

**USAFA ADDITION NO. 2
ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT "Agreement", dated this ___ day of _____, 20___, is between the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City"), and The United States of America acting by and through the Secretary of the Air Force ("Owners" or "Property Owners").

I.
INTRODUCTION

The Owners own all of the real property located in El Paso County, Colorado, identified and described on the legal description attached as Exhibit A (the Property). The Property is owned and held by the United States Government. The Property is the second of two serial annexations involving land owned by the Owner.

The growth of the Colorado Springs metropolitan area makes it likely that the Property will experience development in the future. The Owner will be required to expend substantial amounts of funds for the installation of infrastructure needed to service the Property in connection with the development of the Property and, therefore, the Parties desire to clarify Owner's obligations for installation of or payment for any off-site infrastructure or improvements and with regard to the City's agreements with respect to provision of services to the Property and cost recoveries available to Owner.

Section § 2667 of Title 10 U.S.C. grants authority to the Air Force to use the Enhanced Use Lease Program ("EUL") to lease non-excess underutilized land to third Party entities at or above fair market value. The selected qualified lessee enters into a lease agreement compatible with the terms of the land use and operates with full responsibility to pay for any cost or fees incurred from the direct use of the land.

The Property falls under the EUL and is planned for development by a private developer pursuant to a Site Development Lease ("SDL") and other applicable documents and agreements between Owner and the developer. The Owner does not intend to develop the Property unless an SDL is agreed to with a developer.

Subject to the terms and conditions set forth in this Agreement, both the City and Owner wish to annex the Property into the City to ensure its orderly development. In consideration of the mutual covenants contained in this Agreement, the receipt and sufficiency of which are acknowledged by each of the Parties, the City and Owner agree as follows.

II.
ANNEXATION

The Owners, along with a proposed developer who intends to execute a SDL have petitioned the City for annexation of the Property as set forth in Exhibit A. The annexation will become effective upon final approval by the City Council and the recording of this annexation agreement, the annexation plat, and the annexation ordinance with the El Paso County Clerk and Recorder.

All references to the Property or to the Owners' Property are to the Property described in Exhibit A except as otherwise indicated.

III.

LAND USE

The USAFA True North Commons Master Plan and Concept Plan for the Property has been proposed and submitted to the City for approval. Owners will comply with the approved Master Plan and Concept Plan or an amended Master Plan or Concept Plan approved in accord with applicable provisions of the Code of the City of Colorado Springs 2001, as amended or recodified ("City Code").

IV. ZONING

A. Zoning. The Planning and Development Department of the City agrees to recommend that the initial zone for the Owners' Property shall be PUD (Planned Unit Development; Commercial, Office, Retail, Institutional, Hospitality and Open Space; maximum building height and dimensional controls per CPC MP 18-00138) upon annexation. While zoned PUD, a development plan shall be required for any use. Owners acknowledge the Property shall also be established with an Avigation Easement over the entire Property. Owners acknowledge and understand that the City Council determines what an appropriate zone is for the Property, and this recommendation does not bind the Planning Commission or City Council to adopt the recommended zone for the Property.

B. Change of Zoning. Any future change of zone request shall conform to the USAFA True North Commons Master Plan, as approved or as amended by the City in the future. Rezoning in accord with the zones reflected on the Master Plan will occur prior to actual development of the site.

V. PUBLIC FACILITIES

A. General. As land is annexed into the City it is anticipated that land development will occur. In consideration of this land development, the City requires public facilities and improvements to be designed, extended, installed, constructed, dedicated and conveyed as part of the land development review and construction process. Public facilities and improvements are those improvements to property which, after being constructed by the Owner and accepted by the City, shall be maintained by the City or another public entity. Generally, the required public facilities and improvements and their plan and review process, design criteria, construction standards, dedication, conveyance, cost recovery and reimbursement, assurances and guaranties, and special and specific provisions are addressed in Chapter 7, Article 7 of the City Code (the "Subdivision Code"). Public facilities and improvements include but are not necessarily limited to: 1.) Utility facilities and extensions for water, wastewater, fire hydrants, electric, gas, streetlights, telephone and telecommunications (For water, wastewater, gas and electric utility service, refer to Chapter 12 of the City Code and Section VI. "Utilities Services" and Section VII. "Water Rights" of this Agreement.); 2.) Streets, alleys, traffic control, sidewalks, curbs and gutters, trails and bicycle paths; 3.) Drainage facilities for the best management practice to control, retain, detain and convey flood and surface waters; 4.) Arterial roadway bridges; 5.) Parks; 6.) Schools; and 7.) Other facilities and improvements warranted by a specific land development proposal. The City may require the developer to provide a bond(s) or to execute a Revenue Guarantee Contract or other City-approved guarantee for the fees, costs, performance and compliance obligations contained in this Article V, and the Owner will require that the developer agree and execute such requirements or contracts in the SDL.

It is understood that all public facilities and improvements shall be subject to the provisions of the Chapter 7, Article 7 of the City Subdivision Code, unless otherwise specifically provided for under the terms and provisions of this Agreement. Those specifically modified public facilities and improvements provisions are as follows:

B. Streets, bridge and Traffic Control. Unless agreed to elsewhere in this Agreement the Owner agrees to construct, at the Owner's expense, those street, bridge and/or traffic improvements adjacent to or within the Property. These improvements shall also include mutually acceptable easements. The provisions of City Code §§ 7.7.706 (Reimbursements) and 7.7.1001-1006 (Arterial Roadway Bridges) are excluded. City participation or reimbursement for Arterial Streets and Arterial Bridges within the Property will not be allowed.

1. On-Site or Adjacent Streets: Owner agrees to comply with timing and phasing of construction responsibilities outlined specifically on the Master Plan, CPC MP 18-00138 and any subsequent amendments.

2. Traffic Control Devices. Owner shall pay for installation of traffic and street signs, striping, and traffic control devices, and permanent barriers, together with all associated conduit for all streets within or contiguous to the Property as determined necessary by the City and in accord with uniformly applied criteria set forth by the City. Improvement to North Gate Boulevard shall include the construction of a new full movement intersection with a new traffic control device. Intersection improvements include the construction of a new westbound left turn lane and a new westbound right turn lane along North Gate Boulevard. Construction of all improvements shall be the responsibility of the Owner. All improvements shall be maintained by the Owner.

C. Drainage. A Master Development Drainage Plan shall be prepared and submitted by the Owner to the City and approved by the City Engineer. Final Drainage Reports and Plans shall be prepared and submitted by the Owner to the City and approved by the City Engineer, prior to any approval of a development plan. Owner shall comply with all drainage criteria, standards, policies and ordinances in effect at the time of development, including but not limited to the payment of any drainage, arterial bridge and detention pond fees which will be collected prior to approval of any development plan; and the reimbursement for drainage facilities constructed. The Owner shall provide detention and water quality treatment facilities for all developed areas; to be owned and maintained by the Owner. The Property is currently located within the coverage area of the National Pollutant Discharge Elimination System Permit No COR042007. This permit covers all areas of the municipal separate storm sewer system (MS4) within the exterior boundary of the Air Force Academy. This Agreement will not change the exterior boundary of the academy and will therefore not change the coverage of Permit No COR042007. A Memorandum of Understanding (MOU) between the City and USAFA stating that the Property will remain under the coverage of COR042007 and will not be covered under the City's MS4 Permit (COS-00004) will be required prior to the approval of any development plans within the Property.

D. Parks: Any residential uses are subject to park fees.

E. Schools: Any residential uses are subject to school fees.

F. Improvements Adjacent to Park and School Lands. Streets and other required public improvements adjacent to park and school lands dedicated within the Property will be built by the Owner without reimbursement by the City or the School District.

VI. UTILITY SERVICES

A. Colorado Springs Utilities' (CSU) Services: As the City's utility enterprise, CSU's water, non-potable water, wastewater, electric, streetlight, and natural gas services ("Utility Service" or together as "Utility Services") are available to eligible customers upon connection to CSU's facilities or utility systems on a "first-come, first-served" basis, provided that (among other things) the City and CSU determine that the applicant

meets all applicable requirements of the City's Code of Ordinances ("City Code") and CSU Tariffs, Utilities Rules and Regulations ("URRs"), and Line Extension and Service Standards ("Standards) for each application for Utility Service. In addition, the availability of Utility Services is contingent upon the terms detailed herein and the dedication of real and personal property, public rights-of-way, private rights-of-way, or easements that CSU determines are required for the extension of any proposed Utility Service from CSU utility system facilities that currently exist or that may exist at the time of the proposed extension.

Owner shall ensure that the connections and/or extensions of Utility Services to the Property are in accordance with this Agreement and with the requirements of City Code and CSU's Tariffs, URRs, and Standards, and Pikes Peak Regional Building Department codes and Department of Defense building regulations, if applicable, in effect at the time Utility Service connections and/or extensions are made. Owners acknowledge responsibility for the costs of any extensions or utility system improvements that are necessary to provide Utility Services to the Property or to ensure timely development of integrated utility systems serving the Property and areas outside the Property as determined by CSU.

Owner acknowledge that such connection requirements shall include Owner's payment of all applicable development charges, recovery-agreement charges, advance recovery-agreement charges, aid-to-construction charges and other fees or charges applicable to the requested Utility Service. Because recovery agreement charges, advance recovery-agreement charges, and aid-to-construction charges may vary over time and by location, Owner is responsible for contacting CSU's Utilities Development Services to ascertain which fees or charges apply to the Property in advance of development of the Property.

B. Dedications and Easements: Notwithstanding anything contained in Article XI. of this Agreement to the contrary, Owner, at Owner's sole cost and expense, shall dedicate or convey by recorded document, all property (real and personal) and easements that CSU determines are required for any utility-system facilities necessary to serve the Property or to ensure development of an integrated utility system. CSU shall determine the location and size of all property necessary to be dedicated or otherwise conveyed.

Owner shall provide CSU all written, executed conveyances prior to platting or prior to the development of the Property as determined by CSU.

Further, all dedications and conveyances of real property must comply with the City Code, the City Charter, and CSU Tariffs, URRs, and Standards, and shall be subject to CSU's environmental review. Neither the City nor CSU has any obligation to accept any real property interests. All easements by separate instrument shall be conveyed using CSU's then-current Permanent Easement Agreement form without modification unless approved by CSU.

If Owner, with prior written approval by CSU, relocates, requires relocation, or alters any existing utility facilities within the Property, then the relocation or alteration of these facilities shall be at the Owner's sole cost and expense. If CSU determines that Owners' relocation or alteration requires new or updated easements, then Owner shall convey those easements prior to relocating or altering the existing utility facilities using an easement agreement mutually agreed to in writing. CSU will only relocate existing gas or electric facilities during time frames and in a manner that CSU determines will minimize outages and loss of service.

C. Extension of Utility Facilities by CSU:

1. Electric and Natural Gas Facilities: Subject to the provisions of this Article, City Code, and CSU Tariffs, URRs, and Standards, CSU will extend electric and gas service to the Property if CSU, in its sole discretion, determines there will be no adverse effect to any Utility Service or utility easement. Owner shall cooperate with CSU to ensure that any extension of gas or electric facilities to serve the Property will be in accordance with City Code and CSU Tariffs, URRs, and Standards. CSU, in its sole discretion, may

require Owner to enter into a Revenue Guarantee Contract for the extension of any electric service or facilities, including any necessary electric transmission or substation facilities.

2. Water and Wastewater Facilities: In accordance with City Code, CSU shall be responsible for the construction of centralized water and wastewater treatment facilities needed to serve the Property. In the event CSU or other developers design and construct other water or wastewater system improvements CSU determines are needed to ensure an integrated water or wastewater system is available to serve the Property, Owner shall be required to pay cost recovery for the engineering, materials, and installation costs incurred by CSU or the other developer in its design, construction, upgrade, or improvement of any water pump stations, water suction storage facilities, water transmission and distribution pipelines, or other water system facilities and appurtenances and any wastewater pump stations, wastewater pipeline facilities, or other wastewater collection facilities and appurtenances.

D. Water and Wastewater System Extensions by Owners: Owner must extend, design, and construct all potable and non-potable water system facilities and appurtenances, and all wastewater collection system facilities, wastewater pump stations, and any water or wastewater service lines to and within the Property at Owner's sole cost and expense in accordance with City Code and CSU's Tariffs, URRs, and Standards in effect at the time of each specific request for water or wastewater service. Consistent with City Code § 7.7.1102 (B), Owner shall complete the design and installation, and obtain preliminary acceptance of such utility facilities, prior to CSU's approval of Owner's water and wastewater service requests. Notwithstanding the above requirements, CSU may enter into cost-sharing agreements with Owners for water and wastewater system expansions based on a determination of benefit to CSU, in CSU's sole discretion.

E. Limitation of Applicability: The provisions of this Agreement set forth the requirements of the City and CSU in effect at the time of the annexation of the Property. These provisions shall not be construed as a limitation upon the authority of the City or CSU to adopt different ordinances, rules, regulations, resolutions, policies or codes which change any of the provisions set forth in this Agreement so long as these provisions apply to the City generally and are in accord with the then-current tariffs, rates, regulations and policies of CSU. City Code and CSU's Tariffs, URRs, and Standards, as may be modified from time to time, shall govern the use of all Utilities Services.

F. Southeastern Colorado Water Conservancy District: Notice is hereby provided that upon annexation, and as a condition of receiving water service from CSU, the Property must be included into the boundaries of the Southeastern Colorado Water Conservancy District ("District") pursuant to C.R.S. § 37-45-136 (3.6) as may be amended, and the rules and procedures of the District. Further, notice is hereby provided that, after inclusion of the Property into the boundaries of the District, the Property may be subject to a property tax mill levy or other payment in lieu of taxes for the purposes of meeting the financial obligations of the District. The Owner acknowledges that water service for the Property will not be made available by CSU until such time as the Property is formally included within the boundaries of the District. District inclusion requires consent by the Bureau of Reclamation ("Reclamation"). The Owner shall be responsible for taking all actions necessary for inclusion of the Property into the boundaries of the District, including but not limited to, any action required to obtain Reclamation's consent to include the Property into the District.

VII. WATER RIGHTS

Owner shall not be required to convey to the City any groundwater underlying the Property. City Council approval of the annexation ordinance consenting to the terms of this paragraph is a condition precedent to annexation of the Property.

VIII.
FIRE PROTECTION

The City and Owner will enter into a Mutual Aid Agreement in order to coordinate emergency responses.

IX.
FIRE PROTECTION FEE

The Owner agrees to pay a fee of \$1,631.00 per gross acre for 57.8 developable acres of the annexed area as its share of the capital cost of a new fire station and the initial apparatus purchase required to service this annexation as well as adjacent areas of future annexation. The Fire Protection Fee will be due prior to approval of any building permit within the annexed area and calculated based on the gross acreage of the entire lot on which the building permit is issued. The Owner agree that if any portion of the remaining 40.1 annexed acres of the Property is developed, the then-current Fire Protection Fees will be paid per developed acre at the time of platting.

X.
POLICE SERVICE FEE

The Owner agrees to pay a fee of \$677.00 per gross acre for 57.8 developable acres of the annexed area as Owner's share of the capital cost of a new police station and the initial equipment purchase required to service this annexation as well as adjacent areas of future annexation. The Police Service Fee will be due prior to approval of any building permit within the annexed area and calculated based on the gross acreage of the entire lot on which the building permit is issued. The Owners agree that if any portion of the remaining 40.1 annexed acres of the Property is developed, the appropriate Police Service Fees will be paid per developed acre.

XI.
PUBLIC LAND DEDICATION

The Parties acknowledge that the land associated with this annexation will be annexed into the City of Colorado Springs but will remain federally owned land. Roadways are to remain private and will not be dedicated to the City. Public easements for utility purposes will be established and dedicated to the City for applicable utility development.

XII.
SPECIAL PROVISIONS

Owner currently contemplates development of the property solely through the mechanism of entering into an SDL with a third-party developer. In the event that Owner and a developer enter into an SDL or similar agreement for the development of the Property, Owner may, to the extent feasible, delegate primary responsibility for some or all of Owner's obligations in this Agreement to the developer, including but not limited to, the obligations of Owner set forth in Article V (Public Facilities) and Article VI (Utility Services) of this Agreement; provided however, that the Owner shall bear ultimate responsibility for the performance of such developer and the fulfillment of Owner's obligations.

In the event of any dispute or claim, the City agrees to first pursue remedies against the developer before pursuing remedies against the Owner, to the extent that the developer has assumed the obligations of Owner pursuant to a written agreement. Owner shall provide copies of all such agreements to City. Owner shall reasonably cooperate with any effort of the City to enforce this Agreement against any developer. In order for the City to be obligated under the terms of this Article XII (Special Provisions), any SDL or similar agreement

between the Owner and a developer must give notice of this Agreement and provide that the City be an intended third-party beneficiary of such agreement. Nothing in this Agreement shall require the City to delay filing any claim against the Owner beyond ten (10) days before the expiration of the earliest applicable statute of limitations.

XIII.
ORDINANCE COMPLIANCE

Owners will comply with all tariffs, policies, rules, regulations, ordinances, resolutions and codes of the City which now exist or are amended or adopted in the future, including those related to the subdivision and zoning of land, except as expressly modified by this Agreement or as superseded by operation of Federal law or regulation. This Agreement shall not be construed as a limitation upon the authority of the City to adopt different tariffs, policies, rules, regulations, ordinances, resolutions and codes which change any of the provisions set forth in this Agreement so long as these apply to the City generally.

XIV.
ASSIGNS AND DEED OF TRUST HOLDERS

Where used in this Agreement, the term "the Owners" or "Property Owners," shall also mean any of the heirs, executors, personal representatives, transferees, or assigns, as the case may be, of the Owners and all these Parties shall have the right to enforce and be enforced under the terms of this Agreement as if they were the original Parties hereto. Rights to specific refunds or payments contained in this Agreement shall always be to the Owners unless specifically assigned to another person.

Owners affirmatively state that there exist no outstanding deeds of trust or other similar liens or encumbrances against the Property.

XV.
RECORDING

This Agreement shall be recorded with the Clerk and Recorder of El Paso County, Colorado, and constitute a covenant running with the land. This Agreement shall be binding on future assigns of the Owners and all other persons who may purchase land within the Property from the Owners or any persons later acquiring an interest in the Property. Any refunds made under the terms of this Agreement shall be made to the Owners and not subsequent purchasers or assigns of the Property unless the purchase or assignment specifically provides for payment to the purchaser or assignee and a copy of that document is filed with the City.

XVI.
AMENDMENTS

Amendments to this Agreement shall not be valid unless agreed to in writing by both Parties. In the event that any part of the Property is sold and owned by separate ownership, the City and each individual property owner may amend this Agreement as it pertains to such property owner's portion of the Property, without the agreement of other owners of any other portion of the Property.

Any amendment shall be recorded in the records of El Paso County, shall be a covenant running with the land, and shall be binding on all persons or entities presently possessing or later acquiring an interest in the property subject to the amendment unless otherwise specified in the amendment.

XVII.
HEADINGS

The headings set forth in the Agreement for the different sections of the Agreement are for reference only and shall not be construed as an enlargement or abridgement of the language of the Agreement.

XVIII.
DEFAULT AND REMEDIES

A. If either Owner or City fails to perform any material obligation under this Agreement, and fails to cure the default within thirty (30) days following notice from the non-defaulting Party of that breach, or an extended cure period agreed to by the Parties in writing, then a breach of this Agreement will be deemed to have occurred and the non-defaulting Party will be entitled, at its election, to either cure the default and recover the cost thereof from the defaulting Party, or to pursue and obtain against the defaulting Party an order for specific performance of the obligations under this Agreement and, in either instance, recover any actual damages incurred by the non-defaulting Party as a result of that breach, including recovery of its costs and reasonable attorneys' fees incurred in the enforcement of this Agreement, as well as any other remedies provided by law, except if such action is pursued against the United States, in which case, specific performance shall not be an available remedy for the non-defaulting Party. Prior to filing any lawsuit, the aggrieved Party shall pursue the dispute remedies provided for below, except that in no case shall a Party be obligated to delay filing beyond ten (10) days before the expiration of the earliest applicable statute of limitations.

B. In the event of default of any of Owner's material obligations under this Agreement that is not cured within thirty (30) days, or such extended cure period agreed to by the Parties in writing, Owner shall cause any developer to make available to the City or its designee the proceeds of the bonds bond(s), Revenue Guarantee Contract or other City or CSU approved guarantee, as the case may be, for purposes of completing obligations outlined in this Agreement.

C. If allegations of a breach should arise, the Parties agree to first attempt to resolve the alleged breach using unassisted negotiation techniques (i.e., without the assistance of a neutral third party). Either Party may request in writing that unassisted negotiations commence. As part of the unassisted negotiation, the Parties shall consider employing joint fact-finding, if material factual disputes are involved, and shall use other early resolution techniques appropriate to the circumstances. If the alleged breach involves material issues of fact, the Parties may employ a neutral third party to provide a confidential evaluation of the issues of fact.

D. Alternative Dispute Resolution. If the alleged breach is not resolved within thirty (30) days after the request for unassisted negotiations, and the Parties do not mutually agree to continue the unassisted negotiations, the Parties shall employ alternative dispute resolution ("ADR") procedures involving nonbinding mediation of the dispute by a neutral third party. The ADR procedures employed shall include a confidential evaluation of both the facts and the law and the issuance of confidential recommendations by the neutral third party.

F. Government Obligations. Consistent with the Anti-Deficiency Act, any requirement for the payment or obligation of funds by the Government in connection with this Agreement shall be subject to the availability of appropriated funds, and nothing herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, and nothing in this Agreement is intended to bind the Government to commit, obligate, appropriate or spend funds in violation of the Anti-Deficiency Act and other applicable law respecting Federal funding.

G. If allegations of breach cannot be resolved through the procedures and provisions provided in Sections C and D in this Article XVIII, involving the United States as a party shall be exclusively cognizable in the United States District Court for the District of Colorado and corresponding appellate courts.

XIX.
GENERAL

Except as specifically provided in this Agreement, City agrees to treat Owner and the Property in a non-discriminatory manner relative to the rest of the City. In addition, any consent or approval required in accord with this Agreement from the City shall not be unreasonably withheld, conditioned or delayed. City agrees not to impose any fee, levy or tax or impose any conditions upon the approval of development requests, platting, zoning or issuance of any building permits for the Property, or make any assessment on the Property that is not uniformly applied throughout the City, except as specifically provided in this Agreement or the City Code. If the annexation of the Property or any portion of the Property is challenged by a referendum, all provisions of this Agreement, together with the duties and obligations of each Party, shall be suspended, pending the outcome of the referendum election. If the referendum challenge to the annexation results in the disconnection of the Property from the City, then this Agreement and all its provisions shall be null and void and of no further effect. If the referendum challenge fails, then Owner and City shall continue to be bound by all terms and provisions of this Agreement.

XX.
SEVERABILITY

If any provision of this Agreement is for any reason and to any extent held to be invalid or unenforceable, then neither the remainder of the document nor the application of the provisions to other entities, persons or circumstances shall be affected.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the _____ day and _____ year first written above.

CITY OF COLORADO SPRINGS

BY: _____
John Suthers, Mayor

ATTEST:

BY: _____
Sarah B. Johnson, City Clerk

APPROVED AS TO FORM:

BY: _____
Benjamin J. Bolinger, Senior Attorney

DRAFT

OWNER:

THE UNITED STATES OF AMERICA
ACTING BY AND THROUGH THE SECRETARY OF THE AIR FORCE

BY: _____

NAME: _____

TITLE: _____

ACKNOWLEDGMENT

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day
of _____, 2019, by _____, as
_____ for and on behalf of THE UNITED STATES OF AMERICA ACTING BY
AND THROUGH THE SECRETARY OF THE AIR FORCE.

Witness my hand and notarial seal.

Notary Public

My commission expires: _____

EXHIBIT A
[Exhibit A of the [Annexation Agreement](#)]

LEGAL DESCRIPTION

[ADD LEGAL DESCRIPTION]

DRAFT