

**MEMORANDUM OF UNDERSTANDING
FOR
RAIL-SERVED ECONOMIC DEVELOPMENT INITIATIVE**

This Memorandum of Understanding for Rail-Served Economic Development Initiative (“MOU”) is made this 3~~2~~ day of May, 2018 between the City of Colorado Springs, a home rule city and Colorado municipal corporation (“Colorado Springs”), the City of Fountain, a Colorado municipal corporation (“Fountain”), El Paso County, by and through the Board of County Commissioners of El Paso County, Colorado, a duly organized county and political subdivision of the State of Colorado (“County”), the Colorado Springs Chamber of Commerce and Economic Development Corporation (“EDC”) and Edw. C. Levy Co. a Michigan Corporation (“Levy”) (all collectively referred to hereinafter as the "Parties").

WHEREAS, in 2015, El Paso County, through its Economic Division engaged and funded a third-party investigation of the viability of an economic initiative for job creation in southern El Paso County that included rail services; and

WHEREAS, Fountain, through its Office of Economic Development, actively participated in that investigation; and

WHEREAS, Levy owns approximately 3,000 acres of land (“the Levy Property”) in southern El Paso County upon which a wholly-owned subsidiary of Levy, known as Schmidt Construction, operates an aggregate quarry being evaluated for the economic initiative; and

WHEREAS, adjacent to the Levy Property, Colorado Springs Utilities (“Utilities”), an enterprise of the City of Colorado Springs, a Colorado home rule city and municipal corporation, owns the Clear Spring Ranch property on which Utilities operates the Ray Nixon Power Plant (“Nixon Plant”) and other utility facilities; and

WHEREAS, Utilities owns two railroad spurs that connect to the Class 1 railroad lines operated by Union Pacific (“UP”) and Burlington Northern Santa Fe (“BNSF”), which serve operations at the Nixon Plant; and

WHEREAS, the initial economic initiative concept plan proposes private-use of Utilities’ rail spurs and the construction of additional private rail lines crossing through Utilities-owned Clear Spring Ranch property, which may require Utilities Board, and potentially City Council, approval; and

WHEREAS, Levy has expressed a willingness to further investigate the viability of rail service extended from the Class 1 UP and BNSF main lines through Clear Spring Ranch or through other properties into the Levy Property for the purpose of economic development in the County; and

WHEREAS, EDC is a provider of services to many of the Parties, with its **Mission:** *“To enhance the quality of our community by serving the business development needs of our region so that economic growth exceeds population growth”* and has agreed to provide in-kind services; and,

WHEREAS, the third-party investigation generated a Proof of Concept Report (the "Concept Report") dated September 15, 2015, incorporated by reference, concluding that a rail-served industrial development on the Levy Property is potentially viable, said Report having been favorably reviewed by the Parties; and

WHEREAS, the Levy Property is adjacent to and abuts U.S. Army Fort Carson, Colorado ("Fort Carson"); and

WHEREAS, the Parties at their own initiative and in cooperation and collaboration with Fort Carson have observed that a continuation of the prospective extended rail line in and through the Levy Property could provide a second rail access to Fort Carson, improving mission reliability and redundancy for Fort Carson; and

WHEREAS, reconnaissance level dialogue with the United States Economic Development Administration ("USEDA") regional office in Denver, Colorado indicates technical assistance for such a rail-based economic development initiative may be available in support of Fort Carson and the local economy, which support may require fifty per cent (50%) or greater matching funds for any Technical Assistance grant; and

WHEREAS, the representatives of the governmental Parties met on February 3, 2016 to discuss the next phase of the economic initiative, concluded that a Memorandum of Understanding was appropriate to outline the roles and responsibilities of the Parties, including Levy, and in the interim have continued to negotiate the terms of the MOU and finalize the same.

NOW THEREFORE, in consideration of the foregoing premises, the Parties set out their mutual intent to proceed regarding the next phase of the economic development initiative as follows:

A. GENERAL PROVISIONS

1. **Purposes.** The Parties seek to create opportunity for manufacturing jobs, which are typically high-wage jobs which generate 4-5 additional jobs in the community for each manufacturing job, and to simultaneously create the opportunity for a second railroad access to Fort Carson, which will improve readiness and resiliency at Fort Carson, improving the likelihood that Fort Carson will remain active through any future Base Realignment and Closure process, by pursuing the following tasks:

- (a) Establish a cooperative relationship with Levy for detailed investigation of the Levy Property, including by way of example and not limitation, defining access to the Levy Property for third-party due diligence;
- (b) Negotiate an allocation of the costs of continuing the investigation which is fair and equitable, considering the interests of each of the Parties;

- (c) Pursue and seek to obtain, at the appropriate time, grant funding, including but not limited to the aforementioned grant from the USEDA; however, Colorado Springs will not be a Grantee of any such grant;
- (d) Evaluate and quantify, to the extent possible, the anticipated fiscal impacts and distribution of benefits to each of the Parties and to Fort Carson;
- (e) Identify or outline responsibilities for oversight and management of any third-party contractors by designated representatives of the Parties; and
- (f) Interface with and provide regular updates to appropriate personnel at Fort Carson.

2. **Definitions.**

- (a) “Economic Development Coordinator” means an employee of any of the Parties whose primary responsibility includes economic development activity.
- (b) “Feasibility Study” includes detailed description of all activities, assumptions, analysis, considerations and conclusions reached in the course of the third-party investigation of the viability of an economic initiative for job creation in southern El Paso County that includes rail services, and summarized in a report and/or briefings to the Parties.
- (c) “Matching Funds” means the aggregate of funds that may be committed by all of the Parties.
- (d) “Oversight Committee” is an ad hoc group of Economic Development Coordinators or other designees from each of the Parties, said Committee charged with contracting for or hiring and overseeing the Administrator and Fiscal Agent, Project Managers or third-party vendors to advance the Purposes of the MOU while keeping the respective Parties informed, but without authority to contractually bind individual Parties in any manner to fiscal, regulatory or other ongoing obligations.
- (e) “Administrator and Fiscal Agent” is a person or entity reporting to the Oversight Committee who provides detailed tracking, review, recommendation for approval, payment and reporting of the expenses for advancement of the Purposes of the MOU, timely reports as requested to any of the Parties and the Oversight Committee, participates in the deliberations and decisions of the Oversight Committee and provides professional services, which may be provided in-kind.
- (f) “Project Manager” is any individual or group of individuals engaged by the Parties to advance the objectives of the MOU, meet and report regularly to the Oversight Committee and/or the Administrator and Fiscal Agent and prepare a final report and presentation.
- (g) “Third-Party Vendor” is any individual or group of individuals engaged by the Parties to further the investigation and provide reports, updates and presentations.

- (h) “Interested Parties” are those entities who are not signatories to the MOU but have been invited by a majority of the Parties to participate in the Oversight Committee.
- (i) “Governmental Parties” are the three governmental entities participating as Parties in this MOU including El Paso County, Colorado Springs, and Fountain.

3. **Roles and Responsibilities of the Parties.** To accomplish the purposes of this MOU, the Parties agree to certain specific responsibilities:

- (a) County will provide a representative to the Oversight Committee. County was the lead-agency for the development of the Concept Report and will coordinate with the EDC and other appropriate entities for application for grants and engagement of services to accomplish the purposes of this MOU.
- (b) Levy may provide a designated representative to participate with the Oversight Committee in the management of process. Subject to mutually agreed upon arrangements including timing and scope of the investigations, Levy will allow timely access to the Levy Property in furtherance of the investigation.
- (c) Utilities may provide a representative to the Oversight Committee.
- (d) Fountain will provide a representative to the Oversight Committee.
- (e) Colorado Springs may provide a representative to the Oversight Committee.
- (f) EDC may provide a representative to the Oversight Committee. EDC will provide those services and activities described in Paragraph 13 below.
- (g) The County, Colorado Springs, Fountain, EDC, and Levy, as the Parties, will oversee the activities of the project through the Oversight Committee. Utilities is hereby, and others may be, designated as Interested Parties (“Interested Parties”) who are welcome to participate in the process, but are neither signatories nor Parties to this MOU.

4. **Fundamental Precepts Regarding Security and Operations at Ray Nixon Power Plant.** The Proof of Concept Report¹, and its recommendation that further investigation is warranted, was based entirely on the precept that no future activity associated with an extension of a rail line from the existing switches with the Class 1 carriers would in any way impinge on the security or operational parameters of Ray Nixon Power Plant. While Utilities has not yet approved, and in its sole discretion reserves the right to delay, condition or deny approval of, use of Utilities’-controlled or owned land, infrastructure, spurs, and configuration of the private rail through Utilities property, Utilities is providing a Letter of Support (Attachment B) to advance further diligence. These precepts are hereby acknowledged by all Parties.

¹ <http://bit.ly/2aGpAo5>

5. **Limitations on Jurisdiction.** Nothing herein shall be construed so as to in any manner expand upon or limit the lawful jurisdiction and authority of the Governmental Parties.

6. **Reservation of Rights.** The Parties intend for the investigation to provide the basis and strategies for furtherance of the economic development initiative and improved readiness for Fort Carson through extension of a rail line to the Fort Carson boundary; however, by joining into this MOU, the Parties reserve their right to independently evaluate the viability of the initiative at the present time or in the future. As to Colorado Springs, other than the specific financial commitment in Paragraph 14 and Attachment A, nothing in this MOU is intended, nor shall it be construed to create, any enforceable rights against Colorado Springs in favor of any Party.

7. **Withdrawal.** A Party may withdraw from this MOU upon providing thirty (30) days advance written notice; however, funds pledged in this MOU in Attachment A (including funds pledged to provide matching funds for grants) by said withdrawing Party will be paid in full by said Party prior to withdrawal, or in the case of in-kind services pledged (it is acknowledged that Colorado Springs is not making any pledge of in-kind services), the balance of the amount pledged but not yet served will be paid in cash in lieu of those services.

8. **Termination.** This MOU shall remain in effect until such time as terminated for any of the following reasons:

- a) The work and purpose of the MOU has been completed.
- b) Funding is not in place to complete the purpose of the MOU.
- c) The Parties have not received timely notice from each other that funding will be available after the applicable current fiscal year pursuant to Paragraph 16.
- d) There is only one Party to this MOU.
- e) The Parties mutually agree, in writing, to terminate the MOU.

9. **Amendment.** This MOU may be amended or supplemented by written mutual agreement, signed by all of the Parties hereto.

B. OVERSIGHT COMMITTEE & EDC

10. **Formation of the Oversight Committee.** The Parties hereby establish the Oversight Committee. The Committee is open to attendance by individuals from all Parties and Interested Parties, but will include only one (1) member from each of the Parties, each Party to appoint their respective Member. In the case of Colorado Springs, the member will be appointed by the Mayor. Only the Party Member, and not the Interested Party, will have the authority to vote on issues before the Oversight Committee or make decisions within the responsibility of the Oversight Committee on behalf of the Party. Oversight Committee Members serve without any compensation, and each Party or Interested Party will bear the incidental costs of attendance and participation by its respective representative Member.

11. **Responsibilities of the Oversight Committee.** The Oversight Committee is responsible for the following:

- (a) The Oversight Committee, on behalf of the Parties, will oversee the advancement and completion of the tasks identified in the Purposes (Paragraph 1) of this MOU.

The Oversight Committee will contract for or hire and oversee both the Project Manager and/or third-party vendors, who, by contract, will complete the tasks identified in this MOU, and will keep the Parties informed of progress toward completion. The Oversight Committee will implement the budget included as Attachment A in furtherance of the completion of the tasks identified in this MOU.

- (b) The Oversight Committee will oversee the services EDC provides as Administrator and Fiscal Agent.
- (c) The Oversight Committee will determine the methodology whereby the Parties transfer funds to EDC for payment for services rendered by the Project Manager and/or third-party vendors; and
- (d) The Oversight Committee, upon providing prior written notice, may terminate the services of EDC as Administrator and Fiscal Agent. Upon such termination, should EDC elect to withdraw as a Party, it may do so without penalty, in which case, the continued funding provisions of Paragraph 7 will not apply to EDC.

12. **Meetings of the Oversight Committee.** The Committee will meet regularly and document its activities in the form of meeting notes or minutes.

13. **EDC Services as Administrator and Fiscal Agent.** EDC agrees that it will provide the services of the Administrator and Fiscal Agent to the Oversight Committee as more specifically defined in Paragraph 2(e). As such, EDC agrees that it will manage completion of the tasks identified in the Purposes of this MOU for the Oversight Committee, to include financial management related to completion of those tasks. EDC agrees that it will provide progress reports to the Oversight Committee, including accounting for funds and/or in-kind professional services pledged or provided by the Parties, accounting for funds expended, and in-kind services completed, in furtherance of completion of the tasks identified in this MOU. EDC may also provide specific services, which by way of example and not limitation, may include Work Force analysis, economic benefits analysis, grant application drafting and grant administration. EDC acknowledges and agrees, that although it is a Party and has a Member of the Oversight Committee, its services as Administrator and Fiscal Agent may be terminated by the Oversight Committee as set forth in paragraph 11 (d).

C. FUNDING

14. **Designation and Appropriation of Cost Allocation.** Levy and EDC agree to provide funding in the amounts specified in Attachment A to this MOU in 2018. The governmental Parties agree to provide funding in the amounts specified in Attachment A to this MOU, subject to the limitations of this Paragraph and Paragraphs 15 and 16. In the event any Governmental Party does not have funds appropriated and available for expenditure during 2018 in the amount or amounts set forth in Attachment A for that Party, to the extent required by law, such Party will make reasonable efforts to obtain funds to meet that commitment. In the case of Colorado Springs, if funds are not available in the Economic Development Division for expenditure, the Mayor will seek amendment of the City's budget and appropriation of such

amounts from the City Council of Colorado Springs, with such appropriation being within the discretion of the City Council. The Parties acknowledge and agree that all obligations by the governmental Parties to contribute the funds set forth in Attachment A to the MOU are expressly made subject to and contingent upon availability of funds.

15. **Commitment Limitation.** The Parties understand and agree that, in addition to the limitations of Paragraph 14 of the MOU, all funding commitments set forth in Attachment A, and as may be made in the future, are only for completion of the purposes set forth in this MOU. Any additional funding that may be required for subsequent phases of work beyond that called for in this MOU or to complete the tasks identified in Section A, Paragraph 1(a)-(f) Purposes of this MOU, must be approved by the governing bodies or appropriate officials of the respective Parties. Colorado Springs and County contributions are expressly limited to the commitment made for 2018 only.

16. **Funding Limitation.** The funding and financial obligations of each Party, including payment of the funding commitments contemplated in Attachment A, are limited and expressly contingent on appropriation of said funding revenues and approval of the provision of in-kind services in a timely manner by each Party. The ability of the Oversight Committee to complete the Purposes and work set forth in this MOU is dependent on actual receipt of the funding and in-kind services committed to in Attachment A. Financial obligations of the Parties after their respective current fiscal year are contingent on budgeting of, and appropriation for, funds for those obligations by each of the said entities. Should the performance of this MOU be extended and continue past the current fiscal years of the Parties, each of those Parties shall notify the Oversight Committee in writing no later than October 31 of each applicable year that sufficient funds are available and will be appropriated for continuance of their respective performances under this MOU at the levels set forth in Attachment A. Unless the Oversight Committee is notified in writing of availability and intended appropriation of funds and any applicable in-kind services from all of the Parties by October 31 of each applicable year, the Parties may terminate this MOU.

17. **Flexibility in Carrying Out the Purposes of the MOU, Good Faith.** The Parties agree and acknowledge that economic development initiatives, particularly those generated independently by a community to support military installations like Fort Carson, are subject to changing circumstances which may be beyond the control, jurisdiction or authority of local government entities. The Parties pledge to cooperate with each other in good faith to carry out the Purposes of this MOU, but also acknowledge that flexibility in methodology and funding may be required.

D. **ADMINISTRATIVE PROVISIONS**

18. **Notice.** Except as may otherwise be provided in this MOU, all notices required or permitted to be given under this MOU shall be in writing and shall be valid and sufficient if dispatched by: (a) registered or certified mail, postage prepaid, in any post office in the United States, (b) hand delivery, (c) overnight courier, (d) facsimile transmission upon confirmation of receipt, or (e) e-mail with proof of receipt, addressed to the Parties at the addresses of each Party which is set forth below . The Parties agree that written notices regarding general operational issues may be accomplished through e-mail.

[
City of Fountain
Kimberly Bailey
Economic Development/Urban Renewal
116 S Main Street
Fountain, CO 80817
719-322-2056
kbailey@fountaincolorado.org

El Paso County
DeAnne McCann
Economic Development Executive Director
9 East Vermijo, Suite 112
Colorado Springs, CO 80903
719-520-6481
deannemccann@elpasoco.com

City of Colorado Springs
Robert C. Cope
Economic Development Manager
30 S Nevada Ave, Suite 604
Colorado Springs, CO 80903
719-385-5561
bcope@springsgov.com

Colorado Springs Utilities
Elena E. Nunez
Business Development Manager
121 S. Tejon Street
Colorado Springs, CO 80903
719-668-3840
enunez@csu.org

Colorado Springs Chamber & EDC
Tammy Fields
Senior Vice President
102 S Tejon Street, Suite 430
Colorado Springs, CO 80903
719-884-2836
TFields@cscedc.com

Mulliken Weiner Berg & Jolivet, P.C.
Steven K. Mulliken, Esq.
102 South Tejon Street, Suite 900
Colorado Springs, CO 80903
719-635-8750, ext. 101
Mulliken@mullikenlaw.com

19. **Binding.** This MOU, once approved by the required governmental officials of the respective Governmental Parties, is a contract binding upon the Parties hereto and upon their

respective legal representatives, successors, and assigns.

20. **Other Limitations.** Nothing in this MOU shall limit or constrain the regulatory or approval requirements for land use development, zoning, building permits, or other regulatory requirements of any governmental Party with applicable regulatory authority.

21. **Severability.** If any provision of this MOU or the application thereof to any Party is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other provisions of this MOU that can be given effect without the invalid provision or application.

22. **Counterparts.** This MOU may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same MOU.

23. **No Third Party Beneficiaries.** It is expressly understood and agreed that benefits of this MOU, and any rights of action relating thereto, shall be strictly reserved to the Parties, and nothing contained in this MOU shall give or allow any claims or right of action by any other person or entity. It is the express intention of the Parties that any person or entity, other than the Parties to this MOU, which receives services or benefits under this MOU, shall be deemed to be incidental beneficiaries only.

24. **Attorney's Fees.** In the event a dispute arising from this MOU results in litigation or an administrative proceeding, each Party will be responsible for payment of its own attorney's fees and costs incurred in connection with the litigation or proceeding.

25. **Applicable Law, Jurisdiction, and Venue.** This MOU is subject to and shall be interpreted under the laws of the State of Colorado and applicable federal law. In the event of litigation, jurisdiction and venue shall be exclusively in the District Court for El Paso County, Colorado.

26. **Governmental Party Limitations and Approvals.** The Parties understand and agree to the following limitations of the Governmental Parties (El Paso County, Colorado Springs, and Fountain):

(a) This MOU shall not become binding as to El Paso County, Colorado Springs, and Fountain unless and until it is approved by the required governmental officials of the respective Governmental Parties in open and public meetings or other processes as may be required by Colorado Springs or Fountain. In the event that El Paso County or Colorado Springs or Fountain do not approve this MOU, then this MOU shall be null, void, and without any force or effect as to the non-approving Governmental Party or Parties.

(b) The Parties understand and agree that by executing this MOU, there is no assurance that the Board of County Commissioners the City Councils and/or Mayors of Colorado Springs and Fountain, respectively, will execute the same; and there are no representations or promises or assurances made or implied herein by the County, Colorado Springs, or Fountain that by executing this MOU these governmental Parties will approve any further funding and/or other

zoning and/or 1041 Permit(s) and/or preliminary plans and/or final plats and/or site development plans and/or building permits or certificates of occupancy for the Property as may be contemplated in the project outlined in the Report.

27. Further Conditions. Should the project as outlined in the Report proceed past the feasibility stage, then the Parties acknowledge and agree that said project will be subject to, and shall comply with, all applicable federal and state rules, regulations, and permits, applicable local rules, regulations, and permits including local land use controls, and specifically will be subject to all applicable land use regulations of governmental Parties with jurisdiction, including, but not limited to, applicable comprehensive or master plans, zoning regulations, 1041 Regulations, subdivision regulations, building codes, the El Paso County Land Development Code, the El Paso County Engineering Criteria Manual, and payment of any applicable fees.

APPROVED AS TO FORM:



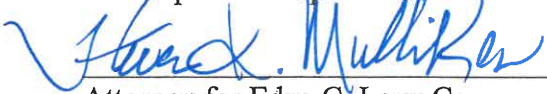
Attorney for El Paso County



Attorney for City of Colorado Springs

Attorney for City of Fountain

Attorney for Colorado Springs Economic
Development Corporation.



Attorney for Edw. C. Levy Co.

[Signature Page Follows]
[Memorandum of Understanding for Rail-Served Economic Development Initiative]

IN WITNESS THEREOF, the parties have signed this MOU on the day and year indicated below.


EL PASO COUNTY


BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: 
Darryl Glenn, President

Dated this 15th day of May, 2018.

ATTEST:


County Clerk and Recorder 18-185A



CITY OF FOUNTAIN

By: _____
City Manager

Dated this _____ day of _____, 2018.

ATTEST:



Secretary


CITY OF COLORADO SPRINGS

By: 
Mayor

Dated this 16th day of April, 2018.

ATTEST:


Secretary 



EDW. C. LEVY CO.

By: 
L. Steven Weiner, Vice President, Real Estate

Dated this _____ day of _____, 2018.

ATTEST:



COLORADO SPRINGS ECONOMIC DEVELOPMENT CORPORATION

By: 

Dated this 12 day of APRIL, 2018.

ATTEST:



IN WITNESS THEREOF, the parties have signed this MOU on the day and year indicated below.

EL PASO COUNTY

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO**

By: _____
Darryl Glenn, President

County Clerk and Recorder

Dated this _____ day of _____, 2018.

CITY OF FOUNTAIN

ATTEST:

By: *Scott Johnson*
City Manager

Silvia Kuffman
Secretary



Dated this 4 day of April, 2018.

CITY OF COLORADO SPRINGS

ATTEST:

By: *John Suthers*
Mayor

Deputy City Clerk
Secretary



Dated this 16th day of April, 2018.

EDW. C. LEVY CO.

ATTEST:

By: *L. Steven Weiner*
L. Steven Weiner, Vice President, Real Estate

Kimberly

Dated this _____ day of _____, 2018.

**COLORADO SPRINGS ECONOMIC DEVELOPMENT
CORPORATION**

ATTEST:

By _____

Dated this _____ day of _____, 2018.

IN WITNESS THEREOF, the parties have signed this MOU on the day and year indicated below.

EL PASO COUNTY

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: _____
Darryl Glenn, President

County Clerk and Recorder

Dated this _____ day of _____, 2018.

CITY OF FOUNTAIN

ATTEST:

By: _____
City Manager

Secretary

Dated this _____ day of _____, 2018.

CITY OF COLORADO SPRINGS

ATTEST:

By: John W. Suthers
Mayor

Secretary 

Dated this 16th day of April, 2018.

EDW. C. LEVY CO.

ATTEST:

By: L. Steven Weiner
L. Steven Weiner, Vice President, Real Estate

Kimberly A. Dauby

Dated this _____ day of _____, 2018.

COLORADO SPRINGS ECONOMIC DEVELOPMENT CORPORATION

ATTEST:

By: Chris Carlson

Chris Carlson

Dated this 12 day of APRIL, 2018.

IN WITNESS THEREOF, the parties have signed this MOU on the day and year indicated below.

EL PASO COUNTY

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO**

By: _____
Darryl Glenn, President

County Clerk and Recorder

Dated this _____ day of _____, 2018.

CITY OF FOUNTAIN

ATTEST:

By: Scott Swinson
City Manager

Silvia Hoffmann
Secretary



Dated this 4 day of April, 2018.

CITY OF COLORADO SPRINGS

ATTEST:

By: John W. Suthers
Mayor

[Signature]
Secretary



Dated this 16th day of April, 2018.

EDW. C. LEVY CO.

ATTEST:

By: L. Steven Weiner
L. Steven Weiner, Vice President, Real Estate

[Signature]

Dated this _____ day of _____, 2018.

**COLORADO SPRINGS ECONOMIC DEVELOPMENT
CORPORATION**

ATTEST:

By _____

Dated this _____ day of _____, 2018.

IN WITNESS THEREOF, the parties have signed this MOU on the day and year indicated below.

EL PASO COUNTY

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: _____
Darryl Glenn, President

County Clerk and Recorder

Dated this _____ day of _____, 2018.

CITY OF FOUNTAIN

ATTEST:

By: _____
City Manager

Secretary

Dated this _____ day of _____, 2018.

CITY OF COLORADO SPRINGS

ATTEST:

By: John W. Suthers
Mayor

April 16, 2018
Secretary Deputy City Clerk

Dated this _____ day of _____, 2018.



EDW. C. LEVY CO.

ATTEST:

By: L. Steven Weiner
L. Steven Weiner, Vice President, Real Estate

Amberly A. Bailey

Dated this _____ day of _____, 2018.

COLORADO SPRINGS ECONOMIC DEVELOPMENT CORPORATION

ATTEST:

By: [Signature]

Chris Carlson

Dated this 12 day of APRIL, 2018.

IN WITNESS THEREOF, the parties have signed this MOU on the day and year indicated below.

EL PASO COUNTY

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO**

By: _____
Darryl Glenn, President

County Clerk and Recorder

Dated this _____ day of _____, 2018.

CITY OF FOUNTAIN

ATTEST:

By: Seth Swain
City Manager

Silvia Hoffman
Secretary



Dated this 4 day of April, 2018.

CITY OF COLORADO SPRINGS

ATTEST:

By: John W. Suthers
Mayor

April 16, 2018
Secretary Deputy City Clerk



Dated this _____ day of _____, 2018.

EDW. C. LEVY CO.

ATTEST:

By: L. Steven Weiner
L. Steven Weiner, Vice President, Real Estate

Amberly N. Bailey

Dated this _____ day of _____, 2018.

**COLORADO SPRINGS ECONOMIC DEVELOPMENT
CORPORATION**

ATTEST:

By _____

Dated this _____ day of _____, 2018.

IN WITNESS THEREOF, the parties have signed this MOU on the day and year indicated below.

EL PASO COUNTY

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: _____
Darryl Glenn, President

County Clerk and Recorder

Dated this _____ day of _____, 2018.

CITY OF FOUNTAIN

ATTEST:

By: _____
City Manager

Secretary

Dated this _____ day of _____, 2018.

CITY OF COLORADO SPRINGS

ATTEST:

By: John W. Suthers
Mayor

[Signature]
Secretary Deputy City Clerk

Dated this 16th day of April, 2018.



EDW. C. LEVY CO.

ATTEST:

By: L. Steven Weiner
L. Steven Weiner, Vice President, Real Estate

[Signature]

Dated this _____ day of _____, 2018.

COLORADO SPRINGS ECONOMIC DEVELOPMENT CORPORATION

ATTEST:

By: [Signature]

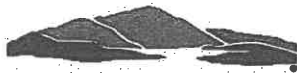
Chris Carlson

Dated this 12 day of APRIL, 2018.

ATTACHMENT A BUDGET

<i>SOURCES OF FUNDING</i>		<i>%</i>
City of Colorado Springs	\$5,000	4%
El Paso County	\$48,000	38%
Edward C. Levy Company	\$6,000	5%
City of Fountain ¹	\$24,000	19%
C.S. Economic Development Corp. ²	\$42,000	34%
Total:	\$125,000	100%
<i>USES OF FUNDING</i>		
Project Management & Reporting ³	\$42,000	
Feasibility Study & Certification ⁴	\$28,000	
Civil Engineering	\$8,000	
Contingency	\$5,000	4%
Administration and Fiscal Agent; Economic & Work Force Analysis	\$42,000	
Total:	\$125,000	
Note 1. Funds available from sources in FY17 and FY18.		
Note 2. In-kind services provided by staff and consultants on retainer to CSEDC.		
Note 3. Estimated at \$3,500/month for 12 months.		
Note 4. Certification to BNSF specifications as a RR yard BNSF will serve.		

ATTACHMENT B LETTER OF SUPPORT
COLORADO SPRINGS UTILITIES



Colorado Springs Utilities

It's how we're all connected

October 23, 2017

Darryl Glenn, President
El Paso County Commissioner District #1
200 South Cascade Avenue, Suite 100
Colorado Springs, CO 80903

RE: Colorado Springs Utilities Letter of Conditional Support for the Proposed Rail-Served Industrial Park

Dear President Glenn:

Please accept this letter of conditional support regarding the proposed Rail-Served Industrial Park (Industrial Park) being considered for the land adjacent to the Colorado Springs Utilities (CSU) Clear Spring Ranch/Ray Nixon Power Plant and Ft. Carson properties, known as the Christian Ranch. The Christian Ranch area is primarily owned by Edward C. Levy Co. d/b/a Schmidt Construction Inc.

The Industrial Park project is being led by CameronButcher with participation from El Paso County, City of Colorado Springs, City of Fountain, and Edward C. Levy, with additional support from the Colorado Springs Chamber and Economic Development Corporation. The Industrial Park has requested permission to use CSU rail spurs currently serving the Nixon Power Plant on the Clear Spring Ranch property (to include Fountain Valley Authority (FVA) facilities and operations), to connect to the Union Pacific Railroad (UP) and BNSF main lines. CSU supports continued due diligence for the Industrial Park project, subject to the conditions described below.

Conditions:

1. No subsidy will be provided by CSU or its ratepayers in furtherance of the Industrial Park.
2. Future Industrial Park rail activity shall not impinge on the operational or security needs of CSU's Clear Spring Ranch property, including the Ray Nixon Power Plant. CSU has identified a number of utility infrastructure and operational conflicts with the proposed configuration and CSU and FVA facilities and operations included in the Industrial Park project's Proof of Concept Report that must be addressed.
3. Industrial Park activity and use of CSU rail spurs will not impair or increase the cost of future operations, use, expansion, and development of Clear Spring Ranch, and will not increase security risks to CSU in light of increasingly rigorous regulatory requirements.
4. The Industrial Park shall consider alternative locations, in the next feasibility phase, for rail spur connections to the railway main lines that eliminate or limit potential impacts to operations on Clear Spring Ranch.
5. Any use of Clear Spring Ranch or CSU rail spurs will be subject to negotiated agreements that ensure the protection of CSU and FVA ratepayer funds, property, and operations. Such agreements will require Industrial Park responsibility for shared maintenance costs and financial assurances for any financial commitments.

6. Use of CSU rail spurs will be subject to successful modification of CSU industry track agreements with BNSF Railway and Union Pacific.
7. Any use of or transfer of interest in Clear Spring Ranch for the Industrial Park will be subject to all requirements of the City Charter and Code of Ordinances for the City of Colorado Springs.
8. CSU must have a clear understanding of the operational and governance structure of the Industrial Park.

With the impending closure of the Martin Drake Power Plant, protecting current and future operations and expansions at the Clear Spring Ranch site is paramount, as this site will become CSU's single location for base-load electric generation. Despite the above concerns, CSU appreciates the complexity involved in a project of this nature, and supports continued efforts to identify a mutually-acceptable solution. To that end, please accept CSU's concurrence to advance due diligence for this project in accord with the above-mentioned conditions.

Respectfully,



Jerry Forte, P.E.
Chief Executive Officer