

USAFA ADDITION NO. 1 ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT "Agreement," dated this ___ day of _____, 2019, 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 first of two serial annexations involving land owned by the Owner. The Parties understand that the Owners have no current plans for future development in respect to the Property subject to this USAFA Addition No. 1 Annexation Agreement.

The growth of the Colorado Springs metropolitan area makes it likely that the areas near the Property will experience development in the future. If future development is proposed on the Property, the Owner may be required to expend substantial amounts of funds for the installation of infrastructure needed to service 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 of Title 10 U.S.C. § 2667 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.

Subject to the terms and conditions set forth in this Agreement, both the City and Owner wish to annex the Property into the City. 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 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 Owners have no current plans for future development in respect to the Property. 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. Although there are no plans for future development in respect to the Property, 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. The City agrees to process in good faith any application by the Owners for a change of zoning to a land use appropriate for the underdeveloped nature of the Property. Otherwise, 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. Owners acknowledge and understand that the City Council determines what an appropriate zone is for the Property, and agreement to process an application does not bind the Planning Commission or City Council to adopt the recommended zone for the Property.

V.
PUBLIC FACILITIES

The Owner does not currently contemplate further development of the Property. In the event that the Owner or any agent of owner submits an application for development of the Property, and only in such event, this Agreement shall incorporate the terms of Article V (Public Facilities) of the USAFA Addition No. 2 Annexation Agreement, made between the parties hereto and dated as of a date on or near the date of this Agreement.

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.

B. The Owner does not currently contemplate further development of the Property. In the event that the Owner or any agent of owner submits an application for development of the Property, and only in such event, this Agreement shall incorporate the terms of Article VI (Utility Services), Sections B-F, of the USAFA Addition

No. 2 Annexation Agreement, made between the parties hereto and dated as of a date on or near the date of this Agreement.

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 Owners agree that if any portion of the said 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 Owners agree that if any portion of said Property is developed, the then-current Police Service Fees will be paid per developed acre at the time of platting.

XI.
PUBLIC LAND DEDICATION

Owner and City 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

Not applicable.

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 if a conflict occurs by operation of Federal law or regulations. 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 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

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, 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 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.

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

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

LEGAL DESCRIPTION

[ADD LEGAL DESCRIPTION]

DRAFT