



Legislation Text

File #: ANEX-22-0001R, **Version:** 1

A resolution adopting findings of fact and conclusions of law based thereon and determining the eligibility for annexation of property known as Villages at Waterview North Addition No. 1 Annexation.

(Legislative)

Related Files: ANEX-22-0001, MAPN-22-0002, ZONE-22-0013, ZONE-22-0014, ZONE-22-0015, ZONE-22-0016, ZONE-22-0017, COPN-22-0002

Presenter:

Gabe Sevigny, Planning Supervisor, Planning & Neighborhood Services Department
Peter Wysocki, Planning Director, Planning & Neighborhood Services Department

Summary:

Owner: CPR Entitlements, LLC; PHI Real Estates Services, LLC; Veterans Villa Operating, LLC; Schulz Partnership, LLLP; WVN 96, LLC.

Representative: Kimley Horn

Location: Northeast of the Powers Boulevard and Bradley Road intersection

The project includes concurrent applications for annexation of 144.82 acres, a master plan for 116.52 acres, establishment of LI/APZ1-AP-O (Light Industrial / Accident Potential Subzone-1 with Airport Overlay) zone district consisting of 20.45 acres, establishment of MX-L/APZ1-AP-O (Mixed-Use Large Scale / Accident Potential Subzone-1 with Airport Overlay) zone district consisting of 27.65 acres, establishment of PF-AP-O (Public Facilities with Airport Overlay) zone district consisting of 3.84 acres, establishment of R-5-AP-O (Multi-Family High with Airport Overlay) zone district consisting of 41.28 acres, establishment of R-FLEX-MED-AP-O (R-Flex Medium with Airport Overlay) zone district consisting of 23.28 acres and a concept plan for 116.52 acres located northeast of the South Powers Boulevard and Bradley Road intersection. The master plan and concept plan illustrate a mixture of industrial, commercial, multi-family residential, single-family detached and attached residential, public facilities, and public parkland uses.

Background:

As the City has expanded over the last several decades; we can see larger areas of annexation throughout our City history. The City experienced a very active period of annexation in the 1980's which included the annexation of areas of North Gate, Briargate and Banning Lewis Ranch. In the early 2000's we see the annexation of Flying Horse. Much of this area has now been developed, and there are existing areas of greenfield that still exist.

The proposed annexation is located south of Bradley Road and northeast of Squirrel Creek Road and Link Road. This property is currently within El Paso County and is mostly vacant, with some minor abandoned buildings remaining on the southwest corner of the property. The overall site comprises of a few existing zone districts within El Paso County (listed above) and is situated in an area of

residential development in El Paso County and surrounding City of Fountain.

When evaluating the El Paso County Master Plan (Your El Paso Master Plan) the subject area is listed as an area of 'Potential Annexation' on the Key Areas Map. This identifies areas of the County that are defined by unique localized characteristics having influence on future land use and development. The master plan discusses that significant portions of the County's expected development population growth will locate in surrounding incorporated municipalities. It further states that, as the largest municipality, the City of Colorado Springs will need to annex parts of unincorporated County to plan for and accommodate new development. This Key Areas Map outlines portions of the County that are anticipated to be annexed.

In addition, the subject site is classified as 'New Development' in the Areas of Change analysis of the Your El Paso Master Plan. The New Development areas within El Paso County are identified to make up ten percent of the expected future change of unincorporated El Paso County (leaving ninety percent of the County expected to experience minimal change). The plan states these areas are expected to be significantly transformed as projected new development takes place on lands currently largely designated as undeveloped or agricultural areas. It is further anticipated that these areas of change will see development similar to that already established or complementary to an urban neighborhood.

In combination with the above approach from Your El Paso Master Plan the City of Colorado Springs and El Paso County passed an Intergovernmental Agreement (IGA) for annexations in 2021. The IGA memorialized the shared vision that it is best practice for logical extensions of urban level developments to be established within the City. The IGA also lays out a collaborative methodology to establishing this approach for future development. As part of this effort, the area surrounding the eastern side of the City was analyzed and much of the undeveloped land considered part of the annexation Area of Interest. This subject site is within this Area of Interest.

We can additionally add some context for the growth of the City reviewing the 15-year period from 2006 (last update to the City Annexation Plan) to 2021. The calculated vacant proportion of the City has decreased from approximately 37% to about 21%, even with some additional annexations during the intervening period. During this same period, the number and proportion of individual master plans in the City that have progressed from "operative" to "implemented" (85% or more built out) has increased significantly. Of the remaining operative master plans, only a relatively small number besides Banning Lewis Ranch have significant remaining single-family housing capacity and general large areas for growth and development.

Landowners seeking voluntary annexation must petition the municipality to request annexation into the City. The Annexation Petition for this property was heard and accepted by City Council on August 9, 2022. The City's authority to annex land is established by Colorado Revised Statutes (C.R.S. 31-12-101) which sets requirements and procedures which municipalities must follow. A property is eligible for annexation if the contiguity requirement is met; not less than one-sixth the perimeter of the proposed area for annexation is contiguous with the existing boundary of the annexing municipality. With a perimeter of 12,385.24 feet to be annexed, the required contiguity is 2,064.21 feet. Currently the proposed annexation has a contiguity of 5,031.80 feet on the north side, staff has determined the proposed annexation meets the requirements of contiguity.

The petitioner proposes to annex approximately 144.521 acres into the municipal limits of the City of

Colorado Springs. The proposed annexation also includes portions of Bradley Road and South Powers Boulevard. This annexation is comprised of only one addition and not requiring serial annexations due to its current contiguity. The property is intended for mixture of industrial, commercial, multi-family residential, single-family detached and attached residential, public facilities, and public parkland uses to be developed within the City and utilizing city infrastructure.

The owner has identified future intentions for the above uses and discussed further below in the master plan and concept plan sections. Staff believes the proposed development shows appropriate compatibility when evaluated with the established surrounding land use pattern. The supporting concept also captures a similar level of detail and clearly identifies the intended land use configuration.

Conditions for Annexation (City Code Section 7.6.203)

- A. *The area proposed to be annexed is a logical extension of the City's boundary;*
- B. *The development of the area proposed to be annexed will be beneficial to the City. Financial considerations, although important, are not the only criteria and shall not be the sole measure of benefit to the City;*
- C. *There is a projected available water surplus at the time of request;*
- D. *The existing and projected water facilities and/or wastewater facilities of the City are expected to be sufficient for the present and projected needs for the foreseeable future to serve all present users whether within or outside the corporate limits of the City;*
- E. *The annexation can be effected at the time the utilities are extended or at some time in the future;*
- F. *The City shall require as a condition of annexation the transfer of title to all groundwater underlying the land proposed to be annexed. Should such groundwater be separated from the land or otherwise be unavailable for transfer to the City, the City, at its discretion, may either refuse annexation or require payment commensurate with the value of such groundwater as a condition of annexation. The value of such groundwater shall be determined by the Utilities based on market conditions as presently exist;*
- G. *All rights of way or easements required by the Utilities necessary to serve the proposed annexation, to serve beyond the annexation, and for system integrity, shall be granted to the Utilities. Utilities, at the time of utility system development, shall determine such rights of way and easements.*
- H. *If the proposed annexation to the City overlaps an existing service area of another utility, the applicant shall petition the PUC (Public Utilities Commission) or other governing authority to revise the service area such that the new service area will be contiguous to the new corporate boundary of the City.*

Springs Utilities has studied the subsections of the Conditions for Annexation related to its utility services in order to assist in the evaluation of the proposed annexation. Springs Utilities has negotiated an annexation agreement with the annexor that includes the terms by which Springs Utilities will be able to provide utility services to the annexing property. Per City Code Section 12.1.111 with annexation Springs Utilities shall be the exclusive provider of utility services. Springs Utilities has reviewed the master plan for areas of impact and needed extensions; the exact details of extension responsibilities is captured in the annexation agreement. All standards per the utilities code will be required for future entitlements for the specifics of development. Through responsible, timely and ongoing planning initiatives, Springs Utilities has developed existing, and identified future,

utility facilities that currently serve or will be needed to serve all present and future users whether within or outside the corporate limits of the City.

Furthermore, on February 14, 2023, City Council approved Ordinance No. 23-02, pertaining to the extension of water service. This ordinance requires a recommendation of approval by the Utilities Board and approval by City Council. The Utilities Board met on May 17, 2023, to take action and ultimately recommended approval with a unanimous vote.

Water

Currently, applying a first-come, first-serve approach, Springs Utilities has adequate water resources available to serve the annexation area as required by City Code section 7.6.203(C). The requirements to connect the annexation area to existing water infrastructure are included in the proposed Villages at Waterview North Annexation Agreement and are consistent with the City Code, Utilities Rules and Regulations (URRs), and Line Extension and Service Standards (LESS).

Wastewater

Springs Utilities has sufficient capacity to serve the annexed area. The requirements to connect the annexation area to existing wastewater infrastructure are included in the proposed Villages at Waterview North Annexation Agreement and are consistent with the City Code, URRs and LESS.

Electric

Electricity to serve the annexation area will be generated and/or purchased in accordance with Springs Utilities' electric integrated resource plan process. The requirements to connect the annexation area to existing electric infrastructure are included in the proposed Villages at Waterview North Annexation Agreement and are consistent with the City Code, URRs and LESS.

Natural Gas

Natural gas service to the annexation area will be in accordance with Springs Utilities' gas integrated resource plan process. The requirements to connect the annexation area to existing gas infrastructure are included in the proposed Villages at Waterview North Annexation Agreement and are consistent with the City Code, URRs and LESS.

A Fiscal Impact Analysis (FIA) is required for all annexation requests and is completed by the City Budget Office. The FIA memo was completed on June 30, 2023. The fiscal review criteria of the City Code states city costs related to infrastructure and service levels shall be determined for a ten-year time horizon for the appropriate municipal funds; new budget policy sets forth criteria to be met for proposed annexations and how a FIA will be completed.

Per the FIA memo this proposal annexes a 116.53-acre property in the City and establishes zoning for 17.5-acres as medium density multi-family residential, 40 acres of high density multi-family residential, 22 acres of retail use, and 20.5-acres of Industrial use, along with other acreage set aside for parks and public facilities. The analysis assumes that the park acreage will be city owned and maintained.

The result of the FIA is a positive cumulative cashflow for the City during the 10-year timeframe. The reason for this outcome is the use tax revenue collected as a result of retail and residential construction, along with the sales tax revenue generated by 22 acres of retail development (**see FIA attachment**).

The draft annexation agreement is attached as **ANNEXATION AGREEMENT**. Dedication and improvements with this annexation are fully outlined in the agreement.

The establishment of the Villages at Waterview North Master Plan sets the overall land use pattern to be established across the 116.53 acres. The proposal will allow for of industrial, commercial, multi-family residential, single-family detached and attached residential, public facilities, and public parkland uses.

The master plan sets out each land use category and establishes maximum units counts. The proposed uses are compatible with the residential uses to the south and southeast, to the commercial and industrial to the west and north of the proposed site. Staff finds that proposed master plan meets the review criteria for master plans as set forth in City Code Section 7.5.408

The proposed zoning request will establish LI/APZ1-AP-O (Light Industrial / Accident Potential Subzone-1 with Airport Overlay) zone district consisting of 20.45 acres, MX-L/APZ1-AP-O (Mixed-Use Large Scale / Accident Potential Subzone-1 with Airport Overlay) zone district consisting of 27.65 acres, PF-AP-O (Public Facilities with Airport Overlay) zone district consisting of 3.84 acres, R-5-AP-O (Multi-Family High with Airport Overlay) zone district consisting of 41.28 acres, and R-FLEX-MED-AP-O (R-Flex Medium with Airport Overlay) zone district consisting of 23.28 acres to accommodate the future intended industrial, commercial, multi-family, and single-family development. It is required by City Code that any annexed property be accompanied by a zoning designation. With the land-use pattern to the south and southeast being residential, staff finds the transitioning from those residential uses from east to west to be compatible and sustainable.

City Code Section(s) 7.4.104, Site Development Standards, and 7.5.502 Development Plan, allows for the establishment of such uses conforming to design criteria. The associated Master Plan and Concept Plan as part of this application details the dimensional requirements and will guide the future development plan and final plat applications.

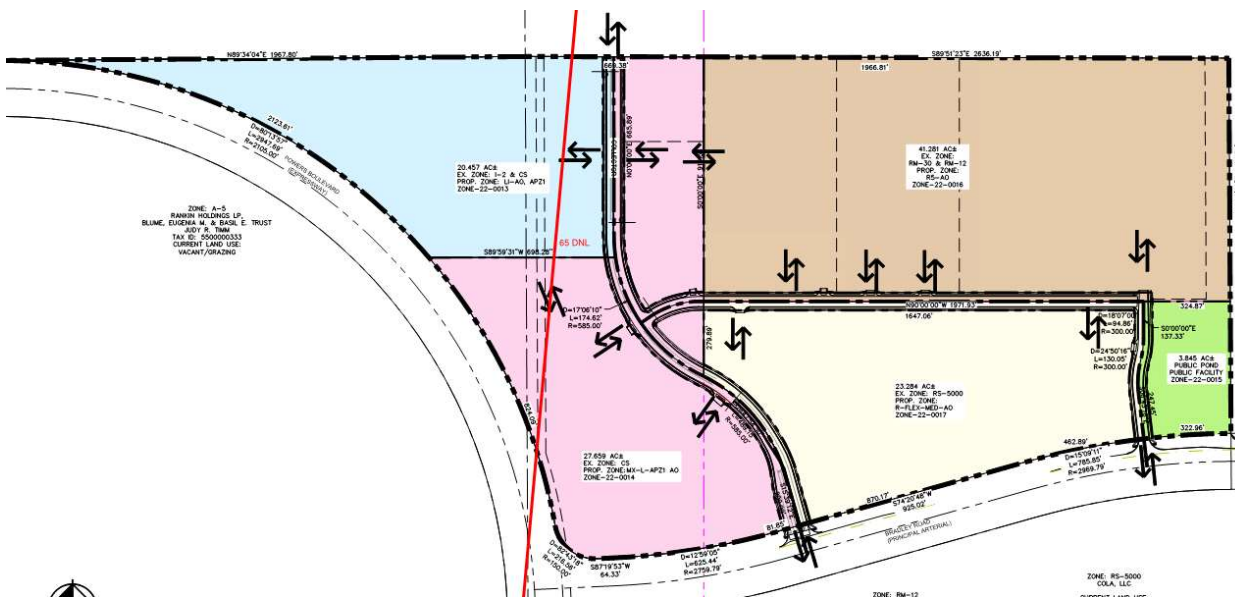
The proposed zone changes are supported by the submittal of a concept that identifies the locations of the proposed land use, major access points, and major roadways. The existence of the Accident Potential Subzone-1 (APZ-1) in this area is indicated on the zoning exhibits and supports the industrial zoning of LI and the commercial zoning of MX-L. Accident Potential Zones are based on the Department of Defense criteria and Federal Aviation Agency recommendations related to the start or end of the particular runway. These areas have been identified as having a high potential for accidents and are represented as sub-zones of the Airport Overlay (AP-O) Zone.

Land use compatibility guidelines for APZ sub-zones recommend lower-density non-residential uses

for these areas. Future development plan proposals will continually be reviewed by the Airport Advisory Commission and Peterson Space Force Command for compliance with APZ land use recommendations. For the reasons stated above, staff finds that the proposed zone changes meet the review criteria as set forth in City Code Section 7.3.603 and the findings established under Section 7.5.603B.

The concept plan illustrates the proposed land uses within Villages at Waterview North Concept Plan for those areas located within the Accident Potential Zone boundary and Airport Overlay. Also illustrated on the concept plan are general locations of access points, and major public roadways. The intended land uses for the amendment area are mixture of industrial, commercial, multi-family residential, single-family detached and attached residential, public facilities, and public parkland uses. As noted above, these are consistent with land use patterns within the area. For the reasons stated above, staff finds that the proposed concept plan meets the review criteria for concept plans as set forth in City Code Section 7.5.501.E.

The proposed site is affected by noise from the Colorado Springs Airport. The 65 DNL (Day/Night Average Sound Level) Noise Contour is indicated by a red line in the image below. The area to the west of the red line is located within the 65 DNL Noise Contour, while the area to the east is not located within an approved noise contour. Any development located within the 65 DNL is required by Code to provide a 30 decibel noise reduction certificate. The certificate is required after construction and prior to issuance of a Certificate of Occupancy. If a developer is unable to secure the certificate, a conditional use would then be required to be approved by Planning Commission.



There are no additional standards in City Code for construction that is proposed outside the 65 DNL boundary (in other words, to the east of the red line). In their motion, Planning Commission intended to require all development within the proposal, regardless of which side of the line, to provide the 30 decibel reduction (whether within the 65 DNL noise contour or not); however, an amended motion added a condition of record that all residential areas within the concept plan would need to meet a “35 DNL max.” The “35 DNL reduction” in the approved motion is unenforceable since DNL is a function of a noise contour over a larger area where a decibel reduction is a measurable standard at

the building level and is the common requirement of developments located within different DNL noise contours. Further, the 35 DNL noise contour does not exist.

If the City Council wishes to apply the decibel reduction intended by Planning Commission, then staff recommends a reword of the condition as follows:

All residential areas within the concept plan would need to meet *the 30 decibel reduction required within the 65DNL Noise Contour.* ~~35-DNL max~~

If City Council does not wish to apply the 30 decibel reduction east of the 65DNL contour line (red line in the picture above) then staff does offer the following information: (1) If the condition of record (reworded as suggested above) is proposed to stay, this would be the only development within the City with such requirements. (2) standard building practices (compliance with the 2018 Energy Code, for example) for either apartment buildings or single-family dwellings can provide the suggested noise reduction to match or further reduce the current standard.

Staff finds that the 30 decibel reduction can be achieved without requiring it via specific condition and recommends approval without the condition of approval added by City Planning Commission.

The current Comprehensive Plan, PlanCOS, identifies policies related to the annexation of property into the City of Colorado Springs as well as the establishment of zoning and planning for the land use pattern to be created. Several themes support the proposed development with positive connections between industrial, commercial, and residential uses that will foster economic and community growth. The proposed development allows for logical growth within an identified High Area of Change in PlanCOS. The typology is also identified as a New/Developing Corridor under the urban place typologies.

The overall intent of annexation is to benefit the City and occur in a manner that ensures a logical extension of the City's boundary. Chapter 8 of PlanCOS provides broad policy direction for annexation; annexations will occur in accordance with State law; support of economic development objectives of the City and will be a fiscal benefit; development will be consistent with long range plans; and avoid creating enclaves while proactively work at incorporating existing enclaves into the City. Staff has evaluated the proposed annexation and determined its eligibility in accordance with State law to be acceptable. The new growth opportunity will be a benefit to the City as discussed with economic findings and logical establishment for growth.

It is the finding of the Planning and Community Development Department that the Villages at Waterview North Addition No. 1 Annexation along with the associated master plan, zonings, and concept plan substantially conform to the PlanCOS goals and objectives.

The City Annexation Plan was last updated in 2006 and is an advisory document. Staff recommends this annexation is consistent with the intent of the 2006.

Previous Council Action:

The Annexation Petition was heard and accepted by City Council on October 12, 2021

Financial Implications:

Per the FIA memo, this proposal annexes a 116.53-acre property in the City and establishes zoning for high and medium multi-family residential, retail, industrial, and parks and public facilities. The result of the FIA is a positive cumulative cashflow for the City during the 10-year timeframe.

The annexation agreement identifies dedication and improvements with this annexation and are fully outlined in the agreement.

City Council Appointed Board/Commission/Committee Recommendation:

Utilities Board met on May 17, 2023, to recommend approval.

Planning Commission met on July 12, 2023, and provided the following recommendations:

ANEX-22-0001 - Recommended Approval, 7 in favor, 0 opposed, 2 absent

MAPN-22-0002 - Recommended Approval, 5 in favor, 2 opposed - Commissioner Briggs and Chair Hente, 2 absent

ZONE-22-0013 - Recommended Approval, 7 in favor, 0 opposed, 2 absent

ZONE-22-0014 - Recommended Approval, 7 in favor, 0 opposed, 2 absent

ZONE-22-0015 - Recommended Approval, 7 in favor, 0 opposed, 2 absent

ZONE-22-0016 - Recommended Approval, 5 in favor, 2 opposed - Commissioner Briggs and Chair Hente, 2 absent

ZONE-22-0017 - Recommended Approval, 5 in favor, 2 opposed - Commissioner Briggs and Chair Hente, 2 absent

COPN-22-0002 - Recommended Approval, 5 in favor, 2 opposed - Commissioner Briggs and Chair Hente, 2 absent - A Condition of Record was added: Development within all residential areas within the concept plan to meet 35 DNL max. (See above discussion for staff recommendation to either reword or remove the condition of record).

Parks Board met on August 10, 2023, and unanimously recommended approval of the Parkland Dedication Ordinance (PLDO) of a total of 8.765 acres of obligation, with 3.5 acres to be land dedicated and the remaining 5.26 acres to be fees in lieu of land dedication.

Stakeholder Process:

The public notification process consisted of providing notice to adjacent property owners within 1,000 feet of the site, which included the mailing of postcards to 16 property owners during the internal review stage, prior to the Planning Commission hearing, and prior to City Council hearing. The site was also posted during the occasions noted above. During the internal review notification City Planning staff did not receive comments in response to the notification.

The applications were sent to the standard internal and external agencies for review and comment. Review comments received have been addressed. Internal review agencies for this project included City Traffic, City Engineering, City Parks, City Fire Department and Police/E-911, Colorado Springs Utilities.

- School District No 3: The district was sent a referral and responded with no issues with the proposal and the District will accept fees in lieu of land dedication for this site.
- Military Installation USAFA: Comments received from Peterson Space Force Base (PSFB)

indicated that the base has no substantial concerns with the proposed entitlement request. A statement from base leadership was received in response to the plan distribution with an excerpt from those comments appears below:

“So long as this development is not encroaching into any APZ zones PSFB does not have any concerns. USAF standards require that no residential development should encroach into APZ zones, and that only heavy industrial should be allowed into APZ 1 zones. PSFB recommends that these standards are followed. PAFB POC for this matter is Mrs. Ayoka Paek, PAFB Community Planner, ayoka.paek@spaceforce.mil”.

- AAC (Airport): The Airport Advisory Commission reviewed the applications at their meeting on December 14, 2021. The Commission had no objections to the applications and provided standard conditions.
- Traffic: A preliminary plan traffic impact and access analysis was completed for this proposal. City Traffic Engineering reviewed and agreed with the recommendations of the study. City Traffic Engineer did note that ‘All access points, roadway improvements (including traffic control devices) & classification details will be addressed with the development plan and traffic impact study review’. These would be completed as stand-alone development plans are submitted for review. The attached Annexation Agreement does include language that the Owners shall pay to the City a future signal fee of \$200,000 to help cover costs incurred to install traffic control devices and relating traffic improvements for the intersection of Bradley Road and Legacy Hill Drive intersection.
- SWENT: The Villages at Waterview North Addition No. 1 area is located within the Big Johnson Reservoir and Jimmy Camp Creek Drainage Basins. Stormwater Enterprise has no outstanding comments on the annexation, master plan, zone changes, nor the concept plan. They have provided language on the attached Annexation Agreement that the Owner shall provide full spectrum detention for all developed areas; to be owned and maintained by the Owner. Also, the Owner shall be responsible for conformance with the Big Johnson Reservoir and Jimmy Camp Creek Drainage Basin Planning Study. A Final Drainage Report will be required to be reviewed and approved prior to approval of a development plan or final plat.
- SECWCD: This property has been approved by the Southeastern Colorado Water Conservancy District (SECWCD) on June 15, 2023, and approved by the Bureau of Reclamation for inclusion on July 28, 2023.
- EDR: A geological hazard investigation was prepared by Entech Engineering on July 15, 2022. It was submitted and review by the City Engineering Development Review Department and approved. Any future applications for development plans will require additional studies to be submitted for review and approval.
- Parks: The developer has agreed to dedicate 3.5 acres for park-land. Parcel 4 and a portion of Parcel 3 will be able to use that dedication in lieu of PLDO fees. If there is excess, and if other portions with residential development are not developed, they may be able to use any excess. Any residential development not located within those areas as identified on the concept plan, would be required to pay fees in lieu of land dedication.

Alternatives:

City Council can choose to approve, deny, or refer to City Planning Commission.

If City Council wishes to maintain the condition of record added by City Planning Commission, then the motion for the concept plan should include the following reworded condition of record: All residential areas within the concept plan would need to meet the 30 decibel reduction required within the 65DNL Noise Contour.

If City Council does not wish to maintain the condition of record added by City Planning Commission then a motion to approve without the added condition would be appropriate.

Proposed Motion:

Approve a resolution adopting findings of fact and conclusions of law based thereon and determining the eligibility for annexation of property known as Villages at Waterview North Addition No. 1 and approving an annexation agreement.