan District No. 1, a special district organized under Title 32, Colorado Revised Statutes (“District”). The County, City and District may be referred to herein individually as a “Party” or collectively as “Parties.”

Recitals

A. Within the jurisdictional boundaries of the County and the District lies a 1,443-acre development known as Sterling Ranch, the plan for which includes construction of two segments of Marksheffel Road. The general location of the segments of Marksheffel Road within and adjacent to Sterling Ranch that are the subject of this Agreement are depicted in Exhibit A, attached hereto and incorporated herein by reference, and is referred to herein as the “Marksheffel Road Segments.” As identified in traffic impact studies submitted for proposed subdivisions within Sterling Ranch, Segment M1 is between Vollmer Road and Sterling Ranch Road and Segment M2 is between Sterling Ranch Road and the south boundary of Sterling Ranch at the City limits.

B. The City will accept ownership, operation and maintenance responsibilities of the Marksheffel Road Segments, provided that they are constructed to City standards. The District shall construct or provide for the construction of the Marksheffel Road Segments in accordance with City requirements to further this goal.

C. The County requires construction of the Marksheffel Road Segment M1 to provide access to the proposed Sterling Ranch Filing No. 2 subdivision and other subdivisions within the Sterling Ranch development.

D. The purpose of this Agreement is to set forth the nature and timing of the Parties’ various obligations related to the design, construction, acceptance for operation and maintenance, transfer of ownership and future annexation.

E. Pursuant to Colorado Constitution, Article XIV, Section 18(2) and Section 29-1-203, Colorado Revised Statutes, governmental entities may cooperate and contract with each other to provide any function, services, or facilities lawfully authorized to each.

Agreement

1. Incorporation of Recitals. The Parties hereby incorporate by reference the above-stated Recitals into this Agreement as if fully set forth herein.

2. No Assurance of Land Use Approvals. The District understands and agrees that (i)

this Agreement does not assure it, the property owners within Sterling Ranch, or their respective successors and assigns that the County will grant future land use or construction approvals for Sterling Ranch, and (ii) no representations or promises are made or implied herein by the County or City, except for those rights that are specifically identified in this Agreement.

3. County Responsibilities.

a. For each final plat in Sterling Ranch that contains a Marksheffel Road Segment, the County shall require that such segment be placed in a separate tract and conveyed to the City within thirty (30) days of plat recording in a form acceptable to the City.

b. The County shall require that the Marksheffel Road Segments be constructed in accordance with City standards, requirements, and specifications. The County will require the posting of construction collateral for the Marksheffel Road Segments and the Intersection Improvements (defined in paragraph 3.e below) with the City in connection with each relevant final plat but will not require the posting of defect warranty collateral.

c. The County agrees to not issue any building permit associated with the Sterling Ranch final plat(s) that contain a Marksheffel Road Segment or Intersection Improvement until all required fees have been paid and all required improvements related to the Marksheffel Road Segments and Intersection Improvements, including but not limited to drainage, street, and erosion control, have been installed as specified by the City of Colorado Springs or alternatively until acceptable assurances, including but not limited to letters of credit, cash, subdivision bonds, or combinations thereof, guaranteeing the completion of such public improvements have been placed on file with the City of Colorado Springs.

i. The approved final plat(s) shall contain the following statement: “No building permits shall be issued for building sites within this plat until all required fees have been paid and all required improvements related to the following: [*insert specific Marksheffel Road Segment and Intersection Improvements to be constructed with the particular plat*], including but not limited to drainage, street, and erosion control, have been installed as specified by the City of Colorado Springs or alternatively until acceptable assurances, including but not limited to letters of credit, cash, subdivision bonds, or combinations thereof, guaranteeing the completion of all such improvements have been placed on file with the City of Colorado Springs.”

d. Until the Marksheffel Road Segments are annexed by the City, the County shall retain the authority to provide final construction drawing and plan approval, to issue notices to proceed with construction, and to apply and enforce stormwater requirements pursuant to its MS4 permit. County shall notify the City of all plan approvals and notices issued and include the City on any communications related to stormwater requirements.

e. The County shall follow its normal process for the oversight of construction, inspection, and acceptance of public improvements with respect to the Intersection Improvements at Marksheffel Road / Vollmer Road and at Marksheffel Road / Sterling Ranch Road as depicted

in the approved construction drawings in PCD File CDR 20-005. The Intersection Improvements shall be satisfactory to the County and the City prior to opening the Marksheffel Road Segments to public traffic.

f. The County shall notify the City when the Marksheffel Road Segments become contiguous to the City and annexation is possible.

4. City Responsibilities.

a. Within thirty (30) days of recording of each final plat in Sterling Ranch that contains a Marksheffel Road Segment, the City shall accept the conveyance, in a form acceptable to it, of the tracts within which the Marksheffel Road Segments will lie. The City, following notification by the County, shall initiate the annexation process for such tracts in the future, after the tracts have been accepted and are contiguous to the City.

b. The City shall review and approve all required plans and construction drawings for the Marksheffel Road Segments and the Intersection Improvements.

c. The City shall follow its normal process for the oversight of construction, inspection, and acceptance of public improvements with respect to the Marksheffel Road Segments and the intersection improvements at Marksheffel Road / Vollmer Road and at Marksheffel Road / Sterling Ranch Road. The City shall work diligently with the District to approve any plan modifications and to identify any deficiencies in construction.

d. The City shall accept the Marksheffel Road Segments for operation, maintenance and repair following expiration of its two-year probationary period, in accordance with its normal process and practices for each Segment.

e. The City requires acceptable assurances be posted by the District guaranteeing the completion of the Marksheffel Road Segments and the Intersection Improvements. The financial assurance amount shall be pursuant to City standards, shall be in and on a City approved form and issued by a City approved surety. A warranty retainage of ten percent (10.0%) of the financial assurance obligation shall be required throughout the warranty period.

5. District Responsibilities.

a. The District shall be responsible for constructing or causing the construction of the Marksheffel Road Segments, including all road, trail, drainage, and appurtenant improvements, and for diligently working with the City to meet all City requirements related to the design, construction, inspection, and acceptance of the Marksheffel Road Segments. Such requirements may include, but are not limited to, the contribution of funds toward future traffic signal improvements along the Marksheffel Road Segments.

b. The District shall construct the Marksheffel Road Segment M1 between Vollmer Road and Sterling Ranch Road within nine (9) months of recording of the final plat for Sterling Ranch Filing No. 2.

c. The District shall construct the Marksheffel Road Segment M2 between Sterling Ranch Road and the City boundary within three (3) years of recording of the final plat for Sterling Ranch Filing No. 2 or within twelve (12) months of recording of a final plat for the property adjacent to that portion of the Marksheffel Road Segment, whichever occurs sooner.

d. The District shall operate, maintain, and repair the Marksheffel Road Segments for each respective two-year probationary period that begins with opening each Marksheffel Road Segment for public use and ends with City assumption of such responsibilities.

e. The District shall post financial assurances with the City for the Marksheffel Road Segments and the Intersection Improvements pursuant to City's requirements.

f. For the stormwater facilities identified in Exhibit B, attached hereto and incorporated herein by reference, including the proposed full-spectrum detention basin and its outfall into the City, District shall enter into a stormwater facility maintenance agreement with the County in compliance with the County's' MS4 permit requirements. The signed agreement and completion of the necessary stormwater facilities to the satisfaction of the City and the County are required prior to opening the Marksheffel Road Segments to public traffic. District shall promptly comply with any City requirements to address offsite drainage and erosion impacts to properties within the City.

g. The District understands and agrees that it may apply for credits or reimbursement through the El Paso County Road Impact Fee Program for the Marksheffel Road Segments and the Intersection Improvements.

h. The District understands and agrees that the construction of the Marksheffel Road Segments will not be eligible for cost recovery or reimbursements through the City or Pikes Peak Rural Transit Authority (PPRTA).

i. Conveyance of Marksheffel Road Segments:

- i. Pursuant to Section 3.a. of this Agreement, the District shall order a title commitment for City as grantee on said tracts to be conveyed to City. The District shall convey the Marksheffel Road Segments to City by special warranty deed(s) satisfactory to the City in form and substance, free and clear of any liens or encumbrances whether recorded or unrecorded, but subject to easements, conditions and restrictions of record permitted by the City.
- ii. If not previously paid, District shall pay all real property taxes on the portion of Marksheffel Road Segments to be conveyed to the City that have accrued through the date of closing.
- iii. At or prior to closing, District shall take all necessary action to remove any and all liens and encumbrances if any affecting the title of the Marksheffel Road Segments, including the removal of liens securing financial indebtedness, other than those exceptions to title specifically permitted by

the City. District shall obtain and provide the title company with any and all executed releases, subordinations, and/or joinders necessary to remove such encumbrances. District shall also supply Title Company with any and all documents to close these conveyances.

- iv. If District is unable to obtain title on the Marksheffel Road Segments free and clear of all liens and encumbrances, District and City agree to work together in good faith to obtain title acceptable to the City.
- v. District shall pay all costs of closing including, the title policy, recording fees, and documentary fees, if any.

6. Contacts and Notices. The individuals identified below are the primary points of contact for any matters related to this Agreement. All notices or other communications to the Parties shall either be sent by electronic mail, personally delivered, or sent by United States mail, postage prepaid, to the persons identified below or to any other person or address which the Parties may substitute in writing.

To the County:

Craig Dossey, Executive Director
Planning and Community Development
2880 International Circle, Suite 110
Colorado Springs, CO 80910
craigdossey@elpasoco.com
(719) 520-7941

And

Lori Seago, Sr. Asst. County Attorney
El Paso County Attorney's Office
200 S. Cascade
Colorado Springs, CO 80903
loriseago@elpasoco.com
(719) 520-7371

To the City:

Gayle Sturdivant, City Engineer
30 South Nevada, Suite 401
Colorado Springs, CO 80903
gayle.sturdivant@coloradosprings.gov
(719) 385-5628

And

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

To the District: Charles Collins, Secretary
20 Boulder Crescent
Colorado Springs, CO 80903
candclandllc@aol.com
(719) 491-8717

7. General Provisions.

a. Entire Agreement. This Agreement represents the complete integration of all understandings between the Parties, is the entire agreement between the Parties, and no additional or different oral representations, promises, or agreements shall be binding on any of the Parties hereto with respect to the subject matter of this Agreement, unless stated in writing and signed by all the Parties.

b. Amendment. This Agreement may be amended by mutual written agreement of all Parties or their respective successors or assigns.

c. Choice of Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Venue shall be exclusively in the District or County Court in and for El Paso County, Colorado.

d. Legal Authority. The undersigned hereby acknowledge and represent that they have the legal authority to bind their respective Party to this Agreement.

e. Severability. If any paragraph, section, subsection, clause or phrase of this Agreement is, for any reason, held to be invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement.

f. Waiver. The waiver of a breach of any of the provisions of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or other provision of this Agreement.

g. Third Party Beneficiary. This Agreement does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this Agreement, to claim any damages or to bring any legal action or other proceeding against any Party for any breach or other failure to perform this Agreement.

h. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages shall all be attached to a single instrument.

i. The Parties hereby agree that if any dispute cannot be resolved by mutual agreement of the Parties, such dispute may be resolved in law or in equity. The Parties further agree and acknowledge that this Agreement may be enforced at law or in equity. In addition to

any other available remedies, in the event of a breach of this Agreement, any Party may request a court of competent jurisdiction to enter a writ of mandamus to compel the breaching Party to perform under this Agreement, and any Party may seek from a court of competent jurisdiction temporary and/or permanent restraining orders, or orders for specific performance, to compel the other to perform in accordance with the obligations set forth in this Agreement.

j. A fully executed copy of this Agreement shall be recorded in the records of the El Paso County Clerk and Recorder.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

Chuck Broerman
County Clerk & Recorder

By: _____
Stan VanderWerf, Chair

Approved as to form:

County Attorney's Office

ATTEST:

CITY OF COLORADO SPRINGS,
COLORADO

Sarah Johnson
City Clerk

By: _____
John W. Suthers, Mayor

Approved as to form:

Office of the City Attorney

STERLING RANCH METROPOLITAN DISTRICT NO. 1

By: _____
[name], [title]