

ORDINANCE NO. 18-90

AN ORDINANCE ANNEXING TO THE CITY OF COLORADO
SPRINGS THAT AREA KNOWN AS VILLANI ANNEXATION
CONSISTING OF 13.10 ACRES

WHEREAS, pursuant to Article II, Section 30 of the Colorado Constitution and Section 31-12-101, *et seq.*, C.R.S., known as the Municipal Annexation Act of 1965, as amended (the "Annexation Act"), persons comprising one hundred percent (100%) of the landowners and owning one hundred percent (100%) of that certain territory known as Villani Annexation, more specifically described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"), filed a Petition for Annexation with the City Clerk of the City of Colorado Springs; and

WHEREAS, the City Council of the City of Colorado Springs, after proper notice as required by Section 31-12-108 C.R.S., held a hearing on August 28, 2018 pertaining to the annexation of the Property in accord with Section 31-12-109; and

WHEREAS, in accord with Section 31-12-110 of the Annexation Act, the City Council determined, by resolution, that the applicable provisions of Section 30 of Article II of the Colorado Constitution and Section 31-12-104 and 105 of the Annexation Act have been met, an election is not required under Section 31-12-107(2) of the Annexation Act, and no additional terms and conditions are to be imposed on the annexation of the Property; and

WHEREAS, the City Council has determined that said area should be annexed forthwith as part of the City of Colorado Springs.

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

Section 1. The Property, known as Villani Annexation and more specifically described on the attached Exhibit "A", is hereby annexed to the City of Colorado Springs.

Section 2. When this annexation is complete, the Property shall become a part of the City of Colorado Springs for all intents and purposes on the effective date of this ordinance, provided that the conditions of Section 31-12-113(2) C.R.S.

are satisfied, with the exception of general taxation, in which respect said annexation shall not be effective until on or after January 1 next ensuing.

Section 3. The annexation agreement between the owner of the Property and the City, attached hereto as Exhibit "B" and incorporated herein by reference, (the "Annexation Agreement") is hereby approved.

Section 4. The Mayor is hereby authorized to execute the Annexation Agreement.

Section 5. This ordinance shall be in full force and effect from and after its passage and publication as provided by the City Charter.

Introduced, read, passed on first reading and ordered published this 28th day of August, 2018.

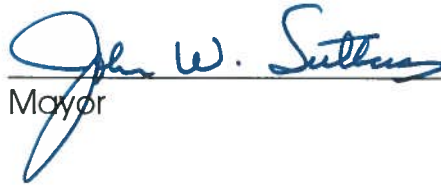
Finally passed: September 11th, 2018



Council President

Mayor's Action:

- Approved on September 11, 2018.
- Disapproved on _____, based on the following objections:



Mayor

Council Action After Disapproval:

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of _____, on _____.
- Council action on _____ failed to override the Mayor's veto.

Council President

ATTEST:



Sarah B. Johnson, City Clerk



CAO:
COS: 

I HEREBY CERTIFY, that the foregoing ordinance entitled “AN ORDINANCE ANNEXING TO THE CITY OF COLORADO SPRINGS THAT AREA KNOWN AS VILLANI ANNEXATION CONSISTING OF 13.10 ACRES” was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on August 28th, 2018; that said ordinance was finally passed at a regular meeting of the City Council of said City, held on the 11th day of September, 2018, and that the same was published by title and summary, in accordance with Section 3-80 of Article III of the Charter, in the Transcript, a newspaper published and in general circulation in said City, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this 11th day of September, 2018.



Sarah B. Johnson, City Clerk



1st Publication Date: August 31st, 2018
2nd Publication Date: September 19th, 2018
Effective Date: September 24th, 2018

Initial: SBJ
City Clerk



LEGAL DESCRIPTION (VILLANI ANNEXATION)

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 13 SOUTH, RANGE 65 WEST, OF THE 6TH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, WHOSE BEARINGS ARE RELATIVE TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF SECTION 7 ASSUMED TO BEAR N 87°50'18" E, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF DUBLIN NORTH 3A ANNEXATION AS RECORDED IN RECEPTION NO. 207712723 OF THE RECORDS OF EL PASO COUNTY, COLORADO, THENCE N87°35'02"E, 547.54 FEET;

THENCE ALONG THE WESTERLY LINE OF SAID DUBLIN NORTH 3A ANNEXATION, S00°15'12"E, 702.31 FEET;

THENCE ALONG THE WESTERLY LINE OF SAID DUBLIN NORTH 3A ANNEXATION, S87°59'14"W, 965.56 FEET;

THENCE CONTINUING ALONG THE WESTERLY LINE OF SAID DUBLIN NORTH 3A ANNEXATION, N59°48'55"W, 80.00 FEET;

THENCE N59°48'55"W, 14.53 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF TUTT BOULEVARD AS RECORDED IN RECEPTION NO. 208136391 AN RECEPTION NO. 209712964 OF THE RECORDS OF EL PASO COUNTY, COLORADO;

THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID TUTT BOULEVARD 222.97 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT WHOSE RADIUS IS 654.00 FEET, HAS A CENTRAL ANGLE OF 19°32'02" AND WHOSE CHORD BEARS N10°37'46"E, 221.89 FEET;

THENCE CONTINUING ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID TUTT BOULEVARD N00°09'31"W, 55.61 FEET TO A POINT ON THE SOUTHERLY LINE OF TEMPLETON ANNEXATION NO. 2 AS RECORDED IN RECEPTION NO. 20872804 OF THE RECORDS OF EL PASO COUNTY, COLORADO;

THENCE ALONG THE SOUTH LINE OF SAID TEMPLETON ANNEXATION NO. 2, S82°21'08"E, 126.56 FEET;

THENCE ALONG THE SOUTH LINE OF SAID TEMPLETON ANNEXATION NO. 2, S59°48'54"E, 80.00 FEET TO THE SOUTHEAST CORNER THEREOF;

THENCE ALONG THE EAST LINE OF SAID TEMPLETON ANNEXATION NO. 2, N30°11'06"E, 519.41 FEET TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 13.10 ACRES (570,793 SF) MORE OR LESS.

Prepared By:

M.V.E., Inc.

1903 Lelaray Street, Suite 200

Colorado Springs, CO 80909

September 20, 2017

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Page 1 of 1

Engineers • Surveyors

1903 Lelaray Street, Suite 200 • Colorado Springs, CO 80909 • Phone 719-635-5736

Fax 719-635-5450 • e-mail mve@mvecivil.com

EXHIBIT A

VILLANI ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT "Agreement", dated this 19 day of June, 2018 is between the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City"), and Villani Partnership LLP ("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 growth of the Colorado Springs metropolitan area makes it likely that the Property will experience development in the future. The Owners will be required to expend substantial amounts of funds for the installation of infrastructure needed to service the Property and, therefore, desires to clarify Owners' 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 Owners. Subject to the terms and conditions set forth in this Agreement, both the City and Owners 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 Owners 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 Agreement, the annexation plat, this Agreement, special warranty deed and irrevocable consent to the appropriation, withdrawal, and use of groundwater as forth in Exhibit B 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

As provided in the Code of the City of Colorado Springs 2001, as amended or recodified ("City Code"), the Manager of the City Planning and Development Department has waived the requirement of submission of a land use master plan for this annexation because it meets the criteria in City Code § 7.5.403(B). Owners will comply with the future approved or amended Concept Plan, approved in accord with applicable provisions of the 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 Agricultural (A) upon annexation. While zoned Agricultural (A), a development plan shall be required for any use. Owners acknowledge the initial zoning of the Property shall also include 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 initial recommended zoning for the Property.

E. Parks: Any residential uses are subject to fees in lieu of parkland dedication pursuant to City Code Chapter 7, Article 7, Part 12.

F. Schools: Any residential uses are subject to fees in lieu of school land dedication pursuant to City Code Chapter 7, Article 7, Part 12.

G. 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 Owners without reimbursement by the City or the School District.

VI.

UTILITY SERVICES

A. Colorado Springs Utilities (CSU) Services: CSU's water, non-potable water, wastewater, electric, streetlight, and 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 City ordinances and regulations, and applicable CSU tariff requirements and regulations for each application for Utility Service. In addition, the availability of Utility Services is contingent upon the terms detailed in this Agreement and the dedication of 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.

Owners shall ensure that the connection and extension of Utility Services to the Property are in accord with all codes and regulations in effect at the time of Utility Service connection and/or extension, including but not limited to CSU's tariffs, rules, and policies, City ordinances, resolutions, and policies, and the Pikes Peak Regional Building Department codes. Further, as specified in this Agreement below, 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.

CSU's connection requirements may require the Owners to provide a bond(s) or to execute a Revenue Guarantee Contract or other CSU-approved guarantee for the extension of any Utility Service before CSU authorizes the extension of Utility Services and/or other utility systems improvements, or any request for a service connection to the Property by Owners. Owners acknowledge that such connection requirements shall include Owners' 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, and any costs CSU incurs to acquire additional service territory for the Utility Service to be provided, including those costs specified in paragraph C below. Because recovery agreement charges, advance recovery-agreement charges, and aid-to-construction charges may vary over time and by location, Owners are responsible for contacting CSU's Customer Contract Administration at (719) 668-8111 to ascertain which fees or charges apply to the Property.

Owners acknowledge that annexation of the Property does not imply a guarantee of water supply, wastewater treatment system capacity, or any other Utility Service supply or capacity, and CSU does not guarantee Utility Service to the Property until such time as permanent service is initiated. Accordingly, no specific allocations or amounts of Utility Services, facilities, capacities or supplies are reserved for the Property or Owners upon annexation, and the City and CSU make no commitments as to the availability of any Utility Service at any time in the future.

B. Dedications and Easements: Notwithstanding anything contained in Section XI of this Agreement to the contrary, Owners, at Owners' sole cost and expense, shall dedicate by plat and/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, including but not limited to, any access roads, gas regulation or electric substation sites, electric transmission

1. Owners shall pay the then-current electric service provider, directly, for the just compensation specified in C.R.S. §§ 40-9.5-204(1)(a) and 40-9.5-204(1)(b); and
 2. If the then-current electric service provider removes the Existing Facilities, then Owners shall pay the then-current electric service provider directly for the removal of any Existing Facilities.
 - C. Further, Owners shall pay CSU the just compensation specified in C.R.S. §§ 40-9.5-204(1)(c) and 40-9.5-204(1)(d) within thirty (30) days of Owners' receipt of an invoice for such costs.
 - D. Owners shall also pay for any Conversion required by CSU as a result of such annexation concurrent with the execution of a contract between the Owners and CSU that specifies the terms of Conversion.
 - E. CSU, in its sole discretion, may require Owners to enter into a Revenue Guarantee Contract for the extension of any electric service or facilities, including any necessary electric transmission or substation facilities.
3. Water and Wastewater Facilities by CSU: The Owners shall pay any recovery-agreement charges or other fees or charges that are not currently approved by CSU for the Property, but which may become applicable as a result of any on-site or off-site water or wastewater system facilities that CSU or other developers may design and construct in order to ensure an integrated water or wastewater system supplying the Property. Additionally, the Owners shall be subject to cost recovery for the engineering, materials and installation costs incurred by CSU 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 or treatment facilities, wastewater pipeline facilities, or other wastewater collection facilities and appurtenances that CSU, in its sole discretion, determines are necessary to serve the Property.
- D. Water and Wastewater System Extensions by Owners: Owners 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 Owners' sole cost and expense in accord with all applicable CSU tariffs, rules, regulations, including CSU's Line Extension and Service Standards, and all City ordinances and regulations in effect at the time of each specific request for water or wastewater service. Consistent with City Code 7.7.1102(B), Owners shall complete the design and installation, and obtain preliminary acceptance of such utility facilities, prior to CSU's approval of Owners' water and wastewater service requests.

Owners shall be solely responsible for all costs and fees associated with engineering, materials, and installation of all water system facilities and appurtenances, and all wastewater collection facilities and appurtenances, whether on-site or off-site, that are necessary to serve the Property or to ensure development of an integrated water or wastewater system serving the Property and areas outside the Property as determined by CSU. Further, Owners acknowledge that CSU may require that such water or wastewater system facilities be larger than necessary to serve the Property itself, and may require the Owners to participate in other development projects, and any necessary off-site system facilities improvements, on a fair-share, pro rata basis. In the event CSU requires such water and wastewater systems to be larger than necessary to serve the Property itself, then Owners may seek reimbursement as provided in CSU's Utilities Rules and Regulations.

The plans, specifications, and construction of the water facilities and appurtenances, and the wastewater facilities and appurtenances, are each subject to CSU's inspection and written acceptance. CSU shall make the final determination as to the size, location, point(s) of connection and the required appurtenances of the utility system facilities to be constructed. No work shall commence on any proposed water or wastewater extension facilities until CSU provides written approval of Owners' water or wastewater construction plans and copies of such approved plans are received by CSU. Owners may only connect newly-constructed facilities to CSU's existing water or wastewater systems upon CSU's inspection and written acceptance of such facilities.

As part of any development plan submittal for the Property, Owners acknowledge that a Preliminary Utility Plan, Wastewater Master Facility Form, Hydraulic Grade Line Request Form, and Hydraulic Analysis Report (as determined by CSU) are required and must be completed and approved by CSU.

Furthermore, pursuant to C.R.S. § 37-90-137(4), as now in effect or hereafter amended, on behalf of Owners and all successors in title, Owners irrevocably consent to the appropriation, withdrawal and use by the City of all groundwater underlying or appurtenant to and used upon the Property.

In the event the City chooses to use or further develop the Water Rights that have been conveyed, Owners agree to provide any and all easements required by the City prior to the construction and operation of any City well or water rights related infrastructure on the Property. Wells constructed by the City outside the Property may withdraw groundwater under Owners' Property without additional consent from Owners.

Upon annexation of the Property, any wells or groundwater developed by Owners prior to annexation will become subject to CSU's applicable tariffs, Rules and Regulations, and rates as amended in the future. Owners' uses of groundwater shall be subject to approval by the City and CSU, and shall be consistent with CSU's standards, tariffs, policies, and the City's ordinances, resolutions and policies for the use of groundwater now in effect or as amended in the future. No commingling of well and City water supply will be permitted.

VIII.
FIRE PROTECTION

The Property being considered for annexation is not within a Fire Protection District. The Property would fall within the sole boundary of the City of Colorado Springs and be covered by the Colorado Springs Fire Department. The Owners understand and acknowledge that the Property may be excluded from the boundaries of the Fire District under the provisions applicable to special districts, Article 1 of Title 32 C.R.S., and as otherwise provided by law. Upon request by the City, the person who owns the Property at the time of the City's request agrees to apply to the Fire District for exclusion of the Property from the Fire District. The Owners understand and acknowledge that the Owners, Owners' heirs, assigns and successors in title are responsible for seeking any exclusion from the Fire District and that the City has no obligation to seek exclusion of any portion of the Property from the Fire District.

IX.
FIRE PROTECTION FEE

The Owners agree to pay a fee of \$1,631.00 per gross acre of the entire annexed area as their 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 recordation of the annexation plat and this agreement. The City agrees as future annexations occur within the service area of a proposed fire station, the owners of future annexations will be required to pay a per-acre fee to the City for the capital improvements to the fire station.

X.
POLICE SERVICE FEE

The Owners agree to pay a fee of \$600.00 per gross acre of the entire annexed area as Owners' 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 recordation of the annexation plat and this agreement. The City agrees as future annexations occur within the service area of a proposed police station, the owners of future annexations will be required to pay a per-acre fee to the City for the capital improvements to the police station.

XI.
PUBLIC LAND DEDICATION

Owners agree that all land dedicated or deeded to the City for municipal or utility purposes, including park and school sites, shall be platted and all applicable development fee obligations paid.

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

This Agreement may be amended by any party, including their respective successors, transferees, or assigns, and the City without the consent of any other party or its successors, transferees, or assigns so long as the amendment applies only to the property owned by the amending party. For the purposes of this article, an amendment shall be deemed to apply only to property owned by the amending party if this Agreement remains in full force and effect as to property owned by any non-amending party.

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 the Owners 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 Owners 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 Owners and City shall continue to be bound by all terms and provisions of this Agreement.

XX.
SEVERABILITY



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:  _____
~~Wynetta Massey, City Attorney.~~
Ben Bolinger, Senior Attorney

EXHIBIT A
LEGAL DESCRIPTION



LEGAL DESCRIPTION (VILLANI ANNEXATION)

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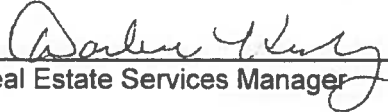
Colorado Springs, CO 80909

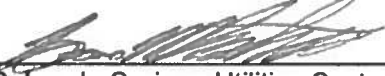
September 20, 2017

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A handwritten signature in black ink, appearing to be 'AV', is located in the bottom right corner of the page.

Accepted by the City of Colorado Springs

By:  this 18 day of July, 2018
Real Estate Services Manager

By:  this 26 day of June, 2018
Colorado Springs Utilities Systems Extension Manager

Approved as to Form:

By:  Date: 8/9/18
City Attorney's Office

Exhibit B

To the
Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater
executed Villani Partnership LLP, Grantor(s) on 6/19/18.

Decreed Groundwater Rights

Case No.

Court:

Source:

Amount:

Date of Decree:

Name of Owner:

Permitted Groundwater

Permit No.

Date of Permit:

Source:

Amount:

Name of Owner:

Legal Description of Well or other structure:

Surface Water Rights

Name of Water Right:

Case No.

Court:

Source:

Amount:

Date of Decree:

Name of Owner: