

ORDINANCE NO. 19-16

AN ORDINANCE ANNEXING TO THE CITY OF COLORADO
SPRINGS THAT AREA KNOWN AS THE USAFA ADDITION
NO. 1 ANNEXATION CONSISTING OF 85.23 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 the USAFA Addition No. 1 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 February 26, 2019 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 the USAFA Addition No. 1 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. 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 26th day of February, 2019.


Finally passed: March 12th, 2019



Council President

Mayor's Action:

- Approved on March 15, 2019.
- 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



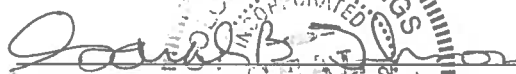
CAO: 
COS: _____


I HEREBY CERTIFY, that the foregoing ordinance entitled **“AN ORDINANCE ANNEXING TO THE CITY OF COLORADO SPRINGS THAT AREA KNOWN AS THE USAFA ADDITION NO. 1 ANNEXATION CONSISTING OF 85.23 ACRES”** was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on February 26th, 2019; that said ordinance was finally passed at a regular meeting of the City Council of said City, held on the 12th day of March, 2019, 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 15th day of March, 2019.

1st Publication Date: March 1st, 2019
2nd Publication Date: March 20th, 2019

Effective Date: March 25th, 2019


Sarah B. Johnson, City Clerk



Initial: SBS
City Clerk

**LEGAL DESCRIPTION
(ANNEXATION PARCEL)**

A PARCEL OF LAND LOCATED IN THE EAST ONE-HALF OF SECTION 12, TOWNSHIP 12 SOUTH, RANGE 67 WEST AND THE WEST ONE-HALF OF SECTION 7, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF COLORADO SPRINGS, COUNTY OF EL PASO, STATE OF COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS WITH BEARINGS REFERENCED TO THE WEST LINE OF THE NORTHEAST ONE-QUARTER OF SECTION 1, TOWNSHIP 12 SOUTH, RANGE 67 WEST BEING MONUMENTED ON THE NORTH END BY A FOUND 6 INCH CONCRETE MONUMENT EMBEDDED WITH A 3-1/2 INCH METAL DISC STAMPED WITH SYMBOLOGY INDICATING IT BEING THE NORTH ONE-QUARTER CORNER OF SECTION 1 AND "1970 U.S. AIR FORCE 6786 BDY 47" AND ON THE SOUTH END BY FOUND REBAR CAPPED WITH A 3-1/4 INCH METAL AND 6 INCH CONCRETE MONUMENT EMBEDDED WITH A BRASS DISC STAMPED WITH SYMBOLOGY INDICATING IT BEING THE CENTER OF SECTION 1 AND "U.S. DEPT. OF INTERIOR - BUREAU OF LAND MANAGEMENT 1966" - BEARING SOUTH 0°12'17" EAST A DISTANCE OF 2674.46 FEET

COMMENCE AT THE CENTER OF SAID SECTION 1; THENCE SOUTH 40°07'17" EAST A DISTANCE OF 4,501.50 FEET TO AN ANGLE POINT ON THE EXTERIOR OF THE UNITED STATES AIR FORCE ACADEMY PROPERTY BEING MONUMENTED BY A 6 INCH CONCRETE MONUMENT EMBEDDED WITH A 3-1/2 INCH METAL DISC STAMPED "1970 U.S. AIR FORCE 6786 BDY 38"; THENCE SOUTH 25°23'28" EAST, ALONG SAID THE EXTERIOR A DISTANCE OF 21.63 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUE SOUTH 25°23'28" EAST, ALONG SAID EXTERIOR, A DISTANCE OF 566.18 FEET TO THE NORTHWEST CORNER OF LOT 4 OF BASS PRO AT NORTHGATE FILING NO. 1 ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED JULY 18, 2012 UNDER RECEPTION NUMBER 212713238 SAID CORNER ALSO BEING THE NORTHWEST CORNER OF THE CURRENT COLORADO SPRING CORPORATE CITY LIMITS;

THENCE CONTINUE SOUTH 25°23'28" EAST, ALONG SAID UNITED STATES AIR FORCE ACADEMY EXTERIOR AND COLORADO SPRINGS CORPORATE CITY LIMITS, A DISTANCE OF 2,290.00 FEET;
THENCE SOUTH 66°17'28" WEST A DISTANCE OF 1,184.56 FEET TO THE EASTERLY RIGHT-OF-WAY OF THE FORMER ATCHISON TOPEKA AND SANTA FE RAILROAD AS DEPICTED IN THAT CERTAIN BOUNDARY SURVEY OF THE UNITED STATES AIR FORCE ACADEMY RECORDED DECEMBER 3, 1970 IN THE OFFICE OF THE EL PASO COUNTY CLERK AND RECORDERS IN PLAT BOOK O2 PAGE 84 (RECEPTION NUMBER 768143) ALSO BEING THE WESTERLY LINE OF THAT CERTAIN EASEMENT GRANTED BY THE UNITED STATES AIR FORCE ACADEMY FOR ROAD, STREET AND HIGHWAY RECORDED AUGUST 11, 1958 IN THE OFFICE OF THE EL PASO COUNTY CLERK AND RECORDER IN BOOK 1691 PAGE 594;

THENCE NORTH 23°42'32" WEST, ALONG SAID COMMON LINE, A DISTANCE OF 304.96 FEET;

THENCE LEAVING SAID RAILROAD RIGHT-OF-WAY LINE SOUTH 66°17'28" WEST, ALONG THE SAID HIGHWAY EASEMENT LINE, A DISTANCE OF 70.00 FEET;

THENCE NORTHWESTERLY, ALONG SAID HIGHWAY EASEMENT LINE BEING 20 FEET SOUTHWESTERLY OF AND PARALLEL WITH THE PREVIOUSLY CITED RAILROAD RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES;

1. THENCE NORTH 23°42'32" WEST A DISTANCE OF 886.71 FEET TO A TANGENT 1,990.08 FOOT RADIUS CURVE WHOSE CENTER BEARS SOUTHWESTERLY;
2. THENCE NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 19°00'57" AN ARC DISTANCE OF 660.49 FEET;
3. THENCE NORTH 42°43'29" WEST A DISTANCE OF 1,023.31 FEET;

LEGAL DESCRIPTION
ANNEXATION PARCEL

THENCE NORTH 64°36'31" EAST A DISTANCE OF 1,613.43 FEET TO THE POINT OF BEGINNING.
THE ABOVE DESCRIPTION PRODUCES A CALCULATED AREA OF 3,712,960 SQUARE FEET (85.23783 ACRES),
MORE OR LESS.

**US AIR FORCE ACADEMY ADDITION NO. 1
ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT ("Agreement") dated this 12th day of March, 2019 (the "Effective Date"), 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 ("Owner"). The City and the Owner are each a "Party" and together, the "Parties."

I.
INTRODUCTION

The Owner owns 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 federal land 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 Owner has no current plans for development of the Property; only the land subject to the second of the two serial annexations is planned for development

Section 2667 of Title 10 U.S.C. grants authority to the Secretary of the Air Force to use the Enhanced Use Lease ("EUL") program to lease non-excess underutilized land to third parties at or above fair market value. The selected third party enters into a lease agreement compatible with the terms of the land use and operates with full responsibility to pay for any costs or fees incurred from the direct use of the land and all liabilities associated with that use and operation, at no cost to the United States Government.

The Property may be considered for development under the EUL program at some point in the future. If so, it would be developed by an Owner-selected private third-party developer pursuant to a Site Development Lease ("SDL") and other applicable documents and agreements between Owner and the third-party developer. The Owner does not intend to have the Property developed unless a SDL is agreed to with a third-party developer. Prior to any development of the Property, the Parties may enter into an amendment to this Agreement ("Amendment") as necessary. The Parties acknowledge and understand that under an SDL, the third-party developer is responsible for performance related to installation of, payment for and reimbursement of any infrastructure or utility improvements contemplated under this Agreement or any Amendment. Additional terms providing for development costs and obligations may be established in a development agreement between the City and the Owner's third-party 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. 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 Owner has petitioned the City for annexation of the Property. The annexation will become effective upon final approval by the City Council and the recording of this Agreement, the annexation plat, and the annexation ordinance with the El Paso County Clerk and Recorder.

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

III.
LAND USE

The Owner has no plans for development of the Property at the time of annexation. A Master Plan and Concept Plan for the Property has been proposed and submitted to the City for approval. The City shall not be obligated to issue Land Entitlements for any development that does not 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 has recommended that the initial zone for the Owners' Property 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. Owner acknowledges and understands 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 Owner for a change of zoning to a land use appropriate for the underdeveloped nature of the Property. Rezoning will occur prior to actual development of any site on the Property. Owner acknowledges and understands 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 a recommended zone for the Property.

C. Avigation Easement. The City may require an avigation easement as a requirement of issuing or approving any entitlement on the Property, including but not limited to zoning ordinances, concept plans, master plans, development plans, plats, building permits or certificates of occupancy, or any similar entitlement (collectively, "Land Entitlements").

V.
PUBLIC FACILITIES

The Owner does not currently contemplate further development of the Property. In the event that the Owner or a third-party developer 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 US Air Force Academy 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 (each, a "Utility Service" or together the "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 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 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 a third-party developer 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 US Air Force Academy 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 have entered into an existing Mutual Aid Agreement to coordinate emergency responses.

IX.
FIRE PROTECTION FEE

The City shall have no obligation to issue any Land Entitlements unless the then-current Fire Protection Fee is paid per developed acre at the time of platting.

X.
POLICE SERVICE FEE

The City shall have no obligation to issue any Land Entitlements unless the then-current Police Service Fee is 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 on the Property 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

Except to the extent preempted by Federal law and regulations including, but not limited to, those laws governing the EUL program, Owner will comply with all utilities requirements, 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 utilities requirements, 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 Owner" shall also mean any of the transferees or assigns of the Owner who shall have the right to enforce and be enforced under the terms of this Agreement as if they were the original Parties hereto.

Owner affirmatively states 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 Owner and all other persons who may purchase land within the Property from the Owner or any persons later acquiring an interest in the Property.

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 article and section headings set forth in this 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 default, 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 that 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 non-defaulting 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 the third-party developer to make available to the City or its designee the proceeds of any payment and performance 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.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals effective as of the Effective Date.

CITY OF COLORADO SPRINGS

BY: John Suthers
John Suthers, Mayor

ATTEST:

BY: Sarah B. Johnson
Sarah B. Johnson, City Clerk



APPROVED AS TO FORM:

BY: Benjamin J. Bolinger
Benjamin J. Bolinger, Senior Attorney

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF COLORADO §
COUNTY OF EL PASO §

On _____, 2019 before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by he/her signature on the instrument the entity upon behalf of which he/she acted executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the Colorado that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature of Notary Public) (Seal)

OWNER:
UNITED STATES OF AMERICA, acting by and
through the Secretary of the Air Force

By: *Carol Ann Y. Beda*
CAROL ANN Y. BEDA
Acting Deputy Assistant Secretary of the Air Force
(Installations)

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF VIRGINIA §
COUNTY OF ARLINGTON §

On 12 March, 2019 before me,
Heather J. Pittman, personally appeared
Carol Ann Beda, who proved to me on the basis of satisfactory
evidence to be the person whose name is subscribed to the within instrument and
acknowledged to me that he/she executed the same in his/her authorized capacity, and
that by he/her signature on the instrument the entity upon behalf of which he/she acted
executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the VIRGINIA that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal

Heather J. Pittman (Seal)
(Signature of Notary Public)
Reg 7636395



EXHIBIT A

[Exhibit A of the Annexation Agreement] No. 1

LEGAL DESCRIPTION

[ADD LEGAL DESCRIPTION]

