SOUTHERN COLORADO RAIL PARK ADDITION NO. 1
ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT “Agreement”, dated this ___ day of _____, 2025, is between the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City"), and Southern Colorado Rail Park LLC and Edw. C. Levy Co., all together herein referred to sometimes collectively as the "Owner" or as “Owners” or "Property Owner". The City and Owner together may be referred to as the Parties, or separately as a Party.

I.
INTRODUCTION

The Owner owns all the real property located in El Paso County, Colorado, identified and described on the legal description attached as **Exhibit A** (“Property” or “Owner’s Property”).

The growth of the Colorado Springs metropolitan area makes it likely that the Property will experience development in the future. The Owner will be required to expend substantial funds for the installation of infrastructure needed to serve the Property and, therefore, desires to clarify Owner’s obligations for installation of or payment for any off-site infrastructure or improvements and cost recoveries available to the Owner for services to the Property. Subject to the terms and conditions set forth in this Agreement, both the City and Owner 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 Owner agree as follows.

II.
ANNEXATION

The Owner has 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, the Southern Colorado Rail Park Addition No. 1, special warranty deed and irrevocable consent to the appropriation, withdrawal, and use of groundwater as set forth in **Exhibit B** and the annexation ordinance with the El Paso County Clerk and Recorder.

III.
LAND USE

The Southern Colorado Rail Park Land Use Plan for the Property has been proposed and submitted to the City for approval. Owner will comply with the approved Land Use Plan and subsequent amendments approved in accord with the Unified Development Code of the Code of the City of Colorado Springs 2001, as amended ("UDC").

IV.
ZONING

Zoning. The City agrees to recommend that the initial zone for the Owner’s Property shall be PDZ (Planned Development Zone) District upon annexation. While zoned PDZ District, a development plan shall be required for any use. Owner acknowledges an Avigation Easement will be placed over the entire Property at the time of final plat(s). Owner acknowledges and understands that City Council determines the appropriate zone for the Property, and the City’s recommended zone does not bind Planning Commission or City Council.

V.
PUBLIC FACILITIES

A. General. As land is annexed into the City it is anticipated that land development will occur. In consideration of this land development, the City requires public facilities and improvements to be designed,

extended, installed, constructed, dedicated and conveyed as part of the land development review and construction process. Public facilities and improvements are those improvements to property which, after being constructed by the Owner and accepted by the City, shall be maintained by the City or another public entity. Generally, the required public facilities and improvements and their plan and review process, design criteria, construction standards, dedication, conveyance, cost recovery and reimbursement, assurances and guaranties, and special and specific provisions are addressed in the UDC. Public facilities and improvements include but are not limited to: 1.) Utility facilities and extensions for water, wastewater, fire hydrants, electric, gas, streetlights, telephone and telecommunications (for water, wastewater, gas and electric utility service, refer to Chapter 12 of the City Code and Section VI. "Utilities Services" and Section VII. "Water Rights" of this Agreement.); 2.) Streets, alleys, traffic control, sidewalks, curbs and gutters, trails and bicycle paths; 3.) Stormwater infrastructure to convey stormwater located in the Right of Way; 4.) Arterial roadway bridges; 5.) Parks; 6.) Schools; and 7.) Other facilities and improvements required by a specific land development proposal.

It is understood that all public facilities and improvements shall be subject to the UDC, unless specifically stated otherwise in this Agreement. Those specifically modified public facilities and improvements provisions are as follows:

B. Metropolitan Districts. Owner has previously organized and obtained approval from the El Paso County Commissioners of the Southern Colorado Rail Park Metropolitan District Nos. 1, 2, and 3 (the "Districts"). Subsequent to taking final action on annexation of the Property and pursuant to Section 32-1-204.7, C.R.S. the Districts intend to petition the City to accept a designation as the approving authority for the Districts for all purposes.

C. Streets, Bridges and Traffic Controls. The Owner agrees to construct or cause to be constructed, at no expense to the City, those streets, bridges and traffic improvements adjacent to or within the Property. These improvements shall also include mutually acceptable dedications of right-of-way and easements, and extension of streets and right-of-way. UDC sections 7.4.304(F) (Cost Reimbursement by the City) and 7.4.305 (Arterial Roadway Bridges) are excluded as City participation or reimbursement for Arterial Streets and Arterial Bridges within the Property will not be allowed.

1. On-Site or Adjacent Streets: Owner agrees to comply with timing and phasing of construction responsibilities outlined specifically on the phasing plan of the Southern Colorado Rail Park Land Use Plan and any subsequent amendments.

2. Off-Site Streets and Bridges:

    a. Unless modified by mutual agreement of the City and Owner, such as to respond to market conditions, Owner agrees to comply with the timing and phasing of construction outlined specifically in the phasing plan of the Southern Colorado Rail Park Land Use Plan or any other applicable land use plan and subsequent amendments thereto that pertain to the development of the Property. The City and Owner will mutually agree on a phasing plan, including any required off-site streets and bridges (the "Phasing Plan"), following a mutually accepted traffic impact study ("TIS"). The parties contemplate that the TIS will likely be updated in the future by the mutual agreement of City and Owner to respond to market conditions, and, if agreed to by City and Owner, the applicable Phasing Plan shall be adjusted according to the results of the updated and accepted TIS.

    b. The current TIS and Phasing Plan for the Property indicate the need to have an access roadway ("Access Roadway") from Interstate Highway 25 ("I-25") to the Property prior to the development of Phase III of the Project. Prior to commencement of development of Phase III of the project (or prior to such earlier or later time in development as indicated in an updated TIS approved by the City), the Owner shall construct or cause to be constructed, at no expense~~,~~ to the City, that interchange within the I-25 right-of-way and the extension of the Access Roadway to the Property, as described in an acceptable TIS. The City and Owner each acknowledge that a portion of the Access Roadway is located within the city limits of the City of Fountain and will require its review and approval prior to construction. Another portion of the Access Roadway is located within the Colorado Department of Transportation's (CDOT)

property, and it will be designed and constructed to meet CDOT's requirements.

3. Traffic Control Devices. Owner shall construct, at the Owner's expense, those traffic and street signs, striping, and traffic control devices, and permanent barriers, together with all associated conduit for all streets within or contiguous to the Property as determined necessary by the City and in accord with the TIS and the uniformly applied criteria set forth by the City.

D. Drainage. Final Drainage Reports and Plans shall be prepared and submitted by the Owner to the City and approved by the Stormwater Enterprise Manager. A Preliminary Drainage Report shall be prepared and submitted by the Owner to the City and approved by the Stormwater Enterprise Manager prior to recording subdivision plats. Owner shall comply with all drainage criteria, standards, policies and ordinances in effect at the time of development. The Property is bounded on three sides by the Fort Carson military reservation which largely receives its drainage flows from U.S. Forest Service land, both of which entities are exempt from and will not participate in the City's drainage basin program. For that reason, the drainage basin within the Property shall, if approved by the City of Colorado Springs / El Paso County Drainage Board (Drainage Board), be deemed a closed basin, and all drainage improvements within the Property, as determined by the City-approved Drainage Report for the Property, shall be the sole responsibility of the Property. As a closed basin, the Property will accept all historic drainage flows onto the Property and will design, engineer and construct the drainage improvements within the Property as needed in order to release all drainage flows from the Property at rates not in excess of those historic flows, all at the Property's sole expense. Because the Property's basin shall be deemed a closed basin, if approved by the Drainage Board, the Property shall not be required to pay any drainage, arterial bridge and detention pond fees. The Owner shall comply with the 4 Step Process and provide full spectrum detention for all developed areas, to be owned and maintained by the individual property owners if additional private facilities are required. The Owner shall be responsible for designing, constructing, and maintaining, channel stabilization measures following City criteria along Little Fountain Creek and Rock Creek and any other open channels located within the annexation area and downstream to I-25-25, to be owned and maintained by the Owner. Channel improvements shall be designed and constructed, or assurances for channel improvements shall be posted with the City, prior to building permit issuance for adjacent developments. Channel improvements shall either be constructed and accepted by the City prior to Certificate of Occupancy release.

E. Parks: Any residential uses are subject to applicable land dedication requirements for neighborhood and community park land as required by the UDC.

F. Schools: Any residential uses are subject to applicable land dedication requirements for school sites as required by the UDC.

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 Owner without reimbursement by the City or the School District.

VI.
UTILITY SERVICES

A. Colorado Springs Utilities' (UTILITIES) Services: UTILITIES' water, non-potable water, wastewater, electric, streetlight, and natural gas services ("Utility Service" or together as "Utility Services") are available to eligible customers upon connection to UTILITIES' facilities or utility systems on a "first-come, first-served" basis, provided that (among other things) the City and UTILITIES determine that the applicant has paid all applicable charges and fees and meets all applicable requirements of the City's Code of Ordinances ("City Code"), UTILITIES Tariffs, Utilities Rules and Regulations ("URRs"), and Line Extension and Service Standards ("Standards") in effect at the time of extension or connection for each Utility-Service application. In addition, the availability of Utility Services is contingent upon the terms detailed herein and the dedication or conveyance of real and personal property, public rights-of-way, private rights-of-way, or easements that UTILITIES determines are required for the extension of any proposed Utility Service from UTILITIES' utility system facilities that currently

exist or that may exist at the time of the proposed extension or connection.

The Owner shall ensure that the connections and/or extensions of Utility Services to the Property are in accordance with this Agreement and with the requirements of City Code and UTILITIES' Tariffs, URRs and Standards, and Pikes Peak Regional Building Department codes in effect at the time of Utility Service connection and/or extension. The Owner acknowledges responsibility for the costs of any extensions 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 UTILITIES in accordance with City Code, URRs and Standards.

Owner acknowledges that UTILITIES' connection requirements shall include Owner's payment of all applicable charges and fees, including without limitation, development charges, water resource fees, recovery-agreement charges, advance recovery-agreement charges, aid-to-construction charges, and all other fees or charges applicable to the requested Utility Service. Because recovery agreement charges, advance recovery-agreement charges, and aid-to-construction charges may vary over time and by location, Owner is responsible for contacting UTILITIES' Customer Contract Administration at (719) 668-8111 to ascertain which fees or charges apply to the Property in advance of development of the Property.

B. Dedications and Easements. Notwithstanding anything contained in Article XI of this Agreement to the contrary, the Owner, at the Owner's sole cost and expense, shall obtain for the benefit of UTILITIES, if the underlying property is not owned by the Owner, and/or dedicate by plat and/or convey by recorded document if the underlying property is owned by the Owner, all property (real and personal) and easements that UTILITIES reasonably determines are required for any utility-system facilities necessary to serve the Property or to ensure development of an integrated utility system. The Owner will dedicate or acquire and dedicate appropriate sites for utility facilities, including but not limited to electric substations, electric transmission and distribution lines and infrastructure, gas regulator station(s), gas mains, City Gate Station(s) wastewater collection mains and pipelines, lift stations and force mains, water tanks and control valves, and water transmission and distribution mains and pipelines, fire protection mains, and facilities necessary to install and maintain UTILITIES' fiber optic network. UTILITIES shall determine the location and size of all property necessary to be dedicated or otherwise conveyed.

Owner shall provide UTILITIES with all written, executed conveyances prior to or at the time of platting or prior to the development of the Property as determined by UTILITIES.

Further, all dedications and conveyances of real property must comply with the City Code, the City Charter, and UTILITIES Tariffs, URRs, and Standards, and shall be subject to UTILITIES' environmental review. Neither the City nor UTILITIES has any obligation to accept any real property interests. All easements by separate instrument shall be conveyed using UTILITIES' then-current Permanent Easement Agreement form without modification unless approved by UTILITIES.

If Owner, with prior written approval by UTILITIES, relocates, requires relocation, or alters any existing utility facilities within the Property, then the relocation or alteration of these facilities shall be at the Owner's sole cost and expense. If UTILITIES determines that Owner's relocation or alteration requires new or updated easements, then Owner shall convey those easements prior to relocating or altering the existing utility facilities using UTILITIES' then-current Permanent Easement Agreement form without modification unless approved by UTILITIES. UTILITIES will only relocate existing gas or electric facilities during time frames and in a manner that UTILITIES determines will minimize outages and loss of service.

C. Extension of Utility Facilities by UTILITIES. Due to the proximity of this Annexation relative to existing UTILITIES' facilities with capacity to serve the Property, extensions of said facilities will take more time than normal. If the Owner requests to accelerate the schedule for UTILITIES' design and/or construction of utility facilities, the Owner will be responsible for the cost of accelerated design and/or construction pursuant to a time and materials agreement by separate instrument to be negotiated between the Owner and UTILITIES at such time.

1. Natural Gas and Electric Facilities:

a. Wholesale Natural Gas or Electric Services. UTILITIES reserves the right to serve the Property by contracting with third-party utility providers to purchase wholesale natural gas and/or electric services to serve the Property; provided, however, that the Owner will be advised of all agreements with such third-party utility providers to the extent such agreements impact the Owner. This wholesale service(s) will be to UTILITIES and all properties within the Annexation will only receive utility service from UTILITIES per City Code. All natural gas or electric services to the Property will be at standard service rates as determined in UTILITIES' Tariffs. In addition, the Owner will pay to UTILITIES natural gas or electric costs not captured in UTILITIES' standard service rates, which may include but are not limited to wheeling charges, measurement fees and any other fees reasonably assessed to UTILITIES by the wholesale service provider(s).

b. Permanent Electric Service.

1. Generation, UTILITIES is responsible for electricity generation to support development of the Property, in accordance with City Code, URRs, UTILITIES' Tariffs, and Standards, and on a first come first served basis. In the event such demand includes large loads, UTILITIES reserves the right to acquire such generation through separate contracts that would be coordinated with the customer at the time of contract and will be on a first come first served basis. For purposes of this subsection, "large loads" shall mean any electric load of 20 megawatts (MW) or greater per potential customer.

2. Offsite and Onsite Infrastructure. The Owner will be responsible for the cost of design, permitting and construction of the electric infrastructure required to serve the demand of the Property through connection points approved by UTILITIES, to the Property and all appurtenances thereto.

3. Regional Improvements. Except as provided in this Agreement. UTILITIES will design, permit, and construct, such substations, substation transformers and transmission lines as UTILITIES determines, in its sole discretion, to be necessary to provide permanent electric service to the Property and future growth of the City. The Owner shall pay for all regional improvements that only benefit the Property. Any regional improvements that provide regional benefit will be paid for as described in City Code, URRs, UTILITIES' Tariffs, and Standards as revised.

a. Transmission. (115 kilovolts (kV) and 230kV): UTILITIES shall be solely responsible for providing all 115kV and 230kV electric transmission infrastructure and facilities (except as provided in this Agreement), including all associated costs.

b. Distribution Substations (12.5kV and 34.5kV). UTILITIES shall be solely responsible for designing, constructing, operating and maintaining all 12.5kV and 34.5kV electric distribution substations. User electric loads of less than 4MW shall be served from 12.5kV distribution and proposed electric loads 4.01 – 59.99MW shall be served from 34.5kV distribution. Exceptions may be made at UTILITIES sole discretion.

c. Switching Substation. (115kV and 230kV): If any customer developing on the Property intends to develop with electric loads equal to or greater than 60 megawatts (MW), UTILITIES shall design, construct, own, operate and maintain a new switching substation.

i. Electric loads equal to or greater than 60 megawatts (MW), shall be served by 115kV or 230kV transmission voltage from the switching substation, with a primary meter provided by UTILITIES. UTILITIES shall not be responsible for customer transformers, switchgear or any other appurtenances after the primary meter.

4. Onsite and Offsite Distribution Infrastructure. Except as provided above, UTILITIES will design and construct all electric distribution facilities within or offsite of the Property in accordance with

UTILITIES' Tariffs, URRs and Standards.

5. Cost Recovery.

   In the event UTILITIES or other parties design and construct other electric system improvements UTILITIES determines are needed to ensure an integrated electric system is available to serve the Property, Owner shall be required to pay cost recovery for its pro rata share of the engineering, materials, and installation costs incurred by UTILITIES or the other party for its design, construction, upgrade, or improvement of any electric infrastructure, facilities or other appurtenances in accordance with the URRs. If the Owner is required to pay for the construction of electric infrastructure, Owner will be eligible for cost recovery in accordance with UTILITIES' Tariffs, URRs, and Standards. If the Owner is required to construct regional improvements, they will be eligible for cost recovery in accordance with City Code, UTILITIES' Tariffs, URRs, and Standards. The Owner may enter into cost recovery or cost sharing agreements with the other parties receiving benefit.

6. Stranded Assets.

   The cost to operate, maintain, repair and replace existing and fund and plan future electric infrastructure is funded by rates. Infrastructure not utilized to full capacity is not sustainable and is considered a stranded asset. Portions of the electric infrastructure needed to serve the Property will cross areas where connections are not likely to occur. As such, the Owner will be required to offset the costs associated with stranded assets that would generally be funded by rates. Such costs to be borne by the Owner shall be calculated by multiplying the length of the electric stranded asset by UTILITIES' electric distribution cost per mile. The electric distribution cost per mile is calculated by dividing the Electric System Distribution Costs by the total electric distribution system miles. Electric System Distribution Costs are the operation and maintenance expenses, debt service, and cash funded capital for the electric distribution system, less additions to cash and Revenue Credits for the electric distribution system. Revenue Credits are development charges for electric service received by UTILITIES in the applicable year. The amount owed shall be offset by the distribution revenue generated by rates for electric service to the Property. On an annual basis, UTILITIES will calculate these costs for the immediately prior year based on the formula above and provide notice to the Owner of such costs. The Owner will pay the costs to UTILITIES on demand. Provided however, that for the first five (5) years commencing the date the stranded asset is placed into service, the above formula will not include maintenance costs. Upon request, from time to time, UTILITIES will provide the Owner with an accounting of the payments made under this provision. The costs to be borne by the Owner shall be reduced to the extent the infrastructure serves other properties. Prior to conveying any lots or parcels of the Property to any party or parties other than the Owner, Owner will assign this obligation to one or more of the Districts which shall assume this obligation to ensure that these costs are paid by one party each year.

7. Electric Service Territory Statutory Compensation Fees. If any portion of the Property is located outside UTILITIES' electric service territory prior to annexation, then, unless specifically addressed to the contrary in this Agreement, upon annexation:

   a. The Owner shall be solely responsible for providing the just compensation for electric distribution facilities and service rights specified in C.R.S. § 40-9.5-204 plus all costs and fees, including but not limited to, attorneys' fees that UTILITIES incurs as a result of or associated with the acquisition of such electric service territory; and

   b. The Owner shall be solely responsible for all costs: (1) to remove any existing electric distribution facilities within the Property that were previously installed by the then-current electric service provider ("Electric Existing Facilities"); and (2) to convert any overhead electric lines to underground service lines ("Conversion") as determined by UTILITIES.

c. Within 30 days of the Owner's receipt of an invoice for the following:

1. The Owner shall pay the former 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 former electric service provider removes the Electric Existing Facilities, then the Owner shall pay the former electric service provider directly for the removal of any Electric Existing Facilities.

3. Further, the Owner shall pay UTILITIES the just compensation specified in C.R.S. §§ 40-9.5-204 (1) (c) and 40-9.5-204 (1) (d) within 30 days of the Owner's receipt of an invoice for such costs.

4. The Owner shall also pay for any Conversion required by UTILITIES as a result of such annexation concurrent with the execution of a contract between the Owner and UTILITIES that specifies the terms of Conversion.

c. Permanent Natural Gas Service.

1. Offsite and Onsite Feeder Infrastructure.

The Owner will be responsible for the cost of design, permitting and construction of the following natural gas infrastructure required to serve the demand of the Property: 150-pound gas main(s) and district regulator stations to connect the Property through connection points approved by UTILITIES and all appurtenances thereto.

2. Regional Improvements.

Except as provided in this Agreement, UTILITIES will design, permit, and construct, such City Gates, air-blending facilities and compressors stations, that UTILITIES determines, in its sole discretion, to be necessary to provide permanent natural gas service to the Property and future growth of the City. The Owner shall pay for all regional improvements that only benefit the Property. Any regional improvements that provide regional benefit will be paid for as described in City Code, URRs, UTILITIES' Tariffs, and Standards as revised.

3. Onsite Distribution Infrastructure.

UTILITIES will design and construct all natural gas facilities within the Property in accordance with UTILITIES' Tariffs, URRs and Standards.

4. Cost Recovery.

In the event UTILITIES or other parties design and construct other natural gas system improvements UTILITIES determines are needed to ensure an integrated natural gas system is available to serve the Property, the Owner shall be required to pay cost recovery for its pro rata share of the engineering, materials, and installation costs incurred by UTILITIES or the other party for its design, construction, upgrade, or improvement of any natural gas infrastructure, facilities or other appurtenances in accordance with the URRs. If the Owner is required to pay for the construction of electric infrastructure, Owner will be eligible for cost recovery in accordance with UTILITIES' Tariffs, URRs, and Standards. If the Owner is required to construct regional improvements, they will be eligible for cost recovery in accordance with UTILITIES' Tariffs, URRs, and Standards. The Owner may enter into cost recovery or cost sharing agreements with the other parties receiving benefit.

5. Stranded Assets.

   The cost to operate, maintain, repair and replace existing and fund and plan future natural gas infrastructure is funded by rates. Infrastructure not utilized to full capacity is not sustainable and is considered a stranded asset. Portions of the natural gas infrastructure needed to serve the Property will cross areas where connections are not likely to occur. As such, the Owner will be required to offset the costs associated with stranded assets that would generally be funded by rates. Such costs to be borne by the Owner shall be calculated by multiplying the length of the natural gas stranded asset by UTILITIES' natural gas distribution cost per mile. The natural gas distribution cost per mile is calculated by dividing the Natural Gas System Distribution Costs by the total natural gas distribution system miles. Natural Gas System Distribution Costs are the operation and maintenance expenses, debt service, and cash funded capital for the natural gas distribution system, less additions to cash and Revenue Credits for the natural gas distribution system. Revenue Credits are development charges for natural gas service received by UTILITIES in the applicable year. The amount owed shall be offset by the distribution revenue generated by rates for natural gas service to the Property. On an annual basis, UTILITIES will calculate these costs for the immediately prior year based on the formula above and provide notice to the Owner of such costs. The Owner will pay the costs to UTILITIES on demand. Provided however, that for the first five (5) years commencing the date the stranded asset is placed into service, the above formula will not include maintenance costs. Upon request, from time to time, UTILITIES will provide the Owner with an accounting of the payments made under this provision. The costs to be borne by the Owner shall be reduced to the extent the infrastructure serves other properties. Prior to conveying any lots or parcels of the Property to any party or parties other than the Owner, Owner will assign this obligation to one or more of the Districts which shall assume this obligation to ensure that these costs are paid by one party each year.

6. Greenhouse Gas Emissions.

   Given new and changing regulations regarding greenhouse gas (GHG) emissions, UTILITIES may require improvements above and beyond requirements in effect at the time of annexation, such as beneficial electrification, battery storage, solar, or other options, to meet regulatory requirements; provided, however, that UTILITIES agrees that all such UTILITIES' requirements shall be uniformly applied to all similarly situated UTILITIES' customers. Further, the Owner acknowledges that UTILITIES may refuse new connections to its natural gas service system if state or federal regulations dictate or if UTILITIES determines such action is necessary or desirable to meet state GHG emission reduction targets; provided, however, that UTILITIES agrees that any such refusal of new connections shall be uniformly applied to all similarly situated prospective UTILITIES' customers.

7. Natural Gas Service Territory Just Compensation Fees. If any portion of the Property is located outside UTILITIES' natural gas service territory prior to annexation, then upon annexation:

   a. The Owner shall be solely responsible for providing any just compensation to the incumbent service provider for natural gas distribution facilities and service rights, plus all costs and fees, including but not limited to, attorneys' fees that UTILITIES incurs as a result of or associated with the acquisition/invasion of such natural gas service territory; and

   b. The Owner shall be solely responsible for all costs to remove any existing natural gas distribution facilities within the Property that were previously installed by the incumbent natural gas service provider; and

   c. The Owner shall pay UTILITIES the just compensation and other fees within 30 days of the Owner's receipt of an invoice for such costs.

2. Water Service and Facilities.

   a. Offsite and Onsite Feeder Infrastructure: The Owner must extend, design, permit and construct all potable water infrastructure required to serve the demand of the Property including without limitation: pump stations, water transmission and distribution mains and all appurtenances thereto to and within the Property at the Owner's sole cost and expense in accordance with City Code and UTILITIES' Tariffs, URRs, and Standards in effect at the time of each specific request for water service. The Owner shall convey all water service infrastructure installed pursuant to this paragraph to UTILITIES in accordance with Standards. Consistent with City Code § 7.4.303(B)(2) and 7.4.306(B)(2) the Owner shall complete the design and installation, and obtain preliminary acceptance of such utility facilities, prior to UTILITIES' approval of the Owner's water service requests. Notwithstanding the above requirements, UTILITIES may enter into cost-sharing agreements with the Owner for water system expansions based on a determination of benefit to UTILITIES, in UTILITIES' sole discretion.

   b. Regional Improvements: Except as provided in this Agreement, UTILITIES will design, permit, and construct, such treatment plants and tanks in its sole discretion, to be necessary to provide permanent water service to the Property and future growth of the City. The Owner shall pay for all regional improvements that only benefit the Property. Any regional improvements that provide regional benefit will be paid for as described in City Code, URRs, UTILITIES' Tariffs, and Standards as revised.

   c. Onsite Distribution Infrastructure: The Owner must extend, design, permit and construct all water distribution facilities and any water service lines to and within the Property at the Owner's sole cost and expense in accordance with City Code and UTILITIES' Tariffs, URRs, and Standards in effect at the time of each specific request for water service. The Owner shall convey all water service infrastructure installed pursuant to this paragraph to UTILITIES in accordance with Standards. Consistent with City Code § 7.4.303(B), the Owner shall complete the design and installation, and obtain preliminary acceptance of such utility facilities, prior to UTILITIES' approval of the Owner's water service requests.

   d. Cost Recovery: In the event UTILITIES or other developers design and construct other water system improvements UTILITIES determines are needed to ensure an integrated water system is available to serve the Property, the Owner shall be required to pay cost recovery for the engineering, materials, and installation costs incurred by UTILITIES, other water providers with whom UTILITIES has contractual obligations regarding service to the Property, or the other developer for 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. If the Owner is required to construct regional improvements, they will be eligible for cost recovery in accordance with UTILITIES' Tariffs, URRs, and Standards. If other developments take benefit from offsite and onsite transmission, distribution and/or storage infrastructure benefitting the Property, the Owner may enter into cost recovery or cost sharing agreements with the other parties receiving benefit.

   e. Water Quality Plan: The Owner is required to submit a Water Quality Plan when the Owner submits utility construction plans to UTILITIES. The Water Quality Plan must show how the Owner will comply with applicable regulations. The Water Quality Plan is subject to UTILITIES' review and approval. Any costs associated with complying with Water Quality Plan requirements shall be borne by the Owner. This may include the cost of temporary pumping, and/or onsite temporary chlorination facilities, including design, permitting, construction, operation, materials, labor, equipment, and water at the current commercial rate. UTILITIES may waive or reduce the requirements in this paragraph at its sole discretion.

   f. Stranded Assets: The cost to operate, maintain, repair and replace existing and fund and plan future water infrastructure is funded by rates. Infrastructure not utilized to full capacity is not sustainable and is considered a stranded asset. Portions of the water infrastructure needed to serve the Property will cross areas where connections are not likely to occur. As such, the Owner will be required to offset

the costs associated with stranded assets that would generally be funded by rates. Such costs to be borne by the Owner shall be calculated by multiplying the length of the water stranded asset by UTILITIES' water distribution cost per mile. The water distribution cost per mile is calculated by dividing the Water System Distribution Costs by the total water distribution system miles. Water System Distribution Costs are the operation and maintenance expenses, debt service, and cash funded capital for the water distribution system, less additions to cash and Revenue Credits for the water distribution system. Revenue Credits are development charges for water service received by UTILITIES in the applicable year. The amount owed shall be offset by the distribution revenue generated by rates for water service to the Property. On an annual basis, UTILITIES will calculate these costs for the immediately prior year based on the formula above and provide notice to the Owner of such costs. The Owner will pay the costs to UTILITIES on demand. Provided however, that for the first five (5) years commencing the date the stranded asset is placed into service, the above formula will not include maintenance costs. Upon request, from time to time, UTILITIES will provide the Owner with an accounting of the payments made under this provision. The costs to be borne by the Owner shall be reduced to the extent the infrastructure serves other properties. Prior to conveying any lots or parcels of the Property to any party or parties other than the Owner, the Owner will create a special district or other entity and this obligation will be assigned to and assumed by such entity to ensure that these costs are paid by one party each year.

3. Wastewater Service and Facilities.

   a. Wholesale Service.

      i. In order to provide wastewater service to the Property, UTILITIES may enter into an agreement with a third-party wastewater service provider, whereby UTILITIES would purchase wholesale wastewater service to serve the Property. In addition to all infrastructure the Owner is responsible as set forth in subparagraphs (a)(ii) and (b), below, the Owner shall also be responsible for the design, permitting and construction of all wastewater infrastructure needed to connect to the wastewater system of the third-party wastewater service provider. All wastewater service to the Property will be at standard service rates as determined in UTILITIES' Tariffs. The Owner will pay to Utilities wastewater costs not captured in UTILITIES' standard tariff rates, which may include fees assessed to UTILITIES by the wholesale service providers, including fees and charges resulting from connection to the third-party wastewater service provider's system and upgrades to that system, including treatment. The Owner acknowledges that UTILITIES provision of wastewater service to the Property may be contingent upon UTILITIES execution of an agreement with a third-party wastewater service provider. Owner will comply with all standards imposed by the third-party wastewater service provider.

      ii. Metering Vault. Pursuant to any wholesale wastewater service agreement between UTILITIES and the third-party wastewater service provider, and in accordance with applicable design and construction standards, the Owner shall be responsible for designing and constructing the wastewater metering vault(s) and any appurtenances required to track and record wastewater flows transported from the Property through UTILITIES' wastewater collection system and/or delivered to the interconnect point(s) with the third-party wastewater provider's wastewater collection and treatment system.

   b. Wastewater Volume Discharge Threshold.

      Any proposed development or project on the Property with proposed clean-water wastewater discharges exceeding one (1) million gallons per day (MGD) shall install an onsite closed-loop water reuse system to limit clean water wastewater discharges into UTILITIES' wastewater collection system. To the extent wastewater services are provided through a wholesale service agreement with a third-party wastewater service provider, UTILITIES reserves the sole and exclusive right to impose a discharge volume requirement required by the third-party wastewater service provider.

c. Infrastructure.

The Owner must extend, design, and construct all wastewater collection system facilities, wastewater pump stations, and wastewater service lines to and within the Property(s) at the Owner's sole cost and expense in accordance with City Code and UTILITIES' Tariffs, URRs and Standards in effect at the time of each specific request for wastewater service. Consistent with City Code § 7.4.303 (B), the Owner shall complete the design and installation, and obtain preliminary acceptance of such utility facilities, prior to UTILITIES' approval of the Owner's wastewater service requests. Notwithstanding the above requirements, UTILITIES may enter into cost-sharing agreements with the Owner for wastewater system expansions based on a determination of benefit to UTILITIES, in UTILITIES' sole discretion.

d. Cost Recovery.

In the event UTILITIES or other developers design and construct other wastewater system improvements UTILITIES determines are needed to ensure an integrated wastewater system is available to serve the Property, the Owner shall be required to pay cost recovery for the engineering, materials, and installation costs incurred by UTILITIES or the other developer for its design, construction, upgrade, or improvement of any wastewater pump stations, wastewater pipeline facilities, or other wastewater collection facilities and appurtenances in accordance with the URRs. If the Owner is required to construct regional improvements, they will be eligible for cost recovery in accordance with UTILITIES' Tariffs, URRs, and Standards. If other developments take benefit from offsite and onsite feeder infrastructure benefitting the Property, the Owner may enter into cost recovery or cost sharing agreements with the other parties receiving benefit.

e. Stranded Assets.

The cost to operate, maintain, repair and replace existing and fund and plan future wastewater infrastructure is funded by rates. Infrastructure not utilized to full capacity is not sustainable and is considered a stranded asset. Portions of the wastewater infrastructure needed to serve the Property will cross areas where connections are not likely to occur. As such, the Owner will be required to offset the costs associated with stranded assets that would generally be funded by rates. Such costs to be borne by the Owner shall be calculated by multiplying the length of the wastewater stranded asset by UTILITIES' wastewater collection system cost per mile. The wastewater collection system cost per mile is calculated by dividing the Wastewater System Collection Costs by the total wastewater collection system miles. Wastewater System Collection Costs are the operation and maintenance expenses, debt service, and cash funded capital for the wastewater collection system, less additions to cash and Revenue Credits for the wastewater collection system. Revenue Credits are development charges for wastewater service received by UTILITIES in the applicable year. The amount owed shall be offset by the collection revenue generated by rates for wastewater service to the Property. On an annual basis, UTILITIES will calculate these costs for the immediately prior year based on the formula above and provide notice to the Owner of such costs. The Owner will pay the costs to UTILITIES on demand. Provided however, that for the first five (5) years commencing the date the stranded asset is placed into service, the above formula will not include maintenance costs. Upon request, from time to time, UTILITIES will provide the Owner with an accounting of the payments made under this provision. The costs to be borne by the Owner shall be reduced to the extent the infrastructure serves other properties. Prior to conveying any lots or parcels of the Property to any party or parties other than the Owner, the Owner will create a special district or other entity and this obligation will be assigned to and assumed by such entity to ensure that these costs are paid by one party each year.

D. Limitation of Applicability. The provisions of this Agreement set forth the requirements of the City and UTILITIES in effect at the time of annexation of the Property. These provisions shall not be construed as a limitation upon the authority of the City or UTILITIES to adopt different ordinances, rules, regulations, resolutions, policies or codes which change any of the provisions set forth in this Agreement so long as these provisions

apply to the City generally and are in accord with the then-current tariffs, rates, regulations and policies of UTILITIES. City Code, UTILITIES' Tariffs, URRs and Standards shall govern the use of all Utilities Services.

E. Southeastern Colorado Water Conservancy District. Notice is hereby provided that upon annexation, and as a condition of receiving water service from UTILITIES, the Property must be included in the boundaries of the Southeastern Colorado Water Conservancy District ("District") pursuant to C.R.S. § 37-45-136 (3.6) as may be amended, and the rules and procedures of the District. Further, notice is hereby provided that, after inclusion of the Property into the boundaries of the District, the Property shall be subject to a property tax mill levy or other payment in lieu of taxes for the purposes of meeting the financial obligations of the District. Owners acknowledge that water service for the Property will not be made available by UTILITIES until the Property is formally included within the boundaries of the District. District inclusion requires consent by the Bureau of Reclamation ("Reclamation"). Owners shall be responsible for taking all actions necessary for inclusion of the Property into the boundaries of the District, including but not limited to, any action required to obtain Reclamation's consent to include the Property into the District.

VII.
WATER RIGHTS

As provided in the Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater ("Deed"), which is attached to this Agreement and hereby incorporated by reference, Owners grant to the City, all right, title and interest to any and all groundwater underlying or appurtenant to and used upon the Property, and any and all other water rights appurtenant to the Property (collectively referred to as "the Water Rights"), together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the City to appropriate, withdraw and use the Water Rights. The Deed conveying the Water Rights shall be executed by the Owners concurrently with this Agreement and shall be made effective upon the execution, delivery and recording of the Deed. The Deed shall be recorded at the El Paso County Clerk and Recorder's office concurrently with the recording of this Agreement, the annexation plat, and the annexation ordinance.

Furthermore, upon recordation of the Deed, 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 recording of the Deed, any wells or groundwater developed by Owners prior to recording will become subject to UTILITIES' applicable Tariffs, URRs, Standards, and rates as amended in the future. Owners' uses of groundwater shall be subject to approval by the City and UTILITIES, and shall be consistent with City Code, UTILITIES' Tariffs, URRs, Standards, and the City's 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. If Owners determine not to use any existing wells on the Property, Owners shall plug and abandon any such wells on the Property in compliance with the State of Colorado Division of Water Resources ("DWR") procedures and provide UTILITIES with a copy of such DWR abandonment approval prior to receiving utility service from UTILITIES.

As previously noted, there is an existing sand and gravel extraction operation located in the area designated as Phase IV of the Phasing Plan. The Parties acknowledge the Mining Operations are intended to continue until the deposit is exhausted, which is estimated to be approximately ten years from the date of this Agreement. UTILITIES owns certain water wells located on Clear Spring Ranch ("Clear Spring Ranch Wells") that are decreed for industrial use whose pumping is augmented by reusable sewered return flows released from the Las Vegas Water Reclamation Facility and/or non-sewered return flows as permitted in Division 2, Water Court, Case Nos. W-4376 and 1989CW36. UTILITIES and Owner, doing business as Schmidt Construction, Inc. ("Schmidt"), entered into a Surplus Water Lease Agreement, under which UTILITIES leases up to 250 acre-feet per year of

untreated groundwater from the Clear Spring Ranch Wells to Owner for dust suppression, washing of gravel, and other non-potable uses in association with Schmidt's aggregate Mining Operations located on the Property if and when such supply is available ("Surplus Lease"). The Surplus Lease expires on August 31, 2025. Owner requested that it be allowed to continue using up to 250 acre-feet per year of water from the Clear Spring Ranch Wells for use in the aggregate Mining Operations on the Property on an interim basis after annexation of the Property~~.~~ until such time as the Mining Operations are concluded. UTILITIES is amenable to allowing the Owner to continue utilizing up to 250 acre-feet of water from the Clear Spring Ranch Wells on an interim basis after annexation until the Mining Operations are concluded pursuant to the Water Service Agreement attached hereto as **Exhibit C**. Execution of the Water Service Agreement by both Parties is a condition of annexation.

VIII.
FIRE PROTECTION

The Owner understands and acknowledges that the Property may be excluded from the boundaries of any applicable 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 any applicable Fire District for exclusion of the Property from the Fire District. The Owner understands and acknowledges that the Owner is responsible for seeking any exclusion from the applicable Fire District and that the City has no obligation to seek exclusion of any portion of the Property from any applicable Fire District.

A minimum of five (5) acres shall be provided to the City for a fire station in a location of Colorado Springs Fire Department's ("CSFD") choosing. The property shall be provided at a time determined by CSFD, based upon predicted or actual call volume and distribution to facilitate the most expedient and reasonable response for this property.

IX.
FIRE PROTECTION FEE

The Owner shall be subject to the requirements of UDC section 7.5.532 regarding Citywide Development Impact Fees. Any public safety land provided as detailed on the Land Use Plan is not applicable CDI land offset as detailed in 7.5.532.F.4.

X.
POLICE SERVICE FEE

The Owner shall be subject to the requirements of UDC section 7.5.532 regarding Citywide Development Impact Fees. Any public safety land provided as detailed on the Land Use Plan is not applicable CDI land offset as detailed in 7.5.532.F.4.

XI.
PUBLIC LAND DEDICATION

Owner agrees that any land dedicated or deeded for municipal or utility purposes, including park and school sites, shall be platted and all applicable development fee obligations paid, and shall be free and clear of liens and encumbrances. All fees that would be applicable to the platting of land that is to be dedicated to the City (including park and school land) shall be paid by Owner. Fees will be required on the gross acreage of land dedicated as of the date of the dedication in accord with the fee requirements in effect as of the date of the dedication. All dedications shall be platted by the Owner prior to conveyance, unless otherwise waived by the City.

In addition, any property dedicated by deed shall be subject to the following:

A. All property deeded to the City shall be conveyed by General Warranty Deed.

B. Owner shall convey the property to the City within 30 days of the City's written request.

C. Any property conveyed to the City shall be free and clear of any liens and/or encumbrances.

D. All property taxes levied against the property shall be paid by the Owner through the date of conveyance to the City.

E. An environmental assessment of the property must be provided to the City for review and approval, unless the City waives the requirement of an assessment. Approval or waiver of the assessment must be in writing and signed by an authorized representative or official of the City**.**

XII.
SPECIAL PROVISIONS

As noted above, there are existing Mining Operations located in the area designated as Phase IV of the Phasing Plan. The Mining Operations are subject to a Reclamation Permit with the Colorado Division of Reclamation, Mining and Safety for which a reclamation bond is posted to ensure reclamation of the site following completion of the Mining Operations. The Mining Operations are shown on the Land Use Plan and are an approved use under the PDZ zone being proposed for adoption by the City Council in conjunction with the approval of this Annexation Agreement. If agreed to through the adoption by the City Council of such Land Use Plan, the Mining Operations can continue following the annexation of the Property as long as the Mining Operations are in compliance with the Reclamation Permit and all other applicable governmental rules and regulations.

XIII.
ORDINANCE COMPLIANCE

Owner will comply with all tariffs, policies, rules, regulations, ordinances, resolutions and codes of the City which now exist or are amended or adopted in the future, including those related to the subdivision and zoning of land, except as expressly modified by this Agreement. This Agreement shall not be construed as a limitation upon the authority of the City to adopt different tariffs, policies, rules, regulations, ordinances, resolutions and codes which change any of the provisions set forth in this Agreement so long as these apply to the City generally.

XIV.
ASSIGNS AND DEED OF TRUST HOLDERS

As used in this Agreement, the term "Owner" or "Property Owner" shall also mean any of the heirs, executors, personal representatives, transferees, or assigns of the Owner and all these parties shall have the right to enforce and be enforced under the terms of this Agreement as if they were the original parties hereto. Rights to specific refunds or payments contained in this Agreement shall always be to the Owner unless specifically assigned to another person.

Owner affirmatively states that there exist no outstanding deeds of trust or other similar liens or encumbrances against the Property.

XV.
RECORDING

This Agreement and any subsequent amendments 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. Any refunds made under the terms of this Agreement shall be made to the Owner 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 joint agreement between the City and any party, including their respective successors, transferees, or assigns, without the consent of any other non-City party or its successors, transferees, or assigns but only as applied to the property owned by the amending party at the time of the amendment. 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.

XVII.
HEADINGS

The headings for the different sections of this Agreement are for convenience and reference only and do not define or limit the scope or intent of any of the language of the Agreement and shall not be construed to affect in any manner the terms or the interpretation or construction of the Agreement.

XVIII.
DEFAULT AND REMEDIES

If either Owner or City fails to perform any material obligation under this Agreement, and fails to cure the default within thirty (30) days following notice from the non-defaulting party of that breach, then a breach of this Agreement will be deemed to have occurred and the non-defaulting party will be entitled, at its election, to either cure the default and recover the cost thereof from the defaulting party, or pursue and obtain against the defaulting party an order for specific performance of the obligations under this Agreement and, in either instance, recover any actual damages incurred by the non-defaulting party as a result of that breach, including recovery of its costs and reasonable attorneys' fees incurred in the enforcement of this Agreement, as well as any other remedies provided by law.

XIX.
GENERAL

Except as specifically provided in this Agreement, City agrees to treat Owner and the Property in a non-discriminatory manner relative to the rest of the City. In addition, any consent or approval required in accord with this Agreement from the City shall not be unreasonably withheld, conditioned or delayed. City agrees not to impose any fee, levy or tax or impose any conditions upon the approval of development requests, platting, zoning or issuance of any building permits for the Property, or make any assessment on the Property that is not uniformly applied throughout the City, except as specifically provided in this Agreement or authorized pursuant to the City Code. Any fee provided for in this Agreement shall be in addition to, and not in lieu of, any impact fee or development requirement required by or authorized pursuant to 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 such finding shall not affect either the remainder of the Agreement or the application of the provisions to other entities.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

CITY OF COLORADO SPRINGS

BY:_____
Blessing A. Mobolade, Mayor

ATTEST:

BY:_____
Sarah B. Johnson, City Clerk

APPROVED AS TO FORM:

BY:_____
Office of the City Attorney

OWNER :
EDW. C. LEVY CO., a Michigan corporation

By: _____

Name: L. Steven Weiner

Title: Vice President

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____day of _____, 2025, by L. Steven Weiner, as Vice President for and on behalf of Edw. C. Levy Co., a Michigan corporation.

Witness my hand and notarial seal.
My commission expires:

Notary Public

OWNER :
SOUTHERN COLORADO RAIL PARK LLC, a Michigan limited liability company

By: _____

Name: L. Steven Weiner

Title: Vice President
(Owner)

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____day of _____, 2025, by L. Steven Weiner, as Vice President for and on behalf of Southern Colorado Rail Park LLC, a Michigan limited liability company.

Witness my hand and notarial seal.
My commission expires:

Notary Public

DEED OF TRUST HOLDER: NONE

EXHIBIT A

LEGAL DESCRIPTION

A PARCEL OF LAND BEING THE WEST HALF OF THE SOUTHWEST QUARTER (W1/2 OF SW 1/4) SECTION 19, THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (NW 1/4 OF NW 1/4) SECTION 30, T16S, R65W, OF THE SIXTH P.M. AND THE SOUTH HALF OF THE SOUTH HALF (S1/2 OF S1/2) SECTION 12, SECTION 13, THE EAST HALF (E 1/2) SECTION 14, THE EAST HALF (E 1/2) SECTION 23, SECTION 24, SECTION 25 AND THE EAST HALF (E 1/2) OF SECTION 26, ALL IN T16S, R66W, OF THE SIXTH P.M., EL PASO COUNTY, COLORADO, EXCEPT THOSE PARTS CONVEYED TO EL PASO COUNTY BY SPECIAL WARRANTY DEEDS RECORDED UNDER RECEPTION NOS. 219042943 AND 219042944, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE QUARTER CORNER COMMON TO SECTION 14 AND SECTION 23, T16S, R66W, SAID POINT BEING A FOUND STONE, FROM WHICH THE QUARTER CORNER COMMON TO SECTIONS 11 AND SECTION 14, T16S, R66W SAID POINT BEING A FOUND 3.25" ALUMINUM CAP STAMPED "R G OBERING, T16S R66W, S11, 1/4 COR, S14, 1999, PE & PLS 13226" ON A NO. 6 REBAR BEARS N01°30'28"W A DISTANCE OF 5,285.06 FEET, BEING THE BASIS OF ALL BEARINGS IN THIS LEGAL DESCRIPTION. (SAID LINE BEING THE NORTH-SOUTH CENTERLINE OF SAID SECTION 14.)

THE FOLLOWING FOUR (4) COURSES ARE ALONG THE EASTERLY LINES OF THE FORT CARSON MILITARY RESERVATION:

1) THENCE N01°30'28"W ALONG THE AFORESAID NORTH-SOUTH CENTERLINE OF SECTION 14, 5,285.06 FEET TO THE QUARTER CORNER COMMON TO SECTIONS 11 AND SECTION 14, T16S, R66W;
2) THENCE N88°40'09"E ALONG THE SOUTH LINE OF SAID SECTION 11 A DISTANCE OF 2,788.00 FEET TO THE SECTION CORNER COMMON TO SECTIONS 11, 12, 13, AND 14, T16S, R66W, SAID POINT BEING THE END OF PROJECT, "BOUNDARY RETRACEMENT SURVEY - FORT CARSON, EL PASO COUNTY, COLORADO" RECORDED UNDER RECEPTION NO. 212900048 OF THE RECORDS OF EL PASO COUNTY, COLORADO;
3) THENCE N00°39'18"W ALONG THE EAST LINE OF AFORESAID SECTION 11 A DISTANCE OF 1,312.70 FEET;
4) THENCE N89°11'58"E A DISTANCE OF 1,197.78 FEET TO THE WESTERLY RIGHT-OF-WAY OF CHARTER OAK RANCH ROAD AS SHOWN ON AFORESAID "BOUNDARY RETRACEMENT SURVEY";

THENCE ALONG THE WESTERLY LINES THEREOF THE FOLLOWING THREE (3) COURSES:

1) THENCE 38.00 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 160.00 FEET, A CENTRAL ANGLE OF 13°36'22", THE CHORD OF 37.91 FEET WHICH BEARS S28°08'29"W TO A POINT OF TANGENT;
2) THENCE S21°20'19"W A DISTANCE OF 355.09 FEET;

3) THENCE S68°39'41"E A DISTANCE OF 70.00 FEET TO THE SOUTHERLY LINE OF THAT PARCEL DESCRIBED BY SPECIAL WARRANTY DEED UNDER RECEPTION NO. 219042943 OF THE RECORDS OF EL PASO COUNTY, COLORADO;

THENCE ALONG THE SOUTHERLY LINES THEREOF THE FOLLOWING THREE (3) COURSES:

1) THENCE 646.18 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 540.00 FEET, A CENTRAL ANGLE OF 68°33'42", THE CHORD OF 608.31 FEET WHICH BEARS N55°37'10"E TO A POINT OF TANGENT;
2) THENCE N89°54'02"E A DISTANCE OF 356.58 FEET;
3) THENCE N88°26'46"E A DISTANCE OF 623.16 FEET TO THE SOUTHWEST CORNER OF THAT PARCEL DESCRIBED BY SPECIAL WARRANTY DEED UNDER RECEPTION NO. 219042944 OF THE RECORDS OF EL PASO COUNTY, COLORADO;

THENCE ALONG THE SOUTHERLY LINES THEREOF THE FOLLOWING SIX (6) COURSES:

1) THENCE CONTINUING N88°26'46"E A DISTANCE OF 224.24 FEET;
2) THENCE N89°38'21"E A DISTANCE OF 293.10 FEET;
3) THENCE N89°04'51"E A DISTANCE OF 753.88 FEET;
4) THENCE N86°07'34"E A DISTANCE OF 381.70 FEET;
5) THENCE N86°06'37"E A DISTANCE OF 476.16 FEET;
6) THENCE N86°06'40"E A DISTANCE OF 471.02 FEET TO THE WESTERLY LINE OF LOT 1 BLOCK 1 "VALLEY VIEW SUBDIVISION" AS RECORDED IN PLAT BOOK O-3 AT PAGE 57 IN THE RECORDS OF EL PASO COUNTY, COLORADO;

THENCE ALONG SAID WESTERLY LINE THE FOLLOWING FIVE (5) COURSES:

1) THENCE S00°57'56"E A DISTANCE OF 25.58 FEET TO THE SOUTH SIXTEENTH CORNER COMMON TO SECTION 7 T16S, R65W AND SECTION 12, T16S, R66W;
2) THENCE CONTINUING S00°57'56"E A DISTANCE OF 1,329.72 FEET TO THE SECTION CORNER COMMON TO SECTIONS 7 AND 18, T16S, R65W AND SECTIONS 12 AND 13, T16S, R66W;
3) THENCE S00°59'15"E A DISTANCE OF 2,639.23 FEET TO THE QUARTER CORNER (1/4 COR) COMMON TO SECTION 18, T16S, R65W AND SECTION 13, T16S, R66W;
4) THENCE S00°59'25"E A DISTANCE OF 2,639.15 FEET TO THE SECTION CORNER COMMON TO SECTIONS 18 AND 19, T16S, R65W AND SECTIONS 13 AND 24, T16S, R66W;
5) THENCE S00°46'56"E A DISTANCE OF 2,617.07 FEET TO THE QUARTER CORNER (1/4 COR) COMMON TO SECTION 24, T16S, R66W AND SECTION 19, T16S, R65W AND THE SOUTHWEST CORNER OF SAID LOT 1 BLOCK 1 "VALLEY VIEW SUBDIVISION";

THENCE N89°21'33"E ALONG THE SOUTH LINE THEREOF, SAID LINE BEING A PORTION OF EAST-WEST CENTERLINE OF SAID SECTION 19, T16S, R65W 1,171.75 FEET TO THE WEST SIXTEENTH CORNER OF SAID SECTION 19;
THENCE S00°51'32"E A DISTANCE OF 2,637.30 FEET TO THE WEST SIXTEENTH CORNER COMMON TO SAID SECTION 19 AND SECTION 30, T16S, R65W;
THENCE S00°20'16"E A DISTANCE OF 1,320.03 FEET TO THE NORTHWEST SIXTEENTH CORNER OF SAID SECTION 30;
THENCE S89°13'59"W A DISTANCE OF 1,155.32 FEET TO THE NORTH SIXTEENTH CORNER OF THE SECTION LINE COMMON TO SECTION 30, T16S, R65W AND SECTION 25, T16S, R66W;
THENCE S01°04'10"E ALONG SAID SECTION LINE 1,326.55 FEET TO THE QUARTER CORNER COMMON TO SAID SECTIONS;
THENCE S00°39'21"E ALONG SAID SECTION LINE 2,640.17 FEET TO THE SECTION CORNER COMMON TO SECTIONS 30 AND 31, T16S, R65W AND SECTIONS 25 AND 36, T16S, R66W, SAID POINT LYING ON THE AFORESAID EASTERLY

THENCE ALONG SAID EASTERLY LINES THE FOLLOWING FOUR (4) COURSES:

1) THENCE S89°36'51"W ALONG THE SECTION LINE BETWEEN SAID SECTIONS 25 AND 36 A DISTANCE OF 5,275.28 FEET TO THE SECTION CORNER COMMON TO SECTIONS 25, 26, 35 AND 36, T16S, R66W;
2) THENCE S89°07'11"W ALONG THE SECTION LINE COMMON TO SECTIONS 26 AND 35, A DISTANCE OF 2,637.64 FEET TO THE QUARTER CORNER COMMON TO SAID SECTIONS 26 AND 35;
3) THENCE N01°34'52"W ALONG THE NORTH SOUTH CENTERLINE OF SAID SECTION 26, 5,263.81 FEET TO THE QUARTER CORNER COMMON TO SECTIONS 23 AND 26, T16S, R66W;
4) THENCE N00°25'00"W ALONG THE NORTH SOUTH CENTERLINE OF SAID SECTION 23, 5,230.86 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS A GROSS AREA OF 137,084,509 SQUARE FEET (3,147.027 ACRES, MORE OR LESS).

EXCEPTING THEREFROM THE FOLLOWING TWO (2) EXCEPTIONS:

EXCEPTION 'A':

THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW 1/4 SW 1/4 SW 1/4) AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SE 1/4 SW 1/4 SW 1/4) OF SECTION 13 AS DESCRIBED IN QUITCLAIM DEED RECORDED UNDER RECEPTION NO. 209137369;
AND
THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (S 1/2 NE 1/4 SW 1/4 SW 1/4) OF SAID SECTION 13 AS DESCRIBED IN WARRANTY DEED RECORDED IN BOOK 5826 AT PAGE 208, EXCEPTING THEREFROM THE EASTERLY 30 FEET OF THAT 60 FEET WIDE INGESS/EGRESS EASEMENT DESCRIBED IN DESIGNATION OF RIGHTS OF WAY RECORDED IN BOOK 2395 AT PAGE 377;
AND
THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (N 1/2 NE 1/4 SW 1/4 SW 1/4) OF SAID SECTION 13 DESCRIBED AS "PARCEL B" IN WARRANTY DEED UNDER RECORDED RECEPTION NO. 210059631, EXCEPTING THEREFROM THE EASTERLY 30 FEET OF THAT 60 FEET WIDE INGESS/EGRESS EASEMENT DESCRIBED IN DESIGNATION OF RIGHTS OF WAY RECORDED IN BOOK 2395 AT PAGE 377;
ALL DOCUMENTS FOUND IN THE RECORDS OF EL PASO COUNTY, COLORADO, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SECTION CORNER COMMON TO SECTIONS 13, 14, 23, AND 24, SAID CORNER BEING MONUMENTED WITH A 3.25" ALUMINUM CAP WITHOUT STAMPS;
THENCE N00°30'22"W ALONG THE SECTION LINE COMMON TO SAID SECTIONS 13 AND 14, 659.62 FEET TO A BENT NO. 5 REBAR WITHOUT CAP;
THENCE N88°38'46"E A DISTANCE OF 658.63 FEET TO THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13;
THENCE N00°30'34"W ALONG THE WEST LINE THEREOF, 659.83 FEET TO THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13;
THENCE N88°33'19"E ALONG THE NORTH LINE THEREOF, 658.50 FEET TO A NO. 3 REBAR WITH RED PLASTIC CAP STAMPED "LS 1593";
THENCE S00°31'35"E A DISTANCE OF 1,320.88 FEET TO A NO. 3 REBAR WITH RED PLASTIC CAP STAMPED "LS 1593";
THENCE S88°39'48"W A DISTANCE OF 1,317.54 FEET TO THE POINT OF BEGINNING.

SAID PARCELS CONTAINING A COMBINED AREA OF 1,304,015 SQUARE FEET (29.936 ACRES, MORE OR LESS).

EXCEPTION 'B':

A PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, T16S, R66W AS DESCRIBED IN WARRANTY DEED RECORDED UNDER RECEPTION NO. 219082791, EXCEPTING THEREFROM THE EASTERLY 30 FEET OF THAT 60 FEET WIDE INGESS/EGRESS EASEMENT DESCRIBED IN DESIGNATION OF RIGHTS OF WAY RECORDED IN BOOK 2395 AT PAGE 377;
AND
A PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, T16S, R66W AS DESCRIBED AS "PARCEL A" IN WARRANTY DEED RECORDED UNDER RECEPTION NO. 210059631, EXCEPTING THEREFROM THE EASTERLY 30 FEET OF THAT 60 FEET WIDE INGESS/EGRESS EASEMENT DESCRIBED IN DESIGNATION OF RIGHTS OF WAY RECORDED IN BOOK 2395 AT PAGE 377;
ALL DOCUMENTS FOUND IN THE RECORDS OF EL PASO COUNTY, COLORADO, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE QUARTER CORNER COMMON TO SECTIONS 13 AND 14, SAID QUARTER CORNER BEING MONUMENTED BY A BENT NO. 5 REBAR WITHOUT CAP;
THENCE N88°39'52"E A DISTANCE OF 658.34 FEET TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, AND THE POINT OF BEGINNING;

THENCE N88°40'01"E ALONG THE NORTH LINE THEREOF, 661.09 FEET TO THE NORTHEAST CORNER OF AFORESAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13;
THENCE S00°05'37"E ALONG THE EAST LINE THEREOF, 328.97 FEET TO A NO. 3 REBAR WITHOUT CAP;
THENCE S00°24'52"E A DISTANCE OF 330.21 FEET TO A NO. 3 REBAR WITHOUT CAP, BEING THE SOUTHEAST CORNER OF AFORESAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13;
THENCE S88°36'23"W ALONG THE SOUTH LINE THEREOF, 658.17 FEET TO THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13;
THENCE N00°30'34"W ALONG THE WEST LINE THEREOF, 659.83 FEET TO THE POINT OF BEGINNING.

SAID PROPERTIES COMBINED CONTAINING AN AREA OF 434,661 SQUARE FEET (9.978 ACRES, MORE OR LESS).

GROSS AREA 137,084,509 SQUARE FEET (3,147.027 ACRES, MORE OR LESS),
LESS EXCEPTION 'A' AREA OF 1,304,015 SQUARE FEET (29.936 ACRES, MORE OR LESS)
LESS EXCEPTION 'B' AREA OF 434,661 SQUARE FEET (9.978 ACRES, MORE OR LESS)
NET AREA 135,345,833 SQUARE FEET (3,107.113 ACRES MORE OR LESS).

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER
Southern Colorado Rail Park Addition No. 1

Edw. C. Levy Co. and Southern Colorado Rail Park LLC (collectively, "Grantor(s)"), whose address is 9300 Dix Avenue, Detroit, Michigan, 48120, in consideration of the benefits received pursuant to the Southern Colorado Rail Park Addition No. 1 Annexation Agreement dated _____, 2025 ("Annexation Agreement"), which is executed by Grantor(s) concurrently with this Special Warranty Deed, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, sell and convey to the City of Colorado Springs, Colorado ("Grantee"), whose address is 30 S. Nevada Avenue, Colorado Springs, CO 80903, all right, title, and interest in any and all groundwater underlying or appurtenant to and used upon the property described in Exhibit A ("Property") and any and all other water rights appurtenant to the Property collectively referred to as the "Water Rights", together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the Grantee to appropriate, withdraw and use the Water Rights; and Grantor(s) warrants title to the same against all claims arising by, through, or under said Grantor(s). The Water Rights include but are not limited to those described in Exhibit B.

Furthermore, pursuant to C.R.S. § 37-90-137(4) as now exists or may later be amended, Grantor(s), on behalf of Grantor(s) and any and all successors in title, hereby irrevocably consent in perpetuity to the appropriation, withdrawal and use by Grantee of all groundwater underlying or appurtenant to and used upon the Property.

This Special Warranty Deed and the consent granted herein shall be effective upon the date of the City of Colorado Springs-City Council's final approval of the Annexation Agreement.

Executed this _____ day of _____, 2025.

GRANTOR(s):

EDW. C. LEVY CO., a Michigan corporation

By:

Name: L. Steven Weiner

Title: Vice President

ACKNOWLEDGMENT

STATE OF_____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____day of _____, 2025, by L. Steven Weiner, as Vice President for and on behalf of Edw. C. Levy Co., a Michigan corporation.

Witness my hand and notarial seal.

My commission expires:

Notary Public

GRANTOR :

SOUTHERN COLORADO RAIL PARK LLC, a Michigan limited liability company

By: _____

Name: L. Steven Weiner

Title: Vice President
(Owner)

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____day of _____, 2025, by L. Steven Weiner, as Vice President for and on behalf of Southern Colorado Rail Park LLC, a Michigan limited liability company.

Witness my hand and notarial seal.

My commission expires:

Notary Public

GRANTOR :

SOUTHERN COLORADO RAIL PARK LLC, a Michigan limited liability company

By: _____

Name: L. Steven Weiner

Title: Vice President

(Owner)

Accepted by the City of Colorado Springs:

By: _____ this _____ day of _____, 2025
Real Estate Services Manager

By:_____ this _____ day of _____, 2025.
Colorado Springs Utilities Customer Utility Connections Manager

Approved as to Form:

By: _____ Date: _____
City Attorney's Office

Exhibit A

LEGAL DESCRIPTION

To the
Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater executed by Edw. C. Levy Co. and Southern Colorado Rail Park LLC, Grantor(s) on _____, 2025.

A PARCEL OF LAND BEING THE WEST HALF OF THE SOUTHWEST QUARTER (W1/2 OF SW 1/4) SECTION 19, THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (NW 1/4 OF NW 1/4) SECTION 30, T16S, R65W, OF THE SIXTH P.M. AND THE SOUTH HALF OF THE SOUTH HALF (S1/2 OF S1/2) SECTION 12, SECTION 13, THE EAST HALF (E 1/2) SECTION 14, THE EAST HALF (E 1/2) SECTION 23, SECTION 24, SECTION 25 AND THE EAST HALF (E 1/2) OF SECTION 26, ALL IN T16S, R66W, OF THE SIXTH P.M., EL PASO COUNTY, COLORADO, EXCEPT THOSE PARTS CONVEYED TO EL PASO COUNTY BY SPECIAL WARRANTY DEEDS RECORDED UNDER RECEPTION NOS. 219042943 AND 219042944, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE QUARTER CORNER COMMON TO SECTION 14 AND SECTION 23, T16S, R66W, SAID POINT BEING A FOUND STONE, FROM WHICH THE QUARTER CORNER COMMON TO SECTIONS 11 AND SECTION 14, T16S, R66W SAID POINT BEING A FOUND 3.25" ALUMINUM CAP STAMPED "R G OBERING, T16S R66W, S11, 1/4 COR, S14, 1999, PE & PLS 13226" ON A NO. 6 REBAR BEARS N01°30'28"W A DISTANCE OF 5,285.06 FEET, BEING THE BASIS OF ALL BEARINGS IN THIS LEGAL DESCRIPTION. (SAID LINE BEING THE NORTH-SOUTH CENTERLINE OF SAID SECTION 14.)

THE FOLLOWING FOUR (4) COURSES ARE ALONG THE EASTERLY LINES OF THE FORT CARSON MILITARY RESERVATION:

1) THENCE N01°30'28"W ALONG THE AFORESAID NORTH-SOUTH CENTERLINE OF SECTION 14, 5,285.06 FEET TO THE QUARTER CORNER COMMON TO SECTIONS 11 AND SECTION 14, T16S, R66W;
2) THENCE N88°40'09"E ALONG THE SOUTH LINE OF SAID SECTION 11 A DISTANCE OF 2,788.00 FEET TO THE SECTION CORNER COMMON TO SECTIONS 11, 12, 13, AND 14, T16S, R66W, SAID POINT BEING THE END OF PROJECT, "BOUNDARY RETRACEMENT SURVEY - FORT CARSON, EL PASO COUNTY, COLORADO" RECORDED UNDER RECEPTION NO. 212900048 OF THE RECORDS OF EL PASO COUNTY, COLORADO;
3) THENCE N00°39'18"W ALONG THE EAST LINE OF AFORESAID SECTION 11 A DISTANCE OF 1,312.70 FEET;
4) THENCE N89°11'58"E A DISTANCE OF 1,197.78 FEET TO THE WESTERLY RIGHT-OF-WAY OF CHARTER OAK RANCH ROAD AS SHOWN ON AFORESAID "BOUNDARY RETRACEMENT SURVEY";

THENCE ALONG THE WESTERLY LINES THEREOF THE FOLLOWING THREE (3) COURSES:

1) THENCE 38.00 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 160.00 FEET, A CENTRAL ANGLE OF 13°36'22", THE CHORD OF 37.91 FEET WHICH BEARS S28°08'29"W TO A POINT OF TANGENT;
2) THENCE S21°20'19"W A DISTANCE OF 355.09 FEET;

3) THENCE S68°39'41"E A DISTANCE OF 70.00 FEET TO THE SOUTHERLY LINE OF THAT PARCEL DESCRIBED BY SPECIAL WARRANTY DEED UNDER RECEPTION NO. 219042943 OF THE RECORDS OF EL PASO COUNTY, COLORADO;

THENCE ALONG THE SOUTHERLY LINES THEREOF THE FOLLOWING THREE (3) COURSES:

1) THENCE 646.18 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 540.00 FEET, A CENTRAL ANGLE OF 68°33'42", THE CHORD OF 608.31 FEET WHICH BEARS N55°37'10"E TO A POINT OF TANGENT;
2) THENCE N89°54'02"E A DISTANCE OF 356.58 FEET;
3) THENCE N88°26'46"E A DISTANCE OF 623.16 FEET TO THE SOUTHWEST CORNER OF THAT PARCEL DESCRIBED BY SPECIAL WARRANTY DEED UNDER RECEPTION NO. 219042944 OF THE RECORDS OF EL PASO COUNTY, COLORADO;

THENCE ALONG THE SOUTHERLY LINES THEREOF THE FOLLOWING SIX (6) COURSES:

1) THENCE CONTINUING N88°26'46"E A DISTANCE OF 224.24 FEET;
2) THENCE N89°38'21"E A DISTANCE OF 293.10 FEET;
3) THENCE N89°04'51"E A DISTANCE OF 753.88 FEET;
4) THENCE N86°07'34"E A DISTANCE OF 381.70 FEET;
5) THENCE N86°06'37"E A DISTANCE OF 476.16 FEET;
6) THENCE N86°06'40"E A DISTANCE OF 471.02 FEET TO THE WESTERLY LINE OF LOT 1 BLOCK 1 "VALLEY VIEW SUBDIVISION" AS RECORDED IN PLAT BOOK O-3 AT PAGE 57 IN THE RECORDS OF EL PASO COUNTY, COLORADO;

THENCE ALONG SAID WESTERLY LINE THE FOLLOWING FIVE (5) COURSES:

1) THENCE S00°57'56"E A DISTANCE OF 25.58 FEET TO THE SOUTH SIXTEENTH CORNER COMMON TO SECTION 7 T16S, R65W AND SECTION 12, T16S, R66W;
2) THENCE CONTINUING S00°57'56"E A DISTANCE OF 1,329.72 FEET TO THE SECTION CORNER COMMON TO SECTIONS 7 AND 18, T16S, R65W AND SECTIONS 12 AND 13, T16S, R66W;
3) THENCE S00°59'15"E A DISTANCE OF 2,639.23 FEET TO THE QUARTER CORNER (1/4 COR) COMMON TO SECTION 18, T16S, R65W AND SECTION 13, T16S, R66W;
4) THENCE S00°59'25"E A DISTANCE OF 2,639.15 FEET TO THE SECTION CORNER COMMON TO SECTIONS 18 AND 19, T16S, R65W AND SECTIONS 13 AND 24, T16S, R66W;
5) THENCE S00°46'56"E A DISTANCE OF 2,617.07 FEET TO THE QUARTER CORNER (1/4 COR) COMMON TO SECTION 24, T16S, R66W AND SECTION 19, T16S, R65W AND THE SOUTHWEST CORNER OF SAID LOT 1 BLOCK 1 "VALLEY VIEW SUBDIVISION";

THENCE N89°21'33"E ALONG THE SOUTH LINE THEREOF, SAID LINE BEING A PORTION OF EAST-WEST CENTERLINE OF SAID SECTION 19, T16S, R65W 1,171.75 FEET TO THE WEST SIXTEENTH CORNER OF SAID SECTION 19;
THENCE S00°51'32"E A DISTANCE OF 2,637.30 FEET TO THE WEST SIXTEENTH CORNER COMMON TO SAID SECTION 19 AND SECTION 30, T16S, R65W;
THENCE S00°20'16"E A DISTANCE OF 1,320.03 FEET TO THE NORTHWEST SIXTEENTH CORNER OF SAID SECTION 30;
THENCE S89°13'59"W A DISTANCE OF 1,155.32 FEET TO THE NORTH SIXTEENTH CORNER OF THE SECTION LINE COMMON TO SECTION 30, T16S, R65W AND SECTION 25, T16S, R66W;
THENCE S01°04'10"E ALONG SAID SECTION LINE 1,326.55 FEET TO THE QUARTER CORNER COMMON TO SAID SECTIONS;
THENCE S00°39'21"E ALONG SAID SECTION LINE 2,640.17 FEET TO THE SECTION CORNER COMMON TO SECTIONS 30 AND 31, T16S, R65W AND SECTIONS 25 AND 36, T16S, R66W, SAID POINT LYING ON THE AFORESAID EASTERLY LINES OF THE FORT CARSON MILITARY RESERVATION

THENCE ALONG SAID EASTERLY LINES THE FOLLOWING FOUR (4) COURSES:

1) THENCE S89°36'51"W ALONG THE SECTION LINE BETWEEN SAID SECTIONS 25 AND 36 A DISTANCE OF 5,275.28 FEET TO THE SECTION CORNER COMMON TO SECTIONS 25, 26, 35 AND 36, T16S, R66W;
2) THENCE S89°07'11"W ALONG THE SECTION LINE COMMON TO SECTIONS 26 AND 35, A DISTANCE OF 2,637.64 FEET TO THE QUARTER CORNER COMMON TO SAID SECTIONS 26 AND 35;
3) THENCE N01°34'52"W ALONG THE NORTH SOUTH CENTERLINE OF SAID SECTION 26, 5,263.81 FEET TO THE QUARTER CORNER COMMON TO SECTIONS 23 AND 26, T16S, R66W;
4) THENCE N00°25'00"W ALONG THE NORTH SOUTH CENTERLINE OF SAID SECTION 23, 5,230.86 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS A GROSS AREA OF 137,084,509 SQUARE FEET (3,147.027 ACRES, MORE OR LESS).

EXCEPTING THEREFROM THE FOLLOWING TWO (2) EXCEPTIONS:

EXCEPTION 'A':

THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW 1/4 SW 1/4 SW 1/4) AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SE 1/4 SW 1/4 SW 1/4) OF SECTION 13 AS DESCRIBED IN QUITCLAIM DEED RECORDED UNDER RECEPTION NO. 209137369;
AND
THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (S 1/2 NE 1/4 SW 1/4 SW 1/4) OF SAID SECTION 13 AS DESCRIBED IN WARRANTY DEED RECORDED IN BOOK 5826 AT PAGE 208, EXCEPTING THEREFROM THE EASTERLY 30 FEET OF THAT 60 FEET WIDE INGESS/EGRESS EASEMENT DESCRIBED IN DESIGNATION OF RIGHTS OF WAY RECORDED IN BOOK 2395 AT PAGE 377;
AND
THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (N 1/2 NE 1/4 SW 1/4 SW 1/4) OF SAID SECTION 13 DESCRIBED AS "PARCEL B" IN WARRANTY DEED UNDER RECORDED RECEPTION NO. 210059631, EXCEPTING THEREFROM THE EASTERLY 30 FEET OF THAT 60 FEET WIDE INGESS/EGRESS EASEMENT DESCRIBED IN DESIGNATION OF RIGHTS OF WAY RECORDED IN BOOK 2395 AT PAGE 377;
ALL DOCUMENTS FOUND IN THE RECORDS OF EL PASO COUNTY, COLORADO, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SECTION CORNER COMMON TO SECTIONS 13, 14, 23, AND 24, SAID CORNER BEING MONUMENTED WITH A 3.25" ALUMINUM CAP WITHOUT STAMPS;
THENCE N00°30'22"W ALONG THE SECTION LINE COMMON TO SAID SECTIONS 13 AND 14, 659.62 FEET TO A BENT NO. 5 REBAR WITHOUT CAP;
THENCE N88°38'46"E A DISTANCE OF 658.63 FEET TO THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13;
THENCE N00°30'34"W ALONG THE WEST LINE THEREOF, 659.83 FEET TO THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13;
THENCE N88°33'19"E ALONG THE NORTH LINE THEREOF, 658.50 FEET TO A NO. 3 REBAR WITH RED PLASTIC CAP STAMPED "LS 1593";
THENCE S00°31'35"E A DISTANCE OF 1,320.88 FEET TO A NO. 3 REBAR WITH RED PLASTIC CAP STAMPED "LS 1593";
THENCE S88°39'48"W A DISTANCE OF 1,317.54 FEET TO THE POINT OF BEGINNING.

SAID PARCELS CONTAINING A COMBINED AREA OF 1,304,015 SQUARE FEET (29.936 ACRES, MORE OR LESS).

EXCEPTION 'B':

A PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, T16S, R66W AS DESCRIBED IN WARRANTY DEED RECORDED UNDER RECEPTION NO. 219082791, EXCEPTING THEREFROM THE EASTERLY 30 FEET OF THAT 60 FEET WIDE INGESS/EGRESS EASEMENT DESCRIBED IN DESIGNATION OF RIGHTS OF WAY RECORDED IN BOOK 2395 AT PAGE 377;
AND
A PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, T16S, R66W AS DESCRIBED AS "PARCEL A" IN WARRANTY DEED RECORDED UNDER RECEPTION NO. 210059631, EXCEPTING THEREFROM THE EASTERLY 30 FEET OF THAT 60 FEET WIDE INGESS/EGRESS EASEMENT DESCRIBED IN DESIGNATION OF RIGHTS OF WAY RECORDED IN BOOK 2395 AT PAGE 377;
ALL DOCUMENTS FOUND IN THE RECORDS OF EL PASO COUNTY, COLORADO, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE QUARTER CORNER COMMON TO SECTIONS 13 AND 14, SAID QUARTER CORNER BEING MONUMENTED BY A BENT NO. 5 REBAR WITHOUT CAP;
THENCE N88°39'52"E A DISTANCE OF 658.34 FEET TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13, AND THE POINT OF BEGINNING;

THENCE N88°40'01"E ALONG THE NORTH LINE THEREOF, 661.09 FEET TO THE NORTHEAST CORNER OF AFORESAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13;
THENCE S00°05'37"E ALONG THE EAST LINE THEREOF, 328.97 FEET TO A NO. 3 REBAR WITHOUT CAP;
THENCE S00°24'52"E A DISTANCE OF 330.21 FEET TO A NO. 3 REBAR WITHOUT CAP, BEING THE SOUTHEAST CORNER OF AFORESAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13;
THENCE S88°36'23"W ALONG THE SOUTH LINE THEREOF, 658.17 FEET TO THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 13;
THENCE N00°30'34"W ALONG THE WEST LINE THEREOF, 659.83 FEET TO THE POINT OF BEGINNING.

SAID PROPERTIES COMBINED CONTAINING AN AREA OF 434,661 SQUARE FEET (9.978 ACRES, MORE OR LESS).

GROSS AREA 137,084,509 SQUARE FEET (3,147.027 ACRES, MORE OR LESS),
LESS EXCEPTION 'A' AREA OF 1,304,015 SQUARE FEET (29.936 ACRES, MORE OR LESS)
LESS EXCEPTION 'B' AREA OF 434,661 SQUARE FEET (9.978 ACRES, MORE OR LESS)
NET AREA 135,345,833 SQUARE FEET (3,107.113 ACRES MORE OR LESS).

PREPARED BY:

VERNON P. TAYLOR, COLORADO P.L.S. NO. 25966 DATE
FOR AND ON BEHALF OF M&S CIVIL CONSULTANTS, INC

Exhibit B

To the
Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater executed (Owner s), Grantor(s) on _____.

Decreed Groundwater Rights : N/A
Case No.
Court:
Source:
Amount:
Date of Decree:
Name of Owner :

Permitted Groundwater : N/A
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 :

EXHIBIT C

WATER SERVICE AGREEMENT

To Annexation Agreement
(Water Service Agreement)

WATER SERVICE AGREEMENT

THIS WATER SERVICE AGREEMENT ("Agreement") is made and entered on the dates set forth below by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home-rule city and municipal corporation, hereinafter called "UTILITIES," and Edw. C. Levy Co, 2635 Delta Drive, Colorado Springs, CO 80910, hereinafter called "Owner."

RECITALS

A. The Owner owns all the real property located in El Paso County, Colorado, identified and described on the legal description attached as Exhibit A ("Property").

B. UTILITIES owns certain water wells located on Clear Spring Ranch ("Clear Spring Ranch Wells") that are decreed for industrial use whose pumping is augmented by reusable sewered return flows released from the Las Vegas Water Reclamation Facility and/or non-sewered return flows as permitted in Division 2, Water Court, Case Nos. W-4376 and 1989CW36.

C. UTILITIES and Owner, doing business as Schmidt Construction (Schmidt), entered into a Surplus Water Lease Agreement, hereinafter called the "Surplus Lease," under which UTILITIES leases up to 250 acre-feet per year of untreated groundwater from the Clear Spring Ranch Wells ("Clear Spring Well Water") to Owner for use in Schmidt's aggregate mining operation located on the Property if and when such supply is available. The Surplus Lease currently expires on August 31, 2025.

D. Owner is annexing the Property into the City of Colorado Springs, pursuant to the terms of Southern Colorado Rail Park Addition No. 1 Annexation Agreement dated 2025 and recorded in the property records of El Paso County at reception no. xxxxxxxx ("Annexation Agreement").

E. Upon annexation of the Property, Owner has the desire to continue using 250 acre-feet per year of Clear Spring Well Water for use on the portion of the Property Schmidt's aggregate mining operation is located for various non-potable uses such as dust suppression, washing of gravel, and other non-potable uses associated with aggregate mining ("Owner's Uses") until: (1) fifteen (15) years from the Effective Date; or (2) the Property is disconnected from the City of Colorado Springs, whichever comes first.

F. The water rights for the Clear Spring Ranch Wells are currently decreed for municipal, industrial and domestic purposes in conjunction with the operation of UTILITIES' R.D. Nixon Power Generating Plant located on Clear Spring Ranch.

G. In order for Owner to use Clear Spring Well Water as described herein, the Parties must request and obtain approval of a substitute water supply plans ("SWSPs") from the Colorado State Engineer's Office pursuant to C.R.S 37-92-308(4) and a change of water rights and/or

augmentation plan from the Division 2 Water Court ("Augmentation Plan") that allows the Clear Spring Well Water to be used for the Owner's Uses.

H. UTILITIES desires to allow Owner to utilize water from the Clear Spring Ranch Wells after annexation of the Property for use in its aggregate mining operation on an annual basis, according to the terms and conditions herein.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE FOREGOING REPRESENTATIONS, IT IS AGREED AS FOLLOWS:

1. **Effective Date**: This Agreement shall become effective upon the date that the Southern Colorado Rail Park Addition No. 1 Annexation becomes effective pursuant to the terms of Section II of the Annexation Agreement.

2. **Termination of Agreement:** This Agreement shall automatically terminate upon the occurrence of: (1) fifteen (15) years from the Effective Date; or (2) the Property is disconnected from the City of Colorado Springs, whichever comes first. This agreement shall also automatically terminate if UTILITIES does not obtain any required approvals of the annual SWSPs from the State Engineer's Office or UTILITIES cannot obtain any required Water Court Approved change of water rights and/or augmentation ("Augmentation Plan") plan described in paragraph 4 below. Upon such termination, Owner shall no longer be entitled to use Clear Spring Well Water without entering into a new agreement with UTILITIES. At least six months prior to the end of the 15-year period described above or when Owner intends to disconnect the Property from the City, UTILITIES and Owner will initiate discussions regarding entering into a subsequent agreement that allows Owner to continue using Clear Spring Well Water for use in Schmidt's aggregate mining operations on the Property.

3. **Termination of Surplus Lease:** The Parties agree that the Surplus Lease shall terminate automatically on the Effective Date.

4. **Substitute Water Supply Plan/Augmentation Plan:** UTILITIES will be solely responsible for obtaining any required SWSPs and Augmentation Plan that allows the Clear Spring Well Water to be used for aggregate mining purposes on the Property. UTILITIES agrees to file an application for the Augmentation Plan and the required SWSPs unless the State Engineer's Office determines that a SWSP(s) or Augmentation Plan is not necessary for Owner's use of Clear Springs Well Water. Owner shall assist UTILITIES with obtaining the Augmentation Plan and SWSPs, including providing UTILITIES with any necessary information for it to obtain a SWSP(s) or Augmentation Plan, as requested by UTILITIES at Owners expense. Such assistance includes Owner hiring a water resources engineer, approved by UTILITIES, to assist UTILITIES in preparing the engineering necessary to support the claims made in the SWSPs and Augmentation Plan, in coordination with UTILITIES' Water Resources staff and the Colorado Springs City Attorney's Office.

Owner shall reimburse UTILITIES for the costs it incurs in obtaining approval of SWSPs and the Augmentation Plan including but not limited to, UTILITIES' legal and engineering fees. Such costs include but are not limited to any costs UTILITIES incurs in hiring outside engineers and/or attorneys to assist with obtaining approval of the SWSPs and Augmentation Plan.

UTILITIES shall have no obligation to make Clear Spring Well Water available to Owner if

the State Engineer's Office does not approve a SWSP request or UTILITIES is unable to obtain an Augmentation Plan for Owner's use of Clear Spring Well Water.

5. **Clear Spring Well Water Deliveries**: Upon approval of an annual SWSP described in paragraph 4,a determination by the State Engineer's Office that a SWSP is not required, or the Water Court approves an Augmentation Plan for Owner's use of the Clear Springs Well Water, UTILITIES agrees to provide up to 250 acre-feet of Clear Spring Well Water to Owner annually solely for uses associated with Schmidt's aggregate mining operations each year this Agreement is in effect. UTILITIES agrees to supply Clear Spring Well Water at a maximum sustained delivery rate of 200 gallons per minute from the Clear Spring Ranch Wells to Schmidt's aggregate mining operation. The maximum annual delivery of Clear Spring Well Water to Owner shall not exceed 250 acre-feet in any calendar year. Deliveries of Clear Spring Well Water will be made at the meter on the existing pipeline that runs from the Zero Discharge softening plant to the Property ("Meter").

6. **Provision of Augmentation Water.** During the term of this Agreement and any renewals thereof, UTILITIES agrees to release up to 250 acre feet annually of water decreed for augmentation use that is necessary to replace out of priority depletions from the use of the Clear Springs Wells by Owner ("Augmentation Water") under an SWSP or Augmentation Plan in accordance with the terms of this Agreement. The amount and timing of the releases of Augmentation Water for the benefit of Owner shall be based on the amount of Clear Spring Well Water delivered to Owner at the Meter.

7. **Measurement of Depletions.**

a. Owner shall read the Meter and report accurate readings of deliveries through the Meter to UTILITIES on a daily basis, unless otherwise determined by Utilities in accordance with the requirements of the SWSPs or Augmentation Plan. Such readings shall be provided to UTILITIES by email at the following address: water_accounting@csu.org

b. In lieu of the requirement to provide daily readings of depletions by email as required by paragraph 7.a above, Owner may, with UTILITIES' prior consent, design, install and utilize telemetry or similar technology that electronically reports the required information to UTILITIES ("Automated Reporting Devices").

c. Owner acknowledges that failure to provide the information required under paragraph 7.a or 7.b above, will result in UTILITIES not being able to accurately determine the amount of Augmentation Water that needs to be released to replace depletions from the Clear Springs Wells, which could lead to enforcement by the State Engineer and/or Division Engineer, including but not limited to a requirement that Clear Springs Well Water no longer be put to Owner's Uses.

8. **Augmentation Infrastructure.**

a. Owner shall design, construct, and install all infrastructure UTILITIES determines, in its sole discretion, is necessary for provision of augmentation service hereunder including but not limited to meter(s) and the Automated Recording Devices described in

paragraphs 5.a and 5.b above ("Improvements"). The Improvements shall be agreed upon by the Parties in advance and shall be designed, installed, constructed, inspected, operated, and maintained in accordance with this Agreement and any applicable UTILITIES' policies. The Improvements shall be located on property owned by Owner or in rights-of-way or easements dedicated to Owner. Owner shall, at its own cost and subject to UTILITIES' approval, locate, design, and construct the Improvements in such a manner and of such material that the Improvements will not at any time be a source of danger to or interference with any of UTILITIES' structures, facilities, or operations. UTILITIES shall have the right to perform its own inspection of the Improvements design and all completed Improvements as well as operation of the Clear Springs Wells to ensure compliance with this Agreement.

b. Owner shall continue to own the Improvements and shall be responsible for the operation, maintenance and repair of all such Improvements, including any repair or maintenance that is requested by UTILITIES.

c. Owner shall keep the Improvements maintained and in good repair so that they continue to properly serve the purposes for which they were originally intended. All repair or maintenance of the Improvements shall be completed in a timely manner and in accordance with this Agreement.

d. Owner agrees to provide UTILITIES with a continuously complete record of all Improvements.

e. Owner hereby grants UTILITIES' ingress and egress over and through Owner's property to all Improvements so that UTILITIES may perform its other duties under this Agreement. Prior to installation of Improvements, Owner shall provide UTILITIES with an easement or plat requirement providing for such ingress and egress in a form approved by UTILITIES.

9. Well Operation and Maintenance Costs: UTILITIES will be responsible for the cost of pumping the Clear Spring Ranch Wells and any other power costs associated with this Agreement, including well-field pumping, as part of the Nixon Plant's overall station use. UTILITIES and Owner agree to split equally any and all maintenance costs of the pipeline, pump, motor, and any other appurtenances associated with the pipeline/pump station necessary for deliveries of Clear Spring Well Water to Owner from the Clear Spring Ranch Wells. UTILITIES will maintain and provide Clear Spring Well Water through the existing infrastructure; any modifications or additional infrastructure that the parties deem necessary for Clear Spring Well Water delivery to Schmidt's aggregate mining operation will be the sole responsibility of Owner.

10. Use of Water: Clear Spring Well Water delivered hereunder will only be used to supply Owner with non-potable water for Schmidt's aggregate mining operation, including dust control and construction activities on or in the vicinity of the quarry and no other purpose in accordance with the terms and conditions of the SWSP approved by the State Engineer's Office. Owner agrees and understands that the Clear Spring Well Water is non-potable and must not be used for human consumption or sanitary purposes. Owner further agrees that it will be solely responsible to comply with all applicable regulatory requirements associated with storing and using non-potable Clear Spring Well Water in its operations. In no event shall Clear Spring Well Water be used to support development or any other potable use. UTILITIES retains the legal ownership of and the right to use,

reuse, and successively use the Augmentation Water.

11. **Requests for and Delivery of Clear Spring Well Water**: Owner shall be responsible to request and arrange for the delivery of the Clear Spring Well Water, including pumping schedules and initial flow rates for delivery of Clear Spring Well Water with UTILITIES' Zero Discharge Plant control room personnel. UTILITIES agrees to use its best efforts to perform on the request provided, however, UTILITIES shall not be liable for non-performance for any reason. Once deliveries of Clear Spring Well Water have commenced, UTILITIES agrees to make flow rate adjustments once per day during normal operating hours. Normal operating hours are Monday through Friday from 6:00 am until 2:30 pm. Owner will be responsible for notifying UTILITIES' Zero Discharge Plant control room personnel at least one hour before any such flow adjustment is required. The contact information for the control room is as follows: **(719) 668-8990.**

12. **Water Rights Unaffected**: No water rights are being transferred to or from UTILITIES or Owner under this Agreement. UTILITIES retains dominion and control and all rights to return flows generated from the Clear Spring Well Water delivered to Owner.

13. **Service Rate, Billing, and Payment**: Owner agrees to pay UTILITIES for Clear Spring Well Water/Augmentation Water provided pursuant to this Agreement at the non-potable rate as defined in UTILITIES' Tariffs in place at the time of the deliveries. UTILITIES will read the water meter on a monthly basis to determine the amount of water provided during the previous month and invoice Owner monthly in arears with payment due within thirty (30) days of the date of billing. Invoices shall be sent by first class mail to Owner at the property contact address on file in the El Paso County, Colorado Assessor's records. records.

14. **Metering**: All Clear Spring Well Water delivered under this Agreement shall be measured at the Meter. If at any time, either UTILITIES or Owner questions the accuracy of the meter, either party may cause such meter to be tested for accuracy and recalibrated if necessary, at such party's expense. In the event a meter shall be tested, the party testing the meter shall provide the other party with three (3) days' notice of such testing. If the parties cannot agree that the meter is measuring accurately, they shall choose an independent third party qualified to test the accuracy of such meters, whose decision regarding accuracy shall be binding on both parties. The expenses associated with use of the third-party tester shall be split evenly between both parties. In the event that the meter is found to be in error, no adjustments will be made to previous bills issued by UTILITIES.

15. **Water Quality**: Clear Spring Well Water is currently of the quality that is acceptable for use in Owner's aggregate mining operations. In the future, if Owner demonstrates that the water supplied under this Agreement has declined in quality to the point that it can no longer be used by Owner in its aggregate mining operations, then Owner has the right to terminate this Agreement upon thirty (30) days' notice to UTILITIES.

16. **No Assignment Without Consent; No Third-Party Beneficiary**: There shall be no assignment of the rights or obligations contained in this Agreement by either party without the prior written consent by the other party, and any such assignment shall be null and void. Notwithstanding anything herein to the contrary, upon written notice to Owner,

UTILITIES may assign this Agreement without consent to the City of Colorado Springs, Colorado. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than UTILITIES and Owner.

17. **Legal Notice**: Notices under this Agreement, other than Owner's requests for water and UTILITIES' responses to such requests, shall be given in writing, signed by an authorized representative of the party giving notice. Telephonic or email notice is not acceptable. Notices shall be delivered by facsimile, by courier service delivery (such as Federal Express), or by first-class mail to the people specified below at the following addresses and telephone numbers:

a. For UTILITIES:

Courier Service Address:
Colorado Springs Utilities
ATTN: Water Resources Management
1525 S. Hancock Expressway
Colorado Springs, CO 80903

United States Postal Service Address:
Colorado Springs Utilities
ATTN: Manager
Water Resources Management
P.O. Box 1107, MC 1825
Colorado Springs, CO 80947-0950

City Attorney's Office – Utilities Division
City Attorney's Office
ATTN: Utilities Division
30 South Nevada Ave., Suite 501
P.O. Box 1575, Mail Code 510
Colorado Springs, CO 80901-1575

b. For Owner

General Manager, Schmidt Construction
2635 Delta Drive
Colorado Springs, CO 80910

L. Steven Weiner
Vice President
Edw. C. Levy CO., a Michigan corporation
8800 Dix Avenue
Detroit, MI 48209

Steven K. Mulliken
Mulliken Weiner Berg & Jolivet P.C.
102 South Tejon Street, Suite 900
Colorado Springs, CO 80903

18. **Approvals.** Owner is responsible for obtaining all approvals of the State Engineer or

Division 2 Engineer, as well as all other approvals required for the delivery and use of Clear Spring Well Water.

19. **Suspension of Service.** Owner acknowledges and consents to UTILITIES' right to temporarily suspend deliveries of Clear Spring Well Water under this Agreement due to a significant interruption of UTILITIES other water supplies, a substantial disruption (including, but not limited to, legal challenges impacting UTILITIES' water system, and maintenance and repair to the infrastructure) to UTILITIES' water system, or as otherwise authorized by the City Code of Colorado Springs. UTILITIES will make reasonable efforts to notify Owner of circumstances that could result in such suspension. Owner further acknowledges and consents to UTILITIES' right to suspend deliveries of Clear Spring Well Water under this Agreement if Owner violates the terms and conditions of the approved SWSP or change of water rights/augmentation plan or the SWSP is revoked by the State Engineer's Office for any reason.

20. **Governing Law, Jurisdictional and Venue**: This Agreement shall be construed in accordance with the laws of the State of Colorado (except for its conflict of law provisions), as well as the Colorado Springs City Charter and the City Code. The place of performance and transaction of business shall be deemed to be in the County of El Paso, State of Colorado. In the event of litigation, the exclusive venue and place of jurisdiction shall be the State of Colorado and, more specifically, El Paso County, Colorado and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

21. **Force Majeure**: Neither party shall be liable for delays in performing its obligations to the extent the delay is caused by unforeseeable conditions beyond its reasonable control without fault or negligence including strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, or labor disturbance.

22. **Appropriation of Funds**: In accord with the Colorado Springs City Charter, performance of UTILITIES' obligations under this Agreement is expressly subject to appropriation of funds by the City Council. In the event funds are not appropriated in whole or in part sufficient for performance of UTILITIES' obligations under this Agreement, or appropriated funds may not be expended due to the City Charter spending limitations, then this Agreement will thereafter become null and void by operation of law, and UTILITIES will thereafter have no liability for compensation or damages to Owner in excess of UTILITIES' authorized appropriation for this Agreement or the applicable spending limit, whichever is less. UTILITIES will notify Owner as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.

23. **Entire Agreement; Modifications to be in Writing**: This Agreement, including any and all appendices and exhibits attached hereto, contains the entire understanding between the parties. No modification, amendment, notation, or other alteration to this Agreement shall be valid or of any force in effect unless mutually agreed to by the parties in writing as an addendum to this Agreement. At the time of the execution of this Agreement, there are no other terms, conditions, requirements, or obligations affecting this Agreement which are not specifically set forth therein. Email and all other electronic (including voice) communications from UTILITIES, except as otherwise specifically provided herein, in connection with this Agreement, are for informational purposes only. No such communication is intended by UTILITIES to constitute either an electronic record or an

electronic signature or to constitute any agreement by UTILITIES to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

24. **No Precedent; Severability**: The parties agree that neither of them intends that this Agreement shall in any way constitute a precedent or standard for any future agreement between the parties, nor vest any rights in either party or any third party for novation, renewal, modification, or addition of any other rights or services on account of this Agreement's existence, as it is based solely on unique conditions currently existing at the time of execution and at the time of UTILITIES' annual determination that the Agreement can continue after expiration of the current term. Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be binding upon the parties who agree that this Agreement shall be reformed to replace such stricken provision with a new provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

COLORADO SPRINGS UTILITIES	OWNER
By:	By:
Date:	Date:
APPROVED AS TO FORM:	
City Attorney's Office – Utilities Division	